European Social Charter | Charte sociale européenne

March 2021

EUROPEAN SOCIAL CHARTER

European Committee of Social Rights

Conclusions 2020

NORTH MACEDONIA

This text may be subject to editorial revision.

The function of the European Committee of Social Rights is to rule on the conformity of the situation in States with the European Social Charter. In respect of national reports, it adopts conclusions; in respect of collective complaints, it adopts decisions.

Information on the Charter, statements of interpretation, and general questions from the Committee, is contained in the General Introduction to all Conclusions.

The following chapter concerns North Macedonia, which ratified the Revised European Social Charter on 6 January 2012. The deadline for submitting the 7th report was 31 December 2019 and North Macedonia submitted it on 17 April 2020.

The Committee recalls that North Macedonia was asked to reply to the specific targeted questions posed under various provisions (questions included in the appendix to the letter of 27 May 2019, whereby the Committee requested a report on the implementation of the Charter). The Committee therefore focused specifically on these aspects. It also assessed the replies to all findings of non-conformity or deferral in its previous conclusions (Conclusions 2016).

In addition, the Committee recalls that no targeted questions were asked under certain provisions. If the previous conclusion (Conclusions 2016) found the situation to be in conformity, there was no examination of the situation in 2020.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report concerned the following provisions of the thematic group I "Employment, training and equal opportunities":

- the right to work (Article 1);
- the right to vocational guidance (Article 9);
- the right to vocational training (Article 10);
- the right of persons with disabilities to independence, social integration and participation in the life of the community (Article 15);
- the right to engage in a gainful occupation in the territory of other States Parties (Article 18);
- the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex (Article 20);
- the right to protection in cases of termination of employment (Article 24);
- the right of workers to the protection of their claims in the event of the insolvency of their employer (Article 25).

North Macedonia has accepted all provisions from the above-mentioned group except Articles 9, 10, 15§3, 18 and 25.

The reference period was from 1 January 2015 to 31 December 2018.

The conclusions relating to North Macedonia concern 8 situations and are as follows:

– 1 conclusion of conformity: Article 24.

– 4 conclusions of non-conformity: Articles 1§1, 1§2, 15§2 and 20.

In respect of the other 3 situations related to Articles 1§3, 1§4 and 15§1, the Committee needs further information in order to examine the situation.

The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by North Macedonia under the Revised Charter.

The next report from North Macedonia will deal with the following provisions of the thematic group II "Health, social security and social protection":

- the right to safe and healthy working conditions (Article 3),
- the right to protection of health (Article 11),
- the right to social security (Article 12),
- the right to social and medical assistance (Article 13),

- the right to benefit from social welfare services (Article 14),
- the right of elderly persons to social protection (Article 23),
- the right to protection against poverty and social exclusion (Article 30).

The deadline for submitting that report was 31 December 2020.

Conclusions and reports are available at www.coe.int/socialcharter.

Article 1 - Right to work

Paragraph 1 - Policy of full employment

The Committee takes note of the information contained in the report submitted by North Macedonia.

The Committee recalls that in 2016, it concluded that the situation in North Macedonia was not in conformity with Article 1§1 of the Charter on the ground that the employment policy efforts had not been adequate in combatting unemployment and promoting job creation (Conclusions 2016).

Employment situation

According to Eurostat, the GDP growth rate dropped from 3.9% in 2015 to 2.8% in 2016 and to 1.1% in 2017, before rising again to 2.7% in 2018.

The overall employment rate (persons aged 15 to 64 years) increased from 47.8% in 2015 to 51.7% in 2018.

The employment rate for men increased from 56.6% in 2015 to 61.4% in 2018, and the rate for women from 38.8% in 2015 to 41.7% in 2018. The employment rate for older workers (55 to 64-year-olds) increased from 40.1% in 2015 to 42.7% in 2018. Youth employment (15 to 24-year-olds) remained at almost exactly the same level: 17.3% in 2015 and 17.4% in 2018.

The overall unemployment rate (persons aged 15 to 64 years) fell from 26.3% in 2015 to 21% in 2018.

The unemployment rate for men dropped from 27% in 2015 to 21.5% in 2018, while for women it fell from 25.3% in 2015 to 20.1% in 2018. Youth unemployment (15 to 24-year-olds) decreased from 47.3% in 2015 to 45.4% in 2018. Long-term unemployment (12 months or more as a percentage of overall unemployment for persons aged 15 to 64 years) fell from 81.6% in 2015 to 74.6% in 2018.

The proportion of 15 to 24-year-olds "outside the system" (not in employment, education or training, i.e. NEET) fell slightly, from 24.7% in 2015 to 24.1% in 2018 (as a percentage of the 15 to 24-year-old age group).

The Committee notes that in spite of favourable developments in the labour market during the reference period (an increase in the employment rate and falling unemployment), the situation remained concerning, with low employment and extremely high unemployment rates. Furthermore, there is still a very wide gap between male and female employment rates (nearly 20 percentage points in 2018).

Employment policy

In its report, the Government states that during the reference period, employment policy was governed by a number of governmental strategy documents, including the National Employment Strategy 2020, the National Employment Action Plan, the Youth Employment Action Plan and the annual Operational Plans for active employment programmes and measures.

The Government also states that changes have been made to legislation with the aim of promoting employment. For example, in 2015, temporary exemption from compulsory social security contributions and/or income tax was introduced to encourage employers to hire unemployed persons from vulnerable groups (those aged under 35 who have never been employed, etc.).

The Committee takes note of the various services the Employment Agency provides to jobseekers and employers (including information, advice, support for actively finding work and vocational guidance). To better support people at a disadvantage in the labour market, "Individual Employment Plans" were introduced in 2017; they are to be drawn up for all jobseekers registering with the Agency.

The Committee also takes note that the active employment programmes and measures provided for in the annual operational plans and implemented during the reference period were aimed, on the one hand, at ensuring direct employment (e.g. through support for entrepreneurship and subsidised employment) and, on the other hand, at increasing the employability of jobseekers (e.g. through training and internships). However, the report does not provide any information about these programmes and measures, with the exception of those aimed at young people (see below). The Committee requests that the next report provide information on the active employment programmes and measures implemented (type of programme or measure, content and number of participants by year).

As far as young people are concerned, the Committee notes that an online tool was developed in 2017 with the support of the International Labour Organisation (ILO) to provide them with easily accessible and quality information about jobs and to support career guidance based on labour market needs and requirements. In addition, from 2017 onwards, young people (aged 15 to 29 years) must account for at least 30% of the participants of all active employment programmes and measures implemented under the annual operational plans; monitoring of this target shows that the proportion of young people participating increased from 36.2% in 2017 to 65% in 2018. Furthermore, the Youth Guarantee (aimed at young people aged 15 to 29 years) was launched in 2018 in North Macedonia, making it the first non-EU member to introduce this programme. A pilot project ran in three municipalities (Skopje, Gostivar and Strumica); at the end of 2018, it included 5,266 young people, of whom 41.7% were active (i.e. 1,916 were employed and 281 were involved in active employment measures aimed at increasing their chances of finding a job). Based on the pilot's results, it was decided to roll out the Youth Guarantee nationwide in 2019 [outside the reference period], with an estimated 14,000 participants per year. The Committee requests that the next report provide information on the implementation of the Youth Guarantee.

The Committee also requests that the next report provide information on the labour market measures specifically implemented to support women, older workers and the long-term unemployed, as well as members of the Roma minority, migrants and refugees.

According to the report, the number of participants in active employment programmes and measures increased from 5,817 in 2015 to 6,387 in 2018 (i.e. from 5.1% to 6.7% of registered unemployed persons as of 31 December). According to the revised 2022 Governmental Employment and Social Reform Programme (ESRP(r), December 2019), public expenditure on active labour market measures (including services) also rose, from 0.11% in 2015 to 0.16% in 2017 (as a percentage of GDP). The Committee considers that, despite these increases, the figures (for participants and public expenditure) remained low, particularly in the light of extremely high unemployment. Moreover, the continuing low employment and high unemployment rates show that the impact of active labour market policies remains limited.

Lastly, the Committee takes note of the information provided by the Government on the monitoring of active labour market programmes and measures and the evaluation of their effectiveness, including on the results of the impact study carried out with the support of the ILO.

In view of the incomplete information concerning the active employment programmes and measures implemented, and noting that despite an improvement in the main unemployment figures, unemployment remained extremely high during the reference period, the Committee considers that the efforts made were not sufficient to meet the requirements of Article 1§1 of the Charter.

Conclusion

The Committee concludes that the situation in North Macedonia is not in conformity with Article 1§1 of the Charter on the ground that employment policy efforts have not been adequate in combatting unemployment and promoting job creation.

Article 1 - Right to work

Paragraph 2 - Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)

The Committee takes note of the information contained in the report submitted by North Macedonia.

1. Prohibition of discrimination in employment

Article 1§2 of the Charter prohibits all forms of discrimination in employment. The Committee asked the State Parties to provide updated information for this reporting cycle on the legislation prohibiting all forms of discrimination in employment, in particular on grounds of gender (had Article 20 not been accepted), race, ethnic origin, sexual orientation, religion, age, political opinion, disability (had Article 15§2 not been accepted), including information on legal remedies. It furthermore asked to indicate any specific measures taken to counteract discrimination in the employment of migrants and refugees.

The Committee will therefore focus specifically on these aspects. It will also assess the replies to all findings of non-conformity or deferrals in its previous conclusion.

North Macedonia has accepted Articles 15§2 and 20 of the Charter. Therefore, it was under no obligation to report on prohibition of discrimination on grounds of disability and gender, which will be examined under the said provisions.

As regards the legislation prohibiting discrimination in general terms, the Committee examined the relevant legal framework in its previous conclusion (Conclusions 2016). It noted that the cornerstone of the anti-discrimination legislation was the Law on Prevention and Protection against Discrimination, together with the Law on Labour Relations, amended in 2010 to take account of the EU directives in the field of equality of opportunity and non-discrimination (Conclusions 2016). The report provides that the new Law on Prevention and Protection against Discrimination was adopted in 2019, which broadens the grounds for discrimination, amends and better defines the glossary and definition of discrimination, amends the Commission for Prevention and Protection against Discrimination, which will also have to work on prevention in addition to protection. Further, an *actio popularis* is introduced, as well as exemption from costs in court proceedings. The report also provides information on the measures taken to implement the legal framework, and lists strategies such as the National Equality and Non-Discrimination Strategy 2016-2020, Strategy for Roma 2014-2020, Strategy for Integration of Refugees and Foreigners 2017-2027. The Committee notes that the European network of legal experts in gender equality and non-discrimination observed that national legislation has still not been harmonised internally (European Equality Law Network) in its country report North Macedonia 2020. It asks that the next report comment on this observation.

With regard to the prohibition of discrimination on grounds of ethnic origin, the report provides that, in order to improve the Roma situation on the labour market, national action and operational plans within the Strategy for Roma in the Republic of North Macedonia 2014-2020 envisage implementation of measures to improve employment opportunities and reduce unemployment among the Roma community, including raising- awareness campaigns and information, and increase the inclusion of Roma in various active employment programmes. In 2018, the Ombudsman conducted a survey and prepared a Report on Roma Inclusion. He submitted information on the situation to the Government, following the implementation of the Roma Decade by including specific recommendations, such as the allocation of more budgetary funds for the institutions that are responsible for implementing the Roma Strategy 2014-2020 and familiarizing local self-governments with the responsibilities they have undertaken with this strategy. The Committee requests that the next report provide more comprehensive information on the observed and expected impact of the measures adopted on the prevention of discrimination of ethnic minorities in employment. It wishes, in this respect, to refer to the ILO Direct Request (CEACR) for Macedonia – adopted 2019, published

at the 109th ILC session (2020) on Discrimination (Employment and Occupation) Convention, in which it encouraged the authorities to continue its efforts to implement the various strategies and action plans mentioned above and stressed the importance of collecting sufficiently detailed data to assess the participation of Albanian, Roma and Turkish minorities in the labour market. The Committee asks that the next report include the data relevant to these minority groups.

Apart from general information on legal framework prohibiting discrimination, the report does not reply to the Committee's request for information on any specific, targeted legislation and practical measures focused specifically on discrimination on grounds of race, age, sexual orientation, political opinion or religion. The Committee again asks that the next report provide comprehensive descriptions of how discrimination on these grounds is prevented and combated.

As regards specific measures taken to counteract discrimination in the employment of migrants and refugees, the report recalls the provisions of the Law on Employment and Work of Foreigners, as well as the bylaws that further regulate the subject matter, determining the quotas for work permits for foreigners and rules on the body responsible for the provision of work permits to foreigners. It also provides statistical data on work permits applied for and granted. The Committee considers that the information provided does not allow for a comprehensive assessment of the prevention and prohibition of discrimination of foreigners in employment. In particular, information on the protection of persons requiring international protection is lacking. The Committee thus requests that the next report comprehensively describe the legal framework and practical measures aimed at prohibiting and combating the discrimination of migrants and refugees in the field of employment.

The Committee recalls that appropriate and effective remedies must be ensured in the event of an allegation of discrimination. The notion of effective remedies encompasses judicial or administrative procedures available in cases of an allegation of discrimination, an appropriate adjustment of the burden of proof which should not rest entirely on the complainant, as well as the setting-up of a special, independent body to promote equal treatment.

The Committee has assessed various aspects of the available remedies in its previous conclusion, such as the shift in the burden of proof or access to court and compensation levels (Conclusions 2016). It noted the low number of cases of discrimination in employment that were lodged and asked for information on the awareness-raising and capacity-building activities conducted for labour inspectors, judges, prosecutors and the wider public, and the results achieved. The report describes various training activities, open days, seminars on non-discrimination, aimed at the wider public, as well as at state institutions, municipalities, lawyers and judges. A series of training cycles has also been organised in 2018 for judges, prosecutors in co-operation with the Council of Europe. The report also provides data on petitions filed with the Commission for Protection against Discrimination, which shows an increase in the reference period.

The Committee notes the positive information and asks that the next report further provide comprehensive information on the functioning of the domestic remedies, in particular on any cases of discrimination in employment dealt with by courts and the Commission for Protection against Discrimination, with specific indications regarding their nature and outcome, the sanctions imposed on the employers and compensation granted to the employees. It notes that the European Equality Law Network in its abovementioned country report points to some persisting difficulties in underfunding and under-staffing in the national human rights institutions, which prevent them from fully exercising their competences. It also criticises that there is no functioning equality body and that some residual control of private entities over the State unduly influencing it erode trust in institutions, including the judiciary. The Committee asks that the next report comment on these observations. It also asks how violations of the legal provisions prohibiting discrimination in the workplace are scrutinised and whether

adequate penalties exist and are effectively enforced. Meanwhile, it reserves its position on this point.

The Committee has concluded previously that the situation was not in conformity with the Article 1§2 of the Charter as regards prohibition of discrimination on grounds of nationality since nationals of other States Parties did not have access to civil service jobs. The Committee recalls that the only jobs from which foreigners may be banned are those that are inherently connected with the protection of the public interest or national security and involve the exercise of public authority (Conclusions 2012, Albania). The Committee notes that the situation in North Macedonia has not changed and still fails to comply with Article 1§2 of the Charter on this point.

2. Forced labour and labour exploitation

The Committee recalls that forced or compulsory labour in all its forms must be prohibited. It refers to the definition of forced or compulsory labour in the ILO Convention concerning Forced or Compulsory Labour (No.29) of 29 June 1930 (Article 2§1) and to the interpretation given by the European Court of Human Rights of Article 4§2 of the European Convention on Human Rights (*Van der Mussele v. Belgium*, 23 November 1983, § 32, Series A no. 70; *Siliadin v. France*, no. 73316/01, §§ 115-116, ECHR 2005-VII; *S.M. v. Croatia* [GC], no. 60561/14, §§ 281-285, 25 June 2020). The Committee also refers to the interpretation by the Court of the concept of « servitude », also prohibited under Article 4§2 of the Convention (*Siliadin,* par. 123; *C.N. and V. v. France,* par. 91, 11 October 2012).

Referring to the Court's judgment of *Siliadin v. France,* the Committee has in the past drawn the States' attention to the problem raised by forced labour and exploitation in the domestic environment and the working conditions of the domestic workers (Conclusions 2008, General Introduction, General Questions on Article 1§2; Conclusions 2012, General Introduction, General Questions on Article 1§2). It considers that States Parties should adopt legal provisions to combat forced labour in the domestic environment and protect domestic workers, as well as take measures to implement them.

The European Court of Human Rights has established that States have positive obligations under Article 4 of the European Convention to adopt criminal law provisions which penalise the practices referred to in Article 4 (slavery, servitude and forced or compulsory labour) and to apply them in practice (*Siliadin,* §§ 89 and 112). Moreover, positive obligations under Article 4 of the European Convention must be construed in the light of the Council of Europe Convention on Action against Trafficking in Human Beings (ratified by almost all the member States of the Council of Europe) (*Chowdury and Others v. Greece,* § 104, 30 March 2017). Labour exploitation in this context is one of the forms of exploitation covered by the definition of human trafficking, and this highlights the intrinsic relationship between forced or compulsory labour and human trafficking (see also paragraphs 85-86 and 89-90 of the Explanatory Report accompanying the Council of Europe Anti-Trafficking Convention, and *Chowdury and Others,* § 93). Labour exploitation is taken to cover, at a minimum, forced labour or services, slavery or servitude (GRETA – Group of Experts on Action against Trafficking in Human Beings, *Human Trafficking for the Purpose of Labour Exploitation*, Thematic Chapter of the 7th General Report on GRETA's Activities (covering the period from 1 January to 31 December 2017), p. 11).

The Committee draws on the case law of the European Court of Human Rights and the above-mentioned international legal instruments for its interpretation of Article 1§2 of the Charter, which imposes on States Parties the obligation to protect effectively the right of the worker to earn his living in an occupation freely entered upon. Therefore, it considers that States Parties to the Charter are required to fulfil their positive obligations to put in place a legal and regulatory framework enabling the prevention of forced labour and other forms of labour exploitation, the protection of victims and the investigation of arguable allegations of these practices, together with the characterisation as a criminal offence and effective prosecution of

any act aimed at maintaining a person in a situation of severe labour exploitation. The Committee will therefore examine under Article 1§2 of the Charter whether States Parties have fulfilled their positive obligations to:

- Criminalise and effectively investigate, prosecute and punish instances of forced labour and other forms of severe labour exploitation;
- Prevent forced labour and other forms of labour exploitation;
- Protect the victims of forced labour and other forms of labour exploitation and provide them with accessible remedies, including compensation.

In the present cycle, the Committee will also assess the measures taken to combat forced labour and exploitation within two particular sectors: domestic work and the “gig economy” or “platform economy” workers.

The Committee notes that the present report replies partially to the specific, targeted questions for this provision on forced labour (questions included in the appendix to the letter of 27 May 2019 whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Employment, training and equal opportunities”).

Criminalisation and effective prosecution

The report indicates that forced labour in North Macedonia is a crime pursuant to the Criminal Code, included in Article 418: On slavery and transportation of persons in slavery, 418-a: Human trafficking in humans, and 418-d: Trafficking a child.

Article 418-a of the Criminal Code prescribes, *inter alia*, imprisonment of at least four years for “whoever shall by force, serious threat, or other forms of coercion, by kidnapping, by deceit and abuse of his own position or abusing somebody’s pregnancy or position of weakness, or the physical or mental disability of another, or by giving or receiving money or other benefits in order to obtain the consent of the person that has control over another person, or in any other manner turn, transport, transfer, buy, sell, harbour or accept persons for the purpose of exploitation through prostitution or other forms of sexual exploitation, pornography, forced labour or servitude, slavery, forced marriages, forced pregnancy, unlawful adoption or similar relations to it, begging or exploitation for purposes forbidden by law, or illicit transplantation of human organs”.

“Whosoever seizes or destroys the ID, passport or other identification document in order to commit the crime, shall be sentenced to imprisonment of at least four years. If such crime is committed by an official person while performing his service, he shall be sentenced to imprisonment of at least eight years. The consent of the victims of human trafficking with the intent to exploit them, is not significant to the presence of the crime”.

Article 418-d incriminates actions of trafficking a child where: “Whosoever induces a child to sexual activities or enables sexual activities with a child, or persuades, transports, transfers, buys, sells or offers for sale, obtains, supplies, harbours or accepts a child for the purpose of exploiting him in sexual activities for money or other forms of compensation or other forms of sexual exploitation, pornography, forced work or servicing, slavery, forced marriages, forced fertilization, illegal adoption, or forces consent as a mediator for child adoption, illegally transplants human organs, shall be sentenced to imprisonment of at least eight years”.

The Committee recalls that States Parties must not only adopt criminal law provisions to combat forced labour and other forms of severe labour exploitation but also take measures to enforce them. It considers, as the European Court of Human Rights did (*Chowdury and Others*, § 116), that the authorities must act of their own motion once the matter has come to their attention; the obligation to investigate will not depend on a formal complaint by the victim or a close relative. This obligation is binding on the law-enforcement and judicial authorities.

The Committee notes from the 2018 European Commission country report that North Macedonia remains a country of origin, transit and destination for trafficking in human beings.

According to the 2018 US Department of State report, the government did not meet the minimum standards in several key areas related to human trafficking.

In this context, the Committee asks that the next report provide information on the enforcement of the criminal law related to forced labour. The report should provide information (including statistics and examples of case law) on the prosecution and conviction of exploiters for slavery, forced labour and servitude during the next reference period, in order to assess how the legislation is interpreted and applied to combat labour exploitation.

Prevention

The Committee recalls that States Parties should take preventive measures such as research and data collection on the prevalence of forced labour and labour exploitation, awareness-raising campaigns, the training of professionals, law-enforcement agencies, employers and vulnerable population groups, and should strengthen the role and the capacities/mandate of labour inspection services to enforce relevant labour law on all workers and all sectors of the economy with a view to preventing forced labour and labour exploitation. States Parties should also encourage due diligence by both the public and private sectors to identify and prevent forced labour and exploitation in their supply chains.

The Committee notes from the European Commission country report that in March 2017, the National Strategy for Combating Trafficking in Human Beings and Illegal Migration (2017-2020) was adopted together with an action plan to implement this strategy. The National Commission for Combating Trafficking in Human Beings and Illegal Migration is responsible for monitoring the implementation of the Strategy.

As no information is provided in the national report, the Committee asks that the next report provide information on the implementation of the measures taken and envisaged to strengthen the capacities of labour inspectors in the prevention of forced labour and in particular, information related to resources made available to them and the training of all bodies concerned in the fight against forced labour, including judges and prosecutors.

Moreover, pursuant to the positive obligations deriving form Article 1§2 of the Charter, the Committee asks that the next report provide information on the measures introduced that regulate businesses and other economic activities to ensure that they do not use forced labour. Information is also requested on whether the domestic legislation includes measures designed to force companies to report on action taken to investigate forced labour and exploitation of workers among their supply chains. It also requires that every precaution be taken in public procurement processes to guarantee that funds are not used unintentionally to support various forms of modern slavery.

Protection of victims and access to remedies, including compensation

The report does not indicate any detailed information related to the protection of victims of forced labour and their access to remedies.

The Committee notes from the 2018 European Commission country report that regarding trafficking in human beings, very few victims have been identified, both among migrants and among nationals. There was a decrease in the number of recognised victims of trafficking in human beings in 2017 (2 persons compared to 6 in 2016). In 2017, only 13 persons were identified as potential victims while in 2016 there were 125 persons.

The Committee considers that protection measures in this context should include the identification of victims by qualified persons and assistance to victims in their physical, psychological and social recovery and rehabilitation.

The Committee asks for information in the next report on the number of potential victims of labour exploitation during the next reference period and the number of such persons benefiting from protection measures and support. It also asks that the next report provide general information on the type of assistance (protection from retaliation, safe accommodation, health

care, material assistance, social and economic assistance, legal advice, translation and interpretation, voluntary repatriation, provision of residence permits for migrants), and to specify the period during which that support and assistance is provided.

As regards access to remedies and compensation, the Committee asks whether the existing legislative framework provides victims of forced labour and labour exploitation, including irregular migrants, with accessible and effective remedies (before criminal, civil, employment courts or other venues) to obtain compensation for all the damages related (including unpaid wages and contributions for social security benefits). It requests statistical information on the number of victims who obtained compensation and examples of the amounts awarded.

Domestic work

The report indicates that domestic work is a sector with a high proportion of workers coming from vulnerable categories, where most of them are informally employed. The highest percentage of domestic workers are girls and women who care for elderly people, assist people with disabilities, clean, sew, etc., while men do manual work such as gardening or farming activities and construction work.

The Ministry of Labour and Social Policy is working on establishing a mechanism of protection for this category of workers, in order to avoid working in the underground economy and to guarantee equal treatment with other workers as regards their rights.

The text of the new Law on Labour Relations (currently being drafted, as part of a broad consultation process) will regulate in more details the issue of home-based work and work in private households (as domestic workers), thus enabling greater protection of these two categories of workers and the alignment of their rights with the ones of those who work on the employer's premises.

In this respect, the Committee recalls that domestic work may give rise to forced labour and exploitation. Such work often involves abusive, degrading and inhuman living and working conditions for the domestic workers concerned (see Conclusions XX-I (2012), General Introduction, General Questions, and the Court's judgment in *Siliadin v. France*). States Parties should adopt legal provisions to combat forced labour in the domestic environment and protect domestic workers as well as take measures to implement them (Conclusions 2008, General Introduction, General Question).

The Committee asks that the next report provide information on this point.

"Gig economy" or "platform economy" workers

The report does not provide information on "gig economy workers".

The Committee notes that since the 2008 global crisis, the "gig economy" is growing and developing throughout the country, affecting mostly young workers. Therefore, the Committee requests that the next report contain information on the concrete measures taken or envisaged to protect workers in the "gig economy" or "platform economy" against all forms of exploitation and abuse. It asks to be informed on the status and rights of these workers (employees or self-employed, or an intermediary category, and their rights in terms of working hours, paid holiday and minimum wage), on whether labour inspection services have any mandate to prevent exploitation and abuse in this particular sector and on any existing remedies they have access to, in particular to challenge their employment status.

Conclusion

The Committee concludes that the situation in North Macedonia is not in conformity with Article 1§2 of the Charter on the grounds that:

- nationals of other States Parties do not have access to civil service jobs;
- it has not been established that the national authorities have fulfilled their positive obligations to prevent forced labour and labour exploitation, to protect victims, to effectively investigate the offences committed, and to punish those responsible for forced labour offences.

Article 1 - Right to work

Paragraph 3 - Free placement services

The Committee takes note of the information contained in the report submitted by North Macedonia.

The Committee recalls that in the appendix to the letter of 27 May 2019 (whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Employment, training and equal opportunities") no information was requested under this provision unless the previous conclusion was one of non-conformity or a deferral.

Article 1§3 provides for the right to free employment services. The Committee deferred its previous conclusion (Conclusions 2016), considering that it had no information in its possession on quantitative indicators necessary to assess the effectiveness in practice of free employment services. It furthermore noted that the number of staff in relation to the number of unemployed was very low (Conclusions XX-1 (2012), 2016). The Committee accordingly asked whether there were plans to increase the number of staff dealing with placement activities and requested information on the following points:

- number of employment services staff in relation to the number of jobseekers;
- number of vacancies notified to the Employment Service Agency;
- number of persons placed via the Employment Service Agency and placement rate (placements made by the employment services as a share of notified vacancies);
- respective market shares of public and private services (the market share is measured as the number of placements effected as a proportion of total hirings in the labour market).

In reply, the report refers to the evolution of the number of the Employment Service Agency (ESA) permanent employees during the reference period (502 in 2015, 504 in 2016, 472 in 2017 and 430 in 2018) and it indicates that the ESA has planned to hire 80 full-time employees by 2022.

As regards the number of employment services staff in relation to the number of jobseekers, the report indicates the following:

- in 2015 there were 256 employees working on active policies for 114,979 active jobseekers, meaning that one employee of the ESA on average provided services to approximately 450 registered jobseekers;
- in 2016 there were 266 employees working on active policies for 104,523 active jobseekers, meaning that one employee of the ESA on average provided services to approximately 393 registered jobseekers;
- in 2017 there were 287 employees working on active policies for 102,394 active jobseekers, meaning that one employee of the ESA on average provided services to approximately 356 registered jobseekers;
- in 2018 there were 214 employees working on active policies for 94,721 active jobseekers, meaning that one employee of the ESA on average provided services to approximately 442 registered jobseekers.

The Committee observes that the situation has improved since 2010, when it found that one employee provided services to approximately 619 registered jobseekers (Conclusions XX-1 (2012)).

The Committee notes from the report that the total number of employees assigned to active policies increased between the period 2015-2017 and decreased in 2018 together with the total number of full-time employees. The report indicates that this decrease is due to natural drain of employees, such as retirement, and to termination of employment upon request of the employee, the employer or with mutual agreement. The Committee asks the next report to provide updated information on the number of employees assigned to active policies.

The report provides information on the number of vacancies notified by employers to the ESA during the reference period as well as the number of persons placed via the Employment Service Agency. The report refers to 338,336 applications for required workers notified by employers to the ESA in 2015; 189,807 persons found employment (placement rate of 56.1%). In 2016, 351,918 vacancies were notified and 184,877 persons employed (placement rate of 52.5%); in 2017, 370,742 vacancies were notified and 185,237 persons employed (placement rate of 50%); in 2018, 403,816 vacancies were notified and 205,358 persons employed (placement rate of 50.9%).

The report further indicates that in 2018 a new law was adopted, Law on Private Employment Agencies (Official Gazette No. 113/18), which regulates the establishment of private employment agencies, their functioning and termination. However, the report does not reply to the Committee's question on respective market shares of public and private services. Therefore, the Committee reiterates its request.

The Committee asks the next report to provide information on a) the average time taken by the public employment services to fill a vacancy; b) the number of persons working in the public employment services (at central and local level); c) the coordination between central and local employment services. The Committee also asks the next report to provide information about the participation of trade unions and employers' organisations in organising and running employment services.

Conclusion

Pending receipt of the information requested, the Committee defers its conclusion.

Article 1 - Right to work

Paragraph 4 - Vocational guidance, training and rehabilitation

The Committee takes note of the information contained in the report submitted by North Macedonia.

The Committee recalls that in the appendix to the letter of 27 May 2019 (whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Employment, training and equal opportunities") no information was requested under this provision unless the previous conclusion was one of non-conformity or a deferral.

Article 1§4 guarantees the right to vocational guidance, continuing vocational training for employed and unemployed persons and specialised guidance and training for persons with disabilities. It is complemented by Articles 9 (right to vocational guidance), 10§3 (right of adult workers to vocational training) and 15§1 (right of persons with disabilities to vocational guidance and training), which contain more specific rights to vocational guidance and training.

As North Macedonia has not accepted Articles 9 and 10§3, the Committee assesses under Article 1§4 the conformity of the situation relating to the right of adult workers to vocational guidance and vocational training in case the previous conclusion was one of non-conformity or a deferral.

Equal treatment

In its previous conclusions (Conclusions XX-1 (2012), 2016) the Committee requested information on the specific legal basis as regards equal treatment of nationals of other States Parties in vocational guidance and continuing vocational training, and reserved its position on this point (Conclusions 2016).

In response to the Committee's request, the report indicates that foreign nationals have the right to register as unemployed persons at the Employment Service Agency (ESA), and therefore access ESA's services and active employment measures only if their employment is terminated before the expiration of the work permit.

The Committee reiterates its question on whether there are legal basis ensuring equal treatment of nationals of other States Parties in vocational guidance and continuing vocational training, without any restrictions related to their length of residence. The Committee reserves in the meantime its position on this point and holds that if such information is not provided in the next report, there will be nothing to establish the conformity of the situation with the Charter on this issue.

Vocational guidance

The Committee previously (Conclusions 2016) took note of career counselling and guidance services provided within the education system. It also asked whether the labour market offered free vocational guidance for employed and unemployed persons, the expenditure allocated to such services, their staffing and the number of beneficiaries. The Committee reserved its position on this issue (Conclusions 2016).

In response to these questions, the report refers to the services provided by the Employment Service Agency (ESA) as established in Articles 3 and 19 of the Law on Employment and Insurance in Case of Unemployment. The report clarifies that professional orientation, which includes testing, interviewing and individual counselling, is provided free of charge by the ESA to unemployed persons and other jobseekers (as specified in the report, the term indicates passive jobseekers). The Committee asks the next report to indicate whether vocational guidance is available also to workers in activity wishing, for example, to change job or to undertake further training.

The report also indicates that the Law on Private Employment Agencies, adopted in 2018, aims at protecting workers employed through private employment agencies and provides that the agencies shall charge the services fee from the employer to whom the employee is provided.

The Committee observes that the report does not include any information on expenditure allocated specifically to vocational guidance services. However, it notes from the information provided under Article 1§1 that the budget allocated to active employment programmes increased from MKD 623 600 948 in 2015 (approximately € 10.1 million at the exchange rate of 31/12/2018) to MKD 974 418 504 in 2018 (approximately € 15.8 million). The Committee asks the next report to provide updated information on expenditure allocated to vocational guidance services.

As regards staffing, the Committee notes from the information provided under Article 1§3 that the number of ESA's employees decreased from 502 employees in 2015 to 430 in 2018. The report also indicates staff distribution among different sectors during the reference period, the reasons for the decrease (see report for details) and that the number of full-time employees should increase by 80 persons by 2022.

The Committee notes that 3 061 unemployed persons were involved in professional orientation and career counselling services in 2016. It asks the next report to provide updated information on the number of unemployed persons and workers participating in vocational guidance services for each year of the reference period.

As regards vocational guidance services provided within the education system, the Committee takes note of the information provided in the report. Counselling for professional orientation is provided by ESA to high school students and university students in the territory of which educational institutions are located. The report specifies that for final year students of primary and secondary education, the ESA organises counselling regarding the choice of occupation in cooperation with competent institutions in the field of education. The Committee observes that the report indicates the number of students participating in individual counselling for professional orientation for 2016 (201 students from the primary schools and 9 students from the secondary schools) and it asks the next report to provide updated and detailed information on the number of beneficiaries for each year of the reference period.

Pending receipt of the information requested, the Committee reserves its position on this issue.

Guidance and vocational training for persons with disabilities

As regards measures related to vocational guidance and training of persons with disabilities, the Committee refers to its assessment under Article 15§1 (Conclusions 2020), in which it deferred its conclusion. Accordingly, the Committee defers its conclusion on Article 1§4.

Conclusion

Pending receipt of the information requested, the Committee defers its conclusion.

Article 15 - Right of persons with disabilities to independence, social integration and participation in the life of the community

Paragraph 1 - Vocational training for persons with disabilities

The Committee takes note of the information contained in the report submitted by North Macedonia.

It previously found (Conclusions 2016) that it had not been established that the right of persons with disabilities to mainstream education and training was effectively guaranteed.

The Committee notes that for the purposes of the present report, States were asked to reply to the specific targeted questions posed to States for this provision (questions included in the appendix to the letter of 27 May 2019, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Employment, training and equal opportunities"). The questions posed for this cycle of supervision focused exclusively on the education of children with disabilities.

The Committee recalls nonetheless that under Article 15 all persons with disabilities, irrespective of age and the nature and origin of their disabilities, are entitled to guidance, education and vocational training in the framework of general schemes wherever possible or, where this is not possible, through specialized bodies, public or private.

Therefore, in its next cycle of supervision, the Committee will examine Article 15§1 issues as they apply to all persons with disabilities (not just as they apply to children).

Legal framework

The Committee notes from the report that a new Anti-Discrimination law entered into force in 2019 (out of the reference period), which prohibits discrimination on ground of disability in several fields and aims at putting the notion of "person with disability" in accordance with the Convention for the Rights of Persons with Disability (CRPD) (see also Conclusions 2016, as regards the legal framework in force during the reference period). Under this law, reasonable accommodation must be provided as long as it does not impose a disproportionate or unnecessary burden, so as to secure the enjoyment or the exercise of all human rights and freedoms for persons with disabilities, on equal basis with the others. Failure to provide reasonable accommodation is considered to constitute a discrimination.

The report also indicates that a National Database of Persons with Disabilities has been set up, in the framework of the integrated health information system, in order to enable the competent authorities to collect and process the data relevant to the exercise of disability rights, in accordance with the law.

As regards more specifically the right to education, the report refers to the adoption of a new rulebook for enrolment of students with special educational needs (SEN) in primary schools in 2017 and to the adoption in July 2019 (out of the reference period) of a new Law on Primary Education which, according to the report, aims at improving the inclusion of students with SEN in primary schools. The Committee asks the next report to provide further information on this law and its impact on inclusion of pupils with SEN in mainstream education.

The Committee furthermore notes from the report that a project *"Preparation for implementation of the new model for functional assessment of additional educational, health and social support for children or youth, based on the International Classification of Functioning – ICF*" started to be implemented in 2019, out of the reference period. It takes note of the detailed information provided in the report on the initial implementation of the new model and the further steps planned and asks the next report to provide updated information on the progress made in this respect.

The Committee has previously stressed the importance of moving away from a medical definition of disability towards a social definition. An early example is that endorsed by the

World Health Organisation in its International Classification of Functioning (ICF 2001) which focuses on the interaction of health conditions, environmental factors and personal factors.

Article 1 of the UN Convention on the Rights of Persons with Disabilities (UNCRPD (2006) crystallises this trend by emphasizing that persons with disabilities include those with long term disabilities including physical, mental or intellectual disabilities which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. Importantly, this means there is no a priori exclusion from inclusive education based on the type of disability. Indeed, Article 2 of the UNCRPD which prohibits discrimination "on the basis of disability" may be read to go further by including those who have had a record of disability in the past but who continue to be treated negatively and those who never had a disability but may nevertheless be treated by others as if they had a disability disability (the so-called "attitudinally disabled").

The Committee therefore asks the next report to clarify whether the assessment of disability in the fields of education and vocational training takes into account the personal and environmental factors interacting with the individual. These factors are particularly relevant when it comes to an assessment of "reasonable accommodation".

Access to education

The Committee previously noted (Conclusions 2016) that education was provided for children with disabilities in mainstream classes or, in case of severe disability, in special classes in mainstream schools or in special schools and that provision was made for pupils with SEN to transfer from mainstream schools to special schools and vice-versa.

According to the data presented in the report, the number of pupils with SEN remained stable during the reference period in special primary education (414 pupils in 2014/2015, 443 in 2015/2016, 444 in 2016/2017, 424 in 2017/2018) and in special classes within mainstream establishments (319 in 2014/2015, 338 in 2015/2016, 331 in 2016/2017, 320 in 2017/2018), while the number of pupils with SEN included in mainstream classes continued to increase by almost one third during the reference period (from 388 in 2014/2015 to 571 in 2017/2018). As regards secondary education, the report states that there were 228 pupils with SEN in the four special schools of the country, but no indication is available concerning the year, the trend and the number of pupils in mainstream secondary education. In this respect, the Committee notes that according to the European Equality Law Network country report 2019 students with SEN cannot enrol in mainstream secondary schools.

The Committee asks for the Governments comments on this. Meanwhile it reserves its position on this point.

The Committee takes note of the information provided concerning access to vocational training.

In order to assess the effective equal access of children with disabilities to education, the Committee needs States parties to provide information, covering the reference period, on:

- the number of children with disabilities, including as compared to the total number of children of school age;
- the number and proportion of children with disabilities educated respectively in:
    - mainstream classes.
    - special units within mainstream schools (or with complementary activities in mainstream settings)
    - in special schools
- the number and proportion of children with disabilities out of education;
- the number of children with disabilities who do not complete compulsory school, as compared to the total number of children who do not complete compulsory school;
- the number and proportion of children with disabilities under other types of educational settings, including:

    - home-schooled children
    - attending school on a part time basis
    - in residential care institutions, whether on a temporary or long-term basis
- the drop-out rates of children with disabilities compared to the entire school population.

Measures aimed at promoting inclusion and ensuring quality education

The Committee previously noted (Conclusions 2016) that curricula and programmes for children with SEN in special schools and special classes in mainstream establishments were based on those in mainstream classes, with compulsory and optional courses adapted to their specific needs, and asked how mainstream curricula were adjusted to take account of disabilities, how personal study plans were drawn up for pupils with disabilities and if supervision of the quality of teaching was based on the same mechanisms that are applied to mainstream education. The Committee also asked for further information on testing or examination arrangements for pupils with disabilities, on whether the qualifications acquired by these pupils are equivalent to those of other pupils, regardless of whether they are in mainstream or special education or whether special arrangements were made for them during the examinations.

On these issues, the report indicates that descriptive assessment methods are applied, in conformity with guidelines elaborated in 2015, in cooperation with UNICEF, which provide teachers with specific guidance on the working methods they should apply and which materials should be used in order to meet the individual needs of the child, in an inclusive manner. In addition, a new follow-up form was applied as from 2016/2017 in primary and secondary schools to monitor the student's development, achievement and progress. The report does not clarify however what measures are taken in practice, if any, in mainstream settings to adapt the programmes and testing to the special needs of students (for example, by applying extended time-limits or authorising the use of personal or technological assistance) and what qualifications can achieve pupils with SEN. The Committee therefore reiterates these questions.

The report refers to the publication of a "*Guide on the work of the school inclusion team*"; the publication in 2017 of primary school textbooks in Braille, and indicates that in 2018, the Bureau for Development of Education, in cooperation with UNICEF, realised 19 trainings for inclusive education in 19 primary municipal schools which included 645 teachers, expert associates and principals of schools in which trainings were organised.

The Committee takes note of the information provided on the process of deinstitutionalisation (in the framework of the National Strategy for Deinstitutionalisation 2018-2027 – "Timjanik", see details in the report) and on the introduction and standardisation of the personal assistance service in 2018 (in the framework of the "*Promoting social inclusion services*" project), which applies to everyday activities, including education.

According to the report, the number of special needs educators in mainstream schools has been increased, as well as the number of personal and educational assistants (334 personal and educational assistants were engaged in 2018/2019 in 38 municipalities out of 81 in the framework of the Community Service Programme). The Committee asks the next report to provide updated information on the number of teachers and personal and educational assistants qualified on SEN and their ratio in respect of SEN pupils in mainstream and special education at primary, secondary and vocational training level. It reserves in the meantime its position on this point.

The Committee recalls that Article 15§1 of the Charter makes it an obligation for States Parties to provide quality education for persons with disabilities, together with vocational guidance and training, and that priority should be given to inclusive education in mainstream school.

States parties must demonstrate that tangible progress is being made in setting up inclusive and adapted education systems.

The Committee has recognised that “integration” and “inclusion” are two different notions and that integration does not necessarily lead to inclusion (Mental Disability Advocacy Centre (MDAC) v. Belgium Complaint No.109/2014, Decision on the admissibility and merits 16 October 2017, International Federation for Human Rights (FIDH) and Inclusion Europe v. Belgium Complaint No. 141/ 2017, Decision on the merits of 20 September 2020). The right to an inclusive education relates to the child’s right to participate meaningfully in mainstream education.

The Committee notes that the UN Committee on the Rights of Persons with Disabilities, in its General Comment No. 4, 2016, on the Right to inclusive education has stated that “inclusion involves a process of systemic reform embodying changes and modifications in content, teaching methods, approaches, structures and strategies in education to overcome barriers with a vision serving to provide all students of the relevant age range with an equitable and participatory learning experience and the environment that best corresponds to their requirements and preferences. Placing students with disabilities within mainstream classes without accompanying structural changes to, for example, organisation, curriculum and teaching and learning strategies, does not constitute inclusion. Furthermore, integration does not automatically guarantee the transition from segregation to inclusion”.

The Committee also recalls that inclusive education implies the provision of support and reasonable accommodations which persons with disabilities are entitled to expect in order to access schools effectively. Such reasonable accommodations relate to an individual and help to correct factual inequalities (MDAC v. Belgium, Complaint No.109/2014, Decision on admissibility and merits 16 October 2017 para 72). Appropriate reasonable accommodations may include: adaptations to the class and its location, provision of different forms of communication and educational material, provision of human or assistive technology in learning or assessment situations as well as non-material accommodations, such as allowing a student more time, reducing levels of background noise, sensitivity to sensory overload, alternative evaluation methods or replacing an element of the curriculum by an alternative element.

The Committee asks the States parties to provide information on how reasonable accommodation is implemented in mainstream education, whether and to what degree there is an individualized assessment of ‘reasonable accommodation’ to ensure it is adequately tailored to an individual’s circumstances and learning needs, and to indicate what financial support is available, if any, to the schools or to the children concerned to cover additional costs that arise in relation to ensuring reasonable accommodations and access to inclusive education.

It asks in particular what measures are taken to ensure that teachers and assistants dealing with pupils and students with disabilities are adequately qualified.

It furthermore asks whether the qualifications that learners with disabilities can achieve are equivalent to those of other learners (regardless of whether learners with disabilities are in mainstream or special education or of whether special arrangements were made for them during the school-leaving examination). The Committee also asks whether such qualifications allow persons with disabilities to go on to higher education (including vocational training) or to enter the open labour market. The Committee also asks the state to provide information on the percentage of disabled learners who go on to higher education or training. The Committee also asks what percentage of learners with disabilities enter the open labour market.

Remedies

The Committee previously noted that the national mechanism for protection against discrimination comprises several institutions and bodies (both judicial and extra-judicial), before which persons being discriminated may request protection: the Constitutional Court,

the Ombudsman, the Commission for Protection against Discrimination, the Representative for determining unequal treatment of women and men, the Standing Inquiry Committee for Protection of Civil Freedoms and Rights, the Inter-Ethnic Relations Committee and the ordinary courts (see Conclusions 2016). It took note in particular of the remedies available to victims of discrimination and the procedure before the Commission for Protection against Discrimination and the courts.

The Committee asks the next report to provide updated information on any relevant development in the case-law concerning access to education of children with SEN, including the provision of adequate assistance or reasonable accommodation.

Conclusion

Pending receipt of the information requested, the Committee defers its conclusion.

Article 15 - Right of persons with disabilities to independence, social integration and participation in the life of the community

Paragraph 2 - Employment of persons with disabilities

The Committee takes note of the information contained in the report submitted by North Macedonia.

The Committee notes that for the purposes of the present report, States were asked to reply to the specific targeted questions posed to States for this provision (questions included in the appendix to the letter of 27 May 2019, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Employment, training and equal opportunities") as well as previous conclusions of non-conformity or deferrals.

The Committee previously (Conclusions 2016) deferred its conclusion, pending receipt of information notably on the implementation in practice of the relevant provisions providing for reasonable accommodation; the functioning in practice of the Commission for Assessment of the Working Capacity and the remedies available to contest its decisions; updated and comprehensive statistical data on the effective access of persons with disabilities (persons with disabilities) to employment; the working conditions in sheltered employment and the role of trade unions in this respect as well as the rate of transfer of persons with disabilities from sheltered employment to the open labour market.

Legal framework

The Committee notes from the report that a new Anti-Discrimination law entered into force in 2019 (out of the reference period), which prohibits discrimination on ground of disability in several fields and aims at putting the notion of "person with disability" in accordance with the Convention for the Rights of Persons with Disability see also Conclusions 2016, as regards the legal framework in force during the reference period). Under this law, reasonable accommodation must be provided as long as it does not impose a disproportionate or unnecessary burden, so as to secure the enjoyment or the exercise of all human rights and freedoms for persons with disabilities, on equal basis with the others. Failure to provide reasonable accommodation is considered to constitute a discrimination. The Committee notes from the European Equality Law Network that this law was repealed in June 2020, it asks the next report to clarify the legal framework applicable.

The report also indicates that a National Database of Persons with Disabilities has been set up, in the framework of the integrated health information system, in order to enable the competent authorities to collect and process the data relevant to the exercise of disability rights, in accordance with the law.

The Law on Employment of persons with disabilities (2016), as amended, specifically regulates the requirements and conditions applying to the employment of persons with disabilities, whether in sheltered employment, in the public or private sector or as self-employed. As previously noted (see Conclusions 2016), this law defines how disability is assessed and recognised for employment purposes by the Commission for Assessment of the Working Capacity, run by the Pension and Disability Insurance Fund. In this respect, the Committee previously asked for clarifications about the assessment procedure, in particular as regards the timeframe for adopting a decision and the judicial remedies available to contest it (see Conclusions XIX-1 (2008), XX-1(2012), 2016). The report confirms that all these aspects are regulated by the Law on Employment of persons with disabilities. It explains that the Commission assesses the degree of disability, working capacity and work that the persons with disabilities can perform. In particular, the disability assessment request is submitted to the local branch of the Pension and Disability Insurance Fund and is decided within 45 days based on the findings of the Fund's Commission for the assessment of the working capacity, which shall prepare and submit such findings within 30 days as of the day of receipt of the application. Once the applicant's disability is established, the person is referred to the Commission for determining the work and tasks that he/she can perform. The relevant procedure and criteria are defined by the "Rulebook on the composition of the Commission

and manner of adopting the findings and the opinion establishing the works that the person with disabilities can perform at the relevant job position" (Official Gazette No 15/2006 and 24/2007). The Committee asks the next report to explain whether and how the assessment of disability in the field of employment takes into account the personal and environmental factors interacting with the individual.

The report recalls that the Law on Employment of persons with disabilities also sets the criteria for the allocation of funds from the Special Fund for specific support measures (see below) and indicates that amendments were adopted in 2018 (Law Amending and Supplementing the Law on Employment of persons with disabilities) which further regulate the allocation of funds, harmonise the provisions concerning self-employment with those of the social security laws (Law on Pension and Disability Insurance, Law on Health Insurance and Law on Obligatory Social Insurance Contributions) and introduce the possibility for the persons with disabilities to have a working assistant during job training, as well as the Special Fund's beneficiary right to an appeal. In order to implement these measures, three more detailed bylaws (Rulebooks) were adopted (see details in the report). In addition, the report indicates that in 2018, personal assistance services were introduced in the framework of the Personal Assistance Programme and as of May 2019 (out of the reference period), when the new Law on Social Protection was adopted, they were provided throughout the country, including as regards the employment field. The Committee asks the next report to provide information about the implementation in practice of reasonable accommodation in the workplace, in the light of the new legislation and to clarify to what extent persons with disabilities have to bear the cost of technical and/or personal assistance which they need to overcome barriers which apply to different aspect of their daily life, including employment (for example, in case they are not entitled to support by the Special Fund or when the support granted does not cover all costs).

Access of persons with disabilities to employment

The report indicates that the number of active unemployed jobseekers with disabilities decreased slightly from 1587 in 2015 to 1336 in 2018, while the number of passive jobseekers remained almost stable (916 persons with disabilities in 2015, 914 in 2018), but the percentage of unemployed (active jobseekers) persons with disabilities out of the total number of unemployed remained stable at 1.4% during the reference period (they were 1587 out of 114 979 in 2015 and 1336 out of 94 721 in 2018). The report also breaks down unemployed persons with disabilities (active and passive jobseekers) according to their gender, type of disability, level of education and their age group. Out of the 1330 employment applications registered in 2018, 414 concerned sheltered companies, 75 the public sector, 806 other companies and 35 registered as self-employed.

The Committee notes that although the report provides some information on the number of unemployed persons with disabilities and those who benefitted from certain employment promotion measures (see below), it is not clear what is the number and proportion of persons with disabilities in employment out of the total number of persons with disabilities of working age, and in particular what is the number and proportion of persons with disabilities who are respectively employed in the open market and in sheltered employment, and whether there is any discernible trend over the reference period, notably as regards the increase in the proportion of persons with disabilities employed in the open labour market. The Committee accordingly reiterates its request of information on these points.

Measures to promote and support the employment of persons with disabilities

The report presents the measures undertaken in accordance with the Law on Employment of persons with disabilities, to promote and support the employment of persons with disabilities. These measures consist notably in the award of non-refundable funds, financed by the Special Fund for disability employment, for adapting the workplace and providing the equipment needed for the full-time employment of persons with disabilities; fiscal incentives in the form of tax exemption and the partial coverage by the state budget of social security contributions; financial operational support to persons with disabilities working as self-employed or in sheltered employment; provision of a work assistant for a maximum of 80 hours per month.

According to the report, the funds granted during the reference period increased from MKD 149 941 590 (EUR 2 418 180 at the rate of 31/12/2015) in 2015 to MKD 175 358 182 (EUR 2 838 790 at the rate of 31/12/2018), the number of employers concerned went from 166 to 210 and the number of persons with disabilities concerned went from 122 to 211.

Noting from the report that a reform of the employment system funding for persons with disabilities is envisaged, the Committee asks the next report to provide updated information on the activities implemented and the results achieved in this area.

Other measures are mentioned in the report, concerning incentives for the employers recruiting persons with disabilities (the employer was exempted from payment of the obligatory social insurance contributions for these persons for a period of 5 years from the date of employment without any further obligation) in the framework of the "Macedonia Employs" project in 2015-2016; a survey on "Adequate job adjustment for people with disabilities" in 2016, which aimed at identifying the key problems and solutions for workers and employers; the project "Pilot Action for Access to the Right to work for persons with disabilities" in 2017, which aimed at assessing the personal characteristics of unemployed persons with disabilities in relation to their employability; further measures related to vocational guidance and training of persons with disabilities as well as training and awareness-raising activities concerning discrimination in general (see details in the report).

The report does not provide the information repeatedly requested on the conditions applying to sheltered employment (Conclusions XIX-1(2008), XX-1(2012) and 2016). The Committee recalls that persons working in sheltered employment facilities where production is the main activity are entitled to the basic provisions of labour law and in particular the right to fair remuneration and trade union rights. The Committee reiterates its request of information on these points and considers in the meantime that it has not been established that persons with disabilities are guaranteed an effective equal access to employment.

Remedies

The Committee previously noted that the national mechanism for protection against discrimination comprises several institutions and bodies (both judicial and extra-judicial), before which persons being discriminated may request protection: the Constitutional Court, the Ombudsman, the Commission for Protection against Discrimination, the Representative for determining unequal treatment of women and men, the Standing Inquiry Committee for Protection of Civil Freedoms and Rights, the Inter-Ethnic Relations Committee and the ordinary courts (see Conclusions 2016). It took note in particular of the remedies available to victims of discrimination and the procedure before the Commission for Protection against Discrimination and the courts.

As regards in particular the remedies available to contest the decisions of the Pension and Disability Insurance Fund (concerning the assessment of disability, working capacity and allocation of support measures), the report states that the applicant is entitled to lodge an appeal with the Ministry of Labour and Social Policy within 15 days as of the date of receipt of the decision. The general administrative procedure regulations apply to appeals against the first instance decision.

The Committee asks the next report to provide updated information on any relevant development in the case-law concerning access to employment for persons with disabilities, including the provision of adequate assistance or reasonable accommodation. It recalls that legislation must confer an effective remedy on those who have been discriminated against on grounds of disability and denied reasonable accommodation.

Conclusion

The Committee concludes that the situation in North Macedonia is not in conformity with Article 15§2 of the Charter on the ground that it has not been established that persons with disabilities are guaranteed an effective equal access to employment.

Article 20 - Right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex

The Committee takes note of the information contained in the report submitted by North Macedonia.

The Committee notes that this report responds to the targeted questions on this provision, which relate specifically to equal pay (questions included in the appendix to the letter of 27 May 2019 whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Employment, training and equal opportunities”). The Committee will therefore focus specifically on this aspect. It will also assess the replies to all findings of non-conformity or deferral in its previous conclusion.

Obligations to guarantee the right to equal pay for equal work or work of equal value

Legal framework

The report points out that the Law on Labour Relations establishes the right to equal pay for women and men. Under Article 108 of this law, employers are required to pay equal wages for equal work and work of equal value, and employees are subject to the same conditions regardless of their gender. Article 6§2 provides that women and men must enjoy equal opportunities and treatment with regard to access to employment (including promotion and vocational training), working conditions, remuneration (equal pay for equal work) and dismissal. The Committee notes that the provisions on equal pay of the Law on Labour Relations also apply to civil servants.

The Committee notes from the report by the European Network of Legal Experts in Gender Equality and Non-Discrimination on gender equality in North Macedonia (2019), that under Articles 105§3 and 106 of the Law on Labour Relations, pay comprises three components: basic salary under workplace rules; performance-related pay; and bonuses for shift work, night work, etc. In this connection, the Committee would point out that under Articles 4§3 and 20 of the Charter (and Article 1 (c) of the Additional Protocol of 1988), the concept of remuneration must cover all elements of pay, that is basic pay and all other benefits paid directly or indirectly in cash or kind by the employer to the worker by reason of the latter’s employment (University Women of Europe (UWE) v. France, Complaint No. 130/2016, Decision on the merits adopted on 5 December 2019, §163). Consequently, it asks for clarification in the next report on this issue.

Effective remedies

The Committee recalls that domestic law must provide for appropriate and effective remedies in the event of alleged pay discrimination. Workers who claim that they have suffered discrimination must be able to take their case to court. Effective access to courts must be guaranteed for victims of pay discrimination. Therefore, proceedings should be affordable and timely. Anyone who suffers pay discrimination on grounds of sex must be entitled to adequate compensation, i.e. compensation that is sufficient to make good the damage suffered by the victim and to act as a deterrent. Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and from being sufficiently dissuasive is contrary to the Charter. The burden of proof must be shifted. The shift in the burden of proof consists in ensuring that where a person believes she or he has suffered discrimination on grounds of sex and establishes facts which make it reasonable to suppose that discrimination has occurred, the onus is on the defendant to prove that there has been no infringement of the principle of non-discrimination (Conclusions XIII-5, Statement of interpretation on Article 1 of the 1988 Additional Protocol). Retaliatory dismissal in cases of pay discrimination must be forbidden. Where a worker is dismissed on grounds of having made a claim for equal pay, the worker should be able to file a complaint for dismissal without valid reason. In this case, the employer must reinstate her/him in the same or a similar post. If reinstatement is not possible,

the employer must pay compensation, which must be sufficient to compensate the worker (i.e. cover pecuniary and non-pecuniary damage) and to deter the employer (see in this respect collective complaints Nos. 124 to 138, University Women of Europe (UWE) v. Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Greece, Ireland, Italy, the Netherlands, Norway, Portugal, Slovenia and Sweden, 5-6 December 2019).

The report describes the remedies available to victims of discrimination and the procedure before the Commission for Protection against Discrimination and the courts. The report also states that under Article 93§5 of the Law on Labour Relations, a trade union may represent an employee (at their request) in a complaint procedure. The Committee notes that a new Law No.101/2019 on Prevention and Protection against Discrimination was adopted in May 2019, outside the reference period. Therefore, it will assess the relevant provisions of this law during the next monitoring cycle.

The Committee takes note of the many employment discrimination cases received by the courts and the Commission for Protection against Discrimination during the reference period. However, it asks for information in the next report on the number of cases of gender pay discrimination brought before the courts and the Commission for Protection against Discrimination, with details of their outcome and the penalties imposed on employers.

The report states that under Article 11 of the Law on Labour Relations, the *burden of proof* lies with the employer, who must prove that there was no discrimination. The Committee asks how the principle of the reversal of the burden of proof is applied in practice, for instance whether it is systematically applied in the event of wage discrimination.

With regard to the rules on compensation in the case of a breach of the principle of equal pay, the Committee refers to its previous conclusion (Conclusions 2016), in which it noted that there was no upper limit in the Law on Labour Relations and that compensation was determined on a case-by-case basis in accordance with the provisions of the Law on Obligations. The Committee asks for examples of compensation awarded by the courts in cases of gender pay discrimination. It also asks whether the obligation to compensate the difference of pay is limited in time or is awarded for entire period of unequal pay, and if there is the right to compensation for pecuniary and non-pecuniary damages.

The Committee asks for the next report to state what rules apply in the event of dismissal in retaliation for a complaint about equal pay.

Finally, it asks whether sanctions are imposed on employers in the event of gender pay discrimination.

Pay transparency and job comparisons

The Committee recalls that pay transparency is instrumental in the effective application of the principle of equal pay for work of equal value. Transparency contributes to identifying gender bias and discrimination and it facilitates the taking of corrective action by workers and employers and their organisations as well as by the relevant authorities. States should take measures in accordance with national conditions and traditions with a view to ensuring adequate pay transparency in practice, including measures such as those highlighted in the European Commission Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency, notably an obligation for employers to regularly report on wages and produce disaggregated data by gender. The Committee regards such measures as indicators of compliance with the Charter in this respect. The Committee also recalls that, in order to establish whether work performed is equal or of equal value, factors such as the nature of tasks, skills, as well as educational and training requirements must be taken into account. States should therefore seek to clarify this notion in domestic law as necessary, either through legislation or case law. In this respect, job classification and evaluation systems should be promoted and where they are used, they must

rely on criteria that are gender-neutral and do not result in indirect discrimination (see in this respect Complaints Nos.124 to 138, UWE, *op. cit.*).

The report does not contain any information about *pay transparency* in the labour market or about job classification systems. The Committee takes note of the information published in the above-mentioned report on gender equality (2019), according to which pay transparency measures are not applied in North Macedonia.

The report states that the law sets the level of the minimum wage but salaries are determined by collective agreements. The Committee notes, for example, that the general collective agreement for the private sector in the field of the economy provides for nine degrees of complexity of tasks with corresponding salary level coefficients. According to the report employees generally have the same salary for the same position. The report also specifies that in court proceedings, the salaries of workers performing work of a similar nature may be compared if the salaries are regulated by the same collective agreement. The report also states that provisions of an employment contract, a collective agreement or a company-level agreement which set different pay levels for men and women are deemed null and void.

As regards the *parameters for establishing the equal value of the work performed*, the report explains that under the Law on Labour Relations, two persons of different genders perform the same work with equal value if:

- they carry out the same work in the same or similar conditions or if they could trade places at work;
- the work performed by one of them is similar in nature to the work of the other; the differences in the work they carry out and the conditions in which they work are insignificant;
- the work that one of them performs is of equal value to that performed by the other once criteria such as qualifications, skills, responsibilities and working conditions are taken into account.

  According to the report, it is planned for the new law on labour relations, which is currently being drafted, to include more detailed regulations on this matter. Consequently, the Committee asks for information in the next report on these legislative amendments.

The Committee reiterates its request that the next report provide information on the job classification and promotion systems in place as well as strategies adopted and the measures taken to ensure pay transparency in the labour market (notably the possibility for workers to receive information on pay levels of other workers), including the setting of concrete timelines and measurable criteria for progress.

The Committee asks for the next report to clearly indicate whether a wage comparator is required under national law to establish or prove a difference in treatment.

Enforcement

The Committee notes the many complaints of gender discrimination made to the Labour Inspectorate. It requests that the next report provide further information about how equal pay is ensured, notably, about the monitoring activities conducted in this respect by the Labour Inspectorate and other competent bodies.

Obligations to promote the right to equal pay

The Committee recalls that in order to ensure and promote equal pay, the collection of high-quality pay statistics broken down by gender as well as statistics on the number and type of pay discrimination cases are crucial. The collection of such data increases pay transparency at aggregate levels and ultimately uncovers the cases of unequal pay and therefore the gender pay gap. The gender pay gap is one of the most widely accepted indicators of the differences in pay that persist for men and women doing jobs that are either equal or of equal value. In

addition, to the overall pay gap (unadjusted and adjusted), the Committee will also, where appropriate, have regard to more specific data on the gender pay gap by sectors, by occupations, by age, by educational level, etc. The Committee further considers that States are under an obligation to analyse the causes of the gender pay gap with a view to designing effective policies aimed at reducing it (see in this respect Complaints Nos.124 to 138, UWE, *op. cit.*).

The Committee takes note of the adoption of the Gender Equality Strategy for the period 2013-2020, the National Action Plan for Gender Equality for the period 2018-2020, a methodology on gender responsive budgeting of the state administrative bodies for 2012-2017 and the National Strategy on Equality and Non-Discrimination for 2016-2020. In accordance with the relevant laws and strategic documents, a national mechanism for equal opportunities for women and men was set up at national and local level. The Committee notes how this mechanism functions and asks whether (and how) it monitors compliance with the principle of equal pay for women and men. The Committee also notes the measures taken during the reference period to implement these strategies and improve women's integration into the labour market.

According to the report, there is still a wide gap between the employment rate of men and women (aged 15 to 64): the employment rate for men increased modestly during the reference period (from 77.5% in 2015 to 77.8% in 2016, 78.4% in 2017 and 78.3% in 2018), while the employment rate for women remained at the same low level (52% in 2015, 50.8% in 2016, 51.7% in 2017 and 52.2% in 2018). However, the report does not provide any information on the gender pay gap.

On this point, the Committee notes the information published in the European Commission staff working document (SWD(2019) 218 final of 25 May 2019), according to which the private-sector gender pay gap in 2018 was 39.2%. However, according to the same source, there is no difference in salaries between women and men in public sector. The Committee also notes from the National Employment Strategy established by the Ministry of Labour and Social Policy for the period 2016-2020 that the gender pay gap (between women and men working in the same sector with the same education, professional experience, etc.) was 17.5% in 2013. Lastly, the Committee notes that in its Concluding Observations on the sixth periodic report of the former Yugoslav Republic of Macedonia (CEDAW/C/MKD/CO/6, 2018, paragraph 35), the Committee on the Elimination of Discrimination against Women expressed its concern about the wide gender pay gap and its prevalence in sectors such as the garment industry.

In the light of the above, the Committee considers that the situation is not in conformity with Article 20 of the Charter on the ground that the obligation to make measurable progress in reducing the gender pay gap has not been fulfilled. The Committee asks for updated information in the next report on the concrete measures taken and activities launched to promote gender equality, to overcome gender segregation in the labour market and to reduce the gender pay gap, along with information on the results achieved. It also asks for information on the employment rate broken down according to gender and the pay gap for each year of the reference period.

Conclusion

The Committee concludes that the situation in North Macedonia is not in conformity with Article 20c of the Charter on the ground that the obligation to make measurable progress in reducing the gender pay gap has not been fulfilled.

Article 24 - Right to protection in case of dismissal

The Committee takes note of the information contained in the report submitted by North Macedonia.

Scope

In reply to the Committee's question (Conclusions 2016) the report states that in accordance with Article 76 of the Law on Labour Relations, the employer may terminate the employment contract only in cases of reasonable grounds for termination related to the conduct of the employee, for breach of the working order and discipline, work-related obligations or economic reasons. According to the report these rules also apply to workers on probationary period.

The Committee addressed specific targeted questions to the States (questions included in the appendix to the letter of 27 May 2019 whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Employment, training and equal opportunities") concerning strategies and measures that exist or are being introduced to ensure dismissal protection for workers (labour providers), such as "false self-employed workers" in the "gig economy" or "platform" economy. The Committee notes that the report does not provide information in this respect. It asks what safeguards exist to ensure that employers hiring workers in the platform or gig economy do not circumvent labour law as regards protection against dismissal on the grounds that a person performing work for them is self-employed, when in reality, after examination of the conditions under which such work is provided it is possible to identify certain indicators of the existence of an employment relationship.

Prohibited dismissals

In reply to the Committee's question regarding termination of employment on the ground that the employee has reached the pensionable age, the report states that according to Article 104 of the Law on Labour Relations, the termination of the employment contract on the ground of age is termination by law. According to paragraph 1, the employer shall terminate the employment contract of the employee when the employee reaches 64 years of age and completes 15 years of service.

In reply to the Committee question regarding protection against dismissal during temporary absence due to sickness, the report states that in accordance with Article 77 of the Law on Labour Relations, approved absence from work by reason of illness or injury, pregnancy, childbirth and parenthood cannot be considered as justified reasons for termination of the employment contract. The Law does not specify any timeframe for protection, which according to the report, means that the protection is valid throughout the leave of absence. In case of permanent disability, the employee is referred to the Disability Insurance Commission of the Pension and Disability Insurance Fund. The procedure for determining the disability of the insured person is initiated upon the request of the insured person, on the proposal of the employer with whom the insured person is employed, as well as on the proposal of the competent family physician and a medical commission of the Health Insurance Fund. The right to disability or family pension is acquired on the basis of the findings, assessment and opinion of the Commission on Assessment of Working Capacity. The Commission is established within the Fund. The Fund makes a decision which determines the existence or non- existence of disability for the purposes of exercising of the right to disability pension.

Remedies and sanctions

In reply to the Committee's question concerning the amount of compensation awarded in case of unlawful dismissal and whether such amount is limited, the report states that, in accordance with Article 102 of the Law on Labour Relations, if the court passes a judgment that the termination of the employment contract of the employee is unlawful, the employee shall be entitled to reinstatement as of the effective date of the judgment, if the employee so wishes.

In addition to reinstating the employee, the employer shall be obliged to pay the employee a compensation in the amount of the gross salary that the employee would have earned within the relevant period, in accordance with the law, collective agreement and the employment contract. If the court has found that the employment contract of the employee has been unlawful, and the employee does not find it acceptable to continue with the employment, the court, upon request of the employee, shall specify the date of termination of the employment and shall award compensation of damages. According to the report, the Law does not include a provision limiting the compensation amount due to unlawful termination of the employment contract.

In reply to the Committee's question regarding whether the burden of proof in dismissal cases is subject to appropriate adjustment between the employee and the employer, the report states that the burden of proof is placed on the employer and the Law on Labour Relations does not envisage any specific adjustments.

Conclusion

The Committee concludes that the situation in North Macedonia is in conformity with Article 24 of the Charter.