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# EUROPEAN SOCIAL CHARTER

European Committee of Social Rights

Conclusions 2020

**MALTA**

*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 Malta, which ratified the Revised European Social Charter on 27 July 2005. The deadline for submitting the 13<sup>th</sup> report was 31 December 2019 and Malta submitted it on 21 January 2020.

The Committee recalls that Malta 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 1196<sup>th</sup> 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).

Malta has accepted all provisions from the above-mentioned group except Articles 18§1, 18§2 and 18§3.

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

The conclusions relating to Malta concern 13 situations and are as follows:

– 7 conclusions of conformity: Articles 1§1, 1§3, 10§1, 10§4, 15§1, 15§2 and 15§3.

– 5 conclusions of non-conformity: Articles 1§4, 10§3, 10§5, 20 and 24.

In respect of the situation related to Article 1§2, 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 Malta under the Revised Charter.

The next report from Malta 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](http://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 Malta.

#### ***Employment situation***

According to Eurostat, the GDP growth rate decreased from 9.6% in 2015 to 5.2% in 2018, but still considerably exceeded the average for the 28 European Union (EU) member States (2% in 2018).

The overall employment rate (persons aged 15 to 64 years) increased from 65.1% in 2015 to 71.9% in 2018, exceeding the EU 28 average (68.6% in 2018).

The employment rate for men increased from 77% in 2015 to 81.5% in 2018, which is higher than the EU 28 average (73.8% in 2018). The employment rate for women increased from 52.5% in 2015 to 61.5% in 2018, which is slightly below the EU 28 average (63.3% in 2018). The employment rate for older workers (55 to 64-year-olds) increased from 42.3% in 2015 to 50.2% in 2018, which is below the EU 28 average (58.7% in 2018). Youth employment (15 to 24-year-olds) rose from 45.6% in 2015 to 50.9% in 2018, which is well above the EU 28 average (35.3% in 2018).

The overall unemployment rate (persons aged 15 to 64 years) fell from 5.4% in 2015 to 3.7% in 2018, which is well below the EU 28 average (7% in 2018).

The unemployment rate for men decreased from 5.5% in 2015 to 3.9% in 2018, which is below the EU 28 average (6.7% in 2018). The unemployment rate for women dropped from 5.4% in 2015 to 3.5% in 2018, which is substantially lower than the EU 28 average (7.2% in 2018). Youth unemployment (15 to 24-year-olds) fell from 11.6% in 2015 to 9.1% in 2018, which is below the EU 28 average (15.2% in 2018). Long-term unemployment (12 months or more, as a percentage of overall unemployment for persons aged 15 to 64 years) fell from 50.2% in 2015 to 48.1% in 2018, which is above the EU 28 average (43.4% in 2018).

The proportion of 15 to 24-year-olds “outside the system” (not in employment, education or training, i.e. NEET) decreased from 10.5% in 2015 to 7.3% in 2018 (as a percentage of the 15 to 24-year-old age group), which is below the EU 28 average (10.5% in 2018).

The Committee notes the favourable developments in labour market indicators during the reference period (an increase in the employment rates and falling unemployment). However, the labour market situation is still characterised by a very wide gap between the employment rates of men and women (20 percentage points in 2018, i.e. the widest gap in the EU that year). In addition, the employment rate for persons over 55 remained low and the long-term unemployment rate remained high in 2018.

#### ***Employment policy***

In its report, the Government describes the labour market measures implemented to help both unemployed persons in general and groups with distinct levels of under-employment and unemployment (such as women, older workers and long-term unemployed persons), together with young people, migrants and refugees.

The Committee takes note of all these measures, particularly those aimed at encouraging women to enter the job market, through, *inter alia*, the childcare system, the benefits scheme (during the first three years of employment) for persons who re-enter the labour market having drawn unemployment benefit or received social assistance or single parent benefits, and the contribution to maternity leave (in force since July 2015), which private sector employers must pay to all their employees, whether men or women.

The Committee also takes note of the continued implementation of the Mature Workers Programme (which supports unemployed persons over 45 through job subsidies). However,

the statistics submitted by the Government show that the number of workers benefiting from this programme steadily decreased – from 83 in 2015, to 34 in 2016, 22 in 2017 and then 5 in 2018. The Committee requests that the next report provide information on the follow-up to the Mature Workers Programme and on any other labour market measures designed to support older workers.

An initiative known as the “Work Programme”, intended to help long-term unemployed persons to integrate or re-integrate into the labour market, was launched in 2015. The final goal of this programme, which is based on three stages (establishing a profile, training and then work placement) and intended to improve participants’ skills to make them more employable, is to appoint them to a lasting job. The statistics provided by the Government show that between 2015 and 2018, 1,550 persons (36.7% of whom were women) took part in this initiative, and approximately one third (501 persons) were given a job. The Committee notes however that according to the information published on the Public Employment Service’s (Jobsplus) website, the “Work Programme” initiative ended after the reference period. It requests that the next report provide updated information on the labour market measures designed to support long-term unemployed persons.

According to statistics from the European Commission, public expenditure on labour market policies (as a percentage of GDP) decreased from 0.45% in 2015 to 0.39% in 2017 (of which 0.13% was for active measures and 0.06% was for passive measures in 2017). According to the Government’s report, the activation rate increased slightly, from 17% in 2015 to 17.75% in 2018.

Lastly, the Committee recalls that labour market measures should be targeted, effective and regularly monitored. It requests that the next report provide information on whether employment policies are monitored and how their effectiveness is assessed.

#### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Malta is in conformity with Article 1§1 of the Charter.

## **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 and the addenda to the report submitted by Malta.

#### **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, accordingly, focus its assessment specifically on these aspects. It will also examine responses to any findings of non-conformity or deferrals of its previous conclusion.

The Committee recalls that Malta has accepted Article 15§2 of the Charter and Article 20 of the Charter. For aspects concerning discrimination in employment on grounds of disability and gender, the Committee thus refers to its Conclusions on these provisions.

The Committee examined the legislation prohibiting discrimination in general terms in its previous conclusions (Conclusions 2016, 2008 and Conclusions XVIII-1 (2006)). It noted that the Equal Treatment in Employment Regulations Legal Notice 461 of 2004 (adopted under the Employment and Industrial Relations Act XXII of 2002) prohibits direct and indirect discrimination in employment on grounds of religion or religious beliefs, disability, age, sexual orientation, racial or ethnic origin. The additional information submitted by Malta indicates that the above Regulations concern all stages of professional life, ranging from the conditions for access to employment, such as advertisements for job opportunities, to the actual conditions of employment, including remuneration and dismissals. Membership of and involvement in trade unions or in employers' associations also fall within the scope of these regulations.

The Committee also noted that the definition of 'discrimination' under the Equality for Men and Women Act was extended to include not only discrimination based on sex or family responsibility, but also on sexual orientation, age, religion or beliefs, racial or ethnic origin, gender identity, gender expression or sex characteristics (Section 2 (1) of Chapter 456 Equality for Men and Women Act, see Conclusions 2016). The additional information submitted by Malta indicates that with respect to discrimination on grounds of age, the law states that difference of treatment on the ground of age shall not constitute a discriminatory treatment if such differences are objectively and reasonably justified by a legitimate aim, including a legitimate employment policy, labour market and vocational training objectives; and if the means of achieving that aim are appropriate and necessary.

The Committee notes from the 2019 Country Report on non-discrimination of the European Equality Law Network that an Equality Bill was being prepared with the aim of introducing comprehensive legislation on discrimination in a single Act. It also notes that a Bill on a Human Rights and Equality Commission was also under preparation. The new Human Rights and Equality Commission would replace the current National Commission for the Promotion of Equality (NCPE). The same source indicates that both bills were presented to Parliament in 2017 but are still in the process of enactment. The Committee asks for information on the status of the Equality Bill and the Human Rights and Equality Commission Bill and on any developments in this sense.

The additional information submitted by Malta in July 2020 under Article 1§1 contains information on the measures taken with regard to the employment of migrants and refugees.

It is indicated that Jobsplus services (Malta's Public Employment Service), including advisory services and training opportunities, are available to all individuals residing in Malta, including migrants who are offered the same services as those offered to locals and/or European nationals. Refugees and other third country nationals who have been granted long-term resident status can register for employment with Jobsplus and are therefore eligible for all the services offered to anyone enrolled on the Jobsplus unemployment register. Such services include being assigned an employment advisor who offers support and guidance in the job search process by assisting the jobseeker in developing a Personal Action Plan. Information is also provided on concrete services and projects developed during the reference period to support the integration of migrants and refugees into the labour market. The Committee notes that, however, according to an Observation of ILO CEACR, in the context of the Universal Periodic Review, the United Nations Human Rights Council issued recommendations regarding the strengthening of the Government's efforts to combat racial discrimination, in particular in the access to employment, and the eradication of stereotypes and discrimination against migrants (A/HRC/40/17, 18 December 2018, paragraph 110). It further notes that the UN Special Rapporteur on the human rights of migrants also expressed concern about the exploitation by employers of migrants in an irregular situation, asylum seekers and refugees, who are made to work long hours and are paid less than the minimum wage, without the required safety equipment or insurance, often in the sectors of construction, tourism and caregiving. According to the Special Rapporteur, such workers refrain from protesting and mobilizing due to their fear of being detected, detained and deported (Observation (CEACR) – adopted 2019, published at the 109th ILC session (2020), [Discrimination \(Employment and Occupation\) Convention, \(No. 111\)](#) – Malta). The Committee asks for information in the next report on the implementation of the measures described in the report and on their impact on reducing inequalities in employment in respect of migrants and refugees.

The Committee further 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, able to provide reinstatement and compensation, as well as adequate penalties effectively enforced by labour inspection; furthermore, it includes 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 explicitly requested information on remedies for this examination cycle.

With regard to judicial or administrative procedures available, the Committee noted previously that the persons who believe that they have been the victims of discrimination on prohibited grounds may take their case before the Industrial Tribunal or before the courts (Conclusions XVIII-1 (2006)). The additional information submitted by Malta in July 2020 indicates that a person claiming to have been subjected to discriminatory treatment in relation to his/her employment, may, within four months of the alleged breach, refer the matter to the Industrial Tribunal for redress. Moreover, a person who alleges that any other person has committed in his or her regard any unlawful act under the regulations shall, within four months of the alleged breach, have a right of action before the competent court of civil jurisdiction requesting the court to order the defendant to desist from such unlawful act and, where applicable, to order the payment of compensation for the damage suffered. The Committee notes that a statutory limitation of four months applies to discrimination cases. The Committee asks for more examples of practice demonstrating how and in which particular situations/cases the courts apply the four-months' time limit rule. Meanwhile, it reserves its position on this point.

The current report indicates that under Article 19 (1) of Chapter 456 of Equality for Men and Women Act "... a person who alleges that any other person has committed in his or her regard any act which under any of the provisions of this Act is unlawful, shall have a right of action before the competent court of civil jurisdiction requesting the court to order the defendant to desist from such unlawful acts and, where applicable, to order the payment of compensation for such damage suffered through such unlawful act."



The report adds that the Department of Industrial and Employment Relations regularly conducts investigations into companies to ensure that no form of discrimination in employment is occurring and action is taken by the Department where breaches of discrimination regulations are found.

With regard to compensation, the Committee took note previously that there was no upper limit on the compensation that may be awarded to the victim (Conclusions 2008). The additional information submitted by Malta indicates that besides proceedings before the Industrial Tribunal and the Civil Court, the Department of Industrial and Employment Relations can institute criminal proceedings against an alleged perpetrator of any of the offences considered in these Regulations. In such cases, any person contravening the provisions of these regulations shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding two thousand three hundred and twenty-nine euros and thirty-seven cents (EUR 2,329.37) or to imprisonment for a period not exceeding six months, or to both such a fine and imprisonment.

The Committee also asks for information on the remedies available for victims in case of discriminatory termination of employment (whether reinstatement is available and what the upper limits of compensation are).

As regards the burden of proof in cases of alleged discrimination, the Committee noted previously that legislation provides for a shift of the burden of proof from the claimant to the defendant (Conclusions XVIII-1 (2006) and Conclusions 2016). The current report confirms that Article 19 (2) of Chapter 456 of Equality for Men and Women Act provides for such a shift of the burden of proof. The Committee also notes that Legal Notice 461 of 2004 (Equal Treatment in Employment Regulations) provides that, in any proceedings brought by a person claiming discriminatory treatment, it shall be sufficient for the claimant to prove that he or she has suffered discriminatory treatment, the defendant having then to prove that such treatment was justified (European Equality Law Network, Country Report on non-discrimination, 2019, page 11).

With regard to equality bodies, the report indicates that in relation to equality in employment, the National Commission for the Promotion of Equality (NCPE) works towards ensuring a society free from discrimination based on: sex and family responsibilities, sexual orientation, age, religion or beliefs, racial or ethnic origin, and gender identity, gender expression or sex characteristics. The report adds that in 2016 through Legal Notice 173, the competence of the NCPE was widened to cover freedom of movement for workers in the EU, namely issues related to their access to employment and conditions of employment and work (remuneration, dismissal, health and safety at work, reinstatement or re-employment).

The report indicates that the NCPE is empowered to investigate complaints of alleged discrimination and to initiate *ex officio* investigations when necessary, to provide training to employers and employees from the public and private sectors, students, teachers, and to conduct awareness-raising activities.

The Committee previously asked for information on any discrimination cases brought before the courts or before the NCPE, including the grounds of discrimination addressed as well as any remedies provided or sanctions imposed (Conclusions 2016). The report provides information on the number and nature of complaints lodged with the NCPE during the reference period.

The Committee asks updated information on discrimination cases in employment before the Industrial Tribunal, the courts and equality bodies, including information on the measures/sanctions imposed on employers and the amount of compensation granted to victims of discrimination.

Pending receipt of the information requested, the Committee reserves its position with regard to the aspect of prohibition of discrimination in employment.

## **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 Musselle 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*, § 123; *C.N. and V. v. France*, § 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 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”.

The Committee notes that the supplementary information provided by the Government in July and September 2020 addresses the specific, targeted questions for this provision on the exploitation of vulnerability, forced labour and modern slavery (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 Committee notes from the current report that the exaction of forced or compulsory labour is prohibited in terms of Section 35 of the Constitution of Malta. It further notes from the supplementary information provided by the Maltese authorities that the national legal framework recognises the phenomenon of exploitation of persons, adults and children in any form as human trafficking, reflecting the EU Directive and the Council of Europe Convention on Action against Trafficking in Human Beings. The list of forms of exploitation under Article 248 A of the Criminal Code includes slavery or practices similar to slavery, servitude or forced labour, and the production of goods or provision of services. For the purposes of Article 248A (1) of the Criminal Code, exploitation includes requiring a person to produce goods and provide services under conditions and in circumstances which infringe labour standards governing working conditions, salaries and health and safety.

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 therefore asks that the next report provide information on the application in practice of the abovementioned criminal law legislation. The report should provide information (including statistics and examples of case law) on the prosecution and conviction of exploiters for forced labour and labour exploitation during the next reference period, in order to assess in particular how the legislation is interpreted and applied.

### **Prevention**

The Committee considers that States Parties should take preventive measures such as data collection and research 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 takes note of the information provided in the report in respect of domestic workers, which refers to two labour laws that came into force in January 2019 and seem to be applicable to all workers. The first one (Subsidiary Legislation 452.115- Annual Leave National Standard Order) deals with leave. The second one (Subsidiary Legislation 452.116 – Itemised Payslip Regulations) requires employers to issue payslips to employees on a monthly basis. Payslips should include the number of hours worked, the number of hours worked at overtime rates and leave balances, amongst others. The new law will facilitate the collection of data by national enforcement bodies, mainly the police and the Department of Industrial and Employment Relations (DIER), during the investigation of potential cases of forced labour.

The Committee takes note of the supplementary information provided by the Government in July and September 2020. The Law Compliance Unit (LCU) within Jobsplus (Malta’s Public Employment Services) handles issues related to undeclared work and abuses on the Maltese Labour Market. The Unit employs a number of inspectors who conduct random inspections

within companies; an online form where individuals can report abuses has been set up and *ad hoc* and routine inspections are carried out accordingly. Jobsplus also contributes to the EU Employers' Sanctions Directive (Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of third-country nationals illegally present on the territory) by organising and participating in Joint Inspections with the Immigration Police. The national authorities provide tables with the number of inspections and the number of infringements by sector (construction, hospitality, manufacture/industry, sales, services, transport) for the period between 2015 and 2018.

The Committee further notes from GRETA's Report on Malta of 2017 that the Third National Action Plan against Trafficking in Human Beings 2015-2016 laid the emphasis on action against trafficking for the purpose of labour exploitation, manifested by such activities as training officials and raising awareness among various stakeholders and potential victims about the risks of labour exploitation (Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Malta, second evaluation round, GRETA (2017)3, 16 March 2017, para. 25). It notes from that source that the prevention of trafficking in human beings for the purpose of labour exploitation is addressed by means of labour inspections, which two entities are responsible for (Employment and Training Corporation and Department of Industrial and Employment Relations) (para. 50). According to GRETA, at the time of the adoption of its report, the major case of trafficking for the purpose of labour exploitation so far detected in Malta took place in 2016 and concerned 31 Filipino victims who had been hired to provide cleaning services at national hospitals after their employer had won a public tender for providing these services. The exploitation was indeed detected as a result of a workplace inspection by the Department of Industrial and Employment Relations and the inspectors reported the case to the police (para. 79).

The Committee asks that the next report provide information on the implementation in practice of the National Action Plan 2015-2016 or any other subsequent national action plans with respect to forced labour and labour exploitation, indicating whether the objectives set out have been achieved and whether specific measures have been taken to prevent labour exploitation of migrants and refugees. In this latter respect, it notes that ECRI has expressed concern at the high number of complaints of extremely low wages and exploitation in unregistered employment, mostly among refugees. ECRI has therefore recommended that the Maltese authorities intensify their efforts to prevent labour exploitation by systematically providing refugees with information on their rights in employment and on how to report abuses (ECRI report on Malta, 2018, par. 77). The Committee also asks for up-to-date information in the next report on the actions carried out by the competent labour inspection services (Jobsplus, Department of Industrial and Employment Relations) with a view to detecting and effectively preventing forced labour and labour exploitation in economic sectors such as agriculture, construction, hospitality and manufacturing, including the number of victims of such practices who have been identified as a result of inspections carried out during the next reference period. The Committee recalls that it has found under Article 3§3 of the Charter that it has not been established that the labour inspection system is effective in Malta (Conclusions 2017 relating to Article 3§3).

The Committee notes from the supplementary information provided in September 2020 that the Government is considering the introduction of new obligations for temporary work agencies, including the requirement to obtain a licence, with the aim of reducing the chances of labour exploitation. The Committee wishes to be informed of any developments in this area.

The current report does not provide any information on whether Maltese legislation includes measures designed to force companies to report on action taken to investigate forced labour and exploitation of workers among their supply chains and 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. The Committee notes from the abovementioned GRETA Report that the Government of Malta issued Circular No. 12/13 on public sector

offices, prohibiting the contracting of work to any company whose employees are not paid at least the national minimum wage or whose employment conditions infringe the standards established in Malta's employment legislation (para. 52). The Committee requests that it be informed about the application/compliance in practice of this Circular and reiterates its request concerning the obligation for private companies to report in detail on the measures taken in order to investigate forced labour and exploitation of workers in their supply chains.

### **Protection of victims and access to remedies, including compensation**

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 notes from the supplementary information provided by the national authorities that the Victims of Crime Act makes provision for the rights, support and protection of victims, including victims of human trafficking. In particular, Article 12(1) (a) provides for a timely and individual assessment of the victims of a crime. The law also states that assistance and support shall not be conditional on the victim's willingness to cooperate in the investigation or criminal proceedings.

The Committee asks for information in the next report on the number of identified victims of forced labour and other forms of labour exploitation and the number of such victims benefiting from protection and assistance measures. It also asks for general information on the type of assistance provided (protection against retaliation, safe housing, healthcare, material support, social and economic assistance, legal aid, translation and interpretation, voluntary return, provision of residence permits for migrants) and on the duration of such assistance.

The Committee also asks for confirmation that the existing legal framework provides the victims of forced labour and labour exploitation, including irregular migrants, with access to effective remedies (before criminal, civil or labour courts or other mechanisms) designed to provide compensation for all damage incurred, including lost wages and unpaid social security contributions. The Committee also asks for statistics on the number of victims awarded compensation and examples of the sums granted. In this context, the Committee refers to the 2014 Protocol to the 1930 ILO Forced Labour Convention (ratified by Malta on 14 February 2019, outside the reference period), which requires Parties to provide access to appropriate and effective remedies to victims, such as compensation, irrespective of their presence or legal status in the national territory.

### **Domestic work**

The Committee reiterates 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 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 recalls that under Article 3§3 of the Charter, inspectors must be authorised to inspect all workplaces, including residential premises, in all sectors of activity (Conclusions XVI-2 (2003), Czech Republic, relating to Article 3§2 of the 1961 Charter; Statement of Interpretation of Article 3§3 (i.e., Article 3§2 of the 1961 Charter)). It considers that such inspections must be clearly provided for by law, and sufficient safeguards must be put in place to prevent risks of unlawful interferences with the right to respect for private life.

In its previous conclusions (Conclusions 2012, General Introduction, General Questions on Article 1§2, Conclusions 2016), the Committee requested information on the legislation adopted to combat forced labour in respect of domestic workers and the measures taken to implement this legislation and supervise its implementation. The Committee pointed out (Conclusions 2016) that, should the information on this point not be provided in the next report,

nothing will allow to establish that the situation is in conformity with Article 1.2 of the Charter regarding the prohibition of forced labour in respect of domestic workers.

The Committee notes that the only information provided in the current report relating to this issue is a reference to Subsidiary Legislation 452.40 – Domestic Service Wages Council, Wage Regulation Order, which regulates minimum wages and conditions of work for domestic workers. The Committee further notes from the abovementioned GRETA Report that labour inspectors (inspectors from the Department of Industrial and Employment Relations) can enter private households to examine the working conditions of domestic workers (para. 51). It notes however from the supplementary information provided by the Government that monitoring domestic work is a delicate matter given that the employment activity is carried out within a household. The Committee therefore asks that the next report confirm that labour inspectors can enter private households, and provide information on the number of inspections carried out in respect of domestic workers and on whether any victims of forced labour or labour exploitation have been identified as a result.

### **“Gig economy” or “platform economy” workers**

The Committee notes from the supplementary information provided by the national authorities that a number of inspections have taken place in companies in the “gig economy” or “platform economy” sectors, in particular those related to taxi and delivery services to ensure that they are abiding by national employment law and to ensure that there is no fictitious self-employment. The Employment Status National Standard Order is a law particularly addressing precarious conditions brought about by fake self-employment.

The Committee asks that the next report provide examples of "gig economy" or "platform economy" workers who have challenged their employment status (self-employed) and/or unfair working conditions before domestic courts under the abovementioned Employment Status National Standard Order.

In the meantime, pending receipt of the information requested in respect of all the points mentioned above (criminalisation, prevention, protection, domestic work, gig economy), the Committee reserves its position on the issue of forced labour and labour exploitation.

### *Conclusion*

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

## **Article 1 - Right to work**

### *Paragraph 3 - Free placement services*

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

Article 1§3 provides for the right to free employment services. The Committee deferred its previous conclusion (Conclusions 2016) and considered that the report did not reply to its questions on quantitative indicators necessary to assess the effectiveness of employment service. It also noted that the Employment and Training Corporation (ETC), which offered employment services, was not informed of all vacancies issued at the national level and therefore that the reliability of the counting system relating to vacancies and placements could be questioned (Conclusions 2016). Accordingly, the Committee asked to provide information on the initiatives taken to improve the reliability of the counting system relating to vacancies and placements operated by ETC.

The Committee also asked the next report to provide the following indicators for the different years of the reference period:

- number of jobseekers and unemployed persons registered with the Employment and Training Corporation;
- number of vacancies notified to ETC;
- number of persons placed via ETC and the related placement rate;
- average time taken by ETC to fill a vacancy;
- number of persons working in ETC (at central and local level);
- number of counsellors involved in placement services;
- ratio of placement staff to registered jobseekers;
- respective market shares of public and private services.

The report indicates that following the amendment to the Employment and Training Services Act in 2018 Jobsplus, the national public employment service, provides targeted support to registered unemployed persons through its employment advisers and job coaches. The report indicates that in 2015, 4,615 unemployed persons registered with Jobsplus, 2,912 in 2016, 2,167 in 2017 and 1,765 in 2018. The decrease was due to an economic boom which resulted in a tight labour market, according to the report.

The report provides information on the number of vacancies notified to Jobsplus and the number of applications for the different years of the reference period (respectively 21,645 and 91,659 in 2015, 24,768 and 103,215 in 2016, 28,480 and 108,636 in 2017, 30,047 and 126,206 in 2018). The report includes information on the number of persons placed by the Agency as well as the placement rate, which remained low during the reference period (between 18% and 20%).

As regards the Committee's question on the average time to fill a vacancy, the report refers to the Key Performance Indicator which requires that employers are referred suitable candidates within 48 hours of notifying the vacancy to Jobsplus. Furthermore, the report points out that since a number of factors can affect job starting date, any data that Jobsplus tries to extrapolate can be erroneous.

The Committee notes that the report indicates the number of persons working in Jobsplus during the reference period and that the number of employees working at central and local level is indicated only for 2018. Therefore, it asks the next report to provide updated information on the number of persons working in Jobsplus at central and local level for the different years of the reference period as well as information on the coordination between central and local employment services.

The Committee observes that the number of counsellors involved in placement services is particularly low. Namely, only 4 persons work specifically on placement services. The report explains that this figure indicates counsellors only dealing with private vacancies (while those working solely on public vacancies are not included) and that all employment advisors as well as job centre staff are involved in placement services.

The Committee takes note that the ratio of jobseekers to placement staff in 2018 corresponded to 441 jobseekers per placement counsellor (the ratio is based on the number of unemployed persons registered with Jobsplus).

The report indicates that the members of Jobsplus' board of directors are appointed by the Labour Ministry and that persons representing the interest of trade unions and employers' associations are appointed on this Board.

The report does not reply to the Committee's request for information on respective market shares of public and private services. Furthermore, the Committee notes from the International Labour Organisation comments on Convention No. 88 that the Employment and Training Services Act (as amended in 2018) has removed the provisions on private employment agencies and their regulation. The Committee asks the next report to comment on this point and to provide updated information on how private employment agencies are regulated and how they cooperate with public employment agencies. It also reiterates its request on respective market shares of public and private services.

The Committee further notes from the Country report on Malta of the European Commission adopted in 2019, that public employment services increased their focus on career guidance for jobseekers. The Work Programme Initiative and the NEET Activation Scheme II targeted the long-term unemployed and inactive people and personal employment advisers profile and create individual action plans. The new Occupational Handbook outlines occupational requirements for career advisers, educational institutions and individuals.

Lastly, the Committee considers that the information provided by the report as regards initiatives taken to improve the reliability of the counting system relating to vacancies and placements operated by ETC do not clarify whether the counting system has been effectively improved. The Committee recalls that in its previous conclusion (Conclusions 2016) the Committee found that the report itself acknowledged that a number of variables were affecting the counting system of vacancies and placements and that ETC was not informed of all vacancies issued at national level. The Committee seeks the next report to clarify whether Jobsplus is informed of all vacancies issued at national level as well as to provide information on initiatives taken to improve the reliability of the counting system relating to vacancies and placements operated by Jobsplus.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Malta is in conformity with Article 1§3 of the Charter.



## **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 Malta.

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.

As Malta has accepted Article 9, 10§3 and 15§1 of the Charter, measures relating to vocational guidance, to vocational training and retraining of workers, and to vocational guidance and training for persons with disabilities are examined under these provisions.

The Committee considered the situation to be in conformity with the Charter as regards measures relating to vocational guidance (Article 9) (Conclusions 2016) and to training for persons with disabilities (Article 15§1) (Conclusions 2016).

It considered however that the situation was not in conformity with the Charter as regards measures concerning vocational training and retraining of workers (Article 10§3) on the ground that it had not been established that the legislation provided for individual leave for training of employed persons (Conclusions 2020). Accordingly, the Committee considers that the situation is not in conformity with Article 1§4 of the Charter on the same ground.

### *Conclusion*

The Committee concludes that the situation in Malta is not in conformity with Article 1§4 of the Charter on the ground that it has not been established that the legislation provides for individual leave for training of employed persons.

### **Article 9 - Right to vocational guidance**

The Committee notes that no targeted questions were asked under this provision. As the previous conclusion found the situation to be in conformity there was no examination of the situation in 2020.

## **Article 10 - Right to vocational training**

### *Paragraph 1 - Technical and vocational training; access to higher technical and university education*

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

The Committee refers to its previous conclusions for a description of the situation which it found to be in conformity with the Charter (see Conclusions 2016).

### ***Measures taken to match the skills with the demands of the labour market***

The authorities point out that, since 2014, in accordance with the national curricula and the Maltese education strategy, pupils between 14 and 16 in compulsory schooling have been able to select vocationally-oriented subjects (on the agro-industry, engineering, health and social care, the hospitality industry and information technology). According to the information provided, the number of pupils attending these training courses is increasing (on average, 40% choose this type of course). The pass rate for examinations is also very high (92%).

Partnership agreements are negotiated with social partners and economic operators to enable secondary school pupils to acquire vocational learning experience. The authorities state that in October 2019, they extended this type of partnership to students on applied learning programmes.

The Committee notes that, since September 2019, in the context of the reform of the "My Journey" scheme, all secondary school pupils have been able to choose several academic, vocational and/or applied subjects in addition to the core curriculum. The Committee notes that this reform aims to foster stronger ties between education and industry, with the possibility of choosing between vocational and/or applied programmes from the age of 12, while retaining the core subjects intended for students on the applied programmes (mathematics, English, Maltese and science).

The Committee notes with interest that an Alternative Learning Programme has been set up with the aim of reducing school drop-out rates by getting the young people concerned (who are in their last year of secondary school) interested in vocational training programmes in addition to academic subjects (English, Maltese and mathematics).

The Committee notes that, as the main post-secondary school vocational training providers, the Malta College of Arts, Science and Technology (MCAST) and the Institute of Tourism Studies (ITS) try to maintain close ties with businesses, as they are required to consult them when drawing up and assessing programmes.

According to the information provided regarding Articles 1§1 and 10§4, the Youth Guarantee scheme, which is the national component of the European Social Fund programme, makes it possible to combat the social exclusion of young people who are neither in employment nor in education or training ("NEETs") by offering them training and other vocational training measures. Group and one-to-one training courses, which are fostered by an inter-institutional approach (involving the Ministry of Education and Employment, the Jobsplus Employment Agency, the MCAST, the ITS and various private sector players), have been set up to improve the training level and employability of the young people concerned. The Committee notes that the data provided shows a drop in the number of NEETs (from 10.5% in 2015 to 7.3% in 2018).

### ***Measures taken to integrate migrants and refugees***

The information provided regarding Articles 1§1 (addendum) and 10§4 specify that the various training programmes offered by Jobsplus are also available to refugees who have been granted long-term resident status. They are entitled to the same services as inhabitants and/or European nationals. Persons who have been granted subsidiary or temporary humanitarian protection may benefit from a similar service entitled "Employment Support Services for Migrants". This project is financed in part by the Asylum Migration and Integration Fund and

devised specially to meet these persons' needs and facilitate migrants' transfer to and integration into the job market. Asylum seekers are also eligible for this project. The Committee asks the authorities to indicate how many people benefit from these programmes.

According to the report (Article 9), co-operation between various NGOs specialising in assistance for migrants has been set up to help them enter the job market. These NGOs inform migrants of the services offered by Jobsplus, particularly training and counselling for jobseekers.

#### *Conclusion*

The Committee concludes that the situation in Malta is in conformity with Article 10§1 of the Charter.

**Article 10 - Right to vocational training**

*Paragraph 2 - Apprenticeship*

The Committee notes that no targeted questions were asked under this provision. As the previous conclusion found the situation to be in conformity there was no examination of the situation in 2020.

## **Article 10 - Right to vocational training**

### *Paragraph 3 - Vocational training and retraining of adult workers*

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

In its previous conclusion (Conclusions 2016), the Committee concluded that the situation in Malta was not in conformity with Article 10§3 of the Charter.

The Committee notes that Malta was asked to reply to the specific targeted questions 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”).

In its previous conclusion (Conclusions 2016), the Committee held that it had not been established that the legislation of Malta provides for an individual leave for training for employed persons, following the absence of relevant information. The report does not contain any information on this issue. The Committee, therefore, reiterates its previous conclusion of non—conformity.

In its previous conclusion (Conclusions 2016), the Committee requested information on the activation rate. In this respect, the Committee notes from the report that adult participation in lifelong learning as a percent of the population aged between 25 and 64, was 7.4% in 2015 and rose to 10.8% in 2018 and that the activation rate was 17% in 2015 and rose to 18% in 2017. According to the report, however, these rates reflect the participation only in active measures included in the Labour Market Policies database. The Committee asks the next report to provide information on the overall activation rate.

The Committee notes from the report that there are several vocational training programmes, available to both employed and unemployed persons. On this point the Committee takes note of the programme Jobplus, in the context of which training schemes aim to enhance transversal or specific skills. It also takes note of the programmes ‘Investing in Skills’ available to employed persons, implemented in collaboration with employers. Finally, the programmes ‘Work Exposure Scheme’ and ‘Work Placement Scheme’ provide skilling to jobseekers. At the same time the Youth Guarantee measures target young jobseekers and economically inactive young persons, while the ‘Work Programme Initiative Scheme’ offers, among others, training to long-term unemployed with the aim of their reintegration into the labour market.

The Committee reiterates its targeted question included in the appendix to the letter of 27 May 2019, and requests information on strategies and measures (legal, regulatory and administrative frameworks, funding and practical arrangements) in place to ensure skilling and re-skilling in the full range of competencies (in particular digital literacy, new technologies, human-machine interaction and new working environments, use and operation of new tools and machines), needed by workers to be competitive in emerging labour markets.

### *Conclusion*

The Committee concludes that the situation in Malta is not in conformity with Article 10§3 of the Charter on the ground that it has not been established that the legislation provides for individual leave for training of employed persons.

## **Article 10 - Right to vocational training**

### *Paragraph 4 - Long term unemployed persons*

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

The Committee notes that the present report was 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”).

In its previous conclusion (Conclusions 2016), the Committee requested detailed information on: a) the types of training and retraining measures available in the labour market, b) the number of persons undergoing such training, c) the special attention given to young long-term unemployed, and d) the impact of the measures on reducing long-term unemployment.

The Committee notes from the report and the appendix to it that Jobsplus, the national Public Employment Service (PES), provides advisory services and training opportunities in line with the skills required in the labour market. People who register with Jobsplus are referred to a job counsellor who, after the initial profiling, provides them with a Personal Action Plan (PAP). The PAP is regularly updated and users are referred to training programs, employment programs and other initiatives to meet their specific needs. Jobsplus also applies to long-term unemployed persons.

During the reference period, Jobsplus, in cooperation with the private sector and with the support of the Work Programme Initiative (WPI) assisted long-term unemployed persons to re-enter the labour market. The target group consisted of long-term unemployed aged 25 years and over, looking for full-time or part-time work. After completing the training phase, users are placed in employment. If a person has not been placed in employment for at least 6 months out of 24 months from the date of signing the WPI contract, he or she is referred back to Jobsplus

The report states that the rate of long term unemployment as a percentage of unemployment fell from 48.5% in 2015 to 34.2% in 2018. However the Committee recalls that it noted in its conclusion under Article 1.1 that according to EUROSTAT long-term unemployment (12 months or more, as a percentage of overall unemployment for persons aged 15 to 64 years) fell from 50.2% in 2015 to 48.1% in 2018, which is above the EU 28 average (43.4% in 2018).

According to the report the number of long-term unemployed in Malta between 2015 and 2018 was 5984 (77.5% of men and 22.5% of women). Among all long-term unemployed, 97.9% (5859) received a PAP, while 23.5% (1405) participated in the WPI between 2015 and 2018. 1356 long-term unemployed participated in the WPI while also having received a PAP, compared to 4503 who received a PAP without participating in the WPI. 26.7% of all long-term unemployed found a job.

The report indicates that at the end of June 2020, 47% of the long-term unemployed had a job compared to 39.2% who had unknown status and 13.8% who registered for a job. The Committee notes that these data do not relate to the reference period. It requires that the next report provide updated information on this issue.

With regard to young long-term unemployed (15-24 years old), the Committee notes from the report that youth in Malta benefit from an inter-institutional multi-stakeholder approach aimed at providing a holistic service, under the aegis of the Ministry of Education and Employment (MEDE) and Jobsplus, in order to improve the design and implementation of the various programmes of the Youth Guarantee Scheme (YG), which consists of education and employment related initiatives aiming at increasing the educational level and employment prospects of young unemployed.

It notes that the registration of youth (and in particular young long-term unemployed) refers specifically to the Activation Scheme II addressing in particular the persons not in education,

employment or training (NEET). This programme has been specifically developed to meet the needs of disadvantaged youth and is part of the YG. The Committee also takes note of a detailed description of the various initiatives taken under the Activation Scheme II, in particular a personalised approach to address the individual needs of the persons concerned.

Statistical data shows that the services provided by the Jobsplus' YG Unit together with the mechanisms in place have had a positive impact: according to Eurostat, the youth (15-24 years old) long-term unemployment rate was as follows: 3.5% in 2015, 2.5% in 2016, 3.0% in 2017 and 1.6% in 2018. The rate of youth NEET decreased in Malta from 10.5% in 2015 to 7.3% in 2018.

In order to assess whether equal treatment with regard to access to training and retraining for the long-term unemployed is guaranteed to nationals of other States Parties legally residing in Malta, the Committee requested in its previous conclusion (Conclusions 2016) detailed information on the "labour market test condition".

In response, the report states that Jobsplus is responsible for carrying out labour market tests for Third Country Nationals (TCN) who need authorisation to work in Malta. These tests do not apply to TCN who have an automatic right to work in Malta.

All Jobsplus training initiatives are made available to migrants that benefit from the same services as those offered to locals and/or EU nationals. Migrants can benefit from these services provided that they submit documentary evidence that the eligibility criteria for participating in these initiatives are met. The report points out that it is not necessary to pass a labour market test in order to participate in any of the employment-related training courses.

#### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Malta is in conformity with Article 10§4 of the Charter.



## **Article 10 - Right to vocational training**

### *Paragraph 5 - Full use of facilities available*

The Committee takes note of the information contained in the report submitted by Malta. The Committee notes that Malta has not accepted points b and c of Article 10§5.

The Committee recalls that in its letter requesting national reports it stated that no information was requested under this provision unless the previous conclusion was one of non-conformity or a deferral.

In 2016, the Committee deferred its conclusion (Conclusions 2016) pending receipt of information on the imposition of a condition of permanent residence or a prior residence requirement on foreigners in order for them to be able to apply for financial assistance for vocational education and training.

The Committee notes that the report does not provide information in response to this question.

It recalls that States Parties must ensure that vocational training, as defined in paragraph 1, is provided free of charge or that fees are progressively reduced. According to the Appendix to the Charter, equality of treatment shall be provided to nationals of other Parties lawfully resident or regularly working on the territory of the Party concerned. This implies that no length of residence is required from students and trainees admitted to reside in any capacity other than being a student or a trainee, or having authority to reside by reason of their ties with persons lawfully residing, on the territory of the Party concerned before starting training. This does not apply to students and trainees who, without having the above-mentioned ties, entered the territory with the sole purpose of attending training.

### *Conclusion*

The Committee concludes that the situation in Malta is not in conformity with Article 10§5 of the Charter on the ground it has not been established that equal treatment of nationals of other States Parties residing or working lawfully in Malta is guaranteed as regards financial assistance for vocational education and training.

## **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 Malta.

It previously found the situation to be in conformity with Article 15§1 of the Charter (Conclusions 2016).

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 recalls that the Equal Opportunities (Persons with a Disability) Act of October 2000 as amended prohibits discrimination, inter alia, in the area of, education (Conclusions 2016).

The Committee asks the next report to provide updated information on the legal framework.

As regards the definition of disability 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 (CRPD) 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 CRPD 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 (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 recalls that special schools were transformed into education resource centres providing services and assistance to children with disabilities during their education that cannot be provided in schools. Some children attend an education resource centre, rather than a mainstream school. Parents retain the right to choose whether to send their child to an education resource centre or a mainstream school. The education resource centres also

provide specialised support and resources to children with disabilities attending mainstream schooling (Conclusions 2016).

No information is provided in the report on the number of children in Malta with disabilities, the number of children with disabilities attending mainstream educational institutions, in special units in mainstream schools, the number of children in education resource centres, the number of children with disabilities attending school on a part time basis and the number of children with disabilities not in education at all.

According to other sources (Academic Network of European Disability Experts (ANED)) since the adoption of an Inclusive Education Policy in 2000, most children with disabilities in Malta now attend mainstream schools. Children are assessed by the *Statementing Moderating Panel* and are provided with support according to their individual educational needs. Children who have a statement are provided with an Individual Educational Plan (IEP) that defines long-term goals and short-term action to realize their full potential. The IEP is implemented with the support of Learning Support Educators (LSEs) who support children with disabilities in the classroom. The costs of employing LSEs is subsidised by the government in state, religious and independent schools.

According to data provided in the European Agency Statistics on Inclusive Education (EASIE) 2018 Dataset Cross-Country Report, in primary and lower secondary schools providing compulsory education), 94.65% of children recognised as having SEN were in inclusive education, and 5.35% in special schools.

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.

As regards measures in place to address the issue of costs associated with education the Committee asks whether children with disabilities or SEN are entitled to financial support to cover any additional costs that arise due to their disability.

### ***Measures aimed at promoting inclusion and ensuring quality education***

The report states that the National School Support Services (NSSS) within the Ministry for Education and Employment provides support for children with disabilities and psychosocial challenges in mainstream schools.

The Committee notes from the Concluding Observations of the UN Committee on the Rights of Persons with Disabilities [CRPD/C/MLT/CO/1, October 2018) that the UN Committee noted

that the concept of inclusive education is not fully applied in the Malta, the number of available learning support educators is insufficient and that resources are inadequate to ensure their replacement, in case of absence.

The Committee asks for the Government's comments on this.

The Committee notes from the report that the number of children with disabilities entering the labour market following education and training has declined during the reference period. It asks for the reasons for this.

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 recalls from previous conclusions that parents can appeal the decision of the *Statement Moderating Panel* regarding the provision of support to a child with disabilities/SEN (Conclusions 2016).

The Committee notes from the Concluding Observations of the UN Committee on the Rights of Persons with Disabilities [CRPD/C/MLT/CO/1, 17 October 2018] that the UN Committee noted that there are reports of children and students with disabilities having been denied access to educational institutions on the basis of their disabilities, such as childcare centres and summer schools, and the lack of accessible mechanisms for them to obtain redress when such discrimination occurs.

The Committee asks for the Governments comments on this.

The Committee asks the next report to provide updated information on the remedies available in the case of discrimination on the ground of disability with respect to education (including access to education, including the provision of adequate assistance or reasonable accommodation) and the relevant case-law.

### ***Conclusion***

Pending receipt of the information requested, the Committee concludes that the situation in Malta is in conformity with Article 15§1 of the Charter.

## **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 Malta.

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 found the situation to be in conformity with Article 15§2 of the Charter (Conclusions 2016).

### **Legal framework**

The report states that the right to inclusive employment, including the provision of reasonable accommodation and appropriate adjustments, is provided for by the Equal Opportunities (Persons with Disability) Act (Chapter 413 of the Laws of Malta), which also prohibits discrimination in employment.

The report also mentions the existence of specific anti-discrimination legislation encapsulating elements of the United Nations Convention of the Rights of Persons with disabilities (UNCRPD) and the EU Employment Equality Directive (2000/78/EC), and will be further strengthened following the adoption of a new Act on the subject. The Committee asks the next report to provide information on the new legislation.

As regards the definition of disability the report states that for the purposes of the work carried out by JobsPlus and the Lino Spiteri Foundation, the definition contained in the Persons with Disability (Employment) Act (Cap. 210) is used, whereby a "person with disability" is defined as 'a person, being over compulsory school age, who, by reason of injury, disease, congenital deformity or other physical or mental incapacity, is substantially handicapped in obtaining or keeping employment or in undertaking work on his own account, of a kind which apart from that injury, disease, deformity or incapacity would be suited to his age, experience and qualifications; and the word "disability", in relation to any person, shall be construed accordingly'.

For all other initiatives, the definition contained in the Equal Opportunities (Persons with Disability) Act (Cap. 413) prevails, having been more closely aligned with UNCRPD, and defining "disability" as a 'long-term physical, mental, intellectual or sensory impairment which in interaction with various barriers may hinder one's full and effective participation in society on an equal basis with others'.

The report further states that the current assessment system will eventually be integrated into a revised, holistic national system for disability assessment and eligibility determination, being coordinated by a multi-stakeholder working group chaired by the Office for Disability Issues (ODI), and which JobsPlus forms part of. The Committee asks to be kept informed of all developments in this respect.

### **Access of persons with disabilities to employment**

The report states that according to Jobsplus' administrative data, the number of persons with a disability in employment increased from 1,797 in 2013 to 3,578 in 2018 the corresponding figure in June 2019 was 3,663.

The Committee requests the next report to provide updated figures concerning the total number of people with disabilities employed (on the open market and in sheltered employment), those benefiting from employment promotion measures and those seeking employment as well as those that are unemployed.

The Committee notes, in this respect that the UN Committee on the Rights of Persons with Disabilities in its Concluding Observations on the initial report of Malta (CRPD/C/MLT/CO/ 1, October 2018) expressed concern about the low level of employment of persons with disabilities in the public and private sectors, despite the quota system that is provided for in articles 15 and 16 of the Persons with Disability (Employment) Act and other policy measures introduced by the State party.

The Committee asks for the Government's comments on this.

### ***Measures to promote and support the employment of persons with disabilities***

The report states that 'Jobsplus' is the state agency offering employment and training opportunities. It is bound by law to include people with disabilities in its programmes and it operates an Inclusive Employment Services Division aiming to assist registered unemployed people with disabilities in finding work and receiving suitable training that is tailored to their individual needs and skills. It works in partnership with the Lino Spiteri Foundation (LSF).

Jobsplus implements a number of measures and programmes aimed at promoting the employment of certain categories of persons, including persons with disabilities; these include:

- Access to Employment scheme which seeks to promote an equal and inclusive labour market through the provision of wage incentives to employers for a number of weeks in order to ensure the integration, retention and progression of individuals into the labour market;

- fiscal incentives for employers hiring persons with a disability. An employer who employs a registered person with a disability is eligible to claim a fiscal incentive equivalent to 25% of the disabled person's basic wage up to a maximum of €4,500 for each person with disability. In 2016, Jobsplus received applications from 12 employers while 101 applications were received in 2017. During 2018 Jobsplus, received 173 applications in relation to the fiscal incentive from 64 different employers:

- Sheltered Employment Training which is a one-year programme aimed at preparing individuals with mental, physical and/or intellectual disabilities for employment, with the aim of moving to open employment;

- Bridging the Gap scheme which is designed to support an individual in the transition period from unemployment to employment, through work experience. Clients receive a weekly allowance of 80% of the minimum wage from Jobsplus. Employers participating in this scheme are exempted from social security contributions, wages and sick leave benefits. Throughout this work exposure phase, the employer can benefit from the support of Jobsplus officials. In 2016 the scheme provided support to 60 registered persons with disabilities respectively. In 2017, 75 persons with disability clients benefited from this scheme while 45 persons with disability participated in 2018.

- Job Bridge Training Centre offers pre-employment training and outreach activities with local education institutions and NGOs.

As regards the quota system the Committee notes that employers hiring more than 20 employees, must ensure that at least 2% of the workforce are persons with a disability. Employers who fail to adhere to this legislation are requested to make an annual contribution for every person with disability they should be employing. The number of private companies which satisfied the 2% quota for employees with disabilities increased by 12% between December 2016 and December 2017. In December 2017 60% of enterprises complied with the quota, compared with 24% in 2015.

### ***Remedies***

The report states that the Equal Opportunities (Persons with Disability) Act empowers the Equal Opportunities Compliance Unit (EOCU) within the Commission for the Rights of Persons with Disability (legally defined as Malta's monitoring mechanism in terms of Article 33(2) of the

UNCRRPD, through the 2016 amendments to the Act) to investigate complaints of discrimination.

Most complaints are solved amicably. However, certain complaints do proceed to the courts, and the Commission is also involved in such matters. The Commission is not empowered to provide redress, compensation or rehabilitation to victims under the current legislation. Nonetheless, they assist victims in obtaining any redress, compensation and rehabilitation that they are entitled to, from the appropriate source, and have also assisted victims in pursuing separate civil actions.

The Committee asks the next report to provide updated information on remedies as well examples of relevant case law. It recalls that 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*

Pending receipt of the information requested, the Committee concludes that the situation in Malta is in conformity with Article 15§2 of the Charter.



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

*Paragraph 3 - Integration and participation of persons with disabilities in the life of the community*

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

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 concluded that the situation in Malta was in conformity with Article 15§3 of the Charter (Conclusions 2016).

***Relevant legal framework and remedies***

The Committee considers that Article 15 reflects and advances the change in disability policy that has occurred over the last two decades away from welfare and segregation and towards inclusion, participation and agency. In light of this, the Committee emphasises the importance of the non-discrimination norm in the disability context and finds that this forms an integral part of Article 15§3 of the Revised Charter. The Committee in this respect also refers to Article E on non-discrimination.

The Committee refers to its previous conclusions for a description of the legal framework (Conclusions 2016).

According to the report, the Commission for the Rights of Persons with Disability (CRPD), Malta’s monitoring mechanism in terms of the UN Convention on the Rights of People with Disabilities (UNCPDR), has undergone a restructuring process, following which a new Directorate for Investigations, Compliance and Enforcement was set up.

The UNCRPD Bill, together with a Bill revising the Equal Opportunities (Persons with Disability) Act, were due to be launched for public consultation in 2020 outside the reference period. They provide for wider mechanisms for national redress for alleged violations of the UNCRPD, while also providing a legal basis for Malta’s restructured national UNCRPD focal point, the Office for Disability Issues (ODI), and Malta’s UNCRPD National Coordination Mechanism.

The Committee asks the next report to provide further information on the adoption of the above-mentioned Bills.

The Committee further asks for updated information on remedies and examples of relevant case law.

Malta’s first National Disability Strategy 2020-2030 was completed and was to be launched in 2020. Malta’s first National Autism Strategy was to be launched in 2020. The Committee asks the report to provide information on the progress in implementing the strategies.

As regards the assessment of disability the report states that a reform of the disability assessment system has begun. A working group, with representatives of different government departments engaged in different areas of disability assessment and service delivery, together with civil society representatives, have so far identified the different and, at times, divergent assessment systems in place. The intended outcome is to agree on a unified system for a single gateway assessment based on functional and social criteria. The Committee notes that this reform has been ongoing since 2013 (Conclusions 2016) and asks for information on the outcome of this reform.

## **Consultation**

The Committee recalls that Article 15§3 of the Charter requires inter alia that persons with disabilities should have a voice in the design, implementation and review of coordinated disability policies aimed at achieving the goals of social integration and full participation of persons with disabilities. It asks the next report to provide information on consultation with people with disabilities, as well as other measures to ensure their participation in the design, implementation and review of disability policies.

## **Measures to ensure the right of persons with disabilities to live independently in the community**

### **Financial and personal assistance**

According to the report the rules for awarding of increased disability allowance for persons with intellectual or psychosocial disability with higher support needs were revised, making more people eligible for this allowance.

Benefit rates for persons deemed 'unfit for work' were also revised upwards, with the aim of equalising these with the national minimum wage.

Further the report states persons with disabilities can apply to the Empowerment Scheme managed by Aġenzija Sapport (Agency Support, a Government agency), which offers funds to support a person's right to live independently and within the community.

Aġenzija Sapport furthermore operates the Personal Assistance Fund (PAF) and Independent Community Living (ICL) Schemes, allowing for the funding of personal assistants, as well as support staff such as carers and live-in carers.

The Sonia Tanti Independent Living Centre (STILC), previously managed by the Commission for the Rights of Persons with Disability (CRPD), was passed over to Aġenzija Sapport as a service provider.

Reach, a project offering services aimed at empowering persons with disabilities to transition from institutional living to independent or supported community-based living arrangements, was also recently launched by Aġenzija Sapport, as an initiative co-funded through European Regional Development Funds (ERDF), as was Narcis, a similar initiative aimed at persons with disabilities who also have complex medical support needs.

The Committee notes from the report that a Personal Autonomy Bill has also been drafted moving away from interdiction, incapacitation and guardianship, and will introduce supported decision making measures.

The Committee asks the next report to provide information on number of beneficiaries of personal assistance. It also asks whether funding for personal assistance is granted on the basis of an individual needs' assessment and whether persons with disabilities have the right to choose services and service providers according to their individual requirements and personal preferences. Further the Committee asks what measures have been taken to ensure that there are sufficient numbers of qualified staff available to provide personal assistance.

The prevalence of poverty amongst people with disabilities in a State Party, whether defined or measured in either monetary or multidimensional terms, is an important indicator of the effectiveness of state efforts to ensure the right of people with disabilities to enjoy independence, social integration and participation in the life of the community.

The obligation of states to take measures to promote persons with disabilities full social integration and participation in the life of the community is strongly linked to measures directed towards the amelioration and eradication of poverty amongst people with disabilities. Therefore, the Committee will take poverty levels experienced by persons with disabilities into account when considering the state's obligations under Article 15§3 of the Charter. The Committee asks the next report to provide information on the rates of poverty amongst persons

with disabilities as well as information on the measures adopted to reduce such poverty, including non-monetary measures.

Information should also be provided on measures focused on combatting discrimination against, and promoting equal opportunities for, people with disabilities from particularly vulnerable groups such as ethnic minorities, Roma, asylum-seekers and migrants.

States should also make clear the extent to which the participation of people with disabilities is ensured in work directed towards combatting poverty amongst persons with disabilities.

### ***Technical aids***

The Committee asks the next report to provide updated information on the provision and cost of technical aids.

### ***Housing***

The Committee notes that the UN Committee on the Rights of Persons with Disabilities in its Concluding Observations (CRPD/C/MLT/CO/1 2018) expressed concern that Malta continues to institutionalise persons with disabilities. The Committee asks for the Government's comments on this.

The Committee asks the next report to provide information on the progress made to phase out institutions (including information on measurable targets clear timetables and strategies to monitor progress) and whether there is a moratorium on any new placements in residential institutions. It asks what proportion of private and public housing is accessible. It asks for information about the existence of accessible sheltered housing as well as assistance to adapt existing housing.

The Committee asks how many persons with disabilities live independently with support and how many live in institutions and small group homes.

### ***Mobility and transport***

As regards the accessibility of the built environment, the report states that the national guidelines on accessibility National Standard SM 3800:2015 adopted in 2015 have recently been made into subsidiary legislation, as the Access for All in the Built Environment Regulations (2019) to allow individuals to rely on the contents of the Standard when filing disability discrimination complaints.

In order to assess the reasonableness of derogations from the rules Malta created the Test of Reasonableness Board in 2016, through amendments to the Equal Opportunities (Persons with Disability) Act. This Board has a particular role in assessing whether accessibility rules impose a disproportionate burden in particular cases.

The Committee asks the next report to provide information on the proportion of buildings that are accessible to persons with disabilities as well as information on sanctions that are imposed in the event of a failure to respect the rules regarding the accessibility of buildings (including the nature of sanctions and the number imposed). It also asks for information on monitoring mechanisms to ensure the effective implementation of the rules.

According to the report public transport is heavily subsidised for persons with disabilities and it is intended to make it free of charge. Specific legislation on parking concessions for persons with disability (Blue Badges) exists, as well as rules for obtaining designated parking spaces.

Furthermore, exemptions from road licence fees and circulation tax exist for persons with disabilities to offset costs involved in obtaining specialised vehicles or modifying these for accessibility purposes. The Report states that measures are ongoing to ensure that legislation regulating accessibility of transport services for persons with disability and persons with reduced mobility (PRM), is implemented including through imposition of sanctions administered by Transport Malta.

The Committee notes that the UN Committee on the Rights of Persons with Disabilities in its Concluding Observations (CRPD/C/MLT/CO/1 2018) expressed concern that numerous public buildings and infrastructure remain inaccessible to persons with disabilities and do not conform to enforceable regulations and public transport services are not always accessible to persons with disabilities.

The Committee asks for the Government's comments on this.

### ***Communication***

The Committee notes that Malta has passed legislation on the accessibility of websites and mobile device applications of public sector bodies, and designating a competent oversight authority, with the power to receive and act upon complaints from the public, and to also administer effective sanctions.

In 2016, the Maltese Sign Language Recognition Act was adopted making Maltese Sign Language (LSM) Malta's third official language. The Act also provided for the setting up of the Sign Language Council of Malta (KLSM), to oversee efforts related to implementation of this legislation in all spheres of public life, in close cooperation with Government, relevant stakeholders and Malta's Deaf community.

The Committee notes that the UN Committee on the Rights of Persons with Disabilities in its Concluding Observations (CRPD/C/MLT/CO/1 2018) expressed concern that there is a lack of accessible information, and information and communications technology, for persons with disabilities.

The Committee asks for the Government's comments on this.

### ***Culture and leisure***

The Committee takes note of the information in the report in relation to sporting activities.

The Committee asks the next report to provide updated information on measures taken to ensure access of persons with disabilities to culture and leisure activities.

The Committee asks the next report to provide updated information on measures taken to ensure access of persons with disabilities to culture and leisure activities.

### ***Conclusion***

Pending receipt of the information requested, the Committee concludes that the situation in Malta is in conformity with Article 15§3 of the Charter.

**Article 18 - Right to engage in a gainful occupation in the territory of other States  
Parties**

*Paragraph 4 - Right of nationals to leave the country*

The Committee notes that no targeted questions were asked under this provision. As the previous conclusion found the situation to be in conformity there was no examination of the situation in 2020.

## **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 Malta.

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 does not contain any new information on the legislative framework. In this respect, the Committee points out that it assessed it in its previous conclusions. In particular, it noted that discrimination on the ground of sex was prohibited by the Maltese Constitution and by other texts: the Employment and Industrial Relations Act of 2002, the Equality of Men and Women Act of 2003 and the Equal Treatment in Employment Regulations of 2004. It also noted that the main legislative provision on equal pay was found in the Employment and Industrial Relations Act 2002, Article 26(2) of which expressly prohibited “terms of payment (...) that are less favourable than those applied to an employee in the same work or work of equal value, on the basis of discriminatory treatment”. Moreover, Article 27 required that the same rate of remuneration be applied to employees in the same class of employment for work of equal value. The relevant provisions of the Equality of Men and Women Act of 2003 (investigations by the National Commission, remedies, shifting the burden of proof, etc.) were also applicable in the area of equal pay (Conclusions 2008).

The Committee considers that the obligation to recognise the right to equal pay has been respected.

#### ***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 indicates that the Employment Tribunal has exclusive jurisdiction over cases concerning unequal pay. The Committee requests that the next report provide detailed and up-to-date information on the remedies available to victims of gender pay discrimination.

The report indicates that, according to the Equality between Men and Women Act (Chapter 456 as amended in 2014), it is sufficient for the plaintiff or the person instituting the proceedings to establish, before a court or other competent authority, facts from which it may be presumed that discrimination occurred. It shall be incumbent on the defendant or on the person against whom such proceedings are brought to prove that there has been no breach of the principle of equal treatment, or that such less favourable treatment was justified in accordance with the provisions of the Equality between Men and Women Act; judges would uphold the complaint if the defendant or the person against whom the proceedings before the competent authority are brought fails to prove that they did not commit an illegal act (Article 19.2 of the above-mentioned law). The Committee asks how the principle of shifting the burden of proof is applied in practice, for example, whether it is systematically applied in the case of pay discrimination.

The report indicates that there is no applicable ceiling at law in rules on compensation in case of pay discrimination on grounds of sex. The Committee 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. It also asks for examples of compensation awarded by the courts in cases of gender pay discrimination.

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.

As regards the penalties applicable for breaches of the regulations on equal treatment in employment, the Committee refers to its previous conclusion on Article 4§3 (Conclusions 2018) in which it noted that the offender was liable to a fine not exceeding €2,399.37 and/or to imprisonment for a period not exceeding six months.

### ***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 Committee recalls that it examines the right to equal pay under Article 20 and Article 4§3 of the Charter, and does so therefore every two years (under thematic group 1 “Employment, training and equal opportunities”, and thematic group 3 “Labour rights”). Articles 20 and 4§3 of the Charter require the possibility to make job comparisons across companies (see in this respect Complaints Nos. 124 to 138, UWE, *op. cit.*). In its previous conclusion (Conclusions 2016), the Committee concluded that the situation was not in conformity with Article 20 on the

ground that it had not been established that in equal pay litigation cases legislation allowed pay comparisons to be made across companies/undertakings. On this point, the Committee notes from the report (11th national report containing additional information on Article 20, 2017, and Conclusions 2018 on Article 4§3) that the law does not provide for comparisons of pay and jobs outside the company concerned, but that it does not prohibit the Employment Tribunal from making such comparisons. The report also states that it is the employer who has to ensure the principle of equal pay.

The Committee notes from the country report on gender equality in Malta drawn up by the European Network of Legal Experts in gender equality and non-discrimination (2019) that Article 2 of the Employment and Industrial Relations Act defines a comparable full-time employee as a full-time employee “in the same establishment who is engaged in the same or similar work or occupation, due regard being given to other considerations including seniority, qualification and skills, provided that where there is no comparable full-time employee in the same establishment, the comparison shall be made by reference to collective agreements covering similar comparable full-time employees in other establishments, and further provided that where there is no applicable collective agreement, reference shall be made to law or in default of provision by law to the prevailing practice as may be established by the Employment Relations Board”.

The Committee takes note of the information published in the European Commission staff working document entitled “Evaluation of the relevant provisions in the Directive 2006/54/EC implementing the Treaty principle on ‘equal pay for equal work or work of equal value’” (SWD(2020) 51 final, 05.03.2020), according to which there is a total lack of pay transparency measures in Malta.

The report does not provide any information on the employment classification system. It does not provide information on the notion of “work of equal value” or on the criteria for assessing equal work/comparable work set out in the legislation either. Therefore, the Committee requests again that the next report provide information on the job classification and promotion systems in place as well as on the strategies adopted to ensure pay transparency in the labour market (in particular the possibility for workers to receive information on the pay levels of other workers), including the setting of timelines and measurable criteria for progress.

### ***Enforcement***

The report indicates that labour inspectors look at the pay structure and compare the pay slips and time sheets of employees, which are required by law. The job history is also requested from the public employment agency (Jobsplus) to compare years of service and the employee’s position in the company. They also have the powers to look into collective agreements, which are concluded only at the level of the enterprise, to establish whether the law is being adhered to.

The report adds that the National Commission for the Promotion of Equality (NCPE) carried out an investigation in 2015 on a case of discrimination on the ground of sex. The NCPE noted that a woman middle manager was paid less than her male counterparts, and consequently, she received a substantial salary increase.

The Committee requests that the next report provide information about how equal pay is ensured, notably, about the monitoring activities conducted in this respect by the Labour Inspectorate and other competent bodies. It asks in particular for information on the activities carried out by the NCPE in this regard, as well as on the number, nature and results of wage discrimination cases, in the private and public sectors, dealt with by the Labour Inspectorate, the courts and the NCPE.



### ***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 several activities carried out by the NCPE as regards the gender pay gap, including a national conference on this issue in 2015; a campaign entitled “PayMeEqually” (2017) to raise awareness of the gender pay gap; the establishment of the Directory of Professional Maltese Women to raise the profile of professional women and their skills, qualifications and experience in various fields (263 professional women had registered on this directory by 2019), etc. In addition, various initiatives were taken to encourage women to enter or stay in the labour market, including in decision-making positions which, according to the report, helped to increase the employment rate of women in the working population.

The Committee notes from the report that the NCPE continues to award the “Equality Mark” to companies which genuinely foster equality through their employment policies and practices by implementing measures which go beyond what is required by law. The enterprises are assessed according to set criteria and receive the assistance necessary to reinforce their commitments in this field. The report indicates that 91 organisations representing over 22 600 employees had been awarded the “Equality Mark”.

The Committee notes from Eurostat data that the gender pay gap was 10.7% in 2015, 11.6% in 2016, 13.2% in 2017 and 13% in 2018 (compared to 9.2% in 2008). It notes that this gap was less than the average for the 28 European Union countries, i.e., 15% in 2018 (data as of 29 October 2020). However, it shows an upward trend.

In view of the widening wage gap between men and women, the Committee notes that the situation is not in conformity with Article 20 of the Charter on this point, on the ground that the obligation to make measurable progress in reducing the gender pay gap has not been fulfilled.

It asks that the next report provide updated information on the specific measures and actions implemented to reduce the gender pay gap. It also asks for up-to-date statistical data on the remuneration of men and women in the public and private sectors, disaggregated by economic activity and profession.

### ***Conclusion***

The Committee concludes that the situation in Malta 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.

## **Article 24 - Right to protection in case of dismissal**

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

### **Scope**

In its previous conclusion (Conclusions 2016) the Committee found that the situation in Malta was not in conformity on the ground that employees undergoing a probation period of six months were not protected against dismissal.

The Committee notes from the report of the Governmental Committee (2017) that discussions were on-going through the Employment Relations Board for the review of Maltese labour law. The latest changes to Labour law connected to the probation period targeted instances of a termination during probation when a person is pregnant; now, an employer is required to justify the reason for termination, and such justification cannot be due to pregnancy. However, according to the report of the Governmental Committee, Employers and Unions on the Board have never considered the review of the issue of dismissal during probation, the primary reason being that no claims to change this article in Labour Law have ever been lodged.

Furthermore, according to the report of the Governmental Committee, where an employee has reason to believe that he/she was dismissed due to race, sex, religion and other factors that go against the provisions of any of the equality acts under Maltese Law, such a person has the right to refer his/her case to an industrial tribunal where the burden of proof is on the employer. Furthermore, the aggrieved may also refer his/her case to a Civil Court.

However, the Committee notes that the report does not provide any new information on this issue. The report reiterates that Maltese law holds that the first six months of any employment shall be probationary employment unless otherwise agreed by both parties for a shorter probation period. In respect of employees holding technical, executive, administrative or managerial posts and whose wages are at least double the minimum wage, such probation period shall be one year unless otherwise specified in the contract of service or in the collective agreement.

During the probationary period, the employment may be terminated at will by either party without assigning any reason. However, a week's notice of the termination of employment shall be given to the other party in the case of an employee who has been in the employment of the same employer continuously for more than one month. According to the report, this is not only beneficial for the employer but also for the employee since the latter can easily terminate his/her employment if he/she does not feel comfortable in the job or has found another more suitable job. In any case, an employee who is dismissed during probation still has a right of redress if he/she claims unfair dismissal and will not lose the right to register for work. Such employees also have the right to claim unpaid wages should there be a discrepancy in pay given during the probation period.

The Committee considers that the situation which it has previously found not to be in conformity with the Charter has not changed. Although the employee has a right to contest dismissal claiming that it has been discriminatory, the employer is not obliged to provide a valid reason for dismissal. Therefore, the situation remains not in conformity with the Charter.

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.

According to the report, the Employment Status National Standard Order was enacted to address bogus self-employment and the resultant abuse and to therefore combat both. This law lists a number of criteria indicating an employment status, rather than a self-employment

status. The Employment Status National Standard Order (SL452.108) states that bogus self-employment will not be considered as such and will be deemed to be an employee if five out of the following eight criteria are met:

- 1. they depend on one single person for whom the service is provided for at least 75% of their income over a period of one year;*
- 2. they depend on the person for whom the service is provided to determine what work is to be done and where and how the assigned work is to be carried out;*
- 3. they perform the work using equipment, tools or materials provided by the person for whom the service is provided;*
- 4. they are subject to a working time schedule or minimum work periods established by the person for whom the service is provided;*
- 5. they cannot sub-contract the employee's work to other individuals to substitute themselves when carrying out work;*
- 6. they are integrated in the structure of the production process, the work organisation or the company's or other organization's hierarchy;*
- 7. the person's activity is a core element in the organization and pursuit of the objectives of the person for whom the service is provided; and*
- 8. they carry out similar tasks to existing employees, or, in the case when work is outsourced, they perform tasks similar to those formerly undertaken by employees.*

If five out of eight criteria are present, the employment relationship is presumed to be indefinite, full-time. In that case, the date of engagement shall be first date of the rendering of the service. All conditions of employment shall be brought to the notice of the new 'employee'. Moreover, according to the report, the same law holds that any conversion of a contract of service or of a contract of employment into a contract for service can only have legal effect if it is authorised by the Director of industrial and Employment Relations. Until such authorisation is obtained and if it is refused once sought, the employment status of the person concerned shall be considered to be unchanged and shall be the same as that enjoyed prior to the request for authorisation.

The Committee asks the next report to indicate 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.

### ***Obligation to provide valid reasons for termination of employment***

In its previous conclusion the Committee found that the situation was not in conformity with the Charter on the ground that termination of employment on the sole ground that the person has reached the pensionable age, which is permitted by law, was not reasonably justified.

The Committee notes from the report of the Governmental Committee that this issue was on the agenda of the Pensions Strategy Group that includes various stakeholders, and that meets regularly to discuss reforms to the Maltese pension system and other related issues such as termination of employment due to pension age.

Although there is agreement that changes should be carried out to Maltese Labour Law, discussions are still being carried out in order to find an outcome that is acceptable to all stakeholders. According to the Governmental Committee report, statistical data gathered indicates that more persons of pension age are opting to remain in employment, with the number of such persons increasing on a yearly basis.

However, the Committee notes from the report that according to the Government, Maltese law is in conformity with EU law and case law of the CJEU in that this does not constitute discrimination on the basis of age, since this is an objective and justified reason related to the dynamics of the labour market and considered ‘on the basis of legitimate aims’. The report underlines that persons recruited after reaching the pensionable age still enjoy the full protection of the law, including in so far as dismissal is concerned.

The Committee considers that there have been no changes to the situation which it has previously considered not to be in conformity with the Charter. Even if the Employment and Industrial Relations Act (EIRA) does not in any way preclude recruitment of a person of a pensionable age, it gives an employer the right to terminate employment relationship upon the employee’s reaching of the national retirement age. Therefore, the Committee reiterates its previous finding of non-conformity on this ground.

### ***Prohibited dismissals***

The Committee recalls that under Article 24 of the Charter dismissal on the ground of temporary absence from work due to illness or injury must be prohibited. A time limit can be placed on protection against dismissal in such cases. Absence can constitute a valid reason for dismissal if it severely disrupts the smooth running of the undertaking and a genuine, permanent replacement must be provided for the absent employee. The Committee asks what rules apply in case of termination of employment on the ground of long-term or permanent disability, such as the procedure for establishing long-term disability and the level of compensation paid in such cases.

### ***Remedies and sanctions***

The Committee notes that there have been no changes. The Committee asks for updated information concerning redress in case of unlawful dismissal, such as the level of compensation granted and the right to reinstatement.

**27.** Where, on a complaint for unfair dismissal referred to the Tribunal, the latter (a) finds that the grounds of the complaint are well-founded, and (b) on the specific request of the complainant to be reinstated or re-engaged made in the referral or in the statement of his case, the Tribunal considers that it would be practicable and in accordance with equity, for the complainant to be reinstated or re-engaged by the employer, the Tribunal shall make an order to that effect, stating the terms on which it considers that it would be reasonable for the complainant to be so reinstated or re-engaged. But where the complainant is employed in a managerial or executive post that requires a special trust in the person of the holder of that post or in his ability to perform the duties thereof, the Tribunal shall not order the reinstatement or re-engagement of the complainant; but where the complainant was appointed or selected to such post as aforesaid by his/her fellow workers, the Tribunal may order his/her reinstatement or re-engagement in the post held by him/her before such appointment or selection. Where, in cases of unfair dismissal, there is no specific request for reinstatement or re-engagement or the Tribunal decides not to make an order for reinstatement or re-engagement, the Tribunal shall make an award of compensation, to be paid by the employer to the complainant, in respect of the dismissal. In determining the amount of such compensation, the Tribunal shall take into consideration the real damages and losses incurred by the worker who was unjustly dismissed, as well as other circumstances, including the worker’s age and skills as may affect the employment potential of the said worker.

### ***Conclusion***

The Committee concludes that the situation in Malta is not in conformity with Article 24 of the Charter on the grounds that:

- employees undergoing a probation period of six months are not protected against dismissal;
- termination of employment at the initiative of the employer on the sole ground that the person has reached the pensionable age, which is permitted by law, is not reasonably justified.

**Article 25 - Right of workers to protection of their claims in the event of the insolvency of their employer**

The Committee notes that no targeted questions were asked under this provision. As the previous conclusion found the situation to be in conformity there was no examination of the situation in 2020.

