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EUROPEAN SOCIAL CHARTER

European Committee of Social Rights

Conclusions 2020

MONTENEGRO

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 Montenegro, which ratified the Revised European Social Charter on 3 March 2010. The deadline for submitting the 9th report was 31 December 2019 and Montenegro submitted it on 21 January 2020.

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

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

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

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

Montenegro has accepted all provisions from the above-mentioned group except Articles 10§5, 18 and 25.

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

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

– 1 conclusion of conformity: Article 24.

– 10 conclusions of non-conformity: Articles 1§1, 1§2, 1§4, 9, 10§1, 10§3, 10§4, 15§1, 15§2 and 20.

In respect of the other 2 situations related to Articles 10§2 and 15§3, 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 Montenegro under the Revised Charter.

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

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

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

The deadline for submitting that report was 31 December 2020.

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

Article 1 - Right to work

Paragraph 1 - Policy of full employment

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

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

Employment situation

According to Eurostat, the GDP growth rate increased from 3.4% in 2015 to 5.1% in 2018.

The overall employment rate (persons aged 15 to 64 years) increased from 51.4% in 2015 to 54.7% in 2018.

The employment rate for men increased from 56% in 2015 to 61% in 2018, and the rate for women from 46.9% in 2015 to 48.4% in 2018. The employment rate for older workers (55 to 64-year-olds) increased from 40% in 2015 to 46.6% in 2018. Youth employment (15 to 24-year-olds) increased from 18.8% in 2015 to 23.2% in 2018.

The overall unemployment (persons aged 15 to 64 years) decreased from 17.8% in 2015 to 15.5% in 2018.

The unemployment rate for men fell from 18% in 2015 to 15.6% in 2018, and the rate for women from 17.6% in 2015 to 15.3% in 2018. Youth unemployment (15 to 24-year-olds) decreased considerably, from 37.6% in 2015 to 29.4% in 2018. Long-term unemployment (12 months or more, as a percentage of overall unemployment for persons aged 15 to 64 years) fell slightly, from 76.9% in 2015 to 75.1% in 2018.

The proportion of 15 to 24-year-olds “outside the system” (not in employment, education or training, i.e. NEET) dropped from 19.1% in 2015 to 16.2% in 2018 (as a percentage of the 15 to 24-year-old age group).

The Committee notes that the economic situation improved during the reference period and that this positive trend went hand in hand with favourable developments in the labour market (an increase in the employment rates and falling unemployment). Nevertheless, employment rates were still low and unemployment rates were still very high in 2018 as compared with other State Parties.

Employment policy

The Committee notes that the Government’s report hardly provides any information on the matters to be examined under Article 1§1.

In particular, the report does not state which active labour market measures are available in general to jobseekers. Nor does it provide any information about the number of participants in the various active measures or about the activation rate (i.e. the average number of participants in active measures as a percentage of the total number of unemployed). It also contains no information about public expenditure on active and passive labour market measures (as a percentage of GDP).

The Committee recalls that in order to assess the effectiveness of employment policies, it requires information on the above indicators. As the report does not provide any information on these matters, the Committee considers that there is nothing to demonstrate that employment policies are adequate to combat unemployment and promote job creation.

Lastly, the Committee would recall 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

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

Article 1 - Right to work

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

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

1. Prohibition of discrimination in employment

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

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

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

In its previous conclusion (Conclusions 2016), the Committee concluded that the situation in Montenegro was not in conformity with Article 1§2 of the Charter on the ground that foreigners with temporary permit might not be employed as teachers, which constituted discrimination on grounds of nationality. The Committee pointed out that this occupation was not linked to the protection of law and order or national security and did not involve the exercise of public authority and, thus, it considered this restriction to be excessive. The report states that this situation has not changed. Accordingly, the Committee concludes that the situation is still not in conformity with the Charter in this respect.

As regards the legislation prohibiting discrimination in general terms, the Committee examined the relevant legal framework in its previous conclusion (Conclusions 2016) and found it to be in conformity with the Charter. No changes have been reported for the reference period.

As regards specific legislation and the practical measures targeted explicitly to combat discrimination on grounds of ethnic origin, the Committee previously noted that members of various ethnic groups had difficult access to the labour market and a very low level of employment. It further noted that the Government adopted a Strategy 2012 – 2016 for improving the employment situation of this group of persons and asked for information on its impact (Conclusions 2016). The report states that according to the statistics of the Employment Office, there has been no significant change in the employment of this group of persons in the reporting period. A new 2016 -2020 Strategy for Social Inclusion of Roma and Balkan Egyptians has been adopted, encompassing, *inter alia*, the implementation of direct measures aimed at the employment of these ethnic groups. The Employment Office is also active in the field, with targeted work programs and activities. The Committee notes in this respect that the UN Committee on the Elimination of Racial Discrimination in its concluding observations on the 2018 periodic report of Montenegro raised concerns about the disproportionately high unemployment rate of members among various ethnic groups, especially affecting women, as well as about their overrepresentation in informal employment and unskilled jobs. Similar observations were made by the European Commission in its report on Montenegro 2019.

The Committee recalls that States must effectively combat any discriminatory practice that might interfere with the workers' right to earn their living in an occupation freely entered upon. Furthermore, States must demonstrate that tangible progress is being made in the setting-up of a non-discriminatory labour market. The Committee finds that the information at its disposal does not allow for an adequate assessment of the situation, in the absence of explanations as

to the ineffectiveness of the measures adopted. It asks that the next report provide comprehensive information on all the State's efforts to improve the labour market situation of ethnic minorities, including on the effect, noted or envisaged, of the 2016-2020 Strategy and of the accompanying actions. Should this information no bet provided, nothing will allow to show that the situation is in conformity with Article 1§2 of the Charter in this respect.

The report does not reply to the Committee's request for information on legislation and practical measures targeted specifically to combat discrimination on grounds of race, age, sexual orientation, political opinion or religion. Neither does it report on specific measures taken to counteract discrimination in the employment of migrants and refugees. In this respect, the Committee notes, in particular, that the ILO in its Direct Request (CEACR) adopted 2019 published at the 109th ILC session (2020) on Labour Inspection Convention, raised concerns over the fact that a large number of migrant workers were found to be working without adequate documentation and over the lack of protection of their labour rights, which are not equal to those enjoyed by Montenegrin citizens. The European Commission in its aforesaid 2019 report on Montenegro points to a large number of apprehended irregular migrants and indicates that Montenegro needs to ensure that adequate institutional mechanisms are in place to protect vulnerable groups from discrimination, such as refugees and asylum seekers. The Committee also notes the observation by the European Commission in the same report that discrimination on grounds of political affiliation in the area of employment continues to be the type of discrimination most commonly reported. In the light of above, while renewing its requests, the Committee underlines that, should the next report not provide the relevant and exhaustive information on the all mentioned aspects, nothing will allow to show that the situation is in conformity with the Charter in this respect.

The Committee recalls that appropriate and effective remedies must be ensured in the event of an allegation of discrimination. The notion of effective remedies encompasses judicial or administrative procedures available in cases of an allegation of discrimination, 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 noted in its previous conclusion that the persons who consider themselves victims of discrimination in employment may complain to the Ombudsman or to the courts in accordance with the Law on Prohibition of Discrimination or with the Labour Law. It further raised concerns about the Ombudsman's capacity to fulfil his broad remit and efficiently handle complaints, as well as about the fact that little follow-up was given to concrete cases of discrimination (Conclusions 2016).

In reply to these observations, the report states that during the reference period, the human resources capacity of the Ombudsman was enhanced, and it provides detailed data on the positions filled. In particular, the capacity for dealing with complaints was enhanced. Furthermore, the Ombudsman began the practice of a detailed breakdown of the areas of discrimination, personal traits and manner of dealing with individual cases, including the area of labour and employment. Out of 135 anti-discrimination cases in 2017, as many as 50 related to the field of labour and employment, while in 2018, out of 155 cases in the field of labour and employment, 52 cases were on different grounds of discrimination. The data collection includes how the cases were resolved, where a violation of rights was identified, what recommendations were made, and the status of the recommendation with regard to the monitoring of its implementation.

The Committee notes that some reservations as regards the functioning and independence of the Ombudsman's Office continue to be raised by international bodies (it refers, for instance to the UN Committee on the Elimination of Racial Discrimination, Concluding observations on the 2018 periodic report of Montenegro). It asks that the next report provide comprehensive information on the appointment process of the Ombudsman and the legislative power to recruit staff openly, transparently and through a merit-based selection process. It also asks for further

statistics showing whether the human and financial resources are sufficient to efficiently carry out the mandate, including anti-discrimination activities.

The Committee further notes from the report that the law sets no upper limit on the amount of pecuniary or non-pecuniary damages that can be awarded to a victim of discrimination. The court, taking into account all the circumstances arising from the damage caused, awards damages in the amount necessary to bring the injured party's financial situation back to the level he would have enjoyed, had there been no harmful act or omission; or damages proportional to the severity of the mental pain suffered by the violation of reputation, honour and dignity of the person. At the same time, it notes from the above-mentioned 2019 EC report that court cases remain rare and a very limited number of cases have been initiated by the relevant inspection services. The Committee asks that the next report provide statistics on the number of court cases concerning discrimination, as well as whether the procedure is easily accessible, including an appropriate adjustment of the burden of proof, costs, representation, as well as the participation of NGOs. It also asks what sanctions may be imposed against employers in cases of discrimination in employment and the Committee requests that the next report provide comprehensive information in this respect, namely, how violations of the legal provisions prohibiting discrimination in the workplace are scrutinised, whether adequate penalties exist and if so, whether they are effectively enforced by labour inspectors. Meanwhile, it reserves its position on this point.

2. Forced labour and labour exploitation

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

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

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

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

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

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

The Committee notes that the national authorities have not replied to 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

Referring to the Criminal Code, Article 444 criminalizes trafficking in human beings and provides that: "Anyone who, by means of threat or use of force, fraud or deceit, by abuse of power or trust, or a relation of dependence, or the vulnerability of another person, or by withholding or destroying personal identification documents, or counterfeiting them, or procuring or manufacturing such counterfeit documents, or by giving or receiving payments or benefits to obtain the consent of a person having control over another person, commits any of the following: recruits, transports, transfers, hands over, sells, buys, mediates in sale, conceals or keeps another person for the purpose of exploitation of his/her work through forced labour, submission to servitude, slavery or practices similar to slavery, commission of criminal activity, prostitution or other forms of sexual exploitation, begging, exploitation for pornographic purposes, entering into unlawful marriage, unlawful removal of organs for transplantation, or exploitation in armed conflicts, shall be punished by a one to ten years' prison sentence". This article in its Alinea 9 also provides for the irrelevance of the victim's consent to the exploitation.

In the absence of any information related to the implementation of the current legislation, 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 implementation of Article 444 of the Criminal Code in practice, particularly with regard to labour exploitation in the forms of forced labour or services, slavery and servitude. The report should provide information (including statistics, examples of case law and specific penalties effectively applied) on the prosecution and conviction of exploiters during the next reference period, in

order to assess in particular how the national legislation is interpreted and applied to combat severe labour exploitation covering work situations that differ significantly from normal working conditions as defined by labour law concerning mainly remuneration, working time, holidays, health and safety, and the decent and respectful treatment of workers.

However, the Committee refers to the European Commission 2018 Country Report. This report indicates that Montenegro has made no progress in the fight against human trafficking, although the legal, institutional and strategic frameworks are in place and are being continuously improved. The failure to identify victims and to detect the organised and forced nature of prostitution, of child begging and of certain forms of labour brings into question the political will and ability of the police and the prosecution services to effectively address this type of crime. Proactive investigations must become general practice in this area. All stakeholders (i.e., the police, the prosecutors, the judges, the labour inspection, and the social workers) need to improve their operational capacity and their ability to work together in a multidisciplinary approach to the prevention and repression of trafficking in human beings and to the protection of victims.

Prevention

As the report does not provide any relevant information, the Committee recalls 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 asks that the next report indicate whether a comprehensive national action plan against all forms of labour exploitation and trafficking has been adopted and if so, to provide information on its implementation and the results achieved with regard to labour exploitation, including in respect of migrants and asylum seekers.

Information is also requested on whether the domestic legislation includes measures designed to force companies to report on action taken to investigate forced labour and exploitation of workers among their supply chains 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.

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 report does not provide any relevant information on this point.

The Committee asks for information in the next report on the number of formally identified victims of forced labour and 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 by the authorities (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 asks for information in the next report if 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, not only moral damage but also 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.

Domestic work

The report indicates that there are no specific regulations to combat forced domestic labour. The labour inspectorate, through its regular activities, focuses solely on monitoring the implementation of the labour law, which recognizes employment contracts for domestic work as a special type of contract, under which the method of payment is provided for (payment in kind can be arranged). It further indicates that the labour inspectorate has not identified any such contracts, concluding that this type of employment contract is not used in practice or that domestic work is hidden and invisible to the inspectorate. Consequently, the labour inspectorate has not identified any cases of violations of the rights of domestic workers, in terms of discrimination or forced labour.

In this regard, the Committee asks more information related to the legal provisions providing for payment in kind and its terms of payment, (i.e., the proportion of the payment, the worker's consent and safeguards against any risk of abuse). The Committee refers to the ILO Convention No.189 that explicitly states that domestic workers are to be paid in cash like workers generally. The Committee concludes that paying a domestic worker in kind carries a greater risk of turning into an abusive practice, in particular when the labour inspectorate is unable to inspect such situations.

Further, 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.

The Committee asks that the next report provide detailed information on the number of inspections carried out relating to registered domestic workers during the next reference period, and the number, if any, of victims of forced labour or labour exploitation identified as a result.

"Gig economy" or "platform economy" workers

The report provides no information on measures taken to protect workers in the "gig economy" or "platform economy".

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

Conclusion

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

- nationals of the other States Parties do not have access to certain jobs, which constitutes a discrimination on grounds of nationality;
- it has not been established that the national authorities have fulfilled their obligations to prevent forced labour and labour exploitation, to protect victims, to effectively investigate the offences committed, and to punish those responsible for forced labour offences.

Article 1 - Right to work

Paragraph 3 - Free placement services

The Committee 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 1 - Right to work

Paragraph 4 - Vocational guidance, training and rehabilitation

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

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 Montenegro 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 that the situation was not in conformity with the Charter on the grounds that:

- it had not been established that the right to vocational guidance within the education system and in the labour market was guaranteed and equal treatment of all nationals of other Contracting Parties was not guaranteed (Article 9) (Conclusions 2020);
- it had not been established that the right to vocational training and retraining was guaranteed for all workers (Article 10§3) (Conclusions 2020);
- it had not been established that the right of persons with disabilities to mainstream training was effectively guaranteed (Article 15§1) (Conclusions 2020).

Accordingly, the Committee considers that the situation is not in conformity with Article 1§4 on the same grounds.

Conclusion

The Committee concludes that the situation in Montenegro is not in conformity with Article 1§4 of the Charter on the grounds that:

- it has not been established that the right to vocational guidance within the education system and in the labour market is guaranteed and the right to equal treatment of nationals of other Contracting Parties is not guaranteed;
- it has not been established that that the right to vocational training and retraining is guaranteed for all workers;
- it has not been established that the right of persons with disabilities to mainstream training is effectively guaranteed.

Article 9 - Right to vocational guidance

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

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.

The Committee previously asked the next report to clarify whether holders of temporary residence permits have equal access with Montenegro nationals to vocational guidance services within the education system and in the labour market (Conclusions 2016). The report states that certain temporary residence permit holders are entitled to vocational guidance within the labour market; stateless persons, those with a temporary residence permit for up to three years, those with a temporary residence permit for a stateless person, those with a temporary residence permit for the purpose of family reunification with a Montenegrin citizen or with a foreign national who has a permanent residence permit, persons with a temporary residence permit for humanitarian reasons, persons with recognized refugee status or approved additional protection and persons who have been granted asylum, subsidiary protection or are seeking international protection, following the expiration of a period of nine months from the date of submitting application for international protection.

¨The Committee recalls that it has previously stated that equal treatment with respect to vocational guidance must be guaranteed to everyone, including 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 residing in any capacity, or having authority to reside in reason of their ties with persons lawfully residing, on the territory of the Party concerned before starting training. To this purpose, length of residence requirements or employment requirements and/or the application of the reciprocity clause are contrary to the provisions of the Charter (Conclusions XVI-2 (2003), Poland .) The Committee therefore concludes that the situation is not in conformity with Article 9 of the Charter on the grounds that equal treatment in respect to vocational guidance on the labour market is not guaranteed.

The Committee asks the next report to provide information on the situation as regards vocational guidance within the educational system.

Vocational guidance within the education system

The Committee previously noted (Conclusions 2016) that vocational guidance in the education system is mostly provided by school counsellors and psychologists. In addition to such services, further vocational guidance activities are provided by the Centre for informing and professional counselling (CIPS), within the Employment Office.

In its previous conclusion (Conclusions 2016), the Committee noted that the report did not contain any information on the number of beneficiaries of vocational guidance provided by school counsellors and psychologists. It further noted that the report did not provide the information previously requested concerning the budget and staffing of vocational guidance services at school. The Committee consequently reiterated its questions. In the meantime, considering the absence of such information, it concluded that the situation in Montenegro was not in conformity with the Charter on the ground that it had not been established that the right to vocational guidance within the education system was guaranteed.

The current report indicates that an Individual Transition Plan (ITP) form was developed for the transition of students from primary to secondary school. In particular, the report indicates that the team in charge of the Plan is responsible to propose activities that are desirable to undertake to assess students' aptitude and interest in future occupations, as well as to provide collaboration between schools to familiarise students with VET programs and select the

appropriate educational program. In this framework, in 2018, six training seminars for 208 participants were completed.

Moreover, the report indicates that an ITP form was developed also in order to facilitate the transition from school to the labour market for students with special educational need. In this context, the school collaborates with various job placement assessment providers, vocational rehabilitation contractors, employment services. Within such form, six seminars for 96 high school students were conducted.

The report further indicates that six trainings for 96 high school students were conducted in cooperation between the Ministry of Education, the Centre for Vocational Education and KulturKontakt-Austria, which involved representatives of secondary schools as well as CIPS advisors.

The Committee notes that the report does not contain any information on the human and financial resources involved in vocational guidance services within the education system. It further notes that no general information on the number of beneficiaries of the services provided by school counsellors and psychologists is provided, except for the number of participants in specific plans. The Committee therefore reiterates its previous questions. In the meantime, it reiterates its finding of non-conformity.

Vocational guidance in the labour market

The Committee previously noted (Conclusions 2016) that in Montenegro vocational guidance is meant to provide assistance to unemployed people, employees, pupils, students and any other person to objectively think about, plan for and succeed in their career and to harmonise the individual needs and capabilities of the unemployed people with the needs and requirements of the labour market. The Committee noted that the report did not provide the information requested concerning the budget allocated to vocational guidance in the labour market. It asked the next report to provide information on the resources, staff and number of beneficiaries of vocational guidance in the labour market. In the meantime, it considered that the situation in Montenegro was not in conformity with the Charter on the ground that it had not been established that the right to vocational guidance in the labour market was guaranteed.

The Committee takes note of the data provided in the current report concerning the number of beneficiaries of vocational guidance programs in the labour market over the reference period. It notes in particular that in the year 2018, a total of 9,485 unemployed benefited from the group professional informational and counselling services, as well as from the individual professional informational and counselling service and psychological processing. In addition, in the same year, individual and group professional informational and counselling services were provided to 343 employers, 6,589 pupils, 455 parents, 665 students and 55 people seeking career change.

As regards the staff involved in vocational guidance services, the current report indicates that such services are provided by specially trained career guidance counsellors, who are psychologists by vocation. Each of seven regional units of the Employment Office employ at least one vocational guidance counsellor. The Committee asks the next report to specify what is the number of vocational guidance counsellors employed in each regional unit of the Employment Office and what is the ratio between that number and the number of beneficiaries of that agency.

The Committee notes that the report does not contain the information requested concerning the budget allocated to vocational guidance in the labour market. The Committee therefore asks the next report to contain such information. In the meantime, it reiterates its finding of non-conformity.

Conclusion

The Committee concludes that the situation in Montenegro is not in conformity with Article 9 of the Charter on the grounds that:

- it has not been established that the right to vocational guidance within the education system and in the labour market is guaranteed;
- equal treatment of all nationals of other Contracting Parties is not guaranteed.

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 Montenegro.

The Committee recalls that in its previous conclusions (Conclusions 2016), it had considered that the situation was not in conformity with this provision on the grounds that insufficient measures had been taken to make the qualifications acquired through vocational training more relevant to labour market integration.

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

The Committee notes the measures adopted by the authorities to reduce the mismatch between what students learn in vocational schools and the requirements of the labour market. In particular, the Committee notes that the development of occupational standards on which educational programmes are based is now carried out in consultation with all relevant actors (e.g. employers and associations). As a result of a 2017 reform of the Vocational Education Act, vocational education curricula include a minimum number of hours of practical training with the employer, and scholarships for loss-making professions are allocated to participating students. The Committee requests that the authorities specify in their next report the nature of these programmes, in particular as regards training programmes in new technologies.

The Committee notes the efforts undertaken by the authorities to put in place statistical measures informing them of the employment rate of graduates of the various vocational schools (questionnaires; quarterly analyses of the Employment Agency's data). However, the Committee notes that the authorities have not been able to draw appropriate conclusions at this stage. Due to the lack of relevant statistical data on this point, the Committee cannot establish that the situation has been brought into conformity and reiterates its request that the authorities inform it of the employment rate of graduates of the various vocational schools.

Measures taken to integrate migrants and refugees

From the information provided under Article 10§4, it appears that the regulations in force allow foreigners who have permanent or long-term residence in Montenegro to enjoy the right to work and employment, placement and unemployment rights, education and training, recognition of diplomas and certificates, access to the market for goods and services, and other rights in accordance with the laws governing the exercise of these rights.

The Committee notes that the relevant law provides all categories of unemployed registered with the Employment Agency with equal access to active employment policy measures, including the right to vocational training. These categories include, inter alia, persons with a temporary residence permit, refugee status or those who have been granted asylum.

Conclusion

The Committee concludes that the situation in Montenegro is not in conformity with Article 10§1 of the Charter on the ground that it has not been established that the right to vocational education is effectively guaranteed.

Article 10 - Right to vocational training

Paragraph 2 - Apprenticeship

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

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.

The Committee recalls that in its 2016 Conclusions, it had concluded that the situation was not in line with the reason that it was not established that there was a well-functioning apprenticeship system.

The information provided under Article 10§1 shows that educational programmes are based on professional standards which have been developed in consultation with all the actors concerned (e.g. employers and associations).

The Committee notes that a coordinating body, consisting of representatives of the Chamber of Commerce, the Employers' Union of Montenegro, the Centre for Vocational Education and the Ministry of Education, has been established to improve the quality of practical education. The Committee requests that the authorities indicate the competences of this coordinating body.

The Centre for Vocational Education establishes the conditions with the employer for the implementation of dual education, together with the representatives of the schools.

The authorities indicate that they have organised training sessions for companies participating in vocational training. Appropriate instructions have been prepared for schools and for tutors in companies. A tutor training programme has been accredited and 88 tutors have been trained. The Committee asks whether these training sessions are continuing and their content. The authorities are also invited to specify the proportion (as a percentage of the total number of tutors) of tutors who have attended these training sessions.

Since a 2017 reform of the Vocational Education Act, vocational education programmes have included a minimum number of hours of practical training with the employer. The Committee notes that the authorities do not indicate in their report how the division of time between theoretical and practical learning in the training of students is carried out, and requests information on this point.

The Committee notes that first- and second-year students are paid from public funds, while third year students receive remuneration from the employer. Students are offered individual contracts for practical instruction. The authorities specify that scholarships for labour-shortage professions are provided to participating students. The Committee notes that the authorities do not indicate the total amount of expenditure – public and private – on these types of training and reiterates its request that this information be made available to the Committee.

The authorities report collecting data since the 2017 reform from schools in order to prepare analyses and recommendations to improve the quality of practical education. It appears that the number of students and employers participating in the dual training system is constantly increasing (277 students and about 20 employers in 2017/2018; 570 students and about 200 employers in 2018/2019; 800 students and about 270 employers in 2019/2020). The Committee notes the attractiveness of the training programme and requests that the authorities indicate whether the supply of available places is sufficient to meet demand.

Conclusion

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

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 Montenegro.

In its previous conclusion (Conclusions 2016), the Committee concluded that the situation in Montenegro was not in conformity with Article 10§3 of the Charter on the ground that it had not been established that vocational training and retraining is guaranteed for adult workers.

The Committee notes that Montenegro 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 requested information on the implementation of the Adult Education Strategy for the period 2015-2025 and the Adult Education Plan for the period 2015- 2019. The Committee notes from the information submitted under Article 10§1 of the Charter that the priority areas of the Adult Education Strategy 2015-2025, which will be materialised in the context of the 2019-2022 Adult Education Plan, include lifelong learning, improvement of both unemployed and employed persons' skills, quality assurance in adult education and flexibility and sustainability of the adult education system. In 2018, 28.996 persons participated in activities of the 2015-2019 Adult Education Plan, while 1539 persons between 25 and 64 years old participated in adult education programmes and the rate of transition to employment for the participants stood at 23.32%. The Committee takes note of the priority objectives of the Adult Education Strategy and notes that the implementation of the 2019-2022 Adult Education Plan will be assessed in the next supervision cycle of the provision.

In its previous conclusion (Conclusions 2016), the Committee requested information on the types of continuing vocational training and education available, overall participation rate of persons in training, percentage of employees participating in vocational training and the total expenditure.

According to the report, civil servants and state employees are entitled to vocational training in the form of development and vocational training programmes, which falls under the competence of the Human Resources Administration. The available programmes in place include a general vocational training and development programme referring to basic skills, specific vocational training and development programmes, the Human Resources Management Skills Education Programme and the Civil Servants Training Programme for Strategic Planning. These programmes are funded through the state budget, while accredited programmes are also funded through the Sector Budget Support.

The Committee notes from the report that the overall participation of the population in lifelong learning is 3%. The report refers to various programmes offered by the Montenegrin Employers Federation. However, the Committee notes that it appears that the projects and conferences presented in the report, e.g. 'Tax Caravan', 'Informal Economy in Montenegro', 'Strong Economy – Successful Montenegro', are not projects related to the skilling and re-skilling of workers. The report states that the two representative trade unions in Montenegro, the Union of Trade Unions of Montenegro and the Union of Free Trade Unions of Montenegro, do not have data concerning vocational training. The Committee concludes that the situation in Montenegro is not in conformity with Article 10§3 of the Charter, on the ground that it has not been established that the right to vocation training and retraining is guaranteed for all workers.

The Committee reiterates its previous question and asks the next report to provide information on the types of continuing vocational training and education available, overall participation rate of persons in training, percentage of employees participating in vocational training and the total expenditure. It also reiterates its targeted question and asks the next report to provide 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.

The Committee notes from the report that active employment policy is implemented through educational programmes, provided by licenced providers, aiming at the acquisition of skills. In 2015, 892 unemployed persons participated in such programmes, in 2016, 454 unemployed persons, in 2017, 553 unemployed persons and, in 2018, 1295 unemployed persons. From the total of available funds for active employment policies, 15.7% was allocated for adult education and training programmes in 2015, a rate that dropped at 10.3% and 12% for 2016 and 2017 respectively and raised at 16.2% in 2018. Finally, the share of participants in adult education and training programmes in the total number of participants in active employment policy measures stood at 27.4% in 2015, 22.6% in 2016, 24.6% in 2017 and 34.6% in 2018. The Committee reiterates its previous questions and asks the next report to provide information on the activation rate, (see Article 1§1) in addition, it asks the next report to provide information on the sharing of the burden of the cost of vocational training among public bodies, unemployment insurance systems, enterprises and households as regards continuing training.

Conclusion

The Committee concludes that the situation in Montenegro is not in conformity with Article 10§3 of the Charter on the ground that it has not been established that that the right to vocational training and retraining is guaranteed for all workers.

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 Montenegro.

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”).

The Committee previously concluded that the situation in Montenegro was not in conformity with Article 10§4 of the Charter on the ground that special measures for the retraining and reintegration of the long-term unemployed had not been effectively provided or promoted (Conclusions 2016).

In its previous conclusion (Conclusions 2016), the Committee reiterated its questions about the types of training and retraining measures available on the labour market, the number of persons in these types of training, the special attention given to young long-term unemployed and the impact of the measures on reducing long-term unemployment.

The Committee notes from its conclusion under Article 1.1 that long-term unemployment (12 months or more, as a percentage of overall unemployment for persons aged 15 to 64 years) fell ever so slightly, from 76.9% in 2015 to 75.1% in 2018, which is significantly higher than the EU 28 average (43.4% in 2018).

The Committee notes from the report, the Employment Office established in 2015 a vocational training programme in partnership with employers to train unemployed persons, in sectors such as tourism, hotels, and wood processing.

537 persons who had been unemployed for at least six months participated. All beneficiaries were employed with the employers implementing vocational training programmes, following the training.

In 2016, 250 long-term unemployed persons were employed following the training (37% of whom were young persons) and in 2017 100 persons (42% of whom were young persons) found employment after undergoing training.

Assistance is also provided to unemployed persons who wish to become self-employed. The report provides details on programmes where the labour office cooperates with private sector employers and provides training to unemployed persons in order assist them to become self-employed. According to the report 244 persons participated in this scheme between 2015 and 2017.

The report does not provide information on any other measures to combat long term employment, nor data on the young long-term unemployment rate in the country. It therefore reiterates its request that the next report provide information on these issues. Meanwhile the Committee considers, in light of the very high rate of long-term unemployment that special measures for the retraining and reintegration of the long-term unemployed have not been effectively provided or promoted.

In its previous conclusion (Conclusions 2016), the Committee requested information on whether long-term unemployed foreigners, nationals of States Parties to the Charter benefit from equal treatment with Montenegrin nationals in access to measures for long term unemployed.

The report states that under the new Law on Mediation in Job Placement and Rights arising from Unemployment, an unemployed person is a person from 15 to 67 years of age, who is a Montenegrin national, registered with the Employment Office of Montenegro, capable or partially , capable of working, who has not established an employment relationship, is actively seeking employment and is available for work. In addition an unemployed person within the

meaning of the law shall also include a foreigner who, in accordance with a special law, has a permanent residence permit, a temporary residence permit for a stateless person, a temporary residence permit for up to three years, a temporary residence permit for the purpose of family reunification with a Montenegrin citizen or with a foreign national who has a permanent residence permit, a temporary residence permit for humanitarian reasons, has recognised refugee status or approved additional protection, has been granted asylum, subsidiary protection or is seeking international protection, following the expiration of a period of nine months from the date of submitting application for international protection. Therefore, all the above categories of unemployed persons on the unemployment register have equal access to active employment policy measures.

Conclusion

The Committee concludes that the situation in Montenegro is not in conformity with Article 10§4 of the Charter on the ground that special measures for the retraining and reintegration of the long-term unemployed have not been effectively provided or promoted.

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 Montenegro.

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

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

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

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

Legal framework

Discrimination is prohibited by Article 8 of the Constitution and Article 64 affords special protection to persons with disabilities. In addition, discrimination on grounds of disability in education and vocational training is prohibited by the Law on the Prohibition of Discrimination, as amended in 2014, and the Law on the Prohibition of Discrimination against Disabled Persons, as amended in 2015 (Conclusions 2016).

As regards more specifically the right to education, the report states that pupils with special educational needs (SEN) are integrated in mainstream education – as governed by the Law on the Education of Children with SEN, amended in 2017, and the laws governing each specific education level. In particular, the report explains that the amendments introduced in 2017 include new and improved regulations prohibiting discrimination and clarifying the notion of "children with SEN" (which includes children with disabilities, children with developmental, physical, intellectual, sensory disabilities, children with combined disabilities and autism-spectrum disorders, developmental difficulties, speech/language difficulties, behavioural disorders, children with severe chronic diseases, children with long-term illnesses and other children with learning difficulties and other difficulties caused by emotional, social, linguistic and cultural barriers). They also define the programmes, the role of resource centres (special education) and schools with special education departments, the role of special education teachers, the setting up of an individual developmental education program, the introduction of an individual transition plan, technical support in teaching and role of teaching assistants. The report also states that the Rulebook on the manner, conditions and procedure for orientation of children with SEN", was harmonised with the Law and oriented towards the human rights model and functional assessment. In addition, a new Inclusive Education Strategy 2019-2025 has been adopted, which according to the report provides for further improvements of the model of guidance and support in the education system, a redefinition of the model of inclusion and child support based on the concept of human rights, the development of a multidisciplinary approach to improve support systems for early identification and intervention, early child development, support, individualisation and transition.

The Committee takes note of the concerns expressed by the Committee on the Rights of Persons with Disabilities – CRPD – in its latest Concluding Observations (2017) about "*the prevalence of a system of assessment for children with disabilities at school enrolment that appears to be in conflict with the human rights model of disability enshrined in the Convention"*

and *"the absence of information on affirmative and non-discriminatory measures for the enrolment of and reasonable accommodation provided to students with disabilities in mainstream education".* It asks the next report to provide updated information on these points.

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

On the basis of the current and previous reports, as well as the Eurydice database, the Committee notes that an individual development and education programme should be drawn up by the school for each child with SEN, which defines the forms of educational work i.e. subjects, provision of additional professional assistance, mobility between programmes, adaptation in terms of organisation, standards of knowledge, achievements and skills, testing and assessment of the child's knowledge, achievements and progress, as well as timetable. A professional team composed of teachers and professionals is in charge of preparing, applying, monitoring and adapting the programme, with the involvement of the parents. Children with SEN can follow the regular programme in mainstream classes, with the possibility of having additional professional assistance, conditions and tools or follow an adapted programme in mainstream classes with additional professional assistance. If their education cannot be achieved through full inclusion, they can attend special classes in mainstream schools (involving participation to mainstream activities) or resource centres. A Transitional Programme is prepared at the end of primary school in view of the passage to secondary school, and at the end of secondary education, with a view to identifying a future occupation, based on the potential and preferences of the child. The report stresses the importance of modularised educational programmes based on gradual professional qualifications of different levels of education (i.e. the final qualification reflects the number of educational modules completed), in order to enable children with SEN to receive education in accordance with their abilities.

In response to the Committee's question (Conclusions 2016), the report maintains that mainstream – inclusive teaching is given priority, notably in line with the abovementioned amendments of 2017 to the Law on Education of children with SEN, and confirms that education and all services in the education system are free of charge.

According to the report, during the reference period the number of SEN pupils in mainstream education went from 2879 in 2015 to 4892 in 2018 (+70%). The report indicates that, as regards resource centres (special education) there were 82 children in primary school and 62 in secondary school, but it does not specify what year these data refer to, nor the trend

observed during the reference period. The report also states that there are no registered children leaving the system.

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.

While taking note of the developments under way, in terms of legislation and inclusion of SEN children in mainstream education, the Committee considers, in the light of the information missing, in particular on the situation in practice, including as regards the implementation and impact of the relevant legislation, the adequacy of reasonable accommodation and professional assistance and the effectiveness of remedies that it has not been established that the right of children with disabilities to mainstream education and training is effectively guaranteed.

In its previous conclusion the Committee concluded that the situation was not in conformity with the Charter on the grounds it had not been established that the right of persons with disabilities to mainstream training was effectively guaranteed (Conclusions 2016). The Committee asks the next report to provide updated information on the situation. Meanwhile it reiterates its previous conclusion.

Measures aimed at promoting inclusion and ensuring quality education

According to the Law on Education of Children with Special Educational Needs, the premises, equipment and teaching resources of preschool institutions and schools must be adapted for children with SEN, in line with the educational programme. Schools must provide adequate educational technologies, as part of additional teaching resources (bigger font, Braille alphabet, etc.). and the number of students in a class is reduced by 10%, as compared to the number established by Law. Resource centres also provide assistance and support to inclusive education through: advisory and professional work, trainings of teachers and professional associates for work with children with SEN, use of sign language, preparation, adaptation, designing, use of special textbooks (in Braille, in Digital Accessible Information System – Daisy format) and other specialised teaching resources. The Committee notes from the Eurydice database that in 2019/2020 (out of the reference period) there were about 330 teaching assistants in the educational institutions in Montenegro, specifically qualfiied and

trained, and that access for children with physical disabilities had been adapted at 107 educational institutions, including toilets at 62 institutions.

The report also refers to an ongoing project ("Improving educational programs and services to meet the needs of marginalised groups"), which deals with modularisation of programs and training of teachers in vocational education.

The Committee notes that the Academic Network of European Disability Experts (ANED) report on the European Semester (2018) alleges that, in practice, "*there is no individualised approach to pupils or students with disabilities*" and, in particular, that there is no correct implementation of the right to reasonable accommodation. According to ANED, these are in practice mostly related to technical accommodations, without entailing the adaptation of the school, teaching plans and programmes, ensuring use of own language and alphabet (sign language, Braille, augmentative and alternative means of communication), purchasing of all necessary ICT, services, including aids. ANED claims that "*insufficient individualised support for children with disabilities is organised to enable their participation on an equal basis with others in 'inclusive' education as there were for the years 2015 and 2016 only 252 assistants for more than 2000 children with disabilities included in mainstream education*". The Committee asks the next report to comment on this point.

The Committee recalls that Article 15§1 of the Charter makes it an obligation for States Parties to provide quality education for persons with disabilities, together with vocational guidance and training, and that priority should be given to inclusive education in mainstream school. States parties must demonstrate that tangible progress is being made in setting up inclusive and adapted education systems.

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

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

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

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

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

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

Remedies

In response to the Committee's question (Conclusions 2016), the report explains that the Law on Prohibition of Discrimination against Persons with Disabilities provides (under Article 29, paragraph 1, items 6,7,8,9) for pecuniary penalties (ranging from €1500 to €20000) for perpetrators of discrimination. In addition, the General Law on Prohibition of Discrimination also provides that victims of discrimination can file a complaint with the Protector of Human Rights and Freedoms (Article 22) or before a civil court (Article 24) and claim, inter alia, compensation of pecuniary and non-pecuniary damages in accordance with the law. Based on the data collected from the courts, the report states that during the reference period (2015 – 2018) there were no civil cases related to discrimination on the basis of disability in the field of education and employment. Furthermore, the report indicates that although the Law on the Prohibition of Discrimination provides (under its Article 33) that data on discrimination lawsuits be specifically recorded and submitted regularly to the Ombudsman, the data collected during the reference period do not allow to identify in a reliable way cases concerning access to education. The report indicates however that the relevant rules on data recording are being revised.

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

Conclusion

The Committee concludes that the situation in Montenegro is not in conformity with Article 15§1 of the Charter on the ground that it has not been established that the right of children with disabilities to mainstream education and training is effectively guaranteed.

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 Montenegro.

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.

It previously found (Conclusions 2016) that the situation was not in conformity with Article 15§2 of the Charter on the grounds that it had not been established that the legal obligation to make reasonable adjustments was effectively respected and it had not been established that equal access to employment was effectively guaranteed to persons with disabilities.

Legal framework

Discrimination is prohibited by Article 8 of the Constitution and Article 64 affords special protection to persons with disabilities. In addition, discrimination on grounds of disability in employment is prohibited by the Law on the Prohibition of Discrimination, as amended in 2014, the Law on the Prohibition of Discrimination against Disabled Persons, as amended in 2015 and the Law on Professional Rehabilitation and Employment of Persons with Disabilities (latest amended in 2016) (Conclusions 2016).

According to Article 2 paragraph 2 of the Law on Prohibition of Discrimination against Persons with Disabilities, "A person with disabilities is a person having long-lasting physical, mental, intellectual or sensory impairments, which in interaction with various barriers may hinder full and effective participation of this person in society on an equal basis with others." The recognition of disability for the purposes of access to employment, insurance, entitlement to benefits etc. depends however on the criteria specified in the relevant regulations. In this respect, the report explains that the Commission for Vocational Rehabilitation determines the percentage of disability taking into account not only the medical criteria (impairments and illnesses), but also the interaction with social and other barriers, which can prevent the disabled person from participating effectively and equally in society with people without disabilities.

The Commission for Vocational Rehabilitation gives also its opinion on the vocational rehabilitation measures and activities needed to ensure the professional inclusion of persons with disabilities, pursuant to the Law on Professional Rehabilitation and Employment of Persons with Disabilities.

These measures include the provision of reasonable adjustments/accommodation, i.e. the analysis of the specific workplace and work environment of persons with disabilities; the development of an adaptation plan of such workplace and work environment, including the necessary equipment and resources for work; the training of the persons with disabilities, their monitoring, professional assistance and follow-up in the workplace after employment. The report indicates that these measures apply to persons with disabilities identified as such in the records of the Employment Office and those, already employed, for which the employer requests a financial participation for equipping the workplace and covering the expenses of work assistants.

Access of persons with disabilities to employment

The report indicates that, during the reference period (2015-2018) disability assessments were carried out in respect of 8214 persons (50% women) and that 80% of the persons were

assessed as employable on the labour market, provided that adjustments be made to their workspace and work environment, or in sheltered employment.

The report also indicates that 871 persons (56% women) were granted vocational rehabilitation measures (including reasonable adjustments/accommodation).

It furthermore states that, according to the records of the Employment Office of Montenegro, at the end of December 2018, there were 8 222 unemployed persons with disabilities, of which 4477 or 54.45% were women. 1475 persons with disabilities were employed, of which 1127 were employed on a temporary basis (renewable contracts) and 348 were employed on a permanent basis.

The report does not provide information on the overall number of persons with disabilities and those of working age and it does not clarify, as requested, to what extent the employed persons with disabilities are working in the open labour market or in sheltered employment.

The Committee notes in this respect that, according to the ANED report on the European Semester (compiled in 2018) "*In Montenegro, there is still no official database containing the exact number of unemployed and employed persons with disabilities, the assessment of their professional abilities and acquired qualifications nor the skills that they have. Most of them are employed in organisations of persons with disabilities. Employers often pay the prescribed levies to the Fund for Professional Rehabilitation and Employment of Persons with Disabilities rather than hiring persons with disabilities*". The Committee asks the next report to comment on this point and to provide updated information on the number of persons with disabilities who are in employment (in the open labour market or in sheltered employment, in the public or in the private sector), the number of those who are benefiting from an employment promotion measure and the number of those who are seeking work. It considers in the meantime that it has not been established that equal access to employment is effectively guaranteed to persons with disabilities.

Measures to promote and support the employment of persons with disabilities

The report recalls (see also Conclusions 2016) that, pursuant to the Law on Professional Rehabilitation and Employment of Persons with Disabilities, employers must either employ the prescribed quota of persons with disabilities or pay a special contribution into a Fund. This Fund finances measures and activities of vocational rehabilitation for unemployed and employed persons with disabilities, co-finances special employment organisations, and provides financial assistance for participants in vocational rehabilitation measures. The Committee takes note of the information provided on the budget allocated to these different measures (see the report for details).

In addition, the report indicates that during the reference period, 1220 persons with disabilities were involved in 195 employment projects (training activities leading to the employment of over 50% of the participants).

The Committee asks the next report to provide information on the number and proportion of employers fulfilling the prescribed quotas and those paying the alternative contribution; it furthermore asks for information on how these respective measures have contributed in practice to the creation of posts for persons with disabilities and how the number of posts has developed through the reference period.

The Committee also asks the next report to provide updated information on the measures taken to promote and support the employment of persons with disabilities and to clarify in particular what measures are taken, if any, to improve the employment rate of persons with disabilities on the open labour market.

Remedies

In response to the Committee's question (Conclusions 2016), the report explains that the Law on Prohibition of Discrimination against Persons with Disabilities provides (under Article 29, paragraph 1, items 6,7,8,9) for pecuniary penalties (ranging from €1500 to €20 000) for perpetrators of discrimination.

In addition, the General Law on Prohibition of Discrimination also provides that victims of discrimination can file a complaint with the Protector of Human Rights and Freedoms (Article 22) or before a civil court (Article 24) and claim, inter alia, compensation of pecuniary and non-pecuniary damages in accordance with the law.

Based on the data collected from the courts, the report states that during the reference period (2015 – 2018) there were no civil cases related to discrimination on the basis of disability in the field of education and employment.

Furthermore, the report indicates that although the Law on the Prohibition of Discrimination provides (under its Article 33) that data on discrimination lawsuits be specifically recorded and submitted regularly to the Ombudsman, the data collected during the reference period do not allow to identify in a reliable way cases concerning access to employment. The report indicates however that the relevant rules on data recording are being revised.

The Committee notes that the report refers to some pending cases, but it is not clear whether they concern discrimination on grounds of disability in the field of employment (access to employment, including the provision of reasonable accommodation). It asks the next report to provide updated information on the relevant case-law. It recalls that legislation must confer an effective remedy on those who have been discriminated against on grounds of disability and denied reasonable accommodation.

Conclusion

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

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 Montenegro.

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.

It previously found (Conclusions 2016) that the situation was not in conformity with Article 15§3 of the Charter on the ground that it had not been established that persons with disabilities were effectively protected against discrimination in relation to housing during the reference period.

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.

In addition to the Constitutional provisions prohibiting discrimination and affording special protection to persons with disabilities, discrimination on grounds of disability is prohibited by the Law on the Prohibition of Discrimination, as amended in 2014. Furthermore, the Law on the Prohibition of Discrimination against Disabled Persons, as amended in 2015, prohibits discrimination on the ground of disability regarding access to buildings and public spaces, access to information and means of communication, access to public transport and restrictions on the right to independence and life in the community. Further protection of persons with disabilities is provided by specific legislation, such as the Law on Social and Child Welfare and the Law on Privileges for the Travel of Persons with Disabilities (see also below).

The Committee previously noted (Conclusions 2016) that the General Law on Prohibition of Discrimination provides that victims of discrimination can file a complaint with the Protector of Human Rights and Freedoms (Article 22) or before a civil court (Article 24). In response to the Committee's question, the report confirms that victims of discrimination can claim, inter alia, compensation of pecuniary and non-pecuniary damages in accordance with the law. In particular, the report explains that the Law on Prohibition of Discrimination against Persons with Disabilities provides (under Article 29, paragraph 1, items 6,7,8,9) for pecuniary penalties (ranging from €1500 to €20 000) for perpetrators of discrimination. The Committee takes note of the case-law examples provided in the report concerning discrimination on ground of disability resulting from lack of accessibility of buildings. It notes that in several judgements, from 2013 to 2016, the courts (including in some cases high courts and the Supreme court) have acknowledged the discrimination, granted the plaintiffs a compensation (including non-pecuniary damages) and, in some cases, prohibited the respondent to repeat the discriminatory act. It notes that further cases are pending and asks the next report to provide updated information on the relevant judicial and non-judicial decisions relating to discrimination on ground of disability in the areas covered by Article 15§3.

Consultation

The report refers to the adoption of a 2016-2020 Strategy for Integration of Persons with Disabilities, a 2017-2021 Strategy for the Protection of Persons with Disabilities from

Discrimination and the Promotion of Equality and the preparation of an Action Plan for the implementation of the recommendations of the UN Committee on the Rights of Persons with Disabilities within the new OHCHR database, which is underway. The report explains that this database will allow to keep track of the follow up given to the CRPD recommendations through the relevant activities of the Ministry of Labour and Social Welfare. In this connection, the report states that the Ministry regularly carries out consultations with persons with disabilities and that this cooperation has been enhanced with the signature of a Memorandum of Cooperation with Disability Organisations, which provides as a special obligation "Ensuring consultation and active participation of persons with disabilities, including children with disabilities and developmental impairments, through organisations representing and advocating for them, when planning, developing, implementing and monitoring the implementation of policies and legislation" (see also Conclusions 2016). The Committee asks the next report to provide updated 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

In response to the Committee's question on the benefits and other forms of economic assistance available to persons with disabilities (Conclusions 2016), the report recalls that, pursuant to the Law on Social and Child Welfare, persons with disabilities are entitled to a personal disability allowance, in case of severe disability (Article 32), amounting to €178.19 per month, or a care and assistance allowance (Article 33) amounting to €65.35 per month. A specific compensation, in the amount of €193 per month, is also provided (Article 39a) to the parent or guardian of a child beneficiary of personal disability allowance. It notes that according to the ANED report 2019 on the European Semester "The amount of social benefits [for persons with disabilities] is largely symbolic, fixed and do not reflect the real costs of living". According to the same source, "The State does not finance any support service related to independent living and living in the community". The Committee asks the next report to comment on these allegations, and to provide updated information on the measures taken (and progress made) to ensure that persons with disabilities have access to adequate financial and personal assistance enabling them, where possible, to live independently in the community. It reserves in the meantime its position on this point.

As regards in particular personal assistance, the Committee notes that the report refers to day care centres, providing assistance to 247 children and young persons with disabilities, and disability support services, including home care assistance, provided to adults with intellectual disabilities.

The Committee asks the next report to provide uptodate information on the personal assistance scheme; the legal framework, the implementation of the scheme, the number of beneficiaries, and the budget allocated. It also asks whether funding for personal assistance is granted based on 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 refers to its previous conclusion (Conclusions 2016) with regard to the technical aids provided in accordance to the Law on Health Insurance of 2004 and the "Regulation on exercising the right to medical and technical aids" of 2013. It asks the next report to provide updated information on the developments, if any, that have occurred in this respect.

Communication

The Committee previously noted (Conclusions 2016) that the Law on Prohibition of Discrimination against Disabled Persons prohibits discrimination on the ground of disability in respect of access to information and means of communication and asked for information about the measures taken to promote access to new telecommunications technologies and about the legal status given to sign language.

In response, the report indicates that the types of benefits and special measures for access to public electronic communication services for persons with disabilities are detailed in a Rulebook, which was drafted by the Agency for Electronic Communications and Postal Services and adopted in 2014 (and latest amended in 2017). The Committee takes note of the detailed information provided in the report in this respect. It notes that persons with disabilities are inter alia entitled access to preferential rates and terms for their electronic communications services, as well as for their terminal equipment, including when this requires adaptations to their needs (special keyboards, hands-free devices, adjustable sound control and screen contrast etc.). According to the report, in order to ensure the conditions for obtaining benefits, the operators cooperate with organisations of persons with disabilities and the Agency for Electronic Communications and Postal Services, to monitor the degree of accessibility of those persons and the benefits and to determine what improvements are needed. The report also explains that the affordability of prices of services and special packages of universal service for socially disadvantaged and disabled persons is regularly assessed on the basis of criteria developed by the Agency in a Rulebook (adopted in 2014, and amended in 2017) which are detailed in the report. The Committee takes furthermore note of the activities carried out in 2016-2018 concerning the development and management of public administration websites, the creation of electronic documents in accordance with accessibility standards etc.

As regards the legal status of sign language, the report refers to the Law on the Education of Children with Special Educational Needs, which provides for sign language teaching through a resource centre and enables its use through the Individual Development and Educational Programme. The report furthermore indicates that access to emergency services is guaranteed for sign language users.

The Committee asks the next report to provide updated information on the measures implemented to enable all persons with disabilities to have adequate access to all public and private information and communication services, including television and the Internet.

Mobility and transport

The Committee previously took note (Conclusions 2012) of the measures taken to overcome obstacles in relation to mobility and transport. It asks the next report to provide comprehensive updated information on the relevant measures enacted and the progress made in ensuring the accessibility of public transport (land, rail, water, air).

The Committee also 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.

Housing

The Laws on Spatial Planning and Construction of Buildings of 2008 (lastly amended in 2014) and 2017 (lastly amended in 2018), provide that new public buildings must be accessible and penalties in the amount of € 5,000 – € 40,000 are prescribed for non-compliance with the prescribed standards.

The Ministry of Sustainable Development is responsible for enabling the removal of architectural and other barriers in public spaces, transport systems, public facilities and residential buildings, in accordance with the "Rulebook on detailed conditions and mode of adjusting facilities for access and movement of persons with reduced mobility" (see Conclusions 2016). In response to the Committee's question (Conclusions 2016) concerning the implementation of the Action Plan 2014 for the Adaptation of Facilities in Public Use for Access, Movement and Use by Persons with Reduced Mobility and Persons with Disabilities, the report explains that, during the reference period, 12 priority facilities were adapted, out of the 13 which had been identified in the action plan, in cooperation with NGO representatives dealing with the issues of persons with disabilities. The works needed to adapt the last facility – the Ministry of Finance building in Podgorica – were expected to be finished by end 2019 (see details in the report). Furthermore, an accessibility analysis of the Centres for Social Work was made in 2018, and their adaptation is planned. The Committee asks the next report to provide updated information concerning the removal of architectural and other barriers in public spaces and facilities.

The report recalls that under the Law on Social Housing, which was adopted in 2013, persons with disabilities are entitled to priority access to social housing. It adds that priority access to housing is also granted to persons with disabilities in the framework of the "1000+" housing project, which has been carried out since 2010 in cooperation with the Council of Europe Development Bank – according to the report, 21 persons with disabilities have resolved the housing issue through this Project.

Regarding the Committee's question as to whether grants are offered to persons with disabilities for renovation works, to install lifts and to remove obstacles to mobility; and how many people have received them, the report refers to the relevant applicable legal framework (Laws, Regulations and decisions) set by the Ministry of Sustainable Development and Tourism. In particular, the report explains that all municipalities have adopted Decisions on the erection and construction of access ramps and elevators and other facilities for access and movement of persons with disabilities, thus considerably simplifying the administrative procedure for obtaining approval for their installation and enabling their faster, easier and cheaper construction. Furthermore, the Law on Maintenance of Residential Buildings Maintenance does not require the consent of apartment owners as regards the works needed to remove barriers for the erection or construction of access ramps, lifts or other facilities that will allow access to persons with disabilities. The report points out that the non-governmental sector dealing with issues of persons with disabilities was actively involved in the process of drafting these documents. The Committee takes note of the information provided but asks the next report to clarify whether the renovation works needed to ensure accessibility of private

housing are at the charge of the persons concerned and what financial assistance is available to them to this purpose. It reserves in the meantime its position on this point.

The Committee notes the concern expressed by the UN Committee on the Rights of Persons with Disabilities (CRPD) in its latest Concluding Observations (2017) about "the continuation of institutional care and the lack of any comprehensive strategy of de-institutionalisation, (...) the high number of persons with disabilities who are institutionalised, and the fact that the efforts made by the State party to develop individual support services remain insufficient". In this respect, the report indicates that some measures are under way to promote the de-institutionalisation of persons with disabilities: the deprivation of their legal capacity is being reviewed, with the aim of preparing them for supported housing. The Committee asks the next report to provide updated information on the implementation of these measures and the results achieved.

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

Culture and leisure

The Committee takes note of the detailed information provided in the report, in response to its question, concerning the measures taken during the reference period to ensure access for persons with disabilities to cultural facilities (museums, theatres, libraries etc.) and activities (publications for the visually impaired, organisation of accessible artistic events and cultural events related to disability).

The Committee asks the next report to provide updated information on the further measures implemented in this area.

Conclusion

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

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 Montenegro.

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

In its previous conclusion (Conclusions 2016), the Committee noted that Article 77 (2) of the Labour Code expressly provided for the principle of equal remuneration for work of equal value by guaranteeing each employed man or woman an equal wage for equal work or work of the same value performed with an employer.

However, the report indicates that the new Labour Code (No. 74/19) published in the Official Gazette on 30 December 2019 and which came into force on 8 January 2020 (outside the reference period) has replaced the 2008 Labour Code. The new Labour Code provides that every worker is entitled to equal pay for equal work or work of equal value.

The Committee notes from the report that the general collective agreement defines the elements for determining basic pay and all other benefits paid to an employee. Wages can be increased further by branch collective agreements or individual agreements at enterprise level. However, the legislation provides that provisions of employment contracts which run counter to the principle of equal pay are deemed null and void.

In the light of the foregoing, the Committee concludes that the obligation to recognise the right to equal pay has been respected.

In its previous conclusion, the Committee noted that under Article 104 of the Labour Code, an employed woman could not be assigned a position with prevailing hard physical labour, works under ground or water, or a job involving tasks that could have a detrimental effect on and an increased risk to her health and life. Therefore, it noted that the situation was not in conformity with Article 20 of the Charter on the ground that women are not permitted to work in all professions which constitutes discrimination based on sex. The report indicates on this point that the new Labour Code (which was adopted and entered into force outside the reference period) does not include such a provision. The Committee considers that the situation was not in conformity with the Charter on this point during the reference period.

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 any employee who believes that they are the *victim of discrimination* can bring a case before the competent court in accordance with the law. Anyone who considers that they have suffered discriminatory treatment by an authority, an enterprise, other legal entity, an entrepreneur or a natural person has a right to protection by the courts. In addition to persons or groups of persons who are the victims of discrimination, organisations or people working for the protection of human rights may also initiate court proceedings. Civil courts are competent in cases of breaches of the principle of non-discrimination, and adjudicate on the basis of the Code of Civil Procedure. The report specifies that no complaints regarding equal pay for women and men were brought in the courts during the reference period.

The Committee notes that the law provides for shifting the *burden of proof* in favour of the plaintiff if they are able to establish the probability of discrimination. It also takes note of the examples given in the report.

Moreover, the report indicates that the law on gender equality, as amended in 2015, strengthened the Office of the Protector of Human Rights by enabling it to bring discrimination cases to court. At the same time, the law provides that the burden of proof in procedures brought before the Office of the Protector of Human Rights lies with the respondent.

As regards the *compensation* awarded in the case of unequal pay, the report states that an employee whose rights in this regard have been breached has a right to compensation amounting to the portion of the salary which they were not paid. Article 26 of the law on the prohibition of discrimination provides that a victim of discrimination may obtain redress in the form of:

- (1) the establishment of the fact that the respondent has acted in a discriminatory manner towards the plaintiff;
- (2) a prohibition on exercising the activity likely to be treated as discriminatory, i.e., a prohibition on repeating the discriminatory activity;
- (2a) removing the consequences of the discrimination;
- (3) compensation for the damage in accordance with the law;
- (4) the publication in the media, with the respondent bearing the costs, of the judgment establishing discrimination.

Regarding the *amount of the compensation*, the report specifies that the law on obligations does not set a limit on the amount of damages that may be awarded to a victim of discrimination, whatever the ground (the amount is decided on a case-by-case basis by the courts). 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.

Concerning the *penalties*, the Committee refers to its conclusion on Article 4§3 (Conclusions 2018) in which it noted that under the law on the prohibition of discrimination, appropriate misdemeanour sanctions depending on the grounds and specific forms of discrimination were provided for: a fine of €1,000 to €20,000 could be imposed on a legal entity for unequal treatment based on gender.

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.

Pay transparency and job comparisons

The Committee recalls that pay transparency is instrumental in the effective application of the principle of equal pay for work of equal value. Transparency contributes to identifying gender bias and discrimination and it facilitates the taking of corrective action by workers and employers and their organisations as well as by the relevant authorities. States should take measures in accordance with national conditions and traditions with a view to ensuring adequate pay transparency in practice, including measures such as those highlighted in the European Commission Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency, notably an obligation for employers to regularly report on wages and produce disaggregated data by gender. The Committee regards such measures as indicators of compliance with the Charter in this respect. The Committee also recalls that, in order to establish whether work performed is equal or of equal value, factors such as the nature of tasks, skills, as well as educational and training requirements must be taken into account. States should therefore seek to clarify this notion in domestic law as necessary, either through legislation or case law. In this respect, job classification and evaluation systems should be promoted and where they are used, they must rely on criteria that are gender-neutral and do not result in indirect discrimination (see in this respect Complaints Nos.124 to 138, UWE, *op. cit*.).

The report does not provide any information on pay transparency. The Committee notes that according to the country report on gender equality in Montenegro prepared by the European network of legal experts in gender equality and non-discrimination (2019), the Labour Code has not addressed the issue of wage transparency. However, under Article 55 of the General Collective Agreement, once a year, employers must inform a trade union of the total calculated gross and net salaries paid out to employees. Moreover, according to Article 86 of the Labour Code, employers must keep monthly records of salaries and wage compensation.

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.). The report states that it is not possible to make pay comparisons across companies. The Committee asks whether it is possible to make pay comparisons across companies in equal pay litigation cases. In order to clarify this issue, the Committee considers that provision should be made for the right to challenge unequal remuneration resulting from legal regulation and collective agreements. In addition, there also should be the possibility to challenge unequal remuneration resulting from internal pay system within a company or a holding company, if remuneration is set centrally for several companies belonging to such holding company.

The Committee observes from the above-mentioned report on gender equality (2019) that the relevant legislation does not mention *comparators* as regards equal pay. The Committee requests that the next report indicate if, following legislative amendments, a comparator on pay, real or hypothetical, is required by law to establish or prove differential treatment.

Concerning the parameters *for establishing the equal value of the work performed*, the report indicates that Article 77(3) of the Labour Code defines the concept of “work of equal value” as work requiring the same level of studies or education or professional qualifications, responsibilities and skills, as well as the same working conditions and performance. On this point, the Committee notes the information provided in the above-mentioned report on gender equality (2019) and in the observations made by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) published in 2018 (107th session of the International Labour Conference) concerning Convention No. 100 on Equal

Remuneration (1951) indicating that the concept of work of equal value is limited [to the above]. The Committee requests that the next report indicate whether the concept of "work of equal value" was amended in the new Labour Code.

The Committee asks again for information in the next report on the job classification promotion systems in place as well as on the strategies adopted to guarantee wage transparency in the labour market (especially those making it possible for workers to obtain information on the pay levels of other workers), specifying in particular what time limits are set to make the progress demanded and the criteria applied to measure progress. In the meantime, it reserves its position on this point.

Enforcement

The report indicates that during the reference period, the Defender of Human Rights and Freedoms received 30 complaints alleging gender discrimination (eight in 2015, three in 2016 and in 2017 and 16 in 2018). The Committee notes that only one complaint concerned wage equality. In that case, the Protector of Human Rights found that there had been discrimination in the exercise of the right to equal pay for work of equal value and made a recommendation.

In addition, the report indicates that when monitoring the implementation of the Labour Code, neither the Labour Inspectorate nor the Administrative Inspectorate found any problem relating to a gender wage gap during the reference period.

The Committee notes that in its Concluding Observations on the second periodic report of Montenegro (CEDAW/C/MNE/CO/2, 24 July 2017), the Committee on the Elimination of Discrimination against Women appreciated the efforts made by the Gender Equality Department within the Ministry for Human and Minority Rights, the creation of the National Council for Gender Equality, in 2016, and the Parliamentary Committee for Gender Equality and the adoption of the national action plan for gender equality, 2017-2021.

The Committee requests that the next report provide further information about how equal pay is ensured, notably, about the monitoring activities conducted in this respect by the Labour Inspectorate and other competent bodies.

Obligations to promote the right to equal pay

The Committee recalls that in order to ensure and promote equal pay, the collection of high-quality pay statistics broken down by gender as well as statistics on the number and type of pay discrimination cases are crucial. The collection of such data increases pay transparency at aggregate levels and ultimately uncovers the cases of unequal pay and therefore the gender pay gap. The gender pay gap is one of the most widely accepted indicators of the differences in pay that persist for men and women doing jobs that are either equal or of equal value. In addition, to the overall pay gap (unadjusted and adjusted), the Committee will also, where appropriate, have regard to more specific data on the gender pay gap by sectors, by occupations, by age, by educational level, etc. The Committee further considers that States are under an obligation to analyse the causes of the gender pay gap with a view to designing effective policies aimed at reducing it (see in this respect Complaints Nos.124 to 138, UWE, *op. cit*.).

The report does not contain data on the gender wage gap. It indicates on this point that the six-monthly publications entitled "Women and Men in Montenegro" of the Ministry of Human and Minority Rights and the Montenegro Statistics Office (MONSTAT) do not contain any statistics on salaries either, or any analysis of the nature and extent of the gender pay gap.

The Committee notes from the above-mentioned report on gender equality (2019) that the survey conducted by the Montenegrin Employers Federation in 2017 showed that the gender wage gap was 13.9%, which means that women earned only 86.1% of the average salary paid to men for the same work or work of equal value. According to this report, the reasons for the gender pay gap include direct or indirect discrimination, lower evaluation of women's work,

segregation in the labour market, tradition and stereotypes as well as an increasing need for women to balance their work and private life.

According to the report, the overall employment rate in 2018 was 47.5%, women's employment rate was 40.8% and men's 54.5% (Labour Force Survey).

The Committee asks for the next report to provide updated information on the specific measures and activities implemented to promote gender equality, overcome gender segregation in the labour market and reduce the gender pay gap, together with information on the results achieved. It also asks that the next report provide information on the employment rate for both men and women and the gender wage gap for each year in the reference period.

Conclusion

The Committee concludes that the situation in Montenegro was not in conformity with Article 20 of the Charter during the reference period, on the ground that women are not permitted to work in all professions which constitutes discrimination based on sex.

Partly dissenting opinion of Barbara KRESAL relating to Article 20 (Montenegro)

I agree with the conclusion that the situation in Montenegro is not in conformity with Article 20 of the Charter, but in my opinion, additional ground for non-conformity should be added, namely that the obligation to promote the right to equal pay has not been fulfilled. My dissent is therefore limited only to the last part of the assessment which appears in the Section 'Obligations to promote the right to equal pay'.

The State Party must adequately promote the right to equal pay with a view to ensure its effective realisation in practice, and it must accordingly demonstrate adequate 'results' in terms of the relevant indicators. These indicators are used to assess the effectiveness of the policies and measures adopted. As regards the gender pay gap indicator, I consider that it is of course necessary to demonstrate a positive trend, i.e. that the gender pay gap has been decreasing, however, this does not suffice, the gender pay gap must also be sufficiently low, minimal. Furthermore, it should not be relevant for the assessment whether the gender pay gap is below the EU average. Non-discrimination is one of the cornerstones of international human rights law and at the very heart of the Charter, explicitly enshrined in Article E of the Charter. It is the essential substance of all human rights, including the right to fair remuneration, and it is explicitly guaranteed in relation to pay/remuneration by Article 4§3 and Article 20.c of the Charter. The right to equal pay for equal work or work of equal value must be guaranteed here and now.

In its decisions on the UWE collective complaints (*University Women of Europe (UWE) v. Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Greece, Ireland, Italy, the Netherlands, Norway, Portugal, Slovenia and Sweden*, Collective Complaints Nos. 124-138/2016, Decisions on the merits 5.-6.12.2019; see, in particular, the preliminary considerations and the assessment parts), the Committee developed strict assessment criteria with respect to the right to equal pay. It is important that these criteria are also applied in a strict and consistent manner, either in the collective complaints procedure or in the reporting procedure when assessing the situation in the States Parties as regards the right to equal pay. The fact that actual realisation in practice of gender equality in general, and equal pay as one of its aspects, is a persistent, long-standing problem in all States Parties should not result in loose criteria or loose application of strict criteria when assessing the state compliance with their obligations stemming from Article 4§3 and Article 20.c of the Charter.

Considering the importance of the right to equal pay and if the criteria developed by the Committee as regards the promotion of equal pay are applied in a strict and consistent manner, the gender pay gap in Montenegro is, in my opinion, too high, and therefore the obligation to promote the right to equal pay has not been fulfilled.

An important emphasis of the Committee is 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" and that "it is necessary to analyse the causes of the gender pay gap with a view to designing effective policies aimed at reducing it" (see Complaints Nos. 124 to 138, UWE, *op. cit.*). Without identifying and understanding the causes of gender pay differences it is impossible to design adequate measures that could effectively address this problem.

It is also true that the gender pay gap is not *per se* evidence of pay discrimination. However, it is one of the most widely accepted indicators of the differences in pay which, together with other relevant indicators, reveals pay inequalities that exist in practice and, to a certain extent, also the causes of those inequalities. Unequal pay is a complex problem. Only a combination of various indicators could give a better picture and allow for a better assessment (for example, if the employment rate of women is high, the gender pay gap is usually also higher and *vice versa*, therefore, the relative gender pay gap in correlation with the female employment rate is probably more relevant than absolute figures; in addition to the unadjusted gender pay gap,

the adjusted gender pay gap should also be taken into account, together with the decomposition and analysis of the explained and unexplained gender pay gap, as well as the overall gender gap in earnings, differences between sectors of activity, occupations, age groups and similar, female employment rate etc.). The Committee recognises the complexity of the concept of (un)equal pay and in this context refers to various indicators that can be used in the assessment. However, the Committee's assessment of the situation in Montenegro as regards the obligation to promote the right to equal pay (the Committee did not find non-conformity on this ground and did not reserve its position on this point, therefore it can be assumed that the Committee decided for a conformity) seems to be based only on the unadjusted gender pay gap, since any other data are lacking.

Article 24 - Right to protection in case of dismissal

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

Scope

In reply to the Committee's question (Conclusions 2016) concerning protection against dismissal during the probationary period, the report states that probationary work is a special condition of employment. An employee who has an employment relationship and is on probation shall enjoy all employment rights in accordance with the duties of the workplace. Thus, an employee on probation enjoys the right to protection against dismissal.

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

Prohibited dismissals

In its previous conclusion (Conclusions 2016) the Committee considered that it had not been established that the legislation prohibits dismissal of an employee at the initiative of the employer on the ground that he/she has reached the pensionable age.

The Committee notes from the report in this respect that the termination of employment on the ground that the employee has reached the retirement age, that is when he/she acquires the right to retirement, is termination of employment by operation of law and does not constitute termination of employment by the employer.

An employer may terminate an employment contract only for the reasons specified in Article 143 of the Labour Law, which are reasons relating to the capacity or behaviour of the employee and for economic reasons. The employer cannot terminate the employment contract on the basis that the employee has reached the age for retirement, but in this case the employee ceases to work under the force of law.

In its previous conclusion the Committee noted that temporary inability to work due to illness, accident at work or occupational disease could not be a valid reason for termination of employment.

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 regarding redress in case of unlawful dismissal, such as the level of compensation granted and the possibility of reinstatement.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Montenegro is in conformity with Article 24 of the Charter.