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EUROPEAN SOCIAL CHARTER

European Committee of Social Rights

Conclusions 2020

THE NETHERLANDS

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.

With effect from 10 October 2010, the Netherlands Antilles ceased to exist as a constituent country of the Kingdom of the Netherlands. Two of the five islands which used to be part of the Netherlands Antilles – Curaçao and Sint Maarten – are henceforth separate constituent countries of the Kingdom of the Netherlands, together with Aruba, which is not affected by these changes. The three remaining islands which used to be part of the Netherlands Antilles – Bonaire, Sint Eustatius and Saba (henceforth referred to as "the Caribbean part") – are now special municipalities, under the direct responsibility of the Netherlands. However, while the Revised Charter applies to the European part of the Netherlands, its Caribbean part remains bound by the engagements subscribed under the 1961 Charter in respect of the Netherlands Antilles, as it is also the case for Aruba, Curaçao and Sint Maarten.

Accordingly, the present chapter of the Netherlands contains three subsections:

- The Netherlands (Kingdom in Europe)

- The Netherlands (Curaçao)

- The Netherlands (Sint Maarten).

The Netherlands (Kingdom in Europe)

The following subsection concerns the Netherlands, which ratified the Revised European Social Charter on 3 May 2006. The deadline for submitting the 13th report was 31 December 2019 and the Netherlands submitted it on 20 December 2019.

The Committee recalls that the Netherlands 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 2012).

In addition, the Committee recalls that no targeted questions were asked under certain provisions. If the previous conclusion (Conclusions 2012) 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).

The Netherlands have accepted all provisions from the above-mentioned group.

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

The conclusions relating to the Netherlands concern 12 situations and are as follows:

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

– 3 conclusions of non-conformity: Articles 18§3, 20 and 24.

In respect of the other 5 situations related to Articles 1§2, 1§4, 10§1, 15§1 and 15§2, the Committee needs further information in order to examine the situation.

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

The next report from the Netherlands 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.

The Netherlands (Curaçao)

The 1961 Charter was ratified by the Netherlands with respect to the Netherlands Antilles on 22 April 1980. On 8 October 2010, the Netherlands Government notified the Treaty Office of the Council of Europe that, with effect from 10 October 2010, the Netherlands Antilles would cease to exist as a constituent country of the Kingdom of the Netherlands and that the international agreements ratified by the Kingdom for the Netherlands Antilles would henceforth continue to apply to Curaçao.

The following subsection concerns the Netherlands in respect of Curaçao. The deadline for submitting the 8th report was 31 December 2019 and the Netherlands in respect of Curaçao submitted it on 14 February 2020.

The Committee recalls that the Netherlands in respect of Curaçao 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 XXI-1 (2016)).

In addition, the Committee recalls that no targeted questions were asked under certain provisions. If the previous conclusion (Conclusions XXI-1 (2016)) found the situation to be in conformity, there was no examination of the situation in 2020.

This report concerned Article 1 of the 1961 Charter (the right to work) and Article 1 of the Additional Protocol (the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex), Articles which are binding on the Netherlands in respect of Curaçao as concerns the thematic group I "Employment, training and equal opportunities".

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

The conclusions relating to the Netherlands in respect of Curaçao concern 4 situations and are as follows:

– 4 conclusions of non-conformity: Articles 1§1, 1§2, 1§3 and Article 1 of the Additional Protocol.

The Netherlands (Sint Maarten)

The 1961 Charter was ratified by the Netherlands with respect to the Netherlands Antilles on 22 April 1980. On 8 October 2010, the Netherlands Government notified the Treaty Office of the Council of Europe that, with effect from 10 October 2010, the Netherlands Antilles would cease to exist as a constituent country of the Kingdom of the Netherlands and that the international agreements ratified by the Kingdom for the Netherlands Antilles would henceforth continue to apply to Sint Maarten.

The following subsection concerns the Netherlands in respect of Sint Maarten. The deadline for submitting the 2nd report was 31 December 2019 and the Netherlands in respect of Sint Maarten submitted it on 21 January 2020.

The Committee recalls that the Netherlands in respect of Sint Maarten 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 XX-1 (2012)).

In addition, the Committee recalls that no targeted questions were asked under certain provisions. If the previous conclusion (Conclusions XX-1 (2012)) found the situation to be in conformity, there was no examination of the situation in 2020.

This report concerned Article 1 of the 1961 Charter (the right to work) and Article 1 of the Additional Protocol (the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex), Articles which are binding on Sint Maarten as concerns the thematic group I "Employment, training and equal opportunities".

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

The conclusions relating to the Netherlands in respect of Sint Maarten concern 3 situations and are as follows:

– 2 conclusions of non-conformity: Article 1§1 and Article 1 of the Additional Protocol.

In respect of the situation related to Article 1§2, the Committee needs further information in order to examine the situation.

The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by the Netherlands in respect of Sint Maarten under the 1961 Charter.

Article 1 - Right to work

Paragraph 1 - Policy of full employment

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

Employment situation

According to Eurostat, the GDP growth rate increased from 2% in 2015 to 2.4% in 2018, exceeding the average for the 28 European Union (EU) member States (2% in 2018).

The overall employment rate (persons aged 15 to 64 years) rose from 74.1% in 2015 to 77.2% in 2018, exceeding the EU 28 average (68.6% in 2018).

The employment rate for men increased from 79% in 2015 to 81.6% in 2018, which is higher than the EU 28 average (73,8% in 2018). The employment rate for women rose from 69.2% in 2015 to 72.8% in 2018, exceeding the EU 28 average (63.3% in 2018). The employment rate for older workers (55 to 64-year-olds) increased from 61.7% in 2015 to 67.7% in 2018, which is higher than the EU 28 average (58.7% in 2018). Youth employment (15 to 24-year-olds) rose from 60.8% in 2015 to 63.9% in 2018, which is well above the EU 28 average (35.3% in 2018).

The overall unemployment rate (persons aged 15 to 64 years) fell from 6.9% in 2015 to 3.8% in 2018, which is below the EU 28 average (7% in 2018).

The unemployment rate for men decreased from 6.6% in 2015 to 3.7% in 2018, which is below the EU 28 average (6.7% in 2018). The unemployment rate for women fell from 7.3% in 2015 to 4% in 2018, which is below the EU 28 average (7.2% in 2018). Youth unemployment (15 to 24-year-olds) decreased from 11.3% in 2015 to 7.2% in 2018, which is well below the EU 28 average (15.2% in 2018). Long-term unemployment (12 months or more, as a percentage of overall unemployment for persons aged 15 to 64 years) fell from 43.2% in 2015 to 36.8% in 2018, which is below the EU 28 average (43.4% in 2018).

The proportion of 15 to 24-year-olds “outside the system” (not in employment, education or training, i.e. NEET) fell from 4.7% in 2015 to 4.2% in 2018 (as a percentage of the 15 to 24-year-old age group), which is well below the EU 28 average (10.5% in 2018).

The Committee takes note of the performance of the labour market in the Netherlands in comparison with other States Parties. Labour market indicators showed positive trends (an increase in the employment rates and falling unemployment). In addition, in 2018, the overall employment rate was very high and the overall unemployment rate was very low.

Employment policy

In its report, the Government states that it has made structural improvements to the labour market by taking measures designed, firstly, to make “work pay better” and, secondly, to make it easier to combine work and childcare. Following an assessment which showed that insecurity and inequalities on the labour market were increasing, the Government also set itself the goal of restoring balance to the labour market. Accordingly, in 2017, it was announced in the coalition agreement that a set of measures would be taken to improve the balance between permanent and flexible work (for example, employers would incur lower costs and risks when they employed workers in open-ended contracts). The key measures set out in the coalition agreement were put into a draft law, which was referred to parliament in November 2018 [and adopted in 2019, i.e. outside the reference period].

In reply to the question put by the Committee in its previous Conclusions (2012), the Government mentions the labour market measures implemented to support vulnerable groups, particularly persons with disabilities and older workers. Regarding foreigners, the Committee notes that in 2018, the Government launched a programme entitled “Further integration into the labour market”, whose aim is to improve the labour market position of

migrants “from all non-Western countries”. The programme began with small scale pilot projects and an evaluation, which should lead to insights into what works where it comes to improving the position of this group on the labour market. For example, one pilot project tests several “nudges” in the right direction, which should help to make recruitment and selection more objective, while another will focus on developing an inclusive working environment and helping participants build a career. The Committee requests that the next report provide information on the evaluation of the implementation of the programme, and on any follow-up given to the programme.

Lastly, the Committee notes that according to European Commission statistics, public expenditure on labour market policies (as a percentage of GDP) decreased slightly, from 2.54% in 2015 to 2.14% in 2017 (of which 0.42% was for active measures and 1.5% for passive measures in 2017). On the other hand, the activation rate increased from 28.8% in 2015 to 34.6% in 2017.

Conclusion

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

Article 1 - Right to work

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

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

1. Prohibition of discrimination in employment

Article 1§2 of the Charter prohibits all forms of discrimination in employment. The Committee asked the States Parties to submit up-to-date 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 background, sexual orientation, religion, age, political opinions or disability (had Article 15§2 not been accepted), together with information on the available remedies. It also asked for information on any specific measures taken to combat discrimination in employment against 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.

The Netherlands has accepted Articles 15§2 and 20. Accordingly, it was under no obligation to report on the prohibition of discrimination on grounds of gender and disability, which will be examined by the Committee under these provisions.

As regards the legislation prohibiting discrimination in general terms, the legal framework previously found to be in conformity with the Charter (see Conclusions 2012) has not changed, as the report certifies. It recalls its underlying anti-discrimination principles.

No statutory changes have been reported with respect to legislation targeted at combating discrimination on grounds of race, sexual orientation, age, political opinion or religion. The Committee notes that it addressed the legal framework and the situation in practice relating to these issues and found it to be in conformity with the requirements of the Charter (see in particular, Conclusions 2008 and Conclusions 2006). Considering the fact that, according to the report, there have been no substantial changes, the Committee renews its positive conclusion on these aspects. However, given that the latest comprehensive assessment of the situation dates back to more than 10 years, it requests that the next report provide a full and up-to-date description of the situation in law and practice.

With regard to prohibition of discrimination on grounds of ethnic origin, the Committee notes that studies had been carried out on discrimination in the labour market and a programme was drawn up in order to combat discrimination in employment on grounds of ethnic origin. It thus requests in particular, that information be provided on the relevant steps taken and on any changes to the situation in this respect.

Apart from questions on the legal framework, during this examination cycle the Committee assesses specific measures taken to counteract discrimination in the employment of migrants and refugees. The report does not provide any information on this issue and the Committee recalls its request in this respect. It notes that the European network of legal experts in gender equality and non-discrimination in its 2019 country report on Netherlands pointed out to increasing tensions in Dutch society between various minority and majority groups and observed that discrimination against people with a migrant background is prevalent in many areas such as the labour market. The Committee asks that the next report comment on these observations.

The Committee further recalls that appropriate and effective remedies must be ensured in the event of an allegation of discrimination. The notion of effective remedies encompasses judicial or administrative procedures available in cases of an allegation of discrimination, able to provide reinstatement and compensation, as well as adequate penalties effectively enforced by labour inspection; furthermore, an appropriate adjustment of the burden of proof which

should not rest entirely on the complainant, as well as the setting-up of a special, independent body to promote equal treatment. The Committee explicitly requested information on these aspects to be provided for this examination cycle.

The Committee has comprehensively addressed various aspects of the remedies available for the victims of discrimination in its previous conclusions and systematically found them to be in conformity with the Charter (see Conclusions 2008 and 2002). The report does not provide any new information on this aspect. The Committee requests a full and up-to-date description of the situation in law and practice in respect of remedies in cases of alleged discrimination, which should include information on procedures available, burden of proof, penalties, level of compensation, as well as statistics on the number of discrimination cases lodged and won before various courts and/or equality bodies. It also asks for a comment on the observation made by the above-mentioned Equality Network report of 2019 that sanctions in discrimination cases may not meet the requirement of being sufficiently 'effective', 'dissuasive' and 'proportionate' under the Dutch legislation.

Pending receipt of the information requested, the Committee concludes that the situation with respect to the prohibition of discrimination in employment is in conformity with the Charter.

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,* §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 and 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 replied only partially 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

The Committee notes from the report that labour exploitation has been criminalised since 2005 pursuant to Section 273f of the Criminal Code (*Wetboek van Strafrecht*). This provision criminalises labour exploitation in the context of trafficking in human beings, among other forms of exploitation. Exploitation includes forced or compulsory labour or services, including begging, slavery or practices comparable to slavery or servitude, servitude or the exploitation of criminal activities. The Committee further notes that the Netherlands ratified the 2014 Protocol to the ILO 1930 Forced Labour Convention, which entered into force in the Netherlands on 8 August 2018.

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

The Committee notes that GRETA, in its 2018 Report on the Netherlands, expressed some concerns over the decreasing number of prosecutions and convictions for trafficking in human beings, and considered that the Dutch authorities should ensure that trafficking offences for all types of exploitation are proactively investigated and prosecuted, leading to proportionate and dissuasive sanctions, by continuing to build the capacity and specialisation of police officers, prosecutors and judges (Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Netherlands, second evaluation round, GRETA (2018)19, 19 October 2018, para. 230). The Committee asks that the next report provide information on the application in practice of Section 273f of the Criminal Code in relation to forced labour and other forms of labour exploitation. The report should provide information (including figures, examples of case law and specific penalties applied) on the prosecution and conviction of perpetrators during the next reference period, in order to assess in particular how the national legislation is interpreted and applied.

Prevention

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

The report indicates that in November 2018, the Ministry of Justice and Security, the Ministry of Public Health, Welfare and Sport, the Ministry of Foreign Affairs, and the Ministry of Social Affairs and Employment launched the programme "Tackling trafficking in human beings together" ("*Samen tegen Mensenhandel*"). Various operational and strategic actions formulated in this programme focus on the prevention, detection, approach and support for victims of labour exploitation. Social partners have been involved. The Committee asks for more detailed information in the next report on the implementation of this programme and on any results achieved in terms of prevention of labour exploitation.

The Committee notes that concerns have been raised over the growing number of migrant workers, particularly from Poland and Hungary, who are coerced by employment agencies into working under exploitative conditions (see United Nations Human Rights Committee, Concluding observations, 22 August 2019, §26). The Committee therefore asks that the next report provide information on any specific measures taken and results achieved in the prevention of labour exploitation in sectors where migrant workers are prevalent.

The Committee notes from the abovementioned GRETA Report that the Labour Inspectorate (SZW, *Sociale Zaken en Werkgelegenheid*), in addition to supervising adherence to labour regulations, is competent to detect and investigate trafficking for the purpose of labour exploitation, under the supervision of the Public Prosecutor's Office. It also carries out preventive work by raising awareness of trafficking for the purpose of labour exploitation among employers. Labour inspections by the Inspectorate SZW are unannounced and may take place at any time (pars. 67-68). GRETA welcomed the increased resources given to the Inspectorate SZW (para. 76).

The Committee requests that the next report provide detailed and up-to-date information on specific actions carried out by the Inspectorate SZW with a view to detecting cases of labour exploitation, particularly in sectors such as agriculture, construction, hospitality, manufacturing and transport. The report should indicate the number, if any, of presumed victims of forced labour and labour exploitation detected as a result of such inspections.

No information has been provided in the report on whether Dutch legislation includes measures designed to force companies to report on action taken to investigate forced labour and exploitation of workers among their supply chains and requires that every precaution be taken in public procurement processes to guarantee that funds are not used unintentionally to support various forms of modern slavery. The Committee accordingly reiterates its request on this point. In this regard, it notes from the abovementioned GRETA Report that in September 2015, the Government published an Action Plan for Responsible and Sustainable Procurement for the period 2015-2020. As part of it, a Manifesto on Responsible and Sustainable Public Procurement was signed by more than 100 local and regional authorities (para. 69). In addition, Responsible Business Conduct agreements have been concluded in sectors identified as being at risk of abuse (i.e., the textile industry, RBC sector agreement in July 2016; para. 99). The Committee wishes to be informed about the implementation of the Action Plan for Responsible and Sustainable Procurement and on the existence of any Responsible Business Conduct agreements in other sectors.

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.

Since the report does not contain any information on this point, the Committee requests that the next report provide information on the number of presumed and 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 confirmation in the next report that the existing legal framework provides the victims of forced labour and labour exploitation, including irregular migrants, with access to effective remedies (before criminal, civil or labour courts or other mechanisms) designed to provide compensation for all damage incurred, including lost wages and unpaid social security contributions. The Committee also asks for statistics on the number of victims awarded compensation and examples of the sums granted. In this context, the Committee refers to the 2014 Protocol to the 1930 ILO Forced Labour Convention (entered into force in the Netherlands on 8 August 2018), which requires Parties to provide access to appropriate and effective remedies to victims, such as compensation, irrespective of their presence or legal status in the national territory.

Domestic work

The Committee reiterates that domestic work may give rise to forced labour and exploitation. Such work often involves abusive, degrading and inhuman living and working conditions for the domestic workers concerned (see Conclusions 2012, General Introduction, General Questions, and the Court's judgment in *Siliadin v. France*). States Parties should adopt legal provisions to combat forced labour in the domestic environment and protect domestic workers as well as take measures to implement them (Conclusions 2008, General Introduction, General Question). The Committee recalls that under Article 3§3 of the Charter, inspectors must be authorised to inspect all workplaces, including residential premises, in all sectors of activity (Conclusions XVI-2 (2003), Czech Republic, relating to Article 3§2 of the 1961 Charter; Statement of Interpretation of Article 3§3 (i.e., Article 3§2 of the 1961 Charter)). It considers that such inspections must be clearly provided for by law, and sufficient safeguards must be put in place to prevent risks of unlawful interferences with the right to respect for private life.

The report does not provide any information on this point. The Committee notes however from the abovementioned GRETA Report that SZW inspectors can enter private households with permission from a judge and in case there is concrete evidence of a violation (para. 68). The Committee asks the next report to indicate the number of inspections carried out relating to domestic workers during the next reference period, and the number, if any, of victims of forced labour and labour exploitation identified as a result.

"Gig economy" or "platform economy" workers

The Committee notes that the report does not reply to its request for information on the measures taken to protect workers in the "gig economy" or "platform economy" from exploitation. It notes however from the report that Article 19(3) of the Constitution guarantees free choice of labour, which extends to all workers and job seekers, irrespective of whether they have an employee status, or they have or will be granted a self-employed status.

The Committee repeats its request and asks for information in the next report on whether workers in the "platform economy" or "gig economy" are generally regarded as employees or self-employed workers. It also asks whether the powers of the competent labour inspection services include the prevention of exploitation and unfair working conditions in this particular

sector (and if so, how many inspections have been carried out) and whether workers in this sector have access to remedies, particularly to challenge their status and/or unfair practices.

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

Conclusion

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

Article 1 - Right to work

Paragraph 3 - Free placement services

The Committee 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 the Netherlands.

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 the Netherlands 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 guidance and vocational training for persons with disabilities are examined under these provisions.

The Committee considered the situation to be in conformity with the Charter as regards measures relating to vocational guidance (Article 9) (Conclusions 2012) as well as to training for persons with disabilities (Article 15§1) (Conclusions 2012).

The Committee however deferred its conclusion on continuing vocational training (Article 10§3) (Conclusions 2020). Accordingly, the Committee defers its conclusion on Article 1§4.

Conclusion

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

Article 9 - Right to vocational guidance

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

Article 10 - Right to vocational training

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

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

The Committee refers to its previous conclusions for a description of the situation which it found to be in conformity with the Charter (see Conclusions 2012). It notes that the authorities indicate that they are currently in the process of extensively reforming the qualification structure of Dutch vocational training with competency-based learning. The Committee asks that the authorities provide specific information on the model adopted, in the light of the main indicators that it has developed (existence of an education and training system; total capacity [ratio of training places to candidates]; total spending on education and training (% of GDP); completion rate of young people enrolled; employment rate of graduates and how long it takes them to find their first skilled job).

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

The authorities have indicated that at national level, education and training programmes are brought into line with the needs of trade and industry through the "Foundation for Vocational Education and Labour Market" (SBB), where employers' representatives and those from the education sector advise the Minister of Education on the main issues concerning the teaching and vocational training system (e.g. qualifications structure, examinations and the requirements of internships).

In view of the information provided by the authorities, the Committee considers it is not in a position to assess the situation in this respect and decides to reserve its position. The Committee reiterates its demand that the authorities indicate what strategies and measures are adopted to match the skills acquired through vocational education and training with the demands of the labour market, especially demands resulting from globalisation and technological developments, and thus to bridge the gap between education and work.

Measures taken to integrate migrants and refugees

According to the information provided regarding Article 1§2, in 2018, the Ministry of Social Affairs and Employment launched a programme entitled "Verdere Integratie op de Arbeidsmarkt" (Further Integration into the Labour Market), which aims to improve the labour market position of all non-Western migrants.

The authorities are invited to specify whether there is a specific support scheme to ensure young migrants' social, linguistic and educational integration and the transition from school to work.

The Committee notes that the report submitted by the authorities does not provide any other information in response to its request. The Committee asks that the authorities specify the number of refugees and foreign nationals lawfully resident on Dutch territory who benefit from vocational training programmes and the results obtained in terms of integration into the labour market.

The Committee notes from the information submitted regarding Article 9, that funds are available through the "Tel mee met Taal" scheme (Be Included with Language), an action programme for basic skills. The Committee wishes to know whether refugees and foreign nationals lawfully resident in the Netherlands benefit from this programme and if other Dutch language classes are automatically offered to them to facilitate their integration into the job market.

Conclusion

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

Article 10 - Right to vocational training

Paragraph 2 - Apprenticeship

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

Article 10 - Right to vocational training

Paragraph 3 - Vocational training and retraining of adult workers

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

In its previous conclusion (Conclusions 2012), the Committee held that the situation in the Netherlands was in conformity with Article 10§3 of the Charter.

The Committee notes that the Netherlands 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").

The Committee notes from the information provided in the report under Article 10§1 of the Charter that the qualification structure of vocational training is under extensive reform, in order to ensure competency-based learning. It also notes that the 'Foundation of Vocational Education and Labour Market', in which employers' and educational institutions' representatives participate, seeks to harmonise education and training programmes with the needs of industry. The above-mentioned foundation also provides information on education and training needs to the Minister of Education.

The Committee 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.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in the Netherlands is in conformity with Article 10§3 of the Charter.

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 the Netherlands.

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”).

It notes that the long-term unemployment rate in the Netherlands reached a record high in the first quarter of 2015. Since then, long-term unemployment has been on a downward trend similar to that of short-term unemployment. The Committee recalls that it noted in its conclusions 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 from 43.2% in 2015 to 36.8% in 2018, which is below the EU 28 average (43.4% in 2018).

The report states that support provided to the long-term unemployed in the Netherlands include training vouchers for long-term unemployed over 55 years of age; intensified placement counselling and assistance for persons entering long-term unemployment and career guidance and network training on labour market issues, as well as subsidies for wage costs.

In 2014, approximately 1 billion euros were earmarked for the overall reintegration policy. However, the effectiveness of this overall package has not been properly assessed.

The Committee requests that the next report provide updated information on statistics on long term unemployment as well as information on measures offered to long-term unemployed persons and their participation rate in such measures.

Conclusion

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

Article 10 - Right to vocational training

Paragraph 5 - Full use of facilities available

The Committee 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 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 the Netherlands.

It previously found (Conclusions 2012) that the situation of the Netherlands was in conformity with Article 15§1 of the Charter, pending receipt of the information requested.

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

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

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

Legal framework

The Committee takes note of the information provided in the report on the legal framework governing the rights of persons with disabilities in respect of healthcare and social support, as amended during the reference period (in particular as regards the Social Support Act). Discrimination, inter alia on ground of disability, is prohibited by the Constitution and the Criminal Code. In addition, the 2003 Disability Discrimination Act (DDA) covers vocational training and, as from 2009, also primary and secondary education (Conclusions 2012).

The report maintains that all children have access to free of charge primary and secondary school, under the Compulsory Education Act 1969. It states that The Primary Education Act (*WPO*) and the Secondary Education Act (*WVO*) provide for education to "pupils with needs for additional support" ("SEN pupils"), as well as to pupils who are ill at home or in hospitals. The education system comprises both mainstream and special schools at primary level in specialised facilities for special education and at secondary level, in Expertise Centres. Under the Expertise Centres Act (*WEC*), pupils themselves or their parents can choose to undertake special secondary education oriented to a diploma, to the employment market or to daytime activities. The report indicates that in 2014, the Appropriate Education Act and the Higher Education (Quality in Diversity) Act were introduced, with the aim of improving education, in particular by setting up an inclusive education system. Under the Appropriate Education Act, the schools have a "duty of care", i.e. the duty the offer the most appropriate education as possible to each child that requires additional support.

In its previous conclusion (Conclusions 2012), the Committee noted that the eligibility of children for special education or mainstream education with extra support was assessed by an independent committee, without reference to any specific definition of disability but based on assessment criteria laid down in the Personal Budget (Education) Decree, which was under review. The Academic Network of European Disability Experts (ANED) report 2018 on disability assessment confirms that entitlement to special additional support is subject to the assessment of two professionals (an orthopedagogue or a psychologist and a medical general doctor, a children psychologist, a pedagogue, a psychiatrist or a social worker) applying assessment criteria decided by the regional schoolboards. According to the European Equality Law Network country report 2019, in practice the notion of disability has been interpreted in an extensive way, taking into account not only the physical or psychological characteristics of

the individual, but also the physical and social environment that allows/does not allow a person to participate on an equal footing.

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

In its latest conclusions (Conclusions 2012) the Committee found that the educational system in the Netherlands was insufficiently inclusive for children with disabilities (only one third of children with disabilities were in mainstream education in 2010) and asked for information on the measures taken to remedy this situation, in the light of relevant statistical data.

The report indicates that almost all children and young people go to school and that the Appropriate Education Act of 2014 addresses more effectively the problem of children who stay at home and temporarily or no longer go to school. With reference to inclusive education under this Act, the report explains that the school, in consultation with the parents, the municipalities, child and youth services and other partners, must guarantee an appropriate programme for the pupil and that mainstream schools are obliged to admit children with a disability unless they can prove they are unable to provide adequate education, in which case the pupil is admitted to special facilities and schools. According to the report, measures have been taken in 2015-2017 to better adapt education to the needs of pupils, for example, by allowing pupils who are enrolled at a special school to follow part of the programme at a mainstream school (symbiosis).

While the report does not provide any of the information requested on the number of children with disabilities/special needs included in mainstream facilities, the number attending special schools, the number attending school on a part time basis etc., the Committee notes that according to the ANED report 2018 on the European Semester "*the proportion of students in special education remains around the same as before* [the introduction of the Appropriate Education Act 2014] *(4.1% in primary school), while the numbers of children being excluded from primary or secondary schools have increased*". According to the ANED, the number of students in special schools had decreased between 2014 and 2017, but has started increasing again in 2017-2018, especially in primary schools. Referring to data of the Ministry of Education, the ANED estimates that more than 7000 children with disability and of compulsory school age are not in education (the number of children formally exempted from school was 5736 in 2017 and had increased by 29% in the past three years, to which should be added some 1300 other children with disabilities not in education for other reasons in 2018). The Committee asks the next report to comment on these comments.

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.

It reserves in the meantime its position on this point.

Measures aimed at promoting inclusion and ensuring quality education

The report states that, following the adoption of the Appropriate Education Act 2014, work has been undertaken (through inclusive education partnerships) to realise a coherent set of educational facilities for all pupils, promote customisation of the educational programmes and improve the support for pupils, schools and parents. The report refers to the setting up of an intervention team at national level which operates since 2016-2018 to bring about tailored programmes in specific cases, with the involvement of organisations that can support parents and schools locally. In addition, as from 1 August 2018, the possibility to adapt the number of teaching hours to the pupil's needs, which previously only applied to secondary schools, has been extended to all mainstream schools. Experimental programmes are also being carried out in cooperation between special and mainstream education at local level, in order for example to provide special education and study material in accessible forms. In this respect, according to the report, diverse measures have been taken to ensure that education is offered in suitable languages, methods, means of communication and learning environments for pupils or students. For pupils and students with an audio-visual and visual impairment, the government subsidises the conversion of existing learning resources to an accessible format. The report refers to the work done in this respect by the foundation Dedicon, which converts schooling and study materials into diverse alternative reading formats and to other measures under way to find technological solutions aimed at improving accessibility to electronic learning resources or developing more and better digital educational materials adapted to the children needs.

The Committee takes note of the information provided in the report concerning the training for teachers and in particular the Master's degree course on SEN; according to the report, the percentage of teachers with a Master's degree of applied sciences specialising in Educational needs, out of the total number of teachers in the senior secondary vocational school (MBO), passed from 1% in 2014 to 1.8% in 2018.

The report also indicates that pupils with disabilities who need support when travelling to an educational institution can make use of school bus services and that municipalities can decide what type of transport service is more appropriate (private or public, with or without supervision and modified conditions). Based on the DDA, pupils and students in primary education,

secondary vocational education and higher education are eligible for individualised adaptations and support insofar as it does not lead to a disproportionate burden on the educational institution.

The Committee had previously noted that a personal budget was provided to schools in respect of children with disabilities to cover the costs of the additional support needed and, in view of the reform under way, had asked about the concrete results achieved in this respect. The report indicates that parents and pupils can engage the services of an educational care consultant to overcome the difficulties arising from impairments, without specifying how this support is chosen and financed. The Committee notes from the ANED report 2018 on the European Semester that, under the Appropriate Education Act 2014, portable individual budgets were abolished and that schools pay for support out of a common budget allocated to groups of schools in the same region. Based on data from the Netherlands Court of Audit, the ANED claims that between 2014 and 2016 the number of children with disabilities who received additional support in mainstream schools dropped from 1% to 0,3%. The Committee asks the next report to comment on this.

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

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

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

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

The Committee asks the States parties to provide information on how reasonable accommodation is implemented in mainstream education, whether and to what degree there is an individualized assessment of ‘reasonable accommodation’ to ensure it is adequately tailored to an individual’s circumstances and learning needs, and to indicate what financial

support is available, if any, to the schools or to the children concerned to cover additional costs that arise in relation to ensuring reasonable accommodations and access to inclusive education.

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

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

Remedies

The report indicates that in case of disputes relating to admission or support, students and their parents can make use of the institution's complaints procedure, or they can turn to the Netherlands Institute for Human Rights (NIHR) for mediation and advice. Should the need arise, students and parents can address the court, without intervention. The Committee notes from the European Equality Law Network country report 2019 that "many cases that come before the NIHR concern reasonable accommodations in the area of (vocational) education". The Committee asks the next report to provide updated information on this point, in the light of any relevant case-law.

Conclusion

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

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

Paragraph 2 - Employment of persons with disabilities

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

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 2012) that it had not been established that persons with disabilities were guaranteed an effective equal access to employment.

Legal framework

The Committee previously noted that the 2003 Equal Treatment of Disabled and Chronically Ill People Act (*WGBH/CZ*) prohibits discrimination on grounds of disability at every stage of employment: placement, recruitment and selection, conclusion of an employment contract, terms and conditions of employment, promotion, training and termination of contract (see Conclusions 2007). It also noted (Conclusions 2012) that this act provides for the possibility to request effective alterations to the workplace and working environment (reasonable accommodation), if this does not impose a disproportionate burden on the employer, taking into account several factors, such as the size of the organisation or institution, the costs entailed by the measures and financial assistance available, the technical feasibility or the financial capacity of the organisation. Pursuant to the Work and Income (Capacity for Work) Act (WIA), the Employee Insurance Agency (UWV) can grant funding for workplace alterations and other forms of assistance, such as transport, sign language interpreters etc. The WGBH/CZ was further amended in 2017, following the ratification of the UN Convention on the Rights of Persons with Disabilities (CRPD).

The report refers to the adoption in 2015 of the Participation Act, which has reformed the employment-support system for persons with disabilities and replaced, to a large extent the schemes previously applicable under the Disability Assistance Act for Handicapped Young Persons (*Wajong*) and the Sheltered Employment Act (*WSW*) (see details in the report and below).

The Committee asks the next report to clarify whether the assessment of disability in the field of employment takes into account the personal and environmental factors interacting with the individual and whether it can be contested.

Access of persons with disabilities to employment

As regards the labour market participation monitoring, the report refers to the UWV database of people with occupational disability benefits, their work capacity and the extent to which they make use of employment provisions. According to this database, in 2017 about 14% of the Dutch population aged 15-64 years noted in a survey that they felt hampered by a chronic illness or disorder (i.e. some 1 554 000 persons out of 11 044 000). Considering only the active population, the persons with disabilities represented 8.7% of this population (i.e. 900 000 persons out of 10 342 000). Within the active population, persons with disabilities in employment were 66.3% (597 000 persons), compared to 81% for the rest of the population. The report states that the formal unemployment rate of occupationally impaired persons between 2015 and 2017 decreased from 13.3% to 9.8%.

In response to the Committee's question (Conclusions 2012) the report confirms that the great majority of persons with disabilities are employed in the ordinary labour market, although the

number of persons working in sheltered employment has been growing during the reference period.

As regards the impact of employment-support measures, the report indicates that at the end of 2018, nearly 113 000 persons with disabilities benefited of some of these measures (including the provision of reasonable accommodation, wage cost subsidies for the employer etc.) in a regular working environment, in addition to 49 279 persons with disabilities working in a sheltered working environment. In the period 2015 – 2018, the total number of people with an occupational impairment that could participate in the labour market with additional support increased by 19%, from 135 814 at the end of 2015 to 162 042 at the end of 2018.

The Committee asks the next report to provide updated data concerning the total number of persons with disabilities, including those in of working age, those employed (on the open market and in sheltered employment); those benefiting from employment promotion measures; those seeking employment; those that are unemployed as well as the general transfer rate of people with disabilities from sheltered to open market employment.

Measures to promote and support the employment of persons with disabilities

The report indicates that the 2015 reform of the long-term care system, expanding the social support responsibilities of the municipalities, implied the amendment of several laws concerning inter alia persons with disabilities. In particular, as regards employment, a new Act (Participation Act) entered into force in 2015, which provides for employment support or income scheme to persons who cannot independently earn the statutory minimum wage because of their impairments. The implementation of this act is entrusted with the municipalities and it is regularly monitored by the Parliament and evaluated (a final evaluation is expected at the end of 2019, out of the reference period). The employment-support scheme provided by the Participation Act has replaced those previously provided under the Disability Assistance Act for Handicapped Young Persons (*Wajong*) and the Sheltered Employment Act (*WSW*). Further amendments to the Wajong are being drafted, concerning employment of young persons with disabilities (see details in the report). The WSW continues to apply to persons who fell under its scope as of the end of 2014, before the entry into force of the Participation Act. In addition, the report indicates that further incentives to the employment of persons with disabilities have been introduced or are under consideration (see details in the report concerning Article 1§1 of the Charter).

The report explains that the number of persons with disabilities working in sheltered employment has increased since the adoption of the Participation Act, as amended in 2017 since, on the one hand, persons with disabilities can apply for a UWV referral to sheltered employment of their own accord and, on the other hand, the municipalities are obliged to offer a sheltered workplace if it is available. The Committee takes note of the information provided about sheltered employment, it asks however the next report to clarify whether by "sheltered workplaces/employment" the authorities refer to employment in sheltered structures (such as special workshops only employing persons with disabilities), as opposed to the open labour market, or whether they refer in fact to supported employment in the ordinary labour market (such as quotas reserved to persons with disabilities or posts held by them pursuant to different employment policies). It asks the next report to provide information on the respective number of persons with disabilities employed under these different conditions. It furthermore asks whether a quota system currently applies to private and/or public employment and to what extent it is respected.

The Committee takes note of the information provided in the report concerning the impact of employment-support policies and measures aimed at persons with disabilities. It notes that the number of beneficiaries of different occupational disability benefits (Wajong, WIA/WAO/WAZ) who went into paid employment after following reintegration programmes procured by the UWV has been increasing during the reference period (see details in the report). The report explains that not all the reintegration programmes procured by the UWV

are directly aimed at getting people into employment, some of them aim to get people skilled for work (bringing them closer to the employment market), and into training programmes. According to the report, the success rate of programmes completed in 2017 aimed at getting people skilled for work was reasonably high (at 75%), and the share of training programmes that had been successfully completed was 81%. The report estimates at 10% the increase in the employment rate of persons with an occupational impairment during the reference period and indicates that according to the latest assessments, the introduction of the Participation Act has increased the employment opportunities for young persons with disabilities, although they are mostly employed on part-time or temporary contracts.

Remedies

The Committee previously noted (Conclusions 2007) that complaints of discrimination could be filed with the Equal treatment Commission, a non-judicial body whose decisions are not binding but are usually complied with and followed by courts in subsequent legal proceedings. This body was replaced in 2012 by the National Institute of Human Rights (NIHR). In addition, victims of discrimination can also bring cases before the civil courts, which will apply a shift in the burden of proof.

The report does not provide the information requested about the relevant cases concerning discrimination on grounds of disability in employment. The Committee notes however from the European Equality Law Network report 2020 on discrimination that in 2018 the majority of requests for an opinion submitted to the NIHR related to discrimination on grounds of disability and chronic illness (they represented 34% of the requests in 2018, 30% in 2017). The Committee asks the next report to provide information on relevant judicial decisions and NIHR opinions concerning discrimination on grounds of disability in the field of employment, including as regards the provision of adequate assistance or reasonable accommodation. It recalls that legislation must confer an effective remedy on those who have been discriminated against on grounds of disability and denied reasonable accommodation. It considers that, should the next report fail to provide the information requested, there will be nothing to establish that the situation is in conformity with the Charter on this point and reserves in the meantime its position.

Conclusion

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

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

Paragraph 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 the Netherlands.

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 2012) that the situation was in conformity with the Charter.

Relevant legal framework and remedies

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

The report indicates that the 2015 reform of the long-term care system implied the amendment of several laws concerning inter alia persons with disabilities. In particular, under the Social Support Act (*Wmo*), as comprehensively reviewed in 2015, the municipalities are responsible for social support. This is understood to include supporting the self-reliance and participation of persons with disabilities, chronic psychological or psychosocial problems, as much as possible in their own environment. Municipalities have also been given the task of encouraging accessibility to facilities, services and areas for persons with disabilities and thus contribute to the realisation of an inclusive society.

Following the ratification of the UN Convention on the Rights of Persons with Disabilities (CRPD) and its entry into force in the Netherlands (European part) on 14 July 2016, the relevant legislative framework was reviewed and amendments were made to the Equal Treatment of Disabled and Chronically Ill People Act (*WGBH/CZ*) and the Elections Act (in the context of accessibility at polling stations). For the rest, the authorities considered that the existing legislation was compatible with the CRPD. As a result of the 2017 amendments, the scope of the *WGBH/CZ,* which already covered employment, education, housing and public transport, was extended to all 'goods and services', including the retail trade, the hospitality industry, culture, sports, recreation, business services, healthcare and internet services. The Committee asks the next report to provide updated information on the relevant case-law related to the implementation of the WGBH/CZ.

It furthermore asks the next report to provide information on the remedies applicable to contest municipalities' decisions concerning tailored provision (see below).

Consultation

The report states that an implementation plan was drafted by the Ministry of Health, Welfare and Sports, in consultation with 40 organisations and institutions, including various civil society organisations and people with disabilities (see also Conclusions 2012, as regards regular consultation with relevant civil society organisations). The implementation plan involves the central government together with municipalities, businesses and social organisations. The Committee asks the next report to provide updated information on the results achieved through the implementation plan. It also asks the next report to provide information on consultation

with people with disabilities, as well as other measures to ensure their participation in the design, implementation and review of disability policies.

The report refers to the programme "Unrestricted participation!" 2018-2021, which aims at the removal of barriers to social inclusion of persons with disabilities. The Committee asks the next report to provide further updated information on the results achieved.

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

Financial and personal assistance

The Committee refers to its previous conclusion (Conclusions 2012) as regards the different forms of financial assistance available to persons with disabilities: in addition to healthcare coverage, there are several types of allowances and special fiscal schemes, and different types of care at home or in an approved institution are also available.

In particular, under the Social Support Act, managed by the local authorities, people may choose to receive care in kind or in the form of a personal budget. In this respect, the report explains that following the decentralisation of social support through the reform of the Wmo, the Youth Act (*Jeugdwet*), the Health Insurance Act (*Zorgverkeringswet*) and the Participation Act (*Participatiewet*), municipalities enjoy a greater freedom to decide on the right to and type of support provided. On the one hand, the municipality provides general services such as community work, meal services, handyman services, etc. On the other hand, people can apply for more specific support. According to the law, the municipality must then carefully scrutinise the needs, characteristics and individual circumstances of the person and, based on this assessment, it can approve a “tailored provision”, including personal assistance and/or technical aids – for example, provision of domestic help, adaptation of the home, provision of a mobility scooter, a wheelchair or individual coaching in daily living activities. The term "tailored provision" implies that the provision must be appropriate for the individual, and according to the law, it must contribute to the realisation of a situation in which the beneficiary is enabled to be self-reliant, to participate and to be in their own living environment for as long as possible. The provision may also take account of the need for protective housing or shelter. The report explains that the municipality takes also into account whether the person can reduce or eliminate the difficulties, either on their own, by engaging the usual help, informal care or with other people in the social network, or with general provisions. It states that people who are in need, can rely on free and independent support aimed at getting suitable relief. The report also indicates that the law guarantees the right to make own choices in the needed support. Under certain conditions, one can buy the necessary care on one’s own with a so-called ’personal budget’. According to the report, this allows people with disabilities to have more personal control over their life and to be able to seek healthcare providers for support in the desired manner and at the time that it is needed. This right is subject to certain conditions: a person must actually be able to handle matters personally, such as making work arrangements with the social and care workers and be able to keep records. The budget is not deposited directly into the client’s account, but it is paid to the caregiver by the administration agency under supervision of the central government.

The Committee asks the next report to provide up to date information on the personal assistance scheme; the legal framework, the implementation of the scheme, the number of beneficiaries, and the budget allocated. 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 notes from the report that under the Wmo, as amended in 2015, the provision of supports, including technical aids, depends to a great extent from municipalities (see above). It had previously noted (Conclusions 2012) that technical aids were also provided under the care insurance scheme governed by the Healthcare Insurance Act. The Committee asks the next report to indicate any significant change concerning this area, in particular as regards the costs that remain at the charge of the beneficiary.

Communication

The Committee previously noted (Conclusions 2008) that certain accessibility requirements applied to Government websites and that television broadcasting companies must subtitle some of their television programmes. In addition, the Dutch Telecommunications Act provides for equal access to public telephony services by end users with physical disabilities.

The Committee understands from the report that the WGBH/CZ, as amended in 2017, covers new communication technologies. It notes from the report submitted to the CRPD committee that an assessment carried out in 2017 indicated however that digital accessibility for people with functional disabilities was not satisfactorily arranged in the care sector.

It 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 report states that improvements are gradually being made to ease access to public transport for people with disabilities. It refers in this respect to programmes aimed at increasing the accessibility of stations and railway transport and to the responsibility of local and regional authorities to ensure accessibility of bus, tram and metro transport services by 2040. Where the public transport is not yet accessible, persons with disabilities can make use of dedicated transportation such as *WMO* (social support) transport and Valys (social-recreational transport), school bus services and transportation to access employment or daytime activities. The Committee notes from the report submitted by the authorities to the CRPD committee in 2018 that as of 2017, all train stations were accessible for people with visual disabilities; as of 2016, 98% of buses and 46% of bus stops were accessible; Metros and metro stops are all accessible; Trams in the urban regions of Utrecht, Amsterdam, Rotterdam and Haaglanden are respectively 100%, 72%, 48% and 26% accessible; Dutch Railways (NS) provides assistance at 123 stations and that number was expected to increase to 128 in 2018. The same report indicates that road transport is accessible, that detailed requirements apply to aviation and airports, and that seagoing and inland navigation vessels for passenger transport comply with existing international and European regulations governing technical requirements relating to physical accessibility for persons with disabilities.

The Committee asks the next report to provide updated information on the relevant measures enacted and the progress made in ensuring the accessibility of public transport (land, rail, water, air).

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

Housing

The Committee notes from the ANED 2019 country report on Living independently and being included in the community that, as a result of the reform of the long-term care of 2015, the number of persons with disabilities living in institutions is diminishing and new forms of residential care are developing, such as group homes in the communities or home care. In this respect, the Committee refers to the information noted above about the reform of the Wmo and the greater involvement of municipalities into the provision of support related to home care assistance and home adaptations.

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 and whether financial assistance was provided to adapt existing housing.

Culture and leisure

The Committee takes note of the information provided in the report about the initiatives taken to promote participation of persons with disabilities to sport activities and to include disability sports in local, mainstream sport associations. The report refers in particular to programmes aimed at promoting disability sport, such as the 'Unlimited Activity' policy and the Special Heroes Project (ran until the end of 2015) and to the setting up of sports desks at rehabilitation centres.

As regards the accessibility of cultural activities, the Committee takes note of the information reflected in the report submitted to the CRPD committee in 2018. As this report refers to discussions under way between the Ministry of Education, Culture and Science and cultural organisations and interest groups about accessibility of culture for people with disabilities, it asks the next report to provide updated information on the additional measures taken in this respect.

Conclusion

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

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

Paragraph 1 - Applying existing regulations in a spirit of liberality

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

Paragraph 2 - Simplifying existing formalities and reducing dues and taxes

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

Paragraph 3 - Liberalising regulations

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

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.

Access to the national labour market/Exercise of the right of employment

The report states that the Foreign Nationals Employment Act sets out the rules governing access to the labour market for foreign workers. An employer can hire foreign workers (from outside the EU/EEA) if no prioritised labour supply is available (meaning Dutch nationals or nationals of EEA states). Should that be the case, the worker must obtain a work permit. No work permit is required for highly skilled migrants and for key personnel/trainees in international concerns.

The Committee notes that steps have been taken to relax and simplify the procedure for employing certain groups of workers from outside the EU/EEA. In particular, the opportunities for highly qualified foreign nationals to seek work in the Netherlands have been expanded via the "Orientation year for highly educated persons' regulation". The requirement to hold a work permit has been discontinued for everyone covered by the regulation, as well as for: foreign nationals who have completed a post-doctoral programme in the Netherlands or at a Top-200 university abroad; foreign nationals who have conducted scientific research in the Netherlands; foreign nationals who have attained a Master's degree on the basis of an Erasmus Mundus master's course or who have completed a degree course under the Cultural Policy Act or a training programme as part of the development and co-operation policy of the Ministry of Foreign Affairs; teachers and researchers at higher education institutions.

According to the report, the work permit obligation for posting third-country nationals for temporary labour in the Netherlands has been discontinued. In addition to being employed, highly skilled foreign nationals, holders of an EU Blue Card and academic personnel may also work as self-employed entrepreneurs. Likewise, students from outside the EEA who study in the Netherlands may, in addition to their study, work on a self-employed basis.

The report provides statistics on the number of work permits granted and denied to nationals of non-EU/EEA States Parties to the Charter. The Committee notes that the number of work permits granted increased from 6,952 to 10,056 during the reference period, while the work permit refusal rate remained relatively stable (at around 10.5%).

The Committee also notes the main reasons, listed in the report, for refusing to issue or renew a work permit (in the case of employees and self-employed workers):

- prioritised labour supply available (557 in 2015, 444 in 2016, 236 in 2017 and 380 in 2018);
- irregularities in the requisite documentation (e.g. no residence permit, incomplete application, late vacancy listing, etc.).

In addition, the Committee observes from the report that among the grounds on which work permits were refused were the age of the applicant (6 cases in 2018) and the fact that no suitable accommodation had been provided to the worker (2 cases in 2018). On this issue, the Committee refers to its previous conclusion (Conclusions 2012) in which it noted that other factors, such as a lack of appropriate housing or the fact that the applicant is over 45 years of age, were optional grounds. Age, therefore, was not a sufficient reason on its own to reject an application for a work permit from a foreign worker. In any case, there is a right to appeal against the authorities' decision to reject a work permit application. The Committee further notes that these two grounds were seldom cited during the reference period and that the

number of refusals resulting from the application of the “prioritised labour” rules declined during the reference period.

In reply to the Committee’s question as to whether the rules regarding employment are relaxed after a certain period of time spent in the Netherlands, the report states that a foreign worker has unhindered access to the labour market once he or she has worked in the Netherlands for five years continuously, irrespective of whether the work is performed at different employers. After those five years a Single Permit is not required.

As regards the Committee’s request for information about any measures that might have been adopted to liberalise regulations governing the recognition of foreign certificates, professional qualifications and diplomas, the report states that access to non-regulated professions in the Netherlands is unprescribed, so there is no qualification requirement. If a profession has been regulated, the employee must comply with certain requirements to practise that profession. Each profession has a competent authority which checks on compliance with the requirements. According to the report, the Netherlands Organisation for International Cooperation in Higher Education provides an overview of education systems abroad in response to requests from employers. For an additional fee, an evaluation of credentials attained abroad can be applied for via the International Credential Evaluation website. The Committee requests information on the number of foreign certificates, professional qualifications and diplomas recognised during the reference period for nationals of non-EU/EEA States Parties to the Charter.

The Committee further asks that the next report clearly indicate under what conditions a foreign national from a non-EEA State party to the Charter can gain access to the national labour market as a self-employed worker. Pending receopt of the information requested, the Committee notes that the situation is in conformity with Article 18§3 of the Charter as regards access to the national labour market for foreign workers.

Consequences of the loss of employment

The report states that the residence permit for paid employment or the Single Permit (combined permit for residence and work) entitles the holder to reside in the Netherlands for the duration of the employment contract or appointment. If a work permit is issued, the residence permit is valid for the same period as the work permit. If the conditions for the residence permit are no longer met, the Immigration office will withdraw the permit. This also applies if the employment contract is terminated (e.g. in the case of summary dismissal). In that case, the person will have to leave the Netherlands unless he or she has other legal grounds to reside in the country. The report also states that if the foreign worker is not to blame for the dismissal, he or she will be given 3 months to find another job.

The Committee points out that both the granting and the cancellation of work and temporary residence permits may well be interlinked, inasmuch as they pursue the same goal, namely to enable a foreigner to engage in a gainful occupation. However, in cases where a work permit is revoked before the date of expiry, either because the work contract is prematurely terminated, whether or not through the fault of the worker, or because the worker no longer meets the conditions under which the work permit was granted, it would be contrary to the Charter to automatically deprive such worker of the possibility to continue to reside in the state concerned and to seek another job and a new work permit, unless there are exceptional circumstances which would authorise expulsion of the foreign worker concerned, within the meaning of Article 19§8.

On the light of the foregoing, the Committee considers that in the event of dismissal or termination of an employment contract, through the fault of the worker, during the validity period of a work permit, the worker concerned will have his or her residence permit withdrawn and must leave the country. The Committee therefore concludes that the situation is not in conformity with Article 18§3 of the Charter on the ground that early termination of the employment relationship of a foreign national (for professional misconduct) results in the

automatic withdrawal of that person's residence permit with no possibility of seeking new employment.

Conclusion

The Committee concludes that the situation in the Netherlands is not in conformity with Article 18§3 of the Charter on the ground that early termination of the employment relationship of a foreign national for professional misconduct results in the automatic withdrawal of that person's residence permit with no possibility of seeking new employment.

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

Paragraph 4 - Right of nationals to leave the country

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

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

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

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

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

Legal framework

The report states that the national legal framework is mainly formed by two laws and Section 646 of Book 7 of the Dutch Civil Code (*BW*). This Section, inter alia, stipulate that the employer may not discriminate between men and women when concluding the employment contract, in providing training to the employee, in the working conditions, in the working circumstances on promotion and on termination of the employment contract. As regards the laws, Equal treatment between Men and Women Act (*Wet gelijke behandeling van mannen en vrouwen, WGBMV*) which entered into force in 1980 and prohibits both direct and indirect discrimination. This also includes discrimination on grounds of pregnancy, childbirth and motherhood. The law prohibits discrimination on entering into an employment contract, in the terms of employment, in working conditions, on promotion and on dismissal. The second one, the General Equal Treatment Act (*Algemene wet gelijke behandeling, AWGB*) entered into force in 1994 and prohibits both direct and indirect discrimination on grounds of gender and pregnancy. The law provides for protection against discrimination on various grounds, including employment.

The Committee has observed in the decision 134/2016 UWE v. the Netherlands that the obligation to recognise the right to equal pay for work of equal value is satisfied (decision on the merits adopted on 6 December 2019, §§139-140).

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. Moreover, 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 meaning 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 should be 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). Employees who try to enforce their right to equality must be legally protected against any form of reprisals from their employers, including not only dismissal, but also downgrading, changes to working conditions and so on.

The report states that anyone who feels that they are a victim of discrimination can ask the National Institute Human Rights to examine their complaint of discrimination and give an opinion. The request must concern issues relating to work, or the provision of goods or services, such as education, living, leisure, care, financial services, transport or social protection. In addition, one of the grounds for non-discrimination from the equality legislation must apply. This concerns grounds which may not form the basis of discrimination: race,

gender, nationality, civil status, sexual orientation, political opinion, religion or beliefs, age, disability or chronic illness, working hours, and type of contract (permanent or temporary). 28% of the opinions of the Institute in 2018 were related to gender discrimination (including pay discrimination).

The Committee noted in the decision in this regard (UWE v. the Netherlands, decision on the merits of 6 December 2019) that, according to the European Network of Legal Experts in Gender Equality and Non-Discrimination, Country Report on Gender Equality: the Netherlands 2018, access to the courts is ensured in general for victims of discrimination as well as for interest groups. However, if access to the Institute is free of charge, the judicial system is not. There is nevertheless a system of legal aid for persons with low income, although this has been restricted in recent years as part of austerity measures. The Committee further noted that the legislation in the Netherlands requires a shifting of the burden of proof to the employer in cases of pay discrimination (as stated in the General Equal treatment Act, article 10§1 and the Equal treatment (Men and Women) Act, section 6a). Retaliatory dismissals of workers who make pay discrimination claims are forbidden.

The Committee requests that the next report provide detailed and up-to-date information on the remedies available to victims of pay discrimination. It also asks for information on the cost of conducting legal proceedings, the availability of legal aid and the conditions for granting it, the time limit for bringing cases of pay discrimination based on gender and the average length of such proceedings. The Committee considers that the situation as regards effective remedies is in conformity with the Charter.

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.

The Committee notes that there is no information submitted on pay transparency in the report. In the framework of the collective complaints mechanism, the Committee has observed that under Article 8 of the Equal Treatment Act, employers have an obligation to make the pay system transparent. Certain pay transparency initiatives have been taken, such as the creation of websites subsidised by the Government to publish levels of pay. Moreover, employers have the responsibility to report pay data internally to works councils, but these data remain confidential and accessible only to the internal body (UWE v. the Netherlands, op. cit., §156). However, the Committee also noted that the Netherlands has not yet taken the necessary measures to ensure application of Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency.

The Committee further observed that the legal framework by placing the main responsibility in ensuring pay transparency on employers relies on the need for a good system of job classification with well-defined criteria. However, there are important differences in pay

between women and men across sectors. This is partly due to the use of non-neutral criteria for determining pay, such as attaching insufficient weight to previous work experience determining it on the basis of the last-earned salary elsewhere and eventually using negotiations to fix the final wage. Moreover, the Committee noted that domestic law does not lay down parameters for establishing equal value of the work performed, such as the nature of the work, training and working conditions. It also acknowledged that the Dutch legal framework requires an actual comparator (and not a hypothetical one) for the purposes of job comparisons in order to establish an equal pay claim in the courts, and that this comparator should be of the opposite sex. A bill was introduced in March 2019 in Parliament, which proposes that enterprises with more than 50 workers would be obliged to show that they pay men and women equally for equal work. The bill provides that these enterprises would have to provide figures every three years on the salary of the workers. If a situation of unequal pay is found, a certain deadline will be fixed and if this deadline is not respected fines can be imposed. The Committee considers that giving workers more insight into their pay may reduce gender pay discrimination and support the individual wishing to file a legal complaint (*op. cit.,* §159-160). However, the bill is not yet in force and was adopted outside the specific period of reference. The Committee considers therefore that the situation as regards pay transparency is not in conformity with the Charter. It further requests that the State informs on the next report on the follow up to Collective Complaint No. 134/2016.

The Committee also 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, 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).

As regards job comparisons across companies, the Committee recalls that in the former conclusion adopted on Article 20 in respect of the Netherlands, it noted that the situation was in conformity with the Charter because it was possible to make job comparisons outside the company directly concerned. Indeed equal pay cases, a comparison can be made with a typical worker (someone in a comparable job) in another company, provided the differences in pay can be attributed to a single source (Conclusions 2012, the Netherlands, Article 20). The situation is therefore in conformity with the Charter in this respect.

Enforcement

The report does not contain any specific information on this issue.

The Committee asks that the next report provide further information about how equal pay is ensured, notably, the work of monitoring done by equality bodies and the Labour Inspectorate in this respect, number of inspections and sanctions imposed.

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 states that, since 2010, Statistics Netherlands (*CBS*) has been commissioned by the Ministry of Social Affairs and Employment, to conduct research every two years into the difference in pay between men and women. Statistics Netherlands consistently does this based on figures of 2 years previously. The most recent research was published on 22 November 2018. The data used for this were of 2016.

The report further states that statistics Netherlands has researched pay differences both within the government and in the business community. This research included both the uncorrected difference as well as the corrected difference. The uncorrected difference is the difference in pay when no account is kept of other factors that could influence the hourly wage level. The *corrected pay gap* is the difference that remains after account is kept of known factors that are strictly associated with remuneration. In its research, Statistics Netherlands examined the following factors: Employee characteristics: gender, age, national origin, education (level and pathway), working experience, occupational disability, household situation and partner's income; Employer characteristics: sector, number of employees, percentage of women, profitability, establishment region; Job features: professional level, profession, type of contract, full-time/part-time, kind of employment relationship, providing leadership, management position.

In 2016, the uncorrected difference at the government was 8% and in the business community it was 19%. In 2016, the corrected difference at the government was 5% and in the business community it was 7%. Since 2008, the report states that the gender pay gap has reduced both at the Government and in the business community.

The report further refers to the labour market participation In 2017, 72.9% of the women aged 15-64 who were not studying were working, whereas 84.8% of the men in this category were working. Labour participation increased both for women and for men after the crisis years. For women, the increase was slightly more than for men, so the difference in labour participation reduced further. The majority of women in the Netherlands work on a part-time basis. Whereas, in 2017, men worked an average of 39 hours per week, for women that was 28 hours per week. The average working hours for women has indeed increased. Two years earlier, this amounted to 27 hours per week and ten years earlier it was 26 hours.

Concerning the gender pay gap, the report states that it has dropped noticeable in the reference period, compared with 2011 (-3 pp).

The Committee notes from Eurostat that gender pay gap in 2018, women's gross hourly earnings were on average 15% below those of men in the European Union (EU-28). In the Netherlands, the hourly gender pay gap stood at 14.7% in 2018. It was 15.1% in 2017, 15.6% in 2016 and 16.1% in 2015. It stood at 17.8% in 2010 (data published on 29 October 2020). While there has been a decrease in the gender pay gap in the public sector (in 2017, the gender pay gap in the public sector was 12.7%), the gender pay gap in the private sector is persistent (in 2017 it stood at 21.1%). The gender overall earnings gap in the Netherlands stood at 47.5% in 2014 (the average gender overall earnings gap in the EU at that time was 39.6%). The adjusted or "unexplained" gender pay gap is at 8.5% compared to an EU-28 average of 11.5% (2014 data, see the Eurostat study "A decomposition of the unadjusted gender pay gap using Structure of Earnings Survey data", 2018).

The Committee notes from the report the efforts to reduce the gender pay gap. The '*Actieplan Arbeidsmarktdiscriminatie*' (Labour market action plan against discrimination) of 16 May 2014, describes various measures in the field of equal treatment for women and men. For example, the Action Plan announced that the Netherlands Institute for Human Rights, jointly with Ministries of Social Affairs and Employment and Education, Culture and Science, would carry out research into equal pay at colleges. That research was published in January 2016. At the end of 2016, on request from the parties to the collective agreement, the labour market fund

for higher professional education (*HBO*) (Zestor) organised a meeting to inform the institutions of the outcomes, and to tell them how they could prevent salary discrimination in their organisation. On 28 November 2017, the Netherlands Institute for Human Rights published a new study, this time about unequal pay between men and women. At the end of 2017, the Netherlands Institute for Human Rights launched a campaign to bring the issue of unequal pay to the attention of employers. The campaign, entitled '*Grip op Gelijk Loon*' [Grip on Equal Pay], includes an online test for employers and HR consultants. This enables them to see which pitfalls exist in their organisation. In addition, they can pose questions and request a checklist to help them set up a more neutral remuneration policy.

Nevertheless, the Committee also observes that as an indicator of the effectiveness of these measures, has not changed in a significant manner in recent years. The gender pay gap is persistent and, although slightly below the EU average, it remains high. Segregation exists in the labour market and there is no clear trend for a lower gender pay gap, particularly in the private sector. The measures adopted by the Government have not achieved measurable progress in this respect.

Conclusion

The Committee concludes that the situation in the Netherlands is not in conformity with Article 20(c) of the Charter on the grounds that:

- Pay transparency is not guaranteed;
- Sufficient measurable progress in respect of the obligation to promote the right to equal pay has not been achieved.

Article 24 - Right to protection in case of dismissal

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

Scope

The Committee notes that there have been no changes to the situation which it has previously (Conclusions 2012) found to be in conformity with the Charter.

The Committee addressed specific targeted questions to the States (questions included in the appendix to the letter of 27 May 2019 whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Employment, training and equal opportunities") concerning strategies and measures that exist or are being introduced to ensure dismissal protection for workers (labour providers), such as "false self-employed workers" in the "gig economy" or "platform" economy. 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.

Obligation to provide valid reasons for termination of employment

In its previous conclusion (Conclusions 2012) the Committee considered that the situation was in conformity with the Charter as regards valid reasons for termination of employment. It further notes from the report that the grounds for dismissal are as follows: (a) commercial circumstances, (b) long-term illness, (c) frequent absenteeism, (d) incapacity for the stipulated work, other than as a result of illness, (e) imputable acts or omissions of the worker, (f) refusal to work due to conscientious objection, (g) a damaged working relationship; (h) other circumstances which prevent an employer from being required to continue the employment contract, where such grounds relate to special cases which are not attributable to the grounds mentioned above.

Termination of employment related to commercial circumstances or after long-term incapacity for work will be assessed in advance by the Employee Insurance Agency (UWV). Proposed dismissals due to alleged dysfunction, imputable acts or omissions of the employee, other reasons attributable to the employee's person, or because of a damaged working relationship, are assessed by the subdistrict court. The employer does not have any freedom of choice for either of the procedures for redundancy. After obtaining consent from the UWV, the employer may terminate the employment contract with the employee with due observance of the applicable period of notice. If the employment contract is terminated after obtaining consent from the UWV, the employer may deduct the time of the procedure at the UWV from the period of notice. Termination of the employment contract without the employee's prior consent or without consent from the UWV will result in a termination subject to annulment. In that case, the employee may request the subdistrict court to annul the termination.

After refusal by the UWV to grant permission for termination of the employment contract, the employer may nonetheless request the subdistrict court to dissolve the employment contract. After consent by the *UWV*, the employee may, after actual termination by the employer, apply to the subdistrict court for the employment contract to be restored. Orders by the subdistrict court may be brought before the Court of Appeal and in cassation before the Supreme Court.

Prohibited dismissals

In its Conclusion (2008) the Committee noted that employment may not be terminated during, inter alia, illness of the employee. It observed that termination in the event of long-term

incapacity for work lasting longer than two years or repeated sickness absence may justify dismissal. The Committee asks in this connection whether the protection against dismissal for short-term illness lasts 2 years and 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.

In its previous conclusion (Conclusions 2012) the Committee found that the situation was not in conformity with the Charter on the ground that the termination of employment on the sole ground that the person has reached the pensionable age, which is permitted by law, is not justified.

It notes from the report in this respect that the age at which an individual is entitled to receive statutory old age pension is specified in the General Old Age Pension Act (AOW). Many collective labour agreements and individual employment contracts contain provisions stipulating that the contract ends automatically when the employee reaches the pensionable age. This is permitted under the Equal treatment in Employment Act (age discrimination), which states that dismissal which 'relates to the termination of an employment relationship because the person concerned has reached the pensionable age under the AOW, or a more advanced age laid down by or pursuant to an Act of Parliament or agreed between the parties' is not prohibited (section 7, paragraph h 1 b).

The objective justification of this distinction is given in the explanatory note to the Equal Treatment Act (*Wet Gelijke behandeling*). Dismissal on reaching a certain age is intended to ensure that, without regard to the person, an objective criterion can be maintained on which the employee leaves the labour market without it being necessary to determine whether the person concerned still qualifies.

In most cases, the employment contract ends, because there is an employment termination at retirement age clause in the contract. An employment termination at retirement age clause is a clause contained in the individual employment contract or a collective labour agreement, which stipulates that the employment contract automatically ends by operation of law upon reaching the statutory retirement age (*AOW*). It is therefore a termination date pre-emptively agreed to by the parties when entering the employment contract. It does not concern termination of the employment at the employer's initiative. The employer therefore does not have to terminate the employment contract.

If no employment termination at retirement age clause is included in the employee's employment contract and the employee reaches the statutory retirement age or continues to work thereafter, the employer may terminate the employment contract without preventive dismissal assessment, with due observance of the prevailing statutory period of notice. This is possible if the employment contract was entered into prior to reaching the statutory retirement age and no other agreement has been reached in writing. On grounds of age, the Equal Treatment Act allows for distinction if there is an objective justification for the distinction. The objective justification for this age distinction, is that employees who have reached the statutory retirement age are not comparable in all respects with employees who have not reached that age. For employees who have reached the statutory retirement age, the need to provide for their own subsistence by means of employment no longer applies. They are entitled to claim a General Old Age Pension (*AOW*) as a basic income, often supplemented by a pension benefit. This justifies that a less strict regime relating to labour law is maintained for pensioners. This facilitates working after the statutory retirement age and is a legitimate purpose. Eliminating obstacles for the employer for that purpose, is dignified and necessary.

The Committee considers that there have been no changes to the situation which it has previously considered not to be in conformity with the Charter. Therefore, the Committee reiterates its previous conclusion of non-conformity on the ground that the termination of employment on the sole ground that the person has reached the pensionable age, which is permitted by law, is not justified.

Remedies and sanctions

In reply to the Committee's question whether the law provides for the possibility of reinstatement in case employees are dismissed without valid reason, the report states that this is stipulated in Article7:682 of the Civil Code. Moreover, in its ruling of 25 January 2019, the Supreme Court ended the uncertainty with regard to whether the employer or the court of appeal is meant to reinstate the employment agreement after wrongful dissolution. The Supreme Court indicated that, in principle, the court of appeal "orders" the employer to reinstate the employment agreement, but that the law does not block the court of appeal from directly reinstating the employment agreement. If an employee wants the court of appeal to directly reinstate him/her without the need for any further action by the employer, the court of appeal must be specifically asked to do so.

Conclusion

The Committee concludes that the situation in the Netherlands is not in conformity with Article 24 of the Charter on the ground that the termination of employment on the sole ground that the person has reached the pensionable age, which is permitted by law, is not reasonably justified.

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

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