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## **EUROPEAN SOCIAL CHARTER**

European Committee of Social Rights

Conclusions XXII-1 (2020)

### **THE NETHERLANDS IN RESPECT OF CURAÇAO**

*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 13<sup>th</sup> 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 1196<sup>th</sup> meeting of the Ministers' Deputies on 2-3 April 2014, the report concerned the following provisions of the thematic group I "Employment, training and equal opportunities":

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

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 8<sup>th</sup> 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 2<sup>nd</sup> 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 in respect of Curaçao.

The Committee recalls that in 2016, it concluded that the situation in the Netherlands in respect of Curaçao was not in conformity with Article 1§1 of the 1961 Charter on the ground that it had not been established that employment policy efforts had been adequate in combatting unemployment and promoting job creation (Conclusions XXI-1 (2016)).

### **Employment situation**

According to the report, the GDP growth rate decreased from +0.3% in 2015 to -2.2% in 2018.

The overall employment rate (persons aged 15 and over) decreased from 49.2% in 2015 to 48.1% in 2018. The Committee requests that the next report provide information on the employment rates of the following categories: men, women, older workers (55 to 64-year-olds) and youth (15 to 24-year-olds).

The overall unemployment rate increased from 11.7% in 2015 to 13.4% in 2018.

The unemployment rate for men increased from 10.5% in 2015 to 11.3% in 2018, and the rate for women from 12.8% in 2015 to 15.4% in 2018. Youth unemployment (15 to 24-year-olds) decreased slightly, from 29.7% in 2015 to 29.3% in 2018. Long-term unemployment (twelve months or more) increased from 39% in 2015 to 44.3% in 2017 for men, and decreased from 48.7% in 2015 to 46.6% in 2017 for women.

According to other sources, the proportion of 15 to 24-year-olds “outside the system” (not in employment, education or training, i.e. NEET) stood at 22% in 2017 (Statistics Netherlands, Statistische trends, Labour force on the Dutch Caribbean islands, 2019).

The Committee notes that the economic situation deteriorated during the reference period, and that this deterioration had negative repercussions on the labour market, namely low (and declining) employment and high (and generally rising) unemployment rates.

### **Employment policy**

According to the report, the Ministry of Social Development, Labour and Welfare (notably through the Centre of Work or “Job Centre”) has organised on-the-job training activities; it has also taken initiatives within the framework of a project aimed at integrating young people (18 to 30-year-olds) into the labour market (*Mil hoben na trabou*, i.e. “1000 youngsters at work”). No details are given on these activities and initiatives (content, number of participants, etc.); it is only stated that they enabled around 300 people to find a job between January 2018 and early October 2018. The report adds that the job placement rate for jobseekers is equal to zero (*nihil*) due to the serious economic problems in Curaçao (problems with multiple causes: repercussions of the crisis in Venezuela, hurricanes, etc.).

In addition, the report contains information on developments after 2018 [i.e. outside the reference period], such as the formal establishment of the Institute for Labour Force Development (planned for 2020).

The Committee notes that the Government did not provide comprehensive information on the labour market measures implemented during the reference period (types of measures, content, number of participants by type of measure and by year). Furthermore, it did not indicate the activation rate (i.e. the average number of participants in active measures as a percentage of the total number of unemployed), nor the public expenditure on passive and active labour market measures (as a percentage of GDP). The Committee recalls that in order to assess the effectiveness of employment policies it requires information on the above

indicators. It therefore reiterates its request that the next report provide information on these points.

The Committee also recalls that labour market measures should be targeted, effective and regularly monitored. In the absence of any information from the Government in this regard, the Committee asks whether employment policies are monitored and how their effectiveness is assessed.

The Committee considers that, once again, the information provided in the report does not make it possible to conclude that the situation satisfies the obligations under Article 1§1 of the 1961 Charter.

#### *Conclusion*

The Committee concludes that the situation in the Netherlands in respect of Curaçao is not in conformity with Article 1§1 of the 1961 Charter on the ground that it has not been established that employment policy efforts have been adequate in combatting unemployment and promoting job creation.

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

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

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

### **1. Prohibition of discrimination in employment**

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

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

Curaçao has accepted Articles 15§2 and Article 1 of the Additional Protocol. Therefore, it was under no obligation to report on prohibition of discrimination on grounds of disability and gender, which will be examined under the said provisions.

In its previous conclusion (Conclusions XXI-1 (2016)), given the repeated lack of information on the legal framework and practice with regard to prohibition of discrimination and on relevant sanctions and remedies, the Committee concluded that the situation in the Netherlands in respect of Curaçao was not in conformity with Article 1§2 of the 1961 Charter on the ground that it had not been established that the protection against discrimination in employment was adequate.

The report again does not provide the requested information in reply to the findings of non-conformity. Neither does it reply to the Committee's request for information on legislation and practical measures targeted specifically to combat discrimination on grounds of race, age, sexual orientation, political opinion or religion or on specific measures taken to counteract discrimination in the employment of migrants and refugees. The Committee again requests the next report to provide this information.

In the light of the above, the Committee renews its conclusion of non-conformity.

### **2. Forced labour and labour exploitation**

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

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

In its previous conclusion (Conclusions XXI-1 (2016)), the Committee asked whether forced labour was prohibited by law and how this was enforced in practice. It pointed out that, should the requested information not be provided in the next report, nothing would allow to show that the situation is in conformity with Article 1§2 of the 1961 Charter as regards the prohibition of forced labour.

The current report indicates that Article 2:239 of the Penal Code specifically prohibits trafficking in persons, including for the purposes of forced labour. Article 2:241-2:244 of the Penal Code criminalises slavery and Article 2:155 of the Penal Code prohibits the employment of illegal immigrants.

The Committee further notes that the Netherlands has accepted the Council of Europe Convention on Action against Trafficking in Human Beings for Aruba (2015) but not for Curaçao.

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

The Committee notes from the report that in 2017 there were two traffickers prosecuted and convicted (the so-called “Bandera Grill case”, concerning sexual exploitation). This was the first time Curaçao brought prosecutions for this crime since 2014. Both convicted traffickers received suspended prison sentences and a three-year probationary period. Following the same investigation, the Government prosecuted four police officers: three were convicted for crimes of perjury and forgery receiving conditional sentences, and one was acquitted of all charges of human trafficking although the judge found that he had engaged in objectionable behaviour. The report also indicates that the relatively mild punishments in this case were due to the short lapse of time during which the victim was exploited and to the fact that there was only one victim involved. However, it refers to the intention of the Public Prosecutor’s Office to issue guidelines in 2018 for imposing higher prison sentences in human trafficking cases.

The Committee wishes to be informed in the next report on whether these guidelines were issued and, if so, what their impact has been on sentencing in human trafficking cases. It asks that the next report provide detailed and up-to-date information on the application in practice of the relevant Articles of the Penal Code mentioned above, particularly in relation to cases of forced labour and labour exploitation. The report should provide information (including figures, examples of case law and specific penalties effectively applied) on the prosecution and conviction of exploiters during the next reference period, in order to assess in particular how these provisions are interpreted and applied.

### **Prevention**

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

The Committee notes from the report that the Government approved an action plan to combat human trafficking in 2017 (2017-2021). One of the targets of the Government policy is Venezuelan women travelling to Curaçao to work in roadside bars (*snèkbars*) and dance halls where they are at high risk of being exploited. The Public Prosecutor’s Office conducted an investigation in 2017 entitled “Venezuelan Trago girls: Curaçao Secret Import”, in which context undocumented women were interrogated. They indicated that they had been smuggled into Curaçao by boat. As a result of this research, the Government launched a prevention programme (“Trago girls”) and an internet awareness campaign aiming to inform people of Venezuela about the risks of being subjected to trafficking.

The report also refers to a training session that took place in 2017, focused on human trafficking and human smuggling. A total of 120 government officials and NGOs participated in this training. The national authorities admit however that, due to a lack of funds, they have not been able to conduct in-depth research and investigation to implement every step of the abovementioned action plan.

While the report mentions that a multidisciplinary team (Government officials from different ministries and the coordinator of human trafficking) worked on a regular basis in the inspection of potential groups and places of human trafficking, it does not provide any information on how these inspections are carried out or by whom. The Committee accordingly asks that the next report provide detailed information on whether labour inspectors carry out regular inspections in high-risk sectors such as agriculture, construction, hospitality and manufacturing, with a view to preventing or detecting cases of forced labour and labour exploitation. If that is the case, the report should indicate the number, if any, of presumed victims of forced labour or labour exploitation detected as a result of inspections carried out during the next reference period.

No information has been provided in the report on whether national 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.

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

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

The report indicates that the Government operates a victim assistance hotline, and that efforts are being made to open a second one. The Victim Assistance Office (*Stichting Bureau Slachtofferhulp*) assists each victim on the basis of his/her needs. Shelters for abused women are being used for victims of human trafficking. Accommodation of male victims of trafficking is generally provided in the form of shelter in hotel rooms or safe houses for troubled male youth. Foreign victims who assist law enforcement officials, make claims or participate in a trial are allowed to stay in Curaçao during the investigation and the court proceedings. However, they do not receive temporary or permanent residence status.

While taking note of the information provided in the current report, the Committee requests that the next report indicate the number of identified victims of forced labour and labour exploitation and the number of such victims benefiting from protection and assistance measures during the next reference period. With regard to foreign victims, it asks whether they can remain legally in Curaçao after the investigation or after the proceedings have been concluded, and if so, on what basis (e.g., eligible to work permits). If that is not the case, the Committee asks if such victims receive any financial assistance for a safe return to their country of origin. It further asks whether foreign victims who do not wish to cooperate with the investigation against their traffickers are systematically denied assistance and deported.

The Committee notes from the report that victims of human trafficking can file civil suits against traffickers for compensation. In one case during the reference period (the above-mentioned “Bandera Grill case”), there was a civil suit by a victim amounting to Nafl 50,000. The request was denied by the court as the damage suffered by the victim had not seemed plausible. The Committee asks that the next report explain what standard of proof is required by domestic courts to obtain damages, including non-material damages, in cases of trafficking and forced labour.

### **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 XX-1 (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 XIX-1 (2008), General Introduction, General Question).

The Committee refers to its previous conclusion (Conclusions XXI-1 (2016)), in which it noted that different legislative measures had been adopted so that the rights accorded to domestic workers were aligned with those granted to other workers. The Committee asked whether the homes of private individuals who employ domestic staff may be inspected, and whether foreign domestic staff have the right to change employers in the event of abuse, or if they lose their residence when they leave their employer.

The current report provides no information on these points. It refers however to the increase in the number of Venezuelan immigrants travelling to Curaçao, and to the fact that some of these migrants obtain employment as house cleaners. The Committee accordingly reiterates its requests and asks in particular whether labour inspectors are authorised to inspect private households with a view to detecting cases of domestic servitude or exploitation of domestic workers. Should the requested information not be provided in the next report, nothing will allow to show that the situation is in conformity with Article 1§2 of the 1961 Charter as regards the positive obligation to prevent labour exploitation of domestic workers.

### **“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 from exploitation in the “gig economy” or “platform economy”.

The Committee reiterates 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*

The Committee concludes that the situation in the Netherlands in respect of Curaçao is not in conformity with Article 1§2 of the 1961 Charter on the ground that it has not been established that the protection against discrimination in employment is adequate.

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

### *Paragraph 3 - Free placement services*

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

The Committee notes that the report does not provide any information regarding this provision.

In its previous conclusion (Conclusions XXI-1 (2016)) the Committee considered that the situation was not in conformity with Article 1§3 of the 1961 Charter on the ground that it had not been established that free placement services operate in an efficient manner. In the absence of any information in the report, the Committee reiterates its previous finding of non-conformity.

The Committee asks the next report to provide information regarding quantitative indicators used by the Committee to assess the situation. In particular, it asks for the following information:

- the number of jobseekers and unemployed persons registered with public employment service;
- the number of vacancies notified to the public employment service;
- the number of persons placed via the public employment service;
- the placement rate (i.e. placements made by the employment services as a share of notified vacancies);
- placements by public employment service as a percentage of total hirings in the labour market.

### *Conclusion*

The Committee concludes that the situation in the Netherlands in respect of Curaçao is not in conformity with Article 1§3 of the 1961 Charter on the ground that it has not been established that free placement services operate in an efficient manner.

**Article 1 - Right to work**

*Paragraph 4 - Vocational guidance, training and rehabilitation*

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 of the 1988 Additional Protocol - 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 the Netherlands in respect of Curaçao.

This report refers to the answers which were submitted in the report of 2017 and which covered 2013 to 2016.

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

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

#### ***Legal framework***

The report does not contain any information. It refers to the former report submitted in 2017, in which it was stated that the Government of Curaçao made legislative and policy changes needed, but the report only refers to 1983 legislation allowing women to access permanent employment with the Government and another piece of legislation of 1994 eliminating the gender pay gap between married women and men. It is also mentioned that the Maternity Leave Act was adopted in 2011.

The Committee had also previously asked for information on the legislation prohibiting discrimination on the ground of sex in employment applicable in Curaçao, since the constitutional reform of 2010 and on its implementation, as well as whether direct and indirect discrimination are prohibited by the law. Because of the lack of information, it had concluded to the non-conformity of the situation (Conclusions XXI-I (2016)).

The report does not provide information requested to address the Committee’s previous questions. Given the lack of information, the Committee concludes that the situation in the Netherlands in respect of Curaçao is not in conformity with Article 1 of the 1988 Additional Protocol to the 1961 Charter on the ground that it has not been established that the right to equal pay for work of equal value is adequately guaranteed in law.

#### ***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.

There was no information, as in previous cycles, on: whether in all gender discrimination cases there is a shift in the burden of proof; information on sanctions and remedies, in particular

whether there is a limit to the amount of compensation that may be awarded to victims of discrimination for, or information on sex discrimination cases (including claims for equal pay for work of equal value) brought before the courts. The Committee reiterates its questions.

### ***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.

As already stated in previous cycles, there is no information on whether legislation permits in equal pay cases comparisons of pay and jobs to be made outside the undertaking/company directly concerned and under what circumstances, information on pay transparency and on whether there are certain exceptions to the prohibition on discrimination on grounds of sex in respect of certain occupations and if so what these are.

Given the lack of information and the previous conclusion on non-conformity (Conclusions XXI-I (2016)), the Committee concludes that the situation in the Netherlands, in respect of Curaçao, is not in conformity with Article 1 of the 1988 Additional Protocol to the 1961 Charter on the ground that it has not been established that the right to equal treatment in employment without discrimination on grounds of sex is adequately guaranteed in practice.

### ***Enforcement***

There is no information on this issue on the report.

The Committee asks that the next report provide further information about how equal pay is ensured, notably, about the inspections conducted by the Labour Inspectorate in this respect. Pending the information requested, it defers its conclusion.

### ***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 refers to some measures improving the right to maternity and paternity leave, reducing poverty for both men and women and unemployment as well as improving training and educational sectors. There is no information on the gender pay gap or on collection of statistics in this respect, though the report recognises that women are overrepresented in less paid jobs.

The Committee in previous conclusions has asked for detailed information on the positive measures to promote equal opportunities between women and men taken in Curaçao since the constitutional reform of October 2010, on the position of women in the labour market and the positive measures taken in Curaçao (Conclusions XXI-I (2016)). The Committee reiterates its questions and asks to produce reliable statistics and the collection of data on the gender pay gap.

### *Conclusion*

The Committee concludes that the situation in the Netherlands in respect of Curaçao is not in conformity with Article 1 of the 1988 Additional Protocol to the 1961 Charter on the ground that it has not been established that the right to equal pay is adequately guaranteed in law and in practice.

