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Conclusions XXII-1 (2020)

THE NETHERLANDS IN RESPECT OF SINT MAARTEN

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 in respect of Sint Maarten.

The Committee recalls that in 2012, it deferred its conclusion pending information on public expenditure on active labour market measures (as a percentage of GDP) and on the total number of beneficiaries of all active labour market measures (Conclusions XX-1 (2012)).

Employment situation

The Government's report does not provide any statistical data on the employment situation (employment and unemployment rates) and economic growth indicators during the reference period.

According to documents published by the Department of Statistics of the Government of Sint Maarten, the GDP growth rate increased slightly, from 0.4% in 2015 to 0.5% in 2016, before falling to -5.8% in 2017 and then to -6.6% in 2018.

In 2018, the employment rates stood at 39% for young people (15 to 24-year-olds), 78% for persons aged 25 to 44 years, and 60% for persons over 45 years of age (compared to 32%, 78% and 65% respectively in 2017).

Again in 2018, the unemployment rates stood at 9% for young people (15 to 24-year-olds), 8% for persons aged 25 to 44 years, and 6% for persons over 45 years of age (compared to 10%, 5% and 2% respectively in 2017).

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 31% in 2016 – the highest rate in the Netherlands Antilles for this category (Statistics Netherlands, Statistische trends, Labour force on the Dutch Caribbean islands, 2019).

The Committee notes that the economic situation deteriorated sharply in 2017-2018, and that this deterioration had negative repercussions on the labour market (in particular a significant increase in unemployment among people over 25 years of age).

Employment policy

In its report, the Government mentions that it conducted a Labour Force Survey (LFS) in 2017 and 2018. These LFS (sample surveys among households) focused on education and employment issues, with the aim of assessing recent developments and the state of the labour market.

The Government reports that it also conducts, each year, a "School-to-Work Transition Survey" among all final-year students in all secondary and tertiary schools. These surveys intend to highlight trends; their results have proved to be fundamental in, *inter alia*, identifying the likelihood of young people's participation in the labour market. According to other sources, the information derived from these surveys "will promote and/or assist in the development of a youth employment policy, advocate youth training and skill building programs, stimulate youth employment and participation" (United Nations, Committee on Economic, Social and Cultural Rights, 61st session, List of issues concerning the sixth periodic report of the Netherlands, Addendum, Replies from the Netherlands, E/C.12/NLD/Q/6/Add.1, 23 March 2017, § 20).

The Committee notes that the Government has not provided any information on the follow-up given (or planned) to the above-mentioned surveys. Nor has the Government provided information on: a) labour market measures implemented during the reference period (types of measures, content, number of participants by type of measure and by year); b) the activation rate (i.e. the average number of participants in active measures as a percentage of the total

number of unemployed); c) public expenditure on active and passive labour market measures (as a percentage of GDP). The Committee recalls that in order to assess the effectiveness of employment policies it requires information on the above indicators. 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. As the Government has not provided any information in this regard, the Committee asks whether labour market policies are monitored and how their effectiveness is assessed.

Conclusion

The Committee concludes that the situation in the Netherlands in respect of Sint Maarten 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 Netherlands in respect of Sint Maarten.

1. Prohibition of discrimination in employment

Article 1§2 of the 1961 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 1 of the Protocol not been accepted), race, ethnic background, sexual orientation, religion, age, political opinions or disability (had Article 15 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 in respect of Sint Maarten has accepted Article 1 of the Protocol. Accordingly, it was under no obligation to report on the prohibition of discrimination on grounds of gender, which will be examined by the Committee under this provision.

As regards the legislation prohibiting discrimination in general terms, the Committee found previously (Conclusions XVII-2) that the legislation in the Netherlands with regard to the Dutch Antilles prohibiting discrimination in employment was inadequate and in its Conclusion XX-1 asked for details of the legislation prohibiting discrimination in employment in Sint Maarten since the constitutional reform of 2010 and to provide information on its implementation. The report provides in reply that under the Constitution, all persons in Sint Maarten shall be treated equally in equal circumstances. Discrimination on the grounds of religion, beliefs, political opinion, race, skin colour, sex, language, national or social origins, membership of a national minority, assets, birth or on any grounds whatsoever shall not be permitted. The report further states that grounds that are not mentioned carry equal weight to those that are. Furthermore, in 2018 the Civil Code was amended in the area of labour agreements and also includes a prohibition of discrimination. The Committee understands that sexual orientation is also prohibited under the "other grounds" of discrimination. It asks that the next report confirm that this is the case and to provide information on the interpretation of these provisions by courts.

Apart from general information on the legal framework prohibiting discrimination, the Committee also requested information on any specific, targeted legislation and practical measures focused specifically on discrimination on grounds of ethnic origin, race, age, sexual orientation, political opinion or religion and disability. The report does not address these issues and the Committee renews its request.

As regards prohibition of discrimination on grounds of nationality, the Committee has previously asked if there were restrictions on foreign nationals' access to certain sectors or services (Conclusions XX-1). The report states that discrimination is not permissible in appointments in government service. It further provides that it does not prejudice the government's authority to partially or entirely reserve civil service appointments for persons who hold Dutch nationality. At the same time, the restriction does not rule out the eligibility of foreigners for civil service appointments. The Committee asks that the next report provide more details on how this principle is applied and what type of positions may be restricted to persons holding a Dutch nationality.

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 states that no specific measures have been taken to counteract

discrimination in the employment of migrants and refugees. The Committee asks that the next report provide explanations as to why such measures were considered unnecessary and how equal treatment of migrants and refugees on the labour market is ensured and discrimination prevented in this respect.

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; it also includes an appropriate adjustment of the burden of proof which should not rest entirely on the complainant, as well as the setting-up of a special, independent body to promote equal treatment. The Committee explicitly requested information on these aspects to be provided for this examination cycle.

The Committee has addressed various aspects of the remedies available for victims of discrimination in its previous conclusions (see Conclusions XX-1) and requested some specific information, namely:

1. whether there is any upper limit on the compensation that may be awarded in cases of discrimination, including those in which employees have been dismissed after filing complaints of discrimination,
2. whether, in disputes relating to an allegation of discrimination in matters covered by the Charter, the burden of proof is the subject of a shift and does not rest entirely on the complainant,
3. whether associations, organisations or other legal entities which, in accordance with criteria set by national legislation, have a legitimate interest in ensuring conformity with equal treatment within the meaning of Article 1§2, may seek a ruling in court that the prohibition on discrimination in employment has been infringed and support those who consider themselves as victims of discrimination.

The report confirms that the shift of the burden of proof is provided for in discrimination cases. In the absence of any information in the report in reply to the other two questions, the Committee again asks what the situation is in this respect. It considers that, should the requested information not be provided, nothing will allow to establish that the situation is in conformity with Article 1§2 of the Charter on these points.

The report further provides that the Inspectorate of Labour is, among other things, in charge of controlling, investigating and handling labour complaints and labour legislation. The Committee asks for more detailed information on the number of complaints concerning discrimination, as well as on their nature and outcome, in particular, whether inspectors may impose sanctions which could be considered sufficiently 'effective', 'dissuasive' and 'proportionate'.

The Committee considers that the information in its possession does not allow to fully assess whether the remedies for the persons alleging that they have been victims of discrimination are sufficiently effective in order to comply with Article 1§2. It requests that the next report provide 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:

- the procedures available;
- the existence of any specialised body to promote, independently, equal treatment, especially by providing discrimination victims with the support they need when taking legal action;
- the recognition of the right of trade unions to take action in cases of discrimination in employment, including on behalf of individuals, and the possibility of collective action by groups with an interest in obtaining a ruling that the prohibition of discrimination has been violated;

- in the event of a violation of the prohibition of discrimination, sanctions that are a sufficient deterrent to employers, as well as adequate compensation proportionate to the damage suffered by the victim;
- the number of discrimination cases lodged and won before various courts and/or equality bodies.

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

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 XX-1 (2012)), the Committee asked whether forced labour was prohibited by law and how this was enforced in practice.

The current report indicates that forced labour is strictly prohibited by the National Constitution of Sint Maarten (Article 4§2). The Constitution also prohibits slavery, servitude and human trafficking (Articles 4§1 and 4§3). In 2016, forced labour was explicitly criminalised under the Penal Code, which prescribes a maximum punishment of nine years’ imprisonment (Article 2:239, second paragraph).

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 Sint Maarten.

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 during the reference period, the Public Prosecutor’s Office investigated five cases of forced labour: four cases involved forced labour of “commercial sex workers” and one case involved “non-sex workers”. All these cases were prosecuted in court and in most of them, the accused were found guilty. The Court of First Instance hears all cases concerning human trafficking and forced labour.

The Committee asks that the next report provide detailed information on the application in practice of the relevant provisions of the Penal Code in relation to forced labour and human trafficking for the purposes of forced labour. 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 National Reporting Bureau on Human Trafficking was established in 2013 to prevent and combat human trafficking and raise awareness about trafficking and human smuggling of commercial sex workers. The National Reporting Bureau has been the core executing agency for the prevention of human trafficking and protection of victims. The Bureau carried out the Human Trafficking and Smuggling awareness campaign in 2016, which included press and social media articles, presentations to groups at risk and information sessions to representative organisations for non-nationals. An action plan for the Government after 2015 involved measures such as conducting outreach work with all incoming migrants, including domestic workers and foreign women on temporary entertainment visas, to ensure that they are informed of their rights, the anti-trafficking hotline, and ways to seek assistance.

In addition, the report indicates that the Inspectorate of Labour investigates and handles labour complaints, including cases of forced labour. Labour inspectors are tasked with carrying out checks on compliance with recognised standards and regulations with regard to working and employment conditions (i.e., minimum wage, vacation, safety, foreign labour). The Inspectorate performs multidisciplinary inspections with other governmental inspectors. For instance, bi-monthly joint site visits of adult entertainment clubs are made by labour inspectors together with workers of the National Reporting Bureau on Human Trafficking. Currently, the Inspectorate of Labour has 3 labour inspectors, who have been appointed as “*buitengewoon ambtenaar van politie*” (extraordinary police officers) and have the capacity to issue fines for non-compliance with the legislation. The Inspectorate has the authority or obligation to bring life-threatening or otherwise precarious cases directly to the Public Prosecutor.

The Committee asks that the next report provide detailed information on whether labour inspectors carry out regular inspections in high-risk sectors other than the adult entertainment industry, for instance in agriculture, construction, hospitality and manufacturing. The report should also 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 Committee notes from the report that the action plan for the Government after 2015 included certain measures that are relevant for the protection of victims: identify and assist potential trafficking victims by implementing formal, proactive measures to guide officials on how to identify and assist victims among vulnerable populations; consult with the Government of the Netherlands on proactive victim identification efforts. In this regard, the Committee asks that the next report provide detailed and up-to-date information on the implementation of the action plan in relation to these measures. It also requests information on 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. The Committee 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 further 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. It asks for statistics on the number of victims awarded compensation and examples of the sums granted. In this respect, the Committee notes from another source that the existing legislation allows victims of human trafficking to request compensation as part of criminal cases or file a civil suit against traffickers. However, it appears that the identified victims are deported to their country of origin and do not stay in Sint Maarten long enough for prosecutors to seek compensation or for victims to file a civil suit (see US Department of State, 2019 Trafficking in Persons Report: Sint Maarten).

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 current report indicates that one of the measures of the Government action plan concerned migrants, including domestic workers, aiming to ensure that these persons are informed of their rights, the anti-trafficking hotline, and ways to seek assistance.

While taking note of this information, the Committee asks that the next report clarify whether labour inspectors are authorised to inspect private households with a view to detecting cases of 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 such is the case, 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 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 Sint Maarten.

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 Article 16 of the Constitution of Sint Maarten refers to equality and non-discrimination. On 2018 a new Title 10 of Book 7 of the Civil Code replaced Book 7A of the Civil Code. This new legislation includes the prohibition of discrimination and in its Article 646, Section 4 it states that “*distinction between men and women when entering into a labour agreement, educating the employee, regarding the employment conditions, promotion and termination of the labour agreement*” is prohibited. It further refers to direct and indirect discrimination.

The Committee had previously asked for information on whether the legislation explicitly refers to equal pay for work of equal value (Conclusions 2012). It reiterates its question and defers its conclusion on this point in the meantime.

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 new section of the Civil Code refers to the shift in the burden of proof for discrimination victims. The Committee considers that this is an important development, although it happened outside the period of reference, and asks the next report for information on how the shift of burden of proof is applied in practice.

There is no 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 or on sex discrimination cases (including claims for equal pay for work of equal value) brought before the courts or any other bodies. The Committee reiterates its questions in this respect and asks that the next report produce this information.

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 report does not provide information on transparency or on the possibility for workers to receive information on pay levels of other worker, or on whether comparisons across companies are possible. Moreover, the report states that Sint Maarten does not have job classifications and promotion systems available.

The Committee reiterates its questions in this respect and asks that the next report provide information on these aspects.

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 does not refer to the positive measures to promote equal opportunities between women and men taken since the constitutional reform of October 2010 or on the position of women in the labour market, employment and training as requested in its previous conclusion (Conclusions XX-I (2012)). As regards the gender pay gap, the report states that the most recent Labour Force Survey indicates an average monthly male and female income of respectively NAf 2.000 and NAf 2.500. The unadjusted average female's salary is therefore 25% of the average male salary in 2018, which is a very high pay gap.

The Committee considers that Sint Maarten has not achieved measurable progress in this respect. Therefore, the situation is not in conformity with the 1961 Charter.

Conclusion

The Committee concludes that the situation in the Netherlands in respect of Sint Maarten is not in conformity Article 1 of the 1988 Additional Protocol to the 1961 Charter on the ground that there is a lack of sufficient measurable progress in respect of the obligation to promote the right to equal pay.

