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## **EUROPEAN SOCIAL CHARTER**

European Committee of Social Rights

Conclusions XXII-1 (2020)

**POLAND**

*This text may be subject to editorial revision.*



The function of the European Committee of Social Rights is to rule on the conformity of the situation in States with the European Social Charter. In respect of national reports, it adopts conclusions; in respect of collective complaints, it adopts decisions.

Information on the Charter, statements of interpretation, and general questions from the Committee, is contained in the General Introduction to all Conclusions.

The following chapter concerns Poland, which ratified the 1961 European Social Charter on 25 June 1997. The deadline for submitting the 19<sup>th</sup> report was 31 December 2019 and Poland submitted it on 16 December 2019.

The Committee recalls that Poland 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.

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 physically or mentally disabled persons to vocational training, rehabilitation and social resettlement (Article 15);
- the right to engage in a gainful occupation in the territory of other Contracting 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 1 of the Additional Protocol).

Poland has accepted all provisions from the above-mentioned group except Articles 10§3, 10§4, 18§1, 18§2, 18§3 and Article 1 of the Additional Protocol.

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

The conclusions relating to Poland concern 7 situations and are as follows:

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

In respect of the other 2 situations related to Articles 1§2 and 1§3, the Committee needs further information in order to examine the situation.

The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Poland under the 1961 Charter.

The next report from Poland 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 4 of the Additional Protocol).

The deadline for submitting that report was 31 December 2020.

Conclusions and reports are available at [www.coe.int/socialcharter](http://www.coe.int/socialcharter).

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

### *Paragraph 1 - Policy of full employment*

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

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

According to Eurostat, the GDP growth rate increased from 4.2% in 2015 to 5.4% in 2018, considerably exceeding the average for the 28 European Union (EU) member States (2% in 2018).

The overall employment rate (persons aged 15 to 64 years) increased from 62.9% in 2015 to 67.4% in 2018, which is slightly below the EU 28 average (68.6% in 2018).

The employment rate for men increased from 69.2% in 2015 to 74% in 2018, slightly exceeding the EU 28 average (73.8% in 2018). The employment rate for women rose from 56.6% in 2015 to 60.8% in 2018, which is below the EU 28 average (63.3% in 2018). The employment rate for older workers (55 to 64-year-olds) increased from 44.3% in 2015 to 48.9% in 2018, which is substantially below the EU 28 average (58.7% in 2018). The youth employment rate (15 to 24-year-olds) increased from 26% in 2015 to 31% in 2018, which is below the EU 28 average (35.3% in 2018).

The overall unemployment rate (persons aged 15 to 64 years) fell by nearly a half, from 7.6% in 2015 to 3.9% in 2018, which is below the EU 28 average (7% in 2018).

The unemployment rate for men decreased from 7.4% in 2015 to 3.9% in 2018, which is below the EU 28 average (6.7% in 2018). The unemployment rate for women decreased from 7.8% in 2015 to 3.9% in 2018, which is below the EU 28 average (7.2% in 2018). The youth unemployment rate (15 to 24-year-olds) declined sharply, from 20.8% in 2015 to 11.7% in 2018, which is below the EU 28 average (15.2% in 2018). Long-term unemployment (12 months or more, as a percentage of overall unemployment for persons aged 15 to 64 years) also fell considerably, from 39.3% in 2015 to 26.9% in 2018, which is substantially lower than the EU 28 average (43.4% in 2018).

The proportion of 15 to 24-year-olds “outside the system” (not in employment, education or training, i.e. NEET) decreased from 11% in 2015 to 8.7% in 2018 (as a percentage of the 15 to 24-year-old age group), which is below the EU 28 average (10.5% in 2018).

The Committee notes that the economic situation improved during the reference period and that this positive trend went hand in hand with favourable developments in the labour market (an increase in the employment rates and a sharp drop in unemployment). However, in general, employment rates were still lower than the EU 28 average.

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

In its report, the Government states that during the reference period, labour market policies focused on increasing the employment rate and supporting groups and individuals at risk of social exclusion. For this purpose, various measures were implemented as part of the country's national employment plans (for 2015-2017 and 2018) and the national reform programme (drawn up as part of the Europe 2020 Strategy). These measures included: adjusting educational curricula to the needs of the economy and the labour market; educational and vocational activation of young people, immigrants and persons on short-term contracts or in insecure employment; promoting mobility among jobseekers and young people; support for persons setting up new businesses; career change assistance for farmers wishing to leave the agriculture sector; and support for childcare facilities (catering for children up to the age of three) to help women return to or remain in work. The Government adds that some measures were introduced following changes in the legislation. For example, the Law on employment promotion and labour market institutions was amended in September 2015 to set up a new tool (subsidised jobs) to encourage the recruitment of young people.

The Committee notes in particular the measures taken to promote training and the entry onto the labour market of young people (under the Youth Guarantee and Youth Solidarity Action programmes) and persons at risk of social exclusion (under the 2023 National Programme for the Development of the Social Economy – The Social Solidarity Economy). It requests that the next report provide information on the labour market policy measures specifically designed to support older workers.

As to monitoring of employment policy, the Government states that the Ministry of Family, Labour and Social Policy assesses how effective the work of district (*powiat*) employment offices is. It focuses in particular on access to employment (looking at the relationship between the number of people who have undergone training and those starting a job during or at the end of training and in work for 30 days in the three following months) and on costs. A team has also been set up to monitor the implementation of the Youth Guarantee. The Government adds that in 2018 an agreement was reached between the Ministry and an association to improve the assessment of the activities of employment offices (the goal being to know how many unemployed persons get a job and still have it 12 months after the employment office's intervention, based on comparable data for employment offices in all *powiats*). The Committee requests that the next report provide detailed, updated information, including figures, on the assessment of the effectiveness of active labour market measures.

According to European Commission data, public expenditure on labour market policies (as a percentage of GDP) decreased from 0.74% in 2015 to 0.69% in 2016 and 0.62% in 2017 (of which 0.34% was for active measures and 0.2% for passive measures in 2017). The Committee requests that the next report provide information on the activation rate (i.e. the average number of participants in active measures as a percentage of the total number of unemployed).

#### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Poland is in conformity with Article 1§1 of the 1961 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 Poland.

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

Article 1§2 of the Charter prohibits all forms of discrimination in employment. The Committee asked 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 Additional Protocol 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.

Poland has accepted Articles 15§2 of the 1961 Charter. Accordingly, it was under no obligation to report on the prevention of discrimination on grounds of disability, which will be examined by the Committee under this provision.

As regards the legislation prohibiting discrimination in general terms, the Committee examined the relevant legal framework in its conclusions 2012 and 2016 and reserved its position, asking, in particular, for clarification on the difference between the definitions of indirect discrimination in the Equal Treatment Act (ETA) and the Labour Code, as well as for information, including details of court decisions, indicating how the prohibition of indirect discrimination in employment has been applied in practice on the basis of the two said legal acts.

In reply, the report provides that the Labour Code transposes the definition of the indirect discrimination from the relevant EU equality directives and refers to a group of workers. Without any supplementary specification, it states that the ETA refers to individuals. It further states that The Ministry of Justice has no data on the judicial practice in this field. The Committee considers that this information does not comprehensively address its queries. It notes, in this regard, that the European network of legal experts in the non-discrimination field (European Equality Law Network) considers that even if the ETA seems to fully implement the EU equality directives, it still raises some doubts and discussions, and that in particular the provisions of the amended Labour Code provide for erroneous definition of indirect discrimination (see Report on measures to combat discrimination, directives 2000/43/EC and 2000/78/EC, Poland, 2013). The Committee also refers to the ILO which raised similar concerns about the indirect discrimination and pointed out, among others, that due to the lack of clarity in the definition of the indirect discrimination in its reference to a group or individuals, the Supreme Court decided that in order to demonstrate that such discrimination existed, it is firstly necessary to demonstrate that there was a specific group of workers the majority of whom, or all of whom, can be described as having a particular feature (ILO Direct Request (CEACR) – adopted in 2019 and published at the 109th ILC session (2020)). In the light of the above, the Committee renews its request that the next report provide information on the manner in which the prohibition of indirect discrimination in employment is applied in practice on the basis of the Equal Treatment Act and of the Labour Code.

The report also points out that in 2015 and 2016, amendments were introduced to the Labour Code generally with respect to fixed-term and permanent contracts and protection against illegal hiring. From the information submitted it is not clear, however, what impact these amendments might have on the prevention of discrimination in the workplace. The Committee

asks that the next report provide more comprehensive explanation in this regard. Meanwhile, it reserves its position on this point.

As regards the prohibition of discrimination on grounds of sexual orientation, in its previous conclusion the Committee has noted the set-up of two teams with specific responsibility for the question of the LGBTI community (one dealing with legal and legislative matters, and the other one with education and awareness-raising). It asked about the activities of these teams and the impact of the relevant measures (see Conclusions XXI-1 (2016)).

The report provides that awareness-raising measures were undertaken to inform medical personnel in matters of patients' rights, including equality treatment regardless of disability, age, illness and sexual orientation. In 2014, the Minister of Health laid the emphasis on the need to implement actions aimed at minimizing the irregular application of the legal and regulatory provisions in force, through the organization of training in legal issues and promoting communication free from stigmatisation and discriminatory innuendos. Furthermore, in 2015 two publications were posted online and distributed by the Government Plenipotentiary Office for Equal Treatment: one aimed at workers and relating to the employment rights of non-heterosexual and transgender people; the other one, addressed to employers, on the need to prevent any form of discrimination in the workplace. These tasks having been carried out, the said teams ceased to meet. The Committee asks whether the impact of these awareness measures has been considered satisfactory and whether and how the situation is monitored. In this respect, it refers to the fact that LGBTI minorities are in a very difficult position in Poland, according to the 2019 country report of the European Equality Law Network. It asks that the next report comment on this observation and it considers that, with the information in its possession, it cannot make a conclusive assessment of the situation.

Apart from questions on the legal framework, during this examination cycle the Committee assesses specific, targeted legislation and practical measures focused specifically on discrimination on grounds of ethnic origin, race, age, political opinion or religion. The report does not reply to the Committee's request. The Committee again asks that the next report provide comprehensive descriptions of how discrimination on these grounds is prevented and combated by the legislation. It notes, in particular, that the UN Committee on the Elimination of Racial Discrimination is concerned about the lack of full and consistent implementation of existing legal provisions prohibiting racial discrimination (see Concluding observations on the periodic reports of Poland 2019). While renewing its request for pertinent information, the Committee underlines that, should the next report not provide the relevant information, nothing will allow to show that the situation is in conformity with the 1961 Charter 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 refers solely to some general awareness raising in the form of an information website for migrants in Poland. It also addresses the protection of migrant workers from abuse when they are employed at the employer's home (which is limited, since the Labour Code does not contain provisions relating to access to a private home when it is the seat of the employer or the location where the worker's activity is carried out). The report does not, however, specifically address the general protection of migrants and refugees from discrimination in employment, and the Committee recalls its request for information on this matter. It considers that, should it not be provided, nothing will allow to establish that the situation is in conformity with Article 1§2 of the 1961 Charter on this point.

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 covers 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 that information on these aspects be provided for this examination cycle.

The Committee has previously criticised the low number of cases of discrimination in employment brought before the Polish courts, the limited powers of the Ombudsman and the lack of a system of sanctions (see Conclusions XXI-1 (2016)). It also expressed some reservations as regards the shift of burden of proof and asked how it was applied in practice. The Committee deferred its conclusion, pending receipt of information on the measures/actions/mechanisms taken or envisaged by the Government to guarantee the effective implementation of the legislation prohibiting discrimination in employment in practice.

The report provides information on awareness-raising measures taken to prevent discrimination in the workplace, undertaken in particular by the Ministry of Family. Discrimination issues were also the subject of the information material produced by the Labour Inspectorate, as was the series of training courses, the aim of which was to combat stress and other psycho-social risks, including discrimination and unequal treatment. The report provides statistics on the Labour Inspectorate investigations into discrimination cases, as well as on cases of discrimination brought to courts under the Labour Code. The Committee notes from the submitted data that the number of violations found appears to be quite low (28 violations in 148 cases in 2018). The Committee notes similar observations were raised in the 2019 country report of the above-mentioned European Equality Law Network.

The report states that the Ministry of Justice has no information on the judicial practice as regards the shift of burden of proof.

In reply to the Committee's query on sanctions imposed in discrimination cases, the report states that, pursuant to the Labour Code, the person against whom the employer has violated the principle of equal treatment benefits from an uncapped right to compensation, the amount of which cannot be less than the minimum wage. The Committee notes, however, the criticism of the ILO (see the Direct Request referred to above) that this system redresses only the damage and does not include a punitive element. It asks that the next report comment on this observation.

The Committee observes that the report does not address other important points, in particular as regards the powers of the Ombudsman. In this regard, it refers to the 2019 country report of the European Equality Law Network (mentioned above), which raises some imperative concerns, namely that since 2015, the Ombudsman's Office, which plays the role of equality body, has faced political attacks for its activities targeting discrimination and that the general political environment around counteracting discrimination has become hostile. It points out that the activities of the Government Plenipotentiary for Equal Treatment have been very limited and a new national programme has not been prepared since 2015, despite the legal obligation in that regard. Moreover, changes began to take place in 2016 with regard to limiting the practical role of the office of the Government Plenipotentiary for Equal Treatment and restricting the budget of the Ombudsman.

In the light of the information in its possession, the Committee considers that it cannot make a comprehensive assessment of all aspects pertinent to the existence and functioning of effective remedies in cases of alleged discrimination. It repeats its requests that all relevant data be included in the next report, together with comments on the observations quoted above. 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 1961 Charter on this point.

Overall, pending receipt of the information requested, the Committee reserves its position on the aspect of prohibition of discrimination in employment.

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

The Committee recalls that forced or compulsory labour in all its forms must be prohibited. It refers to the definition of forced or compulsory labour in the ILO Convention concerning Forced



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

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

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

The Committee draws on the case law of the European Court of Human Rights and the above-mentioned international legal instruments for its interpretation of Article 1.2 of the Charter, which imposes on States Parties the obligation to protect effectively the right of the worker to earn his living in an occupation freely entered upon. Therefore, it considers that States Parties to the Charter are required to fulfil their positive obligations to put in place a legal and regulatory framework enabling the prevention of forced labour and other forms of labour exploitation, the protection of victims and the investigation of arguable allegations of these practices, together with the characterisation as a criminal offence and effective prosecution of any act aimed at maintaining a person in a situation of severe labour exploitation. The Committee will therefore examine under Article 1§2 of the Charter whether States Parties have fulfilled their positive obligations to:

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

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

The Committee notes that the report replies to the specific questions on this provision and, in particular, on forced labour (questions in the appendix to the letter of 27 May 2019 in which

the Committee asked for a report on the application of the Charter provisions relating to the thematic group “employment, training and equal opportunities”).

### **Criminalisation and effective prosecution**

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 Court 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 report states that the national labour inspectorate is actively involved in combating human trafficking, and in particular forced labour. It is not empowered to prosecute human trafficking cases, but it has a duty to report to the police any suspected cases of exploitation for the purpose of forced labour. It carries out checks in conjunction with the police and the border guards. In recent years, the labour inspectorate has identified several suspected cases of forced labour of foreign nationals, particularly citizens of Ukraine, the Philippines and Vietnam. When such suspicions are confirmed, the inspectorate transmits the relevant documentation to the appropriate prosecution authorities. The report also gives figures on the number of persons convicted of human trafficking for the purpose of labour exploitation during the reference period (none in 2015, seven in 2016, three in 2017 and one in 2018).

The Committee notes that the United Nations Human Rights Committee has expressed concern about the lack of an adequate statutory definition of forced labour and the low numbers of potential victims of trafficking identified and low numbers of convictions (Concluding observations of 31 October 2016, para. 27). It called on the Polish authorities to ensure that allegations of trafficking were thoroughly investigated, that alleged perpetrators were prosecuted and, if convicted, punished with appropriate sanctions. The Committee notes, in this regard, that Article 115, paragraph 22, of the Criminal Code makes trafficking for the purposes of forced labour or service, or slavery, among other forms of exploitation, a criminal offence. There is no specific reference to servitude, despite GRETA’s recommendation to this effect (Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Poland, Second Evaluation Round, GRETA (2017)29, 17 November 2017, para. 164). It also notes that forced labour is not an autonomous criminal offence as such and that GRETA has urged the Polish authorities to review the existing legal provisions relating to forced labour (*ibid.* paras 183 and 188). GRETA has also expressed concern about the rather low number of convictions for human trafficking (para. 188).

In the light of the foregoing, the Committee asks that the next report state whether forced labour and labour exploitation, including servitude, can be prosecuted in practice under legal provisions other than the ones relating to human trafficking and, if so, give actual examples of relevant case law to show how these provisions are applied. It also asks for up-to-date statistics on prosecutions brought and convictions handed down relating to trafficking for the purpose of labour exploitation.

### **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 Poland's 18<sup>th</sup> report submitted in 2018 that the 2016-2018 national action plan for combating human trafficking included training for social workers, judges and labour inspectorate, and law enforcement officials. The 2013 Aliens Act also empowered border guards to identify, prevent and detect offences relating to human trafficking and slavery.

Turning to the role of the labour inspectorate, the current report states that officials of the national inspectorate are entitled to enter premises where work is carried out at any time to ensure that the relevant legislation and regulations, including those relating to occupational health and safety, are being properly observed. This enables them to identify potential victims of trafficking working in abusive conditions or subject to coercion. Labour inspectors also have a duty to supply information to potential victims of trafficking on the forms of assistance available to them and the institutions and agencies they can apply to for help.

The Committee notes that during the reference period, the United Nations Committee on Economic, Social and Cultural Rights found that the informal economy was still significant in size, particularly in agriculture, construction and installation services. It also expressed concern about the employment conditions of migrant workers. The UN committee therefore urged the Polish authorities to empower the national labour inspectorate to conduct inspections in all sectors of the economy and to protect migrant workers from all forms of exploitation and abuse (Concluding Observations of 7 October 2016, paras 21-22; in connection with migrant workers, see also the 2019 observations of the ILO's committee on the application of conventions and recommendations (CEACR) on the Forced Labour Convention, No. 29). GRETA has called on the Polish authorities to pursue a proactive approach to identifying victims of trafficking, particularly the ones trafficked for the purpose of labour exploitation in sectors considered to be at risk, and to encourage the use of regular and coordinated multi-agency inspections by organisations responsible for regulating employment, health and safety in those sectors (GRETA Report, para. 109).

The Committee asks for detailed information in the next report on the impact of the 2016-2018 national action plan for combating human trafficking and any subsequent plans in terms of preventing forced labour, and on measures taken and checks carried out by the national labour inspectorate to prevent and identify cases of forced labour in the agricultural, construction, hotel and manufacturing industries and installation services, including the informal economy.

In answer to the request for information about measures designed to force companies to report on action taken to investigate forced labour and exploitation of workers among their supply chains, the report states that the Act of 15 December 2016 amending the Accounting Act transposed the European Union Directive on the publication of non-financial information by certain large companies. The information disclosed must include descriptions of environmental policies, employment rights and respect for human rights. It is for the businesses concerned to decide what information will be presented and there is no statutory requirement to examine supply chains from the standpoint of forced labour. At the same time, the Entrepreneurs Act of 6 March 2018 formally requires businesses to carry out their economic activities in accordance with human rights, based on the United Nations guiding principles on business and human rights of 2011. In 2017, the Council of Ministers approved a national action plan for the implementation of these guiding principles for the period 2017-2020. A working group under the aegis of Group for a "balanced development and social conscience in business" has drawn up practical recommendations to advise businesses on how to minimise the risk of forced labour in their supply chains, including model clauses for inclusion in their contracts with placement agencies. The report also states that in the case of foreign workers placed by an agency for the provision of services, the legislation provides for the Polish and foreign employers to be jointly responsible for the payment of wages and any other remuneration, particularly in the building sector.

The Committee takes note of all these measures and asks for information in the next report on their implementation and how effective they are in preventing the use of forced labour in

companies' supply chains, particularly in the case of the aforementioned national action plan and recommendations.

It also notes the information on preventing forced labour in the field of public contracts. The Public Contracts Act of 29 January 2004 includes measures aimed at eliminating modern slavery, such as excluding from invitations to tender entrepreneurs convicted of infringements of the rights of paid employees or of offences linked to human trafficking; the possible inclusion in the specifications, for the provision of services or works, of requirements relating to social conditions; authorisation to include in the initial tender document or the associated performance requirements, specially marked sections to emphasize the social aspects of the contract, such as respect for social rights, including the prohibition of forced or child labour; and the right to scrutinise the costing of tenders, if these appear to be excessively low, and their compliance with the obligations under employment law.

### **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 in Poland's 18<sup>th</sup> report submitted in 2018 that the 2013 Aliens Act provides for a three-month reflection period based on a statement from the border guards that the foreign national in question is the suspected victim of trafficking, so that his or her stay in Poland can be legalised. Should the suspicions be confirmed, the National consultation and action centre for the victims of human trafficking can provide assistance, including safe shelter, medical and psychological care, free meals, interpretation and legal aid. The report gave precise details of the number of suspected victims of trafficking for the purposes of forced labour identified by the border guards during the 2014-2017 reference period of the last cycle (including 38 persons in 2017).

The Committee asks for information in the next report on the number of identified victims of forced labour or labour exploitation and on the number of those victims receiving protection and assistance. The report should also include general information on the type of assistance provided to victims of forced labour and other forms of labour exploitation, including those who have not been classified as victims of human trafficking: protection against reprisals, safe accommodation, health care, material assistance, social and financial assistance, legal advice, translation and interpretation, assistance with voluntary return, and provision of residence permits for migrants.

The Committee also asks whether under the existing legislation, the victims of such practices, including migrants unlawfully present in the country, have access to effective remedies (in the criminal, civil or labour courts or through other mechanisms), to secure compensation or redress for all the harm suffered as a result of these offences, including unpaid wages and social security contributions. It also asks for statistics on the number of victims who have received such compensation or redress and examples of the sums awarded. In this context, it refers to article 4 of the 2014 Protocol to the ILO's 1930 Forced Labour Convention (ratified by Poland on 10 March 2017), which requires states parties to ensure that all victims of forced or compulsory labour, irrespective of their presence or legal status in the national territory, have access to appropriate and effective remedies, such as compensation.

### **Domestic work**

Turning more specifically to domestic work, the Committee refers to its last conclusion (Conclusions XXI-I (2016)), in which it examined the law relating to migrant domestic workers and found that labour inspectors did not normally carry out inspections in private homes. It therefore asked for more detailed information on the legal provisions designed to protect domestic employees in the event of exploitation by their employers and on the steps taken to monitor their application (see also the statement of interpretation and the questions in the general introduction, Conclusions XX-1 (2012)). In reply, the current report confirms that

domestic law makes no specific provision for labour inspectors to enter private households. Nevertheless, the labour inspectorate's activities as regards control and surveillance extend to any employer who hires domestic workers, and who is therefore subject to the full scrutiny procedure. Individuals or undertakings that do not employ such staff as such but contract the work to persons working independently for their own account are subject to the labour inspectorate's oversight regarding the lawfulness of the work, occupational health and safety, and compliance with the minimum wage legislation. The Committee notes from the 18<sup>th</sup> report, submitted in 2018, that in 2017 the border guards identified a Syrian citizen as the potential victim of domestic slavery.

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

The Committee asks that the next report explain how the labour inspectorate monitors the application of the relevant employment legislation to domestic workers, for example on health and safety and pay, without carrying out inspections in private households. Should the information requested not appear in the next report, nothing will allow to show that the situation is in conformity with Article 1§2.

### **Workers in the “gig” or “platform” economy**

In reply to the question on measures to protect “gig” or “platform” economy workers from exploitation, the report states that the labour inspectorate monitors and enforces compliance with occupational health and safety regulations concerning persons working on another basis than a normal employment contract, for example a civil law contract or as self-employed. It also monitors compliance with the ban on civil law contracts when the circumstances indicate that there is an employment relationship, as in the building industry. The Committee asks for clarification in the next report on whether the labour inspectorate has a specific mandate to monitor compliance with this ban and other relevant aspects of employment law in the “platform” economy sector, with a view to identifying and preventing abusive practices that could lead to forced labour. It also asks to be informed of the status and rights of such workers – whether they are employees, self-employed or some intermediate category, and their rights in terms of hours worked, paid holidays and minimum wage – and whether there are remedies available to them to challenge their employment status and/or abusive or exploitative working conditions.

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

### *Conclusion*

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

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

### *Paragraph 3 - Free placement services*

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

In the last cycle of conclusions (2016), the Committee deferred its conclusion and asked information on:

- the report of the European Commission highlighting the ineffectiveness of public employment services;
- the reform of the public employment services introduced in 2015 and the impact of this reform on the effectiveness of public employment services;
- the total number of jobseekers and unemployed persons registered with the public employment service (PES);
- the number of vacancies notified to PES;
- the number of persons placed via PES;
- the placement rate (i.e. the percentage of placements compared to the number of notified vacancies);
- respective market shares of public and private services.

Furthermore, the Committee requested data on: a) the number of persons working in PES (at central and local level); b) the number of counsellors involved in placement services and the ratio of placement staff to registered jobseekers; c) the average time taken by PES to fill a vacancy.

The Committee also asked for information on the participation of trade union and employers' organisations in the work of the employment services.

In its report the Government provides the following replies. As regards the *performance of public employment services*, the report states that in Poland, there is a decentralised administrative system and the different bodies of the administration have the means allocated to them by the central division. However, the employment services work in an autonomous manner and under their own responsibility, which renders complex to ensure effectiveness at the national level. The Committee notes in this respect that, according to the European Commission 2019 Country report on Poland, based on data of 2018 (SWD(2019) 1020 final, 27 February 2019), although the Polish labour market overall performs well, there should be an improvement in access to employment, in particular of long-term unemployed and of inactive people. There is a need to modernise labour market institutions. In particular, public employment services should be modernised "for effective targeting active labour market policies to the inactive, low skilled, women, older people, persons with disabilities, and the long-term unemployed; support job creation in the social economy." The Committee asks the next report to inform about the measures taken to support public employment services and to overcome the ineffectiveness resulting from the decentralisation of these services.

On the 2015 reform of the *public employment services*, the report refers that in the years 2016-2019 programmes aimed at enhancing the potential of public employment services were carried out. The actions focused on: standardising and improving the quality of actions carried out by labour market institutions; the development of the model procedure for the actions of labour market institutions in the context of working with employers; the development of the model procedure for the actions of labour market institutions in the context of actions for the benefit of persons with disabilities; training for key managers and operational staff of labour market institutions, etc.

Projects have been adopted to expand collaboration between public employment services and employers, including the organisation and funding of training for workers and jobseekers, the acquisition of more places and the greater number of job applicants. In addition, a tool has been developed to assess the quality of employment services at the local, regional and national level, provided under the simplified system of admission of foreigners to employment. The tool also provides data for the assessment of the short-term employment phenomenon,

occupied by foreigners in Poland and for the analysis of requests for employment of foreigners in the various sectors.

On the *total number of jobseekers and unemployed persons* registered with the PES, it is indicated that, concerning jobseekers, there were 33,909 in 2015, 30,167 in 2016, 27,702 in 2017 and 25,072 in 2018. However, as regards unemployed persons, there were 1,563,339 in 2015, 1,335,155 in 2016, 1,081,746 in 2017 and 968,888 in 2018. The Committee asks the next report to indicate why is there such a discrepancy between the number of unemployed persons and of registered jobseekers.

Concerning the *number of vacancies* notified to PES, there were 1,279,003 in 2015, 1,494,003 in 2016, 1,695,160 in 2017 and 1,548,885. Though the number has gone down in 2018, it has increased during the reference period. Concerning the number of persons placed via PES, it has however decreased, from 1,283,943 in 2015 to 899,756 in 2018. As for the *placement rate*, the report indicates that it was 100,4 in 2015 and 58,1 in 2018.

The Committee asks for clarification on the figure provided for placement rate, as it should be a percentage obtained on the basis of the total number of vacancies and the number of people placed.

As regards the respective *market shares of public and private services* (market share is measured as the number of placements effected as a proportion of total hirings in the labour market), it is indicated that in 2015 there were 1,283,943 placements via PES and 1,212,088 via private services. In 2018, there were 899,756 placements via PES and 1,124,626 via private services. The report explains that many jobseekers and unemployed people find jobs otherwise, without the help of PES. The report further refers to the *starosta*, the possibility under Polish law to sign a contract with a private agency which commits itself in finding a job for an unemployed person for at least one year. There were 20 agreements signed in 2015 and 43 in 2016, but none in 2017 and 2018. The Committee requests that the next report explains what the situation is as regards the *starosta* signed and whether private services are free of charge for jobseekers.

As regards the participation of trade union and employers' organisations in the organisation and running of the employment services, the report states that they continue to have an active participation in the PES, as they are invited to take part in all bodies and councils in relation to PES and the policy of the labour market.

The Committee also requested data on: a) the number of persons working in PES (at central and local level); b) the number of counsellors involved in placement services and the ratio of placement staff to registered jobseekers; c) the average time taken by PES to fill a vacancy. The report indicates that these data are not available. The Committee asks the next report to indicate these data.

### *Conclusion*

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

## **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 Poland.

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.

Article 1§4 guarantees the right to vocational guidance, continuing vocational training for employed and unemployed persons and specialised guidance and training for persons with disabilities. It is complemented by Articles 9 (right to vocational guidance), 10§3 (right of adult workers to vocational training) and 15§1 (right of persons with disabilities to vocational guidance and training), which contain more specific rights to vocational guidance and training.

As Poland has not accepted Article 10§3, the Committee assesses under Article 1§4 the conformity of the situation relating to the right of adult workers to vocational training in case the previous conclusion was one of non-conformity or a deferral.

The Committee considered the situation to be in conformity with the 1961 Charter as regards measures relating to vocational guidance (Article 9) (Conclusions XXI-1 (2016)) and vocational training and retraining of workers (Conclusions XXI-1 (2016)).

As regards measures related to vocational guidance and training of persons with disabilities, the Committee refers to its assessment under Article 15§1, in which it also found that the situation in Poland was in conformity with Article 15§1 (Conclusions XXII-1 (2020)). Accordingly, the Committee considers that the situation is in conformity with Article 1§4.

### *Conclusion*

The Committee concludes that the situation in Poland is in conformity with Article 1§4 of the 1961 Charter.



### **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 - Promotion of technical and vocational training ; access to higher technical and university education*

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

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 XXI-1 (2016)).

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

The Committee notes that there were several legislative and regulatory changes during the reference period regarding the vocational education system (law of 2016, regulation of 2017), the vocational training system (law of 2018) and apprenticeships (regulation of 2015), in some cases backed up with various measures supported by the European Social Fund and proposed by teams made up of professional associations, employers' organisations and trade unions. The Committee also notes the statistics provided. The information concerned shows that the vocational education system matches the needs of the labour market.

The Committee notes that the changes in the vocational training system under the law of 22 November 2018 enable the authorities (national, regional and local) to conduct annual analyses of employment needs and adjust the spending on training as appropriate. In addition, the opening up of new training provision now depends on co-operation between schools/colleges and employers in the sectors concerned, or with local and regional authorities. Such co-operation may take various forms (e.g., sponsorship by employers; co-operation in the development of training programmes; practical training; equipping of school workshops or labs, etc.) and seeks to improve the quality and effectiveness of the vocational training. The Committee notes that the funding model for schools is also adapted in line with needs. Where applicable, this makes it possible to increase training funding for occupations for which there is particular demand on the local labour market.

The authorities underline their willingness to give priority to young people, in particular NEETs (young people not in education, employment or training). Several measures for 15 to 29-year-olds were started here under the "Youth Guarantee" programme. In addition, some support is available to employers who take on such persons (e.g., reimbursement of hiring costs).

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

The Polish authorities indicated that refugees are entitled to the support provided for by law on the same basis as Polish citizens and are included among the groups who may take part in activation programmes covered by resources from the Labour Fund. They are entitled to support, in particular vocational guidance and training, on the same basis as Polish citizens. Refugees are also entitled to support through individual integration programmes under the law on social assistance, of which employment activation forms a part.

In their report submitted during cycle XXI-1 (2016), the authorities indicated that the provisions on access by foreigners to vocational training had been amended in 2013 following the incorporation of a European directive into national law. Under these provisions, persons holding work visas or temporary residence permits are entitled to labour market services, except for grants, the reimbursement of training costs, loans to cover training costs and additional funding for postgraduate studies.

However, the Committee notes that the law on employment promotion and labour market institutions does not provide for any specific instruments on vocational training or skills development for refugees.

The Committee concludes that the situation has not been brought into conformity with Article 10§1 in this respect.

### *Conclusion*

The Committee concludes that the situation in Poland is not in conformity with Article 10§1 of the 1961 Charter on the ground that there are no specific instruments deployed to integrate migrants and refugees into vocational education and training.

**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 15 - Right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement**

### *Paragraph 1 - Education and training for persons with disabilities*

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

The Committee previously found that the situation in Poland was in conformity with Article 15§1 of the 1961 Charter (Conclusions XXI-1(2016)).

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

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

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

### **Legal framework**

As a general rule, discrimination against persons with disabilities is prohibited by the Constitution (Article 32) and more specifically, by the non-binding Charter of Rights for Persons with Disabilities adopted by Parliament in 1997 (see Conclusions XX-1 (2012)). A law on equal treatment came into force in 2011, but it does not cover discrimination on the ground of disability in the fields of education and higher education (see Conclusions XXI-1 (2016)). The rights of persons with disabilities to equal access to education are still covered by the law of 1991 on the educational system and the law of 1997 on the vocational rehabilitation, social resettlement and employment of persons with disabilities, as amended (see Conclusions XV-2 (2001), XVIII-2 (2007), XIX-1 (2008)). On this point, the report mentions the enactment in 2017 of new legislation and rules on vocational training, the passing of a new law on higher education in 2018 (see below) and other ongoing reforms which concern, among other things, inclusive schooling, and which are due to be adopted in 2020-2021. The Committee asks for the next report to provide an up-to-date overview of the rules concerning equal access to education, vocational training and higher education for persons with disabilities.

It can be seen from the information available (see the previous Conclusions and the Concluding Observations of the Committee on the Rights of Persons with Disabilities – CRPD – adopted in 2018 and the reports of the ANED – Academic Network of European Disability Experts) that many assessment mechanisms co-exist, with different aims, such as granting financial social benefits to persons with disabilities over the age of 16 and to parents taking care of a child with disabilities who is under the age of 16, or providing special support to persons with special needs in education. These different assessment mechanisms contain multiple definitions of disability, which do not appear to be in keeping with the WHO International Classification of Functioning, Disability and Health (ICF 2001).

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 UN 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 Poland, children with disabilities may attend ordinary classes in mainstream schools, integration classes or special schools (see Conclusions XVIII-2 (2007)). The report states that the education system ensures that the content, method and organisation of teaching are adapted to pupils’ psycho-physical abilities, and guarantees psychological and educational assistance and special teaching approaches; it also ensures access to learning in all types of schools for children and young persons with disabilities, in accordance with their individual developmental and educational needs and their predispositions. Schools are chosen by the parents (or the pupils themselves if they are of age) and they are also involved in drawing up the individual educational and therapeutic programme that the school must then implement by ensuring compliance with the recommendations on the pupils’/students’ special educational needs (SENs) and by providing appropriate teaching equipment and resources. Educational and vocational guidance is available in public psychological/educational consulting centres.

The Committee takes notes of the data provided in the report on the trends concerning the number of students with disabilities in mainstream vocational schools (which increased from 6,054 in 2015 to 7,892 in 2018), in integration classes (which fell from 650 in 2015 to 410 in 2018) and in specialised vocational schools (falling from 10,792 in 2015 to 10,537 in 2018). According to this data, the inclusion of pupils with disabilities in mainstream schools has increased but is still not the rule. As shown by the data provided in the European Agency Statistics on Inclusive Education (EASIE) 2018 Dataset Cross-Country Report,

- in primary schools, 3.77% of children were recognised as having SENs; of these, 56.88% attended mainstream schools, 2.68% were in integration classes and 40.43% in special schools;
- in upper secondary schools, 2.89% of the pupils had SENs; of these, 30.97% attended mainstream schools, 0.59% were in integration classes and 68.44% in special schools.

The ANED report on the European Semester (published in 2019 but referring to data from 2016-2017) confirms that schooling in mainstream education, which is the norm in primary schools is the exception in secondary schools. In 2016-2017, approximately 50% of persons with disabilities were schooled in special schools, 20% in integration classes and 30% in mainstream education. According to the ANED report, the reason for this was the lack of sufficient staffing and financial support given to mainstream schools, the fact that sign language is not recognised, and thirdly the fact that society and teachers are not sufficiently aware of issues relating to disability. Moreover, the report indicates a high school dropout rate among pupils with disabilities (15% against 5% for other pupils).

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.

In view of the information available in the country report and other sources, the Committee considers that the right of children with disabilities to mainstream education is not effectively guaranteed.

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

The Committee refers to its previous conclusions on the different measures to facilitate access to education for persons with disabilities: free school transport, scholarships and sponsorship programmes carried out by the PFRON (the National Fund for the Rehabilitation of Persons with Disabilities), the possibility of extending their studies by one year at each stage in their education, and adapting the conditions and organisation of their exams (see Conclusions XX-1 (2012) and XXI-1 (2016)). In the light of the insufficient level of inclusion of pupils with disabilities in secondary schools (see above), the Committee asks whether there is any assistance granted to children with disabilities which continues throughout their schooling (financial assistance, support staff and other technical assistance).

As regards teacher training, the report states that graduates from higher teaching colleges are trained, amongst other things, to identify children with SENs and their specificities. They also attend in-service training programmes (laid down by the Ministry of Education Regulation of 29 September 2016 on further training institutions for teachers, as amended on 28 May 2019).

New provisions entered into force on 1 October 2018 which seek, among other things, to facilitate the inclusion of persons with disabilities in higher education by adapting teaching methods and techniques (in particular distance learning) and by extending funding, which may now be used not only to cover registration fees, but also to ensure the necessary accommodation measures (paying personal assistants, cost of training staff and raising awareness of disability, purchase of specialised instruments and equipment, renovation of the infrastructure, organising special transportation and parking spaces, etc.). The amount of the grants depends on the number of students with disabilities and their allocation is decided by the school.

More generally, the report indicates that a Strategy for Persons with Disabilities is being drawn up and it is anticipated that new measures will be adopted, including in the education field, aimed at improving accessibility by greater use of modern technologies and investing in accessible infrastructure (under the “Enhanced Accessibility 2018-2025” programme, see the report for details).

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 Center (MDAC) v. Belgium Complaint No.109/2014, Decision on the admissibility and merits 16 October 2017, International Federation For Human Rights (FIDH) and Inclusion Europe v. Belgium Complaint No. 141/ 2017, Decision on the merits of 20 September 2020). The right to an inclusive education relates to the child’s right to participate meaningfully in mainstream education.

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

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

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

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

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

### ***Remedies***

The Committee previously noted (Conclusions XX-I (2012) and XXI-1 (2016)) the role of equality bodies – the Ombudsman and the Government Plenipotentiary on Discrimination, in co-operation with the Government Plenipotentiary for Persons with Disabilities – in dealing with complaints of discrimination based on disability. According to the report of the Ombudsman to the Committee on the Rights of Persons with Disabilities, the remedies



accessible to persons with disabilities in cases of discrimination are insufficient, due to the fact that the law on equal treatment does not fully cover discrimination against persons with disabilities and these remedies are ineffective because the courts rarely grant compensation in this type of case, and when they do, only where there has been material damage. The Committee asks the next report to comment on this and to provide updated information on the remedies available in the case of discrimination on the ground of disability with respect to education (including access to education, including the provision of adequate assistance or reasonable accommodation) and the relevant case-law.

#### *Conclusion*

The Committee concludes that the situation in Poland is not in conformity with Article 15§1 of the 1961 Charter on the ground that the right of children with disabilities to mainstream education is not effectively guaranteed.

## **Article 15 - Right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement**

### *Paragraph 2 - Employment of persons with disabilities*

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

The Committee notes that for the purposes of the present report, States were asked to reply to the specific targeted questions posed to States for this provision (questions included in the appendix to the letter of 27 May 2019, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Employment, training and equal opportunities”) as well as previous conclusions of non-conformity or deferrals.

The Committee previously found the situation to be in conformity with the Charter (Conclusions XXI-1, 2016).

### **Legal framework**

The Committee previously examined in detail the relevant legal framework (see notably Conclusions XX-I (2012) and XXI-1(2016)) as regards the prohibition of discrimination on the ground of disability in employment relations (notably under the Act on Equal Treatment, which entered into force in 2011) and the provisions on reasonable accommodation, notably under the 1997 Law on the vocational and social rehabilitation and the employment of persons with disabilities, as amended (see also the information presented in this respect under Article 15§1), which remains the main reference legislation concerning employment of persons with disabilities.

The report states that a new bill is being examined, which concerns in particular supported employment of persons with disabilities. The Committee asks the next report to present the main changes affecting employment of persons with disabilities.

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

The report states that in 2018, there were 61 118 persons with disabilities registered as unemployed with a job centre (-36% compared to 2015) and 10 328 jobseekers with disabilities (-34% compared to 2015). Unemployed persons with disabilities accounted for 6.3% of the total of unemployed persons in the country (slight increase during the reference period). According to the report, the economic activity rate and the employment rate among persons with disabilities continued to increase during the reference period. In the last quarter of 2018, of the 1 645 000 persons with disabilities of working age, 28.3% were engaged in an economic activity (compared to 26.8% in 2015) and 26% were employed (compared to 23.5% in 2015). The unemployment rate went from 12.3% in 2015 to 8.2% in 2018. In 2018, 341 700 persons with disabilities were employed (compared to 324 316 in 2015), 147 270 of these worked in sheltered employment (compared to 164 780 in 2015) and 194 430 in the open labour market (compared to 159 536 in 2015), which represents a significant increase for employment of persons with disabilities in the open labour market (+22% during the reference period); accordingly, 57% of persons with disabilities were working in the open labour market in 2018, and 43% in sheltered employment.

Despite these positive results, the Committee notes from the ANED report (Academic Network of European Disability Experts) on the European Semester (published in 2019, but concerning data from 2016-2017 or earlier) that the disability employment rate gap remains one of the widest in Europe. It asks the next report to provide updated data, also on this point, including the measures taken in this respect.

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

The Committee refers to its previous conclusions for an overview of the measures aimed at encouraging employment of persons with disabilities in the open labour market, such as the

6% quota for persons with disabilities, reimbursement of costs of workplace accommodations, financial support by the State Fund for Rehabilitation of People with Disabilities (PFRON) towards persons with disabilities who run a business or a farm and other special programmes (see Conclusions XXI-1 (2016), XX-1 (2012) and earlier ones). The Committee notes from the abovementioned ANED report and the Observations from the Committee on rights of persons with disabilities (CRPD Committee) adopted in 2018, that the quotas in favour of persons with disabilities are not fulfilled yet, especially in public administrations sector (in 2015, the rate was 3,9 % instead of the 6 % rate provided by law). In this connection, the report indicates that, as from 2017, the PFRON is implementing a programme ("Steady Job") which aims at improving the employment rate of persons with disabilities in public administrations sector (see details in the report). The Committee asks the next report to provide updated information on the implementation of this programme and the fulfilment of legal quotas in the public and private sectors .

The report also mentions amendments made in 2014 and 2015 to the 1997 law, which have extended the scope for reimbursements of accommodation in the employment sphere (see details in the report), the introduction in 2017 of financial support to social cooperatives which employ persons with disabilities and the organisation in 2015 of training activities concerning disability management in the workplace (295 human resources or local administrations managers took part to these trainings). It appears from the report that, during the reference period, the complementary wage subsidies financed by the PFRON increased by 14%, but the number of persons with disabilities who benefited from PFRON support significantly decreased (-33% of persons with disabilities recruited on adapted workplaces; -49% beneficiaries of reimbursement of products or services targeted at persons with disabilities out of employment or seeking employment; less persons with disabilities obtaining support to the running of a business or a farm; less beneficiaries of trainings.). The Committee asks the next report to clarify whether this development results for example from a reorganisation of support activities or other reasons and to provide updated information on the amounts granted and the number of beneficiaries. It also asks whether the functioning and the effectiveness of PFRON are regularly assessed and whether persons with disabilities associations are involved in the drafting of employment policies concerning them.

### ***Remedies***

The report does not provide new information concerning the remedies available and the developments in the relevant case-law. The Committee refers to the information available on this point in its previous conclusions and asks the next report to provide updated information on remedies as well examples of relevant case law. It recalls that legislation must confer an effective remedy on those who have been discriminated against on grounds of disability and denied reasonable accommodation.

### ***Conclusion***

Pending receipt of the information requested, the Committee concludes that the situation in Poland is in conformity with Article 15§2 of the 1961 Charter.

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

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

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

