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EUROPEAN SOCIAL CHARTER

European Committee of Social Rights

Conclusions 2020

RUSSIAN FEDERATION

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 the Russian Federation, which ratified the Revised European Social Charter on 16 October 2009. The deadline for submitting the 9th report was 31 December 2019 and the Russian Federation submitted it on 5 October 2020.

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

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

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

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

The Russian Federation has accepted all provisions from the above-mentioned group except Articles 15§3, 18§1, 18§2, 18§3 and 25.

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

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

– 2 conclusions of conformity: Articles 10§4 and 24.

– 7 conclusions of non-conformity: Articles 1§2, 1§4, 9, 15§1, 15§2, 18§4 and 20.

In respect of the other 3 situations related to Articles 1§1, 10§1 and 10§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 the Russian Federation under the Revised Charter.

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

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

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

The deadline for submitting that report was 31 December 2020.

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

Article 1 - Right to work

Paragraph 1 - Policy of full employment

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

Employment situation

According to the World Bank, the GDP growth rate stood at 0.19% in 2016, 1.83% in 2017 and 2.54% in 2018.

According to the report, the situation in the labour market remained stable during the reference period. The employment rate of the population (15 to 72-year-olds) fluctuated slightly around 65.3%- 65.7%. The employment rate for men stood at 71.7% in 2018 and the employment rate for women at 60.2%. The unemployment rate in 2018 reached its historical minimum and amounted to 4.8% of the workforce (15 to 72-year-olds), down from 5.6% in 2015. The unemployment rate for men decreased from 5.8% in 2015 to 4.9% in 2018, and the rate for women declined from 5.3% to 4.7% respectively.

Youth unemployment stood at 14.3% in 2015 and 15.3% in 2018 for the age group of 20-24, and at 6.2% in 2015 and 5.5% in 2018 for the age group of 25-29.

The long-term unemployed (twelve months or more) was the largest group among all unemployed, accounting for 27.3% in 2015 and 28.6% in 2018.

According to the International Labour Organisation, the proportion of 15 to 24-year-olds “outside the system” (not in employment, education or training, i.e. NEET) stood at 14.1% in 2018. The Committee asks the next report to provide statistical data about the young NEETs.

The Committee notes that the reference period was marked by economic growth and a low and decreasing overall unemployment rate. However, the long-term unemployment rate was relatively high, and increasing.

Employment policy

According to the report, the State Programme on Employment Promotion is implemented since 2013. Its latest revision was approved by Decree of the Government of the Russian Federation No. 348 of March 28, 2019 [outside the reference period]. The implementation of the State Programme is planned until 2024. The Committee notes that during the reference period additional measures have been introduced in the field of employment, including:

- advanced vocational training for workers of enterprises at risk of dismissal (2015-2016);
- temporary employment of workers at risk of dismissal (2015-2016);
- social employment of persons with disabilities (2015);
- assistance in the employment of unemployed persons with disabilities for workplace adjustments (2015);
- reimbursement to employers of costs associated with the employment of persons with disabilities (2016).

As regards public expenditure on labour market policies, the Government indicates that the spending on active employment measures represented 0.02% of GDP in 2015 and 0.01% in 2018. The spending on passive measures likewise decreased, from 0,05% (2015) to 0.03% (2018) of GDP. The Committee takes note of the sharp drop in the total spending on active employment policy measures – from 16.4 billion roubles in 2015 to 7.3 billion roubles in 2018. The Committee asks the next report to explain this trend. The Committee also asks the next report to provide information on the number of participants in the various active measures and on the activation rate (i.e. the average number of participants in active measures as a percentage of the total number of unemployed).

The Committee further notes that there has been a declaratory commitment to full employment from the Government as well as the close monitoring of employment trends. However, the employment rate has remained stagnant. The Committee asks what active employment policy efforts have been made to promote job creation.

The Committee also asks what measures have been taken to reduce long-term unemployment.

Conclusion

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

Article 1 - Right to work

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

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

1. Prohibition of discrimination in employment

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

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

The Russian Federation has accepted Article 15§2 and Article 20 of the Charter. Therefore, it was under no obligation to report on the prohibition of discrimination on grounds of disability and gender, which will be examined under the said provisions.

As regards the legislation prohibiting discrimination in general terms, the Committee observed in its previous conclusion (Conclusions 2016) that there was no specific legislation for the prohibition of discrimination on grounds of sexual orientation, while also noting that discrimination against LGBT people in employment was widespread. Furthermore, indirect discrimination was not expressly prohibited by law. It concluded, accordingly, that this situation was not in conformity with Article 1§2 of the Charter. As there has been no change to the legislative framework in this respect in the reference period, the Committee reiterates its conclusion of non-conformity. It notes that in 2014 a document was sent to State Duma containing a set of measures to, *inter alia*, improve the national anti-discrimination legislation and its implementation tools in practice, with the inclusion of indirect discrimination, the empowerment of trade unions to monitor the observance of labour rights in the Labour Code, the adoption of legislation governing the burden of proof in cases involving discrimination. The Committee asks that the next report provide information on any developments.

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. The report does not address these issues. As regards the employment situation of LGBT citizens, it refers to the Ombudsman's report of 2014, which is outside the reference period and has already been submitted and comprehensively assessed in the previous conclusion (see Conclusions 2016). In this regard, the Committee notes, in particular, severe concerns raised by various international bodies, in particular in relation to discrimination on grounds of sexual orientation, religion, race or ethnic origin. It refers for example, to the 2018 report of the European Commission against Racism and Intolerance, of the Office of the United Nations High Commissioner for Human Rights Committee on the Elimination of Racial Discrimination and its concluding observations 2017 and Human Rights Watch (world report 2020). The Committee renews its request for comprehensive information on how discrimination on the grounds listed above is prevented and combated. Should the next report not provide exhaustive information in this respect, nothing will allow to show that there is sufficient protection against discrimination in employment on these grounds.

As regards prohibition of discrimination on grounds of nationality, the Committee found previously that the situation was not in conformity with Article 1§2 of the Charter because

foreign nationals could not be employed in the municipal and state service (Conclusions 2016). The report indicates that there have been no amendments to this situation. It further specifies that some other categories of occupations are not accessible to foreign nationals, such as ship's captain, officer, engineer or radio officer sailing under the State Flag. Since 2014 restriction to the profession of aircraft commander has been partially lifted. Likewise, foreigners cannot work at the facilities and organizations whose activities are related to the security of the Russian Federation. The Committee recalls that while Article 1§2 of the Charter makes it possible for states to allow foreign nationals to access employment on their territory provided they have a work permit, they cannot ban nationals of States Parties, in general, from occupying jobs for reasons other than those set out in Article G; restrictions on the rights guaranteed by the Charter are admitted only if they are prescribed by law, serve a legitimate purpose and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals. The only jobs from which foreigners may be banned therefore are those that are inherently connected with the protection of the public interest or national security and involve the exercise of public authority. The Committee thus maintains its conclusion of non-conformity on this point.

Apart from questions on the legal framework, during this examination cycle the Committee assesses the specific measures taken to counteract discrimination in the employment of migrants and refugees. The report provides that the 2014 Federal Law introduced a new chapter on "Labour of workers who are foreign nationals or stateless people" to the Labour code, which grants Russian labour legislation standards to foreign workers, thus almost equalising their rights with those of Russian citizens. The remaining differences include a higher age to enter into an employment relation (eighteen instead of sixteen), as well as the obligation to provide additional documents proving the right of residence in the Russian Federation (on a temporary or permanent basis), a work permit or patent granted by competent authorities of the Russian Federation in accordance with the regulations on the legal status of foreign citizens in the Russian Federation, the insurance certificate/voluntary medical insurance certificate in the Russian Federation for the period of employment, and others. The rights also apply to a refugee or a person granted temporary asylum in the Russian Federation.

The report further states that the Government annually establishes an allowable share of foreign workers (quotas) in certain sectors of the economy, such as the retail sale of alcoholic beverages and tobacco products, vegetable growing, land transport and sports activities. The Committee asks that the next report explain how it is ensured that such quotas do not result in the discrimination of migrants on the labour market. It further asks in practice what targeted measures relating to labour market policies, such as on-the-job training, are provided for migrants and recognised asylum seekers, or aliens and members of their families under subsidiary or temporary protection, and what measures are in place to ensure their equal rights on the labour market.

The Committee recalls that appropriate and effective remedies must be ensured in the event of an allegation of discrimination. The notion of effective remedies encompasses judicial or administrative procedures available in cases of an allegation of discrimination, able to provide reinstatement and compensation, as well as adequate penalties effectively enforced by labour inspection; 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 report provides that the relevant legislative act is the administrative regulation of the Ministry of Labour and Social Protection regarding public service of 2012 on the "Reception of citizens, the timely and full consideration of their appeals filed orally or in writing, making decisions and passing on the responses according to the legislation of the Russian Federation". The Federal Service for Labour and Employment is mandated to implement federal state supervision of compliance with labour legislation and other regulatory legal acts

containing labour standards. Discrimination can lead to an administrative fine of 1,000 to 3,000 RUB (10 to 30 EUR) (for individuals) or 50,000 to 100,000 RUB (500 to 1,000 EUR) (for legal entities). There are also criminal sanctions in case of violations committed by persons in official positions. The Committee asks that the next report explain whether these sanctions are considered dissuasive, proportional and effective, and how they are applied in practice, including statistical data.

The report does not provide comprehensive information on legal institutions, judicial or administrative, for persons alleging that they suffered discrimination in the workplace. It contains no statistical data on discrimination cases before courts or other equality bodies. In particular, the report does not specify the grounds of alleged discrimination, how violations of the legal provisions prohibiting discrimination in the workplace are scrutinised, whether adequate penalties exist and are effectively enforced by labour inspectors, or whether victims of discrimination are awarded sufficient compensation. As regards the legal remedies, the Committee concluded in its previous conclusion that the legislation did not provide for a shift in the burden of proof in discrimination cases. The situation has not changed in this respect and the Committee renews its conclusion of non-conformity on this aspect.

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 an exhaustive description of all the aspects listed 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 Charter in this regard.

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 workers to earn their living in an occupation freely entered upon. Therefore, it considers that States Parties to the Charter are required to fulfil their positive obligations to put in place a legal and regulatory framework enabling the prevention of forced labour and other forms of labour exploitation, the protection of victims and the investigation of arguable allegations of these practices, together with the characterisation as a criminal offence and effective prosecution of any act aimed at maintaining a person in a situation of severe labour exploitation. The Committee will therefore examine under Article 1§2 of the Charter whether States Parties have fulfilled their positive obligations to:

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

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

The Committee notes that the national authorities have not replied to any 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

The Committee notes from the report that the Labour Code prohibits forced labour (see also Conclusions 2016). The definition contained extends the concept of forced labour in comparison with international legal standards (i.e., ILO Forced Labour Convention). No further information is provided on whether forced labour and labour exploitation are criminalised under domestic law.

The Committee notes that the Russian Federation is the only member State of the Council of Europe that has not ratified the Council of Europe Convention on Action against Trafficking in Human Beings. It notes however from the ILO-CEACR Observation adopted in 2016 (published at the 106th ILC session (2017)) that section 127§1 of the Criminal Code criminalises trafficking in human beings, and that section 127§2 of the Criminal Code criminalises the use of slave labour. The Committee further notes that the Russian Federation has ratified both the ILO Forced Labour Convention (No. 29) and its 2014 Protocol (the Protocol was ratified on 17 January 2019, outside the reference period).

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

The Committee therefore asks that the next report provide detailed information on the application in practice of Articles 127§1 and 127§2 of the Criminal Code in relation to forced labour and labour exploitation. The report should provide information (including figures,

examples of case law and specific penalties effectively applied) on the prosecution and conviction of exploiters during the next reference period, in order to assess in particular how these two 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 report does not provide any information on these issues. The Committee notes from other sources (US Department of State: 2019 Trafficking in Persons Report: Russia) that traffickers subject workers from Russia and other countries in Europe, Central Asia, and Southeast Asia, including Vietnam and the Democratic People's Republic of Korea, to forced labour in Russia. Instances of labour trafficking have been reported in construction, manufacturing, logging, saw mills, agriculture, sheep farms, brick factories, grocery stores, the textile and maritime industries, as well as in refuse disposal and street cleaning.

The Committee asks that the next report provide information on whether labour inspection services have the capacity and the mandate to carry out regular inspections in the abovementioned sectors, with a view to detecting and preventing cases of labour exploitation and abusive conditions. The report should indicate the number, if any, of presumed victims of forced labour or labour exploitation detected as a result of such inspections. In this connection, the Committee recalls that it has previously concluded that the situation in the Russian Federation was not in conformity with Article 3.3 of the Charter on the ground that the labour inspection was so understaffed that it could not be considered efficient (Conclusions 2017, Article 3§3). It also notes that the UN Committee on Economic, Social and Cultural Rights, in its Concluding observations of 16 October 2017, expressed concerns over the insufficient action taken by law-enforcement and labour-monitoring mechanisms to end exploitative practices in the labour market, especially with regard to migrant workers and workers engaged in the informal economy. In the same vein, the UN Committee on the Elimination of Racial Discrimination, in its Concluding observations of 20 September 2017, expressed concerns over reports of labour exploitation of migrant workers, and about the limited information concerning the coverage and effectiveness of labour inspections to detect labour violations.

The Committee also notes from the 2017 Report by OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings (following her official visit to the Russian Federation) that Russia had not developed a national strategy or an action plan to combat human trafficking, including for the purposes of labour exploitation. The Committee wishes to be informed on whether a national strategy or an action plan to prevent labour trafficking or forced labour, including of migrant workers, has been adopted in the meantime.

No information has been provided in the report on whether Russian legislation includes measures designed to force companies to report on action taken to investigate forced labour and exploitation of workers among their supply chains. It 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.

No information is provided in the report on these points. The Committee requests that the next report provide information on the number of presumed and identified victims of forced labour and labour exploitation and the number of such victims benefiting from protection and assistance measures. It also asks for general information on the type of assistance provided by the authorities (protection against retaliation, safe housing, healthcare, material support, social and economic assistance, legal aid, translation and interpretation, voluntary return, provision of residence permits for migrants), and on the duration of such assistance.

The Committee 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 context, the Committee refers to the 2014 Protocol to the 1930 ILO Forced Labour Convention (ratified by the Russian Federation on 17 January 2019), which requires Parties to provide access to appropriate and effective remedies to victims, such as compensation, irrespective of their presence or legal status on the national territory.

Domestic work

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

In its previous conclusion (Conclusions 2016), the Committee noted from the national report that the term domestic worker referred to persons such as maintenance workers, drivers/chauffeurs, secretaries, governesses, etc., who had entered into employment contracts with individuals. It further noted that, in accordance with Article 357 of the Labour Code, inspection visits by the State Labour Inspectors to employers, including individuals, were allowed at any time of day or night. Such visits could be made in response to reports by employees of their employer's violations of their rights, or to requests by employees to check their working conditions and workplace safety. The report also indicated that family businesses were subject to inspection visits provided for in Article 357 of the Labour Code. The Committee asked for information on the implementation of criminal legislation and other regulations to protect from abuse domestic staff and employees working in family businesses.

The current report provides no further information in response. The Committee accordingly asks that the next report indicate the number of inspections carried out by the State Labour Inspectors in respect of domestic workers during the next reference period, and the number, if any, of victims of forced labour and labour exploitation identified as a result. It also asks whether cases of domestic servitude can be effectively prosecuted and punished under the existing criminal law provisions on human trafficking and slave labour (see above the relevant provisions of the Criminal Code).

“Gig economy” or “platform economy” workers

The Committee notes that the report does not reply to its request for information on the measures taken to protect workers in the “gig economy” or “platform economy” from exploitation.

The Committee reiterates its request and asks for information in the next report on whether workers in the “platform economy” or “gig economy” are generally regarded as employees or self-employed workers. It also asks whether the powers of the competent labour inspection services include the prevention of exploitation and unfair working conditions in this particular sector (and if so, how many inspections have been carried out) and whether workers in this sector have access to remedies, particularly to challenge their status and/or unfair practices.

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

Conclusion

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

- indirect discrimination is not expressly prohibited by law;
- discrimination on grounds of sexual orientation in employment is not expressly prohibited by law;
- foreign nationals cannot be employed in the municipal and state service, which constitutes a discrimination on grounds of nationality;
- the legislation does not provide for a shift in the burden of proof in discrimination cases.

Article 1 - Right to work

Paragraph 3 - Free placement services

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

Article 1 - Right to work

Paragraph 4 - Vocational guidance, training and rehabilitation

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

The Committee recalls that in the appendix to the letter of 27 May 2019 (whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Employment, training and equal opportunities") no information was requested under this provision unless the previous conclusion was one of non-conformity or a deferral.

As the Russian Federation has accepted Article 9, 10§3 and 15§1 of the Charter, measures relating to vocational guidance, to vocational training and retraining of workers, and to vocational guidance and training for persons with disabilities are examined under these provisions.

The Committee considered the situation to be in conformity with the Charter as regards measures relating to vocational training for persons with disabilities (Article 15§1) (Conclusions 2016).

The Committee however deferred its conclusion as regards measures relating to vocational training and retraining of workers (Article 10§3) (Conclusions 2020).

Finally, the Committee considered that the situation was not in conformity with the Charter as regards measures concerning vocational guidance (Article 9) (Conclusions 2020), on the grounds that:

- it had not been established that the right to vocational guidance within the education system and in the labour market was guaranteed;
- it had not been established that the right to vocational guidance in the labour market was guaranteed equally to nationals of other States Parties.

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

Conclusion

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

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

Article 9 - Right to vocational guidance

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

The Committee recalls that in its letter requesting national reports it stated that no information was requested under this provision unless the previous conclusion was one of non-conformity or a deferral.

In its previous conclusion (Conclusions 2016), the Committee considered that the situation was not in conformity with Article 9 of the Charter on the ground that it had not been established that the right to vocational guidance within the education system and in the labour market was guaranteed.

Vocational guidance within the education system

The Committee refers to its previous conclusion (Conclusions 2016), where it did not find it established that the right to vocational guidance within the educational system was guaranteed, in the absence of the information previously requested concerning the human and financial resources allocated to such guidance and the number of beneficiaries during the relevant reference period (see the questions also in Conclusions 2012). It therefore asked for up-to-date information on these issues to be systematically provided in future reports.

The Committee takes note of the data provided in the current report concerning the number of vocational guidance services provided during the reference period to children aged between 14 and 17 years old. There has been an increase of 15% in the number of vocational guidance services provided to such children compared to 2015. The Committee also takes note of the information concerning the federal project "Every child's success", aimed at creating an effective system for identifying, supporting and developing the abilities and talents of children and youth. According to this project, it is planned to create regional centres in 85 subjects of the Federation by 2024. In this context, a cycle of open online lessons "ProJECtoriaya" for students of 8-11th grades is held annually during the school year. More than 30.000 educational institutions are connected on a regular basis. Open lessons are held in an interactive format through discussions and game practices from leading industry experts and business leaders. In addition, a forum of vocational guidance is held annually in Yaroslavl, bringing together teachers (more than 100), students (more than 500 high school students), as well as representatives of corporations and leading industry enterprises.

While taking note of the abovementioned information, the Committee notes that the report does not specify what is the amount of the budget allocated to vocational guidance services within the education system, whether in educational or psychological services institutions. It also notes that no information on the qualification and number of the staff involved in vocational guidance in the educational institutions is provided, nor on the ratio between the number of such staff and the number of students. The Committee recalls that vocational guidance must be provided by qualified (counsellors, psychologist and teachers) staff and with an adequate budget. It therefore asks the next report to provide such information. In the meantime, it reiterates its conclusion of non-conformity on this point.

Vocational guidance in the labour market

In its previous conclusion (Conclusions 2016), the Committee noted that the report did not contain the information previously requested (Conclusions 2012) on the expenditure on vocational guidance during the reference period and on the number of staff involved in the provision of vocational guidance in the labour market. It therefore considered that it had not been established that the right to vocational guidance in the labour market was guaranteed.

According to the report, from 2016-2018, despite the general decrease in applications to employment services in connection with the improvement of the situation of the labour market, the number of vocational guidance services provided increased by 7%. With regard specifically

to citizens seeking to resume work after a long break (more than a year), the number of vocational guidance services increased by 40% from 2015 to 2018 (from 289,5 to 406,4). The Committee notes however that the current report does not contain any other information in response to the Committee's previous requests. It accordingly reiterates its requests (expenditure, staffing and number of beneficiaries of vocational guidance in the labour market) and its previous finding of non-conformity on this point.

The Committee previously asked (Conclusions 2016) whether nationals of other States Parties to the Charter are guaranteed access to free vocational guidance provided by the Employment Service. It noted that only Russian citizens are entitled to services for unemployed people. The Committee notes from the information provided in the current report under Article 1§3 of the Charter that most of the public services offered by the Regional Employment Service are provided not only to citizens of Russia, but also to foreign nationals and stateless persons. However, only Russian citizens can receive the status of unemployed person and certain services are provided to people with the status of unemployed or other categories of citizens (e.g. women on maternity leave with children up to three years old).

The Committee recalls that it has previously stated that equal treatment with respect to vocational guidance must be guaranteed to everyone, including nationals of other Parties lawfully resident or regularly working on the territory of the Party concerned. This implies that no length of residence is required from students and trainees residing in any capacity, or having authority to reside in reason of their ties with persons lawfully residing, on the territory of the Party concerned before starting training. To this purpose, length of residence requirements or employment requirements and/or the application of the reciprocity clause are contrary to the provisions of the Charter (Conclusions XVI-2 (2003), Poland)

The Committee therefore asks the next report to clarify whether nationals of other Parties to the Charter lawfully resident or regularly working in Russia have access to vocational guidance services provided by the Regional Employment Service. In the meantime, the Committee concludes that the situation is not in conformity with Article 9 of the Charter on the ground that it has not been established that the right to vocational guidance in the labour market is guaranteed equally to nationals of other States Parties.

Conclusion

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

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

Article 10 - Right to vocational training

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

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

In 2016, the Committee deferred its conclusion and requested information on the achievement of the objectives to modernise general and pre-school education. The Committee also asked what measures were taken to set up mechanisms for the recognition/validation of knowledge and work experience acquired in the context of training/working activity to obtain a qualification or to gain access to general, technical and university higher education.

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

The authorities once again described the core elements of the Law of 29 December 2012 (cf. Conclusions 2016).

The Committee takes note of the different federal projects aiming to improve the competitiveness of vocational education, be it by introducing adapted education programmes or by expanding continuing education programmes.

In particular, the Committee notes the development since 2016 of an online educational platform intended to provide young professionals with broader access to higher education and ensure virtual academic mobility thanks to a network of educational institutions and the creation of individual training programmes.

To ensure that the education and training strategies and measures put in place meet the requirements of the labour market, the Committee asks for detailed and up-to-date information in the next report on the existing types of training to develop skills in new technologies. The authorities are asked to provide figures for the total capacity of these training activities (ratio of the number of places to the number of candidates), the pass rate of the persons enrolled, the employment rate and the average length of time needed by persons who have successfully completed this training to acquire a first skilled job.

The Committee reserves its position on this issue.

Measures taken to integrate migrants and refugees

The Committee notes that no information has been provided by the Russian authorities on this issue. Consequently, considering that it is not able to assess whether the measures taken to integrate migrants and refugees into vocational education and training are in conformity with Article 10§1, the Committee reserves its position and asks the authorities to submit such information.

Conclusion

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

Article 10 - Right to vocational training

Paragraph 2 - Apprenticeship

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

Article 10 - Right to vocational training

Paragraph 3 - Vocational training and retraining of adult workers

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

The Committee recalls that it previously found the situation to be in conformity with Article 10§3.

The Committee notes that the Russian Federation was asked to answer the specific targeted questions about this provision (these questions were included in the appendix to the letter of 27 May 2019 in which the Committee requested a report on the implementation of the Charter in relation to the provisions in the “Employment, training and equal opportunities” thematic group).

The Committee notes that the authorities have sent no information in response to the targeted question. The Committee therefore reserves its position and reiterates its question and asks the authorities to describe the strategies and measures (legal, regulatory and administrative frameworks, financing and practical measures) put in place for training and retraining across the entire range of skills (especially digital culture, new technologies, human-machine interaction and new working environments, the use and operation of new tools and machines) which workers need in order to be competitive in emerging labour markets.

Conclusion

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

Article 10 - Right to vocational training

Paragraph 4 - Long term unemployed persons

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

The Committee points out that it previously found the situation to be in conformity with Article 10§4.

The Committee notes that the Russian Federation was asked to answer the specific targeted questions about this provision (which were included in the appendix to the letter of 27 May 2019 in which the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the “Employment, training and equal opportunities” thematic group).

The information provided in relation to Article 1§1 indicates that the unemployment rate fell from 5.3% to 4.7% between 2015 and 2018. According to the information provided in relation to Article 10§4, the proportion of unemployed people who were long-term unemployed fell from 9.4% in 2015 to 9% in 2018.

The Committee notes that the number of unemployed people who were participating in a vocational training programme fell between 2015 and 2018 (from 183 000 people in 2015 to 169 000 people in 2018). However, among these people, the proportion of long-term unemployed increased (from 34.7% in 2015 to 44.3% in 2018).

However, the Committee points out that the report does not state the nature and extent of the special retraining and reintegration measures taken to tackle long-term unemployment. The Committee asks the authorities to describe, in the next report, the types of training and retraining measures offered in the labour market and to continue to provide updated statistics on the number of long-term unemployed participating in vocational training programmes.

Conclusion

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

Article 10 - Right to vocational training

Paragraph 5 - Full use of facilities available

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

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

Paragraph 1 - Vocational training for persons with disabilities

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

The Committee previously deferred its conclusion (Conclusions 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

The Committee refers to its previous conclusions (particularly Conclusions (2016) and to the current report for a description of the relevant legal framework. It recalls that Federal Law no. 273-FZ of 29 December 2012 on Education in the Russian Federation, as amended, provides that state policy and regulations concerning education shall guarantee a universal right to education and prohibit discrimination in this area. Article 79 of the Law on Education governs the organisation of education for children with disabilities. They can study at mainstream schools together with other pupils or in separate classes or groups, and at specialised educational institutions. According to this law, the authorities (at all levels) must make the arrangements necessary for persons with disabilities to be able to benefit from the right to education without discrimination and on the basis of equal opportunities.

According to the report a student with special educational needs is defined in the Education Law as an “individual who has deficiencies in physical and /or psychological development confirmed by psychological, medical and pedagogical examination board and requires the establishment of special conditions so that the individual may benefit from education.”

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 (2006) crystallises this trend by emphasizing that persons with disabilities include those with long term disabilities including physical, mental or intellectual disabilities which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. Importantly, this means there is no a priori exclusion from inclusive education based on the type of disability. Indeed, Article 2 of the CRPD which prohibits discrimination “on the basis of disability” may be read to go further by including those who have had a record of disability in the past but who continue to be treated negatively and those who never had a disability but may nevertheless be treated by others as if they had a disability (the so-called “attitudinally disabled”).

The Committee therefore asks the next report to clarify whether the assessment of “disability” in the fields of education and vocational training takes into account the personal and

environmental factors interacting with the individual. These factors are particularly relevant when it comes to an assessment of “reasonable accommodation”.

Access to education

According to the report at the end of 2019 (outside the reference period) (from indicators of the Accessible Environment Programme) 95.3% of children with disabilities aged 1.5 to 7 years were enrolled in preschool education, 47.4% of children with disabilities aged between 5-18 years were receiving supplementary education and 98.8% of children with disabilities were in receipt of primary, basic and general secondary education. The Committee seeks clarification as to what is meant by supplementary education.

The Committee also notes from the report that according to statistics from the Russian Statistical Agency in January 2018 there were a total of 653,508 children with disabilities in Russia. However, the report does not indicate how many of these are of school age. It further notes from the report that in the academic year 2012/2013 (outside the reference period) there were 417,400 children with “health limitations” in general education Institutions 207,200 in inclusive settings and 210,200 in special schools or special classes. The Committee notes that this data relates to the previous reference period and indicates that a high number of children with disabilities are educated in separate settings.

The Committee notes from the Concluding Observations of the UN Committee on the Rights of Persons with disabilities (CRPD/C/RUS/CO/1) that the UN Committee was concerned that segregated education is still in practice, despite the increase in the number of children with disabilities in mainstream education, in line with the concept of inclusive education.

The Committee asks for the Governments comment’s on this.

The Committee considers that the data provided is insufficient to assess the situation. In order to assess the effective equal access of children with disabilities to education and vocational training, 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 complete compulsory school
- the number of children with disabilities who do not complete compulsory school, as compared to the total number of children who 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.

Meanwhile the Committee reserves its position on the situation.

Measures aimed at promoting inclusion and ensuring quality education

According to the report a plan for the development of education for children with disabilities and special educational needs from 2019-2030 has been adopted. An accessible environment

programme adopted in 2019 (outside the reference period) aims to ensure all educational institutions are accessible.

The Committee asks the next report to provide information on the outcome of these measures.

Further the report provides information on the federal project “Modern School” which will update the infrastructure of over 900 separate educational institutions. The Committee asks whether it is intended to close certain separate educational institutions and ensure mainstream schools are accessible.

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

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

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

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

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

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

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

Remedies

The Committee previous noted that any person who believes that they have suffered discrimination can take the matter to the courts. The Committee requested further information about the remedies available to victims of discrimination on the ground of disability (including examples of relevant case law and the action taken) (Conclusions 2012, Conclusions 2016). No information is provided on this. Therefore the Committee concludes that the situation is not in conformity with the Charter on the ground it has not been established that there are adequate remedies in the event of discrimination on grounds of disability.

The Committee asks the next report to provide 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 the Russian Federation is not in conformity with Article 15§1 of the Charter on the ground that it has not been established that there are adequate remedies in the event of discrimination on grounds of disability in education.

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

Paragraph 2 - Employment of persons with disabilities

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

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

The Committee concludes that the situation in the Russian Federation is not in conformity with Article 15§2 of the Charter on the ground that it has not been established that the legal obligation to provide reasonable accommodation is respected (Conclusions 2016).

Legal framework

The Committee refers to its previous conclusion (Conclusions 2016) for a description of the relevant legal framework with regard to disability and non-discrimination, particularly Federal Law no. 181-FZ of 24 November 1995 on Social Protection for Disabled Persons, as amended which expressly prohibits all forms of discrimination based on disability in all areas and the Law on the Protection of Disabled Persons, as amended by Federal Law no. 168-FZ of 2 July 2013, provides that employers must provide the necessary equipment for persons with disabilities.

Access of persons with disabilities to employment

The report provides no information on the number of persons with disabilities of working age in Russia, nor on the number in employment, or unemployed. The Committee therefore asks that the next report provide up-to-date figures relating to the reference period, on the total number of persons with disabilities of working age, specifying how many of them are active and in work (in the public and private sector, and in the open labour market or in sheltered employment) and how many are unemployed.

Measures to promote and support the employment of persons with disabilities

The Committee refers to its previous conclusion where it noted the employment quotas for persons with disabilities, the reservation of certain jobs for persons with disabilities, the possibility of workplace adaptations the creation of special posts in enterprises particularly for persons with disabilities. It also noted the obligation on employers to submit monthly reports to the employment services providing information on the availability of vacant posts a (Conclusions 2016).

The current report states that following amendments to the quota system in 2013 it has created 300 000 additional jobs for persons with disabilities.

The report contains no new information on measures taken to encourage the employment of persons with disabilities.

The Committee previously concluded that the situation was not in conformity with the Charter a on the grounds that has not been established that the reasonable accommodation requirement is effectively guaranteed. It asked the next report to provide information on how reasonable accommodation is implemented in practice and whether this has prompted an increase in the employment of persons with disabilities in the open labour market. The report contains no information in this respect. Therefore, the Committee reiterates its previous conclusion.

The Committee notes from the Concluding Observations of the UN Committee on the Rights of persons with Disabilities (CRPD/C/RUS/CO/1, April 2018) that the UN Committee was concerned that the denial of reasonable accommodation for persons with disabilities is still not

defined as a ground for discrimination under current legislation. The Committee is also concerned that there is insufficient information available on the “special posts” and the labour market programmes for persons with disabilities, in particular for persons with intellectual or psychosocial disabilities, and that there is a lack of transparent and formalized training and assistance in providing reasonable accommodation for persons with disabilities in the workplace.

The Committee asks for the Government’s comments on this.

Remedies

The Committee previously requested the next report to provide information on the measures taken to ensure effective remedies against alleged discrimination in employment on grounds of disability (including examples of relevant case law and its follow up) (Conclusions 2016).

No information is provided in the report. Therefore the Committee repeats its request for this information. It recalls that legislation must confer an effective remedy on those who have been found to be discriminated against on grounds of disability and denied reasonable accommodation. It considers that should this information not be provided in the next report there will be nothing to establish that the situation is in conformity with the Charter.

Conclusion

The Committee concludes that the situation in Russian Federation is not in conformity with Article 15§2 of the Charter on the grounds that it has not been established that the obligation to provide reasonable accommodation is effectively guaranteed.

**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 takes note of the information contained in the report submitted by the Russian Federation.

The Committee recalls that in its letter requesting national reports it stated that no information was requested under this provision unless the previous conclusion was one of non-conformity or a deferral.

In its previous conclusions (Conclusions 2012 and 2016), the Committee concluded that the situation was not in conformity with Article 18§4 of the Charter on the ground that there were still restrictions on the right of Russian citizens to leave the country. It has therefore asked twice how many people have been affected by the restrictions. The report contains no information on this subject.

In its previous conclusion (Conclusions 2016), the Committee also asked for information about judicial decisions as a result of the appeals against the ban on leaving the country (under Article 17 of Federal Law No. 114-FZ of 15 August 1996 on the procedure for leaving and entering the Russian Federation). The report does not contain the requested information but reiterates that provided in its previous reports.

The Committee notes that in the absence of more detailed information on cases of practical application of the law in question and on the case-law of the domestic courts concerning possible restrictions on the right to leave the country, it is still unable to alter its previous conclusion. It therefore notes that the situation is still not in conformity with Article 18§4 of the Charter.

Conclusion

The Committee concludes that the situation in the Russian Federation is not in conformity with Article 18§4 of the Charter on the ground that there are still restrictions on the right of Russian citizens to leave the country.

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

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

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

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

Legal framework

In its previous conclusion (Conclusions 2016), the Committee noted that according to Section 22 of the Labour Code (main rights and duties of the employer) the employer is obliged to ensure equal pay to workers performing work of equal value. Under Section 132 of the Labour Code “any form of discrimination in setting and modifying the terms of payment is prohibited”

Regarding the *concept of remuneration*, the Committee points out that it must cover all elements of pay, i.e. basic pay and all other benefits paid directly or indirectly in cash or kind by the employer to the worker by reason of the latter’s employment (University Women of Europe (UWE) v. France, Complaint No. 130/2016, decision on the merits adopted on 5 December 2019, §163). It therefore requests that the next report contain information on this point.

In its previous conclusion, the Committee concluded that the situation was not in conformity with Article 20 of the Charter on the ground that women were not permitted to work in all professions which constitutes discrimination based on sex. The report repeats the information that gave rise to the ground for non-conformity, and the Committee therefore reiterates it. However, the Committee takes note of information provided in the 9th periodic report submitted by the Russian Federation under article 18 of the Convention in 2019 (CEDAW/C/RUS/9, 8 January 2020, p.124) indicating that under Ministry of Labour Order No. 512 of 18 July 2019 (out of the reference period), a list of production processes, jobs and occupations with harmful and/or hazardous working conditions in which the use of women’s labour is restricted was approved to replace the existing list of physically demanding jobs and jobs with harmful or hazardous working conditions in which the use of women’s labour is prohibited, which was approved pursuant to Government Decision No. 162 of 25 February 2000. The new list contains only 100 approved items instead of 456 in the previous one. The Order enters into force on 1 January 2021 (out of the reference period).

The Committee recalls that according to the Appendix to Article 20 (§2), provisions concerning the protection of women are not deemed to be discrimination. Such provisions must be objectively justified by needs that apply exclusively to women, such as those relating to maternity (pregnancy, childbirth and the post-natal period). These particular rights are also guaranteed by Article 8 of the Charter (right of employed women to protection of maternity). On the other hand, prohibiting women from performing night work or underground mining while authorising men to do so is contrary to the principle of equal treatment. Therefore, the Committee asks whether there are still activities where gender is a prerequisite for their performance and examples of such activities.

Effective remedies

The Committee recalls that domestic law must provide for appropriate and effective remedies in the event of alleged pay discrimination. Workers who claim that they have suffered discrimination must be able to take their case to court. Effective access to courts must be guaranteed for victims of pay discrimination. Therefore, proceedings should be affordable and timely. Anyone who suffers pay discrimination on grounds of sex must be entitled to adequate compensation, i.e. compensation that is sufficient to make good the damage suffered by the victim and to act as a deterrent. Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and from being sufficiently dissuasive is contrary to the Charter. The burden of proof must be shifted. The shift in the burden of proof consists in ensuring that where a person believes she or he has suffered discrimination on grounds of sex and establishes facts which make it reasonable to suppose that discrimination has occurred, the onus is on the defendant to prove that there has been no infringement of the principle of non-discrimination (Conclusions XIII-5, Statement of interpretation on Article 1 of the 1988 Additional Protocol). Retaliatory dismissal in cases of pay discrimination must be forbidden. Where a worker is dismissed on grounds of having made a claim for equal pay, the worker should be able to file a complaint for dismissal without valid reason. In this case, the employer must reinstate her/him in the same or a similar post. If reinstatement is not possible, the employer must pay compensation, which must be sufficient to compensate the worker (i.e. cover pecuniary and non-pecuniary damage) and to deter the employer (see in this respect collective complaints Nos. 124 to 138, University Women of Europe (UWE) v. Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Greece, Ireland, Italy, the Netherlands, Norway, Portugal, Slovenia and Sweden, 5-6 December 2019).

As regards the *remedies*, the Committee refers to its previous conclusion under Article 4§3 (Conclusions 2018), in which it noted that according to Article 3 of the Labour Code, persons considering themselves to be discriminated against shall be entitled to address the federal labour inspectorate bodies and/or courts for restoration of their violated rights, compensation of the material loss and redress of the moral damage, and that the legislation did not establish special criteria for determining the amount of compensation for pay discrimination. The Committee asks for the next report to provide the examples of compensation awarded by the courts in cases of pay discrimination. It also asks whether the obligation to compensate the difference of pay is limited in time or is awarded for entire period of unequal pay.

As regards the *burden of proof*, the report does not contain any information, therefore the Committee reiterates its previous finding of non-conformity (Conclusions 2016) on the ground that the legislation does not provide for a shift in the burden of proof in gender pay discrimination cases.

The Committee asks for the next report to indicate what rules apply in the event of dismissal in retaliation for a complaint about equal pay. It also asks whether sanctions are imposed on employers in the event of gender pay discrimination.

Pay transparency and job comparisons

The Committee recalls that pay transparency is instrumental in the effective application of the principle of equal pay for work of equal value. Transparency contributes to identifying gender bias and discrimination and it facilitates the taking of corrective action by workers and employers and their organisations as well as by the relevant authorities. States should take measures in accordance with national conditions and traditions with a view to ensuring adequate pay transparency in practice, including measures such as those highlighted in the European Commission Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency, notably an obligation for employers to regularly report on wages and produce disaggregated data by gender. The Committee regards such measures as indicators of compliance with the Charter in this respect. The Committee also recalls that, in order to establish whether work performed is equal or of equal

value, factors such as the nature of tasks, skills, as well as educational and training requirements must be taken into account. States should therefore seek to clarify this notion in domestic law as necessary, either through legislation or case law. In this respect, job classification and evaluation systems should be promoted and where they are used, they must rely on criteria that are gender-neutral and do not result in indirect discrimination (see in this respect Complaints Nos.124 to 138, UWE, *op. cit.*).

The report does not contain any information on *pay transparency* on the labour market. The Committee requests that the next report contain this information.

With regard to the *parameters for establishing equal value for the work performed*, the Committee notes that wages take into account qualifications, the complexity of the work, and the quantity and quality of the work performed. According to above-mentioned periodic report submitted to CEDAW, an employee's wages are established under an employment contract in accordance with the employer's wage systems. Wage systems should ensure that the wages paid to employees vary in line with the complexity and quality of the work done and with the effectiveness of their work, as judged against specified criteria and indicators. The employee's sex does not affect the amount of pay received.

The Committee recalls that it examines the right to equal pay under Article 20 and Article 4§3 of the Charter, and does so therefore every two years (under thematic group 1 "Employment, training and equal opportunities", and thematic group 3 "Labour rights"). Articles 20 and 4§3 of the Charter require the possibility to make job comparisons across companies (see in this respect Complaints Nos. 124 to 138, UWE, *op. cit.*). The Committee asks whether it is possible to make pay comparisons across companies in equal pay litigation cases. In order to clarify this issue, the Committee considers that provision should be made for the right to challenge unequal remuneration resulting from legal regulation and collective agreements. In addition, there also should be the possibility to challenge unequal remuneration resulting from internal pay system within a company or a holding company, if remuneration is set centrally for several companies belonging to such holding company.

The Committee also requests that the next report indicate whether a real and/or hypothetical comparator of remuneration is required by law to establish or prove a difference in treatment.

The Committee also asks for the next report to provide information on the job classification and promotion systems in place as well as strategies adopted and the measures taken to ensure pay transparency in the labour market (notably the possibility for workers to receive information on pay levels of other workers), including the setting of concrete timelines and measurable criteria for progress.

Enforcement

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

Obligations to promote the right to equal pay

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

effective policies aimed at reducing it (see in this respect Complaints Nos.124 to 138, UWE, *op. cit.*).

The report states that the cumulative average wages of workers by sex and subjects of the Russian Federation are compiled by the Federal Service of State Statistics (Rosstat) once every two years. According to data from Rosstat, the ratio of women's wages to men's wages was 71.7% in October 2017 (compared with 72.6% in October 2015 and 74.2% in October 2013). The wage gap between women and men is explained by the higher proportion of women in the sectors of the economy in which pay is lower.

The report indicates that, depending on the occupational group, in 2017 the gender pay gap varied: for executives (32.2%); for specialists with the highest level of qualification (29.4%); for specialists with a medium level of qualification (41.4%).

The Committee finds that there is a significant wage gap between men and women in the Russian Federation that has not been greatly reduced during the reference period. The Committee asks for the next report to provide updated information on the specific measures and activities implemented to promote gender equality, overcome gender segregation in the labour market and reduce the gender pay gap, together with information on the results achieved. In the meantime, the Committee finds that the situation is not in conformity with Article 20 (c) of the Charter on the ground that the obligation to make measurable progress in reducing the gender pay gap has not been fulfilled.

Conclusion

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

- women are not permitted to work in all professions which constitutes discrimination based on sex;
- the legislation does not provide for a shift in the burden of proof in gender pay discrimination cases;
- the obligation to make measurable progress in reducing the gender pay gap has not been fulfilled.

Article 24 - Right to protection in case of dismissal

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

Scope

In its previous conclusion (Conclusions 2016) the Committee considered that the situation was in conformity with the Charter as regards termination of employment during a probationary period. The Committee notes from the report that there are no changes to this situation.

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

Obligation to provide valid reasons for termination of employment

The Committee notes that there have been no changes to the situation which it has previously considered to be in conformity with the Charter. The Committee has previously noted that, on reaching retirement age (i.e. age being a condition for a state pension), all rights and guarantees provided by the labour legislation are retained and the entitlement to the pension is not a reason to restrict them. A worker who has reached retirement age may be dismissed by the employer only on the grounds provided by labour legislation for the dismissal of any other worker, i.e. on general grounds (Article 77 of the Labour Code).

Prohibited dismissals

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

In its previous conclusion (Conclusions 2016) the Committee observed that the period during which the disabled worker cannot be dismissed by the employer corresponds to the actual duration of his/her illness as confirmed by a temporary disability leave and can be long. The Committee further notes from the report that if, as a result of illness or injury, a worker has completely lost the ability to work, he/she will be granted a disability group and the termination of an employment contract is possible if an employee is considered completely incapable of work according to the results of medical examination (p. 5, part 1, Article 83 of the Labour Code). In this case, it is not dismissal by the employer but termination of employment because of the circumstances that do not depend on the will of the parties (Article 83 of the Labour Code).

Remedies and sanctions

The Committee notes that there have been no changes to the situation which it has previously considered to be in conformity with the Charter.

The report reiterates that, as regards compensation for illegal dismissal, according to Article 234 of the Labour Code, the employer is obliged to reimburse financial damage to the worker. The industrial tribunal shall rule on the average wage payable to the worker for his/her forced

absence, i.e. for the whole period when the worker could not perform work functions and get paid (part 2 of Article 394 of the Labour Code).

According to p. 1, part 2 of Article 391 of the Labour Code, the courts shall hear individual labour disputes. Besides restitution of material damage, the unlawfully dismissed worker is entitled to moral damages. The law does not establish limits to the amount of such compensation and the court decides this matter at its discretion. To determine the amount to be paid to the worker, the court takes into account the nature of the physical and mental suffering caused to the worker, the degree of fault of the employer as well as the requirements of reasonableness and fairness.

Conclusion

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

