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EUROPEAN SOCIAL CHARTER

European Committee of Social Rights

Conclusions 2020

SERBIA

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 Serbia, which ratified the Revised European Social Charter on 14 September 2009. The deadline for submitting the 9th report was 31 December 2019 and Serbia submitted it on 27 April 2020.

The Committee recalls that Serbia 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).

Serbia has accepted all provisions from the above-mentioned group except Article 10§5.

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

The conclusions relating to Serbia concern 14 situations and are as follows:

– 8 conclusions of non-conformity: Articles 1§2, 1§4, 9, 10§3, 15§1, 15§2, 15§3 and 20.

In respect of the other 6 situations related to Articles 1§1, 10§1, 10§4, 18§2, 18§4 and 24, 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 Serbia under the Revised Charter.

The next report from Serbia 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 Serbia.

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

Employment situation

According to Eurostat, the GDP growth rate fluctuated during the reference period, increasing from 1.8% in 2015 to 3.3% in 2016, then dropping to 2.1% in 2017 and raising to 4.5% in 2018. The report explains that in 2017, the GDP growth rate was negatively affected by unfavourable weather conditions which impacted the construction sector and agriculture.

Again according to Eurostat, the overall employment rate (persons aged 15 to 64 years) increased from 52.1% in 2015 to 58.8% in 2018.

The employment rate for men increased from 59.3% in 2015 to 65.7% in 2018, and the rate for women rose from 45% in 2015 to 52% in 2018. The employment rate for older workers (55 to 64-year-olds) increased from 37.4% in 2015 to 46.5% in 2018. Youth employment (15 to 24-year-olds) increased from 16.7% in 2015 to 21.1% in 2018.

The overall unemployment rate (persons aged 15 to 64 years) decreased considerably, from 18.2% in 2015 to 13.3% in 2018.

The unemployment rate for men decreased from 17.4% in 2015 to 12.5% in 2018, and the rate for women declined from 19.2% in 2015 to 14.2% in 2018. Youth unemployment (15 to 24-year-olds) fell from 43.2% in 2015 to 29.7% in 2018. Long-term unemployment (12 months or more, as a percentage of overall unemployment for persons aged 15 to 64 years) decreased from 59.7% in 2015 to 50.5% in 2018.

The proportion of 15 to 24-year-olds “outside the system” (not in employment, education or training, i.e. NEET) decreased from 20.1% in 2015 to 16.5% in 2018 (as a percentage of the 15 to 24-year-old age group).

The Committee notes that the employment and unemployment indicators showed positive trends during the reference period (an increase in the employment rate and falling unemployment). However, unemployment rates were still high and youth employment was still low in 2018; in addition, the gap between the employment rates of men and women remained wide (approximately 14 percentage points in 2018).

Employment policy

In its report, the Government recalls that the Law on Employment and Unemployment Insurance governs labour market measures implemented to support harder-to-employ persons in finding a job. Harder-to-employ persons are those who due to their health condition, insufficient or inadequate education, social and demographic characteristics, regional or occupational-related mismatch between supply and demand at labour market or due to other personal circumstances have difficulties in finding job. The report specifies that all unemployed persons registered with the Public Employment Service have access to its services and to active employment policy measures, whose implementation is prioritised for the harder-to-employ groups as provided for under the annual National Employment Action Plan.

In reply to the Committee’s question on labour market policy measures designed to support specific groups or communities, the Government mentions programmes and measures aiming at enhancing the employability of Roma. It states that between 2015 and 2018, 20,200 Roma participated in active employment policy measures, mainly in the active job-search programme

and in functional primary adult education (which encompasses acquisition of primary education and competences for the performance of simple jobs). The report indicates that 25,126 unemployed Roma were registered with the Public Employment Service in 2016 and 26,099 in 2018, representing 3.5% (in 2016) and 4.5% (in 2018) of the total number of the registered unemployed. In this regard, the Committee notes that according to the European Commission, access to the labour market remains particularly difficult for the Roma (Commission staff working document, Serbia Country Report 2019, SWD(2019) 219 final, 29 May 2019). The Committee asks the next report to comment on this point.

The Government adds that under the Youth Employment Promotion project, career guidance, counselling and training courses were offered to 944 young Roma in 2017 and to 1,476 young Roma in 2018. The Committee requests that the next report provide information both on the overall number of young people who participated in the Youth Employment Promotion project and on the results of the project.

The Committee notes that the special service package for youth (cf. Conclusions 2016) still applies for young persons between 15 and 29 years old.

The report does not contain any information on labour market measures specifically designed to support women and older workers. The Committee requests that the next report provide information in this respect.

The Committee notes that under the "IPA 2012 Better Efficiency of Employment Policies Targeted at Vulnerable Population Project" 60 job-clubs and 20 career guidance centres were inaugurated in 2016 with the aim of encouraging unregistered unemployed persons to register with the Public Employment Service and thus of increasing the activation of the unemployed.

The statistical data provided by the Government show that the activation rate increased from 20.8% in 2015 to 28.4% in 2018 (i.e. of 552,513 registered unemployed persons, 156,992 benefited from active employment policy measures in 2018).

The Government further indicates that public expenditure on labour market policies (as a percentage of GDP) rose slightly, from 0.07% in 2016 and 2017 to 0.08% in 2018, and acknowledges that this share is not in line with the objective identified under the National Employment Strategy 2011-2020.

The Committee points out that the Government has only provided information on a limited number of employment programmes. It has not given full details of the active measures taken or the number of participants (broken down by type of measure and year). The Committee asks the next report to provide information in this respect.

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 Serbia.

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.

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

As regards the legislation prohibiting discrimination in general terms, the Committee has exhaustively assessed the legal framework, with the 2009 comprehensive anti-discrimination law as its backbone, in its previous conclusion (see Conclusions 2016). The Committee notes that in their assessment of the relevant anti-discrimination provisions, the European Equality Law Network (in the report on Serbia of 2020) and the UN Human Rights Committee (concluding observations on Serbia of 2017) discerned shortcomings as regards the definition of indirect discrimination as a form of discrimination. It asks that the next report comment on this observation.

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. In this regard, the Committee notes, in particular, concerns about discrimination on grounds of sexual orientation raised by the United Nations Human Rights Committee in the above-mentioned concluding observations. As regards discrimination on grounds of ethnic origin and race, it also notes that the European Commission against Racism and Intolerance (ECRI) in its 2020 conclusions on Serbia pointed to the unproportionate number of Roma and members of other minorities employed in the public sector and their discriminatory working conditions by comparison with other civil servants. 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 has previously asked whether some categories of employment were closed to foreigners and if so, which ones (Conclusions 2016). The report states that pursuant to Civil Servants Law, civil servant positions shall be accessible only to adult Serbian nationals. However, public employee jobs in the civil service are open to non-nationals under a contract of employment under the Labour Code. The Committee asks how these provisions are implemented in practice. The report further states that staff working in the regional and local government authorities is subject to Employment with Authorities Law, under which one of the employment requirements for regional or local authorities is that a candidate is an adult Serbian national. 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 concludes that the fact that nationals of other State Parties to the Charter are excluded from access to the regional and local governments is not in conformity with Article 1§2 of the Charter.

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 does not provide any information on the prevention of such discrimination. The Committee thus renews its request and considers that, should the next report fail to provide it exhaustively, nothing will allow to show that the situation is in conformity with the Charter on this point.

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 and 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 as of 2008, the Ombudsperson's mandate encompasses "ensuring law enforcement and maintaining law and order, ensuring citizens' rights and freedoms, preventing discrimination". The Committee asks that the next report provide comprehensive information on how the Ombudsperson exercises his/her powers, and whether the independence and resources of the Office allow for its effective functioning.

The report further states that the Equality Commissioner is competent to file actions for the violation of the rights guaranteed by the law, with the consent and on behalf of the alleged victim of discrimination. In the reference period, the Commissioner initiated 17 proceedings, 7 of which were settled by a decision in favour of the victim. The Committee asks that the next report provide explanations on the low number of cases in which the Commissioner was active, and whether any awareness-raising measures have been adopted or envisaged to address this phenomenon. It also asks whether the Commissioner is competent to examine complaints and give decisions and if so, what sanctions he/she may impose.

The report does not provide comprehensive information on what legal institutions, judicial or administrative, exist for the persons alleging that they have suffered discrimination in the workplace. It contains no comprehensive 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. It provides, for instance, raw data on the numbers of inspections conducted, without specifying their nature or outcomes. The Committee notes in this regard the concerns raised by the European Equality Law Network, in the above-mentioned report, that sanctions are still not effective, proportionate and dissuasive. Further, the Committee notes recommendations related to remedies in discrimination cases, made by the United Nations Human Rights Committee in the concluding observations mentioned above, that, namely, the capacity of the Commissioner for the Protection of Equality to bring claims under the anti-discrimination law should be increased; moreover, the judicial enforcement of the anti-discrimination law through

criminal and civil proceedings, including by training judges, law-enforcement officials and lawyers regarding non-discrimination should be strengthened. The Committee asks that the next report comment on these observations.

As regards the judicial remedies, the Committee has also repeatedly requested information whether legislation provides for a shift in the burden of proof in discrimination cases (see Conclusions 2012 and 2016). The report does not provide information in this respect. The Committee notes in this respect the concerns raised by the European Equality Law Network in the 2020 report on Serbia that the anti-discrimination legal framework does not contain a provision on the reversal of the burden of proof. Given the persistent lack of information on the matter, the Committee concludes that it has not been demonstrated that the situation is in conformity with the Charter on this point.

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 Mussele v. Belgium*, 23 November 1983, § 32, Series A no. 70; *Siliadin v. France*, no. 73316/01, §§ 115-116, ECHR 2005-VII; *S.M. v. Croatia* [GC], no. 60561/14, §§ 281-285, 25 June 2020). The Committee also refers to the interpretation by the Court of the concept of « servitude », also prohibited under Article 4§2 of the Convention (*Siliadin*, § 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 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 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 present report does not reply to the specific, targeted questions for this provision on forced labour (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 that, with regard to the exploitation of vulnerability and forced labour, Article 388 of the Criminal Code criminalises labour trafficking and prescribes penalties ranging from two to 12 years’ imprisonment. It provides that, “whoever by force or threat, deception or maintaining deception, abuse of authority, trust, dependency relationship, difficult circumstances of another, retaining identity papers or by giving or accepting money or other benefit, recruits, transports, transfers, sells, buys, acts as intermediary in sale, hides or holds another person with intent to exploit such person’s labour, forced labour, commission of offences, prostitution, begging, pornography, removal of organs or body parts, or service in armed conflicts, shall be punished by imprisonment of three to twelve years”.

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 law-enforcement and judicial authorities.

In this regard, the Committee observes from the 2018 GRETA Report that Serbia remains primarily a country of origin of victims of trafficking in human beings (THB) and is significantly affected by internal trafficking (Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Serbia, second evaluation round, GRETA (2017)37, 29 January 2018). GRETA urged the Serbian authorities to take measures to ensure that THB cases are investigated proactively, prosecuted successfully and lead to effective, proportionate and dissuasive sanctions.

According to the 2018 US Department of State report, the government did not meet the minimum standards in several key areas related to human trafficking.

According to the European Commission 2019 country report, the number of convictions on trafficking in human beings is low (23 individuals were convicted, while no individuals were

convicted of having committed the offence within the context of organised crime). However, in 2018 Serbia applied the 'especially sensitive victims' provision to 18 victims (compared with 10 in 2017), thereby ensuring a better protection of victims and a higher quality of the investigation. The revision of the standard operating procedures, i.e., the document that defines roles and responsibilities of all key anti-trafficking stakeholders in identification, support and case processing, is underway. Serbia is starting to be more proactive in terms of detection, identification and protection of victims of trafficking in human beings. Specialised investigation teams were established in 27 criminal police units throughout Serbia.

The Committee asks that the next report provide information on the enforcement of the criminal law related to forced labour. The report should provide information (including statistics and examples of case law) on the prosecution and conviction of exploiters for slavery, forced labour and servitude during the next reference period, in order to assess how the legislation is interpreted and applied to combat labour exploitation.

Prevention

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

The Committee notes from the 2018 GRETA Report that the institutional framework for combating human trafficking has evolved, with the setting-up of the Office for Co-ordinating Action against Trafficking in Human Beings, headed by the National Anti-Trafficking Co-ordinator.

According to this report, Serbia adopted a Strategy for the Prevention and Suppression of Trafficking in Human Beings, especially among Women and Children, and Victim Protection (2017-2022), and a related Action Plan for 2017-2018, supported by funding from the state budget. It has the potential to give new impetus to the fight against human trafficking in Serbia and to strengthen strategic partnerships with civil society. The strategy for social inclusion of Roma men and women in Serbia 2016-2025 also includes measures aimed at the prevention of trafficking in human beings, as well as protection, support and reintegration of victims.

As there is no information in the report, the Committee asks the authorities to indicate the measures taken and envisaged to strengthen the capacities of labour inspectors in the prevention of forced labour and, in particular, information related to resources made available to them and training of all bodies concerned in the fight against forced labour, including judges and prosecutors.

Moreover, pursuant to the positive obligations deriving from Article 1§2 of the Charter, the Committee asks that the next report provide information on measures put in place regulating businesses and other economic activity to ensure that they do not use forced labour. Information is also requested on whether the domestic 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.

Protection of victims and access to remedies, including compensation

The report does not indicate any detailed information related to the protection of victims of forced labour and their access to remedies.

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 2018 European Commission country report indicates that Serbia is implementing its strategy and action plan for the prevention and suppression of trafficking in human beings for 2017-2022. The capacity of the Centre for Protection of Victims of Trafficking in Human Beings should be strengthened. A support fund for victims should be established, and the compensation mechanism in civil proceedings needs to be improved. Efforts to facilitate the reintegration of victims into society require particular attention.

The Committee asks for information in the next report on the number of potential victims of labour exploitation during the next reference period and the number of such persons benefiting from protection measures and support. It also asks that the next report provide general information on the type of assistance (protection from retaliation, safe accommodation, health care, material assistance, social and economic assistance, legal advice, translation and interpretation, voluntary repatriation, provision of residence permits for migrants), and to specify the period during which such support and assistance are provided.

As regards access to remedies and compensation, the Committee asks whether the existing legislative framework provides victims of forced labour and labour exploitation, including irregular migrants, with accessible and effective remedies (before criminal, civil, employment courts or other venues) to obtain compensation for all the damages related (including unpaid wages and contributions for social security benefits). It requests statistical information on the number of victims who obtained compensation and examples of the amounts awarded.

Domestic work

The report does not provide information on domestic work.

According to the 2018 GRETA Report, the Labour Inspectorate (under the Ministry of Labour, Employment, Veteran and Social Affairs) was given authority in 2015 to inspect registered and non-registered employers in any sector of economy in Serbia. However, private households which may employ domestic workers are not covered.

Regular inspection visits should be announced three days in advance, but can also take place without a prior announcement if the inspectorate receives information about illegal employment. According to the authorities, until March 2017, labour inspections resulted in detecting 813 persons employed in violation of the legislation, but none were referred for identification as victims of Trafficking in Human Beings. GRETA noted that the capacity of labour inspectors to detect cases of trafficking in Serbia remains limited. According to GRETA, the number of labour inspectors (238) is not commensurate with the number of businesses to check (356 000).

In this respect, the Committee recalls 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, for the purposes of Article 3§3 of the Charter, inspectors must be authorised to check all workplaces, including residential premises, in all sectors of activity (Conclusions XVI-2 (2003), Czech Republic; Conclusions 2013, Statement of Interpretation of Article 3§3 (i.e., on Article 3§2 of the 1961 Charter). The Committee 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 provide information on this point in the next report.

“Gig economy” or “platform economy” workers

The report does not provide information on “gig economy workers”.

The Committee notes that since the global crises of 2008, the “gig economy” has been growing and developing throughout the country, affecting mostly young workers. Therefore, the Committee requests that the next report contain information on the concrete measures taken or envisaged to protect workers in the “gig economy” or “platform economy” against all forms of exploitation and abuse. It asks to be informed on the status and rights of these workers (employees or self-employed, or an intermediary category, and their rights in terms of working hours, paid holiday and minimum wage), on whether labour inspection services have any mandate to prevent exploitation and abuse in this particular sector, and on any existing remedies they have access to, in particular to challenge their employment status.

Conclusion

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

- restriction on access of nationals of other States Parties to employment in the regional and local governments is excessive, which constitutes a discrimination on grounds of nationality;
- it has not been established that legislation provides for a shift in the burden of proof in discrimination cases.
- it has not been established that the national authorities have fulfilled their positive obligations to prevent forced labour and labour exploitation, to protect victims, to effectively investigate the offences committed, and to punish those responsible for forced labour offences.

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 Serbia.

As Serbia 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 that the situation was not in conformity with the Charter on the following grounds:

- it had not been established that the right to vocational guidance within the education system was guaranteed (Article 9) (Conclusions 2020);
- it had not been established that the right of an employed person to an individual leave for training was guaranteed (Article 10§3) (Conclusions 2020);
- it had not been established that the right of persons with disabilities to mainstream training was effectively guaranteed (Article 15§1) (Conclusions 2020).

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

Conclusion

The Committee concludes that the situation in Serbia 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 is guaranteed;
- it has not been established that the right of an employed person to an individual leave for training is guaranteed;
- it has not been established that the right of persons with disabilities to mainstream training is effectively guaranteed.

Article 9 - Right to vocational guidance

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

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.

The Committee asks the next report to clarify whether foreign nationals can have access to vocational guidance services.

Vocational guidance within the education system

In its previous conclusion (Conclusions 2016), the Committee noted that the report did not contain information on how the provision of vocational guidance is currently organised in educational institutions, the number of staff providing it and their qualification, the number of pupils/students who benefit from it and the financial resources allocated to it. It therefore asked the next report to contain such information. In the meantime, it concluded that the situation in Serbia 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 was guaranteed.

The report provides information concerning the number of persons who benefited from the services of direct career counselling at the Career Counselling and Information Centres (CCICs) of the Public Employment Service (PES). The Committee understands that such number includes also pupils and students.

The Committee takes note in particular of the data concerning the year 2018. In this respect, the report indicates that 6,744 persons benefited from the services of the CCICs. In the same year, 54,358 visitors consulted the E-Guide on the Selection of Occupation, for career planning after the completion of primary school (available at www.vodiczaosnovce.nsz.gov.rs). Moreover, in cooperation with schools and other relevant employment actors at regional level, the PES organised and took part in 32 fairs of career orientation and other events related to career planning. The PES also took part and delivered 28 forums/workshops/lectures for young people across Serbia on career guidance, counselling and career management skills, organised in cooperation with local partners (Chamber of Commerce of Serbia, Youth Office, local government units, etc.). According to the report, 10,177 persons benefited from such services.

The current report indicates that a career guidance and counselling programme is offered at school. According to the report, the career guidance and counselling programme includes provision of career information, counselling, education for the chosen career, career guiding and monitoring. In this context, psychological assessments as well as many activities such as trainings, courses, volunteering activities, practice, etc.) are provided in order to prepare secondary school students for decision-making on the continuation of their career development.

While taking note of the information above, the Committee notes that the current report does not contain information on the number and qualifications of staff providing career guidance in educational institutions, the number of pupils/students who benefit from it and the financial resources allocated to it. It therefore asks the next report to contain 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 took note of the organisation of vocational guidance in the labour market, the number of staff providing it and their qualification, as well as the number of persons who benefited from it over the reference period. The Committee asked the next report to indicate the budget allocated to the National Employment Services related to vocational guidance and career counselling within the labour market.

The current report indicates that career counsellors and career planning methodology and provision of career information carry out the activities of career guidance and counselling as part of their regular assignments of the job post, that is, there are no separate allocations within allocations for active labour market policies for such purposes. The Committee asks the next report to indicate what budget is allocated to the National Employment Services related to vocational guidance and career counselling within the labour market and the developments in budget allocation during the reference period. In the meantime, it reserves its position on this point. It points out that, should the necessary information not be provided in the next report, nothing will enable the Committee to establish that the situation is in conformity with Article 9 of the Charter on this point

Conclusion

The Committee concludes that the situation in Serbia 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 within the education system is guaranteed.

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 Serbia.

The Committee refers to its previous conclusions for a description of the situation which it found to be in conformity with the Charter (Conclusions 2016).

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

Serbia's National Qualifications Framework is the basis used by the formal education system and the non-formal education services in matching teaching with the demands of the labour market (analysis of the needs of the job market and of employers).

The report states that the authorities give priority to young people (15 to 29-year-olds), and in particular those who are "NEET", by putting at their disposal special and tailor-made vocational training programmes, depending on whether or not they have prior qualifications. For each young person registered with the Employment Agency, a "package of tailor-made services" is put in place to enable them to update their competencies and be competitive on the job market.

The authorities indicate with regard to Article 1§4 that the education system also offers ongoing and advanced training to meet the demands of the labour market.

Measure taken to integrate migrants and refugees

The Committee notes that no information has been provided by the Serbian 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 Serbia.

In its previous conclusion (Conclusions 2016), the Committee concluded that the situation in Serbia was not in conformity with Article 10§3 of the Charter.

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

In response to the Committee’s previous finding of non-conformity on the ground that it had not been established that the right of employees to individual leave for training was guaranteed, the report states that, pursuant to Article 49 of the Labour Code, the employer shall provide conditions for education, vocational training and advanced training for his/her employees when the work process requires so, or when new methods and organization are to be introduced. The cost of such education, vocational training and advanced training shall be provided from the funds of the employer and other sources. The report also provides information on the cost and regulations of the said provision of the Labour Code. However, it does not explicitly state whether the right of workers to individual leave for training is guaranteed. The Committee, therefore, reiterates its previous conclusion.

In its previous conclusion the Committee requested updated information on the share of employed persons participating in training measures. With regard to unemployed persons, it requested information on the activation rate. In the absence of information on these points, the Committee defers its conclusion on this point and reiterates its previous questions. It considers that should this information not be provided in the next report there will be nothing to demonstrate that the situation is in conformity with the Charter.

In relation to the targeted question addressed to Serbia with the letter of 27 May 2019, the Committee notes from the information provided in the report under Article 10§1 that the programme of further education and training, organised by the Public Employment Service and being available to unemployed persons and to employed persons that are not able to find or maintain an adequate job, is designed on the basis of analyses on labour market needs and on employers’ needs of knowledge and skills. Among the specific training programmes mentioned in the report, there are the ‘training as a response to labour market demand’ and the programme titled ‘specialist IT trainings in line with the labour market demand’. The Committee takes note of this information and asks the next report to provide more information on strategies and measures (legal, regulatory and administrative frameworks, funding and practical arrangements) in place to ensure skilling and re-skilling in the full range of competencies (in particular digital literacy, new technologies, human-machine interaction and new working environments, use and operation of new tools and machines), needed by workers to be competitive in emerging labour markets.

Conclusion

The Committee concludes that the situation in Serbia is not in conformity with Article 10§3 of the Charter on the ground that it has not been established that the right of an employed person to an individual leave for training is guaranteed.

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 Serbia.

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”).

The Committee previously concluded that the situation in Serbia was not in conformity with Article 10§4 of the Charter on the ground that it has not been established that special measures for the retraining and reintegration of the long-term unemployed have been effectively provided or promoted (Conclusions 2016).

According to the report, the number of registered long-term unemployed decreased as follows over the reference period: 484,566 persons in 2015, 470,474 persons in 2016, 428,194 persons in 2017 and 372,259 persons in 2018. Further the report states under Article 1.1 that the long-term unemployment rate, which was at 7.9% in 2018, fell by 2.5 percentage points in the period 2016-2018. In comparison with the EU countries, long-term unemployment rate in Serbia is two times higher than the EU average (3.1%),

The Committee notes from the report that the long-term unemployed persons are given priority in active labour market policies (ALMPs). According to the data available with from the Public employment service in 2018 the participation of long-term unemployed persons was 68%.

According to the report long-term unemployed persons are provided with a package of services which include the following:

- 1) assessment of their employability;
- 2) development of a tailor-made employment plan and measures for activation and employability enhancing;
- 3) inclusion into active job-search measures (self-efficiency training for skilled long-term unemployed persons and motivational and activation trainings for unskilled and low skilled persons);
- 4) inclusion into programmes of further education and trainings(programme of functional primary adult education, programme of acquisition of practical knowledge for unskilled persons, redundant workers and long-term unemployed persons, etc.), public works, etc.;
- 5) inclusion in the subsidized employment programme.

However, the Committee did not find in the report the specific information requested on the number or rate of young long-term unemployed and their participation in special retraining and reintegration measures. Pending receipt of this information the Committee defers its conclusion on this point.

In addition, the report does not contain any information on the possibility and conditions for non-national long-term unemployed persons to enjoy equal treatment with Serbian nationals with regard to access to vocational training. The Committee repeats its request for this information and defers its conclusion on this point.

The Committee considers that if the requested information is not provided in the next report there will be nothing to establish that the situation is in conformity with the Charter.

Conclusion

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

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

Paragraph 1 - Vocational training for persons with disabilities

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

The Committee previously concluded that the situation in Serbia was not in conformity with Article 15§1 of the Charter on the ground that it had not been established that the right of persons with disabilities to mainstream education and training was effectively guaranteed (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

According to the report the law on the Foundation of the Education System and Upbringing guarantees a quality education to every child, regardless, inter alia of disability. It provides that persons with disability are entitled to education taking into account their educational needs in the mainstream education system, with individual or group additional support or in a separate pre-school group or school. Discrimination in education is prohibited.

According to other sources (Academic Network of European Disability Experts ANED) the Law on the Foundation of the Education System and Upbringing (“Official Gazette of the RS”, No. 88/2017 and 27/2018) was amended in 2018 and provides for the mandatory enrolment of all children in mainstream elementary schools (based on their place of residence). Only after attendance at a mainstream school for some months and the implementation of all available support measures (through individual education plans), can the transfer of a child with disability to a special school be recommended. The Interdepartmental Commission organised by the local administration makes such a recommendation to transfer a child to a special school, but the final decision lies with the parents or legal guardian.

The Law on the Prevention of Discrimination against Persons with Disabilities defines the general obligations of the state administration, autonomous provinces and local self-government authorities responsible for education to take measures to ensure that persons with disabilities benefit from inclusive education of persons (Article 36 – Measures to ensure equality in the field of education).

As regards the definition of disability 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

The Committee previously concluded that the situation in Serbia was not in conformity with Article 15§1 of the Charter on the ground that it had not been established, that the rights of persons with disabilities to mainstream education and vocational training was effectively guaranteed (Conclusions 2016).

The report states that Serbia is committed to the implementation of inclusive education as enshrined in relevant international documents. In past decade, comprehensive education system reforms have been implemented which has resulted in inclusive education for children with disabilities who were previously in segregated settings.

According to the report the number of students educated under an individual education plan (IP) has increased significantly, as has the number of persons who contact an inter-departmental commission. In 2013/14, of 560.099 students, 4538 were included in education on the basis of an IP-1 (0,81%), 2500 on the basis of IP-2 (0.45%), and 2852 (0.51%) students were the subject of the opinion passed by the Commission (0,51%). In school year 2017/18. Of 539.147 students, 8332 (1.54%) were included in education on the basis of IP-1, 5025 (0.93%) were included on the basis of IP-2, and 5416 (1.01%) were the subject of the opinion passed by the Commission.

The number of students included in education on the basis of the IPs in secondary schools has been on the increase on annual basis. According to the data available, in school year 2018/19, of 252.108 secondary school students (grammar schools, secondary polytechnic schools of applied studies and art schools) 566 (0.22%), students were included in education on the basis of IP-1, 1154 on the basis of IP-2 (0.46%), and 113 were included in education on the basis of IP-3 (0.04%).

The Committee seeks confirmation that the figures indicate the percentage of children with disabilities included in mainstream education as a proportion of all children in education.

The report states that the number of children with disabilities educated in special schools has decreased from 5.348 (2013) to 4.719 (2018). In particular, in the school year 2010/11 1.09% of student population attended schools/classes for students with developmental disorders, while in school year 2018/19 the proportion of children in these special schools/classes was 0.89% of such population in schools and classes for the disabled children.

According to other sources (Academic Network of European Disability Experts (ANED) country fiche Serbia 2018) the total number of special education schools in Serbia is 48, of which 13 are in Belgrade. Each of the 17 school directorates has at least one such school. Most of the elementary schools (14) and combined elementary and secondary schools (20) are for the education of pupils with intellectual disabilities. The total number of special classes in mainstream schools is 314.

The Committee previously referred to the Concluding Observations of the UN Committee on the Rights of Persons with Disabilities of 23 May 2016, which noted that many children with disabilities are placed in institutions, particularly those with intellectual disabilities (who account for about 80% of all children living in institutions), and do not therefore have equal

access to education. The Committee asked the next report to outline the measures taken to limit institutionalisation (Conclusions 2016). The Committee notes the information provided in the report detailing the measures taken support the deinstitutionalisation of children with disabilities, such as additional support for families, increase in foster care etc. The report also provides data on the educational status of children with disabilities living in institutions. The Committee notes from the figures that the number of children of primary school age living in an institution, not attending any primary school institution has decreased significantly over the reference period from 126 children in 2016 to 25 in 2018. However the Committee further notes that with concern that nearly all children of primary school age living in an institution attend special schools, that all children of secondary school age living in an institution attend special schools and that a number of children living in an institution drop out of education or are declared “incapable”.

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 concludes that the situation is not in conformity with Article 15§1 of the Charter on the ground that it has not been established that the right of children with disabilities to mainstream education is effectively guaranteed.

As regards measures in place to address costs associated with education the Committee asks whether children with disabilities/SEN are entitled to financial support to cover any additional costs that arise due to their disability

No information is provided on vocational training despite the previous conclusion that it had not been established that the situation is in conformity in this respect. The Committee asks for updated information to be provided in the next report. Meanwhile it reiterates its previous conclusion of non-conformity.

Measures aimed at promoting inclusion and ensuring quality education

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 previously asked for information on the measures taken to ensure effective remedies in cases of alleged discrimination in education and training on the ground of disability (including examples of relevant case law and its follow up) (Conclusions 2016). According to the report complaints alleging discrimination on grounds of disability may be lodged before the

equality Commissioner, who receives a high number of such complaints. The Commissioner has also instituted two strategic lawsuits alleging discrimination on grounds of disability.

The Committee asks the next report 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 Serbia is not in conformity with Article 15§1 of the Charter on the ground that it has not been established that the right of children with disabilities to mainstream education and training is effectively guaranteed.

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 Serbia.

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 previously concluded that the situation was not in conformity with the Charter on the grounds that it had not been established that the reasonable accommodation requirement was effectively guaranteed (Conclusions 2016).

Legal framework

The Committee recalls from previous conclusions that the Labour Code and Law on the Professional Rehabilitation and Employment of Persons with Disabilities (Official Gazette Nos. 36/2009 and 32/2013), provides protection against discrimination inter alia on grounds of disability and includes an obligation on employers to make reasonable accommodation (Conclusions 2012, 2016).

As regards the definition of disability the Committee notes from the ANED report (Academic Network of European Disability Experts) on the European Semester (published in 2018 but concerning data from 2016-2017 or earlier) that the legal system does not have a single, comprehensive definition of disability. The Committee notes from the Concluding Observations of the UN Convention on the Rights of persons with Disabilities (CRPD/C/SRB/CO/1, 2016), that the UN Committee expressed concern that, despite the provision of multidisciplinary committees, assessment of working capacity continues to be based on a medical model of “incapacity”.

The Committee asks for the Governments comments on this and asks the next report to provide updated information on the definition of disability.

Access of persons with disabilities to employment

The report states that in 2018, there were 14,429 persons with disabilities registered as unemployed with a job centre (compared to 15,660 2015) Unemployed persons with disabilities accounted for 2.5% of the total of unemployed persons in the country (a slight increase during the reference period).

The Committee notes from the above-mentioned ANED report that in 2016 22.6% of persons with disabilities aged between 20 and 64 were in employment.

No information is provided on the total number of people with disabilities of working age, nor on those in employment either on the open labour market or in sheltered employment. In order to assess the situation, the Committee 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 report states that persons with disabilities may participate in all labour market measures. In addition, there are special measures which are implemented particularly for persons with disability who are hired under special conditions, in particular workplace accommodation, provision of professional support to a newly employed person with disability.

Active employment measures for persons with disabilities include, reimbursement of the costs of reasonable accommodation, subsidized wages for persons with disability without work experience, Self-employment support, occupational rehabilitation measures and activities.

The Committee previously concluded that the situation was not in conformity with the Charter on the grounds that it had not been established that the reasonable accommodation requirement was effectively guaranteed. The report provides no information about how the requirement is effectively guaranteed in practice, for example how many employers have received funding for workplace adaptations, technical equipment etc. Therefore the Committee reiterates its previous conclusion.

The Committee notes from the Concluding Observations of the UN Convention on the Rights of persons with Disabilities (CRPD/C/SRB/CO/1, 2016), that the UN Committee expressed concern about the insufficient provision of reasonable accommodation.

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

Further the Committee notes from the above-mentioned ANED report on the European Semester that the concept of reasonable accommodation and recognition that the denial of such accommodation is a form of discrimination are not explicitly included in anti-discrimination laws. It cites the Annual Report of the National Employment Agency for 2017 which indicated that there were only 9 contracts for reimbursement of reasonable accommodation cost, and 13 contracts for reimbursement of working assistants' costs. The Committee asks for the Government's comments on this.

The report indicates that the number of persons with disabilities participating in active labour market measures has increased over the reference period from 6020 in 2015 to 10034 in 2018.

The Committee previously requested information on compliance levels with the quota system (the system requires employers with 20-49 employees to hire at least one person with disabilities, and another person for every 50 additional employees.) According to the report in 2017, on average, about 8.216 undertakings complied with the quota, employing on average 19.016 persons with disabilities.

In 2018, on average about 8.801 undertakings complied with the quota, employing on average about 21.218 persons with disabilities

An employer who fails to comply with the quota shall make a payment equivalent to 50% of the average national level salary for every person with disability that it had failed to employ. In 2017, employers made payments into the Budgetary Fund average in respect of about 8.890 persons with disability.

The Committee notes from the Concluding Observations of the UN Convention on the Rights of persons with Disabilities (CRPD/C/SRB/CO/1, 2016), that the UN Committee expressed concern that sheltered workshops for persons with disabilities persist and that the measures to promote the employment of persons with disabilities in the open labour market are not effective.

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

Remedies

The Committee previously asked whether effective remedies exist for persons with disabilities who consider themselves victims of discrimination in employment on the ground of disability (Conclusions 2016).

The report provides no information in this respect. 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 Serbia is not in conformity with the Charter on the grounds that it has not been established that the obligation to provide reasonable accommodation is effectively guaranteed.

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

Paragraph 3 - Integration and participation of persons with disabilities in the life of the community

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

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 concluded that the situation was not in conformity with Article 15§3 of the Charter on grounds that it had not been established that anti-discrimination legislation covers communication; and that it had not been established that persons with disabilities have effective access to transport and housing (Conclusions 2016).

Relevant legal framework and remedies

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

The Committee previously concluded that the situation was not in conformity with Article 15§3 of the Charter on the following grounds it had not been established that anti-discrimination legislation covers communication (Conclusions 2016).

In response the report refers to the Public Information and Media Law (RS/ 83/14) (see below under communication). The Committee asks the next report to clarify whether the above-mentioned legislation confers a right on an individual to claim that he/she has been discriminated against. The Committee also asks that the report provide information on any such remedies as well examples of any case law alleging discrimination in access to telecommunications. However, in light of the information available the Committee reiterates its previous conclusion.

The Committee previously requested updated information on remedies in general, it repeats its request for this information as well as information on any relevant case law.

In its previous conclusions (Conclusions 2012, 2016), the Committee asked for information on the Strategy to improve the Position of Persons with Disabilities for the period from 2007 to 2015. The Committee notes that many of the measures detailed below were adopted in order to implement the strategy.

Consultation

The Committee recalls that Article 15§3 of the Charter requires inter alia that persons with disabilities should have a voice in the design, implementation and review of coordinated disability policies aimed at achieving the goals of social integration and full participation of persons with disabilities. It asks the next report to provide information on consultation with people with disabilities, as well as other measures to ensure their participation in the design, implementation and review of disability policies.

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

Financial and personal assistance

The report states that in accordance with the de-institutionalisation process, community-based services continued to be developed.

According to the report under the Social Welfare Law the following community-based services for persons with disabilities and their families are available:

- day community-based services which include day-care, home help and personal assistant services for children
- services of support for independent living which include supported living; personal assistance; training for independent living.

Supported living is for persons with disabilities leaving residential care, there are currently five licensed supported living service providers for persons with disabilities.

Personal assistance services are available to persons with disabilities who have been assessed as needing a certain degree of support, who receive a benefit for care, have capacities for independent decision-making, have a job or participate in the work of different associations of citizens, sports associations, political parties and other forms of social engagements, i.e. attend mainstream or individual education programme.

Home help is available to persons who are not able to live independently at their homes without regular assistance to perform essential daily activities.

Personal assistant services for children are available to a child with disability or developmental disorders, who needs additional support to fulfil essential needs in everyday living in the field of mobility, maintenance of personal hygiene, feeding, dressing and communication with others provided that it is attending an education institution.

The Committee notes that the number of beneficiaries of home help services and personal assistance is low.

The Committee asks the next report to provide updated information on personal assistance schemes; the implementation of the schemes, the number of beneficiaries, and the budget allocated. It also asks whether funding for personal assistance is granted based on an individual needs' assessment and whether persons with disabilities have the right to choose services and service providers according to their individual requirements and personal preferences. Further the Committee asks what measures have been taken to ensure that there are sufficient numbers of qualified staff available to provide personal assistance.

The Committee notes that the UN Committee on the Rights of Persons with Disabilities in its Concluding Observations (CRPD/C/SRB/CO/1 2016) was concerned that the number of institutionalised persons with disabilities remained high and that insufficient efforts had been made to provide resources for the development of support services, in particular personal assistance services in local communities for those leaving institutions. The UN Committee was also concerned that resources were still invested in renovating or extending institutions.

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

In addition to the provision of services to persons with disability, the report states that the state provide financial support. In particular, under the Social Welfare Law a person with a disability in need of help and assistance of another person to satisfy essential living needs is entitled to a benefit for care and in certain cases to an increased benefit for care. These benefits are not means tested.

According to the report the number of licensed social service providers increased during the reference period (from 54 licences issued in 2014 to over 400 issued by the end of 2018).

The Committee notes from the report that the states transferred funds from the national level to local level in order to roll out and fund social services. The allocation from the national budget in 2016 was of RSD 400 million, and in 2017 and 2018 this increased to RSD 700 million.

The prevalence of poverty amongst people with disabilities in a State Party, whether defined or measured in either monetary or multidimensional terms, is an important indicator of the effectiveness of state efforts to ensure the right of people with disabilities to enjoy independence, social integration and participation in the life of the community.

The obligation of states to take measures to promote persons with disabilities full social integration and participation in the life of the community is strongly linked to measures directed towards the amelioration and eradication of poverty amongst people with disabilities. Therefore, the Committee will take poverty levels experienced by persons with disabilities into account when considering the state's obligations under Article 15§3 of the Charter. The Committee asks the next report to provide information on the rates of poverty amongst persons with disabilities as well as information on the measures adopted to reduce such poverty, including non-monetary measures.

Information should also be provided on measures focused on combatting discrimination against, and promoting equal opportunities for, people with disabilities from particularly vulnerable groups such as ethnic minorities, Roma, asylum-seekers and migrants.

States should also make clear the extent to which the participation of people with disabilities is ensured in work directed towards combatting poverty amongst persons with disabilities.

Technical aids

The Committee asks for updated information on the provision of technical aids.

Housing

The Committee previously concluded that the situation in Serbia was not in conformity with Article 15§3 of the Charter on the grounds it had not been established that persons with disabilities have effective access to housing (Conclusions 2016).

No information is provided in the report. Therefore, the Committee reiterates its previous conclusion.

The Committee asks the next report to provide information on the progress made to phase out large institutions (including information on measurable targets clear timetables and strategies to monitor progress) and whether there is a moratorium on any new placements in large residential state institutions. It asks what proportion of private and public housing is accessible. It asks for information about the existence accessible sheltered housing and whether financial assistance is provided to adapt existing housing.

The Committee asks how many persons with disabilities live independently with support and how many live in institutions and small group homes.

Mobility and transport

The Committee previously concluded that the situation in Serbia was not in conformity with Article 15§3 of the Charter on the grounds it had not been established that persons with disabilities have effective access to transport (Conclusions 2016). The report states that certain persons with disabilities such as the visually impaired are entitled to reduced fares for a limited number of journeys by rail ferry and plane. In addition, they may be accompanied by a companion who travels free of charge or at half price by plane.

Reserved parking is available and persons with disabilities are exempt from highway tolls.

No information is provided on the accessibility of the public transport system. Therefore, the Committee reiterates its previous conclusion.

The Committee notes that the UN Committee on the Rights of Persons with Disabilities in its Concluding Observations (CRPD/C/SRB/CO/1 2016) was concerned about the lack of a national accessibility strategy or legislation with effective sanctions for non-compliance and about the low degree of accessibility of public buildings, institutions and services.

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

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

Communication

The report states that under the Public Information and Media Law (RS/ 83/14) to protect interests of persons with disability and ensure their equal enjoyment of the right to freedom of thought and expression, measures shall be taken at national, regional and local levels to ensure that persons with disability receive public information in an appropriate form and through the use of appropriate technology.

According to the legislation, a media service provider shall, taking into account its financial and technical capacities, make programmes and content accessible to persons with impaired hearing and/or sight. The Regulator shall encourage a media services provider to make its programme and content accessible. Further Article 7 of the legislation imposes an obligation on public media providers to address the need for information of all sections of society without discrimination,

The report states that in April 2015, the Sign Language Law (RS 38/15) was adopted. The Law governs the use of sign language and provides inter alia, for a right to learn sign language and a right to use the services of a sign language interpreter. Deaf persons shall be entitled to the use of a sign language in all proceedings before a state authority at national, regional or local levels.

The Committee asks the next report to provide information on the measures taken to ensure sufficient accessibility to all public and private information and communication services, including television and the Internet, for all persons with disabilities.

Culture and leisure

The Committee notes the information provided in the report on the promotion of sporting activities for persons with disabilities.

The Committee asks the next report to provide updated information on measures taken to ensure access of persons with disabilities to culture and leisure activities, especially in rural areas.

Conclusion

The Committee concludes that the situation in Serbia is not in conformity with Article 15§3 of the Charter on the grounds that it has not been established that:

- anti-discrimination legislation covers telecommunications;
- persons with disabilities have effective access to transport;
- persons with disabilities have effective access to housing.

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

Paragraph 1 - Applying existing regulations in a spirit of liberality

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

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

Paragraph 2 - Simplifying existing formalities and reducing dues and taxes

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

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.

Administrative formalities and time frames for obtaining the documents needed for engaging in a professional occupation

In its previous conclusion (Conclusions 2016), the Committee concluded that the situation in Serbia was not in conformity with Article 18§2 of the Charter on the ground that administrative formalities to obtain residence and work permits had not been simplified.

The report states that the Foreign Nationals Law No. RS 24/2018 has been amended to enable foreign nationals to obtain work permits under a simplified procedure. The law came into force on 3 April 2018, but its application was postponed by six months, to 3 October 2018. Foreign nationals who have obtained visas for longer stays on the basis of employment may exercise the right to employment under the regulations governing employment of foreign nationals in Serbia.

In addition, under the said law, foreign nationals may apply for temporary residence permits in person and also online. Online applications may be used when foreign nationals make applications from abroad, which the report says speeds up the procedure for issuing the permits.

Under the new law, a one-stop shop is employed where applications for temporary residence permits and work permits are submitted using a single application form. As a result, foreign nationals must submit, in person or online, applications for approval or renewal of temporary residence permits, including applications for work permits, to a competent authority using a single application form.

With regard to the necessary formalities, the Committee notes that it is now possible to complete the formalities for the issuance of work and residence permits in the country of destination as well as in the country of origin and to obtain residence and work permits at the same time and through a single application. Nevertheless, it requests that the next report indicate whether there are still situations requiring a separate procedure in order to obtain residence and work permits. It requests additional information on the formalities needed, under the new legal framework, for nationals of other States Parties to the Charter wishing to engage in a gainful occupation in Serbia, either as employed or self-employed persons. In particular, it asks what documents and procedural steps are required to obtain the relevant permits and what authority is responsible for issuing them. It also requests that the next report indicate the timeframes for issuing and renewing the relevant permits under the new legal framework.

Chancery dues and other charges

The report does not include any information on chancery fees or other charges.

In its previous conclusion, the Committee noted that according to the Law on Administrative Fees, the fees for obtaining a decision on employment of foreign citizens in the Republic of Serbia (work permits) stood at RSD 12,760 (€104).

The Committee requests that the next report provide up-to-date information on the cost of obtaining work permits. It points out that, should the necessary information not be provided in the next report, nothing will enable the Committee to establish that the situation in Serbia is in conformity with Article 18§2 of the Charter in this respect. In the meantime, it reserves its position on this point.

Conclusion

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

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

Paragraph 3 - Liberalising regulations

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

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

Paragraph 4 - Right of nationals to leave the country

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

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.

The Committee points out that it deferred its previous conclusions (Conclusions 2016 and 2012) pending receipt of the information requested on the legal framework guaranteeing the right of nationals to leave the country and on what restrictions applied in this respect.

In reply, the report states that under Article 39 of the Constitution, everyone has the right to move around freely and settle in the Republic of Serbia, and to leave and return.

According to the report, the only restrictions permitted are those prescribed by the law and necessary to conduct criminal proceedings, protect law and order, prevent the spread of infectious diseases or defend the country.

The Committee points out that under Article 18§4, States undertake not to restrict the right of their nationals to leave the country to engage in gainful employment in other Parties to the Charter. The only permitted restrictions are those which are prescribed by law 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 Committee asks that the next report provide explanations as to the application in practice of all the grounds for restrictions on the right of nationals to leave the country. In the meantime, the Committee defers its conclusion in this respect.

Conclusion

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

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 Serbia.

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

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

Legal framework

The report states that Article 18 of the Labour Code prohibits direct and indirect discrimination against jobseekers and employees on various grounds including gender. Article 104 of the Labour Code provides that employees working for an employer must be guaranteed equal pay for the same work or work of equal value. Article 17 of the Gender Equality Law refers to the right to equal pay for work of equal value performed in the same company.

In its previous conclusion under Article 4§3 (Conclusions 2018), the Committee also noted that Article 16 of the Anti-Discrimination Law prohibited discrimination at work, particularly unequal pay for work of equal value. Under Article 11 of the 2009 Gender Equality Law, employers were required to ensure that all employees enjoyed equal opportunities and treatment regardless of gender.

The Committee notes from the report that provisions of employment contracts or collective agreements that do not respect the principle of equal pay are deemed null and void.

The Committee points out that under Articles 4§3 and 20 of the Charter (and Article 1 (c) of the 1988 Additional Protocol), the concept of remuneration 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). The Committee therefore asks that the next report contain information on this subject.

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).

The report states that in the event of a violation of the principle of equal pay, an employee may bring a case before the competent court to seek compensation in accordance with the law. The Committee asks for detailed and up-to-date information in the next report on the remedies available to victims of gender pay discrimination.

Regarding the *burden of proof* in cases of pay discrimination, the report states that if during the proceedings, the complainant shows that discrimination is likely to have taken place, it is for the defendant to prove that his or her conduct was not discriminatory. The Committee asks the next report to indicate how the principle of shifting of the burden of proof is applied in practice, for example, if it is systematically applied in the cases related to pay discrimination.

In its previous conclusion (Conclusions 2016), the Committee concluded that the situation was not in conformity with the Charter on the ground that it had not been established that the right to equal treatment in matters of employment without gender discrimination had been ensured in practice; in particular, the report provided no information on the right to compensation. Once again, the report provides no information regarding *compensation*. Therefore, the Committee asks whether there is an upper limit on the amount of compensation which can be granted in the case of gender pay discrimination. In particular, it asks whether the obligation to compensate the difference of pay is limited in time or is awarded for entire period of unequal pay, and if there is the right to compensation for pecuniary and non-pecuniary damages. It also asks for examples of compensation awarded by the courts in cases of gender pay discrimination. In the meantime, the Committee notes that the situation is still not in conformity with the Charter on the ground that it has not been established that the right to compensation is provided for in gender pay discrimination cases.

The Committee asks for the next report to state what rules apply in the event of dismissal in retaliation for a complaint about equal pay.

With regard to the sanctions imposed, the report states that under Article 54§1(6) of the Gender Equality Law, a fine of between RSD 10,000 (€84) and 100,000 (€840) must be imposed on employers who fail to respect the provisions relating to equal pay for men and women for work of equal value.

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 about *pay transparency* in the labour market or about job classification systems. The Committee takes note of the information published by the European Network of Legal Experts in Gender Equality and Non-Discrimination in its report on Gender Equality in Serbia (2019), according to which Serbian case-law does not address pay transparency and pay transparency measures are not applied in Serbia.

As to the *parameters for establishing the equal value of the work performed*, the Committee notes that Article 16(3) of the Labour Code defines work of equal value as the work for which the same educational level, same working ability, responsibility as well as physical and intellectual works are needed.

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 asks again for information in the next report on the job classification and promotion systems in place as well as on the measures adopted to ensure pay transparency in the labour market (in particular the possibility for workers to receive information on the pay levels of other workers), including the setting of timelines and measurable criteria for progress. It also wishes to know whether it is possible in practice to make job comparisons between different companies. In the meantime, it reserves its position on this point.

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 does not contain information on the pay gap between men and women during the reference period.

The Committee takes note of the figures produced by the Statistical Office of the Republic of Serbia in its publication “Women and Men in Serbia 2017”, which show that in almost all sectors, women are paid less than men for the same work. According to this publication, the gender pay gap stood at 8.7% in 2014.

The Committee asks for updated information in the next report on the concrete measures taken and activities launched to promote gender equality, to overcome gender segregation in the labour market and to reduce the gender pay gap, along with information on the results achieved. It also asks for information on the employment rate broken down according to gender and the pay gap for each year of the reference period. The Committee points out that, should the necessary information not be provided in the next report, nothing will enable the Committee to establish that the situation in Serbia is in conformity with Article 20 of the Charter in this respect. In the meantime, the Committee reserves its position on this point.

Conclusion

The Committee concludes that the situation in Serbia is not in conformity with Article 20 (c) of the Charter on the ground that it has not been established that the right to compensation is provided for in gender pay discrimination cases.

Article 24 - Right to protection in case of dismissal

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

Scope

The Committee notes that there have been no changes to the situation which it has previously found to be in conformity with the Charter. It asks the next report to provide updated information regarding termination of employment during the probationary period.

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 found to be in conformity with the Charter.

Prohibited dismissals

The Committee notes that there have been no changes to the situation which it has previously considered to be in conformity with the Charter. As regards protection against dismissal in case of temporary disability, the report states that under Article 183 of Labour Code, temporary incapacity for work due to an illness, occupational injury or disease, maternity leave, childcare and special child care leave shall not constitute a justifiable reason for the termination of an employment contract. The Committee asks what rules apply in case of termination of employment on the ground of long-term or permanent disability, such as the procedure for establishing long-term disability and the level of compensation paid in such cases.

Remedies and sanctions

In its previous conclusion (Conclusions 2016), the Committee asked whether compensation for unlawful dismissal was also awarded for non-pecuniary damage and whether the legislation sets a ceiling to the amount of such compensation. It also asked whether employees were protected against dismissal in the event they file a complaint or participate in proceedings against the employer (retaliatory dismissal). The Committee notes that the report does not provide this information.

The Committee recalls that under the Charter, workers dismissed without valid reason must be granted adequate compensation or other appropriate relief. Compensation systems are considered to comply with the Charter when they provide for:

- reimbursement of financial losses incurred between the date of dismissal and the decision of the appeal body;
- the possibility of reinstatement of the worker; and/or
- compensation of a high enough level to dissuade the employer and make good the damage suffered by the victim (Finnish Society of Social Rights v. Finland, Complaint No. 106/2014, decision on admissibility and the merits of 8 September 2016, §45; Conclusions 2016, Bulgaria).

The Committee further recalls that (Statement of interpretation on Article 8§2 and 27§3, Conclusions 2011) compensation for unlawful dismissal must be both proportionate to the loss suffered by the victim and sufficiently dissuasive for employers. Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive are proscribed. If there is such a ceiling on compensation for pecuniary damage, the victim must be able to seek compensation for non-pecuniary damage through other legal avenues, and the courts competent for awarding compensation for pecuniary and non-pecuniary damage must decide within a reasonable time.

The Committee asks the next report to indicate whether the legislation complies with this approach.

Conclusion

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

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

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

