European Social Charter | Charte sociale européenne

March 2021

EUROPEAN SOCIAL CHARTER

European Committee of Social Rights

Conclusions 2020

SLOVENIA

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 Slovenia, which ratified the Revised European Social Charter on 7 May 1999. The deadline for submitting the 19th report was 31 December 2019 and Slovenia submitted it on 3 June 2020.

The Committee recalls that Slovenia was asked to reply to the specific targeted questions posed under various provisions (questions included in the appendix to the letter of 27 May 2019, whereby the Committee requested a report on the implementation of the Charter). The Committee therefore focused specifically on these aspects. It also assessed the replies to all findings of non-conformity or deferral in its previous conclusions (Conclusions 2012).

In addition, the Committee recalls that no targeted questions were asked under certain provisions. If the previous conclusion (Conclusions 2012) found the situation to be in conformity, there was no examination of the situation in 2020.

Comments on the 19th report by the Human Rights Ombudsperson of the Republic of Slovenia were registered on 1 October 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).

Slovenia has accepted all provisions from the above-mentioned group except Article 18§2.

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

The conclusions relating to Slovenia concern 13 situations and are as follows:

– 7 conclusions of conformity: Articles 1§1, 1§4, 10§1, 10§2, 10§3, 10§4 and 24.

– 3 conclusions of non-conformity: Articles 10§5, 15§2 and 20.

In respect of the other 3 situations related to Articles 1§2, 15§1 and 15§3, the Committee needs further information in order to examine the situation.

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

The next report from Slovenia 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 Slovenia.

Employment situation

According to Eurostat, the GDP growth rate increased from 2.2% in 2015 to 4.4% in 2018, considerably exceeding the average for the 28 European Union (EU) member States (2% in 2018).

The overall employment rate (persons aged 15 to 64 years) increased from 65.2% in 2015 to 71.1% in 2018, exceeding the EU 28 average (68.6% in 2018).

The employment rate for men increased from 69.2% in 2015 to 74.5% in 2018, which is higher than the EU 28 average (73.8% in 2018). The employment rate for women rose from 61% in 2015 to 67.5% in 2018, exceeding the EU 28 average (63.3% in 2018). The employment rate for older workers (55 to 64-year-olds) increased sharply, from 36.6% in 2015 to 47% in 2018, but was still below the EU 28 average (58.7% in 2018). Youth employment (15 to 24-year-olds) rose from 29.6% in 2015 to 35.2% in 2018, roughly equal to the EU 28 average in 2018 (35.3%).

The overall unemployment rate (persons aged 15 to 64 years) decreased significantly, from 9.1% in 2015 to 5.2% in 2018, which is below the EU 28 average (7% in 2018).

The unemployment rate for men decreased from 8.2% in 2015 to 4.7% in 2018, which is below the EU 28 average (6.7% in 2018). The unemployment rate for women fell from 10.2% in 2015 to 5.8% in 2018, which is below the EU 28 average (7.2% in 2018). Youth unemployment (15 to 24-year-olds) dropped from 16.3% in 2015 to 8.8% in 2018, which is below the EU 28 average (15.2% in 2018). Long-term unemployment (12 months or more, as a percentage of overall unemployment for persons aged 15 to 64 years) fell from 52.3% in 2015 to 42.9% in 2018, which is below the EU 28 average (43.4% in 2018).

The proportion of 15 to 24-year-olds “outside the system” (not in employment, education or training, i.e. NEET) decreased from 9.5% in 2015 to 6.6% in 2018 (as a percentage of the 15 to 24-year-old age group), which is below the EU 28 average (10.5% in 2018).

The Committee notes that the economic situation improved during the reference period and that this positive trend went hand in hand with favourable developments in the labour market (an increase in the employment rate and a significant drop in unemployment). However, the employment rate for workers over 55 years of age remained low.

Employment policy

In its report, the Government sets out the active labour market policy measures taken during the reference period. On the one hand, these include general “Education and training” programmes and on the other, programmes aimed at supporting vulnerable groups, for example young people about to enter the labour market, people living in areas of high unemployment, the long-term unemployed, older workers, migrants and refugees.

In particular, the Government states that implementation of the Youth Guarantee scheme began in 2014 in Slovenia and was supported by two governmental implementation plans (2014-2015 and 2016-2020). The 2016-2020 plan includes 54 measures (education, training, subsidised employment, public works programmes, “trial jobs” which enable jobseekers to try out a job, support for entrepreneurs, etc.) involving not just the Ministry of Labour, Family, Social Affairs and Equal Opportunities but also various other ministries (Ministries of Education, Economic Development, Culture and Agriculture). In total, nearly 75,450 young persons aged 15 to 29 years participated in the Youth Guarantee during the reference period. According to the European Commission (Youth Guarantee country by country, Slovenia, October 2020), in 2018, 52.8% of young persons had left the programme with an offer (of

employment, training, etc.) within four months of joining it (compared to the EU average of 46.7%), and on average, the scheme had covered 50.8% of all young NEETs under the age of 25 (compared to the EU average of 38.9%).

The Government further states that older workers are considered to belong to a group of people with a high risk of sliding into long-term unemployment. They are therefore an important target group for many active labour market measures which have been implemented, leading to an increase in the proportion of older unemployed people as a percentage of the total number of participants in active measures (approximately 26% in 2017 and 2018). In addition, other measures and programmes to promote and maintain employment were designed to support specifically older workers. In particular, under the Intervention Measures for the Labour Market Act adopted at the end of 2015, employers were exempted from paying compulsory insurance contributions when hiring jobseekers over 55 years of age who had been registered as unemployed for at least six months, thanks to a measure which was in force from 1 January 2016 to 31 December 2019. Furthermore, in 2018, the Employment Service launched the Active until Retirement programme to promote more permanent employment for older workers (on contracts which are permanent or last until retirement age) through subsidies granted to employers hiring jobseekers aged 58 or over. The Committee requests that the next report provide information on the results of the implementation of the Intervention Measures for the Labour Market Act and the Active until Retirement programme.

The Committee notes that persons under international protection are entitled to all labour market measures and services provided by the State; in addition, measures and programmes have been specifically designed to facilitate their integration in the labour market. It requests that the next report provide information on the number of migrants and refugees participating in active labour market measures (by measure/programme and by year).

According to European Commission data, the activation rate increased from 7.8% in 2015 to 16.5% in 2018. In this regard, the Committee notes from the comments of Slovenia's Human Rights Ombudsman on the Government report that a considerable number of users of the Employment Service had complained about the lack of clear eligibility criteria for active employment policy measures; as a result, the Ombudsman made a series of proposals to ensure greater transparency and avoid allegations of favouritism in decisions concerning participation in those measures. The Committee takes note of the information provided by the Government in response to the Ombudsman's comments. It requests that the next report provide updated information on these points.

Again according to European Commission data, public expenditure on labour market policies (as a percentage of GDP) decreased from 0.76% in 2015 to 0.68% in 2017 (of which 0.17% was for active measures and 0.43% was for passive measures in 2017).

Lastly, the Committee takes note of the information provided by the Government on the monitoring of active labour market measures and the evaluation of their effectiveness.

Conclusion

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

Article 1 - Right to work

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

The Committee takes note of the information contained in the report submitted by Slovenia. It also takes note of the Comments of the Human Rights Ombudsperson of the Republic of Slovenia, submitted on 1 October 2020.

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.

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

The Committee concluded in its previous conclusion, pending receipt of some more detailed, specific information, that the situation was in conformity with Article 1§2 of the Charter.

As regards the legislation prohibiting discrimination in general terms, the report provides that the main non-discrimination laws are the 2016 Protection Against Discrimination Act and the 2013 Employment Relationship Act. This legal framework enshrines the principle of equal treatment irrespective of personal circumstances regarding employment, promotion, training, education, retraining, pay and other remuneration from employment, absences from work, working conditions, working hours and the cancellation of employment contracts, as well as all other aspects of the employment relationship. It explicitly lists some personal circumstances (including nationality, race or ethnic origin, national and social origin, gender, skin colour, health, disability, religious conviction, age, sexual orientation, family status, trade-union membership, financial situation) and adds "or any other personal circumstance". The Committee notes from the report that the National Action Plan of the Republic of Slovenia on Business and Human Rights was adopted in 2018, which contains a range of measures and recommendations to ensure the implementation of the UN Guiding Principles on Business and Human Rights, with a priority being put, in particular, on the prevention of discrimination and inequality. It asks that the next report provide information on implementation of the legal framework in practice, including on measures adopted to promote and apply both Acts, as well as on any steps taken to raise awareness among employers and workers.

Apart from general information on the legal framework prohibiting discrimination, the report replies only partially to the Committee’s request for 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.

As regards discrimination on grounds of age, under Article 1§1, the report provides data on the employment rate of older workers and information on measures to increase it. Older persons are regarded as a vulnerable group at high risk of a descent into long-term unemployment, as they often face other barriers, such as low education or health problems, and as such, they are an important target group for many employment programmes. Their share in such programmes in 2017 and 2018 amounted to about 26% and was growing in the reference period. The programmes included: employment incentives measures aimed particularly at increasing employment opportunities, public work programmes, or an “Active

until Retirement” programme. Furthermore, employers can obtain a subsidy for hiring jobless persons aged 58 and over. The report provides also information on other specific measures, such as comprehensive support for businesses to encourage an “active ageing of the workforce” programme, a catalogue of good practices, measures and tools for the effective management of older workers, an awareness-raising campaign in the media to overcome the negative attitude of employers towards older workers, workshops for employers or an annual Older-Worker-Friendly Company competition. Assessing the situation from the angle of Article 1§2, the Committee notes from the 2020 country report on Slovenia of the European network of legal experts in gender equality and non-discrimination (European Equality Law Network), that age limits for access to certain jobs could be in breach of EU law and CJEU case law. It asks that the next report provide comprehensive information on such age limits, as it is of key importance for the assessment of prevention of discrimination on grounds of age, as enshrined in the Charter. Meanwhile, it reserves its position on this point.

The report does not address measures or targeted legislation focused on other grounds of discrimination mentioned above (ethnic origin, race, sexual orientation, political opinion or religion). In this respect, the Committee notes, in particular, that the European Commission against Racism and Intolerance of the Council of Europe (report 2019), the ILO (Observation (CEACR) – adopted 2019, published at the 109th ILC session) and the UN Special Rapporteur on Minority Issues (report from the 2018 country visit) pointed out that Roma people are often victims of discrimination in the field of employment and that their unemployment rate remains high. It further notes concerns of the UN Human Rights Committee about low rates of reporting of and legal responses to cases of racial discrimination (concluding observations 2016). The ILO, in the aforementioned observation, also considered it necessary that Slovenia adopts a comprehensive and coordinated approach for tackling the obstacles and barriers faced by persons in employment and occupation because of their race, colour or national origin, and for promoting equality of opportunity and treatment for all. The Committee asks that the next report comment on all these observations and it renews its request for comprehensive descriptions of 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 the situation is in conformity with the Charter on these points.

The Committee has previously asked, as regards the prohibition of discrimination on grounds of nationality, whether certain posts reserved for Slovenian citizens in the state administration (civil service) were exclusively posts involving the exercise of public authority or the protection of the public interest. The report does not reply to the Committee’s query. The Committee recalls its request for this pertinent information and, in the meantime, reserves its position on this point.

Apart from questions on the legal framework, during this examination cycle the Committee assesses the specific measures taken to counteract discrimination in the employment of migrants and refugees. The Committee notes the information provided under Article 1§1 that persons under international protection are, in accordance with the provisions of the 2010 Labour Market Regulation Act fully entitled to all measures and services provided by the state in the labour market. In addition, foreigners who are granted international protection status are subject to special, adapted integration measures in the labour market end employment area. The Committee considers that the information provided is, however, not sufficient for a comprehensive assessment of the prevention and prohibition of discrimination of foreigners in employment, in particular of regular migrants from the perspective of Article 1§2. It thus reserves its position on this point and requests that the next report comprehensively describe the legal framework and practical measures aimed at prohibiting and combating discrimination of migrants in the field of employment.

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 Committee has thoroughly assessed these aspects in its previous conclusion (see Conclusions 2012). It then noted that institutional arrangements for protecting persons against discrimination were under review and requested information on a number of pertinent issues. Namely:

1. How the Employment Relationship Act and the Protection Against Discrimination Act interact in discrimination in employment cases; can an alleged victim take action before the courts under both pieces of legislation or must choose under which Act to address a complaint?
2. What are the remedies provided for under the Protection Against Discrimination Act?
3. How many cases of discrimination in employment have been brought before the courts?
4. What are the role and powers of the Council for the Implementation of the Principle of Equal Treatment?
5. What role do NGOs play in judicial and administrative proceedings in support of an alleged victim of discrimination?

The report does not explicitly address the relationship between the two main anti-discrimination acts. It only provides that the provisions of the Protection Against Discrimination Act shall always apply if they are more favourable to the discriminated person regardless of the provisions of other laws, and that it introduced a special lawsuit for protection against discrimination, as well as the definition of the possible participation of an advocate and non-governmental organisations in legal proceedings. This information does not satisfy the requests for information under questions 1, 2 and 5 above, and the Committee asks that the next report provide comprehensive explanations that would allow to assess the existence and effectiveness of the available venues for redress and compensation claims in the event of an allegation of discrimination. It also asks that it comment on an observation made by the European Equality Law Network in the report mentioned above that, although a number of legal remedies exist on paper, the data show that they are not effective.

As regards equality bodies, the report states that in 2016 a new state body for equality was established– the Advocate of the Principle of Equality. In 2018, the Advocate was given administrative and technical autonomy, enabling it to consider individual cases of reported discrimination and to perform other tasks. Among its competencies and duties are, *inter alia*:

- providing independent assistance to persons subject to discrimination in the form of counselling and legal assistance, and participating in judicial proceedings involving discrimination;
- performing inspection duties; proposing the adoption of special measures to improve the situation of people who are in a less favourable position due to certain personal circumstances;
- publishing independent reports and making recommendations to national authorities, monitoring the situation in the field of protection against discrimination;
- raising awareness of the general public on discrimination, and measures to prevent it.

The report provides data on discrimination cases dealt with by the Advocate of the Principle of Equal Treatment before courts (65 cases until the end of 2017, 8 of which ended in a judgment determining a case of discrimination) and on the findings of labour inspectors (17 recorded violations of discrimination in 2018). It further specifies that in most cases of established discrimination, inspectors took action by issuing warnings in reports, in accordance with the Minor Offences Act or the Inspection Act, whereas an inspector issued a regulatory decision in two cases and a minor offence decision with a notice in one case.

The report further provides in this respect that the Advocate concluded that there is relatively little case law in the field of discrimination, that discrimination is somewhat rarely alleged in courts, and that further extensive interpretations of the anti-discrimination law by basic institutions, such as an individual's personal circumstances, individual forms of discrimination and the like, are not found in the case law. Furthermore, discrimination claims brought before the courts often lead to a dead end; as a result, no compensation is awarded for discrimination; consequently, it is not possible to determine whether the sanctions are effective, proportionate and dissuasive. According to the report, the above points to the need to raise public awareness of the possibilities offered by an anti-discrimination law and the legal remedies available, as well as the need for advanced training of professionals such as lawyers and judicial staff who create case law. The Committee asks that the next report provide exhaustive information on the relevant awareness-raising and capacity-building activities that have been undertaken for the general public as well as for judges and prosecutors, to address the limited use of the existing remedies, and on the results achieved. On a related matter, it further notes from the report of the European Equality Law Network, referred to earlier, that it is not clear whether the ceiling for compensation, which is set at EUR 5,000, is in place for compensation claimed solely due to exposure to discrimination, or for compensation in cases of discrimination in general. The verbatim interpretation supports the former position. If the former position is true, the sanctions could not be considered dissuasive as this would mean that compensation in cases of discrimination could never exceed EUR 5,000, even if the actual damages were much higher. It further notes, from the same source, that sanctions (fines for misdemeanours or minor offences) prescribed in a range from a maximum to a minimum are actually prescribed only at the minimum end of the range. The Protection Against Discrimination Act does not explicitly authorise inspectorates to impose fines higher than the minimum, which means that, by law, legal persons do not have to pay more than EUR 3,000 in fines for discrimination, while natural persons do not have to pay more than EUR 250 or EUR 500, depending on the gravity and type of offence. Moreover, in practice, inspectorates never issue fines for misdemeanours. This indicates that misdemeanour fines cannot be regarded as effective and dissuasive. The Committee asks that the next report comment on these observations.

In the light of the information in its possession, the Committee considers that it cannot make a comprehensive assessment of all aspects pertinent to the existence and functioning of effective remedies in cases of alleged discrimination. It repeats its requests that all relevant data be included in the next report, together with comments on the observations quoted above. It considers that, should the requested information not be provided, nothing will allow to establish that the situation is in conformity with Article 1§2 of the Charter on this point.

Overall, the Committee reserves its position as regards the prohibition of discrimination in employment.

2. Forced labour and labour exploitation

The Committee recalls that forced or compulsory labour in all its forms must be prohibited. It refers to the definition of forced or compulsory labour in the ILO Convention concerning Forced or Compulsory Labour (No.29) of 29 June 1930 (Article 2§1) and to the interpretation given by the European Court of Human Rights of Article 4§2 of the European Convention on Human Rights (*Van der 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 the domestic environment and protect domestic workers as well as take measures to implement them.

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

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

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

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

The Committee notes that the national authorities have replied to the specific, targeted questions for this provision on the exploitation of vulnerability, forced labour and modern slavery (questions included in the appendix to the letter of 27 May 2019 whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Employment, training and equal opportunities").

Criminalisation and effective prosecution

According to the report, paragraph 4 of Article 49 of the Constitution states that forced labour is prohibited. The reference to forced labour must be understood as following from the obligations imposed by the international instruments ratified by Slovenia (*inter alia* the ILO Conventions Nos. 29 and 105 and the ECHR) and from the general definition of the right as the right to freedom of work. In addition to the constitutional provision on the prohibition of forced labour, forced labour as a form of exploitation of victims of human trafficking is prohibited and defined as a criminal offence in Article 113 of the Criminal Code. This provision also refers to other forms of exploitation such as slavery and servitude (GRETA's Report on Slovenia of 2017, second evaluation round, GRETA (2017)38, 15 February 2018, para. 146).

Forced labour is also a criminal offence (violent conduct) under Article 296 of the Criminal Code. The Committee also notes from the report that the action plans in 2015-2018 focused on the detection, investigation and prosecution of trafficking offences, and in 2018 mainly covered the activities of the Police and Prosecutor's offices. The police identified that the majority of the cases addressed are cases of exploitation of prostitution and sexual abuse, as well as cases of exploitation for the purpose of forced commission of crimes and forced begging as a form of forced labour. In 2018, the Police processed 33 natural persons and three legal persons, as well as 101 victims of human trafficking.

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

The Committee therefore asks that the next report provide detailed and up-to-date information on the application in practice of Articles 113 and 296 of the Criminal Code in relation to forced labour and labour exploitation. The report should provide information (including figures, examples of case law and specific penalties effectively applied) on the prosecution and conviction of exploiters during the next reference period, in order to assess in particular how the national legislation is interpreted and applied.

Prevention

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

The report indicates that the Inter-ministerial Working Group on Combating Human Trafficking, set up in 2012 and composed of representatives of ministries, NGOs, the Specialised State Prosecutor's Office and the National Assembly, periodically drafts action plans that define the specific tasks of the group in the fields of legislation, prevention, detection, investigation and prosecution of crime, assistance to and protection of victims, and monitors their implementation. In 2018, an important part of its activities was devoted to the prevention of human trafficking and forced labour by raising awareness. Many activities focused on four target groups, namely the general public, potential users of services, professionals, and four at-risk groups, including adolescents, refugees and migrants, Roma and potential victims of labour exploitation and forced labour. The Za-govor (Speak Up) project, carried out by the Counselling Office for Workers in 2018, is aimed at raising awareness, informing and identifying potential victims of labour exploitation, and providing direct assistance to victims. The Counselling Office for Workers published brochures and reports on the violation of labour rights. The Kljuc Society (Centre for fight against trafficking in human beings) carried out several information sessions about trafficking for forced labour among employees in at-risk professions (catering, tourism, construction, agriculture, transport). Preventive measures also address employers (e.g., translation in Slovenian of the Manual for Companies and Employers, whose purpose is to detect and identify concealed employment). The report further refers to other awareness-raising projects, such as "Combating Human Trafficking – Disseminating Information is a Weapon against Exploitation" (targeting migrant and refugees) and training activities aimed at a wide range of public servants (criminal investigators, the police, public prosecutors, judges, labour inspectors, consular staff, medical staff, etc.).

With regard to the Labour Inspectorate, the report provides information on special inspections in the construction industry (2017) and the road transport industry (2018). Although violations of labour legislation were detected, it appears that no victims of human trafficking were identified. These inspections were carried out jointly by representatives of the Police, the Financial Administration of the Republic of Slovenia (FURS) and trade unions. The Committee requests that the next report provide information on specific actions carried out by the Labour Inspectorate and other competent inspection services with a view to detecting cases of labour exploitation in other sectors such as agriculture, hospitality and manufacturing, and also in respect of posted workers. The Committee notes in this connection that GRETA was informed of several cases of labour law infringements concerning posted workers (GRETA Report, pars. 52 and 54). It also notes that, according to the comments submitted by the Human Rights Ombudsperson of the Republic of Slovenia, posted workers are still not sufficiently protected in practice. The next report should also indicate the number, if any, of presumed victims of forced labour or labour exploitation detected as a result of inspections carried out by the Labour Inspectorate.

The Committee notes from the report that the National Action Plan on Business and Human Rights (NAP) was adopted by the Government on 8 November 2018. Priorities of the NAP include the protection of workers' fundamental rights, also in transnational businesses and along the entire production chain, preventing and combating human trafficking, and human rights due diligence. The NAP contains Guidelines on conducting human rights due diligence for business enterprises. Periodic inspections on the implementation of the NAP commitments are carried out every two years and coordinated by the Ministry of Foreign Affairs, which then reports the findings to the Government. The Committee asks that the next report provide detailed and up-to-date information on the implementation of the NAP and the abovementioned Guidelines in the area of prevention of forced labour and labour exploitation in the companies' supply chains. It also asks whether the national legislation requires that every precaution be taken in public procurement processes to guarantee that public funds are not used unintentionally to support various forms of modern slavery.

Protection of victims and access to remedies, including compensation

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

The Committee notes from the report that within the *Za-gopvoer (Speak Up*) *project* (see above), the Counselling Office for Workers provided information and counselling to potential victims of labour exploitation. No other information is provided on protection and assistance measures.

The Committee requests that the next report provide information on the number of presumed and identified victims of forced labour and labour exploitation and the number of such victims benefiting from protection and assistance measures during the next reference period. It also asks for general information on the type of assistance provided by the authorities (protection against retaliation, safe housing, healthcare, material support, social and economic assistance, legal aid, translation and interpretation, voluntary return, provision of residence permits for migrants), and on the duration of such assistance.

The Committee further asks for confirmation in the next report that the existing legal framework provides the victims of forced labour and labour exploitation, including irregular migrants, with access to effective remedies (before criminal, civil or labour courts or other mechanisms) designed to provide compensation for all damage incurred, including lost wages and unpaid social security contributions. It asks for statistics on the number of victims awarded compensation and examples of the sums granted.

Domestic work

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

In its previous conclusion (Conclusions 2012), the Committee asked for information on the measures adopted to combat forced labour in the domestic environment. In its reply, the report stresses that forced labour in the domestic environment is specifically incriminated in the context of family violence in Article 191 of the Criminal Code, which states that whoever within a family or any other permanent living community forces another person to work shall be sentenced to imprisonment of up to five years. If a family member is a victim of forced labour by another family member, all provisions of the Domestic Violence Prevention Act shall also apply.

Since the report does not contain any relevant information on domestic workers, the Committee asks that the next report explain how these workers are protected from labour exploitation and abusive conditions. It asks, in particular, whether the Labour Inspectorate can enter private households to examine the working conditions of domestic workers and whether it has any mandate to detect and prevent labour exploitation in this particular sector.

"Gig economy" or "platform economy" workers

The Committee notes from the report that the Ministry of Labour, Social Affairs and Equal Opportunities (MDDSZ) prepared in March 2016 a document entitled "For Decent Work", in order to address the problem of precarious work, which is expanding with atypical forms of work. The document was drafted as a basis for discussion among social partners. In April 2018, the MDDSZ undertook the co-financing of the project MAPA: "Multidisciplinary analysis of precarious work: legal, economic, social and healthcare aspects". It is a joint project of three Slovenian universities whose aim is to achieve a synthesis and overcome differences in approach to defining the concept of precarious work. One of its main goals is to formulate proposals that would limit the negative effects of precarious wok. The research has been carried out from 1 April 2018 to 31 March 2020.

The Committee takes note of these measures and asks that the next report provide information on the results of this project and on whether it covers workers in the "platform economy" or "gig economy". It also asks for information on whether these workers are generally regarded as employees or self-employed workers. In this connection, the Committee asks whether the powers of the competent labour inspection services include the prevention of exploitation and unfair working conditions in this particular sector (and if so, how many inspections have been carried out) and whether workers in this sector have access to remedies, particularly to challenge their status and/or unfair practices.

Overall, pending receipt of the information requested in respect of all the points mentioned above, the Committee considers that the situation is in conformity with Article 1§2 with regard to forced labour and labour exploitation.

Conclusion

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

Article 1 - Right to work

Paragraph 3 - Free placement services

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

Article 1 - Right to work

Paragraph 4 - Vocational guidance, training and rehabilitation

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

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

As Slovenia 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 guidance and vocational training for persons with disabilities are dealt with under these provisions.

The Committee considered the situation to be in conformity with the Charter as regards measures relating to vocational guidance (Article 9) (Conclusions 2012), to vocational training and retraining of workers (Article 10§3) (Conclusions 2020) and to training for persons with disabilities (Article 15§1) (Conclusions 2016).

Conclusion

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

Article 9 - Right to vocational guidance

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

Article 10 - Right to vocational training

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

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

The Committee points out that in 2012, it deferred its conclusion and asked for the next report to confirm that nationals of all States Parties to the Charter are treated equally in terms of access to vocational training. The Committee takes note of the clarifications provided in relation to the issue of equal treatment in terms of access to vocational training for nationals of all States Parties to the Charter. With regard to secondary education, the legislation has been amended and guarantees this right for foreign nationals when, at the time of enrolment, they themselves or at least one of their parents or legal guardians work and are resident in Slovenia. The Committee asks the authorities to state what rules are applicable to access to higher vocational education. In particular, the authorities must state whether nationals of States Parties who are legally resident in Slovenia have access equal to that of Slovenian nationals.

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

In 2012, the Committee deferred its conclusion because the measures taken by the authorities (reform of the Vocational Education Act; National Assembly resolution on the National Higher Education Programme 2011-2020; adoption of the national qualifications framework) had been taken outside the reference period. The report indicates that the reform of vocational and technical education paved the way for the introduction of modular education programmes offering a wider range of options, with an increase in practical training taking account of local employers' needs in terms of vocational skills. In 2017, at the end of a consultation process carried out with employers' organisations and trade unions, the authorities reintroduced apprenticeships in the education system. The chosen mechanism enables apprentices, who have student status, to spend at least 50% of their time in practical training (on average, an apprentice spends two days a week at school and three days with his/her employer). They are also protected by labour legislation and have the right to be paid.

On the basis of professional standards, vocational and technical education programmes are adopted by a Council of Experts made up of representatives of the various stakeholders concerned. At local level, representatives of local businesses are involved in preparing the open part of the study programme (approximately 20% of programme content).

In December 2015, a Framework Act on Slovenian Qualifications was adopted, which enabled the classification of all types of programs and qualifications in a register, based on learning outcomes and comparability with the European Qualifications Framework (EQF). More than 1,600 qualifications have been included in the register.

The Committee further notes that the information provided under Article 1§1 shows that since 2014, the authorities have been implementing the "Youth Guarantee" programme, an EU initiative aimed at ensuring that all young people continue to be in training, traineeship or employment within four months of becoming unemployed or entering the labour market. The National Implementation Plan for the Youth Guarantee 2016-2020 includes 54 measures intended to improve the situation of young people on the labour market, and includes in particular various training and education programs aimed at making young people more employable and active in the labour market.

Measures taken to integrate migrants and refugees

The Committee points out that Article 9 of the General Upper Secondary School Act grants the right to secondary education to persons under international protection. A decree lays down the arrangements and requirements that guarantee this right for those who are unable to prove the prior education they have received. In such cases, the candidate must take a (free)

examination testing his/her general knowledge and his/her knowledge of social sciences, literature, the humanities, natural sciences and mathematics and his/her ability to communicate in English.

The Committee also notes that according to the Labour Market Regulation Act, persons under international protection are fully entitled to access all measures and services provided by the State in the labour market. In addition, foreign nationals with international protection status benefit from special integration measures (measures to strengthen knowledge and skills in a specific job; mentoring; language education). The Committee also notes that workshops have been run since 2016 in order to integrate persons under international protection, with assistance from an external service provider.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Slovenia is in conformity with Article 10§1 of the Charter.

Article 10 - Right to vocational training

Paragraph 2 - Apprenticeship

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

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 recalls that it had previously deferred its conclusion and requested that the next report confirm that nationals of all States Parties to the Charter enjoy equal treatment with regard to access to learning (Conclusions 2012).

In response to the Committee's request for information, the authorities argued that apprenticeship is only one of the formats of secondary vocational education programmes, and that foreign citizens are therefore subject to the same application criteria as for all secondary education programmes.

The Committee notes that the report refers to the clarifications provided under Article 10§1 of the Charter with regard to access to secondary education (see conclusion on Article 10.1). With regard to secondary education, the legislation has been amended and guarantees this right for foreign nationals when, at the time of enrolment, they themselves or at least one of their parents or legal guardians work and are resident in Slovenia. In the light of this information, the Committee considers that the situation is in conformity with Article 10.2 of the Charter.

Conclusion

The Committee concludes that the situation in Slovenia is in conformity with Article 10§2 of the Charter.

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 Slovenia.

In its previous conclusion (Conclusions 2012), the Committee deferred its conclusion.

The Committee notes that Slovenia 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 its previous conclusion (Conclusions 2012), the Committee asked the next report to clarify whether nationals of all States Parties to the Charter enjoy equal treatment as to access to continuous vocational training system. According to the report, all employed persons have access to vocational training irrespective of their citizenship.

The Committee notes from the report that in 2018 the new Adult Education Act was adopted. This Act regulates the provision of public adult education. According to the report, measures of the Ministry of Education, Science and Sport implementing the 2013-2020 National Programme for Adult Education, which is part of the EU Cohesion Policy, aim at enhancing skills such as literacy rate, digital skills, computer skills, foreign and Slovenian languages and specific professional competences. The Committee takes note from the report of the project Competence Centres for HR Development 2.0, implemented from 2016 to 2019, aiming to increase employees' participation in training. It also takes note of the workshops organized by the Public Scholarship, Development, Disability and Maintenance Fund on soft skill development of employees. According to the report, by the end of 2018, the participants in workshops and training programmes accounted for 37.853. With regard to vocational training available to unemployed persons, the Committee takes note from the report of the implementation of the programme 'Non-formal Education and Training'. According to the information submitted, several programmes provide non-formal education to the unemployed, including on digitalisation. In addition, Practical Employment Promotion Programmes aim at developing the skills and employability of vulnerable jobseekers. The Committee asks the next report to provide specific information on measures in place to ensure skilling and re-skilling of employees in new technologies, human-machine interaction and new working environments, as well as use and operation of new tools and machines.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Slovenia is in conformity with Article 10§3 of the Charter.

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 Slovenia.

It notes from the report that the number of long-term unemployed persons has decreased since 2015, however, their proportion of the total number of unemployed is increasing. The percentage of long-term unemployed was above 50% between 2015 and 2017 and slightly lower (49.6%) in December 2018.

The report indicates that according to the Employment Service of Slovenia (ESS), the structure of long-term unemployed at the end of 2018 was as follows: 49.7% were women, 38.8% over 50 years old and 20.3% under 29 years old. In terms of duration, 66% (38,991) of all long-term unemployed in 2018 had been unemployed for two years or more, while others had been unemployed for 12-23 months.

According to the report, the priority of the Ministry of Labour, Family, Social Affairs and Equal Opportunities was to focus on measures aimed at long-term unemployment, with an emphasis on older people, young people and people with a low level of education. This priority is reflected in the measures taken under the Active Employment Policy (AEP), in the content of the Operational Programme for the Implementation of the EU Cohesion Policy for 2014-2020 and in the AEP Guidelines 2016-2020 adopted by the Government at the end of 2015. Certain AEP programmes are aimed solely at the long-term unemployed.

AEP measures include Non-formal Education and Training, Formal Education Programmes, On-the-job Training, Work-based Test, Verification of National Professional Qualifications, Zaposli.me, public works, etc.

The average share of long-term unemployed among those participating in AEP measures in the period 2015-2018 amounted to 48%.

Long-term unemployed persons in this period also participated in lifelong career orientation workshops. The aim of the workshop is to help participants identify their position in the labour market and equip them for independent career management and becoming active in their search for employment. The workshop lasts 54 pedagogical hours. In 2016, it had 1,120 long-term unemployed participants, of which 37% found a job by the end of September 2017. The workshop had 2,245 participants in 2017 and 1,576 participants in 2018.

From the beginning of the programme in 2016 and to the end of 2018, the *Non-formal Education and Training for the Unemployed* programme that offers participants education and training for jobs in various fields sought by employers without attaining a certain education level was attended by 4,106 persons, 2,650 of which were long-term unemployed.

In May 2016, in order to ensure the European Commission Recommendations on long term unemployment , the ESS drafted the *Strategy on Long-term Unemployment* and covers three main areas:

- preventive activities aimed at preventing the occurrence of long-term unemployment that include: individualised treatment, comprehensive treatment (considering different aspects of a person's life), profiling the unemployed person based on needs (directly employable, employable with additional activities, employable with a more in-depth, intensive approach), early activation, monitoring and escalating activities;
- curative activities aimed at resolving the current situation of long-term unemployment that include: preparing an estimate of the unemployed person's situation after 12 months of registration (counsellors for in-depth career counselling, a rehabilitation counsellor, an advising physician, an AEP programme counsellor), putting together an employment integration plan containing all those activities and services that will result in the person's integration in the labour market or involve them in various other activities aimed at the social activation of

the unemployed. When working with the long-term unemployed, the ESS devotes special attention to vulnerable target groups: young people under 29 years of age, people over 50 years of age and those without vocational education;
- activities aimed at finding systemic solutions and cooperation with employers, social work centres, the National Institute of Public Health and other national and local institutions in the labour market to resolve the problem of long-term unemployment. Strategic activities also include the establishment of AEP programmes, as needed.

The Committee notes that social work centres are the key partner of ESS, especially in finding solutions and jobs for long-term unemployed with identified social and health problems that hinder their entry into the labour market or for persons identified as temporarily unemployable. Unemployed persons can also participate in social activation programmes

Conclusion

The Committee concludes that the situation in Slovenia is in conformity with Article 10§4 of the Charter.

Article 10 - Right to vocational training

Paragraph 5 - Full use of facilities available

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

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 previously deferred its conclusion pending receipt of information as to whether nationals of other States Parties to the Charter who are lawfully resident or regularly working in Slovenia are granted equal treatment with regard to student loans and financial assistance for education,

The report indicates that the Scholarship Act adopted in March 2013, provides for the following types of scholarships:

- state scholarships (for secondary school and university students from socially disadvantaged families);

- Zois scholarships (for secondary school and university students as an encouragement to attain exceptional achievements);

- scholarships for studies in areas where there is a shortage of staff;

- scholarships for Slovenians abroad and

- Ad futura scholarships (for international mobility in the field of education, study visits and participation in knowledge and research competitions).

The report states that the scholarship eligibility criteria are equal for everyone, i.e. Slovenian citizens, citizens of EU Member States and third-country nationals. Third-country nationals must have been granted long-term resident status in accordance with Article 2 of the Foreigners Act, which provides that a long-term resident is an alien who is not an EU citizen but who is in possession of a permit for permanent or long-term residence in an EU Member State issued for a period of validity of five years. In addition, the report mentions that Slovenia has also concluded bilateral treaties with certain third countries which give students access to free studies.

The Committee refers to its established case law, according to which equality of treatment shall be guaranteed to nationals of States Parties to the Charter and the 1961 Charter who are lawfully resident in the territory, proviso that this principle does not apply to students who have entered the country for the sole purpose of study or training. The Committee considers that the rules applicable in Slovenia are equivalent to imposing a condition of a length of residence which affects those who reside legally on its territory for purposes other than education and training but have not (yet) obtained a permanent residence permit. The situation is therefore not in conformity with the Charter.

Conclusion

The Committee concludes that the situation in Slovenia is not in conformity with Article 10§5 of the Charter on the ground that equal treatment of nationals of other States Parties residing or working lawfully in Slovenia is not guaranteed with regard to fees and to financial assistance for training.

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 Slovenia.

It previously found (Conclusions 2012) that it had not been established that the right of persons with disabilities, in particular with intellectual disabilities, to mainstream education was effectively guaranteed.

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

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

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

Legal framework

The Constitution guarantees everyone the right to equal human rights irrespective inter alia of disability, it grants rights to education and training for people with special needs, and provides for obligatory and free education for all citizens (see Conclusions 2012). In addition, the Committee notes from the report that a new Protection Against Discrimination Act (ZVarD) entered into force on 24 May 2016, which covers inter alia discrimination on grounds of disability in the field of education and vocational training.

The right of children with disabilities to education is more specifically covered by several pieces of legislation concerning the different levels of education (Organization and Financing of Education Act, Kindergartens Act, Basic School Act) by the Placement of Children with Special Needs Act (ZUOPP-1) and by the Act Regulating the Integrated Early Treatment of Pre-school Children with Special Needs (ZOPOPP, which was enacted in mid-2017 and started to apply in 2019, out of the reference period). Under these laws, children with special needs can participate in various educational programmes, depending on the level and character of their impairment, for example normal curricula with additional temporary or permanent assistance, adapted programmes with equivalent or lower educational standards, or special education and rehabilitation programmes (see details in the report and in Conclusions 2012). The report states that the integration of children with special needs in the regular school system draws from the concept of inclusive education that is based on the right of all children to the optimum development of their potential and the right to non-discrimination.

The Committee previously noted (Conclusions 2012) that the decision to include a child in a particular educational programme was taken on the basis of an expert opinion by the Placement Commission. In this connection, the report refers to educational programmes for children with visual, hearing, speech and physical impairments, long-term illnesses, developmental disorders, deficiencies in individual areas of learning, autistic disorders, emotional and behavioural disorders. In response to the Committee’s request to clarify the definition of disability (Conclusions 2012), the report maintains that disability status can be granted on the basis of various provisions, related to different rights, by decision of a competent body that establishes the presence of permanent effects of physical or intellectual impairment or illness. According to the Academic Network of European disability Experts

(ANED) Country report on Disability Assessment, the assessment of children with special needs is "*primarily medically and pathology oriented*".

The Committee has previously stressed the importance of moving away from a medical definition of disability towards a social definition. An early example is that endorsed by the World Health Organisation in its International Classification of Functioning (ICF 2001) which focuses on the interaction of health conditions, environmental factors and personal factors.

Article 1 of the UN Convention on the Rights of Persons with Disabilities (CRPD) crystallises this trend by emphasizing that persons with disabilities include those with long term disabilities including physical, mental or intellectual disabilities which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. Importantly, this means there is no a priori exclusion from inclusive education based on the type of disability. Indeed, Article 2 of the 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".

According to the report additional professional assistance and counselling can be provided under the ZUOPP-1, as well as the right to an interpreter for deaf children, the right to be placed in an institution, the right to free transport for pre-school children going to an institution-based kindergarten and for physically impaired children who are unable to use public transport and need adapted transportation. The Committee asks the next report to clarify whether the applicable legislation explicitly provides for the right to reasonable accommodation in mainstream schools (for example, through the removal of architectonic barriers and provision of technical aids and adapted material, etc.).

Access to education

According to the report, the proportion of children with special educational needs (SEN) in mainstream schools increased between 2015/2016 and 2018/2019 from 5.91% to 6.55% in primary schools and from 5.61% to 6.9% in secondary schools: in 2018/2019, there were 17105 SEN pupils in mainstream classes (12054 in primary schools and 5051 in secondary schools) and 4 657 in special classes or educational settings (3114 and 303 in adapted education programmes in primary and secondary schools respectively, 1240 enrolled in other programmes of different levels). The Committee notes that, although the data provided in the report do not fully correspond to those presented in the 2018 report of the European Agency for special needs and inclusive education (EASIE European Agency Statistics on Inclusive Education, 2018 Dataset Cross-Country Report), they both confirm that more than 70% of SEN children were in mainstream education and around 21-22% were in special schools during the reference period.

The report states that the number of children placed in residential institutions went from 354 in 2017/2018 to 390 in 2018/2019, and explains that the increase is in accordance with the pupil population growth. The Committee understands from the report that not all children placed in residential institutions follow an educational programme, it asks the next report to clarify to what extent the data on children placed in residential institutions are included in the statistics concerning children enrolled in programmes carried out by these institutions and what is the number and proportion of children with disabilities who are not in education.

The Committee previously noted (Conclusions 2012) that out of 447 primary schools, only 80 met all the requirements to accept physically impaired children, which meant that children might be placed in special educational programmes in schools or institutions far from their

home. According to data from the Eurydice Network database, out of 455 basic schools (*Osnovna šola*), only 21 mainstream basic schools implemented adapted education programme for SEN children in 2019 (out of the reference period). As the report does not clarify, as requested (Conclusions 2012) how many schools are ready to accept children with different levels of physical and intellectual disability, and how many children with placement decisions have to leave home because of lack of adequate local establishments, the Committee reiterates these questions and holds that if such information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter. It furthermore asks the next report to indicate what measures are taken to ensure that an increasing number of local schools is adapted to inclusive education requirements.

In order to assess the effective equal access of children with disabilities to education, the Committee needs States parties to provide information, covering the reference period, on:

- the number of children with disabilities, including as compared to the total number of children of school age;
- the number and proportion of children with disabilities educated respectively in:
    - mainstream classes.
    - special units within mainstream schools (or with complementary activities in mainstream settings)
    - in special schools
- the number and proportion of children with disabilities out of education;
- the number of children with disabilities who do not complete compulsory school, as compared to the total number of children who do not complete compulsory school;
- the number and proportion of children with disabilities under other types of educational settings, including:
    - home-schooled children
    - attending school on a part time basis
    - in residential care institutions, whether on a temporary or long-term basis
- the drop-out rates of children with disabilities compared to the entire school population.

Measures aimed at promoting inclusion and ensuring quality education

The Committee previously noted (Conclusions 2012) that once a child was included in a programme adapted to his/her special needs, the school would draft an individual educational programme (IEP), which would be reviewed yearly and assessed within a maximum period of three years. The IEP includes a methodology tailored to specific areas of learning, defines the methods and type of additional expert help required (including the competences of the attendant and the number of hours required) and sets out the necessary adjustments in the organisation of classes or in the evaluation of the child's knowledge. Depending on the type of impairment and as determined by an expert group, children can be entitled to temporary assistance (up to two hours per week in pre-school, up to four hours per week in primary school and one or two hours counselling, up to two hours in secondary school, plus up to two hours homework help and one hour counselling per week) or assistance with certain activities (children with visual impairments, long-term illnesses or autistic disorders) or to permanent physical assistance (in case of severe or profound physical impairments).

In the 2018/2019 school year, in regular primary and secondary schools there were respectively 153 and 52 permanent attendants for students with physical impairments; 408 and 117 temporary attendants of children with special needs and 45040 and 8448 hours of additional professional assistance were granted based on placement decisions. The report indicates that in 2017/2018, the Ministry of Education, Science and Sport published 200 additional job openings for special educational needs classroom assistants to aid the integration of children with special needs into regular education. The same year another project was tendered aimed at recruiting 50 assistants who would facilitate the connection

between a school or kindergarten and a non-governmental organisation helping children with special needs, in order to establish innovative forms of cooperation and sharing experience between kindergartens, schools, institutions, and non-governmental organisations. The Committee asks the next report to indicate whether the number of attendants is adequate to the needs, how such adequacy is assessed and whether the attendants are specially qualified to deal with children with disabilities.

The Committee notes from the report that in adapted programmes with equivalent or lower education standards, the entire programme implementation is adapted, including the norms, and children get additional hours of special pedagogical activities. Education programmes are carried out by residential care institutions and institutions for independent children with special needs, either in institutions or in schools with adapted education programmes. In adapted primary education programmes with lower education standards, pupils who have completed the programme but do not enrol in secondary education programmes can continue primary education for a maximum of three years and keep their pupil status. In special education programmes, activities are carried out in groups of five to eight children and the programme is carried out between the ages of six and 26 in six levels, each lasting three years. In these programmes, children do not attain publicly recognised education but a training certificate. The report also points out that the transition from special educational settings to more demanding programmes is possible. The Committee asks the next report to clarify this point.

In response to the Committee's question (Conclusions 2012), the report indicates that while the special educational schools provide only certain types of vocational training (see details in the report), SEN children can enrol in any regular secondary education programme if they meet the enrolment criteria like all other students. They are entitled to more favourable treatment in the selection process in the case of limited enrolment, having to achieve only 90% of the required points. The Committee asks again how many children with disabilities are enrolled in mainstream training structures, how many in specialised structures and how many requests are made for admission to mainstream and specialist provision.

The report states that inclusion is supported by directing special attention to the education and assistance of teachers in regular schools. Furthermore, expert centres were established to support inclusion and the National School of Leadership in Education conducts programmes to raise awareness among principals. In particular, the report refers to measures taken to provide specific training to teachers and care workers dealing with SEN children in the framework of a project launched in 2017 ("Hand in Hand to Help") and to a 3-years pilot project also launched in 2017 (the "Integrated Early Treatment of Children with Special Needs and their Families and the Improvement of Case Workers' Skills"), whose objective was to upgrade the existing network of child development clinics that treat SEN children and to improve the cooperation between medical services, institutions, and non-governmental organisations in education and social care, taking also better account of the families and of the child environment, in order to ensure greater efficiency, faster response time and more flexibility when providing comprehensive help to the family and the child (medical, educational, social, psychosocial support and rehabilitation).

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.

The Committee furthermore asks whether SEN children are entitled to financial support to cover any additional costs that arise to ensure the removal of obstacles to their integration in education.

Remedies

The Committee previously noted that parents could appeal to the Ministry of Education against the decisions taken by the Placement Commission and that cases of alleged discrimination related to education could be brought to the Higher Labour and Social Court or to the Human Rights Ombudsman (Conclusions 2012). In addition, the report indicates that pursuant to the ZVarD a new equality body – the Advocate of the Principle of Equality – was established in October 2016 and enjoys since 2018 of administrative and technical autonomy. According to the report, this new authority can provide counseling and legal assistance to persons claiming

to be victim of discrimination and issue explanations, recommendations, opinions etc., but it can also take part to judicial proceedings.

In response to the Committee's question (Conclusions 2012), the report explains that the Ministry for Education, as appeal body deals with only slightly over 100 complaints amounting to approximately 1% of all applications for placement of children with special needs. It also indicates that the number of complaints which were related to the protection of rights of children with special needs and were brought to the Human Rights Ombudsman dropped between 2015 and 2017, which led the Human Rights Ombudsman to conclude that the field of care and the protection of rights children with special needs seems to be relatively well regulated.

The Committee asks the next report to provide updated information on the remedies available in case of discrimination on ground of disability with respect to education (access to education, including the provision of adequate assistance or reasonable accommodation) and the relevant case-law.

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 2 - Employment of persons with disabilities

The Committee takes note of the information contained in the report submitted by Slovenia. It also takes note of the information provided by the Human Rights Ombudsman, in the comments registered on 1 October 2020.

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.

It previously found (Conclusions 2012) that it was not established that persons with disabilities were guaranteed an effective equal access to employment.

Legal framework

The report states (in respect of Article 1§2 of the Charter) that on 24 May 2016 a new Protection Against Discrimination Act (ZvarD) entered into force, which replaces the Principle of Equal Treatment Act (ZUNEO) and provides for protection against discrimination in the area of employment. Discrimination on the ground of disability in relation to employment, recruitment and vocational rehabilitation is also prohibited by Articles 6-8 and 200 of the Employment Relationship Act (ZDR-1) of 2013, as amended, the Vocational Rehabilitation and Employment of Persons with Disabilities Act (ZZRZI) and the Act on Equal Opportunities for People with Disabilities of 2010 (ZIMI) (see details in the report and Conclusions 2012).

The Committee notes from the report that disability status can be granted on the basis of various provisions, related to different rights, by decision of a competent body that establishes the presence of permanent effects of physical or intellectual impairment or illness. On this point, the UN Committee on the Rights of Persons with Disabilities – CRPD – in its latest Concluding Observations (2018) considered with concern that a number of disability definitions were "*not in compliance with the human rights model of disability, in particular definitions that are derogatory or describe the "unfitness" of persons to participate in regular education, independent life and work on the grounds of their impairment*". The Committee asks the next report to comment on this point and to clarify whether the assessment of disability/invalidity in the field of employment takes into account the personal and environmental factors interacting with the individual.

The Committee had previously noted that under the Act on Social Care of Persons with Mental and Physical Impairments (ZDVDTP), a person receiving social benefits on grounds of disability, regardless of the type and level of such disability, would be automatically presumed unable to live independently or to be employed and thus excluded from any possibility of employment and rehabilitation. In response to the Committee's request for clarifications (Conclusions 2007, 2008 and 2012), the report explains that the ZDVDTP ceased to apply as from 1 January 2019 (out of the reference period), that the disability benefit granted under this Act did not depend on the financial standing of the disabled person and that persons with a disability status did not automatically lose their legal capacity, and could therefore in any event access the open labour market as self-employed. The report also states that, pursuant to the Labour Market Regulations Act (ZUTD) of 2011, persons with disabilities, including those with intellectual or profound physical impairments, can be registered with the Employment Service of Slovenia (ESS). It is however not clear from the report whether and under what conditions persons with a disability status can be employed in the open labour market, notably when the disability status was recognised before working age. The Committee accordingly asks the next report to clarify this point and to provide comprehensive updated information on the applicable legislation.

In this connection, the Committee notes from the Country report on disability assessment 2018, compiled by the Academic Network of European Disability Experts (ANED), that there are in fact two distinct situations, covered by different legislation, depending on whether the assessment of the working capacity intervenes before or after entering employment:

- persons who are not yet into paid employment can have their disability status assessed pursuant to the ZZRZI – if their working capacity is considered to be reduced by at least 25% (level 2 on a scale up to 4) they can get a disability status in relation to employment and otherwise they can get employment rehabilitation for up to one year and be reassessed at the end of the rehabilitation period; persons assessed by the rehabilitation commission as unemployable can enter the programmes of social inclusion (under the Social Inclusion of Disabled Persons Act of 2018 – ZSVI); for those with a work ability assessed to be between 30% and 70%, the Employment Office (ESS) can issue a written order for protected employment; those with a working capacity not lower than 70% can be included in paid employment with particular support; those who don't get a written order of supported or protected employment, or a written order of unemployability, can work in an ordinary work environment.
- persons whose working capacity is reduced while they are in employment can have their disability status assessed pursuant to the Pension and Disability Insurance Act (ZPIZ) – an invalidity commission assesses whether their residual working capacity is entirely lost (Category I), reduced by 50% or more (Category II) or whether it is reduced by less than 50% and allows them to work at least on a half-time basis or on a full-time basis but on a different job (Category III). Depending on their contributions, they can also get an invalidity pension.

The Committee notes from the Country report on non-discrimination issued in 2019 by the European Equality Law Network (EELN) that Article 3(3) of the 2010 Act on Equal Opportunities for People with Disabilities defines 'appropriate accommodation' as 'necessary legislative, administrative and other measures which do not represent an unreasonable burden, that are needed in a specific case in order to ensure for people with disabilities the enjoyment and realisation of their rights and freedoms'. According to this source, these measures also apply to the employment field. In addition, depending on whether the disability status was recognised before or after entering employment, reasonable accommodation can be provided under the ZZRZI or under the ZPIZ (see Conclusions 2012). The report confirms that the costs related to reasonable accommodation are covered by the public disability fund or the Pension and Disability Insurance Institute.

Access of persons with disabilities to employment

According to data provided in the report, by the end of 2018, persons with disabilities represented 3.84% of all employees, namely 34 311 out of 892 404 people employed, while 13 663 were unemployed. The report adds that in fact persons with disabilities represented 17.4% of all unemployed, and in particular of all persons in long-term unemployment (see the information provided in respect of Article 10 of the Charter).

The report indicates that most persons with disabilities were employed in the open labour market, but it does not provide any information on the respective number of persons with disabilities employed in sheltered and open labour market, or working as self-employed. The Committee notes the concern expressed by the CRPD, in its latest Concluding Observations (2018), about *"The persistence of sheltered workplaces that promote the charity approach and preserve the segregation of persons with disabilities in the labour market, especially that of persons with intellectual disabilities, by qualifying them as "unemployable"; (b)The exposure of persons with disabilities to the risk of losing their income when they become self-employed; (c)The lack of implementation of the employment quota system, the absence of reasonable accommodation in the workplace and the asymmetric requirements for quotas in the public and private work sectors".* The Committee asks the next report to comment on these points in

the light of updated data. It recalls in this respect that States Parties need to systematically provide updated figures concerning the total number of persons with disabilities, including those in age of working; those employed (on the open market and in sheltered employment); those benefiting from employment promotion measures; those seeking employment; those that are unemployed as well as the general transfer rate of people with disabilities from sheltered to open market employment (Conclusions 2012, Cyprus). Pending receipt of these information, it reserves its position on this point.

Measures to promote and support the employment of persons with disabilities

The report points out that access to open labour market for disabled people is mainly ensured through a quota system that applies to all sectors, both public and private, for-profit and not-for-profit. The quota applies to all employer who employs at least 20 workers and the respect of the quota is monitored by a public disability fund. Employers exceeding the quota receive incentives (a monthly reward of 20% of the minimum wage for every person with disabilities exceeding the quota), in addition to the coverage of pension and disability insurance for these persons, while employers not meeting the monthly quota are required to pay a contribution to the public disability fund amounting to 70% of the minimum monthly wage for every missing person with disabilities. The incentives also apply to employers not subject to the mandatory quota, such as those with less than 20 workers and self-employed persons with disabilities. In 2018, almost 102 million euros were paid to employers for employing persons with disabilities under two specific aid schemes. The Committee asks the next report to provide information on the effective rate of compliance with the quota requirement.

The report also explains that a network of vocational rehabilitation providers offers persons with disabilities vocational rehabilitation services aimed at training them for suitable work, obtaining employment, keeping employment and advancing or modifying their professional careers. For the 2014–2020 period, 14 providers with 18 expert teams and locations were selected to cover all the ESS regional offices. In 2018, a total of 2165 people underwent vocational rehabilitation and more than 5.3 million euros were allocated to these services. Pursuant to the ZZRZI, a person with disabilities following vocational rehabilitation can still receive cash benefits provided that vocational rehabilitation is carried out for at least 100 hours and the person with disabilities is not a recipient of cash benefits or financial social assistance as an unemployed person or cash benefits from disability insurance. These conditions, according to the comments submitted by the Human Rights Ombudsman, raise serious problems, as outlined in the complaints received by the Ombudsman (see examples in the comments), who has put forward proposal for amendments, notably that persons with disabilities be entitled to a cash receipt proportionate to the number of working hours, i.e. even in the case of fewer or more than 100 hours and that other aspects concerning for example the absences or the reimbursement of meals be also reviewed. The Committee asks the next report to indicate how these proposals have been taken into account. It furthermore asks the next report to provide information on the vocational rehabilitation performed respectively in sheltered or open labour market.

In its previous conclusion (Conclusions 2012) the Committee requested more detailed information about the implementation in practice of reasonable accommodation in the workplace, including statistics showing the number of requests for reasonable accommodation measures, the number of requests granted and the costs refunded, and whether it prompted an increase in employment of persons with disabilities in the open labour market. On this point, the report states that the number of requests submitted increased from 8 in 2016 (5 of which were granted and one refused) to 24 in 2018 (13 of which were granted and 7 refused), that in 2018 the public disability fund financed the adaptation of the workplace and means of work to the needs of 13 newly employed persons with disabilities, and that it financed support services for 63 employed persons with disabilities. The Committee understands from the report that these data concern the accommodation measures granted to persons with disabilities who access employment for the first time, while further accommodation measures

are taken under the ZPIZ for those who became disabled in the course of their employment. It asks the next report to clarify this point and to provide further information on the accommodation measures taken for both categories of workers.

Considering the information available, notably regarding the limited implementation of accommodation measures and support services for persons with disabilities who access employment, and the lack of information on several points, including the measures taken for those who are in employment, it considers that it has not been established that persons with disabilities are guaranteed effective and equal access to employment.

Remedies

The Committee takes note of the detailed information provided in the report (in respect of Article 1§2 of the Charter) concerning the remedies available in case of discrimination, in the light of the ZvarD of 2016. It notes that, pursuant to this act, an Advocate of the Principle of Equality was established in 2016, which enjoys, since 2018 of administrative and technical autonomy as well as of an independent structure. This authority can notably provide counselling and legal assistance to victims of discrimination, participate in judicial proceedings, conduct inspections and independent research on issues related to discrimination, propose the adoption of special measures in favour of vulnerable categories and make recommandations to authorities, employers and other entities, request a review of constitutionality, monitor the general situation in the country, exchange on this subject with the relevant EU bodies and raise the awareness of the public on discrimination (see details in the report). The report indicates that, out of the 149 cases closed in 2018, the most frequently invoked ground of discrimination was disability (9.6%) and most of the cases concerned employment and work.

In addition, the report indicates that, under the ZDR-1, an employment candidate or worker in an employment relationship who believes they have been discriminated against regarding employment has the right to judicial protection by means of a lawsuit before the competent court. In cases of discrimination, a worker or employment candidate who suffered the discrimination may demand compensation.

The Advocate's annual report (2018) concludes that there is relatively little case law in the field of discrimination, that discrimination claims brought before the courts rarely succeed and result in the payment of compensation, and consequently that it is not possible to determine whether the sanctions are effective, proportionate and dissuasive. The Committee asks the next report to comment on this point and to provide updated information, including in the light of relevant case-law examples. It reserves in the meantime its position on this issue.

Conclusion

The Committee concludes that the situation in Slovenia is not in conformity with Article 15§2 of the Charter on the ground that it has not been established that persons with disabilities are guaranteed an effective access to employment.

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 Slovenia. It also takes note of the information provided by the Human Rights Ombudsman, in the comments registered on 1 October 2020.

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.

It previously found (Conclusions 2012) that the situation was in conformity with the Charter, pending receipt of the information requested concerning the effectiveness of remedies against discrimination and the implementation in practice and/or the follow-up of certain laws and programmes, notably concerning the technical aids and personal assistance available to persons with disabilities and the removal of obstacles in the fields of housing, mobility and transport as well as culture and leisure.

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.

Discrimination on grounds of disability is prohibited by the Act on Equal Opportunities for People with Disabilities (ZIMI) of 2010 (see Conclusions 2012) which also provides for reasonable accommodation inter alia in the fields of access to goods and services (including housing), access to public buildings and access to information. Further protection is provided by the Protection Against Discrimination Act (ZVarD), which has replaced in 2016 the Principle of Equal Treatment Act (ZUNEO) and set up an Advocate of the Principle of Equality (see details in the report concerning Article 1§2 of the Charter and Conclusions 2020 concerning Article 15§2 of the Charter). The report indicates that, out of the 149 cases dealt by this authority and closed in 2018, the most frequently invoked ground of discrimination was disability (9.6%). The Advocate's annual report (2018) concludes however that there is relatively little case law in the field of discrimination, that discrimination claims brought before the courts rarely succeed and result in the payment of compensation, and consequently that it is not possible to determine whether the sanctions are effective, proportionate and dissuasive. The Committee asks the next report to comment on this point and to provide updated information, including in the light of relevant case-law examples concerning the areas covered by Article 15§3 of the Charter. It reserves in the meantime its position on this issue.

The report refers to two important legislative developments which were adopted during the reference period, namely the Personal Assistance Act (ZOA – see below) and the Social Inclusion of Disabled Persons Act (ZSVI). The ZSVI has replaced the 1983 Act on Social Care of Persons with Mental and Physical Impairments (ZDVDTP) and concerns persons with profound disabilities that occurred before reaching 18 or 26 years old. The report explains that the personal scope of this Act includes certain categories of persons with disabilities (persons with autistic disorders or severe forms of behaviour disorders, deaf-blind persons and persons with moderate to severe brain injury or damage) that were not covered by the existing legislation. Persons granted disability status under this Act are entitled to financial support and support services for the participation and inclusion in society (training, home support, decision-

making assistance etc.). The Committee notes that this Act entered into force in 2019, outside the reference period, it accordingly asks the next report to provide comprehensive information on its implementation and impact on inclusion of persons with disabilities in the fields relevant to Article 15§3 of the Charter.

The Committee takes note of the information provided about the Action Programme for persons with disabilities 2014–2021 (API) whose purpose is to promote, protect and ensure the full and equal exercise of all human rights by persons with disabilities, and to foster respect for their inherent dignity. It notes that a working group was appointed to monitor the implementation of the 91 measures and thirteen fundamental objectives to be achieved in all areas of life of persons with disabilities. It asks the next report to provide updated information on the implementation of those measures in practice and the results achieved.

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. In this respect, it previously (Conclusions 2012) took note of the consultative role of the National Council of Disabled People's Organisations of Slovenia (NSIOS). It notes however that the UN Committee on the Rights of Persons with Disabilities (CRPD) in its latest Concluding Observations (2018) expressed concern at "*the lack of consultation with organizations of persons with disabilities aimed at ensuring their meaningful involvement in the design and implementation of disability-related legislation and programmes*". 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 does not provide any new information concerning the different allowances and benefits available to persons with disabilities under different schemes (see Conclusions 2012). The Committee asks the next report to provide updated information in this respect.

The report indicates that, during the reference period, personal assistance was provided on a project or programme basis through public tenders with the Ministry of Labour, Family, Social Affairs and Equal Opportunities (MDDSZ) as the main cofinancer. By the end of 2018, the MDDSZ had cofinanced the provision of personal assistance to more than 1000 persons with disabilities; furthermore, an increasing number of persons with disabilities (1020 in 2015, 1663 in 2018) were provided with specialised social programmes cofinanced by the MDDSZ and aimed at empowering them for a more independent life in the society.

As from 2019 (outside the reference period), the provision of personal assistance is organised and regulated by the Personal Assistance Act of 2017 (ZOA) and its implementing Rules of 2018 (see details in the report). This legislation provides for personal assistance to persons with disabilities in all the daily tasks and activities (including their household, education or workplace), as required. Personal assistance can be granted to persons with disabilities between 18 and 65 years old who require such assistance for at least 30 hours per week. Deaf, blind, or deaf-blind persons who do not require a 30-hour personal assistance per week are entitled to a communication allowance in cash or to 30 hours of personal assistance per month. As this legislation entered into force outside the reference period, the Committee asks the next report to provide updated information on its implementation, including the number of beneficiaries, and to clarify to what extent and under what conditions the cost of personal assistance is at the charge of the user or is covered by the State. 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.

It furthermore asks how the further proposals for improvement put forward by the Ombudsman (aimed at improving the working conditions of personal assistants and enabling persons with dementia to obtain personal assistance, as well as at improving accessibility of social care services) have been taken into account, whether in the framework of the current legislation or in the upcoming Act on long-term treatment. In the meantime, the Committee reserves its position on this point.

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 cofinancing of technical aids for overcoming communication barriers for persons with sensory impairments (including deaf-blind persons) is provided by the ZIMI. Under amendments to this Act which were adopted in 2014, vehicle adaptations can also be cofinanced (see details in the report). According to the report, by the end of 2018, vouchers for 4 082 various technical aids for people with sensory impairments and 1 366 vehicle adaptations for physically impaired people were issued. The Committee previously noted that other assistive devices could be covered by the Health Insurance (Conclusions 2012). It notes that the CRPD in its latest Concluding Observations (2018) expressed concern about *"the lack of mobility aids of sufficient quality available for persons with disabilities and the insufficient support for the acquisition of high-quality mobility aids and assistive technologies".* The Committee asks the next report to provide updated information on this point.

Housing

The Committee previously took note of the relevant legislation concerning accessibility of the built environment (see also below, as regards Mobility), including the provision that all new residential buildings should comply with certain accessibility requirements; it furthermore noted that persons with disabilities had priority over other categories for the granting of social housing, non-profit housing or non-profit rent (see Conclusions 2012).

While the current report does not provide any further information on these issues, the Committee notes from the Ombudsman's comments as well as by the Concluding Observations of the CRPD and the reports of the Academic network of European Disability experts (ANED) that persons with disabilities access to independent housing remains limited and that institutionalisation is widespread. According to the Ombudsman, the identified problems include a lack of capacity in institutions, long waiting periods for admission, an underdeveloped system of de-institutionalised care (care in the community), non-transparent system of charging for institutional care, staff shortages and cases of poor treatment of care recipients. The Committee asks the next report to comment on this.

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 institutions. It asks what proportion of private and public housing is accessible. It asks for information about the existence of accessible sheltered housing and whether financial assistance is provided to adapt existing housing.

Mobility and transport

In response to the Committee's question (Conclusions 2012) concerning the research led by the Urban Planning Institute about accessibility of the built environment, the report explains that an on-line database containing information on the accessibility of public buildings and facilities was set up in 2010 and is being gradually updated. The web portal includes a web forum which enables people to report existing barriers, to ask questions and launch initiatives concerning the issue of accessibility of individual public buildings and facilities. The Committee asks what follow-up is given to the users' complaints about the existing barriers. The report also refers to the National Guidelines adopted for improving accessibility to the built environment, information and communications for persons with disabilities in the *Strategy of Accessible Slovenia of 2005*.

In this connection, the Committee notes the concerns expressed in the Ombudsman's comments about the accessibility of courthouses (see details in the above-mentioned comments) and, on a more general level, on the scarce progress made in removing the architectural and communication barriers within the deadlines fixed by the ZIMI. 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.

The Committee takes note of the information provided in the report concerning the measures taken to facilitate the registration of vehicles for persons with disabilities under the new Motor Vehicles Act of 2017 (ZMV-1), access to the public rail transport, in the framework of the above-mentioned Strategy and access of persons with sensory impairments to multimodal transport, in the framework of a project of 2016 (see details in the report).

Communication

The report does not indicate any developments to the situation previously assessed by the Committee (see Conclusions 2012). The Committee asks the next report to provide updated information on the further measures implemented in this area, in the light of the concerns expressed by the CRPD in its latest Concluding Observations (2018) about the *"Insufficient accessibility to all public and private information and communication services, including television and the Internet, for all persons with disabilities, especially persons with intellectual disabilities".*

Culture and leisure

In response to the Committee's request for information about accessibility to cultural activities for persons with disabilities, the report details the various projects which were launched, such as the issuing of guidelines in 2009 and 2011 for ensuring the accessibility of museums to persons with disabilities and other vulnerable groups, the implementation of these guidelines in 2013-2015 through the *Accessibility to Cultural Heritage for Vulnerable Groups* project and the publication of a final detailed report assessing the best practices identified through this project (see details in the report). The Committee asks the next report to provide updated information on further measures taken to ensure access of persons with disabilities to culture and leisure activities.

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 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 3 - Liberalising regulations

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

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.

Access to the national labour market/Exercise of the right of employment

The report states that Slovenia has transposed into its legislation Directive 2011/98/EU of the European Parliament and the Council of 13 December 2011 on a single application procedure for a single permit for third country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State. A new Employment, Self-Employment and Work of Foreigners Act No. 47/2015 (ZZSDT), adopted in 2015, sets out the new conditions and procedures for issuing a single permit for both residence and work. A single permit may now also be issued to foreign nationals for the purpose of seasonal work, work as a self-employed person, or work as a posted worker providing cross-border services.

The Committee notes from the comments of the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) adopted in 2019 (109th session of the International Labour Conference concerning Convention No. 97 on Migrant Workers (revised, 1949) that, under the new legislation, a third-country national may be employed in the country if there are no unemployed persons registered that would be suitable to fill the job vacancy, and the employer meets the requirements of actively operating, being registered for compulsory social insurance and being registered to conduct activity based on business receipts or investments. In addition, during the period of validity of the single permit, a third-country national is allowed to change jobs within the same employer, to change employers, or to take up employment with two or more employers on the basis of the written authorisation of the Employment Service.

In reply to the Committee's question, the report provides statistical data on the number of work permits and single permits granted and revoked during the reference period to foreign nationals (from outside the EU/EEA), broken down by year and by the applicant's country of origin. The Committee observes that the number of work permits and single permits increased (from 10,103 and 979 respectively in 2015 to 16,745 and 14,770 respectively in 2018), while the percentage of work permits and single permits revoked during the same period fell (from approximately 15.7% and 21% respectively in 2015; 12% and 15% in 2016; 8.6% and 11.6% in 2017 to 9% and 7% in 2018). The Committee asks that the next report provide information on the reasons for refusal to grant work permits, for both first-time and renewal applications.

In its previous conclusion (Conclusion 2012), the Committee asked for information about any measures that might have been adopted (either unilaterally, or by way of reciprocity with other States Parties to the Charter) to liberalise regulations governing the recognition of foreign certificates, professional qualifications and diplomas, with a view to facilitating access to the national labour market. In response, the report states that new legislation on the procedure for recognition of professional qualifications for practising regulated professions was adopted in 2016. This legislation takes due account of the European Union directive on professional qualifications (2013/55/EU). The Committee takes note of the various measures adopted to liberalise regulations governing the recognition of foreign certificates, professional qualifications and diplomas, with a view to facilitating access to the national labour market, in particular:

- the introduction of the European professional card as an alternative to regular procedures that ensures a simplified procedure of recognition of professional qualifications with full electronic support;

- modification and simplification of general rules to start a business or to temporarily provide services (the requirements for experts from other EU Member States where a certain vocation is not regulated were lowered to one year of work experience in the previous ten years instead of two years);
- the introduction of “common training principles” providing the opportunity to establish a common set of minimum knowledge, skills, and competences required for practising a certain profession;
- update of the system for automatic recognition, especially for physicians, dentists, graduate nurses, graduate midwives, pharmacists, and architects.

The Committee asks for up-to-date information on the conditions which must be met in order to have unlimited access to the national labour market.

Consequences of the loss of employment

The report states that where a foreign citizen is deregistered from the compulsory social insurance scheme because his or her employment contract has terminated but he or she still holds a valid single permit (or written authorisation not issued on the basis of consent for employment, self-employment or work), the Employment Service must notify the individual concerned that he or she has 15 days within which to have the deregistration process halted if it is unlawful, or to correct any error. The Committee notes from the report that an objection or appeal may be lodged provided that the worker has been registered with the social insurance scheme without interruption.

The Committee notes from the report that, under the agreement concluded between Slovenia, Bosnia and Herzegovina and Serbia on the employment of citizens of Bosnia and Herzegovina and Serbia in Slovenia, the work permits of workers who lose their jobs in the first year of their employment are revoked. Where workers lose their jobs through no fault of their own and are eligible for unemployment benefit, this rule does not apply. If, however, a worker loses the right to unemployment benefit and fails to find a new job or to become self-employed within 30 days, the work permit will be revoked and the foreign national concerned must leave the country.

The report further states that the permit of a migrant worker who lost his or her job due to the extraordinary termination of the employment contract by the employer will not be revoked if, within 30 days following termination of the employment contract, the migrant worker concludes a new employment contract with a different employer for the same job for which the original permit was issued, and is registered with the social insurance scheme.

The Committee considers that in any event, the work permit is revoked if the contract of employment is terminated, but that the migrant worker has 30 days to find a new job. The Committee asks the next report to confirm that this interpretation is correct. It also asks what procedure applies if the migrant worker has a single permit. 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 in Slovenia is in conformity with Article 18§3 of the Charter in this respect.

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 4 - Right of nationals to leave the country

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

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 Slovenia.

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 133 of the Employment Relationship Act (ZDR-1) determines that an employer is obliged to provide equal pay for the same work and for the work of the same value to workers regardless of their gender. Provisions in employment contracts and collective agreements or employers' general acts which are contrary to this rule are invalid. This provision is in close conjunction with Article 6 of the ZDR-1, which generally regulates the prohibition of discrimination. Both direct and indirect discrimination of pay are prohibited. In relation to the wage system, the ZDR-1 regulates wage components and other payments, the reimbursement of costs, and sets the minimum standard of certain payments to workers. The wage system is a significant field of social partners dialogue. By determining the basic wage and wage rates, the type and rate of wage components, the collective agreements function as an important upgrade of the wage system. Wages in the public sector are governed by a special act and collective agreements for specific sectors and professions.

The Committee has observed in the decision 137/2016 UWE v. Slovenia that the obligation to recognise the right to equal pay for work of equal value is satisfied (decision on the merits adopted on 5 December 2019, §§127-128).

Effective remedies

The Committee recalls that domestic law must provide for appropriate and effective remedies in the event of alleged pay discrimination. Workers who claim that they have suffered discrimination must be able to take their case to court. Effective access to courts must be guaranteed for victims of pay discrimination. Therefore, proceedings should be affordable and timely. Moreover, any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and from being sufficiently dissuasive is contrary to the Charter. The burden of proof must be shifted meaning that where a person believes she or he has suffered discrimination on grounds of sex and establishes facts which make it reasonable to suppose that discrimination has occurred, the onus should be on the defendant to prove that there has been no infringement of the principle of non-discrimination (Conclusions XIII-5, Statement of interpretation on Article 1 of the 1988 Additional Protocol). Employees who try to enforce their right to equality must be legally protected against any form of reprisals from their employers, including not only dismissal, but also downgrading, changes to working conditions and so on.

In pay discrimination disputes, the rule on the reversed burden of proof and all other rules from the provisions governing the prohibition of discrimination apply. The burden of proof is distributed in such a manner that the worker must provide facts justifying the discrimination assumption, whereas in this case the employer must prove that no discrimination occurred meaning that the principle of equal treatment was not violated. The Committee notes that the legislation requires a shifting of the burden of proof to the employer in cases of pay discrimination.

In the event of violation of the prohibition of discrimination, the employer shall be liable to provide compensation under the general rules of civil law (Article 8 of the ZDR-1). The above provision explicitly recognises the liability for pecuniary and non-pecuniary damage that workers suffer from due to the violation of discrimination prohibition. The upper limit of the compensation is not specified. The report states that if a person believes they have been discriminated against regarding pay, they may exercise the right to equal pay and demand the difference to the higher payment that they would be entitled to as a person of the opposite gender.

According to the European Network of Legal Experts on Gender Equality and Non-discrimination, Country Report on gender equality: Slovenia, 2018, damages are not limited as to their amount in the private sector. It must be taken into account that the compensation is effective and proportional to the damage suffered by the worker and that it discourages the employer from repeating the violation. However, in the decision in this regard (UWE v. Slovenia, collective complaint No. 137/2016, decision on the merits of 5 December 2019), the Committee noted that even if the legislation provides for remedies in case of gender pay discrimination, there is no evidence that these remedies are effective in practice.

The Committee therefore requests that the next report provide detailed and up-to-date information on the remedies available to victims of pay discrimination. It also asks for information on the cost of conducting legal proceedings, the availability of legal aid and the conditions for granting it, the time limit for bringing cases of pay discrimination based on gender and the average length of such proceedings.

Pay transparency and job comparisons

The Committee recalls that pay transparency is instrumental in the effective application of the principle of equal pay for work of equal value. Transparency contributes to identifying gender bias and discrimination and it facilitates the taking of corrective action by workers and employers and their organisations as well as by the relevant authorities. States should take measures in accordance with national conditions and traditions with a view to ensuring adequate pay transparency in practice, including measures such as those highlighted in the European Commission Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency, notably an obligation for employers to regularly report on wages and produce disaggregated data by gender. The Committee regards such measures as indicators of compliance with the Charter in this respect. . The Committee also recalls that, in order to establish whether work performed is equal or of equal value, factors such as the nature of tasks, skills, as well as educational and training requirements must be taken into account. States should therefore seek to clarify this notion in domestic law as necessary, either through legislation or case law. In this respect, job classification and evaluation systems should be promoted and where they are used, they must rely on criteria that are gender-neutral and do not result in indirect discrimination.

The Committee notes that there is no information submitted on *pay transparency* or job comparisons in the report. In the framework of the collective complaints mechanism, the Committee has observed that domestic case law in Slovenia does not specifically address wage transparency and that Slovenia has not yet taken the necessary measures to ensure application of Recommendation of 7 March 2014 of the European Commission on strengthening the principle of equal pay between men and women through transparency. The Committee understood that there is no obligation for employers to regularly report on pay and produce disaggregated data by gender (UWE v. Slovenia, collective complaint No. 137/2016, decision on the merits of 5 December 2019).

The Committee also observes from the Direct Request published 107th ILC session (2018) concerning ILO Convention No. 100 that the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) underlined that inequalities may arise from the criteria and the methodology used to classify jobs, particularly the undervaluation of jobs in

which women are overrepresented and from unequal access to allowances and benefits. Therefore, CEACR asked the Government to ensure that objective job evaluation methods and the criteria used are free from gender bias in the public sector pay system and that access to additional benefits is equal for men and women. The CEACR also referred to the need to improve gender-neutral job evaluation in collective agreements and general acts of the employer, including the principle of non-discrimination, as well as on setting clear rewards criteria that facilitate gender neutrality, and accurate criteria for advancement across salary groups. The Committee observed that due to the lack of information on comparable jobs and on the pay of fellow workers in comparable situations, it may be difficult for a potential victim of discrimination to start judicial proceedings in relation to discrimination before the courts UWE v. Slovenia, collective complaint No. 137/2016, decision on the merits of 5 December 2019). The Committee considers that the situation as regards ensuring to ensure pay transparency in Slovenia is not in conformity with the Charter. The Committee further requests that the State informs on the next report on the follow up to Collective Complaint No. 134/2016.

The Committee also 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, University Women of Europe (UWE) v. Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Greece, Ireland, Italy, the Netherlands, Norway, Portugal, Slovenia and Sweden, 5-6 December 2019).

As regards *job comparisons across companies*, there is no information in the report. In the collective complaints' mechanism, the Committee notes that it has not been shown whether the scope of job comparisons can extend outside the company directly concerned, if remuneration is set centrally by a group of companies owned by the same person or controlled by a holding or a conglomerate. The Committee asks again for information in the next report on this point.

Enforcement

The report does not contain any specific information on this issue.

The Committee asks that the next report provide further information about how equal pay is ensured, notably, the work of monitoring done by equality bodies and the Labour Inspectorate in this respect, number of inspections and sanctions imposed.

Obligations to promote the right to equal pay

The Committee recalls that in order to ensure and promote equal pay, the collection of high-quality pay statistics broken down by gender as well as statistics on the number and type of pay discrimination cases are crucial. The collection of such data increases pay transparency at aggregate levels and ultimately uncovers the cases of unequal pay and therefore the gender pay gap. The gender pay gap is one of the most widely accepted indicators of the differences in pay that persist for men and women doing jobs that are either equal or of equal value. In addition, to the overall pay gap (unadjusted and adjusted), the Committee will also, where appropriate, have regard to more specific data on the gender pay gap by sectors, by occupations, by age, by educational level, etc. The Committee further considers that States are under an obligation to analyse the causes of the gender pay gap with a view to designing effective policies aimed at reducing it (see in this respect Complaints Nos.124 to 138, UWE, *op. cit.*).

The report states that, although the gender pay gap in Slovenia is among the lowest in the EU Member States. In 2017, the unadjusted gender pay gap in Slovenia was 8.0%, which is twice as low as the EU average (the EU average was 15% in EU 28 according to Eurostat). However, according to Eurostat, in 2018 the gender pay gap stood at 9.3%, in 2017 it stood

at 8.4%, in 2016 at 8.1% and in 2015 it stood at 8,2% (data published on 29 October 2020). In 2010 it was 0.9%.

The Committee notes that the gap, although still at a level which falls below the EU average, has been rising since 2010, when it stood at 0.9%. Therefore, the Committee considers that the measures taken to promote equal opportunities in the labour market with regard to equal pay have not been sufficient and the situation is not in conformity with the Charter.

Conclusion

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

- pay transparency is not ensured;
- there is no sufficient measurable progress in respect of the obligation to promote the right to equal pay.

Article 24 - Right to protection in case of dismissal

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

Scope

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 report states that, to improve protection of workers in precarious employment relationships, the amendment to the Labour Inspection Act (Official Gazette of the Republic of Slovenia [*Uradni list RS*], Nost 19/14 and 55/17; hereinafter: ZID-1) was introduced which specifies the statutory regulation governing the presumption of the existence of an employment relationship at the stage when, based on the observations of the inspector, the employer subject to inspection must provide the worker with an employment contract template, as long as all legally defined circumstances exist, indicating the existence of an employment relationship. This is one of the means to remedy observed irregularities that the labour inspector identifies.

According to the report, platform work in Slovenia entails many risks of putting workers in a precarious position. The key issue in adopting measures to address this phenomenon remains in the definition of the worker, employer, and employment relationship. The ambiguity is in their status – whether they are in an employment relationship or not, who their employer is and what are their rights. The report states that many of them are virtually employed and should be entitled to workers' rights. The Committee observes that in the framework of the MAPA project working conditions of workers in the gig economy will be studied. The MAPA project is aimed at reducing the negative effects of precariousness and thus segmentation in the labour market and ensuring decent work for all workers.

The Committee asks the next report to provide updated information about the outcome of these projects. It asks in particular 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

As regards the termination of employment for a worker meeting the retirement conditions, according to the report the ZDR-1 as a general regulation in employment relationship legislation does not stipulate mandatory (ex lege) termination of employment for a worker on the grounds of meeting retirement conditions. The mere fact that a worker meets retirement conditions to be entitled to full old-age pension does not render them incapable of performing their work. It only means that they are guaranteed a certain level of social security from compulsory pension insurance. This is no "serious reason related to the capability or behaviour of the worker". Thus, the decision to terminate an employment relationship due to retirement is left to the sole discretion of the worker. In this case, the worker may submit a termination of the employment contract or may terminate employment contract by mutual agreement. In Article 90, the ZDR-1 also specifies the circumstances that cannot be considered justified reasons for ordinary termination of the employment contract and are thus absolutely invalid. Indent nine of Article 90 defines the cases of protection of employees against discrimination in termination of employment specifying that, inter alia, unfounded reasons for termination of the employment contract include worker age.

Remedies and sanctions

According to the report, if the termination of an employment relationship is established as wrongful, the interest of the contractual parties plays an important role. Where a court has established that the termination of an employment contract is wrongful, but that with regard to the circumstances and the interests of both contracting parties the continuation of the employment relationship would no longer be possible, the court may, inter alia, grant the worker adequate compensation in the maximum amount of 18 monthly wages of the worker, as paid in the last three months prior to the termination of the employment contract. The court shall determine the amount of compensation with regard to the duration of the worker's employment, the worker's prospects for new employment and the circumstances that led to the wrongful termination of the employment contract, taking into consideration the rights enforced by the worker for the period until the termination of the employment relationship (Article 118 of the ZDR-1).

The compensation under Article 118 has no impact on the right to compensation for damage, because the worker still has the right to enforce compensation for pecuniary and non-pecuniary damage according to the general rules. The compensation under Article 118 does not entail compensation for damage suffered by a worker at work or in relation to work. This compensation is paid for the worker's reintegration or the loss of employment despite a previously established wrongful termination of the employment contract by the employer. This compensation is paid for the future estimated damage resulting from the unsuccessful reintegration of the worker; it is not meant as compensation for the loss of income or compensation for any other pecuniary damage caused by the wrongful termination of the employment contract during the period pending the termination of the employment contract by a court ruling, or for non-pecuniary damage due to potential unlawful action by the employer upon the termination of the employment contract (Judgment Ref. No. VDSS Pdp 933/2011).

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 understands that the situation in Slovenia complies with this approach and the legislation does not set a ceiling to the amount of damages that can be claimed by a person who has been unlawfully dismissed. The Committee asks whether this understanding is correct.

Conclusion

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

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.