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European Social Charter

European Committee of Social Rights

Conclusions 2016

RUSSIAN FEDERATION

This text may be subject to editorial revision.

The role of the European Committee of Social Rights (the Committee) is to rule on the conformity of the situation in States Parties with the Revised European Social Charter (the Charter). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure.

The following chapter concerns the Russian Federation, which ratified the Charter on 14 September 2000. The deadline for submitting the 5th report was 31 October 2015 and the Russian Federation submitted it on 14 January 2016. The Committee received on 22 December 2015 observations from the International Organisation of Employers (IOE) expressing its perspective on the application of Article 24.

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 concerns the following provisions of the thematic group "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 of men and women to equal opportunities (Article 20),
- the right to protection in cases of termination of employment (Article 24),
- the right to workers to the protection of claims in the event of insolvency of the employer (Article 25).

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

The reference period was 1 January 2011 to 31 December 2014.

The conclusions relating to the Russian Federation concern 15 situations and are as follows:

- 7 conclusions of conformity: Articles 1§1, 1§3, 10§2, 10§3, 10§4, 10§5 and 24;
- 6 conclusions of non-conformity: Articles 1§2, 1§4, 9, 15§2, 18§4 and 20.

In respect of the other 2 situations related to Articles 10§1 and 15§1, the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by the Russian Federation under the Charter. The Committee requests the Government to remedy this situation by providing the information in the next report.

During the current examination, the Committee noted the following positive developments:

Article 1§3

- Following the amendment in 2012 of Federal Act No.1032-1 "On employment in the Russian Federation" of 19 April 1991, the subjects of the Federation are entitled to conduct active policies to promote employment
- Act No. 116-FZ " On Amendments to Certain Legislative Acts" of 5 May 2014, set the rules for accreditation and operation of private employment agencies in the Russian Federation.

Article 10§3

- The Order of the Ministry of Labour of Russia № 262 of April 17, 2014 approved the Federal state standards of public services, including vocational training and education for the unemployed.

Article 15

- the Law on the Protection of Disabled Persons, as amended by Federal Law no. 168-FZ of 2 July 2013, provides that employers must supply equipment for special jobs for persons with disabilities, regard being had to their disability
- With effect from 2013, Law No. 183-FZ of 2 July 2013 entitles public authorities to set quotas for the employment of persons with disabilities within organisations which have more than 35 members of staff.
- With regard to the activities of the National Employment Service, standards for public services and public functions in the field of promotion of employment have been drawn up (Federal Law no. 361-FZ of 30 November 2011) in order to guarantee employment and encourage access to the inclusive employment market for persons with disabilities

Article 20

- In 2011 the Council on Gender was created at the Russian Ministry of Labour whose main tasks are to prepare proposals on improvement of legislation in order to ensure gender equality.

The next report will deal with the following provisions of the thematic group "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 October 2016.

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

Article 1 - Right to work

Paragraph 1 - Policy of full employment

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

Employment situation

According to the OECD, the GDP growth rate decreased gradually during the reference period. The GDP growth rate reached 4.2% in 2011, decreased to 3.5% in 2012, to 1.3% in 2013. It stood at 0.8% in 2014.

According to the report, the overall employment rate increased slightly from 63.9% in 2011 to 65.3% in 2014 whereas the male and female employment rates remained quite stable (male: 2011 – 69.2%; 2014 – 71.0%/female: 2011 – 59.2%; 2014 – 60.3%).

The unemployment rate decreased from 6.5% in 2011 to 5.2% in 2014.

The youth unemployment rate (% of active population aged 15 – 24) decreased from 15.3% to 14.1% and the long-term unemployment rate (% of the unemployed) decreased during the reference period from 32.9% to 28.1%.

The Committee notes that the contraction of the economy had no negative impact on the labour market situation during the reference period.

Employment policy

With respect to labour market policies a number of laws in the Russian Federation were changed or revised during the reference period. Reference is particularly made to the law of

July 2013 on “Employment of the population in the Russian Federation”. The law stipulates that employment services provide jobseekers and employers free access to the information system of available vacancies.

The law also introduces a new state program which strengthens the coordination of different areas in the social and economic field. The overall aim of the program is to create the necessary legal, economic and capacity building conditions enabling the effective development of the labour market.

The Committee asks the next report to indicate the overall activation rate, i.e. the average number of participants in active measures as a percentage of total unemployed.

The report describes the labour market measures such as the training of workers under threat of being laid off or the targeted support of job seekers including their transfer to another district to take up a job. For the next report, the Committee requests to provide statistics such as the public expenditure on labour market policies as percentage of the GDP.

The Committee recalls that labour market measures should be targeted, effective and regularly monitored. In this respect it asks whether the employment policies in place are monitored and how their effectiveness is evaluated.

The Committee notes the efforts of the Russian Federation to put the legislative and organisational framework in place to set up an efficient labour market policy. The situation in Russia during the reference period is marked by a surprisingly low unemployment rate despite a considerable contraction of the economy.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in the Russian Federation 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 Russian Federation.

1. Prohibition of discrimination in employment

In its previous conclusion, the Committee noted that the Labour Code prohibits discrimination on grounds of sex, race, skin colour, nationality, language, property, marital or social status, age, place of residence, religious views, political conviction, membership or non-membership of an association, or other circumstances (status) (Conclusions 2012).

The Committee noted previously that discrimination was prohibited in recruitment, conditions of employment and termination. The Committee asked whether the law prohibited both direct and indirect discrimination and how indirect discrimination was defined (Conclusions 2012).

The Committee notes the adoption of Federal Law No. 162-FZ of 2 July 2013 on amendments to Federal Law No. 1032-I on Employment and other legislative Acts, amending Section 25 so as to explicitly prohibit discrimination in recruitment. Pursuant to the amendment, it is prohibited to disseminate vacancy announcements containing restrictions or establishing preferences on the basis of sex, race, skin colour, nationality, language, origin, property, family, social and employment status, age, place of residence, attitude to religion, convictions/beliefs, membership or non-membership of voluntary associations or social groups, as well as any other factors not related to the qualifications of workers, except for cases where these restrictions or preferences are established under specific laws. The Code of Administrative Offences has been amended accordingly to introduce a definition of discrimination and to provide for fines in case of discriminatory job vacancy.

The Committee understands from an Observation of ILO-CEACR that the Federal Law No. 162-FZ also amends Section 3 of the Labour Code (prohibition of discrimination on the basis of listed grounds) so as to remove the adjective “political” before the word “convictions” (beliefs), and adds “membership of other social groups” (Observation (CEACR) – adopted 2014, published 104th ILC session (2015), Discrimination (Employment and Occupation) Convention, 1958 (No. 111)).

The Committee recalls that it examines the situation with regard to the right of persons with disabilities to employment on a non-discriminatory basis under Article 15§2 and it refers to its conclusion on that provision.

With regard to the definition of indirect discrimination, the report indicates that the definition of discrimination in the legislation is not complete, in particular there is a lack of distinction between direct and indirect discrimination. The Committee recalls that under Article 1§2 of the Charter, legislation should cover both direct and indirect discrimination (Conclusions XVIII-I (2006) Austria). As regards indirect discrimination, the Committee recalls that it has stated that in the context of Article E of the Revised Charter: “Such indirect discrimination may arise by failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all” (Autisme Europe v. France, Collective Complaint No 13/2000, decision on the merits of 4 November 2003, §52). The Committee considers that the situation is not in conformity with Article 1§2 of the Charter on the ground that the indirect discrimination is not expressly prohibited by law.

The Committee noted previously that an individual who considers that he/she has been discriminated against in employment has the right to complain to the federal labour inspectorate bodies and/or courts asking for restoration of their violated rights, seek compensation for material loss and redress for moral damage. The Committee asked for more information on the procedure to be followed as well as whether there is a shift in the

burden of proof and whether there are any pre-defined limits to the amount of damages that may be awarded (Conclusions 2012).

The report indicates that there are no special provisions in the legislation in respect of burden of proof in discrimination cases. The Committee recalls that domestic law should provide for a shift in the burden of proof in favour of the plaintiff in discrimination cases (*Syndicat de Défense des fonctionnaires v. France* Complaint No. 73/2011, Decision on the merits of 13 September 2012, §59). Thus, the Committee considers that the situation is not in conformity with Article 1§2 of the Charter on the ground that the legislation does not provide for a shift in the burden of proof in discrimination cases.

The Committee noted that exceptions to the principle of non-discrimination are made for occupational requirements and asked how these are determined and interpreted as well as examples of such exceptions. The report does not provide the requested information. The Committee reiterates its question.

The Committee asked previously whether discrimination on grounds of sexual orientation was prohibited by virtue of the words or other circumstances, and noted in this respect from submissions by LGBT Russia and the International Lesbian, Gay, Bisexual, Trans and Intersex Association (European Region) (ILGA) Europe that these groups are of the view that there is no meaningful protection against discrimination in employment on grounds of sexual orientation given that it is not a specifically protected ground and in light of the hostility towards LGBT persons in Russia and the unwillingness of the courts to protect the rights of LGBT persons in other spheres (Conclusions 2012).

The report indicates that according to the Ombudsman Report 2014, in Russia discrimination based on sexual orientation and gender identity is prohibited, as well as any other form of discrimination, and the rights of LGBT citizens are protected by existing laws. The Constitution of the Russian Federation guarantees equal human and civil rights and freedoms. The Penal Code of the Russian Federation does not provide accountability for homosexual relations.

The report does not provide any information on the employment situation of the LGBT persons. It does not clarify which is the legal basis of the prohibition of discrimination based on sexual orientation mentioned in the Ombudsman report. Therefore, the Committee concludes that the situation is not in conformity with Article 1§2 of the Charter on the ground that discrimination on grounds of sexual orientation in employment is not expressly prohibited by law.

However the Russian Federation is regularly criticized by the representatives of the human rights community. For example, Moscow Helsinki group and Russian LGBT network claim that the federal law adopted in 2013 N 135-FZ is a discriminatory one. In June 2013, a federal law criminalizing the distribution of materials among minors in support of "non-traditional" sexual relationships was enacted as an amendment to an existing child protection law. The law has resulted in the numerous arrests of Russian LGBT citizens publicly opposing the law and there has reportedly been a surge of homophobic propaganda, violence and even hate crimes, many of whom use the law as justification.

The Committee notes that Human Rights Watch documented seven cases in six Russian regions in which LGBT people who worked as educators were either dismissed or forced to resign following complaints – in some cases public, in others anonymous – that they could spread "propaganda" of non-heterosexual orientation to children. Several LGBT people who lost their jobs told Human Rights Watch that their dismissal or forced resignation was preceded by a public campaign by groups of parents and citizens allegedly concerned for the morals and well-being of their children. In most cases, campaigns referred to the "propaganda" law as grounds for demanding the person's resignation or dismissal (Human Rights Watch Report, Russia: Anti-LGBT Law a Tool for Discrimination, 29 June 2014, at: <https://www.hrw.org/news/2014/06/29/russia-anti-lgbt-law-tool-discrimination> _____). The

Committee takes note that in its opinion, the Venice Commission expressed concerns and considered that the statutory provisions prohibiting “propaganda of homosexuality”, are incompatible with the European Convention of Human Rights and international human rights standards (Venice Commission, Opinion on the Issue of the Prohibition of the So-called "Propaganda of Homosexuality", CDL-AD(2013)022). It asks what measures are being taken to ensure effective protection against discrimination on grounds of sexual orientation in employment.

In its previous conclusion, the Committee asked whether and if so, what categories of employment are closed to non-nationals (Conclusions 2012).

The report indicates that Article 14 of the Federal Law No. 115-FZ “On the Legal Position of Foreign Citizens in the Russian Federation” establishes certain activities that are prohibited for foreigners. In particular, the foreign citizen has no right to be employed in the municipal service. As to the state service, Article 21 of the Federal Law №79-FZ "On the State Civil Service of the Russian Federation" provides that a Russian citizen at the age of 18 can be admitted to civil service, so it excludes the admission of foreign citizens or stateless persons. In addition to state and municipal service restrictions, foreigners cannot be ship’s master, chief officer, chief engineer and radio officer in the crew of the vessels, sailing under the State Flag of the Russian Federation as well as they cannot be members of a warship crew of the Russian Federation or other exploited for commercial purposes ship and aircraft of state or experimental aviation. Until recently, foreigners were not allowed to be civil aircraft captain, but the restriction was lifted partially through Federal Law N 73-FZ "On Amendments to Article 56 of the Air Code of the Russian Federation and Article 14 of the Federal Law "On the Legal position of Foreign Citizens in the Russian Federation".

The report further indicates that foreigners cannot work at the facilities and organizations whose activities are related to security of the Russian Federation. These limitations show that they are connected to an exclusive type of work related to national interests and security of the Russian Federation, and cover a narrow range of positions.

The Committee recalls that under Article 1§2 of the Charter while it is possible for states to make foreign nationals’ access to employment on their territory subject to possession of a work permit, they cannot ban nationals of States Parties, in general, from occupying jobs for reasons other than those set out in Article G; restrictions on the rights guaranteed by the Charter are admitted only if they are prescribed by law, serve a legitimate purpose and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals. The only jobs from which foreigners may be banned therefore are those that are inherently connected with the protection of the public interest or national security and involve the exercise of public authority.

The Committee notes that there is a total ban for foreign nationals to be employed in the municipal service and state service. The Committee considers that the situation is not in conformity with Article 1§2 of the Charter on the ground that the restrictions on the access to employment for nationals of other States Parties to the Charter are excessive, which constitutes a discrimination based on nationality.

The Committee previously asked for information on measures taken to promote equality in employment. The report only mentions the Social Forum “Protection of Social Rights: partnership of government and society” held on 27-28 October 2014 in Moscow where a final document containing a set of measures designed to improve the national anti-discrimination legislation and tools for its implementation in practice, was developed.

The Committee asks that the next report provide information on the manner in which the authorities ensure the implementation of the anti-discrimination legislation in employment. It further asks the next report to provide information on any concrete positive measures/actions

taken or envisaged to promote equality in employment and to combat all forms of discrimination in employment.

2. Prohibition of forced labour

The Labour Code prohibits forced labour. Military service, alternative service and work ordered by a court are not considered forced labour.

Work of prisoners

The Committee notes from the report that the work of prisoners is governed by Article 17 of Law No. 5473-1 of 21 July 1993 on penitentiary institutions and bodies and Article 103-105 of the Criminal Penitentiary Code of the Russian Federation. Under these provisions, prisoners may engage in paid work in employment and adaptation centres, production workshops of penal institutions, federal state unitary enterprises of the penitentiary system and facilities of organisations located inside or outside prisons, as well as in the maintenance of prisons and detention centres. Prisoners must work in places and on positions determined by the prison administration, which must take account, where possible, of their sex, age, disability, state of health and profession. Working hours, the rules on occupational health and safety and pay must be in strict compliance with the labour legislation of the Russian Federation. The obligation to work does not apply to some categories of convicted persons of retirement age (men over 60 and women over 55). Persons with disabilities of the first and second groups are allowed to work at their request and in accordance with the law on social protection of persons with disabilities. Work by minors, pregnant women and women with young children is governed by labour legislation. Prisoners are entitled to take part in remote training or extra-mural training in educational institutions; the federal penitentiary system currently co-operates with four educational institutions in Russia. The consideration of proposals, applications and complaints by prisoners and persons in detention is governed by Administrative Regulation No. 125 approved by the Ministry of Justice on 29 June 2012.

The report states that respect for prisoners' human rights is subject to public supervision; in 79 subjects of the Russian Federation, public monitoring commissions may visit places of detention, including women's penal colonies, without special authorisation, and talk to detainees.

The report indicates that the proportion of prisoners working during the reference period was slightly up (39.6% in 2014). According to the Federal Labour and Employment Service (*Rostrud*) quoted in the report, the inspections carried out showed that the number of violations of labour legislation fell by more than half (53.2%) over the period from 2009-2014; most violations (over 60%) were related to occupational health and safety.

The Committee takes note of the information provided and, with reference to its Statement of Interpretation on Article 1§2 (Conclusions 2012), asks for up-to-date information in the next report on the social protection of prisoners during their imprisonment (covering employment injury, unemployment, health care and old age pensions).

Domestic work

The Committee notes from the report that the term domestic worker refers to persons such as maintenance workers, drivers, secretaries and governesses, etc., who have entered into employment contracts with individuals. In accordance with Article 357 of the Labour Code, inspection visits to employers, including individuals, are allowed at any time of day or night. Such visits may be made in response to reports by employees of violations of their rights by their employers or to requests by employees to check their working conditions and workplace safety. Article 13.3 of Federal Law No. 115-FZ of 25 July 2002 on the legal status of foreign citizens in the Russian Federation allows individuals to employ foreign citizens for domestic work, provided that the latter have temporary or permanent residence permits and

work permits issued in accordance with the law. Since December 2014, the Labour Code has provided that foreign workers are covered by the rules of Russian labour law, including the right to terminate the employment contracts with their employers. This termination of employment does not result in the withdrawal of the foreign workers' residence or work permits. Foreign workers are also entitled to change employer.

The report states that family businesses are subject to the same rules of labour legislation as all other businesses and to the inspection visits provided for in Article 357 of the Labour Code. According to the report, family businesses are not widespread in the Russian Federation.

The Committee asks for up-to-date information in the next report on the implementation of criminal legislation and other regulations to protect domestic staff and employees working in family businesses from abuse.

3. Other aspects of the right to earn one's living in an occupation freely entered upon

Minimum periods of service in the Armed Forces

The Committee notes from the report that the length of military service is 12 months, the length of alternative civilian service is 21 months and the length of alternative civilian service within the armed forces is 18 months. Persons engaged in alternative civilian service are not allowed to terminate their employment contracts on their own initiative, take part in strikes or have additional jobs. They are allowed to receive education by correspondence or evening courses. The jobs available for alternative service are approved annually by the Ministry of Labour and are provided solely by organisations under the jurisdiction of the federal executive bodies and executive bodies of the subjects of the Russian Federation. The candidates' education, profession, experience, state of health and marital status are taken into account in the selection of the place of service.

The Committee pointed out in its previous conclusion that the minimum period of service in the armed forces had to be of a reasonable duration and in cases of longer minimum periods due to any education or training that an individual had attended, the length had to be proportionate to the duration of the education and training. Likewise any fees/costs to be repaid on early termination of service had to be proportionate (Conclusions 2012). It asks that the next report provide up-to-date information on the impact of studies or training courses followed by military personnel on the duration of their service in the armed forces and on the possible financial repercussions of early termination of service.

Requirement to accept the offer of a job or training

The Committee notes that the report does not answer the questions it put on the requirement to accept the offer of a job or training in its Statement of Interpretation on Article 1§2 in the General Introduction to Conclusions 2012. Consequently, it reiterates its request for relevant information in the next report on the matters raised in the Statement of Interpretation, particularly on the remedies available for the persons concerned to dispute decisions to suspend or withdraw unemployment benefit. The Committee points out that should the next report fail to provide the requested information nothing will prove that the situation in the Russian federation is in conformity with Article 1§2 of the Charter with regard to this point.

Privacy at work

The Committee reiterates that the right to undertake work freely includes the right to be protected against interferences with the right to privacy. As the report does not provide any information in this respect, the Committee asks for information in the next report on measures taken by the state to ensure that employers give due consideration to workers'

private lives in the organisation of work and that all interferences are prohibited and where necessary sanctioned (Statement of Interpretation on Article 1§2, Conclusions 2012).

Conclusion

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

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

Article 1 - Right to work

Paragraph 3 - Free placement services

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

During the reference period, based on Federal Act No.1032-1 "On employment in the Russian Federation" of 19 April 1991, the redistribution of powers between federal authority and the subjects of the Federation was still ongoing. Following the amendment of the abovementioned Act, as of 2012 the subjects of the Federation are entitled to conduct active policies to promote employment. In this framework, the responsibilities of the subjects of the Federation include: development and implementation of regional employment programs and employment policy measures; registration of job-seekers and unemployed citizens; activities aimed at profiling unemployed persons; information on the labour market; organisation of job fairs.

In reply to the Committee's request, the report indicates that public employment services are free of charge not only for job-seekers and unemployed, but also for employers. It is specified that most of the services are provided not only to citizens of the Russian Federation, but also to foreign nationals and stateless persons. However, only Russian citizens can receive the status of 'unemployed person'; certain services are provided only to people with this status or to specific categories of citizens (young mothers, elderly people, etc.).

In its previous conclusion (Conclusions 2012), the Committee asked information on the placement rate for the different years of the reference period; in this respect, the report provides the following figures: 34.1% in 2011 (2,479,500 placements – 7,267,400 vacancies); 31% in 2012 (2,331,900 placements – 7,511,400 vacancies); 26.7% in 2013 (2,035,600 placements – 8,917,900 vacancies); 23.8% in 2014 (1,819,600 placements – 9,035,200 vacancies). In order to highlight a significant trend's reversal, even though this falls out the reference period, the report adds that in the period January – June 2015 the placement rate increased to 27.8%. In order to explain the decrease in the placement rate during the reference period, the report refers to the imbalance of qualitative parameters in the employment demand and supply and the fact that registered job seekers do not always accept proposed vacancies. The results of a sample survey conducted in the last quarter of 2014 by *Rosstat* showed that the main reasons of non-placement were: refusal to employ (45.4%), low wages (31.5%) and already filled vacancy (30%).

The report also indicates that in the period 2009-2013 the number of citizens who applied to the public employment services decreased to 39%; compared to 2009, in 2014 the same number decreased by half (52%). In this context, out of 4,498,900 job seekers, 2,919,400 found an employment in 2012 (64.9%); in the following years, this relationship shaped as follows: 2013 – 4,209,900 / 2,702,800 (64.2%); 2014 – 4,016,200 / 2,603,100 (64.3%). According to the report, the decrease in the number of applications addressed to the employment service was due to an improvement in the labour market conditions, but also to a reduction in the economically active population.

In reply to a Committee's request, the report indicates that along with the public employment services private employment agencies also operate in the Russian Federation. Until recently, their activity was not regulated by special legislation at the federal level, although in some regions such legislation has already been developed. Act No. 116-FZ "On Amendments to Certain Legislative Acts" of 5 May 2014, set the rules for accreditation and operation of private employment agencies in the Russian Federation. As from 1 January 2016, private agencies must be registered with the Federal Service for Labour and Employment. The Committee asks if private agencies are allowed to charge fees. In this respect, it recalls that this is not contrary to Article 1§3 provided that fully-fledged free employment services exist in all occupational sectors and geographical areas.

In reply to the Committee's request on the percentage of placements made by the public employment services as a share of the total hirings in the labour market, the report indicates that unemployed use the assistance of public employment services more often than the services provided by private employment services. However, it is pointed out that people are increasingly looking for work through informal channels. The Internet is the most rapidly expanding channel of job search. It is specified that public employment services make extensive use of Internet in their work. In this context, the following figures are provided: in 2011, 34% of job-seekers went through public employment services; 3% used private employment services; 23,9% used media and internet; 25,5% applied to the employers directly; 8,7% used other ways. In the following years, the correspondent percentages were as follows: 2012 – 30.1%, 3%, 29.2% 60.8%, 28.5%, 8.3%; 2013 – 29.5%, 3.4%, 33.1% 59.4%, 28.5%, 8.3%; 2014 – 28%, 4.2%, 39.1% 62.9%, 29.1%, 8.9%.

In its previous conclusions, the Committee also asked what proportion of staff are concerned with placement activities, and the ratio of placement staff to registered job-seekers, as well as if trade union and employers' organisations participate in organising and the running of public employment services. The Committee did not find the requested information in the report. It asks that it be provided in the next report.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in Russian Federation is in conformity with Article 1§3 of the Charter.

Article 1 - Right to work

Paragraph 4 - Vocational guidance, training and rehabilitation

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

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

The Committee considered the situation to be in conformity with the Charter as regards measures relating to vocational training and retraining of workers (Article 10§3).

It deferred its conclusion as regards measures relating to vocational training for persons with disabilities (Article 15§1).

It considered however that the situation was not in conformity with the Charter as regards measures concerning vocational guidance (Article 9), on the ground that it has not been established that the right to vocational guidance within the education system and in the labour market is guaranteed. Accordingly, the Committee considers that the situation is not in conformity with Article 1§4 on the same ground.

Conclusion

The Committee concludes that the situation in the Russian Federation is not in conformity with Article 1§4 of the Charter on the ground that it has not been established that the right to vocational guidance within the education system and in the labour market is guaranteed.

Article 9 - Right to vocational guidance

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

In response to the Committee's question (Conclusions 2012), the report indicates that free access to vocational guidance is provided without restrictions not only to Russian citizens, but also to foreign nationals and stateless persons. It notes however from the report that only Russian citizens are entitled to services for unemployed people, it accordingly asks the next report to clarify whether nationals of other states parties to the Charter are guaranteed access to free vocational guidance provided by the Employment Service.

The Committee also takes note of the different means, programmes and extent of dissemination of information on vocational guidance, detailed in the report: information on vocational guidance services is available by print and electronic media, the Internet and direct contact with potential clients of employment services. The report also mentions, among the main distribution channels, the websites and hotlines of the regional departments and employment services; the Employment centres (personal reception of citizens, walk-in days), including the mobile (field) employment centres; local radio and television, local press, news agencies; events organised in cooperation with the municipal districts and rural areas, business leaders and labour collectives; information sessions at general and vocational education institutions. In the different regions, specific forms of provision of information can apply (group counselling, discussions and workshops, information days; events on vocational guidance organised by mobile employment centres; exhibitions and events in educational institutions and enterprises, etc.).

With regard to measures relating to vocational guidance for persons with disabilities, whether in the education system or in the labour market, the Committee refers to its assessment on this point under Article 15 of the Charter.

Vocational guidance within the education system

The Committee refers to its previous conclusion (Conclusions 2012), where it noted that vocational guidance for children is carried out within the framework of the general education programme. Replying to the Committee's question, the report confirms that, pursuant to the Federal law on Education No. 273-FZ of 29 December 2012, vocational guidance is provided on almost all levels of education.

The report also states that, during the reference period, a permanent advisory body was set up, the Interagency Coordinating Council on Vocational Guidance for Young People (Joint Order of Ministry of Labour and Ministry of Education and Science of Russia No. 390/985 of 27 August 2013), whose tasks include the development of vocational guidance for students of educational institutions. The Coordinating Council ensures coherence between the different bodies concerned (federal executive bodies, executive bodies of subjects of the Russian Federation, public organisations and associations representing the interests of young people in the field of vocational guidance and youth employment); proposes statutory regulation in the field of vocational guidance and youth employment; monitors the implementation of vocational guidance measures in educational institutions and youth employment and elaborates proposals for improvement, including as regards the material available in this field and the dissemination of relevant examples of good practices. The Committee takes note of the measures under way at regional level to improve vocational guidance of students in educational institutions, as described in the report.

The report does not provide the information previously requested (Conclusions 2012) concerning the human and financial resources allocated to vocational guidance within the education system and the number of beneficiaries during the reference period. The Committee recalls in this respect that vocational guidance must be provided:

- free of charge;

- by qualified (counsellors, psychologist and teachers) and sufficient staff;
- to a significant number of persons and by aiming at reaching as many people as possible;
- and with an adequate budget.

The Committee asks for up-to-date information on these items to be systematically provided in all future reports. In the meantime, in the absence of the information requested, it does not find it established that the right to vocational guidance within the educational system is guaranteed.

Vocational guidance in the labour market

The report indicates that, pursuant to Article 9 of Federal Law No. 1032-1 of 19 April 1991 "On employment in the Russian Federation", as amended by Federal Law No. 185-FZ of 02 July 2013, citizens are entitled to free advice, free information and services connected to vocational guidance in employment services in order to select the areas of activity (occupation), employment, possibility to receive vocational training and obtain additional vocational education. The Committee asks that the next report clarify whether vocational guidance services are offered to persons who already have a job but wish to advance their careers or to change jobs. During the reference period, additional measures have been taken in favour of vocational guidance of people with disabilities. Furthermore, the report refers to the setting up of an Interagency Coordinating Council on Vocational Guidance for Young People (see above) which is in charge of developing vocational guidance for young people both in the education system and in the labour market, as detailed in the report.

Vocational guidance of adults in the labour market is provided and monitored by the Employment Service. Such services can be obtained in electronic form and are free for unemployed persons. The procedure and terms for provision of services for vocational guidance is established by the Order of the Ministry of Labour and Social Protection of the Russian Federation No. 380n of 23 August, 2013 "On approval of the federal state standard for public service on organisation of vocational guidance for citizens in occupational choice, vocational training and additional vocational training".

According to the report, from 2010 to 2014, the number of people applying for public employment services involving vocational guidance decreased by 30.7% (from 3 746 900 to 2 591 100 people). From 2009 to 2010 (out of the reference period), the public spending on vocational guidance, at Federal level, increased by 41% (from RUB 138 600 000 to RUB 195 600 000). The report does not provide however the information previously requested (Conclusions 2012) on the expenditure on vocational guidance during the reference period and on the number of staff involved in the provision of vocational guidance in the labour market.

The Committee refers to the criteria for assessing conformity with Article 9 of the Charter already mentioned above, and asks that the next reports systematically contain updated figures on the expenditure, staffing and the number of beneficiaries of vocational guidance in the labour market. In the meantime, the Committee considers that it has not been established that the right to vocational guidance in the labour market is guaranteed.

Conclusion

The Committee concludes that the situation in the Russian Federation is not in conformity with Article 9 of the Charter on the ground that it has not been established that the right to vocational guidance within the education system and in the labour market is guaranteed.

Article 10 - Right to vocational training

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

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

Secondary and higher education

The Committee recalls that under Article 10§1 of the Charter the States Parties must:

- ensure general and vocational secondary education, university and non-university higher education and other forms of vocational training;
- build bridges between secondary vocational education and university and non-university higher education;
- introduce mechanisms for the recognition/validation of knowledge and experience acquired in the context of training/working activity in order to achieve a qualification or to gain access to general, technical and university higher education;
- take measures to make general secondary education and general higher education qualifications relevant from the perspective of professional integration in the job market.

The States Parties are under the obligation to introduce mechanisms for the recognition/validation of knowledge and experience acquired in the context of training/working activity in order to achieve a qualification or to gain access to general, technical and university higher education. Moreover, the States are obliged to take measures to make general secondary education and general higher education qualifications relevant from the perspective of professional integration in the job market.

The Committee notes from the report that since 2013 the constitutional right of the citizens to education including the right to vocational education and training has been implemented in accordance with the new Federal Law of December 29, 2012 №273-FZ "On Education in the Russian Federation" (as amended and supplemented). According to the report, this law is a comprehensive basic legal act and along with the general provisions it contains rules governing the relations at all levels of education and defines the main concepts used in the field of educational relations.

Education is divided into general education, vocational education, additional education and vocational training. It provides the possibility to realise the right to education throughout life (lifelong learning). Vocational education under the new law "On Education in the Russian Federation" includes secondary vocational education and higher education (bachelor's and master's degrees) .

In 2011, the Federal Target Programme for education in 2011-2015 was launched. The Committee notes that the objectives of the Programme were the modernisation of general education, bringing the content and structure of vocational education in line with labour market needs and the development of the quality assessment system.

During the first stage of the Programme (2011 – 2013) strategic development projects were initiated. These projects were implemented by the subjects of the Russian Federation, educational and other institutions. The Committee asks the next report to indicate whether and how these objectives have been achieved, especially as concerns making general secondary education qualifications relevant from the perspective of professional integration in the job market.

The Committee further notes that the Ministry of Education and Science of the Russian Federation prepared a new edition of the federal state educational standards for all areas of training for bachelor's degree, master's degree as well as for the qualifications of higher

education, which introduced a requirement for direct participation of employers in the development and implementation of the basic vocational educational programmes.

The Committee asks what measures have been taken to introduce mechanisms for the recognition/validation of knowledge and experience acquired in the context of training/working activity in order to achieve a qualification or to gain access to general, technical and university higher education. It also asks to be informed of measures taken to make general secondary education and general higher education qualifications relevant from the perspective of professional integration in the job market.

Measures to facilitate access to education and their effectiveness

The Committee notes that the total expenditure of consolidated budget and the state extra-budgetary funds on education stood at 1,893 billion roubles in 2010 and 2,888 billion roubles in 2013, corresponding to 10,8% and 11,4% of the overall budget expenditures in 2010 and 2013 respectively and 4,1% and 4,3% of GDP. The share of the secondary vocational education was 114,9 billion roubles in 2013 or 0,2% of GDP. The total spending on higher or post-graduate vocational education stood at 512 billion roubles or 0,8% of GDP. Vocational training, retraining and advanced training expenditure amounted to 17,5 billion or 0,03% of GDP.

According to the report, foreign citizens are entitled to secondary vocational education, higher education and secondary vocational education through budgetary allocations from the federal budget, budgets of the subjects of the Russian Federation or local budgets in accordance with the international treaties of the Russian Federation, federal laws or quotas established by the Government for education of foreign citizens in the Federation. They are treated equally with the nationals and their legal position is the same as that of the nationals.

Conclusion

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

Article 10 - Right to vocational training

Paragraph 2 - Apprenticeship

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

The Committee recalls that Article 10§2 guarantees the right to access to apprenticeship and other training arrangements. Apprenticeship means training based on a contract between the young person and the employer, whereas other training arrangements can be based on such a contract but also be school-based vocational training. This education should combine theoretical and practical training and close ties must be maintained between training establishments and the working world. Under this paragraph the Committee principally examines apprenticeship arrangements within the framework of an employment relationship between the employer and the apprentice, leading to vocational education.

The Committee notes from the report that according to Article 13 of the new law "On Education in the Russian Federation", basic vocational educational programmes include a requirement for practical training and industrial training of students. Practical training is performed by specialists of industrial training and/or teachers in training workshops, educational and experimental laboratories and other structural subdivisions of educational institutions or specially equipped rooms of other organisations, on the basis of contracts concluded with them. Industrial training is carried out in organisations based on agreements between educational institutions and organisations, enterprises and institutions.

Industrial training is an important component of vocational education. It is conducted directly at the enterprises and organisations and during the period of industrial training students can be taken on the relevant positions. In this case, the legal relationship between the apprentice and the employer are governed by the Labour Code of the Russian Federation. A fixed-term agreement is concluded for the period of training. Students receive all guarantees and benefits provided by the Labour Code.

Apprenticeship is approved by the federal executive authority developing public policy and legal regulation in the sphere of education. The new law On Education in the Russian Federation has called for the revision of the model provisions on organisation of industrial training. A new Regulation on apprenticeship of students mastering basic vocational educational programmes of secondary vocational education was adopted and it was approved by the Ministry of Education and Science N 291.

All students in the educational institutions of elementary vocational education, educational institutions of secondary vocational education, educational institutions of higher education undergo training (apprenticeship).

The Committee asks the next report to provide information on the number of young persons who undertook apprenticeship, the types of contracts concluded between the young person and the employer and the total cost, as well as the division of time between theoretical and practical learning. The Committee holds that if this information is not provided in the next report, there will be nothing to establish that there is a system of apprenticeship in the meaning of this provision.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Russian Federation 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 Russian Federation.

Employed persons

The Committee notes that the new law "On Education in the Russian Federation" provides for vocational education for persons of different ages aiming at the acquisition of professional qualifications including work with specific equipment, technology, hardware and software and other professional tools as well as receiving qualifying categories, classes and categories of profession worker or employee (Article 73 of the Education Act).

According to the report, there are several programmes for vocational training of the employed persons, such as:

- retraining of workers and employees to acquire a new profession or a new working position, taking into account the needs of production, type of professional activity;
- advanced training of workers and employees in order to improve professional knowledge and skills in current occupation.

Vocational training is carried out in educational institutions including educational centres of professional development and at production sites as well as in the form of self-education. The duration of vocational training is determined by a specific vocational training programme developed and approved on the basis of professional standards and leads to the final certification in the form of a qualifying examination including practical qualifying paper and theoretical exam. The results of the qualifying examination are the basis for assigning qualification categories, classes, categories of the relevant occupations, positions. The examination involves representatives of employers and their associations

The right of workers to professional training, re-training and skill improvement is reflected in article 21 of the Labour Code "Fundamental rights and duties of workers" as well as in section IX of the Labour Code "Training and further professional education of workers" (as amended). Article 196 establishes the rights and obligations of the workers in this area. In particular, the employer is obliged to create necessary conditions for workers undertaking professional training, allowing them to combine work with study and to provide guarantees stipulated by law (Labour Code, Chapter 26, "Guarantees and compensation for the workers combining work and study").

The employer concludes a training agreement for training with a person seeking job, or a training agreement for in-service retraining with an employee (Labour Code, Chapter 32, Articles 198-208). The training agreement with the employee is in addition to the employment contract.

Workers participating in training in the organisation may, upon mutual agreement with the employer, be excused from the work assigned to them by the labour contract. While on training, the workers cannot be asked to work overtime or be sent on business trips that are not related to their training. Labour legislation, including labour safety legislation, is applicable to trainees.

During the period of training trainees are granted a scholarship in the amount stated in the training agreement and depending on the profession, speciality or qualification they are training for, but no less than the statutory minimum wage.

Training is organised individually or in a group. In an individual training the worker is attached to a skilled mentor or included in to a team where he/she is developing new skills. In a group training trainees are divided into groups trained by skilled workers.

The Committee takes note of the Order of the Ministry of Education and Science of July 1, 2013 № 499 on the "Procedure for organisation and implementation of educational activities for additional vocational programmes" which regulates the structure of training programmes and vocational development programmes, time of training and quality assessment of additional vocational programmes.

The Committee notes that in 2014 continuing vocational education and training was provided to 4,4 million employees of organisations, enterprises and companies or 13.8% of their payroll. About one tenth of these persons were trained by contracts in the organisations of elementary vocational training as part of short-term training programme. The Committee notes that over the period 2010-2013 the number of participants in short-term training programmes slightly declined.

The Committee observes that the most noticeable decline was among persons at risk of dismissal, almost ninefold during the reference period. According to the report, this may be related to the economic recovery and improvement of the economic situation in the country in 2010-2013 responsible for reduction in the number of specified contingent.

The Committee recalls that under Article 10§3 of the Charter States must take preventive measures against deskilling of still active workers at risk of becoming unemployed as a consequence of technological and/or economic development. The States should provide information on the types of continuing vocational training and education available, overall participation rate of persons in training, percentage of employees participating in vocational training and total expenditure. The Committee asks the next report to provide updated statistics concerning the overall number of employed persons in training and as a percentage of the total number of employed persons as well as the information concerning the existence of legislation on individual leave for training.

Unemployed persons

The Committee takes note of the Order of the Ministry of Labour of Russia № 262 of April 17, 2014 which approved the Federal state standards of public services, including vocational training and education for the unemployed. The public service coordinates the provision of training by selecting the suitable educational institution, on the basis of the level of education and professional qualifications of the unemployed and informs the unemployed person about the content and timing of training as well as other conditions and expected results.

According to a report on the implementation and evaluation of the State programme on Development of Education in the Russian Federation for 2013-2020, the coverage of the programmes of additional vocational education (the proportion of employed population of the age 25-65 trained or with advanced training out of the total number of economically active population in that age group) was 37% in 2014.

Committee recalls that the indicators of particular interest when it comes to vocational training for the unemployed are the number of participants, the development in national expenditure and the results of the effort, i.e. the employment effect (Conclusions XIV-2 (1998), Statement of Interpretation on Article 10§3). It asks the next report to provide information about the types of continuing vocational training and education available on the labour market for unemployed persons, the overall participation rate of persons in training and the total expenditure. It also asked what is the activation rate – i.e. the ratio between the annual average number of previously unemployed participants in active measures divided by the number of registered unemployed persons and participants in active measures. In addition, the Committee asks to be informed of the sharing of the burden of the cost of vocational training among public bodies, unemployment insurance systems, enterprises and households as regards continuing training.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Russian Federation 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 the Russian Federation.

In its previous conclusions (Conclusions 2012), the Committee took note of the legal framework governing the protection and, more specifically, the right to vocational training for long-term unemployed.

The Committee notes that in the framework of the Federal Act "On employment in the Russian Federation" dd 19.04.1991 No.1032-1 (ed. of 02.07.2013 No. 185-FZ), Article 23 on "Vocational training and continuing vocational education by the assignment of employment services" specifically provides that at the end of six months of unemployment unemployed persons have a priority right to vocational training.

During the reference period public employment services continued to facilitate the integration of long-term unemployed persons in labour activities by special assistance with job search, vocational training, pedagogic support, and social adaptation on the job market.

In this framework, in 2014: 705,800 long-term unemployed applied to employment services, which constitutes 17,4% of the total number of assisted job-seekers (in 2010: these figures were respectively 1,312,700 and 20.5%); 386,400 long-term unemployed found a job which constitutes 14.8% of all employed job-seekers assisted by the employment services (in 2010: 629,580 – 15.8%).

With an average duration of unemployment of about 5.2 months in 2014 (5.5 months in 2010), the percentage of unemployed persons registered with the employment services for more than 1 year decreased from 23% in 2009 to 18.1% in 2014.

According to the report, the most important measures implemented during the reference period to improve the competitiveness of long-term unemployed people on the labour market referred to vocational training, with a special focus on training for highly demanded professions. In this context, in 2014: 292,600 long-term unemployed received vocational training which constitutes 11,3% of the number of persons that received this service (in 2010: 546.500 – 14.6%).

The Committee takes note that 35,000 long-term unemployed received psychological support which constitutes 17.5% of the number of persons that received the abovementioned service (in 2010: 47,100 – 19,3%); 37,700 long-term unemployed received the service of social adaptation on the job market which constitutes 15,3% of the number of persons that made use of this opportunity (in 2010: 47.100 – 17.1%) .

The Committee also takes note of the programmes of paid public civil works and of promotion of self-employment which were in place during the reference period.

Conclusion

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

Article 10 - Right to vocational training

Paragraph 5 - Full use of facilities available

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

Fees and financial assistance

The Committee takes note of the procedure for granting of state academic scholarships and (or) the state social scholarships to students studying full-time, state scholarships to graduate students, interns, assistants, studying full-time. Other types of scholarships are also awarded and paid as provided by special regulations order.

According to the report, each year, a special order of the Ministry of Education sets a quota for the scholarships of the President and the Government for full-time students of educational institutions of higher education, post-graduate full-time students of educational institutions of higher education and secondary vocational education and scientific institutions, studying in the field of the relevant priority areas of modernisation and technological development of the economy.

The Committee also takes note of the state educational loan system, which is granted for a long period (11 years) and payments are performed after graduation and employment. The state pays three-quarters of the normal rate for students decided to take a loan and the borrower will have to pay 5% per year. In addition, the state insures all its educational loans to reduce the risk of non-payment.

The share of students studying for free at the institutes of secondary vocational education increased from 69.9% in 2010 to 73.2% in 2013. The situation in higher vocational education is different. Less than 40% of students are studying for free.

According to the report, in the 2013/2014 academic year, the scholarships were granted to 52% of students of state and municipal secondary vocational educational institutions and 46% of students of state and municipal universities, and the indicator remained stable for 2010-2014.

The Committee recalls that under Article 10§5 of the Charter equality of treatment as regards access to financial assistance for studies shall be provided to nationals of other States Parties lawfully resident in any capacity, or having authority to reside by reason of their ties with persons lawfully residing, in the territory of the Party concerned. Students and trainees, who, without having the above-mentioned ties, entered the territory with the sole purpose of attending training are not concerned by this provision of the Charter. Article 10§5 does not require the States Parties to grant financial aid to any foreign national who is not already resident in the State Party concerned, on an equal footing with its nationals. However, it requires that nationals of other States Parties who already have a resident status in the State Party concerned, receive equal treatment with nationals in the matters of both access to vocational education (Article 10§1) and financial aid for education (Article 10§5).

Those States Parties who impose a permanent residence requirement or any length of residence requirement on nationals of other States Parties in order for them to apply for financial aid for vocational education and training are in breach of the Charter.

The Committee asks whether nationals of other States Parties legally resident in the Russian Federation are equally treated in the matters of fees and financial assistance for vocational education and training.

Training during working hours

According to the report, the Labour Code provides for a number of guarantees and compensation to workers combining work and study. Thus, according to Article 173 of the Labour Code (as amended by The Federal Law dd July 2, 2013 №185-FZ), workers who

were sent on training by the employer or who entered independently a higher education institution are given an additional leave by the employer with preservation of the average wages. In addition, on the agreement between the parties of the labour contract the working hours may be reduced by giving the worker one day off a week or by shortening the length of working hours during the week with full or partial preservation of the average wages.

According to article 174 of the Labour Code, workers combining work with secondary vocational training are also provided with additional leave with preservation of the average wages. On the agreement between the parties of the labour contract the working hours may be reduced (by giving the employee one day off a week). In addition, the employer pays for a return ticket to the place of the location of this education institution (in the amount of 50% of the fare).

The guarantees and compensation to workers going into general education or general secondary education in the form of part-time training are provided by the Article 176 of the Labour Code. They are also granted an additional paid leave of 9 and 22 days, respectively. At their request they can have a shorter week or shorter working day / shift.

Efficiency of training

According to the report, collective agreements and contracts include provisions for monitoring the implementation of all commitments. In organisations and enterprises such monitoring is carried out by the social partners as a rule by a special commission composed of representatives of workers and employers. The Committee notes that the representation of the social partners (workers and employers) is provided at all stages from the negotiation and conclusion of collective agreements to monitor of their implementation.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Russian Federation is in conformity with Article 10§5 of the Charter.

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

Paragraph 1 - Vocational training for persons with disabilities

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

The report states that there were 12 813 000 persons with disabilities in the Russian Federation as at 1 January 2014, including 582 000 children with disabilities under 19 years of age.

Definition of disability

The Russian Federation ratified the United Nations Convention on the Rights of Persons with Disabilities on 25 September 2012. The first report on the implementation of the Convention was published in 2015.

In reply to the Committee's question, the report sets out the measures taken to comply with the judgement of the European Court of Human Rights in the case of Shtukaturov and the recommendations of the United Nations Human Rights Committee, more particularly with regard to the introduction of a status of limited or partial legal capacity. According to the report, in judgement no. 4-P of 27 February 2009, the Constitutional Court of the Russian Federation endorsed the findings of the European Court of Human Rights with regard to the law of civil procedure and Law no. 3186-1 of 2 July 1992 on Psychiatric Care and Guarantees of Citizens' Rights. Law no. 67-FZ, which was adopted on 6 April 2011, gave additional rights to citizens who are recognised as lacking legal capacity. For the first time, it recognised the independence of persons with mental disorders who have been declared as lacking legal capacity. In addition, citizens recognised as lacking legal capacity gained the right to express their attitude towards psychiatric treatment and the right to give consent to treatment on an equal footing with other persons (having legal capacity). This also applies to refusal of treatment, psychiatric examinations, etc. (see the report for more details). The law contains a provision stating that citizens who are recognised as lacking legal capacity can be hospitalised only by order of a court. In addition, the Code of Civil Procedure of the Russian Federation has been amended with regard to matters of procedure and procedural restrictions in relation to the establishment of legal capacity so as to implement the decisions of the Constitutional Court. The report indicates that persons with disabilities can apply to the courts to have their legal capacity restored

Anti-discrimination legislation

The report states that Article 3 of the new Federal Law no. 273-FZ of 29 December 2012 on Education in the Russian Federation, as amended and supplemented, provides that state policy and regulations concerning education shall guarantee the universal right to education and prohibit discrimination in this area.

Any person who believes that they have suffered discrimination can take the matter to the courts. The Committee requests further information about the remedies available to victims of discrimination on the ground of disability (including examples of relevant case law and the action taken).

Education

In its previous conclusion (Conclusions 2012), the Committee asked what had been done to promote an inclusive approach and what had been the outcome of any initiatives adopted in this regard. In reply, the report states that, on 1 June 2012, the President signed a Decree on the National Child Protection Strategy 2012-2017 which refers to the need for a legally enforceable right for children with disabilities to inclusive pre-school, general and vocational

education, so that education standards can be harmonised with the requirements of the United Nations Convention on the Rights of Persons with Disabilities.

The report states that there are special federal state education standards and special requirements in order to guarantee the right to education of pupils with disabilities. Article 79 of the Law on Education governs the organisation of education for children with disabilities. They can study at mainstream schools together with other pupils or in separate classes or groups, and at specialised educational institutions. The report also states that pupils with disabilities can study while receiving long-term care at a specialised medical institution or at home.

The Law on Education lays down the possible forms of education available to persons with disabilities, providing for tailored educational curricula and individual education plans. For the first time, the law contains provisions concerning inclusive education and training.

According to this law, the authorities (at all levels) must make the arrangements necessary for persons with disabilities to be able to benefit from the right to education without discrimination and on the basis of equal opportunities. In addition, the state authorities of the Subjects of the Russian Federation were to create organisations engaging in educational activities involving the adaptation of basic education curricula for pupils with various disabilities.

The report states that a new national policy concept has been developed in the field of children's rights for the period up to 2025, containing proposals for the provision of differentiated support for families with disabled children, including state guarantees with regard to the education of these children. A plan for the organisation of inclusive education and special arrangements for the education of children with disabilities was developed and approved in 2015 (outside the reference period). The Committee wishes to receive information on the results achieved in implementing this plan.

The Committee notes from the report (data originating from the Federal Statistics Service) that the number of disabled persons with health problems attending inclusive general educational institutions rose from 141 900 in 2011-2012 to 207 200 in 2013-2014, while the number of those attending special institutions or specialised classes at general educational institutions rose from 208 900 in 2011-2012 to 210 200 in 2013-2014. The Committee notes the inclusive education practices that have been implemented in Moscow. The report states that, under the legislation in force, parents or legal guardians have the right to choose the form of education based on pupils' characteristics and abilities.

According to the Law on Education, education and vocational training for persons with disabilities are based on tailored educational programmes. Educational programmes at higher or vocational education institutions are tailored to the needs of persons with disabilities. Furthermore, the report indicates that the state provides training for teachers of pupils with disabilities.

The Committee requests that the next report indicate the number of children who have left school, the number of children who have not attended school, and the percentage of pupils with disabilities who enter the labour market after completing their schooling and/or ordinary or special training.

Vocational training

The report states that the Law on Education governs higher education with special admission regulations. If they pass the entrance examinations, students with disabilities are prioritised for free access to preparatory classes at an institute of higher education. Pupils with disabilities are also entitled to higher education in accordance with the quota for free higher education, which is set on an annual basis for each educational institution.

According to the report, the state authorities of the Subjects of the Russian Federation can adopt laws and other regulations in the field of education provided that they do not contradict federal law. The Committee takes note of the laws of the Subjects of the Russian Federation which govern education for pupils with disabilities.

The report states that an annual monitoring of the conditions in which vocational education is provided to persons with disabilities is being conducted for the 2012-2015 period in order to enhance the effectiveness of measures intended to boost the employment of persons with disabilities and ensure that vocational training is available. The findings are submitted to the President of the Russian Federation and the Government.

According to the report, guidelines on accessibility of the buildings of secondary and higher vocational education institutions for persons with disabilities have been drawn up and sent to the higher executive authorities of the Subjects of the Russian Federation (Letter no. MK-1797/20 of 3 December 2012).

In accordance with Order no. 1082 of the Ministry of Education and Science of 20 September 2013, central or territorial psycho-pedagogical boards are to be created in order, inter alia, to identify children with physical disabilities, mental development problems and/or behavioural problems, and to prepare recommendations as to how their education and training should be organised. The Committee takes note of the activities of these boards as mentioned in the report.

The Committee notes from the report that measures have been taken as part of the 2011-2015 Accessible Environment Programme (Government Decision no. 2181-r of 26 November 2012) in order to equip ordinary educational institutions so as to facilitate access and education for children with disabilities.

In September 2014 a pilot transition to the state educational standards for the education of children with disabilities began as part of the national education initiative entitled "Our New School" (124 educational institutions in 24 Subjects of the Russian Federation are participating). The Committee asks to be informed of the results achieved in implementing this project.

In its previous conclusion (Conclusions 2012), the Committee requested details of the qualifications gained by children with disabilities upon completing their schooling and their success rate in terms of accessing vocational training and continuing education, or entry into the ordinary employment market. According to the report (data from the Ministry of Education and Science), persons with disabilities received secondary vocational training in all professions and specialisations (see the report for more details). A total of 183 educational programmes are tailored for persons with disabilities, which equates to 60% of all educational programmes. The Committee notes from the report that the percentage of graduates with disabilities who were employed in 2012-2013 was 58.8% and the percentage of those who received vocational training was 22%. According to the report, most secondary vocational educational institutions (84%) help graduates with disabilities to find employment.

The Committee notes from the report that the number of pupils with disabilities who continued with their education at a secondary vocational institution fell from 5,447 (approximately 37.8%) in 2010-2011 to 4 456 (approximately 36%) in 2013-2014, while the number of pupils with disabilities who went on to higher education fell from 6 670 (approximately 29%) in 2010-2011 to 5 194 (approximately 30.95%) in 2013-2014.

The report states that Federal Law no. 181-FZ of 24 November 1995 on Social Protection for Disabled Persons, as amended by Federal Law no. 419-FZ of 1 December 2014 on amendments to certain pieces of legislation on the protection of persons with disabilities made for the purpose of ratifying the United Nations Convention on the Rights of Persons with Disabilities, entered into force on 1 January 2016. The main fields concerned by rehabilitation of persons with disabilities are careers advice, general and vocational education, vocational training and employment assistance (including special workplaces).

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 the Russian Federation.

Employment of persons with disabilities

The report states that there were 12 813 000 persons with disabilities in the Russian Federation as at 1 January 2014, including approximately 3 896 000 of working age and approximately 2 407 000 workers with disabilities. The Committee notes from the report that the rate of employment of persons with disabilities aged 15-72 was 12.1%, the unemployment rate was 19.4%, and the economic activity level was 15%.

The report also indicates that, in 2013, 190 631 persons with disabilities sought help from the employment services in order to find work; 211 828 did so in 2012 and 243 407 in 2011. Of this total, 75 642 found jobs in 2013, 159 557 were registered as unemployed, and 4 271 worked under the quota. As for the number of persons with disabilities who benefited from careers advice services, 155 558 did so in 2011, 137 871 in 2012 and 123 869 in 2013; the number of those who benefited from vocational training services fell from 10 779 in 2011 to 7 997 in 2013. Furthermore, in 2013, 34 274 persons with disabilities benefited from additional vocational training which is provided once every 3-4 years.

Anti-discrimination legislation

According to the initial report from the Russian Federation to the Committee on the Rights of Persons with Disabilities (2015), Article 3 of the Labour Code provides that everyone shall have an equal opportunity to exercise their right to work. No one can be discriminated against or favoured in terms of their employment rights and freedoms. The Committee requests that the next report give details of the practical application of this provision in case law, including with regard to disability.

The report states that Federal Law no. 181-FZ of 24 November 1995 on Social Protection for Disabled Persons, as amended by Federal Law no. 419-FZ of 1 December 2014 on amendments to certain pieces of legislation on the protection of persons with disabilities made for the purpose of ratifying the United Nations Convention on the Rights of Persons with Disabilities, entered into force on 1 January 2016 (outside the reference period). It expressly prohibits all forms of discrimination based on disability in all areas.

According to the report, the Law on the Protection of Disabled Persons, as amended by Federal Law no. 168-FZ of 2 July 2013, provides that employers must supply equipment for special jobs for persons with disabilities, regard being had to their disability.

The Committee requests the next report to provide information on the measures taken to ensure effective remedies against alleged discrimination in employment on grounds of disability (including examples of relevant case law and its follow up), as well as on how reasonable accommodation is implemented in practice and whether this has prompted an increase in the employment of persons with disabilities in the open labour market. In the light of the available information concerning the current situation, the Committee considers that it has not been established that the reasonable accommodation requirement is effectively guaranteed.

Measures to encourage the employment of persons with disabilities

In addition to the specific provisions concerning the employment of persons with disabilities referred to in its previous conclusion (Conclusions 2012), the Committee notes from the report that Federal Law no. 11-FZ which entered into force in March 2013 makes provision for amendments to certain pieces of legislation (Code of Administrative Offences, Federal

Law no. 181-FZ of 24 November 1995 on Social Protection for Disabled Persons, and Federal Law no. 1032-1 of 19 April 1991 on Employment) in relation to employment quotas for persons with disabilities. Employers must henceforth submit monthly reports to the employment services providing information on the availability of vacant posts and the implementation of a quota for the employment of persons with disabilities (Law on Employment) and create/allocate jobs for persons with disabilities (Law on Social Protection for Disabled Persons). In addition, the degree of administrative liability of the employment services for violations of the rights of unemployed persons with disabilities has increased (Code of Administrative Offences).

With effect from 2013, Law No. 183-FZ of 2 July 2013 entitles public authorities to set quotas for the employment of persons with disabilities within organisations which have more than 35 members of staff. The Committee notes from the report that the quota system includes small and medium-sized enterprises, including in rural areas, which makes it possible to expand employment opportunities for persons with disabilities. The report states that the number of persons with disabilities working on the basis of quotas has increased from the 2012 level of 15.2% and now stands at 350 000. In 2014, 14 900 additional adapted jobs were created for persons with disabilities.

In addition to the specific measures referred to in the Law on Social Protection, mentioned in its previous conclusion (Conclusions 2012), the Committee takes note of a number of measures set out in the report which are intended to encourage the employment of persons with disabilities and ensure that vocational education is available (Government Decree No. 1921-p of 15 December 2012):

- since 2013, annual monitoring of employment and the adjustment of workplaces for persons with disabilities who have started up their own business (Regulation no. 645 of the Ministry of Labour of 29 December 2012 and Regulation no. 63 of 30 January 2014).
- the basic requirements for the adjustment of special jobs have been extended, in particular to include persons who are in a wheelchair or partially sighted (Regulation no. 685 of the Ministry of Labour of 19 November 2013).
- the list of recommended professions and positions based on the impairment and limitations of persons with disabilities which can be used to select jobs and careers that are offered to persons with disabilities by medical and social institutions, employment services and disabled persons' organisations which are involved in giving them careers advice and promoting employment (Regulation no. 515 of the Ministry of Labour of 14 August 2014).
- subsidies from the federal budget to the budgets of the Subjects of the Russian Federation for the implementation of measures intended to promote the employment of unemployed persons with disabilities, including adapted employment (Government Decrees Nos. 1304 of 15 December 2012, 1198 of 20 December 2013 and 841 of 22 August 2014). The Committee notes from the report that criteria for assessing the effectiveness of the employment of unemployed persons with disabilities – including adapted employment – have been developed in order to make the employment service that works in this field more effective (Regulation adopted by way of Decree no. 82 of the Ministry of Labour of 28 September 2013).
- With regard to the activities of the National Employment Service, the report states that standards for public services and public functions in the field of promotion of employment have been drawn up (Federal Law no. 361-FZ of 30 November 2011) in order to guarantee employment and encourage access to the inclusive employment market for persons with disabilities. The report states that persons with disabilities benefit fully from the employment service. The Committee takes note of the key performance indicators for the public employment services during the reference period with regard to active measures to promote employment, including that of persons with disabilities.

- The report states that Federal Government standards for public services which apply to persons with disabilities as regards the organisation of careers advice, psychological support and social adaptation of unemployed persons in the labour market, the organisation of paid community work, the organisation of temporary work for young people, the promotion of freelance work (including the provision of vocational training and one-off financial assistance), and vocational training. The Committee notes from the report that the State is responsible for overseeing and monitoring the implementation of these standards.
- The employment of persons with disabilities is monitored through scheduled and unscheduled inspections which are carried out on legal entities and individual entrepreneurs. The Committee notes the cases of violations of the rights of persons with disabilities as a result of such monitoring which are mentioned in the report.
- According to the report, each federal standard requires special arrangements (i.e. adjustment of premises and infrastructure) to be put in place for persons with disabilities who seek employment services.

The report states that the 2009-2011 “Promotion of Employment” programme (see Conclusions 2012) has been continued for only 15 regions where the situation in the labour market is very complex. In other regions, it is limited to measures aimed at the employment of persons with disabilities and the parents of children with disabilities. The Committee notes the following measures referred to in the report: temporary employment of workers who are threatened with redundancy and unemployed job-seekers, proactive vocational training for employees who are threatened with redundancy, promotion of the employment of young people in social projects and social employment (see the report for more details).

The report states that in November 2013, the Ministry of Labour launched an information website called “Work in Russia” for persons with disabilities to enable them to find information about employment opportunities in the open labour market, taking account of their region of residence, category of disability and other parameters. In 2014, the website published details of 64,000 jobs for persons with disabilities.

Conclusion

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

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

Paragraph 4 - Right of nationals to leave the country

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

The Committee notes that under Article 18§4, States undertake not to restrict the right of their nationals to leave the country to engage in gainful employment in other Parties to the Charter. The only permitted restrictions are those provided for in Article G of the Charter, i.e. those which are prescribed by law, pursue a legitimate purpose and are necessary in a democratic society for the protection of the rights.

The Committee notes that Article 15 of Federal Law No. 114-FZ of 15 August 1996 on the procedure for leaving and entering the Russian Federation stipulates that the right of a citizen of the Russian Federation to leave the Russian Federation may temporarily be restricted in cases where he/she has access to data of special importance or to top-secret data constituting a state secret in accordance with the law of the Russian Federation on state secrets, and has concluded an employment agreement (contract) stipulating a temporary restriction of the right to leave the Russian Federation, provided that the period of restriction does not exceed five years from the date the individual was last exposed to the data of special importance or to top-secret data – until the expiry of the restriction established by the employment agreement (contract) or in accordance with the said federal law.

In its previous conclusion (Conclusions 2012), the Committee considered that the blanket prohibition on leaving the country as stipulated in the above-mentioned law was too restrictive and went beyond what could be justified under Article G of the Charter. The Committee therefore held that the situation was not in conformity with the Charter.

The report states that the provision was examined by the Constitutional Court, which ruled in decision No. 14-P of 7 June 2012 that the restriction did not breach the Constitution in that, on signing the employment contracts, the individuals concerned voluntarily assumed the obligation not to divulge state secrets and agreed to the partial and temporary restriction of rights under the federal law on state secrets, including the temporary ban on leaving the country.

The report further explains that the ban on leaving the Russian Federation is not final and may be appealed against at the appropriate interdepartmental commission under Article 17 of the Federal Law on the procedure for leaving and entering the Russian Federation. The commission has three months to consider the appeal and makes a reasoned decision on the validity or invalidity of the restrictions on the right to leave the Russian Federation. If the measure prohibiting an individual from leaving the country is confirmed, the interdepartmental commission's decision may be appealed against in court.

The Committee further notes that the right to leave the country to engage in a gainful occupation in other States may also be restricted in the context of criminal proceedings in cases where the person concerned is either under suspicion of having committed a crime or has been accused of or convicted of such, until the sentence has been served or lifted.

The Committee asked in its previous conclusion how many persons had been affected by the ban on leaving the country. The report did not reply to its question. The Committee reiterates its request. It also asks that the next report contains information on judicial decisions delivered as a result of the appeals in question.

In the absence of more detailed information on cases of practical application of the law in question and on the case-law of the domestic courts concerning possible restrictions on the right to leave the country, the Committee is unable to alter its previous conclusion.

Lastly, in its previous conclusion, the Committee asked whether citizens were free to seek work abroad without the involvement of placement agencies licensed under Federal Law No. 128-F3 of 8 August 2001. In this connection, the report states that under Article 10 of the Employment Law, citizens of the Russian Federation are not required to apply to private employment agencies for employment abroad and are not limited in their right to independent job searches or to conclude employment contracts with foreign employers.

Conclusion

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

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

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

Equal rights

The Committee recalls that it examines measures relating to maternity protection under Article 8 of the Charter (Conclusions 2015).

The Committee noted previously that the Constitution guarantees *inter alia* equality between men and women. Section 3 of the Labour Code further provides that employment rights must be guaranteed without discrimination on grounds of gender. Under Section 132 of the Labour Code; “wages for each employee depend on his/her skills, the complexity of the work, the quantity and quality of work. Any form of discrimination in setting and modifying the terms of payment is prohibited” (Conclusions 2012).

The Committee also noted in its conclusion on Article 4§3 (Conclusions 2014) that according to Section 22 of the Labour Code (main rights and duties of the employer) the employer is obliged to ensure equal pay to workers performing work of equal value.

The Committee asked previously whether there are types of employment/activities which are reserved to one sex (Conclusions 2012).

The report indicates that Section 253 of the Labour Code provide a prohibition to employ women in arduous, harmful or dangerous conditions and the Resolution No. 162 of 25 February 2000 excludes women from being employed in 456 occupations. The list includes works performed in underground in mining and construction of underground structures, cleaning pipes, furnaces and flues etc. The report further indicates that the refusal by an employer to recruit a woman to perform the kind of work listed is not discriminatory, if the employer has not established a safe working environment and this is confirmed by a special assessment of working conditions.

The Committee recalls that according to the Appendix to Article 20 (§2), provisions concerning the protection of women are not deemed to be discrimination. Such provisions must be objectively justified by needs that apply exclusively to women, such as those relating to maternity (pregnancy, childbirth and the post-natal period). These particular rights are also guaranteed by Article 8 of the Charter (right of employed women to protection of maternity). On the other hand, prohibiting women from performing night work or underground mining while authorising men to do so is contrary to the principle of equal treatment (Conclusions 2012, Bosnia and Herzegovina). Thus, the Committee considers that the situation in the Russian Federation is not in conformity with Article 20 of the Charter on the ground that women are not permitted to work in all professions which constitutes discrimination based on sex.

In its previous conclusion, the Committee noted that individuals who believe that they have been discriminated against may take their case before the courts, and sought further information on such procedures as well as information on remedies available to victims of discrimination. It asked whether the Russian legislation provides for a shift in the burden of proof in gender discrimination cases (Conclusions 2012).

The Committee recalls that Article 20 of the Charter requires that domestic law should provide for a shift in the burden of proof in favour of the plaintiff in discrimination cases. The shift in the burden of proof consists in ensuring that where a person believes he or she has suffered as the result of non-compliance with the principle of equal treatment and establishes facts which make it reasonable to suppose that discrimination has occurred, the onus is on the defendant to prove that there has been no infringement of the principle of equal treatment (Conclusions XIII-5 (1997), Statement of Interpretation on Article 1 of the

Additional Protocol). The Committee refers to its Conclusion on Article 1§2 where it noted that the report indicates that there are no special provisions in the legislation in respect of burden of proof in discrimination cases. The Committee considers that the situation is not in conformity with Article 20 of the Charter on the ground that the legislation does not provide for a shift in the burden of proof in gender discrimination cases.

The report does not provide information on the remedies available to victims of discrimination. It does not provide information concerning the enforcement of the legal provisions relating to prohibition of gender discrimination in employment, including equal remuneration. No information on cases dealt with by the competent administrative and judicial authorities is provided, which makes it difficult to assess whether the existing complaint mechanism is accessible in practice and allows workers to assert effectively their right to non-discrimination and gender equality under the Labour Code.

The Committee reiterates its request for information on the remedies available to victims of gender discrimination and on examples of domestic case law, including of equal pay litigations, with information on their outcome, sanctions applied against employers and compensation granted to victims. It underlines that if the necessary information is not provided in the next report, there will be nothing to demonstrate that the situation is in conformity with the Charter with regard to the effective implementation of the legal framework.

The Committee has held that a number of other legal steps should be taken to make the right of appeal fully effective, such as authorising trade unions and other bodies to take action in employment discrimination cases, including action on behalf of individuals or setting up an independent body to promote equal treatment and provide legal assistance to victims, and it asked further information on these issues (Conclusions 2012). Since the report does not provide the information requested, the Committee reiterates its question.

The report indicates that in 2011 the Council on Gender was created at the Russian Ministry of Labour whose main tasks are to prepare proposals on improvement of legislation in order to ensure gender equality; to make recommendations to federal executive bodies and local authorities; to organize and conduct scientific and practical activities, round tables on gender equality and to cooperate with the non-governmental organisation on gender equality.

The report further provides information on the activities of the Human Rights Ombudsman related to gender equality, which were conducted mainly at the regional level such as a conference on constitutional rights of women and a research project on discrimination in employment on grounds of gender. The Committee asks that the next report provide information on complaints alleging gender discrimination in employment submitted to the Human Rights Ombudsman and their outcomes/sanctions applied against the employers.

The report indicates that the labour inspectorate performs annual specialized inspections on supervision of women's labour rights. It provides information on the total number of specialized inspections and violations of women's labour rights by the employers. The report does not provide specific information on the results of the inspections with regard to equality between women and men in employment. The Committee asks the next report to provide information on the results of the labour inspections and on any complaints addressed to the labour inspectorate in relation to gender discrimination in employment.

The Committee previously asked whether is it possible to make pay comparisons across enterprises and referred to its Statement of Interpretation in this respect (Conclusions 2012). The report does not provide any information on this point.

The Committee recalls that it examines the right to equal pay under Article 20 and Article 4§3 of the Charter, and does so therefore every two years (under thematic group 1 "Employment, training and equal opportunities", and thematic group 3 "Labour rights"). Usually, pay comparisons are made between persons within the same undertaking/company. However, there may be situations where, in order to be meaningful,

this comparison can only be made across companies/undertakings. Therefore, the Committee requires that it be possible to make pay comparisons across companies. It notes that at the very least, legislation should require pay comparisons across companies in one or more of the following situations:

- cases in which statutory rules apply to the working and pay conditions in more than one company;
- cases in which several companies are covered by a collective works agreement or regulations governing the terms and conditions of employment;
- cases in which the terms and conditions of employment are laid down centrally for more than one company within a holding (company) or conglomerate (Conclusions 2012, Statement of Interpretation on Article 20).

The Committee recalls that in equal pay litigation cases the legislation should allow pay comparisons across companies only where the differences in pay can be attributed to a single source. For example, the Committee has considered that the situation complied with this principle when in equal pay cases comparison can be made with a typical worker (someone in a comparable job) in another company, provided the differences in pay can be attributed to a single source (Conclusions 2012, Netherlands, Article 20) or when pay comparison is possible for employees working in a unit composed of persons who are in legally different situations if the remuneration is fixed by a collective agreement applicable to all entities of the unit (Conclusions 2014, France, Article 4§3).

Considering the above mentioned, the Committee reiterates its question whether it is possible in equal pay litigation cases to make comparisons of pay between several companies which are in one of the situations described above.

Equal opportunities

The Committee takes note of the detailed statistics presented in the report. It notes that in 2013 the employment rate for women of 15-72 was 58.8% (men – 70.4%). The unemployment rate for women stood at 5.2%, while for men was of 5.8% in 2013. The report indicates that 54.7% of unemployed persons registered with the employment services were women.

The report indicates that the gender pay gap remains significant even if it has decreased from 35.9% in 2011 to 25.8% in 2013. According to the statistics provided in the report, the lowest gender pay gaps are observed in economic activities dominated by women such as education, health and social services where the average monthly wage of women is 99% and 90.8% of men's wages and the highest pay gap is registered in the area of research and development – 26.2% followed by manufacturing – 25.5%, transport and communication – 24.8% and mining – 23.8%.

The statistics show significant horizontal occupational gender segregation, with women being concentrated in education, health care and social services, and men in transport and communications, construction and fish farming. The report indicates that segregation by vocational qualification is still high. Women are less involved in entrepreneurship than men and most women work as mid-level professionals and support staff of the natural sciences and health (women – 92%), mid-level professionals in the field of education (94%), workers of service sector (89%), workers employed in preparation of information, documentation and accounting (87%).

The report indicates that a Program of gradual improvement of the system of remuneration in the state (municipal) institutions 2012-2018 was approved by the Government through the Decree No. 2190 of 26 November 2012. The program aims at the alignment of conditions of employment and wages in various economic activities.

The report provides information on the measures taken to promote gender equality such as: programs for vocational training for young women with children in order to increase their

competitiveness on the labour market and vocational training during maternity leave; programs of promoting corporate social policies to support working mothers and families with children; trainings on gender issues in more than 150 scientific and educational organisations in order to promote gender education for civil servants and scientific research. The report adds that a statistical database on gender has been developed and compilations of statistics "Women and Men in Russia" were published in 2012 and 2014.

The Committee asks the next report to provide information on the concrete steps and positive measures taken to address horizontal and vertical occupational gender segregation and inequalities in remuneration existing in practice between men and women, including specific measures to address the legal and practical barriers to the employment of women and stereotypical attitudes and prejudices with a view to reducing inequalities in remuneration, and to indicate how the social partners cooperate in this regard.

Conclusion

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

- women are not permitted to work in all professions which constitutes discrimination based on sex;
- the legislation does not provide for a shift in the burden of proof in cases of discrimination based on sex.

Article 24 - Right to protection in case of dismissal

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

Scope

In reply to the Committee's question the report states that as a general rule, the probationary period cannot exceed three months. In case of a short-term employment contract lasting from two to six months probationary period cannot exceed two weeks (Article 70 of the Labour Code). In any case, the maximum duration of the probationary period is established by law and cannot be extended at the discretion of the parties to the employment contract. If the employer is not satisfied with worker's performance during probationary period, then the employer has the right to terminate the labour agreement before the probationary period expires (Article 71 of the Labour Code). According to the report, as in other cases of termination of employment the employer's decision to terminate employment on the grounds of Article 71 can be appealed in court by the worker and the court examines not only the compliance with formal legal procedures by the employer but also the validity of evaluation of worker's performance by the employer on the basis of which the decision to terminate the employment was taken.

Obligation to provide valid reasons for termination of employment

In its previous conclusion (Conclusions 2012) the Committee asked whether in dismissal cases on economic grounds the courts have the competence to review the case on the facts underlying the economic reasons or just on points of law.

According to the report, the law provides for termination of the employment contract by the employer for economic reasons, such as in cases of termination of activities of an employer and reduction of number of employees in organisation (Article 81 of the Labour Code). As these cases do not imply any fault of workers, the law provides for a higher level of guarantees and compensation for termination of employment on these grounds (Article 180 of the Labour Code). In particular, it provides a for a severance pay at a higher rate.

In these cases, dismissed workers have a right to appeal to court to challenge the dismissal. When considering the labour dispute on dismissal on these grounds the courts verify compliance of the employer with all the guarantees provided by law. In addition, the courts may also investigate evidence of the validity of dismissal. For example, the Supreme Court of the Russian Federation considers that the essential fact for the proper resolution of claims for reinstatement of persons dismissed in connection with the liquidation of organisation or termination of the individual entrepreneur (Article 81 of the Labour Code) is *the actual termination of their activities* (p. 28 Resolution of the Supreme Court Plenum №2 dd 17 March 2004 as amended by the Resolution of the Supreme Court Plenum N 63 dd 28.12.2006)⁹. Moreover, the obligation to prove this fact lies with the defendant and that is the employer. The evidence provided by the employer is examined by the court.

As a rule, courts analyse in details not only formal compliance with the law but also employer's arguments being the reason for choosing these candidates for dismissal and often courts make decisions to reinstate the worker to the former job due to insufficient and unconvincing evidences submitted by the employer.

However, the court is not competent to find out the economic prerequisites of organisational and economic decisions of the employer to reduce the staff or number of workers as well as to assess the feasibility of such activities. According to the report, this would amount to an interference in the production and business activities on an enterprise.

In its previous conclusion the Committee recalled that under Article 24 dismissal of the employee at the initiative of the employer on the ground that the former has reached the normal pensionable age (age when an individual becomes entitled to a pension) will be

contrary to the Charter, unless the termination is properly justified with reference to one of the valid grounds expressly established by this provision of the Charter. The Committee asked whether the legislation complies with this approach.

The report states in this connection that the retirement age is not a common basis for the dismissal of the worker (such grounds are absent in the Article 81 of the Labour Code). On reaching retirement age (i.e., age being a condition for a state pension) all rights and guarantees provided by the labour legislation are retained and the entitlement to the pension is not a reason to restrict them. A worker who has reached retirement age may be dismissed by the employer only on the grounds provided by labour legislation for the dismissal of any other worker i.e. on general grounds (Article 77 of the Labour Code).

In the event of the retirement age law guarantees not only the preservation of all rights and guarantees but also provides some other rights and guarantees such as the right to additional unpaid leave for up to 14 days (Article 128 of the Labour Code), the right to terminate labour agreement upon worker's request without mandatory completion of the notice period (Article 80 of the Labour Code). Collective agreements also have additional guarantees to working pensioners (mainly in order to keep experienced staff in enterprises with shortages of certain specialists).

According to the report, the law establishes some other cases of termination of employment contracts due to reaching the age limit, for example, of civil servants. In accordance with paragraph 1 of Article 25 of the Federal Law № 79-FZ dd July 27, 2004 "On state civil service of the Russian Federation", the mandatory retirement age of civil servants (60 years) is the basis of the worker's dismissal at the initiative of the head of state authority. The head may also decide to extend the employment relationship to 65 years (with the employer's consent). In order to preserve highly qualified managerial staff the maximum age for civil servants at category of "heads" of higher level has been increased from 60 to 70 years since 2013 (Federal Law № 327-FZ dd December, 2012 "On amendments to article 25.1 of the Federal Law "On state civil service of the Russian Federation").

Prohibited dismissals

In its previous conclusion the Committee recalled (Conclusions 2003, Statement of Interpretation on Article 24) that national legislation should include explicit safeguards against termination of employment of persons who resort to the courts or other competent authorities to enforce their rights against reprisals. In the absence of any explicit statutory ban, States must be able to show how national legislation conforms to the requirement of the Charter. In this respect, the Committee asked what rules applied to protect employees from dismissal in the event they file a complaint or participate in proceedings against an employer.

According to the report, individual labour disputes are processed by labour dispute commissions (Article 382 of the Labour Code). In addition, the worker is entitled to seek judicial protection i.e. to file a claim in accordance with established procedural regulations.

In any worker's appeal against maladministration the law does not allow any repression and persecution against worker as well as against people providing aid and assistance, such as trade union representatives. Article 3 of the Labour Code provides that no one can be constrained in his/her labour rights and freedoms or get any advantages irrespective of affiliation or non-affiliation with public associations as well as other factors not relevant to professional qualities of the employee. According to the report, Article 3 of the Labour Code also applies to the persecution of persons in connection with the complaints against the employer.

In its previous conclusion the Committee noted from the report that according to Article 81 of the Labour Code dismissal of the employee during a period of temporary incapacity is not permitted. It asked what time limit is placed on protection in case of temporary incapacity.

According to the report, in accordance with Article 81 of the Labour Code the dismissal of an employee at employer's initiative is not allowed during the period of temporary incapacity of employee for work and during the period of leave of an employee. Moreover, the duration of disability or illness of the worker does not matter – the employer does not have the right to dismiss him/her as long as he/she is absent for the reason that is certified by a temporary disability (sick leave) certificate.

The duration of the sick leave certificate is regulated by a special legal act namely the Procedure for issuance of sick leave certificates, approved by the Ministry of Health and Social Development, No 624n dd June 29, 2011. Depending on the cause of disability, nature of disease and patient's health the period of sick leave certificate may be different (from a few days up to one year) but usually it does not exceed four months, after which a disabled worker may be referred to a medical and social expertise (MSE). In some cases, the period of sick leave certificate may be up to 10 months (in case of complex trauma and reconstructive surgery) and in case of the tuberculosis treatment – up to 12 months. Therefore, the period during which the disabled worker cannot be dismissed by the employer corresponds to the actual duration of his/her illness as confirmed by a temporary disability leave and can be long.

Remedies and sanctions

In its previous conclusion the Committee asked whether an employee who is not satisfied with the decision of the state inspectorate service regarding lawfulness of his/her dismissal may take the case further to the court. According to the report appeals against decisions of state labour inspectors can be submitted to their superior, the Labour Inspector-General and/or to the court. Decisions of the Labour Inspector-General can be appealed against in court (Article 361 of the Labour Code).

According to article 391 of the Labour Code, if a claim is submitted by the employee on reinstatement regardless of the grounds for termination of employment contract, on change of date or wording of the ground of dismissal it shall be considered directly by the court (Article 391 of the Labour Code).

According to the report, unlike the Court, the State Labour Inspectorate is not an authority to consider the labour dispute on its facts. Dismissed worker may within one month from the date of dismissal seek judicial protection (irrespective of the fact whether he/she has applied to the state labour inspectorate). At the same time workers referring to the court with claims arising out of employment relations, shall be exempted from fees and legal expenses (article 393 of the Labour Code).

The Committee recalls that under Article 24 of the Charter compensation in case of unlawful dismissal is considered appropriate if it includes reimbursement of financial losses incurred between the date of dismissal and the decision of the appeal body. 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 (e.g. anti-discrimination legislation), and the courts competent for awarding compensation for pecuniary and non-pecuniary damage must decide within a reasonable time.

The Committee notes from the report in this regard that according to Article 234 of the Labour Code in all events of unlawful dismissal, the employer is obliged to reimburse financial damage to the worker. Such damage is estimated as underpaid wages in connection with unlawful dismissal and refusal of the employer to implement the decisions of labour disputes authorities or a labour inspector on reinstating the employee to work.

The industrial tribunal shall rule on the amount of average wage payable to the worker for his forced absence, i.e. for the whole period when worker could not perform work functions and get paid (Article 394 of the Labour Code).

According to Article 391 of the Labour Code the courts shall hear individual labour disputes. Besides restitution of material damage, the unlawfully dismissed worker is entitled to restitution of moral damage. Article 237 of the Labour Code provides that the moral damage inflicted upon an employee by unlawful activity or omission on the part of an employer is paid at the amount fixed upon agreement of labour contract parties. In the event of any disputes the moral damage inflicted upon the employee and the amount of compensation will be established by the court. The law does not establish limits to the amount of such compensation and the court decides this matter at its discretion. The court takes into account the nature of physical and mental suffering caused to worker, the degree of fault of the employer as well as the requirements of reasonableness and fairness.

Conclusion

The Committee concludes that the situation in Russian Federation is in conformity with Article 24 of the Charter.