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European Social Charter

European Committee of Social Rights

Conclusions 2016

“THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”

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 former Yugoslav Republic of Macedonia", which ratified the Charter on 6 January 2012. The deadline for submitting the 3rd report was 31 October 2015 and "the former Yugoslav Republic of Macedonia" submitted it on 13 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. Comments on the 3rd report by the Federation of Trade Union of Macedonia (FTMU) were registered on 13 January 2016.

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 (Article1),
- 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 former Yugoslav Republic of Macedonia" has accepted all provisions from the above-mentioned group except Articles 9, 10, 15§3, 18 and 25.

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

In addition, the report contains also information requested by the Committee in Conclusions 2014 in respect of its findings of non-conformity due to a repeated lack of information:

- the right to bargain collectively – joint consultation (Article 6§1).

The conclusions relating to "the former Yugoslav Republic of Macedonia" concern 9 situations and are as follows:

– 1 conclusion of conformity: Article 6§1

– 4 conclusions of non-conformity: Articles 1§§1, 2 et 4; 15§1.

In respect of the other 4 situations related to Articles 1§3, 15§2, 20 et 24, the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by "the former Yugoslav Republic of Macedonia" 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 15

- The Committee notes that the Law on Prevention of and Protection against Discrimination (the Anti-Discrimination Law), which was adopted in 2010, entered into force on 1 January 2011. It prohibits any direct or indirect discrimination on grounds including disability in areas such as education, science and sport.

Article 20

- At federal level, the law on combating the gender pay gap was adopted on 22 April 2012 and requires measures to combat the wage gap to be negotiated at inter-occupational, sectoral and company level.

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 report should also contain information requested by the Committee in Conclusions 2015 in respect of its findings of non-conformity due to a repeated lack of information:

- the right of children and young persons to protection – special protection against physical and moral dangers (Article 7§10),
- the right of employed women to protection of maternity – illegality of dismissal during maternity leave (Article 8§2).

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 former Yugoslav Republic of Macedonia".

Employment situation

According to Eurostat, the GDP growth rate decreased considerably from 2011 (2.3%) to 2012 (-0.5%). The GDP growth rate increased significantly over the next two years, from 2.9% in 2013 to 3.5% in 2014. This meant that in 2014 the GDP growth rate stood well beyond the EU 28 average which was at 1.4%.

The overall employment rate increased slightly during the reference period, namely from 43.9% in 2011 to 46.9% in 2014. However, the rate was 18% below the EU 28 average rate of 64.9% in 2014.

The male employment rate increased (52.8% in 2009; 56.1% in 2014), which was however 14% below of the EU 28 average rate which stood at of 70.1% in 2014. The female employment rate increased from 33.5% in 2009 to 37.4% in 2014 but remained significantly below the EU 28 average rate of 59.6%. The employment rate of older workers increased by 4%; from 34.6% in 2009 to 38.6% in 2014. However this rate was considerably below the EU 28 average rate of 51.8% in 2014.

The unemployment rate decreased slightly from 31.4% in 2011 to 28.6% in 2013 which was considerably higher than the EU 28 average rate of 10.2%.

The youth unemployment rate stayed at a very high level even though it decreased slightly from 55.3% in 2011 to 53.9% in 2012.

The long-term unemployment rate (as a percentage of the total unemployed) stayed at relatively high level of 83.2% in 2014.

The Committee notes that the situation is similar to the one described in its Conclusions 2012. The labour market situation improved indeed during the reference period. However, the overall situation remained alarming with low employment rates and high youth and long-term unemployment rates.

Employment policy

The Committee notes from the report that employment policies are regulated in strategic documents of the Government such as the 2015 National Employment Strategy, the National Employment Action Plan 2014 – 2015, the 2015 Youth Employment Action Plan as well as the Annuals Operative Plans for Active Employment Programmes and Measures.

The Committee also notes from the report that several amendments were introduced into the legislation. The main purpose of the law amendments was to create appropriate active employment policies and measures adjusted to the needs of the job-seekers and labour market opportunities.

The Committee also notes from the report the efforts undertaken by the Government in co-operation with the ILO to promote the employment of young persons. The result was an Action Plan for Youth employment 2015 covering the period 2013 to 2015.

The Committee notes the reply given to its request for providing the activation rate, i.e. the average number of participants in the active measures as percentage of all unemployed persons. In 2011, the activation rate was 1.8%. In 2014 the activation rate amounted 8.8%.

As for its request to state whether the employment policies are monitored and how their effectiveness in evaluated, the Committee notes that the Government in co-operation with

the ILO is undertaking an impact evaluation of the active programmes on the labour market. The Committee requests that the outcome of this evaluation is included in the next report.

Conclusion

The Committee concludes that the situation in “the former Yugoslav Republic of Macedonia’ is not in conformity with Article 1§1 of the Charter on the ground that the employment policy efforts have not been adequate in combatting unemployment and promoting job creation.

Article 1 - Right to work

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

The Committee takes note of the information contained in the report submitted by "The former Yugoslav Republic of Macedonia".

1. Prohibition of discrimination in employment

The Committee noted previously that the Law on Prevention and Protection against Discrimination was adopted on 8 April 2010 and entered into force on 1 January 2011. The Law on Labour Relations was accordingly amended in 2010 to take account of the EU directives in the field of equality of opportunity and non-discrimination (Conclusions XX-1 (2012). The Law on Prevention and Protection against Discrimination, which applies to both the public and the private sectors, covers, inter alia, work, labour relations and education. It defines and prohibits direct and indirect discrimination based on "sex, race, skin colour, gender, belonging to a marginalized group, ethnic origin, language, citizenship, social origin, religion or confession, other types of belief, education, political belonging, personal or social status, mental and physical disability, age, family or marital status, property status, health condition or any other ground established by the law or by ratified international agreements".

The Committee noted that discrimination on the ground of sexual orientation was not expressly prohibited by the Law on Prevention and Protection against Discrimination of 2010, even though that law lists the grounds on which discrimination is forbidden. A ban on discrimination on the ground of sexual orientation may conversely be found in Article 6 of the Law on Labour Relations. The Committee asked a very precise description of the situation concerning prohibition of discrimination on grounds of sexual orientation, both in law and in practice (Conclusions 2012). The report indicates that the prohibition of discrimination on grounds of sexual orientation is covered by the expression "*or any other ground established by the law or by ratified international agreements*". The report further mentions that in 2013 several trainings were held in cooperation with OSCE and in 2014 the project "Strengthening of the Rule of Law of the LGBT Community was developed in cooperation with the Civic Association HERA – in order to strengthen the capacities of the Commission for Protection against Discrimination in relation to discrimination on the grounds of sexual orientation and gender identity. With regard to the practice, it is reported that during the reference period, the Commission received a total of 18 complaints related to sexual orientation and gender identity, most of which were submitted by civic associations. The Commission found violations only in 3 cases; in other 9 cases the Commission did not identify a violation, in 3 cases it didn't initiate the procedure provided by the Law on Prevention and Protection against Discrimination and in one case an agreement was reached.

In its previous conclusion, the Committee asked for information on discrimination based on age, in addition to that concerning sexual orientation mentioned above. It also asked whether there is a national strategy for combating all forms of discrimination in employment. In reply to the Committee's question related to discrimination based on age, the report indicates that discrimination on grounds of age is prohibited by Section 6 of the Law on Prevention and Protection against Discrimination, as well as by Section 6 of the Law on Labour Relations and Section 3(6) of the Law on Equal Opportunities between Men and Women. The Committee takes note of the data concerning the cases dealt with by the Commission for Protection against Discrimination. During the reference period, the Commission received 19 complaints on age-based discrimination and only in two cases it identified a direct discrimination based on age in the area of labour relations.

With reference to the Committee's question on whether there is a national strategy to combat all forms of discrimination in employment, the report indicates that the Government, following a proposal of the Ministry of Labour and Social Policy in 2012, adopted the National Equality and Non-Discrimination Strategy based on sex, age, ethnicity, mental and

physical disability, whose main goal is to improve the status of the most vulnerable categories of citizens in the society and to achieve equality and nondiscrimination. The strategy has 3 general goals: (i) Promotion of the legal framework on equal opportunities and nondiscrimination; (ii) Strengthening the capacities of the institutional mechanisms for prevention and protection against discrimination and promotion of equal opportunities; (iii) Raising public awareness to recognize the forms of discrimination and raising the awareness to promote the concept on non-discrimination and equal opportunities. The Committee asks that the next report provide information on the implementation of the measures and activities implemented and the results achieved/concrete impact on combating discrimination in employment.

The Committee previously requested information on the activities actually implemented by the Commission for Protection against Discrimination since its inception (Conclusions XX-1 (2012). The report indicates that despite the challenges faced due to the lack of administrative expert service and a limited budget, the Commission implemented several activities for reducing the discrimination in the area of employment. With the support of the Mission of the Organization for Safety and Cooperation in Europe in Skopje, the Commission on Protection against Discrimination carried out a research of discrimination in the employment advertisements and held two working meetings with the social partners on this topic. The report indicates that during the reference period, the Commission received a total of 139 complaints concerning discrimination the area of employment and labour relations. The Commission found discrimination on the grounds of gender, age, political admiration, ethnicity and personal and social status in only 7 cases. One case concerned the dismissal of a group of persons of Roma origins by a private company.

The report describes the court procedure and the legal remedies available to victims of discrimination. As regards the burden of proof, the Committee previously noted that that if job applicants or employees provide evidence in disputes that employers have discriminated against them, the burden of proof then lies with the employer, who must show that they have acted in compliance with the law (Conclusions XIX-1 (2008). It asked whether this has changed since the transposition in national law of the European Union directives in the field of equality of opportunity and non-discrimination (Conclusions XX-1 (2012). The report indicates that according to the Law on Prevention and Protection against Discrimination and the Law on Labour Relations, the burden of proof shall fall on the defendant, who has to prove that there was no discrimination.

The Committee noted previously that the amount of compensation is determined case by case and there is no upper limit of compensation in cases of discrimination (Conclusions XX-1 (2012). However, the report does not provide any information on the actual amounts of compensation granted to victims of discrimination in employment in practice.

The Committee takes note of the low number of cases of discrimination in employment that are being lodged which is likely to indicate a lack of awareness of rights, lack of confidence in or absence of practical access to procedures, or fear of reprisals. The Committee asks information on the awareness-raising and capacity-building activities conducted for labour inspectors, judges, prosecutors and the wider public, and the results achieved. The Committee requests that the next report provide information on any cases of discrimination in employment dealt with by courts and the Commission for Protection against Discrimination, with specific indications regarding their nature and outcome, sanctions imposed on the employers and compensation granted to the employees.

The Committee previously asked whether groupings with an interest in establishing a breach of the prohibition of discrimination are entitled to bring a collective action (Conclusions XX-1 (2012). The report indicates that associations and foundations, institutions and other organisations from civil society can intervene as third parties in proceedings on the right to equal treatment, as well as initiate collective actions. The report adds that by the end of 2014, the Commission for Protection against Discrimination received a total of 11 collective

complaints, most of which were submitted by associations, such as the Network for Protection against Discrimination.

The Committee asked whether the legislation granted authority to set aside, withdraw, revoke or modify any provision in collective agreements, employment contracts and firms' internal regulations which were incompatible with the principle of equal treatment (Conclusions XX-1 (2012). The report indicates that under Section 29 of the Law on Labour Relations, the provisions of the employment agreement which are inconsistent with the general provisions on rights, obligations and responsibilities of the contracting parties determined by law, collective agreement or act of the employer shall be invalid as of the moment of conclusion of the agreement.

Concerning the access of foreign nationals to civil service jobs, the Committee concluded previously that the situation was not in conformity with Article 1§2 of the Charter on the ground that nationals of other States Parties to the Charter do not have access to civil service jobs. The report reiterates that only the citizens of "the Former Yugoslav Republic of Macedonia" have access to public sector posts. The representative of "the Former Yugoslav Republic of Macedonia" stated that in view of protecting the domestic labour market priorities could be given to domestic workers. The employment of foreigners is governed by the law on the Employment and Work of Foreigners. Exceptions to the prohibition on foreign nationals being employed in the public sector were made in the education and health care sector (Report concerning Conclusions XX-1 (2012) of the European Social Charter). The Committee notes that the situation has not changed during the reference period and it therefore maintains its conclusion of non-conformity on this point.

2. Prohibition of forced labour

The Committee notes from the report that forced labour is prohibited under Article 11 of the Constitution and that any breaches are punishable under the Criminal Code, in particular Article 418 on slavery, Article 418-a on human trafficking and Article 418-d on child trafficking.

Work of prisoners

In reply to the question asked by the Committee during the previous evaluation cycle (Conclusions XX-1/2012), the report refers to the 2015-2019 Action Plan of the National Strategy for the Development of the Penitentiary System and states that prisoners' rights, hiring conditions and contracts are covered by the guidelines on the conditions, manner and procedure for labour engagement of inmates outside of prison institutions.

With reference to Conclusions XX-1/2012, the Committee asks for relevant information in the next report on the matters raised in the Statement of Interpretation on Article 1§2, in which it stated that "prisoners' working conditions must be properly regulated, particularly if they are working, directly or indirectly, for employers other than the prison service. In accordance with the principle of non-discrimination enshrined in the Committee's case law, this supervision, which may be carried out by means of laws, regulations or agreements (particularly where companies act as subcontractors in prison workshops), must concern pay, hours and other working conditions and social protection (in the sphere of employment injury, unemployment, health care and old age pensions)."

Domestic work

The Committee notes from the report that the powers of the State Labour Inspectorate are determined by the Law on Labour Inspection and the Law on Labour Relations. However, as the inviolability of individuals' homes is enshrined in Article 26 of the Constitution, the Labour Inspectorate may not conduct inspections in the private dwellings of individuals who employ domestic workers, unless authorised to do so by a court. At the same time, under Article 53 of the Law on Labour Relations, domestic workers bound by employment contracts may

submit requests to the Labour Inspectorate for it to check compliance with the conditions laid down in the contracts.

The Committee further notes that the current legislation prohibits the conclusion of employment contracts with foreigners who do not have work permits. The Law on Labour Relations also prohibits both direct and indirect discrimination based on nationality. Foreign employees are entitled to change employer once it has been ascertained that all relevant charges have been paid by the previous employer. The new employer must provide a new work permit and the previous permit must be cancelled. However, employees' previous residence permits remain valid. Applications for new work permits must be submitted one month before the expiry of the previous residence permits.

With reference to its Statement of Interpretation on Article 1§2 (Conclusions XX-1/2012), in which it drew attention to the existence of forced labour in the domestic environment and in family businesses, and particularly the need for information on the laws enacted to combat this type of forced labour and on the steps taken to apply such provisions and monitor their application, the Committee asks whether there is criminal legislation in force which affords domestic workers exploited by their employers effective protection.

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

In its previous conclusion (Conclusions XX-1/2012), the Committee pointed out that any 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 must be proportionate. Since the report does not provide any information on the situation of "the former Yugoslav Republic of Macedonia" in this respect, the Committee asks for up-to-date information on the subject in the next report.

Requirement to accept the offer of a job or training

The Committee notes from the report that in accordance with the Law on Employment and Insurance in Case of Unemployment, recipients of unemployment benefits must be recorded as active job seekers and must register with a competent employment centre every 30 days. It also notes the conditions for the termination of unemployment benefits, including, in particular, refusal to appear at the employer designated by the employment office, refusal to establish an employment relationship with the employer designated by the employment office, refusal of full or part-time employment which is not shorter in duration than half of standard working hours and is appropriate, rejection of training or requalification or deliberate termination of such training, unjustified refusal of temporary employment proposed by a competent authority in exceptional circumstances (floods, earthquakes), refusal of contracts for performing public works and refusal of employment which requires lower qualifications if the individual held such employment immediately before becoming unemployed or had stated his/her willingness to accept such employment. Under the existing legislation, the employment office offers appropriate employment from the date of registration of unemployment until 12 months from that date. The office may offer suitable employment from 12 months to 24 months from the date of registration of unemployment. Thereafter, any other job offer may be offered to the unemployed person. Unemployment benefit is also payable during vocational training organised by the employment office.

With reference to its Statement of Interpretation on Article 1§2 (Conclusions XX-1/2012) on the obligation to accept a job offer or training or otherwise lose entitlement to unemployment benefit, the Committee asks for relevant information to be included in the next report on the

remedies available for the persons concerned to dispute decisions to suspend or withdraw unemployment benefit.

Privacy at work

The Committee reiterates that the right to undertake work freely includes the right to be protected against interference 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 XX-1/2012).

Conclusion

The Committee concludes that the situation in "the former Yugoslav Republic of Macedonia" is not in conformity with Article 1§2 of the Charter on the ground that restrictions on employing foreign nationals of other States Parties to the Charter in the public service are excessive, which constitutes a discrimination based on 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 former Yugoslav Republic of Macedonia".

The report states that during the reference period a number of amendments were introduced to the Law on Employment and Insurance in Case of Unemployment. In this context, 22 articles were added to the abovementioned law in 2012 in relation to the organisation and functioning of the Employment Service Agency (ESA). The amendments notably refer to the status of ESA employees. Other amendments to the Law on Employment and Insurance in Case of Unemployment refer to the redefinition by ESA of job seekers categories ("unemployed person" and "other person seeking employment"), as well as to the introduction of individual employment plans.

In 2013, ESA included 30 local offices, supported by 15 branch offices; a staff of 492 persons, including 51 at headquarters and 441 at the local offices; 63% of staff handled front office tasks (source: Wapes – *World Association of Public Employment Services*, 2015). In its previous conclusion (Conclusions XX-I), the Committee found that the number of staff in relation to the number of unemployed was very low. It therefore asked if there were plans to increase the number of staff dealing with placement activities. In reply to this question, the report refers to the evolution of the number of ESA permanent employees during the reference period: they were 511 in 2011, 490 in 2012, 492 in 2013 and 474 in 2014. Data and percentages on different categories of employees and their functions are also provided in the report.

In this respect, the Committee notes that even if there was a slight increase in the number of managers (from 47 to 53), in the period 2011-2014 the total number of employees and employees assigned to active policies decreased.The Committee asks the reasons for this decrease and reiterates its question asking if there are plans to increase the number of staff dealing with placement activities. Furthermore, the Committee asks that the next report provides information on the number of employment services staff in relation to the number of job seekers.

The report does not provide information on the number of vacancies that were notified by employers to the ESA during the reference period. The Committee asks that the next report provides information on this figure, as well the following data: a) placement rate (i.e. placements made by the employment services as a share of notified vacancies), b) respective market shares of public and private services.

Conclusion

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

Article 1 - Right to work

Paragraph 4 - Vocational guidance, training and rehabilitation

The Committee takes note of the information contained in the report submitted by "The former Yugoslav Republic of Macedonia".

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

As "the former Yugoslav Republic of Macedonia" has not accepted Articles 9 and 10§3, the Committee assesses under Article 1§4 the conformity of the situation relating to the right of adult workers to vocational guidance and vocational training.

Equal treatment

In its previous conclusion (Conclusions XX-1 (2012)), the Committee requested updated information as regards equal treatment of nationals of other States Parties and the specific legal basis for it. The report does not provide this information.

The Committee recalls that States must grant access to the services covered by Article 1§4 to all those interested and ensure equality of treatment for nationals of other States Parties to the Charter lawfully resident or working regularly on the territory of the Party concerned. In light thereof, the Committee asks again what legal basis in "The former Yugoslav Republic of Macedonia" ensures that vocational guidance and continuing vocational training, including adult education, is available to foreign persons, without any restrictions related to their length of residence. It reserves in the meantime its position on this point.

Vocational guidance

The Committee takes note of the information, provided in the report, concerning the development of professional orientation and career counselling and guidance within the education system. In particular, it notes the opening of career centres in 49 secondary vocational schools, in the framework of the YES Network project, and the information provided concerning the number of teachers trained to provide career guidance.

As regards the vocational guidance services provided in the labour market, the Committee takes note of the measures taken by the Employment Service Agency (ESA) to increase the number and quality of services for the unemployed persons. It notes in particular the measures taken to improve the Agency's web-page and its interactive services, the opening of 21 new decentralised offices and the organisation as from 2014 of Employment Fairs, in the framework of the "Open day for New Job Positions" Project. It also notes that a research is under way to better identify the skills required on the labour market, so as to take such requirements into account when preparing future employment plans, including as regards guidance.

The Committee recalls that, in order to assess the conformity of the situation with Article 1§4, in respect of vocational guidance, it needs to know whether the labour market offers free vocational guidance for employed and unemployed persons, what is the expenditure allocated to such services, their staffing and the number of beneficiaries. The Committee asks that the next report provide information on these points. It reserves in the meantime its position on this issue.

Continuing vocational training

The Committee takes note of the information provided, in response to its question (Conclusions XX-1 (2012)) concerning the implementation of the Law on Adult Education of 2008. It notes in particular the setting up of a Centre for Adult Education as well as the strengthening of its activities, in the framework of a capacity-building EU project, as detailed in the report. Three components of the project, which had a budget of €1 725 655, have been implemented during the reference period. They were aimed at training the trainers, at starting some pilot training programmes (involving 99 persons) and developing literacy programmes for socially excluded persons (95 persons were trained). According to the report, between 1 January 2012 and 27 July 2015 (out of the reference period), 120 qualifying programmes and 8 programmes aimed at acquiring skills were verified by the Centre for Adult Education and the Ministry of Education and Science.

In addition, as from 2010, the Centre for Adult Education, in cooperation with the Ministry of Education and Science, implemented a Project aimed at providing Secondary Vocational Adult Education to persons who had only completed primary education, with a view at increasing their competitiveness on the labour market and reducing unemployment. Between 2010 and 2015, 1131 persons completed such training and 444 persons were still attending it. The report also provides information about the number of adults attending primary education.

In response to the Committee's question as to the reasons of the decrease in the number of unemployed persons taking part to continuing vocational training (including requalification or further qualification) organised upon the employers' request by the Employment Services Agency (ESA), the authorities explain in the report that employers prefer to take an active part in other types of active employment measures. They also clarify that the ESA conducts trainings only for unemployed persons, not for people in employment.

According to the report, the number of unemployed persons participating to Training, Requalification or Further Qualification Programmes went from 246 in 2011 (0.1% of the recorded unemployed persons on 31 December 2012; for an expenditure of MKD 3 728 191, that is approximately €60 000) to 401 in 2014 (0.3% of the recorded unemployed persons on 31 December 2014, for an expenditure of MKD 9902506, that is around €160 000). Under this programme, the employer has an obligation to recruit at least 50% of the trainees and gets a compensation for mentorship and material costs, as detailed in the report. As from 2013, a new similar training programme is implemented, which gives priority to persons aged 50-59 years old, young people up to 29 years of age with completed primary or secondary education and long-term recorded unemployed persons. The employer gets a compensation, but is obliged to recruit at least 50% of the participants to the programme and to keep the person at work for the following 12 months after the expiration of the subsidy, or to employ another person from the same target group. Other training programmes are furthermore implemented by the ESA, depending on the annual operational plans for active employment (trainings for advanced IT skills, training for deficient occupations). The number of participants, including those following a training with a specific employer, was:

- in 2011, 1179 persons (0.4% of the recorded unemployed persons on 31 December 2011), 476 of which were employed;
- in 2012, 4254 persons (1.7% of the recorded unemployed persons on 31 December 2012), 1870 of which were employed;
- in 2013, 607 persons (0.6% of the recorded unemployed persons on 31 December 2013), 432 of which were employed;
- in 2014, 647 persons (0.5% of the recorded unemployed persons on 31 December 2014), 431 of which were employed.

The Committee asks the next report to clarify whether continuing vocational training is also organised directly by employers and whether training programmes are available also to workers in activity. It furthermore asks the next report to provide updated information as

regards the percentage of unemployed persons and employees participating in continuing vocational training.

Guidance and vocational training for persons with disabilities

As regards measures related to vocational guidance and training of persons with disabilities, the Committee refers to its assessment under Article 15§1 (Conclusions 2016), in which it considers that the situation is not in conformity with the Charter, on the ground that it has not been established that the right of persons with disabilities to mainstream education and training is effectively 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 former Yugoslav Republic of Macedonia" is not in conformity with Article 1§4 of the Charter on the ground that it has not been established that the right of persons with disabilities to mainstream education and training is effectively guaranteed.

Article 6 - Right to bargain collectively

Paragraph 1 - Joint consultation

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2015 on conclusions of non-conformity for repeated lack of information in Conclusions 2014.

The Committee takes note of the information submitted by the former Yugoslav Republic of Macedonia in response to the conclusion that it had not been established that joint consultation takes place in the public sector, including the civil service (Conclusions 2014, former Yugoslav Republic of Macedonia). Consultation must take place on several levels: national, regional/sectoral. It should take place in the private and public sector (including the civil service) (Conclusions III, (1973), Denmark, Germany, Norway, Sweden).

The report states that tripartite consultations take place in the public sector through the Economic and Social Council. Further bilateral consultation between representatives from the Ministries of Labour and Social Policy and two representative trade unions takes place prior to negotiations for renewing the General Collective Agreement for the public sector. The Committee asks whether this consultation is institutionalised.

Conclusion

Pending receipt of the information requested the Committee concludes that the situation in "The former Yugoslav Republic of Macedonia" is in conformity with Article 6§1 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 former Yugoslav Republic of Macedonia".

The Committee notes from the Governmental Committee's report (2013) that 910 pupils with disabilities were in mainstream schools, 559 in special primary schools (8 schools) and 288 in special secondary schools (4 schools) in 2012-2013. However, the report did also point out that the statistics were not up-to-date, mainly because of the ongoing process of identifying and categorising children with disabilities and poor co-ordination and co-operation between the various institutions concerned. The reform relating to the categorisation of persons with disabilities was expected to be completed by mid-2014.

The report refers to the Law on the National Database of Persons with Disabilities adopted on 21 August 2015 (outside the reference period). The Committee asks for all the relevant data to be provided in the next report.

"The former Yugoslav Republic of Macedonia" ratified the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol on 29 December 2011.

Definition of disability

In its previous conclusion (Conclusions XX-I (2012)), the Committee asked whether socio-economic factors were also taken into account when determining if someone should be regarded as a person with a disability. In reply the report states that under the Law on Employment of Persons with Disabilities, assessments of the remaining capacity to work of persons with disabilities over the age of 26 are based on medical check-ups and the person's socio-economic circumstances, education, state of health and ability to find employment.

The report also states that in 2014-2015, steps were taken by the Ministry of Labour and Social Policy working with the Ministry of Education and Science to reform the process of assessing the needs of children and young people with developmental disorders so as to secure the same rights for all citizens. As a result the draft of the new assessment model was drawn up in accordance with the International Classification of Functioning (ICF 2001).

Anti-discrimination legislation

In its previous conclusion (Conclusions XX-I (2012)), the Committee found that the situation was not in conformity with Article 15§1 of the Charter on the ground that the anti-discrimination legislation on education for persons with disabilities was inadequate. The report gives a detailed description of the national mechanism for protection against discrimination. It comprises several institutions and bodies (both judicial and extra-judicial), before which persons being discriminated may request protection: the Constitutional Court, the Ombudsman, the Commission for Protection against Discrimination, the Representative for determining unequal treatment of women and men, the Standing Inquiry Committee for Protection of Civil Freedoms and Rights, the Inter-Ethnic Relations Committee and the ordinary courts (see the report for more details).

The Committee notes that the Law on Prevention of and Protection against Discrimination (the Anti-Discrimination Law), which was adopted in 2010, entered into force on 1 January 2011. It prohibits any direct or indirect discrimination on grounds including disability in areas such as education, science and sport (Article 3). Article 8 of the law states that "discrimination against persons with physical or intellectual disabilities is considered to have occurred when their access to health protection is deliberately prevented or obstructed, … or they are denied the right to education or employment or the rights arising from an employment relationship" (see also Conclusions XX-I (2012)).

This law also gave rise to the Commission for Protection against Discrimination, which came into operation on 1 January 2011. It hears complaints from natural or legal persons, makes recommendations and gives opinions in certain discrimination cases, informs victims about available remedies, initiates proceedings in the event of violations, supervises the implementation of the aforementioned law and promotes education in equality, human rights and non-discrimination. Appeals may also be submitted to the courts. The Committee takes note of the remedies available to victims of discrimination and the procedure before the Commission for Protection against Discrimination and the courts. The Commission has received 331 complaints since its establishment including 34 for discrimination on the grounds of physical or mental disability (one of which related to education).

From the reply in the report to the Committee's question, it emerges that the report on the implementation of the Anti-Discrimination Law prepared in 2013 presents the results of its application and certain recommendations. In 2014, the Ministry of Labour and Social Policy drew up an Action Plan for the implementation of the law based on these recommendations, whose aim was to contribute to prevention of and protection against discrimination. The Action Plan comprises specific activities for the five-year period concerned including quality and quantity indicators for the expected results.

The Committee notes that the new law meets the requirements of Article 15§1 of the Charter and considers that the situation is in conformity with the Charter in this respect.

Education

In its previous conclusion (Conclusions XX-I (2012)), the Committee found that the situation was not in conformity with Article 15§1 of the Charter on the ground that it was not established that the right of persons with disabilities to mainstream education was effectively guaranteed.

The report states that the Ministry of Labour and Social Policy carries out various activities for the inclusion of children with special educational needs in pre-school education, including the preparation of special programmes. 198 children with developmental disorders are enrolled in mainstream kindergarten groups.

According to the report, the government guarantees that education will be provided for children with disabilities in mainstream classes or, if they have a severe disability, in special classes in mainstream schools or in special schools. The Committee notes that, in keeping with the principle of inclusive education, the number of pupils in special primary and secondary schools is declining in favour of mainstream education. In 2014-2015, 725 primary school pupils with disabilities attended a mainstream school, 422 attended a special school and 254 attended special classes in a mainstream school. Provision is made for children with special educational needs to transfer from mainstream schools to special schools and vice-versa.

The report states that it is usually up to the parents to decide whether to enrol their child in a mainstream school or a special school although, in some cases, pupils may take the decision themselves. Furthermore, to avoid stigmatisation of pupils with special needs, such pupils may not be required to hold a medical certificate or present any such certificate to the mainstream school they are attending, and this makes the data on the number of pupils with disabilities in mainstream schools inaccurate.

As to secondary education, the report states that pupils with special educational needs may enrol in mainstream *gimnazije* or vocational secondary schools or in state-run arts schools or schools for pupils with special needs. The Committee asks for more details in the next report on schools for pupils with special needs.

According to the report, primary school curricula are being reformed in accordance with the nine-year elementary education concept. Curricula and programmes for children with special educational needs in special schools and special classes in mainstream establishments

derive from the curricula for mainstream primary and secondary schools and are devised by the Ministry of Education. Compulsory and optional courses are offered as part of curricula which are adapted to their specific needs.

The report describes the distance education project which has been set up by the Ministry of Education and Science both to promote the integration and participation of pupils with special needs into the mainstream education system and to improve access to new technologies for pupils with disabilities.

On the subject of the excessive numbers of Roma children in special schools, the report describes some of the activities being carried out to rectify this situation, particularly the establishment of a Commission on Review of the Medical Documentation in the Special School, whose aim is to gain an overview of the situation. According to the report, Roma children amounted to 5.07% of the pupils enrolled in mainstream primary schools and 2.66% of those in mainstream secondary schools during the reference period whereas they represented 17.6% of pupils in special primary schools and 37.5% of pupils in special secondary schools in 2013-2014.

The report states that under Component IV of the EU Instrument for Pre-Accession Assistance (IPA) for 2013-2014, several activities have been carried out to modernise schools and adapt existing infrastructure to the needs of children with disabilities (installation of access ramps, lifts and movable platforms).

In addition, in 2009-2015, the Ministry of Employment and Social Policy opened 28 day centres providing social services for children with disabilities under the age of 18. Their aims include providing support for families and assistance to parents to prevent the institutionalisation of children with special needs.

As to examinations, the report states that the practical arrangements for tests and examinations to be taken by pupils with special needs have been adjusted in *gimnazije* and in vocational and arts schools. The Committee asks nonetheless for further information in the next report on testing or examination arrangements for pupils with disabilities and reiterates its questions on whether the qualifications acquired by these pupils are equivalent to those of other pupils, regardless of whether they are in mainstream or special education or whether special arrangements were made for them during the examinations.

The Committee asks again for information in the next report on how mainstream curricula are adjusted to take account of disabilities, how personal study plans are drawn up for pupils with disabilities and if supervision of the quality of teaching is based on the same mechanisms that are applied to mainstream education.

Vocational training

In its previous conclusion (Conclusions XX-I (2012)), the Committee found that the situation was not in conformity with Article 15§1 of the Charter on the ground that it had not been established that the right of persons with disabilities to mainstream training was effectively guaranteed.

With regard to university education, the report states that under the law on higher education (2008), state higher education establishments do not require pupils with type 1 and 2 disabilities to contribute to tuition fees, which are covered by the state budget.

In reply to the Committee's question on the percentage of students with disabilities entering the labour market following vocational education and/or training, the report explains that under the law on secondary education, secondary education is compulsory so pupils who attend school regularly cannot be part of the labour market. The report also points out that the Ministry of Education and Science does not have any data on pupils joining the labour market having completed their studies.

Under the Action Plan for the Strategy on Vocational Education and Training in the context of Life-Long Learning for 2013-2020, it is planned to establish systematic co-operation between employment agencies, the Centre for Vocational Education and Training and Higher Education with the aim in particular of sharing information on labour market requirements, graduate employability and graduates' transition to the labour market.

The report describes the changes which have been made to secondary vocational education, particularly in the two and three-year courses for 13 specific occupations, which include new curricula adapted to labour market needs, changes to teacher training, increased co-operation with social partners and improvements in the quality of practical courses (see the report for more details). New curricula have also been set up for the four-year vocational course through reforms sponsored by the PHARE project. Reforms to technical vocational courses are also planned.

The Ministry of Education and Science grants scholarships for pupils with special needs attending both state and private secondary schools (about 50 a year).

Students with special needs are also housed for free in student accommodation, may travel for free on public transport along with anyone accompanying them and are offered free textbooks.

Despite the new information provided, the Committee considers that the report fails to answer most of the questions put in its previous conclusions (Conclusions XX-I (2012) and XIX-I (2008)) or to provide relevant statistical data. It reiterates those questions and concludes that the information and figures provided in the report are insufficient to establish that the situation is in conformity.

Conclusion

The Committee concludes that the situation in "the former Yugoslav Republic of Macedonia" is not in conformity with Article 15§1 of the Charter on the ground that it has not been established that the right of persons with disabilities to mainstream education and training is effectively guaranteed.

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

Paragraph 2 - Employment of persons with disabilities

The Committee takes note of the information contained in the report submitted by "The former Yugoslav Republic of Macedonia".

Employment of persons with disabilities

The Committee notes that the data show positive trends including a reduction in the number of unemployed persons with disabilities. The report also breaks down unemployed persons with disabilities according to their level of education and their age group. It appears that the percentage of unemployed is even higher than the education level is lower.

The employment rate for persons with disabilities on the open labour market rose sharply, from 60% in 2011 to 70% in 2014. The report points out, however, that it does not hold data on unemployed persons with disabilities if they have not registered with an employment agency.

The Committee points out that reports must systematically provide up-to-date figures concerning the total number of persons with disabilities, the number of people with disabilities of working age, the number in employment (in the open market or in sheltered employment), the number benefiting from employment promotion measures and the number seeking employment. As the information provided is not sufficiently comprehensive to assess the situation, the Committee asks for the next report to provide the necessary details.

Anti-discrimination legislation

The Committee refers to its conclusion under Article 15§1 for a description of the new Law on Prevention of and Protection against Discrimination (the Anti-Discrimination Law), which prohibits all direct or indirect discrimination on grounds including disability in several fields including employment and labour relations. Under this law, persons with disabilities have access to employment on the open labour market, public service jobs and sheltered employment. The Committee takes note of the remedies available to victims of discrimination and the procedure before the Commission for Protection against Discrimination and the courts.

The report refers to the National Equality and Non-Discrimination Strategy for the period 2012-2015, which focused on the discrimination faced by the country’s most vulnerable categories.

Furthermore, the Committee notes from Governmental Committee report (2013) that employment of persons with disabilities on the open labour market is also regulated by the Law on Labour Relations (2005), which prohibits discrimination in employment on the ground of disability or health, and the Law on Employment of Persons with Disabilities (2000), which establishes special arrangements, tax benefits and financial incentives for the recruitment of any person with a disability (see also Conclusions XX-I (2012)).

In reply to the question put by the Committee on the implementation of the employer’s obligations to make reasonable accommodation, the report states that under the Law on Employment of Persons with Disabilities, employers are required to create appropriate working conditions and adapt the workplace according to the job involved, the type and level of education and the type and degree of disability of the person with a disability who is being employed. Employers may claim grants from the relevant Special Fund for workplace adaptation. The Special Fund awards grants for hiring of persons with disabilities on permanent contracts, purchase of special equipment and training of persons with disabilities prior to employment. The Committee asks for information in the next report on the number of applications for grants and the numbers awarded.

The report also states that reasonable accommodation has contributed to an increase in employment of persons with disabilities in the open labour market. Over the period between 2001 and 2014, 4 415 persons with disabilities took up employment.

The Law on Employment of Persons with Disabilities may only be relied upon by persons whose disabilities are recognised by the Commission for Assessment of the Working Capacity run by the Pension and Disability Insurance Fund. The report explains that in order to adjust the working conditions and the workplace of persons with disabilities, it is necessary to determine the degree and type of the disability from which they suffer. This Commission enables persons with disabilities to work in suitable workplaces, which take account of their disability.

In its previous conclusions (Conclusions XX-I (2012) and XIX-I (2008)), the Committee asked how long it took the Commission to notify employers wishing to hire a person with disabilities of its decision; it also asked if the decision could be appealed against in court. Since there is no answer in the report, the Committee repeats its questions.

Measures to encourage the employment of persons with disabilities

In its previous conclusion (Conclusions XX-I (2012)), the Committee found that the situation was not in conformity with the 1961 Charter on the ground that it had not been established that equal access to employment was effectively guaranteed for persons with disabilities. As a result, the Committee asked for information on the measures planned to increase employment of persons with disabilities and the relevant statistical data.

The Committee notes from Governmental Committee report (2013) that economically active persons with disabilities enjoyed certain tax benefits – in particular, they were exempt from certain social contributions – and that companies providing sheltered employment did not pay any social contributions. Employers on the open labour market also enjoyed certain tax benefits and financial incentives if they took on persons with disabilities and adapted their workplaces. The Committee notes that according to the report, there are 291 sheltered employment facilities employing 6 721 people, 2 730 of whom are disabled. The Committee asks whether trade unions are active in sheltered employment. It also asks for detailed information on the procedure under the relevant legislation for calculating the remuneration of persons working in sheltered employment and on the rate of transfer of persons with disabilities from sheltered employment to the open labour market.

The report describes the project on “Encouraging Social Inclusion and an Inclusive Labour Market”, which is co-financed by component IV of the EU Instrument for Pre-Accession Assistance (IPA) for 2012-2013. The aim of the project is to improve the quality of services intended for persons in unfavourable situations on the labour market, with particular emphasis on persons with disabilities. As part of the project, full reviews were made of existing employment legislation and policies. As a result, a documentary entitled “A Labour Market for All” was produced and practical guidelines were published. These describe good practices for the integration into the labour market of disadvantaged persons, particularly persons with disabilities. In addition, training courses were arranged for 325 professionals in this field from various institutions and organisations.

As to the Committee’s finding that there had been a decrease in financial incentives to support employment and benefits for persons with disabilities during the period from 2000 to 2010 (Conclusions XX-I (2012)), the report to the Governmental Committee explained that, while the budget of the Special Fund had decreased in the initial years, the percentages of contributions to the Fund had increased subsequently and the Employment Agency had dealt with all applications diligently.

The report describes the Programme for the Self-Employment of Persons with Disabilities, which is planned to cover 360 people in total, including 120 who wish to start their own business and 240 unemployed persons with disabilities who will be employed by these

businesses. The Government provided about €1 million (59 million denars) for the implementation of this programme.

Furthermore, as part of the campaign to raise public awareness about the need to open up the labour market to marginalised groups, five thematic seminars were held to highlight the benefits of the integration of persons with disabilities into the labour market. Thematic groups were also set up in several municipalities, bringing together representatives of central and local government to prepare action plans for the employment of persons from vulnerable groups.

Conclusion

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

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

The Committee takes note of the information contained in the report submitted by "The former Yugoslav Republic of Macedonia".

Equal rights

The Committee recalls that it examines measures relating to maternity protection and family responsibilities under Articles 8 and 27 of the Charter (Conclusions 2015).

The report indicates that the Labour Relations Act prohibits, *inter alia*, direct and indirect discrimination on grounds of gender. Section 6 (2) of the Labour Relations Act provides that women and men must be provided with equal opportunities and equal treatment in connection to: access to employment, including promotion and vocational training; working conditions; equal payment for equal work; and termination of employment.

Any provisions of collective agreements and labour contracts that fail to comply with the equality principle shall not be valid. The law provides exceptions in cases of special protection of pregnant women or women who exercise maternity rights which are not deemed to be considered discrimination. The report mentions also that certain jobs/activities may be limited to persons of one sex if this is due to the nature of such jobs/activities or the conditions in which they are carried out; and this represent a real and decisive condition to perform the work, and provided that the goal to be achieved is justified and the condition is reasonable. The Committee asks examples of such occupations/activities which are reserved exclusively to persons of one sex. It also asks whether women are prohibited from performing night work or work in the mines/underground.

The report describes the legal remedies available to victims of discrimination and the procedure in front of the Commission for Protection against Discrimination and courts. As regards the burden of proof, the report indicates that under Section 11 of the Labour Relations Act the burden of proof is shifted to the employer who has to prove that there was no discrimination in a particular case. As for the compensation granted to victims of discrimination, the report indicates that there is no upper limit in the current version of the Labour Relations Act and compensation shall be determined for each case individually in accordance with the provisions of the Law on Obligations. However, the report does not provide any information on the actual amounts of compensation granted to victims of discrimination in employment on grounds of sex in practice.

The Committee takes note of the low number of cases of discrimination in employment that are being lodged. It asks information on the awareness-raising and capacity-building activities conducted for labour inspectors, judges and the wider public, and the results achieved. The Committee requests that the next report provide information on any cases of discrimination in employment dealt with by courts and the Commission for Protection against Discrimination, with specific indications regarding their nature and outcome, sanctions imposed on the employers and compensation granted to the employees.

The report adds that a new Law on the Equal Opportunities of Men and Women No. 6/2012 was adopted on 13 January 2012, which additionally promoted the principle equal opportunities and equal treatment of men and women. The law provided precise obligations on the responsible entities and responsible persons (coordinators and deputy coordinators in State Authorities and Local Government Units) and provides that a gender perspective shall be considered in the strategic plans and budgets; to acquire statistical data divided by gender and to monitor the effects and influence of their programmes on men and women, as well as to report on the same within their annual statements.

With regard to equal pay, the report states that the Labour Relations Act guarantees the right to equal pay of men and women. Section 108 provides that the employer shall pay equal salary for equal work with equal requirements regardless of gender. If the employment

contract, collective agreement or the General Act of the employer foresee provisions which determine different payment for men and women for equal work, they will be considered void. In equal pay cases, the employees may use the legal remedies available for discrimination based on gender.

The Committee takes note of the concerns raised by the ILO –CEACR and UN Committee of Economic, Social and Cultural Rights that the provisions of Article 108 of the Labour Relations Act are not in line with the principle of equal pay for work of equal value (ILO-CEACR, Direct Request (CEACR) – adopted 2015, published 105th ILC session (2016), Equal Remuneration Convention, 1951 (No.100).

The Committee recalls that women are entitled to equal pay for work of equal value, as men are. This means that the equal pay principle applies to the same work, but also to different works of the same value. Therefore, the Committee asks clarification on the meaning/understanding of the principle of equal remuneration for "equal work with equal responsibilities in the same job position, regardless of gender" provided for in Section 108 of the Labour Relations Act and how it is applied in practice.

The report indicates that the State Labour Inspectorate has not received any complaint and has not found any violation of the equal pay regulation. The Committee asks updated information in the next report on any complaints or cases regarding equal pay dealt with by the Labour Inspectorate or the courts.

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”). The Committee has asked whether in equal pay litigation it is possible to make comparisons of pay and jobs outside the company directly concerned (Conclusions 2014 on Article 4§3). Articles 20 and 4§3 of the Charter require the possibility to make pay comparisons across companies (Conclusions 2010, France). 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 (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).

In the light of the above mentioned, the Committee reiterates its question whether in equal pay litigation cases it is possible to make comparisons of pay and jobs outside the company directly concerned.

Equal opportunities

The Committee notes from the survey on the structure of earnings of employees that, in 2010, the gender pay gap averaged 7% and varied greatly according to the sector of activity where, for example, it was as high as 25% in the manufacturing sector or 20% in the

wholesale sector. The Committee also notes that while the annual gender pay gap between men and women with a university education was 13%, it went up to 23% between men and women with an incomplete primary or secondary education, and when considering this last category of workers, the hourly gender pay gap was 50% (ILO-CEACR, Direct Request (CEACR) – adopted 2015, published 105th ILC session (2016), Equal Remuneration Convention, 1951 (No.100)).

From the *Women and Men in Macedonia* publication, the Committee notes the persisting occupational gender segregation between men and women in certain sectors, for example the construction sector where women represent 7 per cent of the task force or the health and social work sector where women make up 67 per cent of the employed. It also notes, from the 2013 concluding observations of the Committee on the Elimination of Discrimination against Women (CEDAW), that the CEDAW expressed concern over the fact that women, including from ethnic minorities, continue to be under-represented in the political sphere (CEDAW/C/MKD/CO/4-5, 22 March 2013, paragraph 27).

The Committee takes note from the report of the adoption of the following strategic documents with regard to equal opportunities between men and women: the National Strategy for Gender Equality (2012–2020), the National Action Plan for Gender Equality (2013–16) and the National Strategy on the Introduction of Gender-Responsive Budgeting (2012–2015). The report describes also the measures taken to implement these strategies and to strengthen the position of women on the labour market, including at the local level.

The Committee notes that in its Concluding observations on Macedonia of the UN Committee on Economic, Social and Cultural Rights was concerned at the disproportionately low labour participation and employment rates among women, particularly Roma women and ethnic Albanian women, as well as at the predominance of women in unskilled/underpaid jobs and positions. It was also concerned at the absence of active employment measures targeted at women and the insufficient level of implementation of the 2012 Law on Equal Opportunities of Women and Men and the National Strategy for Gender Equality 2013-2020. It was further concerned at the large gender pay gap in the State party (Committee on Economic, Social and Cultural Rights, Concluding Observations on Macedonia, 24 June 2016). The Committee asks the next report to provide information on the concrete measures taken to reduce the gender pay gap.

The report indicates that within the structure of the national gender equality mechanisms, a significant role also plays the Commission on Equal Opportunities of Men and Women in the Assembly of Republic of Macedonia and the Women Parliamentarians' Club. Pursuant to the recent data of the Ministry of Labour and Social Policy, in all 81 municipalities there were established Commissions for Equal Opportunities of Men and Women and coordinators for equal opportunities of men and women were appointed. Besides the progress made in certain areas, as direct result of the arrangement and commitment on the gender equality mechanisms, it was, however, concluded that the capacities of the institutional mechanisms are not yet on a satisfactory level to respond to the obligations that arise from the Law on Equal Opportunities of Men and Women. For that purpose, the Ministry of Labour and Social Policy – through the Equal Opportunities Sector – in cooperation with the Inter-Ministerial Advisory Group and with the support of the UN Women undertook specific measures towards systemizing the approach in upgrading the capacities of the institutional mechanisms. The Committee asks update information in the next report on the results of such specific measures.

The report describes the situation in the labour market of women of Roma origin and women from rural areas. A second national Action Plan for Promoting the Social Status of Romani Women was adopted in 2010 and measures to encourage women from rural areas to obtain subsidies for economic activities in agriculture and rural tourism were initiated.

The Committee asks the next report to provide comprehensive information on all measures taken to eliminate *de facto* inequalities between men and women, including positive actions/

measures taken. It asks in particular information on their implementation and impact on combating gender discrimination and to reduce the gender pay gap.

Conclusion

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

Article 24 - Right to protection in case of dismissal

The Committee takes note of the information contained in the report submitted by "The former Yugoslav Republic of Macedonia".

Article 24 of the Charter obliges states to establish regulations with respect to termination of employment (at the initiative of the employer) for all workers who have signed an employment contract. To assess whether the regulations applied in cases of termination of employment are in conformity with Article 24, the Committee's examination will be based on:

- *the validity of the grounds for dismissal under the general rules on termination of employment and increased protection against dismissal based on certain grounds (Article 24.*a *and the Appendix to Article 24);*
- *penalties and compensation in cases of unfair dismissal and the status of the body empowered to rule on such cases (Article 24.*b*).*

Scope

The Committee recalls that under Article 24 of the Charter all workers who have signed an employment contract are entitled to protection in the event of termination of employment. According to the Appendix to the Charter, certain categories of workers can be excluded, among them workers undergoing a period of probation. However, exclusion of employees from protection against dismissal for six months or 26 weeks in view of probationary period is not reasonable if applied indiscriminately, regardless of the employee's qualification (Conclusions 2005, Cyprus).

The Committee notes from the report that according to the Law on Labour Relations, the probationary period cannot last longer than six months and that the employer can cancel the employment agreement upon the expiration of the probationary period based on assessment of unsuccessfully completed work. The Committee notes that for apprentice service period, which cannot last more than one year, unless otherwise stated by law, the employer must not terminate the employment agreement, with the exception of a procedure of termination in case of violation of the working order and discipline or working tasks pursuant to law. The Committee asks whether there are other categories of employees who may be excluded from dismissal protection other than during probationary period.

Obligation to provide valid reasons for termination of employment

The Committee recalls that under Article 24 the following are regarded as valid reasons for termination of an employment contract:

- *reasons connected with the capacity or conduct of the employee;*
- *certain economic reasons*.

The Committee recalls that Article 24 establishes in an exhaustive manner the valid grounds on which an employer can terminate an employment relationship. Two types of grounds are considered valid, namely on the one hand those connected with the capacity or conduct of the employee and on the other hand those based on the operational requirements of the enterprise (economic reasons).

The Committee notes from the report that the complete list of valid grounds for termination of an employment contract with an employee is set by the Law on Labour Relations and that the employer may only terminate the employment contract if there is a justified reason based on the worker's conduct ("personal reasons of the employee"), due to violation of the working order and discipline or labour relations or if the reason is based on the needs of the employer's functioning ("business reasons"). Article 76 established 3 categories of 'justified reasons for dismissal': 1. "personal reason": inability to carry out employment obligations due to conduct, lack of knowledge or capabilities; 2. "fault reason": violation of contractual or other obligation arising from the employment relationship; 3. "business reason" defined as economic, organisational, structural or similar reasons.

The Committee notes that from the Law that Article 72 states that the employer is obliged to indicate the ground for termination, as stipulated by law or collective agreement, and to substantiate the reasons justifying termination. In addition before the termination of employment due to the fault of the employee, the employer must warn in written for the failure to fulfil the obligations and the opportunity of dismissal in case of further violation of the same (Article 73). Article 74 provides the employer's obligation to explain the reasons for termination in the notice of dismissal, as well as to provide indication on the legal remedies and to introduce his/her rights to unemployment insurance.

The Committee recalls that according to the Appendix to the Charter, for the purposes of Article 24 the term 'termination of employment' means termination of employment at the initiative of the employer. Therefore, situations where a mandatory retirement age is set by statute, as a consequence of which the employment relationship automatically ceases by operation of law, do not fall within the scope of this provision, but dismissal of the employee at the initiative of the employer on the ground that the former has reached the normal pensionable age (when he/she is entitled to a pension) will not be in conformity with the Charter unless properly justified with reference to one of the valid grounds expressly established bu this provision of the Charter. The Committee asks whether and how the legislation complies with this approach.

Prohibited dismissals

The Committee recalls that a series of Charter provisions require increased protection against termination of employment on certain grounds:

- *Articles 1§2, 4§3 and 20: discrimination;*
- *Article 5: trade union activity;*
- *Article 6§4: strike participation;*
- *Article 8§2: maternity;*
- *Article 15: disability;*
- *Article 27: family responsibilities;*
- *Article 28: worker representation.*

Most of these grounds are also listed in the Appendix to Article 24 as non-valid reasons for termination of employment. However, the Committee will continue to consider national situations' conformity with the Charter with regard to these reasons for dismissal in connection with the relevant provisions. Its examination of the increased protection against termination of employment for reasons stipulated in the Appendix to Article 24 will thus be confined to ones not covered elsewhere in the Charter, namely "filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities" and "temporary absence from work due to illness or injury".

As regards the first ground, the Committee considers (Conclusions 2003, Statement of Interpretation on Article 24) that national legislation should include explicit safeguards against termination of employment on this ground. The Committee notes that termination of employment, according to Article 71 of the Law on Labour Relations, based on the grounds of discrimination listed in Article 6, shall be null and void.

Furthermore safeguarding persons who resort to the courts or other competent authorities to enforce their rights against reprisals is essential in any situation in which a worker alleges a violation of the law. The Committee notes that 'the submission of lawsuit or participation in proceedings against the employer for violation of contractual and other obligations arising from the labour relation before an arbitration, judicial and administrative authorities' is among the unfounded grounds for dismissal (Article 77) and approved sick leave.

As regards temporary absence from work due to illness or injury, the Committee recalls that under Article 24 a time limit can be placed on protection against dismissal in such cases. Absence from work can constitute a valid reason for dismissal if it severely disrupts the

smooth running of the undertaking and a genuine, permanent replacement must be provided for the absent employee. Additional protection must be offered, where necessary, for victims of employment injuries or occupational diseases. The Committee asks what time limit is placed on protection in case of temporary incapacity and what rules apply to the cases of permanent invalidity.

Remedies and sanctions

The Committee recalls that Article 24 of the Revised Charter requires that courts or other competent bodies are able to order adequate compensation, reinstatement or other appropriate relief. In order to be considered appropriate, compensation should include reimbursement of financial losses incurred between the date of dismissal and the decision of the appeal body ruling on the lawfulness of the dismissal, the possibility of reinstatement and/or compensation sufficient both to deter the employer and proportionate to the damage suffered by the victim.

According to the report, the worker shall be entitled to appeal to the management body or to the employer, within eight days from receipt of the decision, against the decision to terminate the employment without notice. The employer must reply within eight days from the complaint and during that period the execution of the dismissal is suspended. In case of a dismissal with notice period, the worker can submit a complaint in the same way, but the complaint shall delay the execution of the decision on dismissal until the adoption of a final decision upon the complaint. If no decision is taken on the complaint or if the worker is not satisfied with the response, the worker is entitled to take proceedings before the competent court. At the request of the worker, the union can represent workers in opposition proceedings.

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 asks what is the amount of compensation awarded in case of unlawful dismissal and whether it is limited.

The Committee notes that if the court adopts a decision by which it is determined that the worker's employment has been illegally terminated, the worker shall be reinstated, if he/she requested it and the employer shall be obliged to pay the worker the due compensation. If the court determined by a decision that the worker's employment has been illegally terminated, and for the worker it is unacceptable to stay in labour relation, the court shall determine the day of termination of the labour relation and will determine compensation of damage, on request of the worker. The court can adopt the decision on request of the employer too if there are circumstances that indicate that the continuation of the labour relation, with respect to interests of both parties, is not possible. The worker can also request from the court to order his/her return at work temporarily, until the completion of the dispute. Workers can submit an application for protection of the rights in termination of the employment agreement by the employer to the State Labour Inspectorate, as an authority performing supervision of the application of the Law on Labour Relations, collective agreements and employment agreements.

The Committee recalls that (Statement of Interpretation on Article 24, Conclusions 2008) in proceedings relating to dismissal, the burden of proof should be subject of an appropriate adjustment between employee and employer. The Committee asks to specify whether the law provides for such an adjustment.

Conclusion

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