



November 2008

European Social Charter

European Committee of Social Rights

Conclusions XIX – 1 (“The former Yugoslav Republic of
Macedonia”)

Articles 1 and 15 of the Charter in respect of Charter

Introduction

The function of the European Committee of Social Rights is to assess the conformity of national law and practice with the European Social Charter and the Revised Charter. In respect of national reports, it adopts “conclusions” and in respect of collective complaints, it adopts “decisions”.

A presentation of this treaty as well as statements of interpretation formulated by the Committee figure in the General Introduction to the Conclusions¹.

The European Social Charter was ratified by “the former Yugoslav Republic of Macedonia” on 31 March 2005. The time limit for submitting the 1st report on the application of the Charter to the Council of Europe was 31 October 2007 and “the former Yugoslav Republic of Macedonia” submitted it on 19 November 2007. On 11 April 2008, a letter was addressed to the Government requesting supplementary information regarding Articles 1§1, 1§3, 15§1 and 15§2. The Government submitted its reply on 26 June 2008.

This report was the first under the new system for the submission of reports adopted by the Committee of Ministers.² It concerned the accepted provisions of the following articles belonging to the first 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 education, training and employment (Article 15),
- the right to engage in a gainful occupation in the territory of the other Contracting Parties (Article 18),
- the right of men and women to equal opportunities (Article 1 of the Additional Protocol).

“The former Yugoslav Republic of Macedonia” has accepted these articles with the exception of Articles 9, 10, 18 and Article 1 of the Additional Protocol.

The applicable reference period was 30 April 2005 – 31 December 2006

The present chapter on “the former Yugoslav Republic of Macedonia” concerns 6 situations and contains:

- 0 conclusions of conformity:
- 3 conclusions of non-conformity: Articles 1§1, 1§2 and 15§1.

In respect of the 3 other situations concerning Articles 1§3, 1§4 and 15§2, the Committee needs further information. The Government is therefore invited to provide this information in the next report on the provisions in question.

The next report of “the former Yugoslav Republic of Macedonia” deals with the accepted provisions of the following articles belonging to the second 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 4 of the Additional Protocol).

The deadline for the report was 31 October 2008.

¹ The conclusions as well as state reports can be consulted on the Council of Europe’s Internet site (www.coe.int/socialcharter).

² Decision adopted at the 963rd meeting of the Ministers’ Deputies on 3 May 2006.

Article 1 – The right to work

Paragraph 1 – Policy of full employment

The Committee notes the information in the report of "the former Yugoslav Republic of Macedonia".

Employment situation

According to Eurostat, growth fell from 4.1% in 2005 to 3.8% in 2006 but remains fairly high.

However, the growth was accompanied by an unfavourable employment situation. According to ILO statistics, the employment rate has fallen steadily since 2002 and was 35.2% in 2006, compared to the EU-15 average of 66.2% in 2006.

The unemployment rate fell during the reference period from 37.3% in 2005 to 36% in 2006, but remains particularly high, as are the rates for women and young persons (15-24), at respectively 30.7% and 59.8% in 2006.

The Committee also notes that long-term unemployment as a percentage of total unemployment was extremely high during the reference period: 86.3% in 2006.

In reply to the Committee's question, the Government refers to a certain number of programmes in favour of long-term unemployed (encouraging business creation, trainings, employment subsidies) which started outside of the reference period. The Committee asks the next report to indicate what specific measures have been taken in favour of long-term unemployed.

In reply to the Committee's question, the Government indicates that the number of persons with disabilities registered at the Employment Agency decreased from 2,577 in 2005 to 2,216 in 2006. It further indicates that the largest groups of foreign nationals are Serbs, Turks, Greeks and Bulgarians. The Committee wishes to obtain statistics about the unemployment of foreign nationals.

Employment policy

It emerges from the report that the main objectives of the Government's long term employment policy are to combat unemployment and the underground economy, and raise workers' competitiveness and labour market flexibility, particularly through the establishment of agencies for temporary employment, under 2006 legislation.

Raising the employment rate is the first priority of the Government's national employment strategy, which includes the following specific objectives:

- raising the total employment rate to 48% by 2010;
- raising the female employment rate to 38% by 2010;
- raising the employment rate of older persons (55-64) to 33% by 2010;
- offering active measures to all young job seekers before they have completed 6 months' unemployment (12 months for adults);
- offering active measures to 15% of the long-term unemployed by 2010.

There is a strong emphasis on active measures such as training, skills upgrading for job seekers, vocational guidance and encouraging business creation. The report refers to several projects established during this period in a number of local authorities, aimed mainly at assisting the unemployed, including young and persons with disabilities and women, to find work or their first employment. The projects also include grants to assist job seekers.

The latter can also benefit from individual and collective advice and guidance, job placements and training courses in centres run by the national employment agency. During the reference period, 74,544 job seekers benefited from these services, of whom 30% subsequently found a job. The Committee wishes to know to what extent these jobs were of a lasting nature.

Since some of the projects cover the period 2005-2007, the Committee asks for details in the next report on the number of beneficiaries of these measures during the reference period, for each category of job seeker. It also asks how much time elapses on average between a person registering as unemployed and receiving an offer of an active measure.

In reply of the Committee's question, the Government indicates that the total spending on employment policy (active and passive measures) decreased from 2.3% of GDP in 2005 to 1.8% of GDP in 2006. According to

the Government, spending on active measures also decreased from 0.2% of GDP in 2005 to 0.1% of GDP in 2006.

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 despite the measures it has introduced, the Government's efforts to improve the employment situation are still inadequate.

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

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

1. Elimination of all forms of discrimination in employment

The Committee notes that under Article 1§2 legislation should prohibit discrimination in employment at least on grounds of sex, race, ethnic origin, religion, disability, age, sexual orientation and political opinion (Conclusions 2006, Albania). Since "the former Yugoslav Republic of Macedonia" has accepted Article 15§2, discrimination against persons with disabilities will be considered under this provision

The constitution of "the former Yugoslav Republic of Macedonia" enshrines the principle that all citizens have equal rights and freedoms, irrespective of sex, race, skin colour, national or social origin, political or religious beliefs, financial situation or social status. The main labour law also bans discrimination in any form. More specifically, section 6 provides that employers may not discriminate against job applicants on grounds of race, skin colour, sex, age, health/disability, religious, political or other beliefs, trade union membership, national or social origin, family situation, possessions, sexual orientation or other personal circumstances.

Under the legislation, any provision of a collective agreement or employment contract that includes a discriminatory clause on any of the grounds specified in section 6 will be ruled null and void.

The Committee has ruled that the discriminatory acts and provisions prohibited by this provision may apply to all aspects of recruitment and employment conditions in general, including remuneration, training, promotion, transfer, dismissal and other forms of detriment (Conclusions XVI-1, Austria). It asks for information in the next report showing how the aforementioned legal provisions are applied and enforced for each of the forms of employment discrimination prohibited by Article 1§2. In particular, it asks for information on discrimination based on age and sexual orientation. It also asks whether there is a national strategy for combating all forms of discrimination in employment.

The labour law defines direct and indirect discrimination. Under section 7, direct discrimination consists in any form of treatment for one of the reasons specified in section 6 as a result of which an employee is, has been or might be placed at a disadvantage, compared with other persons in the same situation. Indirect discrimination occurs when a specific provision, criterion or practice that appears to be neutral in fact places or could place a person in a less favourable position than other persons.

The Committee asks how the prohibition on direct and indirect discrimination are applied in practice and what are the authorised exceptions to the non-discrimination principle.

The Committee has ruled that exceptions to the ban on discrimination may be authorised for essential occupational requirements or to permit positive action (Conclusions 2006, Bulgaria). Section 8 specifies the exceptions to the ban on discrimination. Thus, difference of treatment will not be considered discriminatory when the nature and conditions of work are such that at least one of the grounds specified in section 6 is essential to perform the work, so long as the purpose is justified and the condition is reasonable. The Committee asks for more information on these exceptions and how they are applied.

Legislation on equal opportunities for women and men was enacted in 2006. It provides the legal basis for measures to promote equality and specifies the powers, duties and responsibilities of the relevant equal opportunities bodies and the procedures for determining what constitutes unequal treatment of women and men. An equal opportunities department has been set up in the ministry of labour and social policy. It undertakes various activities to promote women's status and establish equal opportunities. Equal opportunities committees have also been established in the national parliament and at local level.

The report acknowledges the difficulties faced by women in the employment field. The government therefore approved a national action plan for equality of the sexes in July 2007 to secure equal treatment of women and men with regard to employment, pay and promotion prospects. The Committee asks for information in the next report on what the action plan has achieved.

The Committee has also ruled that legislation banning discrimination must be effective, and at the minimum must:

- grant authority to set aside, withdraw, revoke or modify any provision in collective agreements, employment contracts and firms' internal regulations that is incompatible with the principle of equal treatment (Conclusions XVI-1, Iceland). The Committee asks what the legislation stipulates in this regard and how it is enforced;
- offer employees who lodge complaints or bring actions in court protection against dismissal or other reprisals by employers (Conclusions XVI-1, Iceland). The Committee again asks what the legislation stipulates in this regard and how it is enforced;
- provide for appropriate and effective remedies in response to allegations of discrimination. When discrimination is established, the compensation must be effective and proportionate and act as a deterrent. Imposing a pre defined upper limit is therefore not in conformity with Article 1§2 as in some cases the compensation awarded may not be commensurate with the loss or damage incurred and not sufficiently dissuasive for the employer (Conclusions 2006, Albania). The Committee notes that under section 10 of the labour law job applicants and employees who have suffered discrimination are eligible for compensation of up to five months' average wage. The Committee concludes that imposing such a predefined maximum level of compensation is not in conformity with Article 1§2 of the Charter.

The Committee has ruled that, in disputes relating to an allegation of discrimination in matters covered by the Charter, the burden of proof should not rest entirely on the complainant, but should be the subject of an appropriate adjustment. It notes that if job applicants or employees provide evidence in such disputes that employers have discriminated against them the burden of proof then lies with the latter, who must show that they have acted in compliance with the law. The Committee concludes that the situation is compatible with Article 1§2 of the Charter.

The Committee considers that other means of combating discrimination in accordance with Article 1§2 of the Charter include:

- recognising the right of trade unions to take action in cases of discrimination in employment, including action on behalf of individuals (Conclusions XVI-1, Iceland). The Committee notes that in cases of sex discrimination, citizens' associations, employers' organisations and trade unions can represent individuals, at their request, in administrative proceedings they have initiated to protect their rights. It asks whether this option is also available for judicial proceedings, and whether it is also possible in cases involving other forms of discrimination;
- the right of collective action by groups with an interest in obtaining a ruling that the prohibition of discrimination has been violated. The Committee asks whether such collective action is possible;
- the setting up of a specialised and independent body to promote equal treatment, especially by providing discrimination victims with the support they need to take proceedings (Conclusions XVI-1, Iceland). The Committee asks whether such a specialised body exists.

The Committee has ruled that states may make foreign nationals' access to employment subject to possession of a work permit, but they may not issue a general ban on nationals of States Parties occupying jobs for reasons other than those set out in Article G. The only jobs from which foreigners may be barred are therefore ones that are inherently connected with the protection of law and order or national security and involve the exercise of public authority (Conclusions 2006, Albania). The report says that before a foreign national can be granted a work permit, there must be no job seekers registered with the employment service who meet the conditions laid down by the employer. The Committee considers that this system for granting work permits constitutes discrimination against national of States Parties and is therefore not in conformity with Article 1§2 of the Charter.

Finally, the Committee has ruled that excluding persons from the public service, in the form of refusal to recruit or dismissal, because of their previous political activities, is prohibited when it is not "necessary", within the meaning of Article G, because it does not apply solely to departments with responsibilities in the field of law and order and national security or to functions involving such responsibilities (Conclusions 2006, Lithuania). The Committee asks whether such exclusion is possible with regard to past or present political activities and if so in what way it can be deemed necessary, within the meaning of Article G.

2. Prohibition of forced labour

The Committee considers that forced or compulsory labour in any form must be prohibited. Failure to apply in practice legislation that is incompatible with the Charter is not sufficient to bring the situation into line with the Charter (Conclusions XIII-3, Ireland). Article 11§3 of the Constitution prohibits forced labour. The Committee asks how this prohibition is applied in practice.

Prison work

Article 1§2 of the Charter requires strict regulation of prison work, in terms of remuneration, working hours and so on, particularly when the prisoners work for private employers. Prisoners may only be employed by private companies with their consent and in conditions as close as possible to an employment relationship freely entered into (Conclusions XVI-1, Germany).

The Committee refers to the report for a detailed description of prison work in “the former Yugoslav Republic of Macedonia”. Prison work is governed by sections 113 to 122 of the legislation on the execution of sentences. The Committee notes that prisoners are entitled, but not obliged, to work. The purpose of such work is to enable prisoners to reintegrate into society. Attention is paid to prisoners’ preferences as to the type of work they wish to perform, in so far as this is possible within the prison.

Prisoners’ work is limited to 40 hours per week. Overtime is possible in certain cases. Prisoners who have worked more than six months are entitled to leave in accordance with the general rules.

Certain prisoners may work outside prison. Those serving sentences of six months or less for offences that are not connected to their work can continue to work with their former employer after serving their sentence.

The main areas of activity of prisoners in prison workshops are agriculture, stock rearing and woodworking. They may also be employed on prison maintenance work. Some prisoners may work outside prison for public bodies such as local authorities or for private employers. Prisoners are entitled to compensation for work for up to one year. The Committee asks what this one-year limit signifies. The level of compensation depends on the type of goods produced and the work carried out, their quality and quantity and prisoners’ skills, commitment to the work and contribution to reducing costs. Prisoners are also entitled to disability insurance against occupational accidents or diseases.

According to the report, monthly wages range from 100 Denar (MKD; € 1.61) to MKD 1,700 (€ 27.51) for work in prisons (though reference is also made to prisoners who do not receive any payment) and from MKD 1,500 (€ 24.28) to MKD 4,200 (€ 67.98) for work outside. The Committee asks how it is justified that certain prisoners are not paid and that there are such large variations in pay. It also asks for comparative statistics on the minimum wage of employees in “the former Yugoslav Republic of Macedonia”.

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

Several other practices may cause problems from the standpoint of Article 1§2:

Part-time work

There must be various legal safeguards attached to part-time work. The Committee needs to know whether there is a minimum working week and whether there are rules to avoid undeclared work in the context of overtime and ones requiring equal pay, in all its aspects, between part-time and full-time workers (Conclusions XVI-1, Austria).

The Committee notes that the report fails to submit information on this matter. It therefore asks for information in the next report on the legal safeguards attached to part-time work and how they are applied.

Requirement to accept the offer of a job or training

The Committee considers that in general the conditions to which the payment of unemployment benefits is subjected, including any obligations to take up offered employment, should be assessed under Article 12§1 of the Charter (or Article 12§3 in the case of new developments). However, in certain cases and under certain circumstances the loss of unemployment benefits on grounds of refusal to accept offered employment could amount, indirectly, to a restriction on the freedom to work and as such the situation would be assessed under Article 1§2. (See General introduction to Conclusions 2008, §10)

The Committee has ruled that the right to earn a living in an occupation freely entered upon means that, for a reasonable initial period, job seekers must be able to refuse offers that do not correspond to their qualifications and experience without risking the loss of their unemployment benefits (Conclusions 2004, Cyprus). The Committee asks for information in the next report on this subject.

Privacy at work

The Committee asks for information to enable it to determine how far human freedom and dignity are protected by legislation and the courts against intrusions into personal or private life that may be associated

with or result from the employment relationship (see observations on Article 1§2, general introduction to Conclusions 2006, §§13-21).

Restrictions linked to the fight against terrorism

The Committee invites the Government to reply to its question in the General Introduction to Conclusions XVIII-1 as to whether any legislation against terrorism precludes persons from taking up certain types of employment.

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 grounds that:

- there is an upper limit on compensation for discrimination in employment;
- the system for granting work permits constitutes discrimination based on nationality against nationals of other States Parties.

Paragraph 3 – Free placement services

The Committee notes the information in the report of "the former Yugoslav Republic of Macedonia".

The national employment agency was established in 1997 under the Employment and Insurance Act (Official Gazette 37/97, as amended by Act 50/2006). It is responsible for advising on and implementing employment policies, advising, offering training to and placing unemployed persons seeking work and helping employers to meet their manpower and staffing needs. The services are free for users.

During the reference period the public employment services were made up of a national agency and 29 regional employment centres serving one or several municipalities. The Committee requests information on their staffing.

The report only provides figures on the number of job seekers who applied for particular vacancies. The Committee asks for details in the next report on the total number of vacancies notified to the public employment services.

The report should also indicate the placement rate, namely the ratio of the number of placements made by the public employment services to the number of job offers registered.

The Committee also asks for the average period of time required to fill vacancies.

It also notes that there are private agencies, whose activities are governed by the previously cited legislation. They must be registered in the register of commerce after obtaining authorisation from the labour ministry, which also supervises their activities. The Committee asks for information on co-ordination between these services and on what percentage of the market the public employment services represent, that is placements made by the public employment services as a percentage of the total number of persons hired in the labour market.

It finally asks whether trade unions and employers' organisations are involved in the management of the state employment agency, for example on a board of directors or similar body.

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

Paragraph 4 – Vocational guidance, training and rehabilitation

The Committee takes note of the information provided in the report of "the former Yugoslav Republic of Macedonia".

Under Article 1§4 of the Charter, the Committee considers vocational guidance, continuing training for workers and the rehabilitation of persons with disabilities.

As "the former Yugoslav Republic of Macedonia" has accepted Article 15§1 of the Charter (right of persons with disabilities to vocational guidance, education and training), the Committee refers to its conclusion under that article, in which it conceded that the situation is not in conformity with the Charter on the ground that the anti-discrimination legislation covering education for persons with disabilities is inadequate. Since this ground concerns education, it is not relevant under Article 1§4.

The Committee is concerned here only with vocational guidance and continuing vocational training in view of the fact that “the former Yugoslav Republic of Macedonia” has not accepted Articles 9 and 10§3 of the Charter. Where one or two of the three provisions has not been accepted, the Committee deals with the following points under Article 1§4, looking in turn at guidance, continuing training and the guidance and training of persons with disabilities:

- the existence on the labour market of vocational guidance and training services for employed and unemployed persons and guidance and training aimed specifically at persons with disabilities;
- access: how many people make use of these services;
- the existence of legislation explicitly prohibiting discrimination on the ground of disability in the field of training.

Vocational guidance

Act No. 755 on employment and unemployment insurance of 24 July 1997 governs the functioning of the vocational guidance services provided by the employment office. The employment office works with the Ministry of Education and Science and other ministries and institutions in the context of various projects to promote vocational guidance on the labour market.

The employment office’s services include individual counselling for jobseekers and persons with disabilities which take account of personal skills and qualifications and the needs of the labour market. Persons are catered for by the office nearest to their place of residence and services are free of charge.

Since the restructuring of the employment office in 2005, vocational guidance has been an integral part of the work of central and regional employment offices (accounting for 66% of their activities in 2005 and 70% in 2006). Guidance takes the form of psychological examinations, vocational counselling to help people choose their future occupation and career development plans.

The Committee asks whether the vocational guidance on offer satisfies demand.

Continuing vocational training

According to the report, a new Vocational Education and Training Act was adopted in 2006. However, no information on continuing vocational training is given. The Committee asks for the next report to provide information on continuing vocational training for workers and unemployed persons.

The Committee wishes to know what is the demand for training placements and whether training supply meets training demand. In the event that companies organise training courses, the Committee asks whether employees’ training costs are covered by the company or the trainees themselves.

According to the report equal treatment is guaranteed to all the persons concerned including nationals of other States Parties residing or working in “the former Yugoslav Republic of Macedonia”, and this applies equally to persons with disabilities.

Conclusion

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

Article 15 – Right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement

Paragraph 1 – Education and training for persons with disabilities

The Committee takes note of the information provided in the report of “the former Yugoslav Republic of Macedonia” and the additional information submitted by the Government on 26 June 2008 in reply to a further question addressed to it by the Committee.

To assess the effective access of children and adults with disabilities to education and vocational training, the Committee asks the next report to provide the following up-to date figures:

- total number of persons with disabilities, including the number of children;
- number of students with disabilities following mainstream education and vocational facilities;
- number of students with disabilities following special school education or training facilities;
- the percentage of students with disabilities entering the labour market following mainstream or special education or/and training.

–
In this regard, the Committee has noted from the report that no reliable statistical data exist with regard to the total number of children with special needs. However, it recalls that when it is generally acknowledged that a particular group is or could be discriminated against, the state authorities have a responsibility for collecting data on the extent of the problem (ERRC v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, §27). The gathering and analysis of such data (with due safeguards for privacy and against other abuses) is indispensable to the formulation of rational policy (ERRC v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005, §23).

Definition of disability

The report states that the definition of disability is contained in the Law on Employment of Disabled Persons (Official Gazette No. 44/00, 16/04, 62/05 and 113/05), which defines “disabled” a person with vision, hearing, cognitive, physical, intellectual or combined development impairments or autism, who due to the level of disability has specific working needs. A person with “labour disability with remained or decreased working capacity” is also deemed disabled. For disability to be recognised, persons with disabilities, their parents or their tutors have to submit a request to:

- an expert Commission established within the context of the Law on Social Security (for persons until the age of 26);
- the Commission for the assessment of working capacity within the context of the Law on Pension and Disability Insurance (after 26 years of age).

The Committee observes that the above mentioned definition appears to be mainly based on medical characteristics (impairments). In this regard, it requests the next report to clarify whether the assessment of the status of disability also takes into account socio-economic factors, including educational and psychological ones. It consequently asks the next report to highlight whether any steps have been taken, or are planned, to move towards a more social definition of disability such as that endorsed by the WHO in its International Classification of Functioning (ICF, 2001). Furthermore, the Committee asks the next report to clarify the notion of “labour disability with remained or decreased working capacity”.

Anti-discrimination legislation

The Committee recalls that, as stated in the Autism-Europe decision (Autism-Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, § 48), “the underlying vision of Article 15 is one of equal citizenship for persons with disabilities and, fittingly, the primary rights are those of independence, social integration and participation in the life of the community. Securing a right to education for children and others with disabilities plays an obviously important role in advancing these citizenship rights”.

Under Article 15§1, the Committee therefore considers necessary the existence of anti-discrimination legislation as an important tool for the advancement of the inclusion of children with disabilities into general or mainstream educational schemes. Such legislation should, as a minimum, require a compelling justification for special or segregated educational systems and confer an effective remedy on those who are found to have been unlawfully excluded or segregated or otherwise denied an effective right to education. Legislation may

consist of general anti-discrimination legislation, specific legislation concerning education, or a combination of the two (Conclusions 2007, General Introduction, Statement of Interpretation on Article 15§1).

Despite the report and additional information submitted, the Committee is not certain that legislation explicitly prohibits discrimination in the field of education and training on the ground of disability. The Committee therefore asks for clarification in this regard (see below). It also wishes to receive information on the right of individuals to seek remedies before the courts in cases of discrimination on the ground of disability in education.

Education

The Committee notes that although legislation on education provides all children with the right to free compulsory education, this does not amount to non-discrimination legislation. Additionally, from the information submitted, it appears that discrimination on the ground of disability is explicitly prohibited only by the Law on Higher Education and not by those on Primary and Secondary Education. The Committee wishes to receive clarification in this regard reiterating that the existence of non-discrimination legislation is an important tool for the advancement of the inclusion of children with disabilities into general or mainstream educational schemes.

In this framework, the Committee notes that the Ministry of Education and Science is implementing a project aimed at integrating children with special educational needs into mainstream schools since 1998. Progress has been achieved but the report acknowledges that there are still significant obstacles in the practical implementation of the inclusion of children with disabilities in mainstream schools. The Committee asks the next report to inform it about the measures taken to improve the situation. Meanwhile, it concludes that the situation is not in conformity with the requirements of Article 15§1 of the Charter.

As regards mainstream education, the Committee asks the next report to also information on:

- whether and how the normal curriculum is adjusted to take account of disability;
- whether and how individualised educational plans are crafted for students with disabilities;
- whether general teacher training incorporates special needs education as an integral component;
- whether and how resources follow the child (including support staff and other technical assistance) and whether measures are in place to facilitate the integration of children with disabilities into mainstream education, like e.g. to adapt schools to make them physically accessible;
- whether and how testing or examination modalities are adjusted to take account of disability and whether the fact that examinations are taken under non-standard conditions is revealed to third parties who, the Committee considers, have no right to such information;
- whether the qualifications that eventuate are the same for all children or whether different qualifications ensue and if so, whether these qualifications are officially recognised and validated and whether they have the same functional value to the individual as the mainstream qualification.

The Committee notes that the report indicates that there are four high schools for students with special needs which appear to be special education institutions: one is for students with visual impairment; another for students with hearing impairment and two for students with intellectual impairment. All schools operate through adapted curricula and programmes. Some curricula provide for the continuation of education at university level. According to the figures provided for the reference period, the number of students with intellectual impairments exceeded that of places available (265 students in 2006 for 170 places in the two special needs schools). The Committee requests the next report to inform it about the measures taken to overcome this problem.

With respect to special education, the Committee is particularly interested in being informed on:

- whether the Ministry of Education has primary responsibility;
- how the curriculum is designed and whether it is validated/adopted by the Ministry of Education;
- whether individualised education plans are crafted and the process by which they are determined;
- what kinds of qualifications does the curriculum lead to and whether they are recognised in order to enable progress into further education or to gain entry to vocational education or the open labour market;
- what the success rate is in progressing into vocational training, or further education or into the open labour market;
- whether the quality of education is monitored by mainstream monitoring mechanisms.

Vocational training

The report states that the Law on Social Security guarantees persons with disabilities until the age of 26 the right to a training for a work production activity. Such training is carried out in social care institutions and the disabled person does not bear any costs (travel expenses, accommodation, food and training are paid for). The Committee wishes to be informed in the next report on the implementing measures, including financial means, related to this right to special training.

The Law on Employment of Disabled Persons foresees that unemployed persons with disabilities (therefore also over the age of 26) be trained to prepare them for employment. The Committee asks the next report to provide further details (including whether also such training occurs in special centres or not).

The Committee observes that the current report provides no information on mainstream vocational training facilities. It asks that this information be provided in the next report along with information on the measures in place to enable integration of persons with disabilities in such facilities.

The Committee recalls that Article 15§1 of the Charter requires persons with disabilities to be integrated into mainstream facilities to the maximum extent possible – special facilities should be the exception – and it requires states to provide evidence that this is the case or at least that substantial efforts are being made to achieve this.

The Committee also recalls that under Article 10 of the Revised Charter it regards vocational training as encompassing all types of higher education including university education. It considers that this interpretation applies *mutatis mutandis* to Article 15 of the Charter. It therefore asks information on the participation of persons with disabilities to general higher education.

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 the anti-discrimination legislation covering education for persons with disabilities is inadequate.

Paragraph 2 – Employment of persons with disabilities

The Committee takes note of the information provided in the report of “the former Yugoslav Republic of Macedonia” and the additional information submitted by the Government on 26 June 2008 in reply to a further question addressed to it by the Committee.

The Committee refers to its conclusion under Article 15§1 for its assessment of the definition of disability.

Anti-discrimination legislation

The report states that the Law on Working Relations (No. 62/05 of July 2005) explicitly prohibits discrimination on the basis of disability in employment. The Committee asks the next report to clarify whether the prohibition of discrimination on the basis of disability applies to recruitment, promotion, pay and dismissal.

Moreover, to assess whether the right to non-discrimination in employment is effectively guaranteed for persons with disabilities, the next report should also clarify whether there is an obligation for the employer to adjust working conditions (reasonable accommodation) with regard to persons with disabilities. In this context, it also asks the next report to indicate:

- how such reasonable accommodation obligation is implemented in practice;
- whether there is case law on the issue and whether reasonable accommodation has prompted an increase in employment of persons with disabilities in the open labour market;
- what remedies are available for those who have been subject to discriminatory measures, including dismissal.

The Committee also requests the next report to inform it about the implementation in practice of the above legal framework and whether it contributes to the increase of the employment rate of persons with disabilities.

The report indicates that a Commission established by the Minister for Labour and Social Policy determines what activities may be performed by persons with disabilities in a specific job position. Subject to a positive opinion of the Commission, a person with disabilities may hold a responsibility position in a given job. Employers may not derogate from the findings of the Commission when employing persons with disabilities.

The Committee requests the next report to provide it with further details on the operation of this Commission (e.g. how often does the Commission assess persons to decide what positions they may take, how long does

it take the Commission to inform employers wanting to hire a person with disabilities about the outcome of their decision, etc). The Committee also asks whether effective remedies are available for persons (the persons with disabilities or the employers) wishing to contest the findings of the Commission or alleging discriminatory treatment on the basis of disability as a result of the Commission's decision.

Measures to promote employment

There must be obligations on the employer to take steps in accordance with the requirement of reasonable accommodation to ensure effective access to employment and to keep in employment persons with disabilities, in particular persons who have become disabled while in their employment as a result of an industrial accident or occupational disease.

The Committee notes that the Law on Employment of Disabled Persons provides for measures aimed at promoting the employment of persons with disabilities such as financial incentives and tax exemption. The report however does not provide any details in this regard. Moreover, the Committee observes that the information provided in the report on this matter (reference to the Rulebook on the criteria and the method of granting non-refundable funds from the Special Fund for improvement of the conditions of employment and operation of persons with disabilities) is unclear. It therefore asks the next report to clarify what measures are in place for promoting employment of persons with disabilities, as well as the number of beneficiaries of the different measures, in particular of those working in the ordinary labour market.

The Committee notes that the number of economically active persons with disabilities has been very low and has further decreased during the reference period: 2,577 in 2005 and 2,216 in 2006 and asks the next report to clarify what measures are envisaged to increase the employment of persons with disabilities.

The report acknowledges that the employment of persons with disabilities is primarily not in the open labour market, but rather in protected companies. The Committee recalls that people working in sheltered employment where production is the main activity must enjoy the usual benefits of labour law and it therefore asks whether this principle is observed and whether trade unions are active in sheltered employment facilities.

The Committee reiterates that Article 15§2 of the Charter requires that persons with disabilities be employed in an ordinary working environment; therefore sheltered employment facilities must be reserved for those persons who, due to their disability, cannot be integrated into the open labour market. They should aim nonetheless to assist their beneficiaries to enter the open labour market.

The Committee asks the next report to indicate the measures introduced to enable the integration of persons with disabilities into the ordinary labour market and the rate of progress into it.

Conclusion

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