



European
Social
Charter | Charte
Sociale
Européenne



January 2013

European Social Charter (revised)

European Committee of Social Rights

Conclusions 2012

(SERBIA)

Articles 1, 9, 10, 15, 18, 20, 24 and 25
of the Revised Charter

This text may be subject to editorial revision.

The function of the European Committee of Social Rights is to rule on the conformity of the situation in States with the European Social Charter. In respect of national reports; it adopts "conclusions" in respect of collective complaints, it adopts "decisions".

A presentation of this treaty as well as statements of interpretation formulated by the Committee appear in the General Introduction to the Conclusions.¹

The European Social Charter (revised) was ratified by Serbia on 14 September 2009. The time limit for submitting the 1st report on the application of this treaty to the Council of Europe was 31 October 2011 and Serbia submitted it on that date. On 14 June 2012, a letter was addressed to the Government requesting supplementary information regarding Article 1§2. The Government submitted its reply on 29 August 2012.

This report concerned the accepted provisions of the following articles belonging to the thematic group " Employment, training and equal opportunities ":

- the right to work (Article 1),
- the right to vocational guidance (Article 9),
- the right to vocational training (Article 10),
- the right of persons with disabilities to independence, social integration and participation in the life of the community (Article 15),
- the right to engage in a gainful occupation in the territory of other States Parties (Article 18),
- the right of men and women to equal opportunities (Article 20),
- the right to protection in cases of termination of employment (Article 24),
- the right of workers to the protection of claims in the event of insolvency of the employer (Article 25).

Serbia has accepted articles 1, 9, 10§1 to 4, 15, 18, 20, 24 and 25 from this group.

The reference period was 1 November 2009 to 31 December 2010.

The present chapter on Serbia concerns 19 situations.

In respect of the all these situations, the Committee needs further information in order to assess the situation. The Government is therefore invited to provide this information in the next report on the articles in question.

The next Serbian report 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 23),
- the right to protection against poverty and social exclusion (Article 30).

The deadline for the report was 31 October 2012.

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

Article 1 - Right to work

Paragraph 1 - Policy of full employment

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

Employment situation

The Committee notes from the report that GDP growth rate in Serbia fell from 5.4% in 2007 to 1.5% in 2010.

As regards the employment and unemployment rates, the report shows that the employment rate dropped slightly towards the end of the reference period, standing at 47.1% in 2010.

The unemployment rate increased from 18.8% in 2007 to 20.0% in 2010. As regards the youth unemployment rate, it reached 46.1% in 2010, whereas the long-term unemployment rate amounted to 14.3% that same year.

The Committee notes that there was an economic slowdown towards the end of the reference period. The employment rate continued to be low, combined with high levels of unemployment.

Employment policy

The Employment and Unemployment Insurance Act, which entered into force on 23 May 2009, is the legal framework for employment policy. It provides a flexible legal framework for active employment policies. The Committee asks to be kept informed on the main contents of this Act and its implementation.

The National Employment Strategy 2005-2010 contains the main employment policy goals: (i) increase employment, (ii) increase labour quality and efficiency, and (iii) social cohesion and inclusion in the labour market. It also contains specific directions to tackle unemployment. Pursuant to the Employment Strategy, a number of Employment Action Plans and Programmes have been adopted.

The Committee recalls that in assessing national situations under Article 1§1 it pays particular attention to active labour market policies adopted by States. It notes from another source¹ that in 2003, around 250,000 people joined the unemployment register, but the job activation programme only covered about 21,000 people (less than 10%), and over 8,000 of these participated in job fairs. Thus only around 12,000 (less than 5%) of the registered unemployed benefited from job activation measures in the early stages of their period out of work.

As these statistics do not cover the reference period, the Committee asks the next report to provide up-to-date information on measures to activate unemployed persons, the number of beneficiaries as a percentage of the unemployed ('activation rate'), and on the duration of unemployment spells before being offered participation in a measure.

It also asks for information of expenditure on active labour market policies (as a share of GDP).

Given the particular concern raised by youth unemployment, the Committee asks if there are any measures targeted specifically at this group (how many young persons received activation offers, what were the effects, etc.).

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

Conclusion

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

The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Serbia under the Charter. The Government consequently has an obligation to provide the requested information in the next report on this provision.

¹*Employment Policy Review, Serbia, Prepared by the International Labour Office and the Council of Europe in 2005 and 2006, <http://www.coe.int/t/dg3/socialpolicies/socialrights/source/EmploymentPolicyReviewSerbia.pdf>*

Article 1 - Right to work

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

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

1. Prohibition of discrimination in employment

The Constitution of the Republic of Serbia prohibits all discrimination on any grounds and in particular on grounds of race, sex, nationality, social background, birth, religion, political or any other belief, financial standing, culture, language, age and psychological or physical disability. It further states that any special measures, that might be introduced in order to establish full equality of persons or groups which do not share equal position with other citizens, will not be considered discrimination.

Further there is the Prohibition of Discrimination Act (The Official Gazette no. 22/09) and the Law on Prevention of Discrimination of Persons with Disabilities (The Official Gazette no. 33/06). The Employment and Unemployment Insurance Act, also prohibits discrimination in employment.

Article 18 of the Labour Act (The Official Gazette, no. 24/05, 61/05 and 54/09) prohibits direct and indirect discrimination of persons seeking employment and employed persons on grounds of gender, birth, language, race, skin colour, age, pregnancy, health condition that is invalidity, nationality, religion, marital status, familial obligations, sexual orientation, political or some other belief, social background, financial standing, membership in political organizations, trade unions or some other personal characteristic.

As with other states that have accepted Article 15§2 of the Charter, the Committee will examine Serbia's legislation banning discrimination based on disability under this provision. Similarly, for states such as Serbia that have accepted Article 20, the right to equal treatment and opportunities without discrimination based on sex is considered under this provision.

Indirect discrimination is defined by the Labour Act as when a seemingly neutral stipulation, criterion or practice places or would place a person seeking employment or an employee, in a more disadvantageous position than other persons, and that due to particular characteristic, status, orientation or belief.

Article 22 of the Labour Code allows for genuine occupational requirements. However the Committee notes that it also states that discrimination may be permitted when its purpose is justified. It asks what types of situation this provision is intended to cover.

The Committee notes from other sources (EU Commission Opinion on Serbia's application for membership of the European Union COM(2011) 668) that a Commissioner for the Protection of Equality was appointed in May 2010. The Commissioner acts upon complaints of discrimination and may initiate a law suit, promote and monitor equality, initiate the adoption and amendments of regulations in the area of discrimination, and recommend measures aimed at ensuring equality of public bodies. Awareness raising activities were carried out in August 2011.

The Committee recalls that in order to enable effective access to justice domestic law must provide for a shift in the burden of proof to the benefit of the plaintiff in cases of alleged discrimination.

Further the Committee recalls that under Article 1§2 of the Charter remedies available to victims of discrimination must be adequate, proportionate and dissuasive. Any ceiling on compensation that may preclude damages from making good the loss suffered and from being sufficiently dissuasive is proscribed.

In order to assess the situation, and since the report does not provide the information, the Committee asks:

- how discrimination on grounds of age has been interpreted;
- the number of cases alleging discrimination brought before the courts, as well as the number of findings of discrimination;
- information on the procedure to be followed in cases alleging discrimination, for example whether there is a shift in the burden of proof;
- information on remedies i.e. reinstatement or damages that may be awarded to a victim of discrimination and information on any pre-defined limits to the amount of damages that may be awarded;
- information on the right of associations, organisations or other legal entities, to obtain a ruling that the prohibition of discrimination has been violated in the employment context.

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

According to the report National Action Plans annually stipulate priorities, programs and measures for the active employment policy. These usually include measures to promote the employment of more vulnerable groups such as persons with disabilities, Roma People, refugees and displaced persons, returnees and women.

2. Prohibition of forced labour

The Labour Act does not contain any explicit stipulation which prohibits coercive or forced labour; however Article 26 of the Constitution of the Republic of Serbia prohibits slavery, slavery-like circumstances and coercive labour.

Prison work

The Committee ask the next report to provide information on work done in prisons. It refers to its statement of interpretation in the General Introduction on this issue.

Coercion in connection with domestic work

The Committee refers to its statement of interpretation and question in the General Introduction in this respect.

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

Minimum periods of service in the armed forces

The Committee notes the information submitted on minimum periods of service in the professional armed forces. It highlights that any minimum period must be of a reasonable duration and in cases of longer minimum periods due to education or training that an individual has benefitted from, the length must 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.

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).

In this respect it refers to its statement of interpretation in the General Introduction. It asks that the next report include updated information on this issue.

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.

The Committee refers to its statement of interpretation and question in the general introduction.

Conclusion

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

The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Serbia under the Charter. The Government consequently has an obligation to provide the requested information in the next report on this provision.

Article 1 - Right to work

Paragraph 3 - Free placement services

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

The Employment and Unemployment Insurance Act, which entered into force on 23 May 2009, provides the legal basis for the system of employment services. The activities of the National Employment Service include, amongst others, providing information on employment opportunities and conditions, mediation in employment in the country and abroad, career guidance and professional orientation and the implementation of active employment policy measures. Services provided are free of charge.

The Committee notes that the National Employment Service has a total staff of 1,773 persons. It asks how many of these persons are employment advisers dealing with employment mediation and placement matters, and what is the ratio of placement staff to registered jobseekers.

The report states that the number of vacancies registered by the National Employment Service in 2010 were 94,418. The Committee asks what was the placement rate, that is, the number of placements made as a percentage of the total vacancies notified to the employment services. It also asks the next report to indicate the average length of time in filling vacancies.

As regards private employment agencies, the Committee asks how these are licensed, operate and co-ordinate their work with the public employment service.

Finally, it asks whether trade union and employers' organisations participate in organising and the running of the National Employment Service, and how the latter co-operates with employers in acquiring vacancies.

Conclusion

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

The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Serbia under the Charter. The Government consequently has an obligation to provide the requested information in the next report on this provision.

Article 1 - Right to work

Paragraph 4 - Vocational guidance, training and rehabilitation

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

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

The Committee deferred its conclusions with regard to these three provisions because of a lack of information.

Conclusion

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

The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Serbia under the Charter. The Government consequently has an obligation to provide the requested information in the next report on this provision.

Article 9 - Right to vocational guidance

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

As Serbia has accepted Article 15 of the Charter, measures relating to vocational guidance for persons with disabilities are dealt with under that provision.

The Committee notes that the Employment and Unemployment Insurance Act provides the legal basis for the system of vocational guidance in the labour market. Professional orientation and career guidance, which includes the provision of information, counselling, training, and the organisation of professional fairs, is provided by the National Employment Service, which has branches across the whole country. The vocational guidance is provided free of charge.

The Committee asks the next report to indicate how the right to vocational guidance is guaranteed within the school system (expenditure, staffing and beneficiaries).

The Committee notes that the National Employment Service has a total staff of 1,773 persons, out of which 39 are devoted to professional orientation (whom are psychologists by occupation). The Committee also notes the number of persons that were provided professional orientation and career planning services in 2010: 7,667 (counselling), 24,756 (selection/classification), and 1,879 (training). It finds that the staff/client ratio for questions of vocational guidance is rather low.

It asks the next report to indicate how the qualifications and competence criteria for counsellors are monitored, as well as the amount of funding allocated to vocational guidance in the labour market.

Finally, the Committee asks whether there is a length of prior residence or permanent residence requirement for nationals of other States Parties to enjoy equality of treatment with regard to access to vocational guidance in Serbia.

Conclusion

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

The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Serbia under the Charter. The Government consequently has an obligation to provide the requested information in the next report on this provision.

Article 10 - Right to vocational training

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

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

The report states that the National Employment Agency carries out an annual program of "additional education and training" for the labour market needs, such as at-work training with the employers or through specialised trainers, with whom individual programmes are arranged after the public procurement procedures.

Pursuant to the guidelines and tasks stipulated by employment action plans and the National Employment Agency Workplan, the annual measures of additional education and trainings include: functional education of adults, apprentices and volunteers, postgraduate student co-financing and training for the labour market. Additional education programmes during 2009 and 2010 mainly focused on implementation of two programmes: vocational training and youth employment "The First Chance" and training programs for the labour market. "The First Chance" programme included vocational training and employment of young people and adults up to 30 years of age with no vocational work experience and it was primarily provided as an aid to private sector employers who employ apprentices.

The report also states that a professional practice measure is in place which aim is to train the self-employed. This measure continues up to 12 months, during which period the trainees receive financial assistance.

The Committee takes note also of the figures on additional education and training as indicated in the report.

The Committee recalls that the notion of vocational training of Article 10§1 covers: initial training – i.e. general and vocational secondary education – university and non-university higher education, and vocational training organised by other public or private actors, including continuing training – which is dealt with under paragraph 3 of the Charter. University and nonuniversity higher education are considered to be vocational training as far as they provide students with the knowledge and skills necessary to exercise a profession.

In this regard, the Committee notes that the report does not provide information on general secondary education and university and non-university higher education and asks next report to do so.

Furthermore, States must provide vocational training by:

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

Also, facilities other than financial assistance to students must be granted to ease access to technical or university higher education based solely on individual aptitude. This obligation can be achieved namely by:

- avoiding that registration fees or other educational costs create financial obstacles for some candidates;
- setting up educational structures which facilitate the recognition of knowledge and experience, as well as the possibility of transferring from one type or level of education to another.

The main indicators of compliance include the existence of the education and training system, its total capacity (in particular, the ratio between training places and candidates), the total spending on education and training as a percentage of the GDP; the completion rate of young people enrolled in vocational training courses and of students enrolled in higher education; the employment rate of people who hold a higher-education qualification and the waiting-time for these people to get a first qualified job.

The Committee asks that this information is included in the next report.

Equal treatment with respect to access to vocational training must be guaranteed to non-nationals. According to the Appendix to the Charter, equality of treatment shall be provided to nationals of other Parties lawfully resident or regularly working on the territory of the Party concerned. This implies that no length of residence is required from students and trainees residing in any capacity, or having authority to reside in reason of their ties with persons lawfully residing, on the territory of the Party concerned before starting training. This does not apply to students and trainees who, without having the above-mentioned ties, entered the territory with the sole purpose of attending training. To this purpose, length of residence requirements or employment requirements and/or the application of the reciprocity clause are contrary to the provisions of the Charter.

The Committee asks whether there are any specific requirements for foreigners as to access to vocational education.

Conclusion

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

The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Serbia under the Charter. The Government consequently has an obligation to provide the requested information in the next report on this provision.

Article 10 - Right to vocational training

Paragraph 2 - Apprenticeship

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

The report states that several programmes and projects on apprenticeship and training of young workers have been implemented during the reference period. Among the priorities of the Governments Youth Employment Action Plan and National Employment Action Plan were promotion of professional practice of students, promotion of youth employment and implementation of youth employment strategies.

The Committee takes note of specific programmes and projects such as "Youth Employment and Migration", "Youth Employment Promotion", "Youth Employment Fund" and "Inclusion of Endangered Groups in the Labour Market" which aimed at helping youth with training practices.

The Committee recalls that according to Article 10§2, young people have the right to access to apprenticeship and other training arrangements. Apprenticeship means training based on a contract between the young person and the employer, whereas other training arrangements can be based on such a contract, but also be school-based vocational training. They both must combine theoretical and practical training and close ties must be maintained between training establishments and the working world.

Apprenticeship is assessed on the basis of the following elements: length of the apprenticeship and division of time between practical and theoretical learning; selection of apprentices; selection and training of trainers; remuneration of apprentices; termination of the apprenticeship contract.

The main indicators of compliance are the existence of apprenticeship and other training arrangements for young people, the number of people enrolled, the total spending, both public and private, on these types of training and the availability of places for all those seeking them.

Equal treatment with respect to access to apprenticeship and other training arrangements must be guaranteed to non-nationals on the basis of the conditions mentioned under Article 10§1. The Committee asks whether there are any requirements for foreigners lawfully residing in Serbia in order to have access to apprenticeship.

In order to be able to assess the situation as to compliance of Serbia with Article 10§2 of the Charter, the Committee asks that next report contain information on the above-mentioned issues.

Conclusion

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

The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Serbia under the Charter. The Government consequently has an obligation to provide the requested information in the next report on this provision.

Article 10 - Right to vocational training

Paragraph 3 - Vocational training and retraining of adult workers

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

The report states that vocational training for adult unemployed persons are organised and carried out. The duration of this type of training is up to 6 months, depending on its complexity. Training expenses, financial support and insurance of attendants in case of injury at work and occupational disease are compensated.

Labour market trainings are organised and carried out in compliance with the employers' needs in the relevant area, in compliance with the Annual Additional Education and Training Programme and Work Programme of the National Employment Service.

Programmes of the functional adult primary education are organised for persons who have dropped out of primary school. The programmes enable these persons to complete the primary education which they had already commenced and to proceed to secondary education, whether through continual trainings for the labour market needs or through the secondary education system based on the programmes adjusted to the adult needs, in order to acquire functional literacy and basic qualifications, and thus to increase their skills. To this aim, "The Second Chance – Development of the System of Functional Adult Primary Education in Serbia" project is carried out.

The Committee recalls that the right to continuing vocational training must be guaranteed to employed and unemployed persons, including young unemployed people. Self-employed persons are also covered by this provision. Article 10§3 takes into consideration only those of the activation measures for unemployed people that strictly concern training, while Article 1§1 deals with general activation measures for unemployed people. Specific measures for long-term unemployed people are dealt with under Article 10§4. The notion of continuing vocational training includes adult education.

For both employed and unemployed persons, the main indicators of compliance with this provision are the types of continuing vocational training and education available on the labour market, training measures for certain groups, such as women, the overall participation rate of persons in training and the gender balance, the percentage of employees participating in continuing vocational training, and the total expenditure.

As regards employed persons, the existence of preventive measures against the deskilling of still active workers at risk of becoming unemployed as a consequence of technological and/or economic development is also taken into consideration.

As regards unemployed people, the activation rate – i.e. the ratio between the annual average number of previously unemployed participants in active measures divided by the number of registered unemployed persons and participants in active measures – is used to assess the impact of the States' policies.

In addition, the following aspects are taken into account:

- the existence of legislation on individual leave for training and its characteristics, in particular the length, the remuneration, and the initiative to take it;
- the sharing of the burden of the cost of vocational training among public bodies (state or other collective bodies), unemployment insurance systems, enterprises, and households as regards continuing training.

Equal treatment with respect to access to continuing vocational training must be guaranteed to non-nationals on the basis of the conditions mentioned under Article 10§1.

In order to be able to assess the situation as to compliance of Serbia with Article 10§3 of the Charter, the Committee asks that next report contain information on the above-mentioned

issues. The Committee asks whether there are any requirements for foreigners lawfully residing in Serbia in order to have access to vocational training and retraining.

Conclusion

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

The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Serbia under the Charter. The Government consequently has an obligation to provide the requested information in the next report on this provision.

Article 10 - Right to vocational training

Paragraph 4 - Long term unemployed persons

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

The report states that Employment and Unemployment Insurance Act stipulates active employment measures as activities that are to improve employment, implemented also in case of long term unemployed persons. The National Employment Strategy 2005-2010 and the Annual Employment Action Plans during the reference period, have given priority to long-term unemployed persons, members of particular ethnic minorities with prominent unemployment rates, women, persons over 45 or 50 years of age, refugees and displaced persons and persons with disabilities to be included in active employment policy measures.

One of the priority tasks stipulated by the National Action Plan for the period 2006-2008 was to include unemployed persons registered with the National Employment Agency for more than 12 months in training programs. The training encompassed programmes in: fundamentals of informatics, foreign language, retraining and additional training for the labour market needs. The National Employment Action Plans for 2009 and 2010 included long term unemployed persons in the active employment policy measures.

The Committee recalls that, in accordance with Article 10§4, States must fight long-term unemployment through retraining and reintegration measures. A person who has been without work for 12 months or more is long-term unemployed.

The main indicators of compliance with this provision are the types of training and retraining measures available on the labour market, the number of persons in this type of training, the special attention given to young long-term unemployed, and the impact of the measures on reducing long-term unemployment.

Equal treatment with respect to access to apprenticeship and other training arrangements must be guaranteed to non-nationals on the basis of the conditions mentioned under Article 10§1. The Committee asks whether there are any requirements for foreigners lawfully residing in Serbia in order to have access to vocational training when long term unemployed.

In order to be able to assess the situation as to compliance of Serbia with Article 10§4 of the Charter, the Committee asks that next report contain information on the above-mentioned issues.

Conclusion

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

The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Serbia under the Charter. The Government consequently has an obligation to provide the requested information in the next report on this provision.

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

Paragraph 1 - Vocational training for persons with disabilities

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

On 31 July 2009, Serbia ratified the Convention on the Rights of Persons with Disabilities.

According to UNDP¹, there are 800,000 people with disabilities representing 10% of the population.

In order to assess the effective access to education and vocational training for persons with disabilities, the Committee wishes the next report to provide the following figures:

- the number of persons with disabilities of 0-18 years of age;
- the number of persons with disabilities in mainstreaming and special education and vocational training, including higher education.

Definition of disability

According to the Law on the Fundamentals of Education and Upbringing System (The Official Gazette no. 72/09) disability in the education system means children and pupils with developmental issues and disability. The Committee wishes to be provided with a more precise definition of disability.

Anti-discrimination legislation

The Committee recalls that under Article 15§1, the Committee 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, Statement of Interpretation on Article 15§1).

First the Constitution provides the prohibition of discrimination notably on the basis of a psychological or physical disability. In addition the report indicates that the protection of the rights of persons with disabilities has been reinforced by the Law on the Prevention of Discrimination of Persons with Disabilities (The Official Gazette no. 33/06) adopted in 2006. The Committee asks the next report to provide further details on such legislation in relation to education.

Education

The Committee recalls that under Article 15§1, persons with disabilities (children, adolescents, adults) must be integrated into mainstream facilities; education and training must be made available within the framework of ordinary schemes and, only where this is not possible, through special schools. Moreover, lessons provided in mainstream schools and, if need be, in special schools must be adequate (Association Internationale Autisme-Europe (AIAE) v. France, Complaint No 13/2002, Decision on the merits of 4 November 2003, §48).

The report states that the Law on the Fundamentals of Education and Upbringing System (The Official Gazette no. 72/09) provides equal rights and access to education for everybody through the implementation of inclusive measures. These ones consist notably in the mandatory enrollment in preliminary pre-school programm and primary school of all children from all social background, the possibility to work according to the individual education plan

and the use of sign language when necessary. The Law also contains special standards and achievements that may be adjusted to each student with developmental issues and disability if supported by constant monitoring of his or her development. Furthermore, final examinations, general and vocational graduations are organized in conformity with the student's motoric abilities.

In addition to the Law mentioned above the report indicates that the support of the children and pupils with developmental issues and disability is recognized in the following legislations and rulebooks:

- the Law on Textbooks and other Teaching Resources (The Official Gazette no. 72/09) provides special editions of textbooks for notably blind persons;
- the Law on Pre-School Education and Upbringing (The Official Gazette no. 18/10) provides the enrollment of children with developmental issues either in regular groups in kindergartens or in developmental groups created for children with extremely difficult developmental issues. Hospitalized children will also have the possibility to exercise their education rights;
- the University Education Act (The Official Gazette no. 76/05) deals with the organization of studies of disabled persons at the University level;
- the Rulebook on Additional Education, Health and Social Support of Children and Students (The Official Gazette no. 63/10) provides additional education system support for disabled children through the work of inter-ministerial commission (IMC) on the local level;
- the Rulebook on Precise Instructions for the Individual Education Plan Stipulation, Implementation and Estimation (The Official Gazette no. 76/10) provides appropriate education for disabled children in the regular education system.

The report refers to several measures taken to implement the legal framework:

- over 7500 practitioners in the education system have followed and mastered the national training on inclusive education and on the implementation of the Individual Education Plan;
- 160 new IMCs have been established within municipal and city administrations. Local commissions, comprised of representatives of the Ministry of Health, Education and Social Policy, assess and monitor the needs of children with developmental issues and disabilities following an individualized approach. There is also an additional support for the purchase and adjustment of textbooks and other education resources such as assistive technologies, books in Braille script or the recruitment of pedagogic and personal attendants;
- there are 47 specialized schools for the primary education system, which provide an individual educational plan for each student. Pupils are enrolled in these schools following the consent of their parents, the doctor's recommendation and the need for additional educational, health or social support;
- there are three main organizational forms for the secondary education system for pupils with developmental issues: schools for pupils with developmental issues, special classes within regular schools and classes within regular schools in which children with developmental issues get educated together with other children;
- an Inclusive School Development Manual has been issued to help schools in developing an inclusive policy, culture and practice;

- educational inclusion has been implemented through the partnership with the non-governmental sector including school administration counsellors, teaching staff and expert associates;
- the Strengthening of Inclusive Education Institutions programme aims at supporting schools projects in view of improving the inclusive culture and practice through grants. Financial assets have thus been allocated for notably employee trainings, the supply of assistive technology, and small construction renovation;
- the network of inclusive education support, consisting of 75 practitioners and 10 schools has been set up with a view to answering questions related to disability, providing team work capacities with the involvement of parents in developing learning resources;
- educational infrastructures are being adjusted thanks to the support of donors and projects;
- a four-year project, called Provision of improved services on the local level, that started in 2008 aims at implementing new legal provisions in relation to the inclusion of children with developmental issues. This project is financed through a World Bank loan and is being implemented in collaboration with the Ministry of Health, Labour and Social Policy and local self-administration bodies.

Vocational training

The Committee recalls under Article 15§1 that all persons with disabilities have a right to education and training: primary education, general and vocational secondary education as well as other forms of vocational training.

The report is silent on vocational training. Therefore, the Committee asks the next report to provide information on this matter.

Conclusion

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

The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Serbia under the Charter. The Government consequently has an obligation to provide the requested information in the next report on this provision.

¹<http://www.undp.org.rs/index.cfm?event=public.newsDetails&revid=53A444D7-D792-E993-38D6B2D82CEF08AB>

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

Paragraph 2 - Employment of persons with disabilities

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

Employment of persons with disabilities

The Committee recalls that Article 15§2 requires states to promote access to employment on the open labour market for persons with disabilities. It applies to both physically and intellectually disabled persons (Conclusions I, Statement of Interpretation on Article 15§2).

In order to better assess the employment of persons with disabilities on the open labour market the Committee asks the next report to contain the following figures:

- the number of persons with disabilities in working age;
- the number of persons with disabilities in ordinary employment;
- the number of persons with disabilities in sheltered employment;
- the number of persons with disabilities unemployed.

Anti-discrimination legislation

The Committee recalls that under Article 15§2 legislation must prohibit discrimination on the basis of disability in employment (Conclusions 2003, Slovenia), as well as the dismissal on the basis of disability. In addition, 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 (Conclusions 2007, Statement of Interpretation on Article 15§2).

The Law on Professional Rehabilitation and Employment of Persons with Disabilities (The Official Gazette no. 36/2009), hereinafter the Law, provides the prohibition of discrimination of persons with disabilities. The Law aims notably at establishing conditions for the equal access of persons with disabilities to the open labour market and promoting professional rehabilitation. The Committee asks the next report to provide further details on such legislation in relation to employment.

As far as the reasonable accommodation obligation is concerned, the report indicates that in compliance with the Law the organization competent for employment activities, the National Employment Agency, is in charge of stimulating the employment of persons with disabilities. The activities of this Agency include the provision of technical, professional and financial support for the adjustment of jobs and workplaces. The financing is guaranteed by a Budgetary Fund also established by the Law. Moreover, employers who, under special requirements, employ persons with disabilities who are in need of special adjustments of their workplaces will be able to benefit from a compensation of appropriate expenses. The Committee wishes further to be informed on the following questions:

- Has the reasonable accommodation obligation given rise to cases before courts?
- Has the reasonable accommodation obligation prompted an increase in employment of persons with disabilities in the open labour market?

Measures to encourage the employment of persons with disabilities

The Law mentioned above refers to several activities aiming at stimulating the employment of persons with disabilities such as the promotion of equal access of persons with disabilities to the open labour market, the organization and implementation of rehabilitation measures, the implementation of measures for self-employment and employment, the adjustment of

jobs and workplaces, the monitoring of the outcome of social inclusion and the cooperation with disabled persons associations.

A Budgetary Fund for professional rehabilitation and stimulation of employment of persons with disabilities has been established by the Law notably with a view to improving work conditions, introducing standards, improving the quality of products and services provided and adjusting workplaces.

In 2010, the Government has set up the Centre for Professional Rehabilitation and Employment of Persons with Disabilities to provide vocational training, business start-up grants, and work placements in public and private organizations. Since its establishment the Centre has permitted the employment of 3681 persons with disabilities, the networking with 1850 employers, the organization of 50 platform speeches informing employers and the public of the activities and subsidies, the examination of 4206 persons by expert-witnesses and 4011 decisions rendered on the ability to work.

In 2010, pursuant to the Law an employment quota system was brought into effect. This system requires employers with 20-50 employees to hire at least one person with disabilities, and another person for every 50 additional employees. The Committee notes from another source¹ that approximately 3700 people with disabilities found employment thanks to this system, up from only 600 in 2009.

As to sheltered employment, the Committee recalls under Article 15§2 that these facilities must be reserved for those persons with disabilities who, due to their disability, cannot be integrated into the open labour market. They should aim to assist their beneficiaries to enter the open labour market.

With regard to sheltered employment, the report mentions three structures obeying each to specific requirements:

- a company for professional rehabilitation and employment of persons with disabilities is a legal entity which employs and carries out professional rehabilitation of persons with disabilities. It may be established by the Government, the autonomous province, a local self-administration unit, a company, an association of persons with disabilities or some other legal or physical entity;
- a workcenter is a special form of institution which provides work as a therapeutic activity for persons with disabilities unemployable or unable to maintain employment neither under general nor under special requirements, that is whose work efficiency is less than a third of the work efficiency of a person employed within a regular workplace;
- a social company or organization is established to perform activities which should satisfy the needs of the persons with disabilities and which, regardless of the total number of employees employs at least one disabled person. Part of the income earned is invested to improve work conditions, work skills, social integration, life standard and satisfaction of the needs of persons with disabilities.

The Committee asks the next report to provide further details on sheltered employment.

Conclusion

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

The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Serbia under the Charter. The Government consequently has an obligation to provide the requested information in the next report on this provision.

¹<http://www.undp.org.rs/index.cfm?event=public.newsDetails&revid=53A444D7-D792-E993-38D6B2D82CEF08AB>

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

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

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

Integration and participation of persons with disabilities in the life of the community

On 28 December 2006, the Government has adopted the Strategy improving the Position of Persons with Disabilities for the period 2007-2015. Generally speaking, the Strategy aims at ensuring that persons with disabilities have equal rights and obligations as the rest of the population. To achieve this end the Strategy contains the following goals:

- the inclusion of the question of the integration of persons with disabilities in general development plans;
- an efficient legal protection in order to prevent the discrimination of persons with disabilities;
- social, health and other services, in compliance with internationally-accepted methods, available for persons with disabilities;
- the development of policy measures in the fields of education, employment and residence with a view to providing equal opportunities for persons with disabilities;
- the plan of barrier removal and construction of available facilities and services notably in the fields of transportation and communications;
- the provision of social security to persons with disabilities.

The Committee asks the next report to contain information on the outcome of this Strategy.

Anti-discrimination legislation and integrated approach

The Committee recalls that Article 15§3 requires the existence of comprehensive non-discrimination legislation covering both the public and private sphere in fields such as housing, transport, telecommunications and cultural and leisure activities and effective remedies for those who have been unlawfully treated (Conclusions 2007, Slovenia).

The report indicates that the protection of the rights of persons with disabilities has been reinforced by the Law on the Prevention of Discrimination of Persons with Disabilities (The Official Gazette no. 33/06) adopted in 2006. The Committee asks the next report to indicate precisely whether this Law covers fields such as housing, transport, telecommunications and cultural and leisure activities. It also wishes to be informed on the existence of effective remedies.

Consultation

The Committee recalls that under Article 15§3, people with disabilities should have a voice in the design, implementation and review of a coherent policy in the disability context. (Conclusions 2003, Italy).

The report is silent on this matter. The Committee, therefore, asks the next report to provide information on how organizations of people with disabilities are consulted in the design, review and implementation of measures for people with disabilities.

Forms of financial aid to increase the autonomy of persons with disabilities

The report indicates that the Ministry of Labour and Social Policy, the Ministry of Culture and the Ministry of Economics and Regional Development allocate part of their budgetary assets to the promotion of equality and full inclusion of persons with disabilities. However, the report

does not provide any figures, therefore, the Committee asks for the next report to provide details on all benefits and other forms of financial assistance available to persons with disabilities.

Measures to overcome obstacles

Technical aids

The Committee recalls that under Article 15§3 technical aids must be available either for free or subject to a contribution towards their cost (Conclusions 2007, Finland).

The report being silent, the Committee asks the next report to indicate whether persons with disabilities are entitled to free technical aids or must contribute themselves to the cost. If an individual contribution is required, the Committee asks whether the state provides some financial contribution to the cost of obtaining technical aids. It also asks whether disabled persons are entitled to free support services, such as personal assistance or home help, when required, or have to meet some of the costs of such measures.

Communication

The Committee recalls that under Article 15§3 telecommunications and new information technology must be accessible (Conclusions 2005, Estonia) and sign language must have an official status (Conclusions 2003, Slovenia). The Committee asks for the next report to explain how telecommunications and new information technology are accessible. It also wishes the next report to state what the legal status of sign language is.

Mobility and transport

The Committee recalls that, under Article 15§3, public transports (land, rail, sea and air), all newly constructed or renovated public buildings, facilities and buildings open to the public, and cultural and leisure activities should be physically accessible (Conclusions 2003, Italy).

With regard to accessibility to public buildings, the report refers to the Planning and Construction Act, according to which there is an obligation to fulfill accessibility standards when designing and building new public buildings. This Law provides also sanctions for offenders.

As far as public transports are concerned, the report mentions the Public Transportation Safety Act, which contains provisions on equal access for persons with disabilities to public transports. The Committee asks the next report to indicate the percentage of public transports that are fully accessible to wheelchair users. It also asks information on whether free or reduced fares are available for persons with disabilities, where necessary to cover additional costs.

Housing

The Committee recalls that under Article 15§3 the needs of persons with disabilities must be taken into account in housing policies, including the construction of an adequate supply of suitable, public, social or private, housing. Further, financial assistance should be provided for the adaptation of existing housing (Conclusions 2003, Italy).

The report states that the Planning and Construction Act mentioned above provides an obligation to comply with accessibility standards when designing and building residential multi-storey buildings. The Committee asks the next report to indicate the percentage of houses that are fully accessible to wheelchair users. It wishes also to be informed on grants available to individual people with disabilities for home renovation work, lift installation and the removal of barriers to mobility, the number of beneficiaries of such grants and the general progress made on improving access to housing.

Culture and leisure

The Committee recalls that, under Article 15§3, the right of persons with disabilities to social integration implies that barriers to communication and mobility be removed in order to enable access to cultural activities and leisure (social and sporting activities) (Conclusions 2005, Norway).

The report states that the Ministry of Labour and Social Policy, through its Section for Protection of Persons with Disabilities, gives financial support to cultural and sport activities with a view to promoting a successful integration of persons with disabilities. Thus, the Ministry has developed a long-lasting cooperation with 37 Unions of Associations of Persons with Disabilities, within which 500 local associations operate. The report indicates that every month approximately RSD 20,000,000.00 (EUR 170,355) are allocated to these associations whose main activities are in the fields of sport and culture. Moreover, the Ministry provided considerable support for Paralympic sports development as demonstrated by the participation to the Paralympic Games of 2008, held in Beijing.

Conclusion

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

The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Serbia under the Charter. The Government consequently has an obligation to provide the requested information in the next report on this provision.

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

Paragraph 1 - Applying existing regulations in a spirit of liberality

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

Foreign population and migratory movements

The Committee asks for information regarding the trends in migration flows to Serbia from various States Parties.

Work permits

The Committee recalls that under Article 18§1 of the Charter, States Parties are required to apply existing regulations governing the employment of foreign workers in a spirit of liberality. This paragraph applies to employees and the self-employed who are nationals of States Parties to the Charter. It also covers members of their family allowed into the country for the purposes of family reunion.

Article 18§1 is concerned with administrative practice rather than legal aspects. The Committee has held the view that a State Party may comply with this provision even where its legislation on the employment of aliens contains strict rules, provided that these rules allow some administrative discretion and are applied in a liberal spirit.

The Committee considers that regulations preventing nationals of another State Party from applying for work permit, due to the combined effects of the various rules on entry, length of stay, residence and the exercise of a gainful activity would not be in keeping with this provision of the Charter (Conclusions XIII-1, Sweden).

The Committee notes from the report that pursuant to the Law on Employment of Foreigners ("The Official Gazette of the Socialist Federal Republic of Yugoslavia" No. 11/78 and 64/89 and "the Official Gazette of the Federal Republic of Yugoslavia" No. 42/92, 24/94 and 28/96), only foreigners holding a permanent residence permit can be employed. However, the Committee understands from the report that foreigners holding a temporary residence permit can also be employed. The report states that foreigners need to apply for work permits which are issued by the organisations competent in employment issues.

The Committee asks for clarification as to whether foreigners have first to obtain residence permit to qualify for a work permit. It also asks what are the conditions for granting temporary and permanent residence permits and in which circumstances can the holders of such permits be refused a work permit.

According to the report no work permits are needed for "specific cases", namely those relating to expert activities stipulated by the Agreement on Business and Technical Support, Long-Term Production Cooperation, Foreign Investment Technology Transfer (Article 2 Paragraph 2 of the Law on Employment of Foreigners).

The Committee asks whether there are any restrictions on the right to engage in a gainful occupation by nationals of other States Parties and if so, on what grounds. In particular, it asks what economic and social reasons would justify the restrictions imposed on the liberty of nationals of other States Parties to exercise a professional activity.

Relevant statistics

The Committee recalls that the assessment of the degree of liberality, and therefore of conformity with Article 18§1, is based on figures showing the granting and refusal rates for work permits for first-time and for renewal applications by nationals of States Parties (Conclusions XVII-2, Spain). A high percentage of successful applications by nationals of States Parties to the Charter for work permits and for renewal of work permits and a low

percentage of refusals has been regarded by the Committee as a clear sign that existing regulations are being applied in a spirit of liberality.

According to the report, 2,533 approvals for the employment of foreigners with temporary residence were issued by the National Employment Agency branches in 2010, while 16 requests were turned down. The National Employment Agency issued 42 work permits to the foreigners holding permanent residence permit, while it turned down 2 requests.

Conclusion

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

The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Serbia under the Charter. The Government consequently has an obligation to provide the requested information in the next report on this provision.

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

Paragraph 2 - Simplifying existing formalities and reducing dues and taxes

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

Administrative formalities

The Committee recalls that Article 18§2 deals with formalities and dues and other charges payable by foreign workers and their employers. It presupposes the possibility of completing such formalities in the country of destination as well as in the country of origin and obtaining the residence and work permits at the same time and through a single application.

According to the report, foreigners with permanent residence permits apply for the issuance of work permits with the National Employment Agency branches, according to their permanent place of residence. Work permits are issued for the time period permanent residence is allowed to foreigners. The Committee refers to its conclusion under Article 18§1 and asks whether a permanent residence permit is a precondition for issuing a work permit. It also asks on what basis the permanent or temporary residence permits can be obtained and whether there are two separate procedures to follow for obtaining residence and work permits.

According to the report, when issuing permits, the National Employment Agency branches take into account general requirements for employment according to the labour regulations, vocational education, occupation, knowledge, skills and work ability of the foreigners to whom permanent residence has been granted, that is the requirements for particular jobs with the employers as well as vocational education, occupation, knowledge, skills and work abilities of the foreigners to whom permanent residence is allowed.

Self-employment

The Committee asks what rules apply to the self-employment of foreign workers.

Waiting times

Decision on the granting of a work permit issuance is passed within 30 days upon the application. Applicants may lodge an appeal against the first instance body's decision within 15 days after the relevant decision has been passed.

Chancery dues and other charges

The Committee notes that a 'republic administrative fee', at the amount of RSD 9,330.00 (€ 84) is charged for work permit issuance procedure by the National Employment Agency. The Committee asks whether fees are also charged for residence permits.

Conclusion

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

The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Serbia under the Charter. The Government consequently has an obligation to provide the requested information in the next report on this provision.

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

Paragraph 3 - Liberalising regulations

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

Access to the national labour market

The Committee recalls that under Article 18§3, States Parties are required to liberalise periodically the regulations governing the employment of foreign workers by making access to the national labour market less restrictive.

The Committee notes from the report that following the adoption of the National Integration Programme, the Draft Law on Employment of Foreigners is expected to be passed which should regulate employment and the work and residence permits of foreign workers. The Committee wishes to be informed of these developments.

Exercise of the right of employment / Consequences of job loss

The Committee recalls that under Article 18§3 loss of employment must not lead to the cancellation of the residence permit, thereby obliging the worker to leave the country as soon as possible. The Committee asks what is the average time that is necessary for issuance of work and residence permits and whether the residence permit is automatically withdrawn in case the foreign worker loses his job.

Conclusion

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

The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Serbia under the Charter. The Government consequently has an obligation to provide the requested information in the next report on this provision.

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

Paragraph 4 - Right of nationals to leave the country

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

It notes that the National Employment Agency and the Migration Service Centre are responsible for assisting persons wishing to engage in a gainful occupation abroad.

The Committee recalls that under Article 18§4, States should undertake not to restrict the right of their nationals to leave the country to engage in a gainful employment in other Parties to the Charter. The only permitted restrictions are those provided for in Article G of the Charter, i.e. those which are "prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals".

The Committee asks what is the legal framework that guarantees the right of nationals to leave the country with a view to engaging in a gainful occupation in other states. It also asks what restrictions apply in this regard.

Conclusion

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

The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Serbia under the Charter. The Government consequently has an obligation to provide the requested information in the next report on this provision.

Article 20 - Right to equal opportunities and equal treatment in employment and occupation without sex discrimination

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

Equal rights

The Labour Act prohibits, inter alia discrimination on grounds of gender, it prohibits both direct and indirect discrimination and extends to recruitment, conditions of employment as well as promotion and training. The law also prohibits employers from asking potential employees to take a pregnancy test.

The Committee asks whether there are certain exceptions to the prohibition on discrimination on grounds of sex in respect of certain occupations and if so what these are.

Article 104 of the Labour Act requires equal pay for work of equal value. The Committee asks for further information on this provision

The Committee asks whether domestic law makes provision for comparisons of pay and jobs to extend outside the company directly concerned where this is necessary for an appropriate comparison. The Committee refers to its statement in the General Introduction in this respect.

The report also refers to the Gender Equality Act which also requires employers to provide for equal treatment, and prohibits gender discrimination in job advertising except where justified by the provisions of the Labour Act. The Committee asks what exceptions are justified by the Labour Act.

The Committee asks that the next report provide:

- information on the number and grounds of gender discrimination cases, including cases investigated or brought before the courts by the Commissioner for Equality;
- information on the procedure to be followed in cases alleging discrimination, for example whether there is a shift in the burden of proof;
- information on remedies i.e. reinstatement or damages that may be awarded to a victim of discrimination and information on any pre-defined limits to the amount of damages that may be awarded.

The Committee further asks whether equal treatment between men and women is guaranteed with respect to social security.

Specific protection measures

The Committee examines specific protection measures relating to pregnancy, childbirth and family responsibilities under Articles 8 and 27 of the Charter.

Position of women in employment and training – Measures to promote equal opportunities

The Committee notes from the information in the report that women benefit from additional education and training measures and employment subsidies. The Committee asks for further information to be provided in the next report on the position of women in training and employment as well as information on the gender pay gap.

No information is provided on measures strategies etc, to promote gender equality in employment. However the Committee notes from other sources that The National Strategy for Improving the Position of Women and Enhancing Gender Equality for 2009-2015, adopted in 2009, identifies six of the most critical areas: improvement of the economic position, health, representation in public life, equality in education, suppression of violence against women and elimination of gender stereotypes in media. The Committee asks that

detailed information on the results of the strategy and other special measures to remove de facto inequalities, be provided in the next report.

Conclusion

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

The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Serbia under the Charter. The Government consequently has an obligation to provide the requested information in the next report on this provision.

Article 24 - Right to protection in case of dismissal

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

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 asks whether any categories of workers can be excluded from protection against dismissal.

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 and certain economic reasons. In this respect it notes from the report that Section 179 of the Labour Act allows employers to terminate an employment agreement for a number of reasons, including poor performance, mistakes, failure to obey the work discipline and a failure to return to work after 15 days when unpaid leave ends.

As regards economic reasons, employment relationship can also be terminated when due to technological, economic or organisational changes the need for a particular job ceases or when there is no more work.

The Committee wishes to know the national courts' interpretation of the law and their leading decisions and judgements as regards the extent to which reasons are regarded in practice as justifying dismissal. It asks whether the courts have the competence to review a dismissal case on its facts and not only on points of law.

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.

The Committee further 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 holds that under Article 24 dismissal of the employee at the initiative of the employer on the ground that the former has reached the normal pensionable age (age when

an individual becomes entitled to a pension) will be contrary to the Charter, unless the termination is properly justified with reference to one of the valid grounds expressly established by this provision of the Charter.

The Committee asks 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. 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. In the absence of any explicit statutory ban, States must be able to show how national legislation conforms to the requirement of the Charter. The Committee asks what rules apply to protect employees from dismissal in the event they file a complaint or participate in proceedings against an employer.

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 notes from the report that pursuant to Section 179 of the Labour Act temporary work inability due to illness, accident at work or occupational disease cannot be regarded as a valid reason for termination of employment. The Committee asks what is the time limit placed on protection against dismissal in such cases.

Remedies and sanctions

The Committee recalls that Article 24 of the 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.

The Committee asks what is the amount of compensation in cases of unlawful dismissal and whether the law provides for a possibility of reinstatement. It also asks whether it is up to the employer to prove that dismissal was for a justified cause.

Conclusion

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

The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Serbia under the Charter. The Government consequently has an obligation to provide the requested information in the next report on this provision.

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

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

Article 25 of the Charter guarantees the right of individuals to their wages and other payments arising from the employment relationship in the event of the insolvency of their employer. States having accepted this provision benefit from a margin of appreciation as to the form of protection of workers' claims and so Article 25 does not require the existence of a specific guarantee institution. However, the Committee wishes to emphasise that the protection afforded, whatever its form, must be adequate and effective, also in situations where the assets of an enterprise are insufficient to cover salaries owed to workers. Moreover, the protection should apply in situations where the employer's assets are recognised as insufficient to justify the opening of formal insolvency proceedings.

The Labour Act (The Official Gazette, No 24/05, 61/05 and 54/09) stipulates the right to outstanding claims. According to the report, the Solidarity Fund has been established in order to perform activities which include provision and payment of claims in the event of the insolvency of the employer. The Fund is a legal entity and operates as a public service.

Section 125 of the Act stipulates that the employee is entitled to (i) the earnings and compensation of earnings during leave of absence due to temporary work inability, pursuant to the medical insurance stipulations, which should be paid out by the employer for the last nine months prior to the bankruptcy procedure; (ii) compensation for annual unused vacation for the calendar year in which the bankruptcy procedure has been instituted; (iii) terminal wage due to retirement taking place in the year of the bankruptcy procedure, provided that the retirement right has been exercised prior to the bankruptcy procedure; (iv) compensation of damages based on the court decision passed during the calendar year of the bankruptcy procedure, due to an injury at work or occupational disease, on condition that the relevant decision has been valid prior to the bankruptcy procedure.

The Committee understands that the amount of workers claims paid in the event of insolvency is the minimum statutory wage, except for "retirement wage" which is set at the amount of the average national wage. The Committee asks whether its understanding is correct. The Committee also asks what is the number of months for which the claim for wage is paid (the duration of the wage guarantee).

According to the report, the Fund shall proceed to the payment within 15 days after the relevant final decision has been submitted, pursuant to the law stipulating bankruptcy procedures. In 2010, 4,885 requests were submitted for claims of which 2,384 were satisfied. The Committee finds that the rate at which claims are satisfied is low. It asks what is the most common reason for a refusal to satisfy a claim.

The Committee recalls (Conclusions 2003) that under Article 25 of the Charter the protection should also apply in situations where the employer's assets are recognised as insufficient to justify the opening of formal insolvency proceedings. The Committee asks whether workers' claims will be satisfied in such cases through the Solidarity Fund and what would be the amount of claims satisfied.

Conclusion

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

The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Serbia under the Charter. The Government consequently has an obligation to provide the requested information in the next report on this provision.