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European Social Charter

European Committee of Social Rights

Conclusions 2016

SERBIA

This text may be subject to editorial revision.

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

The following chapter concerns Serbia, which ratified the Charter on 14 September 2009. The deadline for submitting the 5th report was 31 October 2015 and Serbia submitted it on 24 February 2016. The Committee received on 22 December 2015 observations from the International Organisation of Employers (IOE) expressing its perspective on the application of Article 24.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report concerns the following provisions of the thematic group "Employment, training and equal opportunities":

- the right to work (Article1),
- the right to vocational guidance (Article 9),
- the right to vocational training (Article 10),
- the right of persons with disabilities to independence, social integration and participation in the life of the community (Article 15),
- the right to engage in a gainful occupation in the territory of other States Parties (Article 18),
- the right of men and women to equal opportunities (Article 20),
- the right to protection in cases of termination of employment (Article 24),
- the right to workers to the protection of claims in the event of insolvency of the employer (Article 25).

Serbia has accepted all provisions from the above-mentioned group except Article 10§5.

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

The conclusions relating to Serbia concern 19 situations and are as follows:

–7 conclusions of conformity: Articles 1§3, 10§1, 10§2, 18§1, 18§3, 24 and 25;

– 10 conclusions of non-conformity: Articles 1§1, 1§4, 9, 10§3, 10§4, 15§1, 15§2, 15§3, 18§2 and 20.

In respect of the other 2 situations related to Articles 1§2 and 18§4, the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Serbia under the Charter. The Committee requests the Government to remedy this situation by providing the information in the next report.

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

Article 15

- Law on the Professional Rehabilitation and Employment of Persons with Disabilities (Official Gazette Nos. 36/2009 and 32/2013), which came into force on 23 May 2009 and was amended on 16 April 2013. It prohibits all discrimination against persons with disabilities and aims to create the conditions for equal access for persons with disabilities to the open labour market and to promote professional rehabilitation.

The next report will deal with the following provisions of the thematic group "Health, social security and social protection":

- the right to safe and healthy working conditions (Article 3),
- the right to protection of health (Article 11),
- the right to social security (Article 12),

- the right to social and medical assistance (Article 13),
- the right to benefit from social welfare services (Article 14),
- the right of elderly persons to social protection (Article 23),
- the right to protection against poverty and social exclusion (Article 30).

The deadline for submitting that report was 31 October 2016.

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

Article 1 - Right to work

Paragraph 1 - Policy of full employment

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

Employment situation

According to the report, the GDP growth rate decreased considerably from 2011 (1.4%) to 2012 (-1.0%). The GDP growth rate increased significantly in 2013 to 2.6%, however it decreased again sharply to -1.8% in 2014. This growth rate was well below the EU 28 average which stood at 1.4% in 2014.

The overall employment rate increased during the reference period, namely from 45.3% in 2011 to 49.3% in 2014. However, the rate was far below the EU 28 average rate of 64.9% in 2014.

The male employment rate increased during the reference period (52.5% in 2009; 56.3% in 2014). However, this rate was still far below the EU 28 average rate which stood at of 70.1% in 2014. The female employment rate increased from 37.2% in 2009 to 42.5% in 2014 but remained significantly below the EU 28 average rate of 59.6%. No figures were provided with respect to the employment rate of older workers.

The unemployment rate decreased slightly from 24.4% in 2011 to 21.2% in 2014 which was considerably higher than the EU 28 average rate of 10.2%.

The youth unemployment rate stayed at a very high level (51.9% in 2011; 52.8% in 2014) whereas the long-term unemployment rate (as a percentage of the active population aged 15 – 74) amounted to 14.1% in 2014.

The Committee notes that the economic situation in Serbia is rather fragile. Even though the employment figures improved slightly, the unemployment rates in particular for the young persons and the long-term unemployed stayed at a considerably high level.

Employment policy

The Committee notes from the report, that the legislative framework in Serbia in the field of employment is ensured by the following laws: a) the Law on Employment and Unemployment Insurance (entered into force in May 2009), b) the Law on Professional Rehabilitation and Employment of Persons with Disabilities (entered into force in May 2009) and c) the Law on Employment of Foreign Nationals (entered into force in December 2014).

The strategic framework of the employment policy is provided through the National Employment Strategy for the period 2011 – 2020. The strategy sets as basic objective the alignment of the employment policy of Serbia with the *acquis* of the European Union by prioritising activities aiming at the increase of employment by investment in the human capital and higher social inclusion.

With respect to encouraging youth employment, a special service package is applied. This package is carried out by the National Employment Service with a view to engaging the young people in the world of work as soon as possible. Measures include an employability assessment, definition of an individual employment plan as well as measures which are considered most suitable for the activation and promotion of employability.

According to the report, public expenditure on active labour market policies in Serbia amounted to 0.015% of GDP in 2014 which was by all means very low in particular compared with the EU 28 average (where the average public spending on active labour market measures as a percentage of GDP was 1.8% in 2011).

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

The realisation of the active employment policy measures is monitored annually through the report on the realisation of the Performance Agreement of the National Employment Service and the report on the realisation of the National Employment Action Plan.

The Committee takes note of the legislative and organisational measures taken. However, these measures have not demonstrated the positive impact on the employment and unemployment indicators.

Conclusion

The Committee concludes that the situation in Serbia is not in conformity with Article 1§1 of the Charter on the ground that it has not been established that employment policy efforts have been adequate in combatting unemployment and promoting job creation.

Article 1 - Right to work

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

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

1. Prohibition of discrimination in employment

The Committee noted previously that 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 (Conclusions 2012). Provisions prohibiting discrimination in employment are also found in the Law on the Prohibition of Discrimination (The Official Gazette no. 22/09), Law on the Prevention of Discrimination against Persons with Disabilities (The Official Gazette no. 33/06) and the Employment and Unemployment Insurance Act (Conclusions 2012).

The report indicates that Section 18 of the Labour Law ("Official Gazette of RS", No. 24/05, 61/05,54/09, 32/13 and 75/14) defines the prohibition of both indirect and direct discriminations of persons seeking employment, as well as the employees in respect of their sex, origin, language, race, colour of skin, age, pregnancy, health status or disability, nationality, religion, marital status, familial commitments, sexual orientation, political or other belief, social background, financial status, membership in political organisations, trade unions, or any other personal quality.

Moreover, the Law on the Prohibition of Discrimination (LPD), Section 2, paragraph 1 prohibits discrimination based on the grounds of 'race, skin colour, ancestry, citizenship, national affiliation or ethnic origin, language, religious or political beliefs, gender, gender identity, sexual orientation, financial position, birth, genetic characteristics, health, disability, marital and family status, previous convictions, age, appearance, membership of political, trade union and other organisations'. This is an open-ended clause, as the LPD uses the wording 'and other personal characteristics', whether they are real or presumed.

The Committee noted previously that Section 22 of the Labour Law allows for genuine occupational requirements. It also noted that the same provision states that discrimination may be permitted when its purpose is justified and asked what types of situation this provision is intended to cover (Conclusions 2012). The report indicates that Section 22 of the Labour Law provides that differentiation, exclusion or prioritisation for a certain job shall not be considered discriminating when the nature of the work is such or the work is done under such circumstances that qualities relating to some of the grounds referred to in Section 18 of this law represent the true and decisive requirement for performance of such job, and that the purpose aimed at is justified. The report adds that the law cannot envisage concrete situations, but it stipulates that exceptions must be related only to objective circumstances as referred in Section 22 of the Labour Law.

In its previous conclusion, the Committee asked information on the procedure to be followed in cases alleging discrimination, for example whether there is a shift in the burden of proof (Conclusions 2012). It also asked whether associations, organisations or other legal entities have the right to obtain a ruling that the prohibition of discrimination has been violated in the employment context.

The report indicates that in the event of discrimination, a person seeking employment, as well as employed persons, may institute proceedings before a competent court for the compensation of damage against the employer, in conformity with the law. The Labour Law was amended in 2014 so that Section 23 now provides that if in the course of the proceedings the claimant made it probable that discrimination in terms of this law had

taken place, the burden of proof that there was no conduct that constitutes discrimination lies with the defendant.

The Committee also notes from the Report 2015 on Serbia of the European Equality Law Network that the Law on the Prohibition of Discrimination sets out special civil court procedures and establishes an independent body, the Commissioner for Protection of Equality. Section 41 of the LPD provides that anyone who claims to be a victim of discriminatory treatment has the right to initiate a lawsuit. The complainant may request:

- that a ban be imposed on an action that poses a threat of discrimination, a ban on proceeding with a discriminatory action or a ban on repeating a discriminatory action;
- that the court should establish that the defendant has treated the complainant or another party in a discriminatory manner;
- that steps be taken to redress the consequences of the discriminatory treatment;
- compensation for pecuniary and non-pecuniary damage; and
- that the decision passed on any of the lawsuits referred above be published.

Furthermore, Section 46 provides that a lawsuit may be initiated by the Commissioner and also by an organisation engaged in the protection of human rights or the rights of a certain group of people. Several NGOs which focus on human rights and discrimination are active in submitting complaints and initiating lawsuits.

The Committee requested information on the number of cases alleging discrimination brought before the courts, as well as the number of findings of discrimination and information on any pre-defined limits to the amount of damages that may be awarded (Conclusions 2012). The report does not provide the requested information**.** The Committee reiterates its question. It points out that should the next report fail to provide the requested information nothing will prove that the situation in Serbia is in conformity with Article 1§2 of the Charter on this point.

With regard to the procedures involving the Commissioner for the Protection of Equality, the Committee takes note of the information made available by the Report 2015 on Serbia of the European Equality Law Network. A complaint must be forwarded within 15 days from its submission to the alleged violator who has 15 days to respond to it. The Commissioner can propose mediation if both parties agree to it. However, if the dispute is not subject to mediation, the Commissioner must give an opinion as to whether there has been a violation of the prohibition of discrimination within 90 days of receiving a complaint and inform the individual who submitted the complaint and the individual against whom the complaint was submitted. If the Commissioner finds a violation, they issue a recommendation to the individual against whom the complaint was submitted, suggesting a way of redressing the violation in question. In 2014 the Commissioner's office provided awareness-raising activities on discrimination and mechanisms for protection against discrimination. It issued 109 decisions in complaints procedures, issued 198 recommendations, two opinions on draft laws and general acts and three motions for the assessment of the constitutionality and legality of general acts, initiated two strategic litigations, made 20 public statements and issued six warnings, as well as initiating one misdemeanour charge and six criminal charges.

In its previous conclusion, the Committee asked whether and if so, what categories of employment are banned for non-nationals (Conclusions 2012). The report indicates that Law on Employment of Foreign Nationals ("Official Gazette of RS", No 128/2014), which entered into force on December 4, 2014, regulates the terms and procedures for employment of foreign nationals in the Republic of Serbia, including the possibility of establishing labour relations with foreign nationals, i.e. conclusion of other contracts for exercising labour rights, as well as self-employment of foreign nationals under specifically defined conditions and within precisely defined periods; possibility of defining the quota, i.e. limit of the number of

foreign nationals exercising the right to work in accordance with the situation and trends in the labour market in the Republic of Serbia.

The Committee recalls that under Article 1§2 of the Charter while it is possible for states to make foreign nationals' access to employment on their territory subject to possession of a work permit, they cannot ban nationals of States Parties, in general, from occupying jobs for reasons other than those set out in Article G; restrictions on the rights guaranteed by the Charter are admitted only if they are prescribed by law, serve a legitimate purpose and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals. The only jobs from which foreigners may be banned therefore are those that are inherently connected with the protection of the public interest or national security and involve the exercise of public authority (Conclusions 2006, Albania).

The Committee reiterates its question whether there are any types of restrictions for foreign nationals to access certain public or private jobs/position such as the requirement of being a national of Serbia and which are those categories of jobs/positions.

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.

The Committee asks that the next report provide information on the manner in which the authorities ensure the implementation of the anti-discrimination legislation in employment. It further asks the next report to provide information on any concrete positive measures/actions taken or envisaged to promote equality in employment and to combat all forms of discrimination in employment.

2. Prohibition of forced labour

The report states that forced or compulsory labour in all its forms must be prohibited. Indeed the fundamental principles of Article 26 of the Constitution of the Republic of Serbia prohibit slavery, slavery-like circumstances and forced labour. The definition of forced or compulsory labour is based on Article 4 of the European Convention on Human Rights and on ILO Convention 29 on forced labour.

Work of prisoners

The report states that the above-mentioned definition of forced labour may also under certain circumstances cover prison work. The Committee asks that the next report provide more details.

The Committee notes that the current report does not answer the questions concerning prison work raised in its previous conclusions and in its Statement of Interpretation on Article 1§2 set out in the General Introduction (Conclusions 2012). Consequently, the Committee reiterates its request that the next report include the relevant information on the points raised in the Statement of Interpretation in which it points out that "Prisoners' working conditions must be properly regulated, particularly if they are working, directly or indirectly, for employers other than the prison service. In accordance with the principle of non-discrimination enshrined in the Charter, this supervision, which may be carried out by means of laws, regulations or agreements (particularly where companies act as subcontractors in prison workshops), must concern pay, hours and other working conditions and social protection (in the sphere of employment injury, unemployment, health care and old age pensions)" (Conclusions 2012). The Committee points out that should the next report fail to provide the requested information nothing will prove that the situation in Serbia is in

conformity with Article 1§2 of the Charter with regard to the prohibition of forced labour in prisons.

Domestic work

The Committee notes that the current report fails to answer the questions concerning domestic work raised in its Statement of Interpretation of Article 1§2 set out in the General Introduction to Conclusions 2012. Consequently, the Committee reiterates its request that the next report include the relevant information on the points raised in the Statement of Interpretation where it draws attention to the existence of forced labour in the domestic environment and in family enterprises, and in particular to the legislation adopted to combat this type of forced labour and the measures taken to apply it.

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

Minimum periods of service in the Armed Forces

In its previous conclusion (Conclusions 2012), the Committee highlighted that any minimum period of service in the armed forces must be of a reasonable duration and in cases of longer minimum periods due to education or training that an individual has benefited 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. As the current report fails to provide any information on the situation in Serbia from this point of view, the Committee asks that the next report provide updated information in this respect. The Committee points out that should the next report fail to provide the requested information nothing will prove that the situation in Serbia is in conformity with Article 1§2 of the Charter with regard to this point.

Requirement to accept the offer of a job or training

The Committee notes that, pursuant to Law on Employment and Unemployment Insurance, a beneficiary's entitlement to unemployment benefit shall be terminated if, inter alia, she/he is removed from the Registry (Article 76 of the Law), which occurs if he/she fails to fulfil his/her obligations towards the National Employment Service without a justifiable reason, namely if, inter alia, he/she declines the offer of appropriate employment (Article 87 of the Law). The report states that, according to the data available at the National Employment Service, there have been no cases in practice that a person lost his/her entitlement to unemployment benefit because the person declined the offer of appropriate employment. The Committee asks that the next report include relevant information on the remedies that may be used to challenge the decision to suspend or ending unemployment benefits.

Privacy at work

In its previous conclusion (Conclusions 2012), the Committee asked 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. As the current report does not provide this information, the Committee reiterates its request that the next report include the relevant information on the points raised in its Statement of Interpretation on Article 1§2 on workers' right to privacy. The Committee points out that should the next report fail to provide the requested information nothing will prove that the situation in Serbia is in conformity with Article 1§2 of the Charter with regard to this point.

Conclusion

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

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 report provides a description on the responsibilities and main functions of the National Employment Service (NES) and employment agencies, based on the Employment and Unemployment Insurance Act (Official Gazette of the Republic of Serbia – Nos. 36/2009, 88/2010 and 38/2015). In this framework, detailed information is provided on specific services provided, on the one hand, to unemployed, employed persons wishing to change occupation, other job-seekers; and, on the other hand, to employers.

According to the report, in 2015 the number of the registered 'unemployed persons' was 746,010 (the report does not contain such information for the years of the reference period) and the number of employees working for NES was 1,966 (it was 1,773 during the previous reference period). The Committee takes note of this information and asks that the next report provide information with regard to the reference period.

In reply to the requests made by the Committee in its previous conclusion (Conclusions 2012), the report provides the following information: a) the total number of employment counsellors performing activities of mediation in branch offices is 618; b) activities of career planning (vocational guidance) are performed by 49 employed persons; c) the ratio of unemployed persons to the employment counsellors in branch offices is 1.177 unemployed persons per counsellor (branch offices); d) the placement rate was 57,56% in 2011 (61,804 vacancies – 35,576 employed persons); 59.37% in 2012 (55,583 vacancies – 32,998 employed persons); 59,10 in 2013 (44.148 vacancies – 26,093 employed persons); and 53.94**%** in 2014 (42,563 vacancies – 22,959 employed persons). The Committee asks that the next report provide comments on the decrease of the placement rate.

Concerning the average length of time in filling vacancies, in reply to a Committee's request, the report merely states that the duration depends on several factors: urgency of the job position expressed by the employer, number of vacancies, complexity of jobs and positions to be filled, and can take from one to several months. Having regard to the unemployment rate in Serbia, the Committee asks that the next report provide the requested information on the average length of time in filling vacancies.

In its previous conclusion, the Committee also asked how private agencies are licensed, operate and co-ordinate their work with the public employment service. The report indicates that the conditions under which private agencies can operate are provided by the Employment and Unemployment Insurance Act. Licenses are issued by the ministry competent for employment issues. In order to receive the license, the agency concerned must fulfil a number of requirements with respect to professional capacity, qualified staff, adequate material resources, formal registration, etc. The Committee asks that the next report provides information on the co-ordination between the work of private agencies and that of the public employment service. It also asks that this information include data on the respective market shares of public and private services (the market share is measured as the number of placements effected as a proportion of total hirings in the labour market).

In reply to the Committee's request, the report states that representatives of representative trade union and employers organisations are members of the Board of Directors of NES and employment council at all levels, which ensures their participation in the decision making and implementation processes of employment policy programmes and measures.

Conclusion

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

Article 1 - Right to work

Paragraph 4 - Vocational guidance, training and rehabilitation

The Committee takes note of the information contained in the report submitted by 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 vocational guidance and training for persons with disabilities are examined under these provisions.

The Committee considered that the situation was not in conformity with the Charter on the following grounds:

- it had not been established that the right to vocational guidance within the education system was guaranteed (article 9);
- it had not been established that the right of an employed person to an individual leave for training was guaranteed (article 10§3);
- it had not been established that the right of persons with disabilities to mainstream education and vocational training was effectively guaranteed (article 15§1).

  Accordingly, the Committee considers that the situation is not in conformity with Article 1§4 on the same grounds.

Conclusion

The Committee concludes that the situation in Serbia is not in conformity with Article 1§4 of the Charter on the following grounds:

- it has not been established that the right to vocational guidance within the education system is guaranteed;
- it has not been established that the right of an employed person to an individual leave for training is guaranteed;
- it has not been established that the right of persons with disabilities to mainstream education and vocational training is effectively guaranteed.

Article 9 - Right to vocational guidance

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

As regards equal access to vocational guidance for nationals of other States Parties, the report refers to the Law on Employment of Foreign Nationals. This Law provides for equal rights and obligations for all foreign national working in Serbia, as employed or self-employed workers. If the legal requirements defined by the regulations on employment and unemployment insurance are met, the foreign national can furthermore be entitled, like Serbian nationals, to the rights related to unemployment, including vocational guidance services. The Committee recalls that equal treatment with respect to vocational guidance must be guaranteed to everyone, including non-nationals from other Parties, who are lawfully resident or regularly working on the territory of the Republic of Serbia. This implies that no length of residence should be 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. 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 (Conclusions XVI-2 (2003), Poland). In view of this, the Committee asks the next report to clarify whether foreign nationals can have free access to vocational guidance services not related to the unemployment status, in particular within the education system.

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

Vocational guidance within the education system

The report refers to the Strategy of Career Guidance and Counselling in the Republic of Serbia, adopted in 2010, and its Action Plan 2010-2014, as the main reference documents concerning career guidance and counselling in the sector of education and employment. The Strategy defined the objectives of career guidance and counselling (objectives related to life-long learning, labour market, social involvement and inclusion), activities, principles, organisational forms, services and users of services of career guidance and counselling. A working group was established in 2011 to monitor its implementation, until 2014. The Committee also notes from the report that further measures concerning vocational guidance within the education system were included in certain National Employment Action Plans (NEAPs) which were issued during the reference period in the framework of the National Employment Strategy 2011–2020. The Committee asks the next report to provide comprehensive and updated information on the measures effectively implemented during the reference period and their results.

According to the report, the vocational guidance services provided by the National Employment Service (NES) are addressed to anybody, including pupils and students. However, the report admits that its primary target remains active jobseekers and that the trend is to decrease the number of NES services provided to pupils and students, while developing instead the provision of such services by the educational institutions themselves, at all levels. The report does not provide however information in this respect.

The Committee takes note from the report that guidance material is available to pupils and student since 2011 through the NES website, such as an application intended for pupils of the final grades of primary school (Guide to the choice of a profession – www.vodiczaosnovce.nsz.gov.rs); a "Career Trip" Game intended for the pupils of lower grades of primary schools; and an information booklet "What to learn, what to do?", which contains information on education profiles, secondary schools, curricula, and occupation descriptions and is intended for everyone making choices on secondary professional and

general education, and for those providing support in the process of life-long learning (experts, parents and other interested persons). The report indicates that the number of people consulting the website has been constantly increasing during the reference period. The report also indicates that the NES regularly organises vocational guidance events or participates to educational events in cooperation with local educational institutions (between 18 and 22 every year, during the reference period).

The Committee recalls that under Article 9 of the Charter, vocational guidance must be provided within the school system (information on training and access to training) and within the labour market (information on vocational training and retraining, career planning, etc.):

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

The Committee reiterates its request for information on how the provision of career guidance is currently organised in educational institutions, the numbers of staff providing it and their qualifications, the number of pupils /students who benefit from it, and the financial resources allocated to it. It holds that, in the absence of this information, it cannot be established that the right to vocational guidance within the education system is guaranteed.

Vocational guidance in the labour market

The report recalls that the Employment and Unemployment Insurance Act provides the legal basis for the system of vocational guidance in the labour market. Pursuant to Section 49 of the Act, vocational guidance and career counselling consist of activities aimed at offering group or individual assistance to jobseekers or other persons in respect of career planning, in choosing or changing occupation and in making decisions on career development. The Committee takes note of the strategic documents adopted during the reference period, in particular the programmes and measures related to the development of career guidance and counseling planned in the annual National Employment Action Plans adopted in the framework of the National Employment Strategy 2011–2020.

The Committee previously noted that professional orientation and career guidance, which includes the provision of information, counselling, training, and the organisation of professional fairs, are provided free of charge by career counsellors of the National Employment Service (NES), which has branches and offices across the whole country. The report indicates that as of 21 August 2015 (out of the reference period), the NES had a total staff of 1966 persons, including 42 career planning counsellors and 7 career information counsellors. These counsellors have a VII level degree/second level of studies or degree in psychology including employment studies, 1 year of work experience, knowledge of a foreign language and computer literacy. The total number of counsellors for employment (mediation) in branch offices is 618 (such counsellors have a VI/VII level degree).

The Committee takes note of the data presented in the report concerning the number and profile of beneficiaries of professional orientation and career planning counselling services in 2011-2014 and notes that the number of counsellors remains rather low compared to the number of beneficiaries (in particular, the beneficiaries of counselling services were 10206 in 2011, 9136 in 2012, 8362 in 2013 and 11000 in 2014). The report indicates, in response to the Committee's remarks (Conclusions 2012) that all efforts are deployed to develop and use the latest ITC methods and techniques in order to make the best use of the resources available and thus meet the needs of the clients. The Committee asks the next report to indicate the budget allocated to NES services related to vocational guidance and career counselling in the labour market.

Conclusion

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

Article 10 - Right to vocational training

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

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

Secondary and higher education

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. University and non-university higher education are considered to be vocational training as far as they provide students with the knowledge and skills necessary to exercise a profession.

The Committee notes from Eurydice (Overview, Serbia) that secondary education is not compulsory and covers a population of students aged 15 to 19 years. Secondary education is realised as general secondary education lasting four years (gymnasium) and vocational and artistic secondary education lasting three or four years (vocational and art schools). Higher education system has two types of study: academic study realised at universities, and vocational profession-oriented study realised at colleges of applied studies as well as universities.

The Vocational Training and Adult Education Council has been established, which is, among others, in charge of proposing the National Qualifications Framework (NQF) to the Minister of Education, for the level of secondary vocational education, vocational training and other forms of vocational education. In September 2010, the Vocational Training and Adult Education Council adopted a decision by which the development of NQF for the level of secondary vocational education, vocational training and other forms of vocational education was initiated, thus setting into motion the application of the lifelong learning principle in the system of vocational education.

The NQF also aims at ensuring comprehensibility, clarity and transparency of qualifications and their interconnectedness; development of Qualification Standards which are based on the economy and society requirements; enabling the orientation towards learning outcomes; improving the access, the flexibility of paths and the mobility within the systems of formal and non-formal education; enabling the identification and the recognition of non-formal and informal learning; improving the co-operation among relevant stakeholders, i.e. social partners; securing the quality system in the processes of developing and acquiring qualifications; securing the international comparability and recognition of Serbian qualifications.

According to Eurydice a social dialogue was initiated between the representatives of economy, local authorities and educational institutions. A survey on employers' needs for various forms of trainings has been carried out, on the basis of which modules and courses have been defined. Five centres for lifelong learning have been established at universities, training plans and programmes have been developed on the basis of short courses and the realisation of trainings has begun. The process of networking of university centres at national level is ongoing, as well as their integration into regional and international networks. The Committee notes that the implementation of the above mentioned activities has contributed to the promotion of the lifelong learning concept and its relevance for the new role of universities in knowledge economy.

The principles of lifelong learning have also been implemented in the field of labour market active policy measures and employment policy. This primarily refers to the organisation of trainings for the needs of labour market and those initiated at the request of employers. At annual level, upon completion of public procurement procedure, the National Employment

Service organises around 80 different courses for the unemployed, in accordance with the National Employment Action Plan.

The Committee asks the next report to provide information regarding the outcome of the above mentioned reforms, especially in the light of the following:

- 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.

Measures to facilitate access to education and their effectiveness

The Committee recalls that under Article 10§1 of the Charter 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 and the employment rate of people who hold a higher-education qualification.

The Committee notes from Eurydice that for the primary school level, as well as for obtaining a first-grade degree, adults do not incur any educational costs. For all other levels and programmes, fees are determined by respective schools and organisations.

The Committee notes from the report that as regards funds spent for the programmes of further education and training, there has been a substantial decrease in funding from RSD 3,4 billion in 2011 to RSD 209 million in 2014. The Committee asks what is the reason for this decrease.

In its previous conclusion the Committee asked whether access to vocational education was guaranteed to foreign nationals lawfully residing in Serbia. It notes in this respect from the report that Law on Employment and Unemployment Insurance prohibits discrimination in the field of employment, i.e. the principles of impartiality, gender equality and freedom of choice of occupation and job position have been adopted. Foreign nationals or stateless persons can be registered as unemployed persons in the register of the National Employment Service if holding the permit for permanent or temporary residence. In that case, the foreign national shall have the right to be informed by the National Employment Service on possibilities and conditions for employment, to participate in active employment policy measures, to exercise the rights in the event of unemployment, in line with the law, and the right to mediation in employment.

The Committee asks whether foreign nationals lawfully resident in Serbia have equal access to higher vocational education, without any length of prior residence requirement.

Conclusion

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

Article 10 - Right to vocational training

Paragraph 2 - Apprenticeship

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

In its previous conclusion (Conclusions 2012) the Committee asked the next report to provide information about the apprenticeship system, i.e. training based on a contract between the young person and the employer, which combines theoretical and practical training while maintaining ties between training establishments and the working world. It also wished to be informed about the length of the apprenticeship and division of time between practical and theoretical learning, remuneration of apprentices, termination of the apprenticeship contract, as well as 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.

The Committee notes from the report that one of the primary target groups for which employment policy programmes are intended for and adjusted to, including, the programmes of further education and training, are the young. Programmes created for the young are goal oriented and are adjusted to the needs of the young, in order to create opportunities for productive employment and further professional development.

Vocational education and training as well as apprenticeship are regulated by the Labour Law. Apprentice programme and apprenticeship programme aim at preparing the young persons to take the professional or apprentice examination. Through these programmes the young acquire their first work experience in the labour market.

The internship takes no longer than 24 months, during which interns are employed. The apprenticeship process is led by a mentor, who directly trains them for independent professional work through theoretic and practical knowledge.

According to the report, programmes of professional training implemented by the National Employment Service proved to be very efficient in solving the issues of the employment of the young. These programmes are continuously analysed and modified in order to adjust to the latest needs of the labour market.

The Committee notes from the report that in 2013 2,418 persons were in apprenticeship training. The Committee asks whether apprenticeship and internship (the two terms used by the report) are the same and whether apprenticeship/internship is based on a contract between the young person and the employer and what is the division of time between practical and theoretical learning.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Serbia is in conformity with Article 10§2 of the Charter.

Article 10 - Right to vocational training

Paragraph 3 - Vocational training and retraining of adult workers

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

The Committee notes from the report that Law on Employment and Unemployment Insurance, as an active employment policy measure, defines further education and training as activities aimed at offering an unemployed person or an employed person whose services may no longer be required, or to whom adequate employment cannot be offered, the possibility to undergo theoretical and practical training to gain new skills and knowledge in order to find employment, thus creating possibilities for employment and self-employment. The annual programme of further education and training shall be implemented by the National Employment Service.

Employed persons

The Committee recalls that under Article 10§3 of the Charter States must take preventive measures against deskilling of still active workers at risk of becoming unemployed as a consequence of technological and/or economic development. The States should provide information on the types of continuing vocational training and education available, overall participation rate of persons in training, percentage of employees participating in vocational training and total expenditure.

The Committee notes from Euridyce (Overview, Serbia) that as an organised and systematic activity of learning intended for people above a certain age, adult education can be formal or non-formal. Formal Adult education is based on the approved national curricula within the primary and secondary education systems, as regulated by the Law on the Foundations of the Education System, Law on Primary Education and Law on Secondary Education.

A number of adult education programmes are financed from the state and/or local authorities' budgets, in compliance with the annual plan which is issued by the Government each year, prior to the start of the school year. This is the case with primary education for adults and vocational education programmes leading to the learners' first vocation, which are free of charge for the participants. Other programmes may be financed from other sources, either individually or jointly by different financiers.

The Centres for the Professional Development of Adults are located in twelve towns in various parts of Serbia. Their scope is the following: identification of labour market needs and educational priorities, collaboration with local authorities, schools and other relevant institutions, and proposals for adult education programmes and their implementation.

Non-formal education, which includes all programmes beyond the school system, may involve structurally varying kinds of training (various lengths, target groups, topics etc.). This type of education does not provide transition to a higher education level; however, it provides learners with skills, knowledge and abilities essential for professional development, which is documented by a certificate as proof of acquired qualifications. Non-formal education is intended for people who have, partly or entirely, completed formal education and who need to improve their skills or requalify for another vocation.

The Committee takes note of various training measures implemented by the National Employment Service, such as training for the labour market, the aim was to increase the competences and competitiveness, acquisition of vocational skills, knowledge and competences, which provide increasing possibilities for good quality and faster employment in the open market. Moreover, trainings required by employers included the acquisition of vocational and practical knowledge, skills and competences for performing specific activities at the request of the employer, who shall employ them for the period of 6 months, with the obligation of keeping them employed at least 6 months after the completion of the training.

The Committee takes note of the numbers of persons who participated in various forms of training. In notes that in 2013 234 persons participated in training required by employers. The Committee notes that the corresponding figures in 2012 was 1600 persons. The Committee also notes that in 2012 1,997 persons took part in the training for the labour market and this figure stood at zero in 2013. The Committee wishes to be informed of the reasons behind such dramatic drop in the numbers of persons participating in various training measures.

The Committee wishes to receive updated information regarding the share of employed persons who participated in training measures.

In its previous conclusion the Committee asked about the existence of legislation on individual leave for training and its characteristics, in particular the length and the remuneration. In the absence of an reply in the report, the Committee considers that it has not been established that the right of an employed person to an individual leave for training is guaranteed.

Unemployed persons

According to the report, an integral part of the national employment action plan adopted annually, the Annual Programme of further education and training defines programmes and measures of further education and training to be realised during the year. It is based on the analysis of the labour market needs, i.e. needs of employers regarding the necessary knowledge and skills needed for performing certain activities.

The right to professional development, training and education through the programmes of further education and training are be granted to the unemployed persons, who seek employment, and who are be obliged to accept further education and training to which the National Employment Service sends them for the purpose of employment or increase the possibility of employment in line with individual employment plan, respecting individual needs and competences. The employment programme of the National Employment Service defines the type and amount of expenditures to be borne by the National Employment Service for persons engaged in the programme, and for employers as well.

The Committee notes from the report that in 2014 1000 persons participated in trainings for competence building for the unemployed.

In reply to the Committee's question, the report states that according to the data of the National Employment Service in late December 2014, there were 78,993 persons with higher education registered as unemployed, of whom 33,495 had no work experience. A large number of unemployed persons with no work experience had been registered as unemployed longer than one year. The Committee notes that 20% of the youth were neither in education or training, nor in employment in 2014.

The Committee asks what is the activation rate, i.e.the ratio between the annual average number of previously unemployed participants in active measures divided by the number of registered unemployed persons and participants in active measures.

Conclusion

The Committee concludes that the situation in Serbia is not in conformity with the Charter on the ground that it has not been established that the right of an employed person to an individual leave for training is guaranteed.

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 the National Employment Strategy for the period 2011-2020 ("Official Gazette of RS", No 37/2011) puts a specific attention to the prevention of long-term unemployment and the integration of unemployed persons before entering long-term unemployment. In this context, it points out that the Employment and Unemployment Insurance Act (Official Gazette of the Republic of Serbia – Nos. 36/2009, 88/2010 and 38/2015), as well as national employment action plans, recognise the category of the long-term unemployed persons, as the priority target group for the inclusion in the programmes of further education and training.

In order to be able to assess the situation as to compliance of Serbia with Article 10§4 of the Charter, in its previous conclusion (Conclusion 2012) the Committee asked that the next report contain information on specific indicators of compliance with this provision, as well as whether there are any requirements for non-nationals lawfully residing in Serbia in order to have access to vocational training when long term unemployed. The Committee considered 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.

In reply to the Committee's requests, the report indicates that answers are provided within the response referring to Artilce 1§1 of the Charter. In this context, as regards long-term unemployed, the Committee notes the long-term unemployment rate during the reference period was 16,3% in April 2011 and 14,1% in October 2014.

However, the Committee did not find in the report the requested specific information on targeted training and retraining measures available on the labour market for long-term unemployed, 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.

No information was found in the report on the requirements for non-nationals in order to have access to vocational training when long term unemployed. In this respect, the Committee considers that equal treatment must be guaranteed to nationals of other States Parties lawfully residing in the national territory on the basis of the conditions mentioned under Article 10§1.

The Committee is not able to assess the situation as to compliance of Serbia with Article 10§4 of the Charter in practice.

Conclusion

The Committee concludes that the situation in Serbia is not in conformity with Article 10§4 of the Charter on the ground that it has not been established that special measures for the retraining and reintegration of the long-term unemployed have been effectively provided or promoted.

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.

The Committee points out that in order for it to assess whether children and adults with disabilities have effective equal access to education and vocational training, it should be informed systematically of the following key figures:

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

It asks for these figures to be provided in the next report and points out that where it is known that a certain category of persons is, or might be, discriminated against, it is the national authorities' duty to collect data to assess the extent of the problem (European Roma Rights Centre v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, para. 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 (European Roma Rights Centre v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005, para. 23).

Serbia ratified the UN Convention on the Rights of Persons with Disabilities on 31 July 2009. The first report on the implementation of the Convention was published in 2012.

Definition of disability

In its previous conclusion (Conclusions 2012), the Committee asked for more details about the definition of disability given in the Law on the Fundamentals of the Education System (Official Gazette Nos. 72/09 and 52/11). The report does not answer this question. However, according to the first report by Serbia to the UN Committee on the Rights of Persons with Disabilities (2012), "children and students with developmental impairments and disabilities" are considered to be disabled under this law. The Law on Higher Education (Official Gazette Nos. 46/05, 100/07, 97/08, 94/10 and 52/11) refers to "handicapped students".

The report refers to the definition given in the Law on the Professional Rehabilitation and Employment of Persons with Disabilities (Official Gazette No. 36/09), which is based on the principles of respect for human rights and human dignity and integration in all spheres of society on an equal footing with others. It defines persons with disabilities as persons showing the permanent effects of physical, sensory, mental, or psychiatric disorders or diseases, which cannot be eliminated by any treatment or rehabilitation, meaning that they face restrictions and obstacles which affect their capacity to work and their potential to find or retain employment and have little or no opportunity to integrate into the labour market or apply for a job on an equal footing with others (Article 3, paragraph 1).

Anti-discrimination legislation

The Committee notes from the report that the establishment of Serbia's legislation on education and training is now complete and refers to its previous conclusion (Conclusions 2012) on this point. The Committee repeats its request for further details on the legislation concerning education and training.

The Committee asks for information in the next report on the measures taken to ensure effective remedies in cases of alleged discrimination in education and training on the ground of disability (including examples of relevant case law and its follow up).

Education

The report refers to the Law on the Fundamentals of the Education System, which establishes the general principle that all pupils must have the same right and the same access to education and the same educational opportunities at all levels, in line with their interests and needs. The law also provides for educational support, inspections and criminal sanctions.

The report states that children with disabilities may attend mainstream schools or special schools. It also points out that schools are required to provide such pupils with extra educational support and to eliminate physical and communication barriers as well as adopting personal education plans.

According to the report, the decision to enrol a child in a mainstream or special school may be taken on the basis of the opinion of the Committee for the assessment of needs relating to additional education, health or social assistance, subject to the parents' (or guardians') consent.

The report also refers to data from the Ministry of Education, Sciences and Technological Development indicating that the number of pupils with disabilities enrolled in mainstream primary schools has increased.

The Committee refers to the conclusions of the UN Committee on the Rights of Persons with Disabilities of 23 May 2016, which notes that many children with disabilities are placed in institutions, particularly those with mental disabilities (who account for about 80% of all children living in institutions), and do not therefore have equal access to education. The Committee asks for the next report to outline the measures taken to limit institutionalisation and give the relevant figures.

In order to assess whether persons with disabilities have effective access to education, the Committee asks for up-to-date information in the next report on developments concerning integration into mainstream schools, particularly the number of pupils in mainstream schools and special schools. The Committee concludes that not enough information is provided in the report for it to be able to establish that the situation is in conformity.

Vocational training

In its previous conclusion (Conclusions 2012), the Committee asked for information on vocational training for persons with disabilities. In reply, the report states that, under the Law on Higher Education, higher education is based on the principle of non-discrimination, including on grounds of sensory or motor disability. Everyone who has completed their secondary education has the right to higher education.

The Committee asks for updated information in the next report on projects under way and on the number of persons with disabilities attending mainstream vocational training courses, the number attending special training facilities and the percentage of persons with disabilities entering the labour market following mainstream or special training. In the absence of the information requested, the Committee considers that it has not been established that the situation is in conformity in this respect.

Conclusion

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

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

Paragraph 2 - Employment of persons with disabilities

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

Employment of persons with disabilities

The report states that in Serbia in 2014, 4 132 persons with disabilities were in employment and 20 870 were unemployed. The report does not, however, give the figure for the number of persons with disabilities of working age.

Anti-discrimination legislation

The report refers to the Law on the Professional Rehabilitation and Employment of Persons with Disabilities (Official Gazette Nos. 36/2009 and 32/2013), which came into force on 23 May 2009 and was amended on 16 April 2013. It prohibits all discrimination against persons with disabilities and aims to create the conditions for equal access for persons with disabilities to the open labour market and to promote professional rehabilitation. It introduces the principle of positive action for the improved integration of persons with disabilities into the labour market. The law also gives a definition of persons with disabilities and establishes the procedure to assess capacity to work.

The report also presents the Law on Employment and Unemployment Insurance (Official Gazette Nos. 36/2009, 88/2010 and 38/2015), which prohibits discrimination in employment. It grants employers the right to choose the workers they wish to employ or recruit entirely independently. The Committee asks that the next report clarifies the employer's obligations in terms of recruitment of a person with disabilities.

The Committee notes that according to Serbia's first report to the Committee on the Rights of Persons with Disabilities (2012), the Labour Code also prohibits any direct or indirect discrimination against job-seekers or employees on grounds including health and disability. Under Article 18 of the Labour Code, discrimination is prohibited in relation to requirements for recruitment, selection of candidates for any job, working conditions and all rights linked to employment, education, training and development, promotion and termination of employment.

The Committee asks whether effective remedies exist for persons with disabilities who consider themselves victims of discrimination in employment on the ground of disability.

In order to assess whether the right to non-discrimination in employment is effectively guaranteed for persons with disabilities, the Committee asked in its previous conclusion (Conclusions 2012) whether there was any case law with regard to reasonable accommodation and whether this requirement had prompted any increase in employment of persons with disabilities on the open labour market. Since the report fails to answer this question, the Committee considers that it has not been established that the reasonable accommodation requirement is effectively guaranteed.

Measures to encourage the employment of persons with disabilities

The report states that it is possible for persons with disabilities to be employed on the open labour market and in companies for the professional rehabilitation and employment of persons with disabilities.

According to the report, the National Employment Strategy for the period 2011-2020 (Official Gazette No. 37/2011) establishes the fundamental aims of employment policy in matters including persons with disabilities. Employment action plans, adopted annually, set out the specific employment policy programmes and measures to be carried out each year, based

on analyses of labour market trends. Unemployed persons belonging to categories of less employable persons are given priority for inclusion in active employment measures. The Committee asks to be informed of progress on the implementation of these action plans.

The Law on the Professional Rehabilitation and Employment of Persons with Disabilities mentioned above makes it possible for larger numbers of persons to enter the labour market and for their employability and the quality of their working lives to be improved. The report describes several incentive measures and activities targeting employers and unemployed persons with disabilities carried out under this law including the promotion of equal access for persons with disabilities to the labour market, the organisation and implementation of rehabilitation measures, measures to promote self-employment (114 beneficiaries in 2014), adaptation of jobs and workplaces (11 beneficiaries in 2014), subsidies to employers for the creation of new posts (94 beneficiaries in 2014), subsidies for the wages of persons with disabilities with no work experience employed on permanent contracts (212 beneficiaries in 2014) and public works (1 355 in 2014).

In 2014, 4 420 persons with disabilities registered with the Employment Agency took advantage of professional rehabilitation services. The report points out that the costs of professional rehabilitation for persons with disabilities whose capacity to work has been reduced as the result of a work accident or an occupational disease must be covered by employers whereas the equivalent costs for all other persons with disabilities will be covered by the body responsible for employment issues.

The report also describes the activities carried out by the Ministry competent for Employment Affairs under the Law on the Professional Rehabilitation and Employment of Persons with Disabilities. This includes granting authorisation for the implementation of professional rehabilitation measures, issuing licences to companies for the professional rehabilitation and employment of persons with disabilities (49 companies employing 1 437 persons), providing funds for income subsidies for persons with disabilities (about €3.3 million (414 695 464.83 dinars) was earmarked for this purpose in the 2014 Budget Fund), and supervising the implementation of professional rehabilitation measures.

Companies for the professional rehabilitation and employment of persons with disabilities are provided with funds to cover the costs of employing experts in the vocational training and professional rehabilitation of persons with disabilities and the cost of transport for these persons in line with the rules on state aid (about €650 k (80 102 443.24 dinars) in 2014).

The report also describes a quota system, which came into force on 23 May 2010 and is applied to all employers with 20 employees or more. The system requires employers with 20-49 employees to hire at least one person with disabilities, and another person for every 50 additional employees. The Committee asks for information in the next report on the level of compliance with the quota and measures taken to ensure compliance.

The report states that the Law on the Professional Rehabilitation and Employment of Persons with Disabilities lays down the procedure for assessing capacity to work and the possibility of taking up or retaining employment.It applies medical, social and other criteria to determine whether persons with disabilities have the necessary skills to be integrated into the labour market and perform practical tasks independently or through special measures or technical aids, and includes an assessment of employment possibilities under general or specific conditions. The Committee notes that the number of decisions taken on these matters decreased during the reference period from 5 133 in 2011 to 4 270 in 2014.

The Committee asks for more detailed information on the procedures provided for by the legislation for calculating the remuneration of persons working in sheltered employment and on the overall rate of transfer of persons with disabilities from sheltered employment to the open labour market.

Conclusion

The Committee concludes that the situation in Serbia is not in conformity with Article 15§2 of the Charter on the following grounds:

- it has not been established that the legal obligation to provide reasonable accommodation is respected;
- persons with disabilities are not guaranteed effective access to the open labour market.

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.

Anti-discrimination legislation and integrated approach

In reply to the Committee's question, the report gives a detailed description of the Law on the Prevention of Discrimination against Persons with Disabilities (Official Gazette No. 33/2006), which prohibits discrimination on the ground of disability in the fields of access to public facilities, areas and services, healthcare services, employment and employment relationships, access to public transport, education, culture and sport.

The Committee notes that it is not clear whether anti-discrimination legislation applies to all the fields covered by Article 15§3, particularly communication. It asks for clarification on this matter in the next report.

As to effective remedies, the report states that the law prohibiting discrimination provides for a special procedure for disputes concerning discrimination on the ground of disability. According to Serbia's first report to the UN Committee on the Rights of Persons with Disabilities (2012), complaints of discrimination on the ground of disability may be submitted by persons with disabilities themselves, their legal representative, the Commissioner for the Protection of Equality, a human rights organisation or an organisation protecting the rights of a group of persons.The Committee asks the next report to provide further information on this issue.

In its previous conclusion (Conclusions 2012), the Committee asked for information on the Strategy to improve the Position of Persons with Disabilities for the period from 2007 to 2015. In the absence of any reply, the Committee repeats its request. It also asks whether integrated programming is applied by all authorities involved in the implementation of the policy for persons with disabilities.

Consultation

The report states that associations of persons with disabilities initiate institutionalised co-operation activities in the civil sector and establish a network of organisations of persons with disabilities and the National Organisation of Persons with Disabilities. Co-operation consists, on the one hand, of involvement by these organisations in the area of standard-setting activities, monitoring the application of laws and regulations and participating in all working groups set up to prepare new legal or strategic documents and, on the other, of financial support by the Ministry of Labour, Employment, Veteran and Social Affairs for organisations implementing programmes to protect the rights of persons with disabilities. The aim is to promote the integration of persons with disabilities into the social and economic life of the community.

Furthermore, in 2002, the Serbian authorities set up the Council for Persons with Disabilities, which is made up of representatives of the relevant ministries and national organisations of persons with disabilities. It is an advisory body to the Government following the implementation of the policy for persons with disabilities. According to the first report by Serbia to the UN Committee on the Rights of Persons with Disabilities (2012), persons appointed by the National Organisation of Persons with Disabilities to sit on the Council on its behalf are delegates from representative organisations who themselves have physical, sensory or intellectual disabilities.

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

The Law on Social Care (Official Gazette No. 24/2011) establishes the right to various types of material support to facilitate the social inclusion of those receiving it:

- financial social assistance: awarded in particular to persons with a level-III capacity to work under the regulations governing employment of persons with disabilities;
- benefit for assistance and care by another person: awarded to persons who, as a result of a physical or sensory impairment, intellectual difficulties or a change in their state of health, require the assistance and daily care of another person to carry out essential activities. This benefit can be increased for people with a bodily impairment of 100%, a permanent neurological or psychological disorder or multiple disabilities causing a level of incapacity of at least 70%.
- vocational training support: awarded to children, young people or adults with disabilities who can be trained for a particular job, depending on their mental and physical capabilities. Support may take the form of coverage of vocational training costs and pupils' accommodation costs or reimbursement of travel costs.
- one-off financial assistance,
- assistance in kind and other types of assistance.

The report also states that the Ministry provides financial assistance through three types of competitive procedure for over 500 associations implementing programmes to protect persons with disabilities in Serbia (see the report for more details).

Measures to overcome obstacles

Technical aids

The Law on Social Care is to enable persons with disabilities to access services, appliances and other aids at reasonable prices. It divides social care services into the following groups:

- assessment and planning services: assessment of beneficiaries' state of health, needs, parents, adoptive parents, and guardians, and preparation of an individual or family plan for the provision of services, etc.;
- daily services in the community: day care centres and home help. These services are provided by the local authorities;
- independent living support services: supported housing (financed by the state budget), personal assistance (financed by the local authorities) and training in independent living;
- therapeutic counselling services: intensive support and counselling for families;
- accommodation services: accommodation in kinship families, foster families or other families for adults and the elderly, residential accommodation, etc.

The report explains that home help services are available for children, adults and elderly people who have limited physical and mental abilities preventing them from living independently in their own homes without regular assistance with their day-to-day activities and care and supervision, failing assistance from family. This assistance is exercised in all areas of home life (see report for details).

As to personal assistance services, the report states that all children with disabilities may have a personal companion until completion of their compulsory schooling provided that they are enrolled in an educational establishment. Personal assistance is also available for adults with disabilities.

The Committee asks whether mechanisms have been set up to assess the barriers to communication and mobility faced by persons with disabilities and to identify the technical aids and support measures that may be required to assist them in overcoming these

barriers. It also asks if persons with disabilities are entitled to the technical medical equipment they need (prosthetics, orthotics, wheelchairs, etc.) for their treatment and medical rehabilitation.

Communication

The report states that the Law on the Use of Sign Language was adopted in May 2015 (outside the reference period) so the Committee will examine it in its next conclusion.

The Committee repeats its question concerning access to communication and information technologies.

Mobility and transport

The report points out that the Law on the Prevention of Discrimination against Persons with Disabilities defines discrimination in the field of transport as a particular form of discrimination. It prohibits discrimination in all modes of transport such as refusing to transport a person with a disability, refusing to provide physical assistance and identifying adverse transport conditions for passengers with disabilities.

Provided that they are resident in Serbia, some categories of persons with disabilities (blind persons, persons suffering from dystrophy and muscular diseases, palsy, etc.) and persons accompanying them, are entitled to the special rates when using domestic passenger transport. The Committee takes note of the list of organisations from which persons with disabilities can obtain a card to enjoy the benefits. Meanwhile, it is not demonstrated that the effective access of people with disabilities to transport is assured.

The Committee repeats its question on the percentage of public transport vehicles that are fully accessible to wheelchair users.

Housing

Under the Law on the Prevention of Discrimination against Persons with Disabilities, the owners of public amenities and the relevant public companies are responsible for arranging the necessary work to make them accessible to everyone.

The report also refers to the Law on Social Housing (Official Gazette No. 72/2009), which provides the main criteria on which decisions on applications for social housing are based are residential status, income, state of health, disability, and the number of members in the household. Priority is given to persons from particularly vulnerable groups. The Committee asks how many persons with disabilities are entitled to social housing.

In its previous conclusion (Conclusions 2012), the Committee asked for information on the percentage of housing that is fully accessible to wheelchair users, 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. In the absence of any reply, the Committee repeats its request. Meanwhile, the Committee considers that it has not been established that there is an effective access to housing.

Culture and leisure

The report refers to the Law on the Prevention of Discrimination against Persons with Disabilities, which describes measures to promote participation by persons with disabilities in cultural, sports and religious activities.The local authorities are responsible for taking measures to ensure equal participation by persons with disabilities.

The Committee asks what measures have been taken to enable people with disabilities to practise sports and cultural activities in an ordinary environment, including in terms of access to them, prices and adaptation of programmes.

Conclusion

The Committee concludes that the situation in Serbia is not in conformity with Article 15§3 of the Charter on the following grounds:

- it has not been established that anti-discrimination legislation covers communication;
- it has not been established that persons with disabilities have effective access to transport and housing.

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.

Work permits

Employment of nationals of States Parties of the Charter is regulated in accordance with Law on employment of foreign nationals, No. 128/14, entered into force on 4 December 2014. Nationals of the States Parties wishing to work in Serbia must obtain a certification for permanent or temporary residence and an employment permit. Temporary or permanent residential permit are delivered by the Ministry of Interior whereas the employment permit is delivered by the National Employment Service.

The Law envisages two types of work permits for foreigners: (i) personal work permit and (ii) (general) work permit. Personal work permit is issued on a personal request of a foreigner and allows the foreigner to enter into employment agreement, to be self-employed and to exercise rights in case of unemployment. This permit is issued to foreigners with a permanent residence permit, refugees and special categories of foreigners. Additionally, under certain conditions, personal work permit may be issued for reunification of the family. Work permit is granted upon the request of the employer (except work permit for self-employment) and there are three different types of such work permits (i) work permit for employment, (ii) work permit for self-employment and (iii) work permit for special cases. The foreigner is entitled to perform only activities for which he/she has obtained the work permit. All above mentioned work permits have specific requirements regarding the required documentation and conditions that have to be fulfilled. The Committee understands from the report that the common characteristic for all types of work permits is reflected in the need for a foreigner to have obtained a residential permit in Serbia. Rulebook on Employment Permits entered into force on 20 December 2014, which regulates methods of issuing and/or extending employment permit. The Committee, thereupon, asks what are the conditions and methods for granting temporary and permanent residence permits and in which circumstances can the holders of such permits be refused a work permit.

In its previous conclusion (Conclusions 20212), the Committee asked 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 reply, the report indicates that the law provides with a possibility of introducing a quota system, only possible upon disturbances on the labour market. Quota is decided on the proposal of the ministry for employment with the previously obtained opinion of the socio-economic council and organisations competent for employment activities.

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. 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, from the day when the Law on Employment of Foreign Nationals entered into force, 4 December 2014, 2,784 employment permits have been issued to foreign citizens by the National Employment Service, of which, 304 personal employment permits and 2,480 employment permits were issued. According to the data of the National

Employment Service, the largest number of employment permits has been issued to nationals of China, Russian Federation, Croatia, Turkey, "the Former Yugoslav Republic of Macedonia", Bosnia and Herzegovina and Italy.

As the above mentioned law entered into force in 2014, which corresponds to the end of the reference period, the report could not provide the information requested (Conclusions 2012) on the number and rate of refusals of work permits. The Committee reiterates its request and recalls that to this end, the figures to be supplied in the next report on the number and rate of refusals of work permits must also distinguish between first-time applications and renewal applications for work permit for every year of the reference period.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Serbia is in conformity with Article 18§1 of the Charter.

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.

On the basis of the Law on Employment of Foreigners entered into force on 4 December 2014, the foreigners are now entitled to enter into employment agreement or even to be self-employed in Serbia. The law envisages two types of work permits for foreigners: (i) personal work permit and (ii) (general) work permit.

Personal work permit is issued on a personal request of a foreigner and allows the foreigner to enter into employment agreement, to be self-employed and to exercise rights in case of unemployment. This permit is issued to the foreigners with the permanent residence permit, refugees and special categories of foreigners. Additionally, under certain conditions personal work permit may be issued for reunification of the family.

(General) Work permit is granted upon the request of the employer (except work permit for self-employment) and there are three different types of such work permit: (i) work permit for employment, (ii) work permit for self-employment and (iii) work permit for special cases. The foreigner is entitled to perform only those works for which he/she has obtained the work permit. All abovementioned work permits have specific requirements regarding the required documentation and conditions that have to be fulfilled.

Administrative formalities and time frames for obtaining the documents needed for engaging in a professional occupation

According to the Law on Employment of Foreigners, entered into force on 4 December 2014, employment as an employee and self-employed is done under the condition that the applicant has obtained a certification for temporary or permanent residence, in accordance with regulations governing stay of foreigners in the Republic of Serbia, as well as the employment permit is issued in line with the above mentioned law. Temporary or permanent residential permit is issued by the Ministry of Interior whereas employment permit is issued by the National Employment Service.

The Committee understands from the report that the common characteristic for all types of work permits is reflected in the need for a foreigner to have obtained temporary residential permit in Serbia and that work permit is issued for the period of validity of temporary residence but not longer than one year. This implies that there is not a single procedure to obtain the residence and work permits at the same time and through a single application in Serbia.

It therefore recalls that with regard to the formalities to be completed, conformity with Article 18§2 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.

The Committee notes that the 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. The Committee asks what is the deadline to issue a residence permit.

Chancery dues and other charges

According to the Law on Administrative Fees, the fee for obtaining the decision (employment permit) on employment of foreign citizens in the Republic of Serbia shall be paid in the amount of 12,760 RSD (104 euros). As in its previous conclusion, the Committee asks again whether fees are also charged for residence permits.

Conclusion

The Committee concludes that the situation in Serbia is not in conformity with Article 18§2 of the Charter on the ground that formalities to obtain the residence and work permits have not been simplified.

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

In its last conclusion (Conclusion 2012), the Committee deferred its decision due to lack of information showing how regulations governing the employment of foreigners were liberalised in Serbia.

The Committee refers to its conclusion under Article 18§1 and recalls that employment of nationals of States Parties of the Charter is regulated in accordance with Law on employment of foreign nationals, No. 128/14, entered into force on 4 December 2014. This law prescribes the right to free access to labour market in Serbia. Nationals of the States Parties wishing to work in Serbia must obtain a certification for permanent or temporary residence and an employment permit. Temporary or permanent residential permit are delivered by the Ministry of Interior whereas the employment permit is delivered by the National Employment Service.

The Committee notes in the report that the law provides with a possibility of introducing a quota system, only possible upon disturbances on the labour market. Quota is decided on the proposal of the ministry for employment with the previously obtained opinion of the socio-economic council and organisations competent for employment activities.

As the above mentioned law entered into force in 2014, which corresponds to the end of the reference period, the Committee asks that the next report provides information on the law's impact on the access to the national labour market of other States Parties nationals.

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. Therefore, it asks the next report to provide information in this respect. The Committee also asks for information on measures taken to liberalise regulations governing the recognition of foreign certifications, professional qualifications and diplomas, necessary to engage in a gainful occupation as employees or self-employed workers. In this respect, it asks for information on the number of recognition of foreign certificates, professional qualifications and diplomas issued to nationals from States Parties of the Charter during the reference period.

Exercise of the right of employment/Consequences of the loss of employment

The report indicates that according to the Law on Employment and Unemployment Insurance, a foreign citizen or stateless person may be recorded as unemployed person if he/she has obtained certification for permanent or temporary residence. In this case, the foreign citizen is entitled to get informed on employment opportunities and conditions at the National Employment Services, participate in active measures of employment policy, exercise their rights in the event of unemployment, in accordance with the law, as well as the right to employment mediation. Keeping records on the unemployed foreigner ceases if his/her permanent or temporary residence certification is no longer valid. The Committee understands from the report that the residence permit is not automatically withdrawn in case the foreign worker loses his job. It asks the next report to confirm this information.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in Serbia is in conformity with Article 18§3 of the Charter.

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. This information was already provided in the last report.

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, pursue 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 Committee asks again what is the legal framework that guarantees the right of nationals to leave the country. It also asks what restrictions apply in this regard.

Conclusion

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

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

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

Equal rights

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

The Committee noted previously that the Labour Law prohibits *inter alia* direct and indirect discrimination on grounds of gender in relation to recruitment, conditions of employment as well as promotion and training. The Committee asked 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 (Conclusions 2012). Since the report does not provide any information on this point, the Committee reiterates its question.

The Committee notes from the Country Report on Gender Equality 2015 of the European Equality Law Network that the Labour Law provides in Section 104(2) that employees shall be guaranteed equal earnings for the same work or work of equal value performed with an employer. It defines work of the same value as work requiring the same professional qualification level, the same work abilities, responsibility and physical and intellectual effort (Article 16(3)).

The Committee notes further that the anti-discrimination legislation contains the principle of equal pay. Thus, Section16(1) of the Law on the Prohibition of Discrimination prohibits discrimination in the sphere of employment, and violation of the principle of equal opportunity in gaining employment or equal conditions for enjoying all rights pertaining to the sphere of employment, including equal pay for work of equal value. Furthermore, the Gender Equality Act is even more explicit as in Section 17 guarantees the right to equal remuneration for the same work or work of equal value with the same employer, in accordance with the Labour Law, for all employees regardless of their sex.

In its previous conclusion, the Committee asked 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 (Conclusions 2012). It notes that Section 17 of the Gender Equality Act refers to the right to equal remuneration for work of equal value "*with the same employer*" and Article 104(2) of the Labour Law refers to "equal earnings for the same work or work of equal value performed *with an employer*".

The Committee recalls that it examines the right to equal pay under Article 20 and Article 4§3 of the Charter, and does so therefore every two years (under thematic group 1 "Employment, training and equal opportunities", and thematic group 3 "Labour rights"). The Committee recalls that equal treatment between women and men includes the issue of equal pay for work of equal value. Usually, pay comparisons are made between persons within the same undertaking/company. However, there may be situations where, in order to be meaningful, this comparison can only be made across companies/undertakings. Therefore, the Committee requires that it be possible to make pay comparisons across companies. It notes that at the very least, legislation should require pay comparisons across companies in one or more of the following situations:

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

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

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

In its previous conclusion, the Committee requested (Conclusions 2012):

- 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.

Since the current report does not provide this information, the Committee concludes that the situation is not in conformity with Article 20 of the Charter on the ground that it has not been established that the right to equal treatment in employment without discrimination on grounds of sex is guaranteed in practice.

With regard to the burden of proof, the Committee notes from the Country Report on Gender Equality 2015 of the European Equality Law Network that the Gender Equality Act contains a provision on the shift of the burden of proof in Article 49(2), which provides that if the "claimant has made it probable during the proceedings that an act of gender-based discrimination was committed, the burden of proof that such an act had not caused any violation of the principle of equality, namely of the principle of equal rights and obligations, will be borne by the defendant."

Equal opportunities

The report indicates that through the National Employment Strategy 2011-2020 and the National Employment Action Plans measures and activities were developed which had as purpose to encourage the employment of unemployed women coming from especially vulnerable categories; to support female entrepreneurship; to grant self-employment subsidies to women for establishing a new business; to promote flexible forms of work suitable for women and to encourage employers to create conditions for flexible forms of employment (part-time labour, working from home, etc.). The Committee notes from the information in the report that women benefit from additional education and training measures.

The report indicates that the employment rate of women stood at 43.5% in 2014 which was significantly lower than the employment rate of men of 56.3%. Unemployment rate of women in the first quarter of 2015 amounted to 20.8%, and in case of men it was 19.1%, representing a difference in 1.7 percentage points.

The report does not provide any information on gender pay gap. The Committee notes from ILO –CEACR that the Government reported that the gender wage gap is around 17%. The Government also mentions a study published by the Foundation for the Advancement of

Economics (FREN) in 2013, which indicates that the adjusted gender wage gap is 11% (7.5% in the public sector), whereas the unadjusted gap (average difference between men and women wages) amounts to only 3.3% because women who work are better qualified than men who work. The study also indicates that women face high barriers at the point of entry in the labour market, so they need to be better qualified than men on average to be able to access employment in the first place, and it concludes that the relatively low gender wage gap is due to the low participation of women in the labour market. The CATUS asserts that the gender pay gap is due to horizontal occupational gender segregation, with more women in education and social protection for instance, which results from social traditions and a general decline of employment opportunities (ILO-CEACR, Direct Request (CEACR) – adopted 2015, published 105th ILC session (2016), Equal Remuneration Convention 1951 (No. 100))

The Committee asks that the next report provide information on the gender pay gap and the position of women in the labour market. The Committee notes from other sources that a National Strategy for Improving the Position of Women and Enhancing Gender Equality for 2009-2015 was adopted in 2009. It also notes that in its Concluding Observations on Serbia, the CEDAW expressed concerns in relation to the persistent gender wage gap; women's disproportionately high unemployment, especially among Roma women, women with disabilities and rural women; the increasing feminization of certain professions; the lack of opportunities to reconcile work and family obligations; the sexual harassment of women in the workplace; and the lack of disaggregated data on the situation of women in the labour market (CEDAW/C/SRB/CO/2-3, 30 July 2013, paras. 5 and 30). It asks that detailed information on the results of the strategy and other special measures to remove de facto inequalities and reduce the gender pay gap, be provided in the next report.

Conclusion

The Committee concludes that the situation in Serbia is not in conformity with Article 20 of the Charter on the ground that it has not been established that the right to equal treatment in employment without discrimination on grounds of sex is guaranteed in practice.

Article 24 - Right to protection in case of dismissal

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

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 probation period. However, in view of probation period, exclusion of employees from protection against dismissal for six months or twenty-six weeks, is not reasonable if applied indiscriminately, regardless of the employee's qualifications (Conclusions 2005, Cyprus)

The Committee notes from the Labour Law (Article 36) that the probation period may be extended for a maximum of six months and that, prior to the expiration of the time for which the probation work was contracted, the employer or the employee may terminate the employment contract with a notice period which may not be shorter than five working days and that the employer must give reasons for termination of employment contract.

Obligation to provide valid reasons for termination of employment

The Committee notes that according to Article 179 of the Labour Law, justified reasons for termination of employment contract by the employer are (1) legitimate reasons related to an employee's work abilities and his/her behaviour, (2) employee's fault for breaching work duty and work discipline; and (3) business-related reasons of the employer ((i)redundancy and (ii) an employee's refusal to sign an annex to the contract of employment on grounds determined under the Labour Law) .

Articles 180 and 181 of the Labour Law prescribe the procedure prior to cancellation of the employment contract. In case of dismissal for personal reasons, the employer is obliged to warn the employee in writing about the reasons for termination of employment and to provide a period of eight workdays, from the delivery of warning, to comment the allegations. If the employee consults with his/her trade union, the employer is obliged to consider also the opinion of the trade union. Article 185 of the Labour Law stipulates that an employment contract shall be terminated by serving a pertinent notice, in writing and always with substantiation and advice on legal remedy. The notice shall be served in person, in the premises of the employer, or to the address, or place of residence of the employee. In the case of dismissal for economic reasons, a notice period is not foreseen and instead a severance pay is mandatory.

The Committee notes, in reply to its request for information regarding dismissal at the initiative of the employer on the grounds that the employee has reached the normal pensionable age, that according to Article 175 of the Labour Law, one of the reasons for employment termination is when an employee reaches the age of 65 and a minimum of 15 social insurance years, unless otherwise agreed between the employer and the employee. A person with the conditions for pension according to regulations governing pension and disability insurance and prior to 65 years of age cannot, against his/her will, have the employment termination only because he/she meets the conditions for retirement.

Prohibited dismissals

The Committee notes that the Labour Law lists in Article 183 the non valid reasons for termination of employment, which include temporary impediment for work due to illness, accidents at work or occupational disease.

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".

Articles 187 and 188 prescribe special protection against cancellation of employment. Article 187 relates to the right of employed women to protection of maternity, which the Committee considers under Article 8§2 of the Charter. Article 188 prescribes that an employer shall not terminate the employment contract or put in less favourable position an employee because of his/her status or activities as an employee representative, trade union member, or because of his participation in trade union activities which the Committee considers under Article 5 of the Charter (trade union activity) and Article 28 (Worker representation).

In reply to its question on the time limit placed on the protection against dismissal in case of inability due to illness, accident at work or occupational disease, the Committee notes that the Labour Law does not prescribe time limitation within which protection against the employment termination due to a temporary inability to work for the reason of illness, accident at work or occupational disease, disregarding its duration, can be realised.

The report does not provide the information requested on what rules apply to protect employees from dismissal in the event they file a complaint or participate in proceedings against the employer. The Committee reiterates its request for information and considers that, should the next report fail to provide the information requested, there will be nothing to establish that the situation is in conformity with the Charter on these points.

Remedies and sanctions

Article 191 of the Labour Law prescribes the legal consequences of unlawful termination of employment. In reply to its question on the amount of compensation in cases of unlawful dismissal and whether the law provides for the possibility of a reinstatement, the Committee notes from the report that, if the court, during the proceedings, determines that the dismissal was unlawful, the court may:

- decide to reinstate the employee, at his/her request, and compensate the employee for damages, associated with contributions for compulsory social security for the period when the employee has not been working. The damages are equal to the amount of lost salaries (including the pertaining taxes and social contributions in accordance with the law) but excluding food allowance, annual leave allowance, bonus, awards and other compensation for contribution to the employer's business success;
- decide that the employee does not require to return to work and, at his/her's request, obligate the employer to compensate the employee for damages in the

amount of a maximum 18 salaries of the employee, depending on years of service, age, and number of dependent family members;

- deny the request of the employee to be reinstated, as the employer proved that circumstances are such that a return to work for the employee would be impossible, and order the employer to pay damages to the employee for an amount double the standard compensation when an employee is being reinstated to work.
  In case the ground for dismissal is justified but the employer acted contrary to the law which prescribes the procedure for termination of employment, the court shall reject the request for reinstatement, and shall order the employer to compensate damages in the amount of up to six salaries paid in the month prior to dismissal.

The Committee recalls that under Article 24 of the Charter compensation in case of unlawful dismissal is considered appropriate if it includes reimbursement of financial losses incurred between the date of dismissal and the decision of the appeal body. The Committee further recalls that (Statement of interpretation on Article 8§2 and 27§3, Conclusions 2011) compensation for unlawful dismissal must be both proportionate to the loss suffered by the victim and sufficiently dissuasive for employers. Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive are proscribed. If there is such a ceiling on compensation for pecuniary damage, the victim must be able to seek compensation for non-pecuniary damage through other legal avenues (e.g. anti-discrimination legislation), and the courts competent for awarding compensation for pecuniary and non-pecuniary damage must decide within a reasonable time. The Committee asks whether compensation is awarded also for non-pecuniary damage and whether other legal avenues are available in such case.

Replying to the Committee request whether it is up to the employer to prove that the dismissal was for a justified cause, the report refers to the burden of proof related to employees' representatives, membership in a trade union or participation in trade union activities, which are considered by the Committe under Article 5. The Committee therefore reiterates its question whether the courts have the competence to review a dismissal case in its facts and not only on points of law.

Conclusion

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

Article 25 - Right of workers to protection of their debts 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 discretion 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 Committee previously deferred its conclusion and requested information on how this provision of the Charter was applied.

The report indicates that the Labour Act ("Official Gazette of the RS", No 24/05, 61/05, 54/09, 32/13 and 75/14) ensures the right of the employees to payment of outstanding claims owed by the employer, against whom a bankruptcy procedure has been initiated. The right shall be exercise in the procedure before the Solidarity Fund, if the claims have not been paid in accordance with the law governing the bankruptcy procedure.

Moreover, the report indicates that the Labour Act stipulates that the employee is entitled to receive the following: 1) income and income reimbursement for the period of a work leave due to a temporary inability to work based on the regulations on health security which the employer was obliged to disburse in accordance with this Law, for the last nine months prior to initiating the bankruptcy procedure; 2) damage reimbursement for unused annual vacation by the fault of the employer, for the calendar year when the bankruptcy procedure was started, if he/she enjoyed the right in question prior to bankruptcy procedure; 3) severance payments due to the retiring in the calendar year when the bankruptcy procedure was initiated; 4) damage reimbursement based on the court decision made in the calendar year when the bankruptcy procedure was initiated, on the account of an accident at work or occupational disease, provided that the decision became final prior to initiating the bankruptcy procedure.

The Committee recalls that States may limit the protection of workers' claims to a prescribed amount. National laws or regulations may limit the protection of workers' claims to a prescribed amount which shall be of a socially acceptable level, namely not less than three months wage under a privilege system and eight weeks under a guarantee system. The workers' claims covered should also include holiday pay due as a result of work performed during the year in which the insolvency or the termination of employment occurred (Conclusions 2012 Slovak Republic)

The Committee recalls that in order to demonstrate the adequacy in practice of the protection, States must provide information, inter alia, on the average duration of the period from a claim is lodged until the worker is paid (Conclusions 2003, Sweden)(Conclusions 2012), Lithuania and on the overall proportion of workers' claims which are satisfied by the guarantee institution and/or the privilege system (Conclusions 2012, Serbia).

The report indicates that, as far as the amount of claims disbursed to the employee are concerned, the Labour Act prescribes that income reimbursement shall be paid on the basis of the minimum statutory wage . Damage compensation for the unused annual vacation shall be disbursed in the amount defined by the decision of the bankruptcy court, not exceeding the minimum statutory wage. The report indicates that the Solidarity Fund has been established for the purpose of exercising the given rights, in accordance with the Labour Act,

the business activity of which is to provide and disburse claims in accordance with this Law. The fund is a legal entity and operates as a public service. The procedure for exercising the rights with the Solidarity Fund is initiated at the request of an employee within 45 days from delivering the decision, in accordance with the law governing the bankruptcy procedure. Claims referred to in Section 125 of the Labour Act, being the following: salary, salary reimbursement and damage compensation shall be disbursed in the minimum amount of the salary, severance pay due to retiring in the amount of two average salaries in the Republic, according to the last published data by the republic authority competent for statistical matters. Damage compensation on the account of accidents at work or occupational disease shall be paid in the amount defined by the court decision. The minimum amount shall be defined according to the minimum statutory wage defined in line with the Labour Act on Labour, time spent working and taxes and contributions paid from the salary. Minimum statutory wage is defined by the decision of the Socio-Economic Council established for the territory of the Republic of Serbia. In light of the information included in the report which refers only to the overall proportion of workers claims which are satisfied by the guarantee institution and/or the privilege system, the Committee asks to provide additional information on the average duration of the period from a claims is lodged until the worker is paid.

In its previous conclusions (2012), the Committee recalled that under Article 25 of the Charter the protection should also apply in situation where the employers assets are recognised as insufficient to justify the opening of formal insolvency proceedings. Therefore, it asked wheter workers claims will be satisfied in such cases through the Solidarity Fund and what would be the amount of claims satisfied.

The report indicates the following overview expressed per years, on the number of filed requests to the Solidarity Fund, as well as the number of those positively resolved and paid: in 2011 – 9,985 filed requests (3055 resolved positively and paid); in 2012 – 3,912 filed requests (2,786 resolved positively and paid); in 2013 – 2,573 filed requests (2,341 resolved positively and paid); in 2014 – 1,609 filed requests (2,841 resolved positively and paid). The Committee in previous conclusions (2012) found that the number of satisfied requests was very low. It notes from the report that the number of satisfied requests increased in percentage from a very low rate in 2011, to a high rate in 2014.

The report indicates that the most frequent reason for rejecting a request of reimbursement of claims, would have been untimeliness in submitting the requests to the Solidarity Fund. Namely, the Labour Act, which was effective until July 29, 2014, prescribed that the procedure for exercising the rights thru the Solidarity Fund shall be initiated at the request of an employee within 15 days from the day of delivering a decision verifying the right to claiming, in accordance with the law governing bankruptcy procedure. In this respect, having considered that a number of requests is untimely submitted to the Solidarity Fund, by missing the stipulated deadline, the Government of Serbia introduced certain amendments to this Article of the Labour Act; therefore, as of July 29, 2014, new amendments to the Labour Act came into force, increasing the deadline for submission of requests to 45 days. The Committee asks to be informed, in the next report, on the evolution of the situation since the introduction of the new amendments in the legislation.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Serbia is in conformity with Article 25 of the Charter.