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European Social Charter

European Committee of Social Rights

Conclusions 2016

FINLAND

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 Finland, which ratified the Charter on 21 June 2002. The deadline for submitting the 11th report was 31 October 2015 and Finland submitted it on 6 November 2015. The Committee received on 22 December 2015 observations from the International Organisation of Employers (IOE) expressing its perspective on the application of Article 24. Comments on the 11th report by EK, SAK, STTK and Akava were registered on 21 January 2016. On 26 May 2016, a request for additional information regarding Article 18§2 was sent to the Government which submitted its reply on 29 June 2016.

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

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

Finland has accepted all provisions from the above-mentioned group.

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

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

- the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28).

The conclusions relating to Finland concern 21 situations and are as follows:

- 15 conclusions of conformity: Articles 1§1, 1§2, 9, 10§1, 10§2, 10§4, 15§1, 15§2, 15§3, 18§1, 18§2, 18§3, 18§4, 20, 25.
- 3 conclusions of non-conformity: Articles 10§5, 24 as well as Article 28.

In respect of the other 3 situations related to Articles 1§3, 1§4 and 10§3 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 Finland 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 18§2

- The procedure allowing foreign nationals to receive a personal identity number has been simplified: as a result, as from the end of 2014, they do no longer need to apply for their personal identity number but can receive it together with their first residence permit.

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 Finland.

Employment situation

The GDP growth rate declined since 2011 from 2.6% to – 1.4% in 2012, – 0.8% in 2013 and – 0.7% in 2014. The growth rate is well below the EU 28 average of 1.4%.

The overall employment rate declined slightly since 2011 from 69.0% to 68.7% in 2014. The rate is still well above the EU 28 rate of 64.9%.

The male employment rate remained stable during the reference period (69.5%). The female employment rate remained practically stable (2009: 67.9%; 2014: 68.0%). The employment rate of older work increased from 55.5% in 2009 to 59.1% in 2014.

The unemployment rate increased during the reference period from 7.8% to 8.7%. It remained well below the EU 28 average rate of 10.2%.

The youth unemployment rate remained high during the reference period. It stood at 20.1% in 2011 and at 20.5% in 2014. The long-term unemployment rate (as a percentage of the active population aged 15 – 74) remained low (1.7% in 2011; 1.9% in 2014).

The Committee notes that the economy declined during the reference period. The unemployment rate increased to 8.7% in 2014, which was still below the EU average rate of 10.2%. However, the youth unemployment rate stayed at a high level of 20.5% in 2014.

Employment policy

Finland was hit by the 2009 economic crisis. However, the unemployment rate is still below the EU 28 level. This is due to active market policies that encourages job search and facilitate job matches.

The Committee notes from the report that a number of reforms were introduced during the reference period. For example, a new Act on Public Employment and Business Service entered into force at the beginning of 2013. The objective of this Act is to define the objective and content of the public employment and business services. The Act also contains provisions on services promoting the development of entrepreneurial activities that consist of training and expert services aimed at companies.

A Youth Guarantee entered into force in 2013. In accordance with the Youth Guarantee, all young people under 30 years and recently graduated will be offered a job or a traineeship within three months of becoming unemployed.

According to Eurostat, public expenditure on active labour market policies in Finland amounted to 2.4% of GDP in 2011 which was above the EU 28 average (where the average public spending on active labour market measures as a percentage of GDP that year was 1.8%).

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

Conclusion

The Committee concludes that the situation in Finland is in conformity with Article 1§1 of the Charter.

Article 1 - Right to work

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

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

1. Prohibition of discrimination in employment

The report indicates that a new Non-Discrimination Act (1325/2014) entered into force on 1 January 2015. The Committee asks information in its next report on the main legal provisions of the new Non-Discrimination Act with regard to discrimination in employment and their implementation. It notes that the revised Non-discrimination Act prohibits discrimination on the grounds of age, origin, nationality, language, belief, opinion, political activity, industrial activity, family ties, state of health, disability, sexual orientation or other reasons related to a person (European Equality Law Network, Report on the reform on anti-discrimination legislation).

With regard to supervision, the Committee refers to its conclusion on Article 20 where it noted that since 1 January 2015, the Ombudsman for Equality and the new National Non-Discrimination and Equality Tribunal are operating. The Committee notes that Finland received in November 2013 a reasoned opinion on inadequate implementation of rules on assistance by a specialized body to victims of discrimination in employment as required by Article 13 Directive 2000/43 (European Equality Law Network, Country Report 2013). Thus, the Committee asks the next report to provide clear information on the concrete competences and activities of both equality bodies – the Ombudsman for Equality and the new National Non-Discrimination and Equality Tribunal – in assisting victims of discrimination in employment (on all protected grounds).

The report indicates that according to the Non-Discrimination Act, different treatment based on age is not regarded as discrimination when it has an objectively and appropriately founded employment policy (e.g. providing employment to persons under 25 of age or for elderly persons), labour market, vocational training or some other comparable justified objective, or when the different treatment arises from age limits adopted in qualification for retirement or invalidity benefits within the social security system.

With regard to compensation payable in cases of unlawful discriminatory dismissal, the Committee previously noted that compensation was subject to a ceiling both under the Non-Discrimination Act (15 000€ to 16,430€) and the Employment Contracts Act (maximum of 24 months' pay). However where special cause exists, the maximum level of compensation may be exceeded if this is justified by the duration and severity of the discrimination and other circumstances of the case. The payment of compensation does not preclude an injured party claiming damages under the Tort Liability Act (412/1974) or other legislation. The Committee noted that under the Tort Liability Act, a victim of discrimination may be compensated for both material loss and suffering if the employer has committed a crime. Thus, the Committee previously requested information on cases, where the employee has successfully sought compensation under the Tort Liability Act in case of unlawful dismissal (Conclusions 2012). Given the recent reform of the anti-discrimination legislation, the Committee requests updated information on the level of compensations that may be granted to victims of discrimination in cases of unlawful discriminatory dismissal. In particular it asks whether the new Non-Discrimination Act (1325/2014) provides a ceiling for compensation payable to victims of discrimination.

The report indicates that the Helsinki Court of Appeal maintained the judgment of the Helsinki District Court on a case of discriminatory unlawful dismissal. The employer had been found guilty of discrimination at work and sentenced, *inter alia*, to compensate the employee on the basis of the Tort Liability Act the employee's loss of earnings (11,406.27 euros) and mental suffering caused by the discrimination (1,000 euros). The District Court stated in its judgment, *inter alia*, that it is a well-established practice in this kind of cases

concerning crimes relating to employment, to condemn compensation on the basis of the Tort Liability Act in spite of claims for compensation for unlawful dismissal on the basis of the Employment Contract Act and the Non-discrimination Act in a separate civil trial.

The Committee asks information in the next report on cases of discrimination in employment handled by the courts and other competent bodies, with specific indications regarding their nature and outcome, and compensation paid to the employees.

The Committee 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

Work of prisoners

The Committee notes that the report reiterates information concerning prison work (Imprisonment Act No. 767/2005) provided during the previous evaluation cycle.

In reply to the questions which the Committee asked at that time, the report states that for production activities in open-type prisons prisoners are entitled to a wage and for those carried out in a closed-type prisons, they are entitled to an activity allowance. For all other activities (participating in rehabilitative work, training or other activities arranged or approved by the prison), prisoners receive an activity allowance in both types of prison. There are three categories of activity allowance depending on demand, regularity of participation and duration of the work, training or other activities as well as the prisoner's personal performance. Prisoners who are exempted from participation, receive an expenses allowance for the working or activity hours for which no wages or activity allowance are paid (Chapter 9, Section 6 of the aforementioned act concerning vocational training). Tax deductions and wage constraints are made in accordance with the legislation in force. Moreover, in open-type prisons, the prisoners must also pay the prison a contribution towards food and maintenance costs out of their wage. This does not apply in closed-type prisons or to prisoners receiving an activity allowance (Chapter 9, Section 7 of the aforementioned act concerning wage deductions).

The Committee notes that working prisoners are not affiliated to the social security system in Finland.

Domestic work

According to the report, the Act on the Employment of Household Workers (951/1997) was repealed on 1 January 2015 as part of the revision of Finnish legislation in order to be able to ratify the ILO Domestic Workers' Convention No. 189. As a result, the general labour legislation now applies to domestic workers, as do the criminal penalties for violation of their rights.

In reply to question asked by the Committee during the previous evaluation cycle, the report states that pursuant to Section 9 of Act No.44/2006 on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces (44/2006), workplace inspections may be carried out in the homes of individuals who have domestic employees if there is a reasonable cause to suspect that the work performed on the premises or the working conditions cause danger to an employee's life harm to his or her health. Detailed information concerning workplace inspections in private homes for these reasons is not available. According to the Government authorities responsible for supervision of occupational safety, workplace inspections to individuals' homes have mainly been carried out in the following areas: farm relief work, berry farms, compliance with rest time for drivers, different types of domestic services and personal assistants. Through these

inspection measures, the Government has strived to review issues regarding employment, immigration and working conditions.

Concerning the protection of domestic workers recruited in another country, the Finnish terms of employment apply to all work performed in Finland. Under the Employment Contracts Act (55/2001)², employers are obliged to inform workers of the conditions and terms applicable to their work contract (Chapter 2, Section 4 of Act). Residence permits for employed persons are usually granted for a job in a specific professional field. Workers may change jobs freely if the new job is in the same professional field. If a new job is in another professional field, the worker must apply for a new residence permit.

The Committee takes note of the information provided and asks that the next report contain updated information on the application of the legislation on the employment of household workers and on the steps taken to oversee its application (General questions of the Committee, Conclusions 2012).

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

As the report does not contain any information concerning service in the armed forces, the Committee asks that the next report provide information on the impact of studies or training courses followed by soldiers on the duration of their service in the armed forces and on the possible financial repercussions of early termination of service (see Conclusions 2012).

Requirement to accept the offer of a job or training

The Committee notes from the report that if jobseekers refuse a job offer without good cause, their entitlement to unemployment benefit is usually lost for a period of 60 days (30 days if the job would not have lasted for longer than two weeks). Jobseekers can lose entitlement to unemployment benefit by refusing to accept a job offer if the job offered is considered suitable for them considering their working ability, and if the salary paid complies with the collective agreement in question, or, if no collective agreement exists, the pay is considered normal and reasonable for the job in question. Jobseekers have good cause to refuse a job offer if they have not had enough time to arrange child care or their journey to and from work, if the work is contrary to their religious beliefs or conscience, or if it involves duties that are clearly indecent or unethical, or involve the imminent threat of violence, harassment posing harm or a danger to their health, or other inappropriate treatment. Job offers may also be refused if the salary and any agreed unemployment benefit, minus the costs incurred by accepting a job, amount to less than the unemployment benefit paid while unemployed, or if the job proposed is not in Finland. During the first three months after registration as jobseekers, unemployed persons may refuse job offers which do not correspond to their skills. Once this period has elapsed, all job offers must be accepted in order to be entitled to unemployment benefit.

Refusal to participate in the activities proposed by the Public Employment Department (TE Office), for example training, usually results in loss of unemployment benefit for a period of 60 days.

Jobseekers may lodge an appeal against decisions concerning unemployment benefit with the Unemployment Appeal Board and subsequently with the Insurance Court.

Privacy at work

The Committee notes from the report that privacy at work is protected by a special Act on the Protection of Privacy in Working Life (759/2004), governing matters such as the processing of personal data, the processing of information on drug use, camera surveillance in the workplace, and retrieving email messages that belong to the employer. The

Occupational Safety and Health (OSH) authorities and the office of the Data Protection Ombudsman are responsible for ensuring compliance with the Act on the Protection of Privacy in Working Life. The Personal Data Act (523/1999) and the Act on the Protection of Privacy in Electronic Communications (516/2004) supplement the afore-mentioned special act. Violations by employers relating to the processing of personal data contrary to Acts No. 759/2004 and No. 523/1999 concerning the processing of personal data may result in a fine or a prison sentence of no more than one year (Chapter 38, Section 9 of the Criminal Code).

The Committee takes note of the information provided on the protection of employees' personal data. It would underline the fact that the emergence of new technologies has made it possible for employees to work for their company at any time and any place, including at home, thereby blurring the boundaries between work and private life. The result is an increased risk of work encroaching on employees' private lives, including outside working hours and the workplace. The Committee considers that the right to earn one's living in an occupation freely entered upon includes the right to be protected against such interference (Statement of Interpretation of Article 1§2, Conclusions 2012). It asks that the next report provide updated information on this point.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Finland is in conformity with Article 1§2 of the Charter.

Article 1 - Right to work

Paragraph 3 - Free placement services

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

The report mentions that under the Act on Public Employment and Business Services (916/2012), in force since 1 January 2013, the services provided by the Employment and Economic Development Offices (TE Offices), have been known as employment and economic development services (TE Services).

The Committee notes from the web page of the Ministry of Economic Affairs and Employment (MEE) that TE Services make the labour market function by ensuring the availability of competent workforce and by improving jobseekers' employment prospects and employability. TE Services assist new entrepreneurs and make it easier for enterprises to operate successfully. The ministry directs, steers and monitors the process in which TE Services are provided in all parts of Finland in a customer-focused and performance-oriented manner. TE Offices are part of the local administration under Centres for Economic Development, Transport and the Environment (ELY Centres). The task of the ELY Centres is to steer TE Offices in achieving their objectives and developing their services.

The report further mentions that 15 TE Offices operate throughout the national territory through a renewed network of services that includes regional offices with their service points, joint service points, regional business services and other co-operation services. Employment services are provided through the current online service *te-palvelut.fi*. The TE Customer Service Centre, established in 2012, also gives information and guidance concerning public employment and corporate services and provides assistance through the *Enterprise Finland* and *Job line* telephone services.

Following the abovementioned Act, the Committee asks for information concerning: a) the number of persons working in TE Offices (at central and local level); b) the number of counsellors involved in placement services; c) the ratio of placement staff to registered jobseekers.

The Committee notes from the report that cooperation between public and private employment services is being increased and based on co-operation agreements. MEE and Private Employment Agencies Association HPL signed a cooperation agreement on 26 February 2015, aiming at improving the effectiveness of employment services. The Committee asks the next report to provide information on this co-operation.

The Committee recalls from its previous conclusion (Conclusions 2012) that in 2011 the placement rate of public employment services was 23,2% and further asked the authorities to provide quantitative indicators used to assess the effectiveness in practice of free employment services for the different years of the reference period. The report does not answer this question.

Outside the reference period, from another source (Annual Employment Service Statistics for 2015), the Committee notes that in 2015 TE Offices registered 517,300 vacancies, out of which 133,400 were filled (a placement rate of 25,8%). It asks the next report to comment on the level of the abovementioned rate.

The Committee asks the next report to contain information on the following points: number of jobseekers and unemployed persons registered with TE Offices; number of vacancies notified to TE Offices; number of persons placed via TE Offices; placement rate; average time taken by TE Offices to fill a vacancy; placements by TE Offices as a percentage of total employment in the labour market; respective market shares of public and private services.

Conclusion

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

Article 1 - Right to work*Paragraph 4 - Vocational guidance, training and rehabilitation*

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

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

The Committee considered the situation to be in conformity with the Charter as regards measures concerning vocational guidance (Article 9) and vocational training for persons with disabilities (Article 15§1).

It deferred however its conclusion as regards measures relating to vocational training and retraining of workers (Article 10§3). For the same reasons, the Committee defers its conclusion on Article 1§4.

Conclusion

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

Article 9 - Right to vocational guidance

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

The report confirms that access to vocational guidance in Finland is free and open without discrimination to anyone.

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

Vocational guidance within the education system

The Committee refers to its previous conclusions (Conclusions XVI-2 (2003), 2007, 2008, 2012) for a description of the guidance provided to all students by education and training institutions. In particular, it refers to the provisions on vocational guidance, as part of vocational education, which are set out in the Act on Vocational Education (630/1998), as amended by Act (787/2014) which came into effect on 1 August 2015 (out of the reference period). Pursuant to these provisions, the education provider shall prepare a personal study plan based on the student's individual aptitude. The education provider shall also see to it that those wishing to complete a competence test receive guidance and counselling planned and accomplished in a customer-oriented manner, as well as other forms of support and services to be agreed upon on a mutual basis.

With a view to securing equal, continuous and high-quality counselling at all school-levels, in August 2014 the National Board of Education and the Ministry of Education and Culture issued recommendations for good student guidance and counselling in basic education, general upper secondary education and vocational training in accordance with the Education and Research 2011–2016 development plan.

According to the report, additional measures have been taken to promote guidance in vocational adult education. In particular, an European Social Fund development programme carried out between 2007 and 2014 (*Opin ovi*) resulted in the establishment of regional networks, the development of local guidance services through lifelong learning steering groups, strategic guidance work, the preparation of initial analyses and the analysing of needs, as well as various trainings. At its most active stage, the programme included 51 projects in Finland. Actions in respect of, inter alia, information, guidance and counselling services were also taken in 2014 concerning the transitional periods in education and working life. Further measures, involving guidance, were taken in 2011-2014 to reduce the number of students dropping their studies.

In the framework of the *Learners' Online Services*-project, launched in 2011 by the National Board of Education and the Ministry of Education and Culture, together with other stakeholders, electronic services have been developed by education and teaching providers to the intention of applicants, students, educational institutions, enterprises and public administration. The report refers in particular to the setting-up of a national, multi-sectoral service model (*Ohjaamo*) and a national online counselling service (*Opintopolku.fi*) and their enhancement through the development of multi-sectoral information, guidance and counselling services and procedures.

The report states that a total of 242 student counsellors were employed in upper secondary vocational education and training on a full-time basis. Of them, 222 (91.7%) are duly qualified for their position. Guidance and counselling in vocational education are also provided by other teachers. The extent and volume of student guidance varies according to the education provider and field of study. The Committee previously noted that, as the cost of vocational guidance in education system makes part of the student guidance and counselling and is funded through the general local government grant system, the expenditure cannot be itemised and consequently, no detailed data on the expenditure is available.

Vocational guidance in the labour market

The Committee previously noted that the Employment Offices (TE-Offices) support individuals in entry to the labour market and lifelong learning, by providing information on all general, vocational and higher vocational level educational opportunities, fields, professions and work duties, required competence and the labour market, and by giving advice on issues related to training and work life. The objective is to provide clients with sufficient and clear information to enable them to make informed decisions concerning their choice of education or professional development. Aside from personal discussions, information on studying and the labour market can be obtained by participating in group guidance organised by training counsellors, by telephone or e-mail as well as by information available on the Internet. The report specifies that competence development services include vocational guidance and career planning, coaching, work try-outs, education and training and wage subsidy. These services are available to all person and their content can be adapted to the target group. Career guidance is also provided to persons who are unsure of their choice of profession, who are changing careers, who are returning to work, or who are considering entrepreneurship.

The Committee takes note of the information on the new projects developed during the reference period, such as the reform of the Employment services in 2013, which reorganised the provision of guidance services and the setting up, as of 2014, of a regular follow-up of their quality and effectiveness. Other measures were aimed at improving the national telephone service *Jobline* and a number of relevant online services (*te-palvelut.fi*; AVO; *Ammattinetti*). The report also presents in detail the programme carried out between 2011 and 2015 by the Lifelong guidance and cooperation group with the aim of promoting accessibility and quality of guidance services in cooperation with the Centres for Economic Development, Transport and the Environment (ELY Centres).

The report does not contain any updated information as regards the resources, staff and number of beneficiaries of vocational guidance in the labour market. The Committee accordingly asks for up-to-date information on these items to be systematically provided in all future reports.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Finland is in conformity with Article 9 of the Charter.

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 Finland.

Secondary and higher education

The Committee notes from Cedefop (Statistical overviews on VET, Finland, 2014) that one of the basic principles of Finnish education is that all people must have equal access to education and training. Consequently, compulsory education is provided within a single structure. The education system is also highly permeable. There are no dead ends preventing progression to higher levels of education. Vocational education and training is available as school-based programmes, apprenticeship training (*oppisopimuskoulutus*) and competence-based qualifications (*näyttötutkinnot*).

The Committee takes note of the Competence Programme for Young Adults, launched by the Ministry of Education and Culture in 2013, which is targeted at young adults aged 20 to 29 who do not have an upper secondary qualification. The budget of the Competence Programme was € 27 million in 2013 and € 52 million per year in 2014–2015. Around 60 education providers have implemented the Programme as institutional education and apprenticeship training. The Programme has reached its target of 4,000 new students per year. The Competence Programme has also met its qualitative targets. Slightly less than 40% of the students who started in the programme had been unemployed, and slightly less than 40% were not in education, employment or training.

According to the report the personalisation of education and the qualifications is an integral element of the competence-based qualification system. The Ministry of Education and Culture received € 20 million of additional funding for 2014–2015 for a programme called Strengthening the Competence Base of Adults, which is intended for adults aged 30–50 without an upper secondary qualification. The Ministry monitors this programme, and some of the lessons learned in the Competence Programme for Young Adults can be adapted to the older target group, either directly or after small modifications.

The Committee notes from Cedefop that the share of all upper secondary school students enrolled in vocational education (70.1%) is much higher than the EU average (50.4% in 2012).

The Committee recalls that under Article 10§1 the States Parties should take measures to make general secondary education and general higher education qualifications relevant from the perspective of professional integration in the job market. They should ensure that qualifications acquired in general secondary and higher education are geared towards helping students find a place in the labour market.

In this regard, the Committee notes from Cedefop that vocational qualification requirements are developed in broad-based cooperation with stakeholders. The national qualification requirements have been based on a learning-outcomes approach since the early 1990s. Consequently, close cooperation with the world of work has been essential.

Cooperation with the world of work and other key stakeholders is carried out in order to ensure that qualifications support flexible and efficient transition to the labour market as well as occupational development and career change. In addition to the needs of the world of work, development of vocational education and training and qualifications takes into account consolidation of lifelong learning skills as well as the individuals' needs and opportunities to complete qualifications flexibly to suit their own circumstances.

Measures to facilitate access to education and their effectiveness

According to the report, the new student admission criteria for vocational training and the electronic application services that were introduced in the joint application procedure in 2013 improved the opportunities to be admitted for those covered by the Youth Guarantee.

The Committee notes that the Educational Guarantee for all comprehensive school graduates secures every basic school graduate a place in a general upper secondary education, general vocational education, an apprenticeship, a workshop or vocational rehabilitation place, or a place in some other form of study. The aim is to provide all young people realistic opportunities to pursue and complete a post-basic qualification and find employment. It also includes renewed criteria for student selection to vocational education, renewed e-application services for the joint application process, increased training compensation in apprenticeship training and renewed preparatory training for vocational education.

Conclusion

The Committee concludes that the situation in Finland 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 Finland.

The Committee notes that according to Section 17 of the Act on Vocational Training (630/1998), apprenticeship is a form of training mostly provided at the workplace based on a fixed-term written contract between the apprentice and the employer known as the apprenticeship contract. Additionally, the law requires that the employer and the training provider agree on the organisation of the training in a manner prescribed in a decree. The apprenticeship contract must be accompanied by the apprentice's personal study plan indicating, among others, the qualification to be completed, a competence test to be followed in the training, the main work duties, theoretical education included in the training and other circumstances.

Provisions on the compensation payable for training are set out in Section 6(4) of the Decree on Vocational Education (811/1998). Compensation is payable to the employer for the provision of on-the-job training according to the estimated cost of such training incurred by the employer. The training provider and employer are to agree on the amount of compensation payable for each individual apprenticeship contract before signing. According to Section 7 of the Act on Vocational Education, the training provider is responsible for the supervision of the apprenticeship training and the control of contracts.

The Committee notes that the share of apprentices among all vocational students in education that leads to a qualification or the completion of a module is 18%. Around 92% of the apprentices are between 20 and 54 of age. Apprenticeship training contributes to lifelong learning by giving an opportunity to attain a new professional qualification or to update or redirect one's competencies alongside work.

The Ministry of Education and Culture launched an action programme to renew on-the-job training and apprenticeship training among young people in 2014 as part of its activities to promote the youth guarantee. The aim of the action programme is to make apprenticeship training more popular among young people, to create educational models that combine institutional and apprenticeship training, and to find models that combine training and work that are targeted at young people in a flexible manner.

Conclusion

The Committee concludes that the situation in Finland 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 Finland.

Employed persons

The Committee recalls that as regards employed persons, under Article 10§3 of the Charter the States are obliged to provide facilities for training and retraining of adult workers. The existence of these preventive measures helps fight against the deskilling of still active workers at risk of becoming unemployed as a consequence of technological and/or economic development.

The Committee notes from the report that an additional allowance of € 8 million was allocated to the implementation of educational models that combine a work-based learning approach and different forms of arranging education in the budget for vocational training. The aim of providing more versatile approaches to on-the-job training through cooperation between education providers and workplaces and building flexible study paths is to make young people remain as users of educational services and help them complete their training.

In reply to the Committee question, the report states that the Study Leave Act (273/1979) does not apply in situations, where the employer requires the employee to take part in a training programme. In this case the employee has the right to attend training during normal working hours and get normal wages during the training.

Unemployed persons

The Committee recalls Article 10§3 guarantees the right to labour market training for the unemployed. The Committee takes into consideration only those activation measures for unemployed people that strictly concern training.

The main indicators of compliance are the types of continuing vocational training and education available on the labour market, the overall participation rate of persons in training and the total expenditure.

The Committee notes that in 2012, approximately 69,700 people started employment training, and about € 221 million was spent on the training. An average of 19,351 people studied independently with the help of unemployment benefits in 2012.

Under Section 3 of the Public Employment Service Act (No. 1295/2002), the public employment service is required to offer unemployed people training to help them acquire the vocational skills needed to gain access to the labour market. The Committee asks what types of training are on offer and what percentage of unemployed people take part. It also asks about the activation rate – i.e. the ratio between the annual average number of previously unemployed participants in active measures divided by the number of registered unemployed persons and participants in active measures.

In its previous conclusion (Conclusions 2012) the Committee asked for information on the total spending on continuing training and the sharing of the cost of vocational training between public bodies (central and other authorities), unemployment insurance systems, enterprises and households.

The Committee notes from Cedefop (VET in Europe, Finland, 2014) in this respect that in Finland, almost all VET provision is Government-regulated. Most of the funding comes from the State and from local authorities. The qualification requirements for the different professions are also decided at a national level.

The majority of vocational institutions are maintained by local authorities, joint municipal authorities and the State. Nearly 40% are maintained by private organisations and 20% of

students are enrolled in institutions maintained by private organisations. Funding criteria are uniform irrespective of ownership.

Conclusion

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

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 Finland.

The report refers to the previous report and states that relevant legislation and practice remained unchanged. In its previous conclusion (Conclusions 2012), the Committee found the situation to be in conformity with Article 10§4.

The Committee recalls that the main indicators of compliance with this provision are the types of training and retraining measures available on the labour market, the number of persons in this type of training, the special attention given to young long-term unemployed, and the impact of the measures on reducing long-term unemployment. It asks the next report to provide detailed information on the abovementioned indicators. The Committee also asks whether the equality of treatment is ensured for nationals of other States Parties lawfully resident in Finland as regards access to training intended for the long-term unemployed.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Finland is in conformity with Article 10§4 of the Charter.

Article 10 - Right to vocational training

Paragraph 5 - Full use of facilities available

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

Fees and financial assistance

In its previous conclusion (Conclusions 2012) the Committee found that the situation was not in conformity with the Charter on the ground that non-EEA nationals lawfully resident were not granted equal access to financial assistance for education.

The Committee notes from the Governmental Committee report (TS-G (2013), §25) that according to the Finnish legislation, all foreign persons, irrespective of their country of origin, are treated equally with respect to student financial aid. The length of residence does not define a person's right to student financial aid.

According to Section 1, sub-section 3(1) of the Act on Financial Aid for Students (65/1994), student financial aid can be allowed to a foreigner who resides permanently in Finland for other than study purposes. Moreover, three alternative conditions must be met: he/she must have been granted a continuous (A) or permanent (P) residence permit regulated in the Aliens Act or a long-term resident's EC resident permit (P-EC).

The Committee also notes from the report that foreigners lawfully residing in Finland with a permanent residence permit are entitled to student financial aid with the same criteria as Finnish citizens.

The Committee notes from the Finnish Immigration Service that a temporary permit may not be replaced with a continuous permit as long as the purpose of the residence in Finland is studying. A non-EC national may apply for a continuous residence permit after he/she has resided in Finland for two years without interruption.

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

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

The Committee understands that the non-EEA nationals need to have resided in Finland for two years, other than for the purpose of studying in order to qualify for a continuous residence permit and thus for student aid. The Committee considers that this amounts to a length of residence requirement of two years, which is contrary to the Charter. Therefore, the situation is not in conformity with the Charter.

Training during working hours

The Committee notes from the report that there have been no changes to the situation which it has previously found to be in conformity with the Charter.

Efficiency of training

The Committee asks what measures are taken to evaluate vocational training programmes for young workers, including the apprentices. In particular, it wishes to be informed of the participation of employers' and workers' organisations in the supervision process.

Conclusion

The Committee concludes that the situation in Finland is not in conformity with Article 10§5 of the Charter on the ground that non-EEA nationals must have resided for two years in order to have access to student financial aid.

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 Finland.

Finland ratified the United Nations Convention on the Rights of Persons with Disabilities and its Optional Protocol on 11 May 2016.

The report does not provide figures on the total number of adults and children with disabilities. The Committee notes from the report that since disability is not used as a variable in population surveys, it is impossible to gather comprehensive data on persons with disabilities in Finland. However, statistics on special classes provided in general education and vocational training institutions are available.

The Social Insurance Institution (Kela) compiles annual statistics on the benefits paid by it to persons with disabilities, from which it appears that 308 596 people (34 547 of whom were under 16 years of age) were in receipt of disability allowance in August 2015, compared with 296 324 in 2010.

Definition of disability

The Committee notes that there is no single definition of disability, and that each piece of legislation concerning persons with disabilities has its own definition. Nonetheless, the common principle underlying every policy measure for persons with disabilities is guaranteeing them the right and opportunity for integrated living. The United Nations Convention on the Rights of Persons with Disabilities was ratified, the Committee asks whether the definition of disability has been standardised.

Anti-discrimination legislation

The legislation governing the protection of persons with disabilities against discrimination as described in the previous conclusion was considered by the Committee to be in conformity with Article 15§1 of the Charter. The Committee notes from the report, however, that Act No. 21/2004 has been repealed by the new Non-Discrimination Act No. 1325/2014 which took effect on 1 January 2015 (outside the reference period). The Committee asks that the next report provides information on the effects of the new law.

Education

In its previous conclusion, the Committee noted the lack of data with regard to the special educational needs of upper secondary students and therefore asked how the Government ensured implementation and monitoring of relevant law and policies under Article 15§1. In reply, the report indicates that most students with special needs in vocational upper secondary education attend mainstream institutions (around 75%), and slightly less than 25% attend special educational institutions.

According to the 2012 figures provided by the Academic Network of European Disability Experts (ANED), the percentage of 30–34 year-old persons with disabilities having completed tertiary-level education was 52.2% compared with 50.2% for non-disabled persons in the same age group. The percentage of 18-24-year-old persons with disabilities who leave school early was 11.1% compared with 3.9% for non-disabled persons in the same age group.

In its previous conclusion, the Committee asked that the next report explain the increased number of transfers of students from general to special education. In reply, the report cites various factors, such as statistical and rehabilitative factors, improved diagnostics, new information as a result of research in special pedagogy, and amendments to the legislation on teaching.

As to the other questions, the report states that the study support for pupils is organised in accordance with the Basic Education Act which was amended in 2010. It appears that amendments to the National Core Curricula, for pre-primary and basic education, came into force on 1st January 2011 and include a new systematic way of organising support. In this context, support for study and school attendance was divided into three categories: general support (to which everyone is entitled), intensified support and special support. Intensified and special support is based, *inter alia*, on individual learning plans for pupils. The report emphasises that only pupils entitled to special support are covered by what is termed special education. According to the report, the Ministry of Education and Culture carried out a study in 2014 and found that there were notable differences across municipalities. The Committee notes that the percentage of students receiving special support has declined (from 8% in 2010 to 7.3% in 2014), while the percentage of students receiving intensified support has increased (from 3.3% in 2011 to 7.5% (i.e. 40,500) in 2014).

According to the report, Valteri, a national centre for education and consulting, supplements the municipal educational and school attendance support services. The forms, content and practical implementation of support services vary according to needs at various stages of the support (e.g. consultation visits and counselling for day-care centres and schools, support periods for pupils, evaluation and rehabilitation services for individual children, workplace counselling, etc.).

Vocational training

In its previous conclusion, the Committee asked that the next report provide more information on the plan to update the strategy for vocational special education. In reply, the report explains that the Ministry of Culture and Education identified development policies for vocational special education in 2011 and drew up an Education and Research Development Plan 2011–2016. The report emphasises that the development of special education has been closely linked to the development of vocational education and training in general, which has helped make vocational education and training more accessible, in accordance with the inclusion principle.

According to the report, the Universities Act No. 558/2009 was amended several times during the reference period, and a new Polytechnic Act No. 932/2014 entered into force on 1 January 2015. The report points out that higher education is free of charge for all students and that admission cannot be refused on grounds of health or functional capacity.

In addition, a law of 2015 amended the Vocational Education Act No. 360/1998 concerning special education and special arrangements for studying, and new provisions on preparatory training for vocational upper secondary education and preparatory training for work and independent living have been added. The Act came into force on 1st August 2015 (outside the reference period). The Committee will examine it in detail in its next report.

The Committee notes from the report that the number of pupils with special needs in vocational upper secondary education rose from 21 264 in 2011 to 23 256 in 2014, whereas the number of pupils in preparatory training fell (from 6 540 in 2011 to 6 120 in 2014). According to the report, this is due to a reduction in the number of places allocated by education providers in 2013.

The report also describes the various types of financial aid available for vocational training (hence, €100 increase in student loans and 30% increase in the income ceilings of parents of 18-19-year-old students in upper secondary level education living independently).

The report mentions the “Youth Guarantee” programme enabling every young after his/her basic education, to get a place in a general upper secondary school, vocational institution, in apprenticeship training, etc. In addition, six vocational education providers have been assigned to provide special education for people with severe disabilities. The Committee

asks that the next report provide information about the number of people with disabilities who have been integrated into educational facilities under this programme.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Finland is in conformity with Article 15§1 of the Charter.

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 Finland.

Employment of persons with disabilities

The Committee notes that the number of persons with reduced working capacity who benefited from vocational rehabilitation has increased, from 13 389 in 2011 to 15 178 in 2014. It also notes that the number of placements for job-seekers with disabilities by the public employment service and active labour market measures decreased from 40 651 in 2011 (out of a total of 93 030 those looking for employment opportunities, 44 690 of whom were unemployed) to 24 881 in 2014 (out of a total of 86 992, 46 282 of whom were unemployed).

According to the report by the Academic Network of European Disability Experts (ANED), in 2014, the percentage of women with disabilities aged 20-64 who were in employment was 58.9% as against 70.8% for non-disabled women, and the percentage of men with disabilities was 53.1% as against 78.6% for non-disabled men. The unemployment rate for women with disabilities was 10.7% compared with 6.8% for non-disabled women, while the unemployment rate among men with disabilities was 18.4% compared with 9% for non-disabled men.

Anti-discrimination legislation

Apart from the specific measures relating to discrimination on grounds of disability mentioned in its previous conclusion (Conclusions 2012), the Committee notes from the report that the new Non-Discrimination Act which took effect outside the reference period, prohibits discrimination based, *inter alia*, on disability or health and applies to all public and private activities, excluding private life, family life and the practice of religion. The report points out that, under the new legislation, public authorities, education providers and employers must make reasonable accommodation to ensure that employees with disabilities have equal access to work, education and training, as well as goods and services.

The Committee wishes to be informed in the next report about the impact of the new legislation on the employment of persons with disabilities and about any relevant case law. It also asks that the next report provide information about whether compensation is available, under the new Act, for material and non-material damage to persons who have been discriminated against and which legal and non-legal remedies are available to them.

The report also states that the definition of a person with a reduced working capacity has been expanded in vocational rehabilitation services organised by the Social Insurance Institution, Kela (Act No. 973/2013 which entered into force on 1st January 2014). The new conditions make it possible for people with reduced working capacity to start rehabilitation earlier, thus enabling greater consideration to be given to the person's overall situation.

Measures to encourage the employment of persons with disabilities

In addition to the measures to encourage the employment of persons with disabilities mentioned in the previous conclusions, the report outlines actions to encourage access of people with disabilities to employment which are organised for those who need specific measures. In 2013, 1 809 persons for whom the public employment and business services were not sufficiently effective received specific help with finding employment and 9 594 persons benefited from rehabilitative work services.

In its previous conclusion, the Committee asked for follow-up information on the effectiveness of the Social Enterprises Act. As the report does not address this issue, the Committee reiterates its question.

In reply to the Committee's question about the role of the trade unions in sheltered employment, the report states that the Employment Contracts Act applies to work in sheltered employment facilities pursuant to an employment contract. The report points out that sheltered employment facilities which have been turned into social enterprises have a collective agreement that runs from 1st May 2014 to 31 December 2017.

The report refers to the Public Employment and Business Service Act (No. 916/2012), which entered into force on 1st January 2013 and repealed the Public Employment Service Act (No. 1295/2002). According to the new Act, anyone with a disability who is in receipt of a disability pension is entitled to use the services of the Employment and Economic Development Office. The guidelines issued by the Ministry of Employment and the Economy explain that these services can be offered for the purpose of vocational rehabilitation in cases where a disability or an illness diagnosed by a physician interferes with a person's ability to find employment, retain a job or advance in a job. In this regard, only those services that are offered because of a disability or illness are considered to be vocational rehabilitation. In addition, according to the report, the Act takes disability and illness into consideration for wage subsidies and subsidies for arranging working conditions (for further details, see the report). The Committee asks that the next report provide information about the impact of this measure on the employment of persons with disabilities.

The report also refers to an amendment No. 1366/2014, which provides for the granting of subsidies for arranging working conditions and wage subsidies when a disability or illness substantially and permanently reduce productivity. This amendment entered into force on 1st January 2015 (outside the reference period) so the Committee will examine it in detail in its next report.

In 2013, the Ministry of Social Affairs and Health introduced the Programme to promote the employment of persons with partial work capacity for 2013-2015. Its purpose is to develop practical solutions for helping those with partial work capacity to find and remain in employment. The Committee asks that the next report provide information about the results of this programme.

Conclusion

The Committee concludes that the situation in Finland is in conformity with Article 15§2 of the Charter.

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 Finland.

Anti-discrimination legislation and integrated approach

In its previous conclusion (Conclusions 2012), the Committee asked for examples of case law under the Penal Code and also for examples of case law involving the constitutional provision. In the absence of a reply, the Committee reiterates its questions.

According to the report, the implementation of the Disability Policy Programme is monitored by the National Council on Disability and the National Institute for Health and Welfare. The latter is in charge of practical monitoring measures and has reported that 82% of the 122 planned measures have been implemented. The programme concluded at the end of 2015.

Consultation

The Committee notes that there has been no change in the situation which it previously found to be in conformity.

According to the report, the National Institute for Health and Welfare has published a guide on Disability Services which is updated regularly to provide information on legislative amendments, court decisions on disability services, disability research and events.

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

The Committee notes that there has been no change in the situation which it previously found (Conclusions 2012, 2008 and 2007) to be in conformity.

According to the report, the 320 municipalities that existed in Finland in 2014 are responsible for providing social and health care services to their residents, including services for persons with disabilities.

Measures to overcome obstacles

Technical aids

The report does not contain any information about technical aids but the Committee stated in its previous conclusion that there had been no change in the situation which it had previously found to be in conformity.

Communication

The Committee notes that by the end of 2014, 5 539 persons had benefited from interpretation services under the Act on Interpreter Services for Hearing and Visually Impaired, Hearing Impaired and Speech-Impaired Persons (there were 4 500 in 2010). It points out that under Act No. 1403/2011 on the Research Institute for the Languages of Finland, the said Institute is tasked with carrying out research and preserving the purity of Sign Language and the Romany language.

The Committee asks that the next report provide information on measures that have been taken to promote access to information and communication technologies.

Mobility and transport

As this issue is not dealt with in the report, the Committee asks that the next report provide information on this subject, and asks whether persons with reduced mobility are entitled to

special fares or required to bear the extra costs of any special facilities. It also wishes to know what measures have been taken to improve access to public road transport.

Housing

In its previous conclusion, the Committee noted that in 2010, the Government had adopted a resolution on a programme to provide housing and related services for mentally disabled persons over the period 2010–2015. According to the report, there were approximately 40 000 persons with intellectual disabilities in Finland, of whom 1 790 were in long-term institutional care in 2010, and 1 330 at the end of 2013. The report states that by the end of 2014, 2,637 apartments had been finalised, renovated or acquired under the said programme.

The report also indicates that in 2012, a further resolution was adopted on securing individual housing and services for persons with intellectual disabilities. The purpose of the resolution is to define the next steps for the 2010-2015 programme and to outline measures for the abolition of the institution-based housing system by the year 2020. The Committee asks that the next report provide information on the results achieved through this programme and the number of persons who have benefited from it.

Culture and leisure

The Committee notes that there has been no change in the situation which it previously found to be in conformity. It further notes that a new Act on the Promotion of Sports and Physical Activity (No. 390/2015) based on the principles of equality, social inclusion and non-discrimination, entered into force on 1 May 2015 (outside the reference period).

The report likewise points out that the Ministry of Education and Culture continues to support the Finnish Paralympic Committee and the Finnish Sports Association for Persons with Disabilities (a non-governmental umbrella sports organisation for persons with disabilities in Finland) as well as research on adapted physical activity, equal access to sport facilities and other activities to enhance the integration and inclusion of persons with disabilities.

Conclusion

The Committee concludes that the situation in Finland is in conformity with Article 15§3 of the Charter.

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 Finland.

It notes that all EU and EEA nationals, as well as their family members, have free access to the labour market and are not required to have a residence permit. During the reference period, nationals of the following States Parties to the Social Charter required a work permit: Albania, Andorra, Armenia, Azerbaijan, Bosnia and Herzegovina, Croatia (until 30 June 2013), Georgia, Republic of Moldova, Montenegro, Russian Federation, Serbia, "the former Yugoslav Republic of Macedonia", Turkey and Ukraine.

Work permits

The report indicates that, pursuant to the Aliens Act (301/2004), there are different types of residence permits issued for working in Finland: the residence permit for an employed person, the regular residence permit (other residence permit for gainful employment) and the residence permit for a self-employed person. The right to employment may also be linked to a visa or visa exemption. The permit type applicable to each situation is determined by the nature of the employment in question. For instance, in sectors that require seasonal workers, such as berry farms, people are allowed to work for a maximum of three months with a visa or on a visa-exempt basis if they are citizens of a visa-exempt country.

A regular residence permit without applying the labour policy practice of determining the availability of home market labour, i.e., a local labour market test, is issued to specialists and other special groups listed in the Aliens Act. In particular, in compliance with the legislative changes concerning the implementation of the EU Blue Card Directive, which entered into force on 1 January 2012, third countries nationals can be granted a so-called EU Blue Card if they have been employed for at least one year in an area of employment where high skills are required and if their salary is higher than average. In addition, the terms and conditions of employment must be based on the relevant provisions and collective agreements of the employment.

The Committee takes note of the information provided on the Future of Migration 2020 Strategy (Government Resolution adopted on 13 June 2013). In accordance with the action programme adopted in March 2014, the Employment and Economic Development Offices produces and publishes three times per year data on labour demand and supply as well as on expected needs for foreign labour in strategic sectors and in the different regions of Finland.

Relevant statistics

The Committee notes, from the OECD report 2015 on recent changes in migration movements and policies, that at the end of August 2014 foreigners had increased by 4% and constituted 4% of the population. The largest groups were Estonians, Russians and Swedes. The number of people migrating to Finland in 2013 was 2% higher than in the previous year and the highest since Finland gained independence. Permanent migration from within the EU totalled at 10 200 in 2013, similar to the previous year. A total of 21 300 non-EU/EEA nationals applied for a residence permit in Finland in 2013, a similar number to the previous year. In 2014, the number of applications for residence permits remained stable. Of 18 000 decisions on first residence permits, 37% were for family reasons, 31% for study and 28% for employment.

The authorities indicate in their report that in 2014 the Immigration Service issued a total of 5,829 decisions on first residence permit applications on the grounds of employment, of which 5,062 (87%) were positive and 767 (13%) negative. In 2013, 4,938 employment-based residence permit applications were issued. 83% of the decisions were positive and 987

(17%) were negative. 3,456 of the employment-based decisions required an interim decision (that is, in most cases, an assessment of the labour market needs), of which 2,600 (69%) were positive. In 2012, a total of 4,990 employment-based residence permit applications were issued, accounting for 80% of all employment-based residence permit decisions. 1,192 (20%) decisions were negative. 3,826 of the employment-based decisions required an interim decision, of which 2,831 (74%) were positive. In 2011, a total of 5,278 employment-based residence permit applications were issued, accounting for 85% of all employment-based residence permit decisions. 918 decisions were negative. 3,891 of the employment-based decisions required an interim decision, of which 3,029 (78%) were positive. During the reference period, most of the first residence permit applications on the grounds of employment were granted to Ukrainian and Russian applicants.

As regards residence permits for self-employed persons, the report states that, in 2013, 65 applications were granted and 44 were rejected, corresponding to a refusal rate of 40% but that in the period 1 November 2011–30 June 2014, the number of granted applications was 44 and the number of rejected applications 16, corresponding to a refusal rate of 27%. In response to the Committee's previous request for clarifications, the authorities indicate in the report that there are no specific statistics available on negative decisions according to nationality, but only according to the grounds for the application. In particular, the most common reasons for the refusal to grant residence permits to self-employed workers were that the economic activity was not considered to be profitable and/or that it could not offer subsistence to the applicant. In 2014, a total of 7,483 applications for worker's residence permits were submitted (of which 4,610 were first applications and 3,173 applications for extension). Out of these, 1,173 applications (15,7%) were rejected for reasons related to the assessment of the labour market needs or for non compliance with the applicable labour legislation or collective agreement. Some 5 to 10% of the decisions were rejected for reasons of public security or because there were reasonable grounds to suspect that the alien intended to circumvent the Aliens Act immigration provisions.

The Committee notes that the refusal rate of residence permits for self-employed persons remains high, it asks the next report to clarify what criteria apply in deciding that the economic activity would not be profitable or could not offer subsistence to the applicant. It also asks for clarifications as regards the refusals based on the intention to circumvent the Aliens Act.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in Finland 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 Finland, as well as in the addendum to the report submitted on 29 June 2016.

It refers to its conclusions under Article 18§1 and its previous conclusions (Conclusions 2007, 2008 and 2012) for an overview of the residence and labour permits for non-EEA nationals.

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

The report confirms that, even before the transposition into national law of the EU Single Permit Directive in 2014, in most cases the right to work was already included in most of the residence permit categories. Accordingly, they can be both granted by the Finnish Immigration Service, pursuant to the Aliens Act (301/2004) through a same, single application procedure. The Committee also notes, from the OECD report 2015 on recent changes in migration movements and policies, that the procedure allowing foreign nationals to receive a personal identity number has been simplified: as a result, as from the end of 2014, they do no longer need to apply for their personal identity number but can receive it together with their first residence permit.

The Committee previously noted (Conclusions 2012) that an alien can submit the application for a first residence permit to a Finnish diplomatic mission in the home country before entering Finland. If, however, he/she finds a job while visiting Finland, he/she may apply for a residence permit by submitting an application to the local police or Employment and Economic Development Office of his place of residence and the Finnish Immigration Service will process and consider the application.

The report indicates that, for employment-based residence permits, the authorities must take a decision within four months from the date of the application. The Committee asks whether this also concerns the self-employed workers' permits.

The Committee takes note of the information provided on the Future of Migration 2020 Strategy (Government Resolution adopted on 13 June 2013). In accordance with the action programme adopted in March 2014, the Employment and Economic Development Offices now produce and publish three times per year data on labour demand and supply as well as on expected needs for foreign labour in strategic sectors and in the different regions of Finland. The report indicates that the Government aims at increasing flexibility in administration and the effectiveness of procedures, making migration administration and its permit procedures flexible and clear, ensuring that all permit applications be processed without delay and within a reasonable period of time and streamlining the permit procedures laid down in EU legislation regarding Schengen visas. According to the report, further development of the residence permit process will be examined, exploring for example alternative ways of submitting residence permit applications.

Chancery dues and other charges

The report indicates that the fees for a first residence permit for an employed person were 500€ in 2015 (450€ if the application was submitted electronically) – out of the reference period, 540€ in 2014 (450€ if applied electronically), 500€ in 2013, 440€ in 2012 and 400€ in 2011. The fee for renewal of a residence permit of an employed person was 159€ in 2015, 158€ in 2014, 156€ in 2013, 145€ in 2012 and 120€ in 2011.

The Committee requested further clarifications as to how the costs related to the granting of first residence permits for an employed person are assessed and, in particular, on the reasons for such an important increase of the fees during the reference period. In response

to this question, the addendum to the report confirms that the fees are decided yearly, based on the Act on Criteria for Charges Payable to the State (150/1992). According to this Act, the fees for residence permits cannot be higher than the actual costs incurred by the state for granting them. Except where reduced fees or no fees apply (for example, in the case of minors and victims of trafficking of human beings), the amounts of fees are estimated on a yearly basis and are based on the actual costs of the year before. According to the addendum to the report, the reason for the increase of the fee from 2011 to 2016 is thus the increase in actual costs, in particular those related to personnel granting residence permits. There are indeed usually more than two officials taking part in the process when a residence permit for an employed person is granted and therefore the fee for these permits is higher than for other permits. The authorities indicate in their response that digitalisation and increasing use of electronic processing of requests are expected to cut down some of the costs in future.

The Committee points out that under Article 18§2 of the Charter the Contracting Parties undertake to reduce or abolish chancery dues and other charges payable by foreign workers or their employers. It notes that in Finland, during the reference period and in particular in 2014, there was a substantial increase in charges, which is not in conformity with the spirit of Article 18§2 of the Charter. The Committee has taken note of the explanations provided by the government to justify such increase, namely the increased costs incurred by the authorities to process applications, pursuant to Act No. 150/1992. In view thereof, the Committee concludes that the situation in Finland is in conformity with Article 18§2 of the Charter in this respect.

Conclusion

The Committee concludes that the situation in Finland is in conformity with Article 18§2 of the Charter.

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 Finland.

Access to the national labour market

The Committee refers to its conclusion under Article 18§1 and its previous conclusions (Conclusions 2007, 2008 and 2012) for an overview of the permits authorising persons to engage in gainful occupations for workers from non-EEA countries. It notes that the basic requirements to obtain an employee's or a self-employed worker's residence permit are covered by Sections 72 to 81 (as amended by Act 1218/2013) of the Aliens Act (301/2004).

In particular, pursuant to the Aliens Act, residence permits for employed persons are issued taking into account whether no suitable candidate within a reasonable time can be found in the national labour market (including EEA nationals), whether the candidate fulfils the qualifications and health criteria that might be required for the job and whether the alien's means of support are secured by the employment or in another way (Section 72). The employer must ensure that the terms of work comply with the relevant laws and collective agreements (Section 73). A residence permit for an employed person entitles the holder to work in one or several professional fields. For special reasons, a residence permit for an employed person may be restricted to work for a certain employer (Section 77).

Self-employed persons are issued with residence permits if the intended business operations meet the requirements for profitable business and the alien's means of support are secured (Section 72 of the Aliens Act).

Non-EEA nationals can also obtain unrestricted access to the national labour market on the basis of other residence permits than those delivered on ground of employment (as employed or self-employed persons), namely if they have been issued with permanent residence permits, or a continuous residence permit on grounds other than employment or self-employment. This concerns notably aliens who have been issued with a residence permit on the basis of family ties or on the basis of temporary protection or other humanitarian ground; aliens who graduated in Finland; victims of trafficking of human beings; aliens working in managerial positions or on tasks requiring special expertise; sport professionals; aliens working in a religious community or non-profit association; professionals in science, culture or the arts (with the exception of restaurant musicians); staff of international organizations or involved in official cooperation between States; aliens whose employer or contractor is based abroad if they work professionally in the mass media or if they do market research, prepare for a company's establishment in Finland, negotiate and acquire customer orders or supervise the fulfilment of orders or have other similar duties; aliens issued with a residence permit by the Ministry for Foreign Affairs for the construction, repair or maintenance of a mission.

Restricted access to the national labour market (other than that covered by the employment and self-employment permits) can furthermore be obtained in other cases, such as those concerning traineeships of students (under certain conditions); visiting teachers, lecturers, trainers, consultants or researchers (up to one year); aliens performing work under a supply contract related to an individual machine, device, product line or expert system imported into or exported from the country (up to six months); employment or traineeship that is part of an intergovernmental agreement or an exchange programme organized by non-governmental organizations (up to 18 months); intra-company transfer (up to one year); traineeship carried out by an 18—30-year-old alien who studies Finnish or Swedish at a foreign university, or if the field of the traineeship corresponds to his or her studies or qualification (up to 18 months); or aliens who, pursuant to Section 51, cannot be removed from the country for compassionate grounds.

In its previous conclusions (Conclusion 2012) the Committee asked for information about the measures eventually adopted (either unilaterally, or by way of reciprocity with other States Parties to the Charter) to liberalise regulations governing the recognition of foreign certificates, professional qualifications and diplomas, with a view to facilitating the access to national labour market. It notes that, according to the report, new legislation concerning the recognition of professional qualifications was being prepared in accordance with the EU directive on Professional Qualifications (2013/55/EU). It asks the next report to provide updated information in this respect, as well as on whether non-EU nationals of states parties to the Charter are also covered by these or similar measures.

The Committee refers to its assessment under Article 18§1 for an overview of the statistical data provided in the report concerning the granting and the refusal of work permits to non-EEA nationals. It also refers to its request for clarifications concerning the high rate of refusals of self-employed permits and the criteria applied in that respect and asks the next report to provide this information.

The Committee recalls that the restrictions initially imposed with regard to access to employment (which can be accepted only if they are not excessive) must be gradually lifted after a person has been legally resident for a given length of time on the territory of another party. It asks in this connection the next report to provide information on the criteria applying to the renewal of work permits and statistical data concerning the number of requests, the acceptance/refusal rates and the reasons for refusal of permit renewal in respect of non-EEA nationals of states parties to the Charter.

Consequences of the loss of employment

The Committee previously noted that a residence permit is not automatically revoked in case of loss of employment (Conclusions 2012). The report confirms in this respect that, in the administrative practice, the possibility to seek for another job after losing the employment is widely used. The Finnish Immigration Service website states that, in case of loss of employment occurring before the expiry of the residence permit, the employer or employee must inform the Finnish Immigration Service in writing and, if the residence permit is still valid, the worker can change job within the limits set by the residence permit. However, according to the report, the extension of the residence permit is not possible on the ground of employment if there is no employment relationship. In this respect, the Committee notes that pursuant to Section 58§5 of the Aliens Act "a fixed-term residence permit may be cancelled if the grounds on which the permit was issued no longer exist".

The Committee asks the next report to clarify under what circumstances, if any, the premature loss of employment might entail the expiry of the worker's residence title and whether an extension of validity is possible in such cases.

Conclusion

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

The report indicates that Section 9 of the Finnish Constitution (731/1999) provides that everyone has the right to leave the country. Limitations on this right may be provided by law, if they are necessary for the purpose of safeguarding legal proceedings or for the enforcement of penalties or for the fulfilment of the duty of national defence. In particular, no passport shall be issued to a person in respect of whom an injunction to leave the country (pursuant to Chapter 4, Sections 8 or 9 of the Bankruptcy Act 120/2004) or a travel ban (pursuant to Chapter 5, Section 3 of the Coercive Measures Act 806/2011) has been imposed. Furthermore, under Section 15 of the Passport Act (671/2006), "A passport may be denied to a person:

- when there is probable cause to suspect the person for having committed an offence carrying a minimum sentence of one year's imprisonment in respect of which the pre-trial investigations or considerations of charges are still pending or for which charges are brought or a warrant for arrest is issued;
- who has been given an unconditional prison sentence not yet served;
- who is 28 years of age and liable to complete military service up until the end of the year when he turns 30, unless he is able to show that the liability to serve does not constitute an impediment to the issuance of the passport."

In applying the abovementioned restrictions, due account shall be taken of the importance of travel in terms of the person's family relations, state of health, income, occupation and other such circumstances. An assessment shall also be made whether there is reason to believe that the person concerned intends to leave the country in order to avoid pre-trial investigation, punishment or its enforcement (Section 16 of the Passport Act).

The Committee takes furthermore note of the grounds for cancellation of a passport listed in Section 21 of Passport Act and detailed in the report and considers that the situation remains in conformity with Article 18§4 of the Charter.

Conclusion

The Committee concludes that the situation in Finland is in conformity with Article 18§4 of the Charter.

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 Finland.

Equal rights

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

The report indicates that the Act on Equality between Women and Men (609/1986, the so-called "Equality Act") was amended during the reference period (by Act 1329/2014 in connection with the enactment of the new Non-Discrimination Act (1325/2014). The amendments entered into force on 1 January 2015 (outside the reference period).

The report indicates that the Equality Act now was amended so that to include prohibition of discrimination based on gender identity and gender expression, as well as provisions on prevention of such discrimination. The amendment ensures that the prohibition of discrimination against members of sexual minorities, for example against persons with transgender identity, is implemented as the Constitution requires. By the new Equality Act, discrimination is prohibited regardless of whether it is based on a reason concerning the victim of discrimination or another individual (so called discrimination by association) and regardless of whether it is based on fact or assumption.

The report further indicates that the provisions on the supervision of the Equality Act were likewise revised. The Act on the Ombudsman for Equality and the Equality Tribunal was repealed. Instead, separate Acts were laid down on the Ombudsman for Equality (1328/2014) and the National Non-Discrimination and Equality Tribunal (1327/2014). According to the new Act, the Ombudsman for Equality shall submit to the Government annual reports on his or her operations and once every four years report to the Parliament on the attainment of gender equality. The former equality boards, Discrimination Board (concerned with gender equality) and Equality Tribunal (concerned with ethnic discrimination), were united to form the new Non-Discrimination and Equality Tribunal with a broader mandate.

The new Board of Equality has the competence to handle cases under both the Non-Discrimination Act and the Equality Act. The Committee notes from the reports of the European Equality Law Network that however, a victim of gender discrimination (unlike a victim of discrimination based on other prohibited grounds) does not have the right to bring a case to the new Board, as the Act on Equality limits this right to the Equality Ombudsman and the main Social Partners. The Network further expressed concerns that the reform of the law has facilitated the unification of the equality boards, but not the Equality Ombudsmen. However, there is a significant disparity in both access to and the mandate of the new Equality Board, which puts victims of gender discrimination at a disadvantage (European Equality Law Network, Report on "Reform of gender equality and non-discrimination law").

The Committee notes that the new rules regarding the Equality Act and the supervision of the Equality Act entered into force on 1 January 2015, which is outside the reference period. It asks that the next report provide information on how the new rules are implemented into practice, including examples and the number of cases filed before the Ombudsman for Equality and before the courts with regard to gender discrimination in employment. It also asks information on the outcome of such cases and the compensation paid to the employees.

The Committee noted previously that under the Equality Act, surveys are carried out to determine the underlying causes of any pay differentials between men and women. It asked who was responsible for undertaking such surveys (Conclusions 2012). The report indicates that the employer is responsible for undertaking pay surveys. The amended Equality Act obliges the employer to draw up a gender equality plan that includes a pay survey. The

content of a pay survey included in every plan is defined in more detail by the Equality Act. The report further indicates that the gender equality plan must be prepared in cooperation with the shop steward, elected representative, occupational safety and health delegate or other personnel representative. Personnel representatives must get sufficient opportunities to participate in the drafting of the plan and influence it. The Act also includes an obligation to communicate the equality plan and the included pay survey to personnel and to inform them of any updates. A gender equality plan at work will be drafted at least every other year under the new provisions. The Committee asks updated information in the next report.

As regards pay comparisons, the report indicates that according to the Equality Act upon suspecting pay discrimination, the wages will be compared between employees working for the same employer. However, the comparison has not been limited to the same work unit or operational unit. Then the effects of different pay levels in different regions need to be taken into account. EU legislation and its interpretation are taken into account when interpreting the Equality Act. According to the so called "single source concept" of the Court of Justice of the European Union, the pay has to have one single source, on which the pay gap depends. The idea behind this is that only the party who is in a position to guarantee equal treatment can be responsible for equal pay. For instance, pursuant to national courts' case-law, district court judges working for different district courts are considered to work for the same employer. The report adds that the municipalities are considered as one employer for the purposes of the Equality Act.

Equal opportunities

According to the report, the percentage of women in managerial positions has slightly decreased: from 32% to 30% between the years 2009 and 2012. The percentage of female managers has started to decline in all other sectors of working life except in municipalities. In central government, the percentage of female managers is 42% (universities included). The percentage of women in lower-level management positions has gradually increased.

The report also indicates that among Finnish listed companies, the percentage of women in all company boards has increased from the average 17% in 2010 to 23% in 2014. On the boards of large listed companies, the share of women was about 30% in 2014. On the boards of state-owned companies, the share of women has been about 40% since 2009. The report states that during the last few years, gender equality development has however slowed down in large and medium-sized listed companies. At the moment, there are only two women working as CEOs in listed companies.

The Committee notes from Eurostat that the gender pay gap decreased from 19.6% in 2011 to 18% in 2014.

The Committee takes note of the measures undertaken to reduce the gender pay gap and promote equal opportunities for men and women during the reference period.

As noted in its previous conclusions, the Government and the social partners have since 2006 been carrying out an *Equal Pay Programme* in order to bridge the gender pay gap. The objective has been to reduce the average gender pay gap to no more than 15% throughout the labour market. The report indicates that the pay gap decreased from about 20% to 17%, which means that some development took place but the over-all goal was not reached.

An overall evaluation of the Equal Pay Programme was conducted by an external evaluator in spring 2014. According to the evaluation, the most effective measures for reducing the gender pay gap relate to wages and wage formation (remuneration and contract policies, pay systems and pay surveys at workplaces), to dismantling the traditional distribution of duties between men and women, as well as to reconciling work and family. The narrowing of the pay gap has slowed down due to the weakened economic situation and smaller increases in salary compared to previous years.

The report further indicates that Equality Report policies have been implemented mainly through measures in the *Government Action Plan for Gender Equality* (2012-2015). One of the measures was to decrease segregation through development activities, focusing particularly on e.g. employment services.

The report provides information on the programmes and research projects on equal pay developed during the reference period.

The Committee asks the next report to provide updated information on the positive measures and actions undertaken to reduce the gender pay gap and to address the occupational gender segregation in employment, as well as to increase the share/presence of women in senior/management positions.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Finland is in conformity with Article 20 of the Charter.

Article 24 - Right to protection in case of dismissal

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

Scope

The Committee notes that there have been no changes to the situation which it has previously found to be in conformity with the Charter.

Obligation to provide valid reasons for termination of employment

The Committee notes from the report that since the previous conclusions only small changes have been made in the Employment Contracts Act (55/2011) concerning the protection in case of dismissal. A new provision has been added, regarding the absence for taking care of a family member or someone close to the employee (Section 7a of Chapter 4) which is based on a contract between the employee and the employer and has for consequence that an employee who is pregnant or on family leave during the fixed-term leave would be excluded from special protection of employment relationship.

The Committee recalls that it will examine this issue when the report relating to special protection of employed women and to family responsibilities and employment, respectively Article 8 and Article 27 of the Charter, will be submitted.

The Committee also notes the adoption of a new Seafarers Employment Contracts Act (7536/2011), which considers termination of an employment contract under general provisions as well as in other Chapters of the Act, in line with the provisions of the Employment Contracts Act. For the procedures of terminating an employment contract, some new provisions are included as the employer's duty to explain the ground for termination, the obligation to notify the Employment and Economic Development Office and to provide information on employment plan and the change security supplement. For retirement age, the relationship is terminated – without notice and notice period – at the end of the month when the employee turns 68, unless the employer and the employee agree to continue the employment relationship.

Furthermore, the Committee notes from the report that in Finland the retirement age is flexible and between the ages of 63-68 the employee enjoys regular security of employment. The termination of employment on the ground of age is not allowed and may only occur for proper and weighty reasons related to the employee's imprudent conduct etc. Special provisions relate to the employment protection of elderly employees, such as longer periods of notice.

Prohibited dismissals

The Committee notes that there have been no changes to the situation, which it has previously held to be in conformity with the Charter.

Remedies and sanctions

In its previous conclusion (Conclusion 2012) the Committee noted that the Finnish legislation did not provide for the possibility of reinstatement in case of unlawful dismissal, although Article 24 required that such a possibility must be guaranteed by legislation. Therefore, the Committee considered that the situation was contrary to the Charter. The Committee notes from the Governmental Committee report (GC(2013)25) that the new Employment Contracts Act (in force from 2001) does not include a provision on the alternative compensation the employer had to pay in case of reinstatement of the employment contract. In case of unlawful termination of employment contract, the employee's financial status is secured by a compensation set in the law. In addition, the obligation of re-employment supplements the job security of those employees whose employment contract has been terminated on

financial or production-related grounds. According to the representative of Finland, the Government considers that the employment contract is a contractual relationship between employer and employee. Thus, a legal obligation of reinstatement in case of unlawful dismissal would suit poorly into the Finnish legal system as it would create an impossible and impractical situation for both the employee and the employer. For the reinstatement of a service relationship, termination is regulated in the Civil Service Act, with identical grounds that those in the Employment Contracts Act. Civil service being a non contractual relationship, if termination is found groundless, the service relationship continues uninterrupted and the authority that has terminated the relationship may before the end of the notice and upon the civil servant's acceptance, cancel the termination. The Committee finds that this obligation cannot be regarded as a substitute for reinstatement as it has a limited scope of application and does not have as its purpose the reinstatement of workers unlawfully dismissed. Therefore, the Committee reiterates its previous finding of non-conformity.

In reply to the Committee's request of information on cases where the employee successfully sought compensation under the Tort Liability Act in case of unlawful dismissal, the report refers to the judgement of 24 October 2010 of the Helsinki Court of Appeal. (n°1370). In this case of discriminatory unlawful dismissal, the Helsinki Court of Appeal maintained the judgement of the Helsinki District Court, which found the employer guilty of discrimination at work and sentenced, *inter alia*, to compensate the employee on the basis of the Tort Liability Act the employee's loss of earnings (€11,406,27) and mental suffering (€1,000). The District Court stated that it is a well established practice in cases on crimes relating to employment to condemn compensation on the basis of the Tort Liability Act and the Non-Discrimination Act in a separate civil trial.

The Committee notes that the Tort Liability Act does not apply in all situations of unlawful dismissal, and may only be applicable in restricted situations. Therefore the Committee finds that the Tort Liability Act does not provide an adequate alternative legal avenue for the victims of unlawful dismissal not linked to discrimination. The Committee considers that the upper limit to compensation provided for by the Employment Contracts Act may result in situations where compensation awarded is not commensurate with the loss suffered. Therefore the Committee considers that the situation is not in conformity with the Charter.

Conclusion

The Committee concludes that the situation in Finland is not in conformity with Article 24 of the Charter on the ground that:

- with the exception of civil servants, the legislation does not provide the possibility of reinstatement in case of unlawful dismissal;
 - the upper limit on compensation for unlawful dismissal may not be adequate to cover the loss suffered, in certain circumstances.

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 Finland.

The Committee notes that the situation which it has previously considered to be in conformity with the Charter has not changed.

In its previous conclusion (Conclusions 2012) the Committee asked what was the minimum length of pay security.

According to the report, there is no fixed period of time that limits employee's right to pay security or minimum length of pay security. However, an application for payment of the claim in the form of pay security shall be submitted within three months of its falling due. If the employee continues to work in the employment relationship for an unreasonably long time although the employer has neglected payments of salary and employee must have knowledge about employer's insolvency, pay security may be restricted according to the rules concerning prevention of abuses.

The report indicates that different ceilings exist for different types of claims. In general, the maximum amount of the pay security for one employee for work done for the same employer is 15,200 euros. However, claims concerning pay on the basis of working time accounts have a specific ceiling, which is equivalent to the employee's six month's salary. There is no general ceiling for the pay security for seamen, with the exception of claims concerning compensation for damages.

The report indicates that the average time between submission of claims and payment of pay security to employees was 71 days in 2014. In case of employer's bankruptcy pay security process usually takes two weeks. In other situations (where no insolvency procedure is going on) the length of the process varies. The usual length is a few months but might be as long as eight to ten months in some parts of the country. The Ministry of Employment and the Economy has taken action to shorten the length of the process.

The report finally indicates, that the Ministry of Employment and the Economy frequently monitors the number of those applications where pay security is limited by a ceiling. In 2014, the amount of this type of decisions was 90. The total amount of negative decisions in 2014 was 6,391.

Conclusion

The Committee concludes that the situation in Finland is in conformity with Article 25 of the Charter.

Article 28 - Right of workers' representatives to protection in the undertaking and facilities to be accorded to them

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

The Committee takes note of the information submitted by Finland in response to the conclusion that it had not been established that workers' representatives are granted adequate protection (Conclusions 2014, Finland).

Under Article 28 protection should cover the prohibition of dismissal on the ground of being a workers' representative and the protection against detriment in employment other than dismissal (Conclusions 2003, France).

Remedies must be available to worker representatives to allow them to contest their dismissal (Conclusions 2010, Norway).

Where a dismissal based on trade union membership has occurred, there must be adequate compensation proportionate to the damage suffered by the victim. The compensation must at least correspond to the wage that would have been payable between the date of the dismissal and the date of the court decision or reinstatement (Conclusions 2007, Bulgaria).

According to the report the rights and the protection granted to workers' representatives and shop stewards are covered by the Employment Contracts Act (55/2001) as well as collective agreements concerning shop stewards.

If the employer has terminated an employment contract contrary to the grounds laid down in the Employment Contracts Act, he she must be ordered to pay compensation for unjustified termination of the employment contract. The maximum amount due to be paid to shop stewards elected on the basis of a collective agreement or to elected representatives referred to in Chapter 13, Section 3, is equivalent to the pay due for 30 months. The Employment Contracts Act makes no provision for reinstatement.

Safety delegates have the same protection as other workers' representatives.

In disputes concerning termination of employment it is the defendant employer's obligation to prove legality of termination.

The Committee recalls that it has repeatedly held that the possibility of ordering reinstatement recognises the importance of placing the employee back into an employment situation no less favourable than he/she previously enjoyed. Whether reinstatement is appropriate in a particular case is a matter for the domestic courts to decide.

As there is no possibility for reinstatement representatives who have been unlawfully dismissed in Finland the Committee concludes that the situation is not in conofmrity with Article 28 of the Charter.

Further the Committee recalls that as regards compensation it has held that that under the Charter, employees dismissed without valid reason must be granted adequate compensation or other appropriate relief. Compensation systems are considered appropriate, if they provide for the following:

- reimbursement of financial losses incurred between the date of dismissal and the decision of the appeal body;
- possibility of reinstatement;
- compensation at a level high enough to dissuade the employer and make good the damage suffered by the employee .

Any upper limit on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive is in principle, contrary to the Charter. However 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) (Conclusions 2012, Andorra re Articles 1§2, and 24, Conclusions 2011 Statement of Interpretations Articles 8§2 and 27§3.).

In Finland there is a general ceiling on compensation equivalent to 24 months pay. The Committee considers that compensation equivalent to 24 months pay may result in situations where compensation awarded is not commensurate with the loss suffered. In addition it cannot conclude on the basis of the information available that adequate alternative other legal avenues are available to provide a remedy in such cases. However, in respect of unlawful dismissal with a discriminatory element it notes that compensation for unlawful dismissal may be claimed in addition under the Non-Discrimination Act and Tort Liability Act. It asks for further information on the applicability of these pieces of legislation where workers representatives are unlawfully dismissed.

The Committee repeats its request for information on the protection of employee representatives against prejudicial acts other than dismissal.

Conclusion

The Committee concludes that the situation in Finland is not in conformity with Article 28 of the Charter on the grounds that legislation makes no provision for the reinstatement of worker representatives unlawfully dismissed.