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Charter

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

This text may be subject to editorial revision.

Introduction

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

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

The European Social Charter (revised) was ratified by Finland on 21 June 2002. The time limit for submitting the 7th report on the application of this treaty to the Council of Europe was 31 October 2011 and Finland submitted it on 31 October 2011. On 14 June 2012, a letter was addressed to the Government requesting supplementary information regarding Articles 1§2 and 1§3. The Government submitted its reply on 14 August 2012. Comments on the report from the Central Organisation of Finnish Trade Unions (SAK), the Finnish Confederation of Professionals (STTK) and Akava, the Confederation of Unions for Professional and Managerial Staff in Finland were registered on 7 March 2012.

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

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

Finland has accepted all articles from this group.

The reference period was 1 January 2007 to 31 December 2010.

The present chapter on Finland concerns 20 situations and contains:

- 16 conclusions of conformity: Articles 1§1,1§2,1§3, 9,10§1, 10§2,10§4,15§1,15§2, 15,§3,18§1,18§2,18§3,18§4, 20 and 25.
- 2 conclusions of non-conformity: Articles10§5 and 25.

In respect of the other 2 situations concerning Articles 1§4, 10§3 the Committee needs further information in order to assess the situation. The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Finland under the Charter. The Government consequently has an obligation to provide this information in the next report on the articles in question."

The next Finnish report deals with the accepted provisions of the following articles belonging to the second thematic group "Health, social security and social protection":

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

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

The deadline for the report was 31 October 2012.

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

Article 1 - Right to work

Paragraph 1 - Policy of full employment

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

Employment situation

The Committee notes from Eurostat that the GDP growth rate in Finland fell from 5.3 % in 2007 to 3.6 % in 2010, still above the EU-27 average (2.0 % in 2010). Affected like other countries by the global economic crisis, in 2009 the GDP contracted by 8.2 %. The economic recovery has nevertheless been strong, with GDP expanding by 3.6 % in 2010, sustained by both domestic demand and a rebound in exports.

The employment rate decreased from 70.3 % in 2007 to 68.1 % in 2010 (but was still higher than the EU-27 average of 64.1 %).

The unemployment rate showed an increase of about 2 percentage points, rising from 6.4 % of the labour force in 2008 to 8.4 % in 2010.

The youth unemployment rate was 21.4 % in 2010, up from 16.5 % in 2007. The long-term unemployment rate (as a percentage of all unemployed persons) also increased from 22.8 % in 2007 to 24 % in 2010 (but below the EU-27 average of 39.9 %).

The Committee notes that the unemployment rate increased during the reference period. However, with the resumption of growth in 2010, Finland has managed to maintain the increase of the overall unemployment rate at a moderate level.

Employment policy

The main objectives of employment policy which appear in Finland's National Reform Programme 2008-2010 are to raise the employment rate and to improve the functioning of the labour market. Key measures aimed at achieving these objectives consist of extending working careers, improving the incentive effect of tax and benefit systems and wage formation, and better matching of labour demand and supply.

The National Reform Programme 2008-2010 states that the number of hard to employ people has fallen faster than other unemployment, partly as a result of demographic change. A reform of the funding and terms of labour market support, the activity of employment service centres and the improved effectiveness of labour policy activation measures have contributed to the fall in structural unemployment. In addition, employment subsidies for the disabled and physically impaired have been doubled. The activation rate of the long-term unemployed was 28.2 % in 2006 and 2007, i.e. above the EU's employment policy target (25 %). As to the overall activation rate for unemployed jobseekers, the report indicates it stood at 28.7 % in 2007, and fell to 24.5 % in 2010. As regards young persons, the National Reform Programme states that the aim is to give young people skills and bring them into working life more quickly than at present.

According to Eurostat, public expenditure on active labour market policies in Finland amounted to 0.88 % of GDP in 2009, which is just above the average of the EU-27 countries (where the average public spending on active labour market measures as a % of GDP that year was 0.78 %). The Committee notes that the level of spending on active measures has slightly increased since the last report (0.7 % in 2005).

The Committee notes from another source¹ that although the Finnish authorities recognise the increase in long-term unemployment as a pressing issue, so far no comprehensive strategy has been designed to combat it ; the same source recommends that Finland should target active labour market measures better on the long-term unemployed and young people. The Committee therefore asks to be kept informed of any policies or measures

implemented to support these vulnerable groups to re-integrate the labour market. More generally, it recalls that labour market measures should be targeted, effective and regularly monitored, and 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.

¹*European Commission, Recommendation for a Council Recommendation on the National Reform Programme 2011 of Finland*

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

A description of the legal frameworks prohibiting discrimination in Finland appears in Conclusions 2006. However the Committee asked for further information as to how indirect discrimination had been interpreted by the courts. The report states that to date there have been no cases concerning indirect discrimination in employment before the Supreme Court.

The report states that a reform of the equality and non-discrimination legislation is foreseen. The Committee asks to be informed of the changes to the situation.

The Committee previously found that the situation was not in conformity with the Charter on the grounds that the law establishes a ceiling on the compensation payable in cases of unlawful discriminatory dismissal; The Committee recalls that under the Non Discrimination Act 2004 victims of discrimination are entitled to compensation for suffering, subject in general to a ceiling of 15 000€ (increased recently to 16, 430€. 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 statute also provides that 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. Further the Committee notes that in cases of unlawful discriminatory dismissal, the employment Contracts Act provides for compensation limited to a maximum of 24 months' pay.

The statutes outlined above are not mutually exclusive and an employee can claim compensation under all of them based on a single event. The employee can also start a criminal action so employers may be faced with simultaneous criminal and civil proceedings as a result of the same event.

The Committee notes that however there are no limits to the amount of compensation that may be awarded in discrimination cases on grounds of gender under the Non-Discrimination Act.

The Committee wishes to clarify its position on the issue of ceilings to compensation in discrimination cases¹

: the Committee considers that compensation for all acts of discrimination including discriminatory dismissal, must be both proportionate to the loss suffered by the victim and sufficiently dissuasive for employers. Any ceiling on compensation that may preclude damages from making good the loss suffered and from being sufficiently dissuasive is proscribed.

In the case of Finland compensation is subject to a ceiling both under the Employment Contracts Act, and the Non-Discrimination Act. The Committee therefore in order to assess the situation, needs further information on the operation of the Tort Liability Act; namely how this may be relied upon in discrimination cases. It also asks for details of awards made by the courts in discrimination cases.

As regards discrimination on grounds of nationality the report states that only a Finnish national or a national of an EU/EAA member state may be a master of a Finnish merchant ship. According to the report this is because a ship master is vested in certain powers and authority equivalent to those exercised by the police and courts.

2. Prohibition of forced labour

The report provides no new information.

Prison work

According to the Imprisonment Act (767/2005), a prisoner is obliged to participate in work, training or other activity (known as the 'duty to participate'). The activity is carried out in accordance with an individual plan covering the entire term of imprisonment. The work carried out by prisoners should correspond to the work commonly performed in society. The work performed during imprisonment may be professional or rehabilitative work. The starting point is that the work activity must be arranged and supervised by a public authority, namely the Criminal Sanctions Agency. In open prisons, the work performed may also be commissioned by a public authority other than the Criminal Sanctions Agency. Certain types of work, such as packing and assembly, may also be undertaken at the prison, where a private company has sub-contracted for such work. This work must also be carried out under the supervision of the prison authorities.

A prisoner may be allowed to work outside the prison under certain conditions as specifically provided by law and may be employed by a private company. A prisoner may also be given permission to carry out work on his or her own account, provided that such work is acceptable and suitable for being carried out in prison. Working in such cases is always based on the prisoner's consent.

Much of prisoner's work is related to domestic care, real estate maintenance or construction work at prisons and or production work. The products are sold to state and municipal institutions, to the business sector, or directly to private consumers by prison shops. Some products, such as cell furniture and prisoner clothing, are made for prison use.

The maximum regular working hours of prisoners are 38 hours 15 minutes per week in open prisons and 35 hours per week in closed prisons. For rehabilitative work, the prisoners are paid an activity allowance of 0.70–1.20€ per hour. The wage paid for skilled work carried out in an open prison is 3.70–7.30€ per hour.

The Committee asks whether production work performed in closed prisons is considered as rehabilitative work and therefore paid by the activity allowance. It also asks whether working prisoners are affiliated to the social security system.

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

Coercion in connection with domestic work

The Act on the Employment of Household Workers 951/1977 sets out the terms and conditions of employment where work is performed in an employer's home. According to the report compliance with the Act is monitored through inspections. The Committee asks whether this means that where domestic workers are employed private dwellings may be inspected. It also wishes to know whether there is criminal legislation in force which affords domestic workers exploited by their employers effective protection, whether there are any regulations that apply to domestic workers with a view to protecting them against abuse for example requiring that migrant domestic workers who are recruited in one country for domestic work in another receive a written job offer, or contract of employment that is enforceable in the country in which the work is to be performed, addressing the terms and conditions of employment. It also asks whether foreign domestic workers have the right to change employer in cases of abuse, or whether if they leave their employer they lose their right to reside in Finland. The Committee refers to its interpretative statement and question in the General Introduction on this issue.

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

Service required to replace military service

In its previous conclusion (Conclusions 2008), the Committee found that the situation was not compatible with the Charter on the grounds that the length of alternative service (395 days) was more than double the length of compulsory service performed by the majority of conscripts.

Under the Military Service Act the length of military service is 180, 270 or 362 days. The regular duration of military service is 12 months (362 days) which is undergone by 45% of conscripts, the average duration is nine months (270 days).

The Non-Military Service Act 1466/2007 which entered into force in 2008 shortened alternative service from 395 days to 362 days. The Committee finds that the situation is now in conformity with the Charter in this respect.

Minimum periods of service in the armed forces

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

Privacy at work

The Act on the Protection of Privacy in Working Life (759/2004) entered into force on 1 October 2004. According to the Act, an employer is only allowed to process personal data directly necessary for the employee's employment relationship. No exceptions can be made to the necessity requirement, even with the employee's consent. The Committee refers to its interpretative statement and question in the General Introduction on this issue.

Requirement to accept the offer of a job or training

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

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.

¹The Committee refers in this respect to the decision of the Court of Justice of the European Union of 2 August 1993 in the case of *Marshall v. Southampton and South West Hampshire Area Health Authority (No. 2)*.

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 provides no information on the organizational changes that have taken place in the public employment services during the reference period. The Committee however notes from another source¹ that in 2009 the Employment Offices were renamed as Employment and Economic Development Offices (which have many responsibilities, but whose main focus remains on employment services). The same source mentions that a body for managing the public employment services at the national level does not exist and responsibility in the Ministry of Employment and the Economy seems to be spread across different units. The Committee asks whether the new institutional framework has had a positive impact on the quality of the labour market services provided by the employment services.

The report indicates that in 2010 there were 74 Employment and Economic Development Offices operating in 186 locations. The total number of staff in these offices was 4,003 persons, out of which 2,727 were customer service personnel. The Committee also notes from the abovementioned source that the number of public employment service staff relative to the number of wage earners in the economy, or relative to the number unemployed, is reasonably high in Finland compared with other OECD countries, and that a comparatively high proportion of staff are concerned with placement activities.

The above source also states that with a view to supporting the establishment and implementation of effective action plans and more frequent interview contacts with jobseekers, the role of skilled and experienced case managers should be developed further (the case management function should involve job-matching and placement as well as traditional vocational guidance). The Committee asks if there are plans to develop the qualifications of staff in the employment offices in the said direction.

The report indicates that in 2011 the public employment agencies had 563,962 open vacancies. Out of these vacancies, 130,992 were filled by jobs seekers that were registered at the PES (a placement rate of 23, 2%). The Committee asks the next report to provide placement figures for the different years of the reference period.

Conclusion

The Committee concludes that the situation in Finland is in conformity with Article 1§3 of the Charter.

¹OECD Social, Employment and Migration Working Papers, Activation Policies in Finland, 23 November 2009

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 guidance and vocational training for persons with disabilities are examined under these provisions.

In these conclusions, the Committee found that the situation with regard to vocational guidance (Article 9) as well as on education and training for persons with disabilities (Article 15§1), is in conformity with the Charter.

However, it deferred its conclusion on continuing vocational training (Article 10§3) because of lack of information.

Conclusion

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

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

Article 9 - Right to vocational guidance

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

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

Vocational guidance within the education system

a. Functions, organisation and operation

Provisions on the vocational guidance as part of vocational education are set out in the Act on Vocational Education (630/1998). The upper secondary vocational qualification includes at least 1.5 credits for students' vocational guidance. The guidelines for vocational qualifications stipulate that the education provider is to prepare a personal study plan based on the student's individual aptitude. This is to be updated throughout the training period in order to ensure individual freedom of choice. Section 8 of the Act on Vocational Adult Education (631/1998) stipulates that the education provider is to ensure that due consideration is given to the personalisation of applying for and completing training, and for acquiring the professional skills required for competence tests and related preparatory training. According to Section 1 of the regulation (43/011/2006) issued by the National Board of Education under said Section 8, the education provider shall see to it that those wishing to complete a competence test receive guidance and counseling 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.

The Committee takes note of the information on the JOPO and CHANCES projects as described in the report.

b. Expenditure, staffing and number of beneficiaries

The report states that a total of 230 student counselors were employed in upper secondary vocational education and training on a full-time basis. Of them, 197 (85.7%) are duly qualified for their position. Guidance and counseling in vocational education are also provided by instructors teaching other subjects. The extent and volume of student guidance varies according to the education provider and field of study. As to the cost of vocational guidance in education system, the report states that this makes part of the student guidance and counseling and is funded through the general local government grant system. For this reason the expenditure cannot be itemised and consequently, no detailed data on the expenditure is available.

Vocational guidance in the labour market

a. Functions, organisation and operation

The Employment and Economic Development 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 counselors and by information available on the Internet.

The Committee takes note of the information on the projects developed under the Action Plan on Vocational Counseling for Adults.

In 2010, the vocational guidance and career planning programme (AVO) was developed to support vocational guidance and career planning services and had a total of 45,000 users. More than half were young people under 20 making their first career choices.

b. Expenditure, staffing and number of beneficiaries

The report states that for the first time in over 10 years, the number of cases of vocational guidance counseling provided by the Employment and Economic Development Offices increased from year to year. In 2010, the number of cases reached almost 176,000, up by 4,300 on 2009. The National Education Guidance Service accounted for 12.3% of all counseling. Of all inquiries, 7,560 (4.3%) were answered by e-mail. The number of instances in which advice was provided by e-mail communication increased by around 2 000 compared with the year before. The total number of group counseling events planned and organised by education counsellors in the whole of Finland was 1,500 and drew an audience of 24,200.

The report states that the number of cases of vocational guidance counselling has declined following cut-backs in staff resources due to the Government Productivity Programme. In 2010, the psychologist resources of the Employment and Economic Development Offices stood at around 200 persons whereas the corresponding figure for 2008 was around 215. However, the number of cases did not fall in direct proportion to staff reductions because greater focus was placed on personal counselling.

The report states that the expenditure in vocational guidance services consists of the payroll cost of Employment and Economic Development Offices and other operational costs. As the Ministry of Employment and the Economy does not monitor the expenditures of Employment and Economic Development Offices by professional category, detailed data on the expenditure for guidance and counselling services were not available.

Conclusion

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.

The Committee takes note of the amendments to the Universities Act No. 558/2009 and Polytechnic Act No. 564/2009 which, as of 1 January 2010, allow admission of students with an upper secondary vocational qualification, further vocational qualification, specialist vocational qualification or other equivalent qualification to studies leading to a university degree. It takes note also of the information on upper secondary vocational education and preparatory training for immigrants, as described in the report.

In its last conclusion, the Committee asked for information on measures introduced to ensure that qualifications acquired in general secondary and higher education are geared towards helping students find a place in the labour market.

In reply, the report states that one of the main goals of the higher education system included an intensification of cooperation between polytechnics and universities and the labour market and the production of a qualified workforce. One of the indicators applied by the Ministry of Education and Culture in steering the activities of institutes of higher education is the employability of university graduates. All Finnish polytechnics and universities include a unit offering career and recruitment services catering for students in the various stages of their studies as well as education providers and local employers. Students are given assistance with career planning, internship issues and search for employment. Employers, in turn, are offered intern and job exchange services as well as topics for cooperation regarding theses. Important forms of activity include organising meetings with prospective employers, recruitment fairs and alumni events. A new area is the inclusion of modules in the basic studies that prepare students for working life. The courses are available for all students. The recruitment services offered by institutes of higher education create a nationwide network that works in close cooperation with the labour administration and trade unions. One aspect of this cooperation is the monitoring of the career development of university graduates.

In its last conclusion, the Committee asked for information on the proportion of graduates who find employment and how long it takes for them to find their first skilled job.

In reply, the report states that employment of 2008 graduates with upper secondary vocational qualification at the end of 2009 was at the level of 69.2%. According to the report of the Academic Career Services of Finland: "Within the five-year follow-up period, the graduates had been employed in a job that corresponded with their degree for 4 years and 3 months." Almost three out of four respondents (72%) were employed in a job where the requirements matched their degree well. This study examined the employment situation of university graduates with a master's degree within the five-year period after their graduation. The data consisted of the nationwide career and employment survey that was aimed at graduates of 2003 and realised in autumn 2008. This study covered 16 Finnish universities.

In its last conclusion, the Committee asked for information on figures on spending, such as on university education and on continuing education

In reply, the report states, among other, that in 2007, the expenditure for higher education in Finland amounted to 1.6% of the GDP. The Committee notes from the information in the report that in 2010 there was an allocation of 1,678.6 million € to universities from the government budget and 907 million € to polytechnics from both government and local government budget.

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 report states that there have been no changes to the legislation on apprenticeship during the reference period. On the other hand, a range of measures were taken during 2007–2010 to develop the provision and financing of apprenticeship training.

Among others, the funding system for apprenticeship training was amended as of 2009 by lowering the unit prices for apprenticeship training provided as upper secondary vocational training by approximately 18%, and by raising the unit prices for apprenticeship training provided as advanced vocational training by approximately 7%. The objective was to make the unit prices reflect actual costs more accurately.

In the spring of 2009, the Ministry of Education and Culture, the Ministry of Employment and the Economy and the labour market organisations worked out rules in view of a situation in which the apprenticeship contract cannot be duly fulfilled because of lay-offs, redundancies or business failures. Instructions and guidelines based on the efforts of said parties have been issued by the Ministry of Education and Employment to address such situations.

During 2008–2009, the Ministry of Education and Culture initiated a total of 17 projects to pilot the Subsidised Apprenticeship scheme with the aim of identifying and developing new empirical approaches to reaching and including socially excluded and other under-represented groups in the education system.

As to expenditure on apprenticeship system, the report states that apprenticeship accounts for approximately 15% of the total volume of vocational education. In 2009, the number of apprenticeship contracts eligible for funding in the branch of government the Ministry of Culture and Education is responsible for was approximately 48,000. The number of apprenticeship training providers was 91.

In its last conclusion, the Committee asked for information on measures to increase the number of apprentices and whether the number of available places satisfied the demand.

In reply, the report states that from 2004 to 2008, the number of apprentices increased by one third from 36,000 to 49,000. Following the proposals of the working group preparing the comprehensive reform of adult education, the maximum number of apprenticeships was increased during 2008–2010 by a total of 2,300 per year (from 27,100 to 29,400), or 8%. The report states that, consequently, the demand is met quite well at the present time although the demand for apprenticeships has declined as a result of the economic downturn.

In its last conclusion, the Committee asked for information on the average length of apprenticeship and the division of time between practical and theoretical training.

In reply, the report states that the duration of apprenticeship training aiming at an upper secondary vocational qualification varies according to the skills acquired by the apprentice earlier. The estimated average duration of training required for an upper secondary vocational qualification is 2.5 to 3 years. In further vocational education, the duration of apprenticeships varies considerably according to the qualification to be attained and the skills acquired by the apprentice earlier. The average duration of further education apprenticeship is 0.5 to 2 years.

Most of the apprenticeship training takes place at the workplace through the performance of practical work duties. On average, on-the-job training accounts for around 80% of the total. Varying on the nature of apprenticeships, a plan, prepared jointly by the apprentice, employer and the training provider, determines how studies in the various learning environments are to be implemented and how the apprentice can, in practice, attain the

objectives defined for the training. As a rule, the percentage of theoretical studies is greater in the early part of the training for an upper secondary vocational qualification.

In its last conclusion, the Committee asked for information on the procedures of selection and training of trainers.

In reply, the report states that the on-the-job instructors for apprenticeship training are chosen when the apprenticeship contract is signed. Under the legislation governing vocational education, the training workplace must offer sufficiently extensive production and service activities in accordance with the requirements for curriculum and competence-based qualifications, the necessary tools, and competent staff with adequate qualifications in terms of professional skills, education and work experience to be assigned as instructors responsible for the apprentice. The training provider is responsible for ensuring the compliance of the aforesaid.

In its last conclusion, the Committee asked for information on the rules for termination of contracts for apprentices.

In reply, the report states that an apprenticeship contract is a fixed-term employment contract subject to approval by the provider of apprenticeship training. Apprenticeship contracts are governed by the Employment Contracts Act (55/2001). An apprenticeship contract may be cancelled with immediate effect by mutual agreement between the apprentice and employer. An apprenticeship contract may also be cancelled unilaterally in the event that the employer winds up the business, is placed in bankruptcy or dies. The contract may also be cancelled with the training provider's permission in circumstances that would constitute valid reasons for termination of employment under the Employment Contracts Act. Additionally, the apprenticeship contract may be terminated by the training provider following consultations with the apprentice and the employer if the training organised at the workplace fails to meet the requirements specified in the Act on Vocational Education; or the Decree issued under said Act; or the provisions of the agreement made between the training provider and the employer referred to in Section 17 of said Act.

Apprenticeship training may also be temporarily suspended. The most common reasons for such suspension are an extended sick leave or a family leave.

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.

The report states that there have been no changes to the respective legislation during the reference period and refers to its previous report.

In its last conclusion, the Committee asked for information on legislation authorising individual leave for training, the conditions and whether this leave is paid.

In reply, the report states that under the Study Leave Act, an employee whose full-time employment has lasted for at least 1 year, whether in one or several periods, is entitled to take a study leave of up to 2 years over a period of 5 years. If employment has lasted for at least 3 months, the employee is entitled to a maximum study leave of 5 days. A study leave can be taken in one or several periods. The days during the study leave may also be divided into two – the employee works for part of the day and studies for the rest. The employer is not required to pay any wages or other compensation for the time taken off for such studies, unless otherwise provided for in collective agreements or between the employer and the employee.

The Committee asks what is the case of short-term leave for training when this is required by the employer.

State and local civil servants have the same right to a study leave as other workers. A study leave may be used for studies under official supervision and – subject to certain conditions – for trade union training and training arranged for agricultural entrepreneurs. Studies abroad are also permitted during a study leave.

In its last conclusion, the Committee asked for information on total spending on continuing training both for employed and unemployed persons and how the cost of vocational training is shared between public bodies (central or other authorities), unemployment insurance systems, enterprises and households.

In reply, the report states that both unemployed and employed can freely apply for vocational education, university and polytechnics education and free education work. Such education can be used as means to acquire continuing training. The possibilities of the unemployed to obtain education flexibly have been eased by enabling, on certain grounds, spontaneous studying leading to qualification by using employment benefits. Training is organised also to the employed as a labour policy related training, for example, to support recruiting. The mode of instruction, the position of the training in the qualification structure and division of the financing share between, for example different ministries (e.g., Ministry of Employment and the Economy and Ministry of Education and Culture) does not lead to any conclusions on the exact division of funding between the employed and unemployed.

When training is provided primarily at educational institutions, the costs are treated as a whole inclusive of the cost of on-the-job learning. The annual costs of upper secondary vocational education provided primarily at educational institutions are approximately 10,300€ per student.

Conclusion

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

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

Article 10 - Right to vocational training

Paragraph 4 - Long term unemployed persons

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

The report refers to its previous report. The Committee in its last conclusion found the situation to be in conformity with Article 10§4.

Conclusion

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.

The report refers to its previous report. The Committee in its last conclusion found the situation to be in conformity with Article 10§5.

In its last conclusion, the Committee asked for information on the possibility of nationals of other States Parties who have obtained a temporary residence permit to be guaranteed an equal treatment with regard to financial assistance for training.

In reply, the report states that under Finnish legislation, student financial aid is not granted to persons who move to Finland for study purposes, irrespective of the form of residence permit. If a person moves to Finland with the purpose of studying, he/she is granted a temporary residence permit (B). If the studies take more than one year, the permit is usually granted for one year at a time. The permit is conditional on the student being admitted to a Finnish educational institution and that the studies lead to a degree or other qualification. It is only in exceptional cases that a permit is granted for other, nonqualifying studies. In addition, as the overriding principle is that a person coming to Finland to study must be able to cover his/her living expenses, he/she must demonstrate that he/she has sufficient financial means to study in Finland (in practice, 500€/month or 6,000€/year) and has a valid insurance policy that covers healthcare services.

The Committee recalls that under Article 10§5 of the Charter, no length of residence should be required from students and trainees residing in any capacity, or having authority to reside in reason of their ties with persons lawfully residing, on the territory of the Party concerned before starting training. This does not apply to students and trainees who, without having the above-mentioned ties, entered the territory with the sole purpose of attending training. To this purpose, length of residence requirements or employment requirements and/or the application of the reciprocity clause are contrary to the provisions of the Charter.

The Committee asks whether there are any exceptions for those foreigners who have not entered the territory of Finland with the sole purpose of attending training.

In its last conclusion, the Committee asked for information on the measures to evaluate the efficiency of training.

In reply, the report states that the efficiency and effectiveness of vocational education is primarily monitored as part of the performance-based funding system. A key indicator in the performance-based funding system for upper secondary vocational education is effectiveness measured in terms of graduation rates, employment and the pursuit of further studies. Performance-based funding for further vocational education is determined by the number of qualifications taken.

Conclusion

The Committee concludes that the situation in Finland is not in conformity with Article 10§5 of the Charter on the ground that nationals of other States Parties lawfully resident in Finland are not treated equally with respect to financial assistance.

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 signed the UN Convention on the Rights of Persons with Disabilities and the Optional Protocol on the 30 March 2007, but has not ratified it yet. The Ministry for Foreign Affairs has, in May 2011, set up a working group to prepare the measures necessitated by the ratification of the Convention and its Optional Protocol in Finland. Its work is still ongoing. The intention is to ratify the Convention during the current Government's term of office (2011-2015).

The report does not provide data regarding the total number of persons and children with disabilities. According to the Academic Network of European Disability experts (ANED)¹ disabled people are not identified in census data, but the number of people who use disability services is recorded in official statistics. The Fifth Disability High Level Group Report on the Implementation of the UN Convention on the Rights of Persons with Disabilities confirms 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. Statistics on disability are collected mainly by the National Institute for Health and Welfare, Statistics Finland and the Social Insurance Institution of Finland, and describe mostly services and benefits provided to persons with disabilities. Some statistics on special education in comprehensive schools and vocational training are available.

The Social Insurance Institution of Finland (Kela) provides annual statistics about the benefits it grants to persons with disabilities – it states that the total number of recipients of disability benefits at the end of 2010 equalled to 296,324 (out of which 33,263 constituted disability allowance for under 16), compared to 254,000 in 2005 (Conclusions 2008).

The Committee recalls that where it is known that a certain category of persons is, or might be, discriminated against, it is the national authorities' duty to collect data to assess the extent of the problem (European Roma Rights Centre v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, §27). The gathering and analysis of such data (with due safeguards for privacy and against other abuses) is indispensable to the formulation of rational policy (European Roma Rights Centre v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005, §23). The Committee notes, in particular, lack of data with regard to special educational needs of upper secondary students (see below). The Committee therefore asks how the Government ensures implementation and monitoring of relevant law and policies under Article 15§1.

Definition of disability

The Committee recalls that there is no single definition of disability, but that each piece of legislation concerning persons with disabilities refers to its own definition. Nonetheless, the principle underlying every policy measures for persons with disabilities is guaranteeing them with the right and opportunity for integrated living (see Conclusions 2007).

Anti-discrimination legislation

In reply to the Committee's question the report explains that the Basic Education Act (628/1998) contains no provision explicitly prohibiting discrimination, however the general anti-discrimination legislation – the Non-Discrimination Act (21/2004) applies to both public and private activities with regard to access to education, including advanced education and retraining, or vocational guidance. Section 6 of the Act prohibits discrimination *inter alia* on the grounds of disability.

According to Section 4 of the Act, the authorities shall, in all they do, seek purposefully and methodically to foster equality and consolidate administrative and operational practices that will ensure the fostering of equality in preparatory work and decision making. In particular, the authorities shall alter any circumstances that prevent the realisation of equality. Section 31 provides that every disabled pupil is entitled to receive the interpretation services and assistance necessary for participating to basic education free of charge.

In its previous Conclusions (Conclusions 2008) the Committee asked the report to clarify whether a victim could claim compensation for the damage suffered as a result of discrimination and to provide examples of relevant case-law. The Committee now notes from the report that according to the Basic Education Act, guardians may appeal a decision made by the education provider. Such an appeal is filed following the procedure stipulated in the Administrative Procedure Act (586/1996). The Basic Education Act does not recognise, however, any compensation in this regard. To claim compensation, a special action for damages must be brought to the District Court under the Tort Liability Act (412/1974). Furthermore, under Section 9 of the Non-Discrimination Act, a supplier of work, services, education or benefits, who has infringed provisions prohibiting discrimination or victimisation on the grounds of, *inter alia*, disability shall pay the injured party compensation for suffering resulting thereof. The compensation shall not exceed €15,000, unless special circumstances occur. Payment of compensation under these provisions does not preclude an injured party from claiming damages under the Tort Liability Act or other legislation. Likewise, under Chapter 11, Section 11 of the Penal Code (39/1889), discrimination is punishable by a fine or imprisonment and the victim may simultaneously claim damages for emotional suffering under the Tort Liability Act.

The Committee notes from the report that legal proceedings related to education have mostly concerned an issue of adequate assistance being granted to a student in need. According to the report of the Ministry of Justice (59/2010), little case-law exists to date with regard to the liability of a party exercising public authority to pay compensation for fundamental rights violation.

Education

According to European Union Statistics on Income and Living Conditions (EU-SILC) data for 2009, compiled by ANED, the proportion of disabled people (aged 30-34) having completed tertiary level education in Finland was 35.4, compared to 48 for non-disabled people. The proportion of young disabled people (aged 18-24) leaving school early in Finland was 14.5, compared to 8.4 for non-disabled people.

In Finland learners with special needs are classified into two basic categories: those with an official decision (45,493 in 2008/2009 academic year) and those without an official decision. This second group includes learners with minor learning difficulties (dyslexia, maths, speech difficulties etc.). There were 126,288 pupils who received part-time special needs education in 2007/08². According to the report, in 2009 there were 47,168 special education students at schools, of whom 1,491 were severely disabled and 10,574 otherwise mentally disabled.

Data from Statistics Finland suggest that transfer of pupils from comprehensive to special education has been increasing for more than a decade. 8.5% of comprehensive school students, or over 46,700 pupils, had been transferred to special education in autumn 2010. The share was unchanged from the previous year. Special education is increasingly organised in conjunction with comprehensive education. In all, 23.3% of pupils, or 128,700 comprehensive school students received part-time special education during the 2009-2010 academic year. In 2010, 30% of those transferred to special education were fully and 24% partially integrated into groups attending general education. 32% of those transferred to special education received teaching in special groups in comprehensive schools and 14% in special schools. Special education was arranged in general education groups more often

than in the previous year, and the number of pupils studying in special schools and in special groups decreased (respectively 5,2% and 3,1%).

The Committee notes that the proportion of students with special educational needs integrated fully or partially into mainstream education is considerably higher compared to the previous reference period. Nevertheless, it would like the next report to explain the increased number of transfer of students from general to special education. The Committee also asks whether there is a general policy to integrate children with disabilities into mainstream education and what are the criteria and legal basis for placing children in special or segregated educational systems.

In its previous Conclusion the Committee reiterated its request for figures on mainstreaming in general upper secondary education, including an estimation of how many students have intellectual disabilities, as well as information on whether general teacher training includes a module on special educational needs. It now notes from the report that relevant legal provisions (the Act on General Upper Secondary Schools 629/1998 and the Decree on General Upper Secondary Schools 810/1998) do not mention special education. However, according to other sources³ the Upper Secondary Schools Act provides that students with disabilities and those in need of special support for some other reason are entitled to assistant services, other teaching and student welfare services and special aids, as required in their studies. Furthermore, the National Core Curriculum for Upper Secondary Schools emphasises the fact that the purpose of special support is to help and support students so as to guarantee them equal opportunities to complete their upper secondary school studies.

The report states that no systematic, comprehensive or regularly gathered data are available with regard to the extent and type of special educational needs of upper secondary students.

As regard teacher training, the report explains that the learning process and the child's developmental phases are among the key subjects studied by class teachers; modules focusing on special education are common in the early part of the education, mainly when students take their bachelor's degrees. The Committee further notes from ANED that in Finland inclusive teacher training is not organised in disability-oriented streams. The aim is to provide to teachers with a range of knowledge and skills that they can apply in various settings and situations to arrange inclusive educational possibilities. This training is not focused on disability awareness, but on opportunities for the participation of every pupil. Disabled people or their organisations are not systemically involved in training.

The Committee notes from ANED database that the Basic Education Act has been amended (Amendment 642/2010, entered into force as of 1 January 2011) to provide for support to disabled pupils. The Committee wishes the next report to provide detailed information on the reform and its outcome.

Vocational training

The Committee notes from the report that under Section 20 of the Act on Vocational Education (630/1998), instruction to students who need special education or student care services because of a disability, illness, retarded development, emotional disorders or other such reason is to be provided in the form of special education. Under Section 9 of the Act, the Ministry of Education and Culture may order an education provider to organise special education, preparatory and rehabilitative instruction and guidance, as well as a range of education-related development, guidance and support services. In special education, exception can be made to the provisions of the Act on Vocational Education and the related Decree (811/1998) as specified in the core curriculum or qualification requirements. Instruction in special education is to be adjusted so as to enable the students, where possible, to attain the same level of competence as in other vocational education. Remedial teaching given to those temporarily falling behind in studies or to students with minor learning or adaptation disorders is not deemed to constitute special education. Preparatory

or rehabilitative instruction and guidance may be organised for students with disabilities, and it has to follow the core curricula adopted by the National Board of Education.

According to the report, in 2010, vocational and career planning services were provided to 5,716 persons with disabilities, representing 20.8% of the total number of persons benefiting from such services (compared to 20.7% in 2009). No statistical information concerning rehabilitative instruction and guidance, in particular concerning the percentage of those entering some kind of work relationship, is available. However, the report provides some statistics with regard to the number of vocational special education students, according to which 4,464 students received coaching and rehabilitative/preparatory training in 2010 (out of 21,895 students in different special vocational education).

Since the beginning of 2008, the intake of students for upper secondary vocational education has increased by nearly 11,700. According to the report, increasing the intakes of vocational special education providers, as well as charging vocational education establishments with providing special education, allowed to strengthen service capacity of special education institutes and respond to the training needs of persons with most serious disabilities in the various regions. The adequacy of vocational education and its availability throughout the country have been improved. According to Statistics Finland, in 2010 students of special vocational education constituted 6.9% of all students in vocational education (compared to 5.8% in 2007), and the majority studied in curriculum-based education.

To facilitate access to further studies following the completion of basic education, a pilot project concerning a preparatory training for upper secondary vocational training called 'Profession Start' (*ammattistartti*) was launched in autumn 2006 and established on a permanent basis in 2010. According to the follow-up study, approximately 70% of the Profession Start students had continued their studies or had found employment. The Committee wishes to know how this programme affected the results of students with disabilities.

In spring 2010, the Ministry of Culture and Education launched a project to update the strategy for vocational special education. The proposals for guidelines to develop vocational special education were completed in spring 2011. The Committees asks the next report to provide more information on the reform.

In this respect the Committee notes from the ANED report in respect of Finland that universities may make special arrangements for entrance examinations, campus accessibility and learning support, but they are not obliged by any legislation to provide any special educational support or physical arrangements. There is no specific, separate system of financial support for disabled students, however, financial aid is available to all students in financial difficulty and disabled students receive rehabilitation allowances (the Act on Rehabilitation and Rehabilitation Financing Benefits).

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.

¹<http://www.disability-europe.net/content/aned/media/Finland%20ANED%20country%20profile.pdf>

²*Special Needs Education Country Data 2010, the European Agency for Development in Special Needs Education;*

³*"The Development of education: national report of Finland", 2008, prepared by the National Board of Education for the 48th session of the UNESCO International Conference on Education, http://www.ibe.unesco.org/National_Reports/ICE_2008/finland_NR08.pdf ; The European Agency for Development in Special Needs Education, country information for Finland, <http://www.european-agency.org/country-information/finland/national-overview/complete-national-overview>*

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

Disabled people are not identified in the Finnish Labour Force Survey. Data from Social Insurance Institution of Finland (Kela) states that the total number of recipients of disability benefits at the end of 2010 equalled to 296,324. The report, however, provides data with regard to jobseekers with disabilities registered with the public employment service and the active labour market measures arranged by the labour administration: it follows that in 2010 there were 97,600 jobseekers with disabilities; 69,200 of them remained unemployed, but 70,900 benefited from different kinds of active measures (41,600 benefited from job placements on the open labour market; 8,400 started labour market training or other vocational education; 9,800 were placed in a business or in the public sector through wage subsidy; and 11,100 were placed in work try-out, practical training or preparatory training for working life at a working place).

In this regard, the Committee notes from the comments submitted by the Central Organisation of Finnish Trade Unions (SAK), Finnish Confederation of Professionals (STTK) and Akava, the Confederation of Unions for Professional and Managerial Staff in Finland on the 7th Finland's Report that almost 30,000 persons have in practice been excluded from employment services. According to a study conducted by Pellervo Economic Research PTT on the effectiveness and financial significance of measures to support the employment of persons with disabilities (*Vammaisten työllistymisen tukitoimien vaikuttavuus ja taloudellinen merkitys*, 2011), many of them are work-oriented and capable of working. The trade unions "consider that this problem should be corrected by preventing the source of subsistence provided by the support, e.g. the benefits paid by the Social Insurance Institution of Finland, from excluding work oriented job-seekers with disabilities from the services of the labour administration". The Committee invites the Government to comment on this; in particular, it asks what kind of support is provided to those persons and in what way they are excluded from labour administration services. The Committee also asks the Government to clarify who is considered to be a "jobseeker with disability" for the purpose of the statistics provided in their report.

Anti-discrimination legislation

Equal treatment of persons with disability is guaranteed by the Constitution of Finland (731/1999), the Non-Discrimination Act (21/2004), and several other acts, such as the Equality Act, the Penal Code, the Employment Contracts Act (55/2001), and the Act on the Public Employment Services (1295/2002).

The Act on Services and Assistance for the Disabled (*laki vammaisuuden perusteella järjestettävistä palveluista ja tukitoimista* (380/1987), defines a disabled person as a person who because of an impairment or illness has longstanding difficulties to manage ordinary activities of life. Functional capacity cannot be assessed only medically. The Act on Public Employment Services (*laki julkisesta työvoimapalvelusta* (1295/2002)) for its part defines "a handicapped" as a person whose opportunities in working life have considerably lessened due to an appropriately established impairment or illness. Both of these definitions are specific and have no bearing on anti-discrimination law as such, though a person who meets either one of the above-mentioned criteria is undoubtedly to be considered a person with a disability also with respect to anti-discrimination law¹.

According to Section 5 of the Non-Discrimination Act, a person who commissions work or arranges training shall, where necessary, take reasonable steps to help a person with disabilities to gain access to work or training, to cope at work and to advance in his or her career. The wording 'where necessary' means that the need for reasonable accommodation is to be determined on a case-by-case basis. In the workplace, appropriate accommodation measures may relate e.g. to work conditions, organization of work, working hours, methods of work, work aids, training and work guidance. The arrangements should make it possible for a disabled person to cope in working life.

In contractual and public-service employment relationships, compliance with the Act is supervised by the occupational health and safety authorities. Moreover, a study on the use of special form of support for accommodating working conditions and working environment was conducted by the Ministry of Employment and the Economy in 2010.

In addition to this provision, the Act on Occupational Safety and Health provides for an obligation of the employer to consider disability in the working environment, work arrangements and work dimensioning and the Employment Contracts Act stipulates that the employer is obliged to ensure that all workers have the possibility to receive training and to improve themselves in order to advance in their careers.

The Committee also notes from other sources² that an employer may receive a refund for costs that result from work and training experimentations, medical examinations, and consultations aiming to support the opportunities of a disabled person to gain or keep her/his work (the Employment Services Act). The employer may also receive compensation for such accommodation measures (with regard to changes to machines or other physical environment or e.g. the rearrangement of the method of work) that she/he has taken in order to enhance the opportunity of a disabled person to gain or keep his/her work (the Decree on Employment Service Benefits). Maximum compensation for such measures has been laid down to be € 2.500 per person. With regard to persons with difficult disability the amount may be up to 3.500€.

Further to the Committee's questions regarding reasonable accommodation, the report indicates that in 2009, 121 applications for a subsidy were approved for a total of 131,600€ (5 applications were rejected), compared to 129 applications approved (for a total of 176,00€) and 17 rejected in 2008.

An employer may also receive compensation in a situation in which a fellow employee provides help to a disabled employee in order to enhance his/her ability to perform his/her work properly. The maximum compensation in this case is 250€ per month for a maximum period of one year. With regard to persons with difficult disability this amount may be exceeded up to 350€ per month for maximum period of two years.³ The Government's report states that 12 subsidies for the reimbursement of costs arising from assistance provided by another employee were granted in 2009, for a total of 25,000€, while in 2008 17 approved applications involved costs amounting to 15,000€.

According to the report, there were no court cases concerning reasonable accommodation under the Non-Discrimination Act during the reference period.

Measures to encourage the employment of persons with disabilities

To raise the employers' awareness of the support measures available for the employment of persons with reduced capacity for work and persons with disabilities, the Ministry of Employment and Economy published, in 2010, a handbook containing information on how work try-outs or work experience placement periods may also benefit the employer (contact with a potential recruit) and what kind of support is available for lowering the threshold for employment (examples include a pay subsidy, preparatory training for working life, and a subsidy for creating suitable working conditions). Labour market organisations and disability NGOs contributed to the preparation of the handbook.

According to the report, the Act on the Public Employment Service (1295/2002) was amended on 1 May 2007 and a new provision has been added, under which a social enterprise may be granted an increased wage subsidy for the employment of a disabled person amounting to 50% of the wage costs, but not higher than 1,300€ per month. The Committee notes from other sources⁴ that social enterprises (sosiaalinen yritys) are a new form of enterprise which aim to provide work opportunities for people with disabilities or those who are long-term unemployed. The public employment service aims to support jobseekers' employment in the open labour market, as well as improving their labour market potential. The legislation on social enterprises thus gives a more solid status to enterprises of this kind which are already established, in addition to supporting the establishment of new businesses. A social enterprise will receive wage subsidies as a compensation for potentially reduced work ability of the employee. The amount of the subsidy is the same as paid to regular enterprises hiring a disabled person, however, the social enterprise is entitled to the subsidy for a longer period (6 months in case of a regular company, 3 years in case of a social enterprise employing persons with disabilities, or longer in certain situations). In 2010 there were 154 registered social enterprises in Finland, compared to 100 in 2007 and 27 in 2005.

A social enterprise must be entered in the register of social enterprises held by the Ministry of Employment. The Act on Social Enterprises entered into force in 2004 and was amended in 2007. According to Section 4 of the Act, a corporation, a foundation or another registered trader may be entered in the register of social enterprises, provided that:

1. it is entered in the trade register;
2. it produces goods and services on a commercial principle;
3. at least 30% of the employees are disabled persons, or at least 30% are disabled and long-term unemployed (percentage of placed employees); and
4. it pays all its employees, irrespective of their productivity, the pay of an able-bodied person agreed in the collective agreement, and if no such agreement exists, customary and reasonable pay for the work done.

In this regard, the Committee notes from the trade unions' comments on the Government's report that the number of persons with disabilities employed under this Act is very low, which in their opinion is due to restrictive conditions laid down in Section 4 and mentioned above. The Committee invites the Government to comment on this. It also requests the next report to provide follow-up information on the effectiveness of this measure.

To improve the capacity of disabled jobseekers for work and training and to support their employment, the labour administration arranges supportive measures such as examinations of health and working capacity, rehabilitation examinations, expert consultations and work coaching). According to the Social Welfare Act (710/1982), municipalities are responsible for organising activities supporting the access to employment and specific work for people with disabilities.

As a part of the activities to support the access of people with disabilities to employment, it is possible to organise work in which the employee is in an employment relationship with the service provider under the Employment Contracts Act (55/2001). The pay for the work can be agreed upon by a collective agreement referred to in the Collective Agreements Act (436/1946).

In the Social Welfare Act, specific work for people with disabilities refers to the maintenance of their functional capacity and activities promoting it. Such work is organised for persons incapacitated for work who, due to their disability, are not able to take part in the activities supporting the access to employment, and whose income is mainly based on benefits granted on the basis of illness or incapacity for work.

According to the Act on Special Care for People with Intellectual Disabilities (519/1977), special care districts consisting of municipalities must organise work activity, housing and other such activities that support the integration of the people with intellectual disabilities into the society. Municipalities are also responsible for organising the duties laid down in the Act on Rehabilitative Work (189/2001). The aim of the law is to improve the employment possibilities, or possibilities for education, or activities supporting access to employment provided by the employment administration to long-term unemployed persons who receive labour market subsidies or subsistence subsidies (social assistance). The Act requires that rehabilitative work activities are arranged according to an individual activation plan prepared together by the employment and municipal authorities and the person concerned.

The Committee notes from the report that a person taking part in specific work for people with disabilities is not in a contractual employment relationship referred to in the Employment Contracts Act with the organiser of the activity or the service provider. The same applies to rehabilitative work provided under the Act on Rehabilitative Work. According to the legislation, both of these are social services and thus the clients receive the social or employment benefits that they are entitled to during the service. However, the provisions on employees' safety at work apply to work for people with disabilities also when the person concerned is not in an employment relationship with his/her employer. The organiser of work for people with disabilities shall take out an insurance policy referred to in the Employment Accidents Insurance Act (608/1948) for the person engaged.

According to the report, no information exists on the level of the trade union activity in those work centres that provide work under an employment contract; however, the same rules apply to them as to all other work places in Finland (freedom to be a member of a trade union, right to have a trade union representative at the workplace, etc.). The Committee recalls that people working in sheltered employment facilities where production is the main activity must enjoy the usual benefits of labour law. It asks again whether this is the case and whether trade unions are active in sheltered facilities.

Conclusion

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

¹*Finland Country Report 2010 on Measures to Combat Discrimination (Directives 2000/43/EC and 2000/78/EC), drafted for the European Network of Legal Experts in the Non-discrimination Field.*

²*ibidem*

³*ibidem*

⁴<http://www.sosiaalinenyryitys.fi/english/theAct>;

<http://www.eurofound.europa.eu/areas/socialcohesion/egs/cases/fi002.htm>

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

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

In the previous conclusions (Conclusions 2007 and 2008), the Committee concluded that the situation in Finland was not in conformity with the Revised Charter on the grounds that there was no anti-discrimination legislation prohibiting discrimination on grounds of disability in the areas covered by this provision.

Although during the reference period there has been little change in the legal framework in this respect (that is the Non-Discrimination Act covers disability only with regard to education and employment), the Committee now notes from the report and from the Governmental Committee Report¹ that in Finland, the main provisions pertaining to discrimination have been laid down not only in the non-discrimination Act, but also in the Constitution and the Penal Code.

Article 6 of the Constitution provides for equality and prohibits discrimination. The main thrust of this constitutional guarantee is to ensure formal equality, i.e. the principle that people are to be treated similarly in similar circumstances, but it also aims at promoting the achievement of full, substantive equality in practice. The constitutional prohibition of discrimination may be directly invoked in courts (e.g. as a grounds for claiming damages) and regular laws are to be interpreted in accordance to it. So far the constitutional anti-discrimination provision has been applied mainly in situations involving the use of public power, but it may in some instances have a bearing on relationships between private parties as well.

The prohibition of discrimination in Article 6(2) is general in scope and its field of application has not been limited in any way. The provision does not use the concept of “discrimination” as such but speaks instead of “differential treatment without an acceptable reason”. The non-discrimination clause of Article 6(2) in combination with the obligation of authorities to promote human rights and fundamental freedoms, as laid down in Article 22 of the Constitution, have been taken to mean that the legislator has an obligation to make sure that the legislation does not contain provisions that without an acceptable reason treat people differently on a prohibited ground.²

The Committee would like the next report to provide examples of relevant case-law involving the constitutional provision.

The Penal Code has two provisions on discrimination. The first covers discrimination, *inter alia*, in the provision of services and in the discharge of public duties, while the second covers discrimination in the field of employment. Discrimination is considered a crime under public prosecution, which means that after a victim of discrimination has filed a crime report to the police, the police have to institute an investigation led by a prosecutor (pre-trial investigation). There is a considerable amount of case law under the first provision (for example, in 2005 the District Court of Vaasa found that denying a person with a severe sight disability access to a restaurant with her guide dog on the grounds that dogs were not allowed, constituted discrimination on the ground of disability, as defined in Article 11 :9 of the Penal Code. The owner of the restaurant, who had given instructions not to let dogs into

the restaurant, and the waiter who had acted in accordance with these instructions, were ordered to pay fines)³.

The Committee asks the next report for examples of more recent case-law under the Penal Code.

Furthermore, the Committee notes from the report that the Ministry of Justice set up in January 2007 a committee ("Equality Committee") to review and prepare a reform of the current anti-discrimination legislation. One of the key objectives of this committee is to work towards a more integrated legislative framework where the available legal mechanisms and remedies would not, as a matter of principle, depend on the ground of discrimination in question. The equality committee submitted its final report in December 2009. The Government bill based on the report is expected during the electoral period 2011-2015.

The Committee further notes that the Government Report on Disability Policy 2006 focused on legislative reforms relating to the equality of people with disabilities, the right to social inclusion and the right to necessary services and supportive measures. The Disability Policy Programme 2010–2015 contains proposals for promoting and implementing the UN Convention on the Rights of Persons with Disabilities in different sectors.

In the light of the foregoing, the Committee considers that the existing legislation in Finland provides comprehensive protection against discrimination in fields covered by this provision. Nevertheless, it wishes to be informed of developments regarding the above-mentioned reform of the anti-discrimination framework.

Consultation

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

The National Council on Disability is a national coordinating body, which involves key government departments with organisations of disabled people and their families. There are also local municipal disability councils. The council is responsible for coordinating the follow-up on the implementation of Finland's Disability Policy Programme.

The Finnish Disability Forum encourages disabled people's equality and participation and seeks to influence national and international policy. The Finnish Disabled People's International Development Association (FIDIDA) has had the status of a partnership organisation of the Ministry for Foreign Affairs of Finland since 2010. This status is helping to involve FIDIDA in official development policy programmes. Assistentti-info is a nationwide network of personal assistance and information services, which produces educational materials.⁴

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

The Committee notes from ANED⁵ that a disability pension is available to eligible disabled persons. The criterion for receiving the pension is incapacity to work. Persons who have a permanent mobility disability or sightless persons always receive the full amount of this pension. The disability allowance is an alternative to the disability pension and is tax free.

The national pension is a basic income for persons who are entitled only to a very small earnings-related pension or to none at all. The national pension is paid by the Social Insurance Institution. To qualify for a national pension, any other pension or benefits received may not exceed a certain limit. The age limits for the disability pension is 16-64 years and after that the disability pension is automatically converted into the old-age pension. According to the Act on Services and Assistance for the Disabled, extra costs will be paid when a disabled person requires special clothing or a special diet.

Measures to overcome obstacles

It follows from the report that Finland's 336 municipalities are responsible for providing social and health care services to their residents, including services for the disabled. The services are funded by state aid to local government, municipal tax revenues and service charges. The services for the disabled are usually free of charge. The Government's policy is to provide the services to all citizens on equal terms. Additionally, there is a range of special services provided for the disabled under the Act on Services and Assistance for the Disabled and the Act on Special Care of Mentally Disabled Persons. Under those Acts, persons with severe disabilities have a subjective right to transportation services, sheltered housing, day activities, personal assistance, home conversion services, and the right to have assistive devices installed in their apartments. In this context, 'subjective right' means that the municipality has an obligation to provide the service as soon as the criteria prescribed by law are met, regardless of the municipality's financial standing.

The objective of the Finnish Design for All (DfA) Network is to support the development of the information society, according to objectives defined at European and at national level. Another relevant context for the Finnish Design for All Network is sustainability that is, economically, ecologically and especially socially sustainable development.

Technical aids

The Committee notes from ANED that assistive and adaptive equipment is available as a part of public service for people with disabilities. Assistive device services include instruction of use, renewal and maintenance. They are free of charge. Assistive devices aiming at improving social life and recreation are also available as a disability service from social welfare departments. Persons with severe disabilities are reimbursed the costs of adaptation of their home and of necessary equipment installed. Assistive devices are provided by local authorities. This service is based on the Act on Services and Assistance for the Disabled and the Act on housing condition improvement of special groups.

Furthermore, the report states that an amendment of 1 September 2009 to the Disability Service Act provides a right to free personal assistance for severely disabled persons, including persons with an intellectual disability. Personal assistance can be granted for daily activities, educational and employment purposes; in addition, they have a right to minimum 30 hours per month of assistance for other purposes, such as recreation and social interaction.

The provision of services for persons with disabilities is granted on the basis of an individual assessment of the person's needs. The law underlines the importance of the disabled person's active participation in this assessment.

Communication

Recognition of Finnish sign language is laid down in the Constitution of Finland (731/1999). According to Article 17, the rights of persons using Sign Language and of persons in need of interpretation or translation assistance owing to disability shall be guaranteed by the law. The Act on the Research Institute for the Languages of Finland (1403/2011) states that the Institute shall ensure the research and preservation of the purity of Sign Language and Romany language.⁶

The amended Act on Interpreter Services for Hearing and Visually Impaired, Hearing Impaired and Speech-Impaired persons entered into force on 1 September 2010, shifting the responsibility for financing the interpreter service from municipality to the State. The right to interpreter services remained unchanged. The hearing and visually impaired persons are entitled to minimum of 360 hours of interpreter services per year and those with hearing and speech impairment to a minimum of 180 hours. The extent of interpreter service may vary

according to personal needs. In 2009, 4,088 disabled persons benefited from interpreter services (4,500 in 2010).

According to ANED, Finland does not have much ICT and web accessibility legislation. The anti-discrimination clause of the Constitution would apply as would anti-discrimination legislation regarding employment. There is a national action programme 'Towards Barrier Free Communication', which includes initiatives in sectors such as broadcasting, telecommunications and websites.⁷

Mobility and transport

Municipalities provide transport services to those who have severe disabilities causing exceptional mobility difficulties. Transport services may include the assistance service. A Government Decree (275/2010) guarantees subsidies for municipalities to develop accessible public transport.⁸

The report submits that during 2003–2006, the Ministry of Transport and Communications implemented a Research and Development Programme for Accessibility named 'ELSA'. The programme aimed, inter alia, at increasing awareness of importance of accessibility among the municipal sector, transport service providers, and the public. According to the evaluation report, the programme contributed to improvement of accessible transport system.

Housing

Several acts and decrees applicable in Finland pose requirements in this respect. For instance Land Use and Building Act (*maankäyttö- ja rakennuslaki* (1320/1999)) and Land Use and Building Decree (*maankäyttö- ja rakennusasetus* (895/1999)) require that buildings used by the administration, service providers or businesses (subject to certain conditions) have to be accessible to persons with disabilities. The equality laws or their *travaux* do not, however, address the question whether a failure to comply with this legislation constitutes discrimination. Such cases need to be assessed on a case-by-case basis to see whether the facts of the case are subsumed under the relevant provisions of the equality legislation (the general definitions of discrimination).⁹ It is required that where necessary, any reasonable steps are taken to help a person with disabilities to gain access to work or training, to cope at work and to advance in their career.

Finland's National Building Code contains a Barrier-free Building regulation which is binding. It consists of 10 pages of detailed technical requirements for buildings promoting their accessibility and accommodation for disabled persons, for example provisions and recommendations on facilitating the accessibility for persons using wheelchairs and other similar technical assistance equipment. Subsidies and supports for housing for people with disabilities are available under the Act on Services and Assistance for the Disabled.

The Act on Residential Renovation and Energy Saving Grants (1021/2002) lays down conditions for reimbursement of house repairs, lift construction and removal of obstacles to mobility. The Act on Subsidies for Improving Housing Conditions for Special Groups (1281/2004) provides for subsidies for acquirement and modernisation of rental houses and dwellings intended for special groups such persons with disability.

The Committee further notes from the report that in January 2010, the Government adopted a decision-in-principle on a programme to provide housing and related services for mentally disabled persons in 2010–2015. The purpose of the housing programme is to promote independent living by mentally disabled persons in a normal living environment, and hence to strengthen their inclusion and equal treatment in the community and society.

Culture and leisure

The Committee acknowledges the measures described above and relating to mobility and accessibility, in particular personal assistance, interpreter services and financial aid, aim also at facilitating access of persons with disabilities to culture and leisure activities.

Conclusion

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

¹Report of the Governmental Committee T-SG(2010)6

²http://www.non-discrimination.net/content/media/2010-FI-Country%20Report%20LN_final.pdf

³*Ibidem*

⁴<http://www.disability-europe.net/countries/finland>

⁵The Academic Network of European Disability experts (ANED) – <http://www.disability-europe.net/dotcom>

⁶<http://www.disability-europe.net/dotcom>

⁷*Ibidem*

⁸*Ibidem*

⁹http://www.non-discrimination.net/content/media/2010-FI-Country%20Report%20LN_final.pdf

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.

Work permits

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

Relevant statistics

In its previous conclusion (Conclusions 2008) the Committee held that the situation in Finland was not in conformity with the Charter as the refusal rate for residence permits was on the rise. It now notes from the report that in 2010 there was a total of 2,294 applications for residence permits from non-EU States Parties to the Charter, of which 88% were granted (the refusal rate of 12%). As regards residence permits for self-employed persons, there were 43 applications of which 21 were granted, corresponding to the refusal rate of 51%. The Committee asks what were the most common reasons for the refusal to grant residence permits to self-employed workers.

The Committee asks for information in the next report on the number of work permits granted to applicants from non-EEA States, as well as on work permit refusal rate with respect to applicants from such States, as this information is relevant in order to assess the degree of liberality in applying existing regulations governing access to national labour market. In this regard, the Committee observes that an absence or an extremely low number of work permits granted to nationals of non-EEA States Parties to the Charter, together with a very high work permit refusal rate with respect to applicants from such States, due to the application of rules like the so called “priority workers” rule (according to which a State will consider requests for admission to its territories for the purpose of employment only where vacancies cannot be filled by national and Community manpower), would not be in conformity with Article 18§1, since it would indicate an insufficient degree of liberality in applying existing regulations with respect to the access to the national labour market of nationals of non-EEA States Parties to the Charter.

Conclusion

Pending receipt of the information requested, 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.

Administrative formalities

The Committee notes from the report that most of the residence permit categories in Finland include the right to work, thus the person concerned is not required to apply for a work permit.

According to the Aliens Act, the purpose of the system of residence permits for employed persons is to support the availability of labour in a systematic, prompt and flexible manner, with consideration for the legal protection of employers and foreign employees, and the employment opportunities for the labour already in the labour market. There are no geographical restrictions regarding residence permits.

According to the report, all refusals are based on the Aliens Act. As regards the first residence permits for employed persons, the negative decisions are affected by the labour market situation. Unemployment in the labour market and the general economic situation are in direct correlation with the amount of negative decisions.

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. The Finnish Immigration Service will process and consider the application.

In its previous conclusion (Conclusions 2008) the Committee asked what was the average time needed to obtain a residence permit. According to the report, consideration should be given to the fact that the processing time of individual applications may vary considerably depending on the profile of the applicant and the application. Some applications are unclear and require more examination and additional clarifications. Additionally, interviews conducted in the diplomatic missions may extend the duration of the proceedings. According to the report, the average time for processing first applications for employed persons took 65 days on average in 2010 and 149 days on average for self-employed persons.

Chancery dues and other charges

According to the report, the fee for the first residence permit for an employed person was 250€ in 2010. The fee for the renewal of the residence permit was €120. The Committee notes that according to the report, the fees are still lower than the actual costs incurred by the authorities when processing applications.

The Committee recalls that States have to make concrete efforts to progressively reduce the level of fees and other charges payable by foreign workers or their employers. States are required to demonstrate that they have taken measures towards achieving such a reduction. In the opposite case, they will have failed to demonstrate that they serve the goal of facilitating the effective exercise of the right of foreign workers to engage in a gainful occupation in their territory.

For this reason, the Committee, while recognising that the cost of the residence permit and its renewal is not excessive, asks Finland to provide information in the next report on the measures eventually adopted in view of reducing them.

Conclusion

Pending receipt of the information requested, 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 notes from the report that according to the Aliens Act a residence permit for an employed person is granted as a permit for one or several professional fields. Only in exceptional cases the residence permit can be limited to a certain employer (such as for a short-term project, delivery contracts, ship musicians, circus artists etc.).

The Committee asks for information in the next report on the number of applications for work permits submitted by nationals of non-EEA States, as well as on the grounds for which work permits are refused to nationals of non-EEA States parties to the Charter. In this respect the Committee observes that should refusals always or in most cases derive from the application of rules – like the so called “priority workers” rule –, according to which a State will consider requests for admission to its territories for the purpose of employment only where vacancies cannot be filled by national and Community manpower, determining as a consequence to discourage nationals of non-EEA States from applying for work permits, this would not be in conformity with Article 18§3, since the State would not comply with its obligation to liberalise regulations governing the access to national labour market with respect to nationals of non-EEA States Parties to the Charter.

The Committee asks for information in the next report 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. Such information shall concern the category of dependent employees, as well as the category of self-employed workers, including workers wishing to establish companies, agencies or branches in order to engage in a gainful occupation.

Exercise of the right of employment / Consequences of job loss

In its previous conclusion the Committee held that it had not been established that the rules governing consequences of loss of job had been liberalised. More specifically it asked whether in consequence to a job loss a worker could be given a possibility to look for a new job. It notes from the report that a residence permit is not revoked in case a worker loses his job. Besides, a residence permit can be granted in case of court proceedings if the attendance of the applicant is indispensable.

Conclusion

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.

In its previous conclusion the Committee asked in which circumstances would the nationals be prevented from leaving the country with a view to engaging in a gainful occupation in the territory of other States Parties. In reply to the report states that nationals may be prevented from leaving the countries in the following situations: detention, apprehension, a travel ban and seizure of a passport in connection with the imposition of a travel ban.

The Committee notes that the situation which it has previously considered to be in conformity with the Charter has not changed. It reiterates its previous finding of conformity.

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 employment and occupation without sex discrimination

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

Equal rights

The Act on Equality between Women and Men (the Equality Act) was amended in 2009, introducing an obligation on an employer upon request to provide a job seeker or an employee who perceives that he/she has been discriminated against, a report on the procedures followed by the employer. It further amends the definition of sexual harassment, and raises the limits for compensation for job applicants who have been discriminated against.

As regards pay comparisons according to the report comparisons can be made between the wages and salaries paid to the employees of the same employer. However, such comparisons are not limited to a single working or functional unit. Comparison of wages and salaries between employees serving in separate units can also be compared; due consideration must then also be given, e.g., to the impact of different pay levels in different parts of the country. The Committee refers to its statement in the General Introduction in this respect and asks for further clarification of the matter.

Under the Equality Act, the incomes of men and women must be compared and surveys carried out to determine the underlying causes of any pay differentials. The purpose of these surveys is to determine whether the wages afford equal treatment to men and women, and whether positions requiring the same level of competence are treated on an equal basis. When pay surveys are carried out, steps should be taken to determine whether wage criteria are inherently non-discriminatory, and whether they are applied in a non-discriminatory manner. The Committee asks who is responsible for undertaking such surveys.

Specific protection measures

Measures relating to the protection of maternity are examined under Article 8 of the Charter (Conclusions 2011).

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

According to the report the percentage of women in executive positions has increased significantly, particularly in the state sector. According to a study carried out by Statistics Finland, the share of women in executive positions increased by five percentage points to 33% from 2004 to 2009. In central government administration, the percentage of female directors in top management increased by 3.1 percentage points from 2006 to 2010. During 2006–2009, women's share of all executive positions grew by 4.7 percentage points.

The difference in pay between men and women has remained more or less unchanged for some time. To narrow the gap, the Government adopted in 2006 an equal pay programme in collaboration with the central labour market organisations. The Government continued to pursue the programme and increased the resources substantially during the reporting period. The programme's main objective is to reduce the gender pay differential by at least five percentage points by 2015.

In order to promote/ensure equal pay for work of equal value the Government programme (2007–2011) provided for an increase in the central government's contribution in support of collective agreements for the municipal sector where a collective agreement improved competitive pay in sectors predominated by women.

The percentage of the increased government grant depended on how effectively the collective agreement addressed sectors predominated by educated women where pay was not commensurate with the requirements of the position. Accordingly, the 2007 collective

agreements for the municipal sector include an equal pay provision, under which the pay increases to female dominated groups were slightly higher than those paid to others. Over a period of four years, the Government allocated a total of € 150 million per year to raise income levels in female dominated fields in the municipal sector. The 2010 collective agreement for the municipal sector offers slightly higher increases to predominantly female groups of relatively low incomes.

Other measures taken include reducing the number of short term employment contracts, increasing the number of workplace equality plans, promoting equal distribution of family leave between parents, and increasing the number of occupations in which men and women are equally represented.

A Gender Mainstreaming Development Programme Valtava (2008-2013), which is a nationwide programme in Finland was introduced. It is implemented by the Ministry of Employment and the Economy and co-financed by the European Social Fund (ESF).

The programme supports gender mainstreaming and gender equality inter alia in employment and education. One of its aims is to decrease the horizontal and vertical segregation of the labour market and education, and develop structures that support women's entrepreneurship and innovation potential.

Conclusion

Pending 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 a valid reason for termination of employment

In its previous conclusion (Conclusions 2008) the Committee asked whether courts had the competence to review the facts underlying a dismissal that is based on financial or production-related grounds invoked by the employer. In this connection it notes from the report that the number of cases concerning dismissal based on financial or production-related grounds is not very high. Courts are often called upon to consider whether the employer has failed to determine whether other employment would be available for the employee and whether the employer has failed to offer such employment. The court decides whether the necessary preconditions for valid grounds for termination of employment have been satisfied.

In reply to its questions asked in the previous conclusion, the Committee notes that according to Section 1a of the Employment Contracts Act employment is terminated automatically at the end of the month when the employee turns 68. Furthermore, pursuant to the Employment Pension Act (395/2006), employees should retire when reaching the age of 68. However, if the employee wishes to continue working and this is acceptable to the employer, the parties may sign a contract on continued employment for a fixed or indefinite period of time.

As regards the termination of employment between the ages of 63-68, the report reiterates that the employee enjoys regular security of employment until he/she turns 68 and the termination of employment on the ground of age is not allowed. Such termination may only occur for proper and weighty reasons related to the employee's imprudent conduct etc.

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 the Committee held that the situation in Finland was not in conformity with Article 24 of the Charter on the ground that the compensation for unlawful termination of employment was subject to an upper limit.

According to the report, the causal relationship between unjustified termination of employment and the loss incurred by the employee is deemed to have been broken when two years have elapsed from the termination, if not earlier. The amount of compensation is always determined individually based on consideration of all the circumstances pertaining to the case.

The Committee notes from the report of the Governmental Committee to the Committee of Ministers¹ regarding Article 1§2 that in addition to the compensation of a minimum of 3 and maximum of 24 months' pay, the victim may also seek redress under other legislation such as the Non-Discrimination Act, the Act on Equality Between Women and Men or the Tort Liability Act, provided that the special requirements in regard to these Acts are met.

According to the representative of Finland, Finnish legislation does not establish a ceiling for compensation; it only defines the maximum amount of the time over which the employer is responsible for the damages caused by his/her unjustified actions. It provides a system where the victim has several possibilities of seeking redress and which are not mutually

exclusive; an employer may be obliged to pay the employee a sum of 24 months' pay and compensation under the Tort Liability Act (material losses and suffering).

In this connection, the Committee recalls that compensation for unlawful dismissal must be both proportionate to the loss suffered by the victim and sufficiently dissuasive for employers. Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive are proscribed. If there is such a ceiling on compensation for pecuniary damage, the victim must be able to seek compensation for non-pecuniary damage through other legal avenues (e.g. anti-discrimination legislation), and the courts competent for awarding compensation for pecuniary and non-pecuniary damage must decide within a reasonable time.

The Committee wishes to be informed of cases, if any, where the employee has successfully sought compensation under the Tort Liability Act in case of unlawful dismissal.

As regards the burden of proof, the Committee notes from the report that in disputes over termination of employment, the employer is required to prove that termination is based on a proper and substantial reason.

The Committee notes that the Finnish legislation does not provide for the possibility of reinstatement in case of unlawful dismissal. It recalls that Article 24 requires that such a possibility must be guaranteed by legislation. Therefore, the Committee considers that the situation is contrary to 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 the legislation does not provide for the possibility of reinstatement in case of unlawful dismissal.

¹*Report of Governmental Committee (TS-G (2010)6, §§ 27-32)*

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

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

In its previous conclusion (Conclusions 2008) the Committee asked what the protection period in respect of each type of protected claim was. In this respect it notes from the report that pay security for 'working time account claim' (wages) is, at maximum, the equivalent of six months' salary for work done for the same employer. The Committee asks what the minimum length of pay security is.

According to the report, through the amendment 1633/2010, the employee's right to receive travel and other expenses as a pay security was clarified. Such claims are paid if they are habitual in nature and their amount is reasonable.

In its previous conclusion the Committee also asked about the average length of time between submission of claims and payment of the sums due to employees. It notes that in 2010, the average number of days was 60. However, 50% of claims were satisfied in less than one month.

In reply to the Committee's question, the report states that the fixed ceiling of 15,200€ set in the Pay Security Act is not adjusted periodically. The Ministry of Employment and Economy frequently monitors the number of those applications where pay security is limited by the ceiling. In 2010 the ceiling was reached in 82 cases. During 2007-2010 decisions were made on a total of 38,604 pay security applications, of which 6,220 were rejected in their entirety. The most common grounds for rejection were disputes or lack of valid grounds and the late submission of the application.

Conclusion

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