December 2007

European Social Charter (revised)

European Committee of Social Rights

Conclusions 2007 (FINLAND)

Articles 1§4, 2, 3, 4, 8, 9, 10, 11, 14, 15, 17, 18, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31 of the Revised Charter

Introduction

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

A presentation of this treaty as well as general comments formulated by the Committee figure in the General Introduction to the Conclusions[1].

The Revised European Social Charter was ratified by Finland on 21 June 2002. The time limit for submitting the 1st report on the application of this treaty to the Council of Europe was 31 March 2006 (reference period: 1 August 2002 to 31 December 2004) and Finland submitted it on 24 October 2006.

This report concerns the following "non-hard core" provisions of the Revised Charter:

– right to just conditions of work (Article 2);
– right to safe and healthy working conditions (Article 3);
– right to a fair remuneration (Article 4);
– right of employed women to protection of maternity (Article 8);
– right to vocational guidance (Article 9);
– right to vocational training (Article 10);
– right to protection of health (Article 11);
– right to benefit from social welfare services (Article 14);
– right of persons with disabilities to independence, social integration and participation in the life of the community (Article 15);
– right of children and young persons to social, legal and economic protection (Article 17);
– right to engage in a gainful occupation in the territory of other States Parties (Article 18);
– right of workers to be informed and consulted (Article 21);
– right of workers to take part in the determination and improvement of the working conditions and working environment (Article 22);
– right of elderly persons to social protection (Article 23);
– right to protection in cases of termination of employment (Article 24);
– right of workers to the protection of claims in the event of insolvency of the employer (Article 25);
– right to dignity at work (Article 26);
– right of workers with family responsibilities to equal opportunities and treatment (Article 27).

Finland has accepted these articles with the exception of Articles 2§7, 3§2, 3§3, 4§1, 4§4, 8§1, and 8§3.

The present chapter on Finland contains 51 conclusions[2]:

– 29 cases of conformity: Articles 2§2, 2§3, 2§6, 2§7, 3§1, 3§4, 4§3, 4§5, 8§4, 9, 10§1, 10§2, 11§2, 14§2, 15§1, 15§2, 17§1, 17§2, 18§1, 18§4, 21, 22, 24, 25, 26§1, 27§2, 28, 31§2 and 31§3;

---

[1]. The conclusions as well as state reports can be consulted on the Council of Europe's Internet site (www.coe.int) under Human Rights.

[2]. The 51 conclusions correspond to the paragraphs of the Articles which are part of the non-hard core and Article 1§4. This latter provision is usually examined together with Articles 9, 10 and 15 due to the links between these provisions. Since the right to equality under Article 20 covers remuneration, the Committee no longer examines the national situation in this respect under Article 4§3 (right to equal pay) as regards States which have accepted both provisions.

– 6 cases of non-conformity: Articles 2§1, 4§2, 8§1, 10§5, 15§3 and 27§3.

In respect of the other 16 cases, that is Articles 1§4, 2§4, 2§5, 10§3, 10§4, 11§1, 11§3, 14§1, 18§2, 18§3, 23, 26§2, 27§1, 29, 30 and 31§1, the Committee needs further information in order to assess the situation.

The next Finnish report will be the first under the new system for the submission of reports adopted by the Committee of Ministers[1]. It concerns 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);
– right of workers to the protection of claims in the event of insolvency of the employer (Article 25).

The report should be submitted to the Council of Europe before 31 October 2007.

[1]. Decision adopted at the 963rd meeting of the Ministers' Deputies on 3 May 2006.

Article 1 – Right to work

Paragraph 4 – Vocational guidance, training and rehabilitation

The Committee takes note of the information in the Finnish report.

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, education and vocational training for persons with disabilities are dealt with under these provisions.

In these conclusions, the Committee found that the situation with regard to vocational guidance (Article 9) and vocational education and training of persons with disabilities (Article 15§1) was in conformity with the Revised Charter.

However, it deferred its conclusion on vocational training and retraining for workers (Article 10§3) for lack of information.

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

Article 2 – Right to just conditions of work

Paragraph 1 – Reasonable daily and weekly working hours

The Committee takes note of the information contained in the Finnish report.

The report states that there have been no changes to the legislation during the reference period. The Committee notes that according to the Labour survey carried out by Statistics Finland the average working hours in all sectors amounted to 37.2 in 2003 and 37.1 in 2004.

In its previous conclusion (Conclusions XIV-2, p. 248) the Committee noted that according to Section 32 of the Working Hours Act the rest period can be reduced to nine hours in shift work, seven hours for a temporary period under flexible working hours arrangements and even five hours (Section 29§2) in certain exceptional cases for a maximum of three days. Therefore the Committee concluded that the situation was not in conformity with Article 2§1 of the Revised Charter.

The Committee notes that there have been no changes to this situation.

The Committee concludes that the situation in Finland is not in conformity with Article 2§1 of the Revised Charter as the Working Hours Act permits daily rest period to be reduced to seven and even five hours.

Paragraph 2 – Public holidays with pay

The Committee notes from Finland's report that there have been no changes to the situation which it has previously found to be in conformity. It nonetheless asks the next report to provide confirmation that public holidays are paid, and information on the rates of pay.

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

Paragraph 3 – Annual holiday with pay

The Committee notes the information provided in Finland's report.

A new Annual Holidays Act (162/2005) entered into force in April 2005 outside the reference period. The new Act has an extended scope of application, in particular improving the situation of persons working less than 35 hours per month.

The Committee will examine the legislation the next time it assesses Article 2§3 of the Revised Charter.

The Committee considers that under Article 2§3 of the Charter annual holidays exceeding two weeks may be postponed in particular circumstances defined by domestic law, the nature of which should justify the postponement. It asks the next report to provide information on the rules of postponement.

Pending receipt of the information requested the Committee concludes that the situation in Finland is in conformity with Article 2§3 of the Revised Charter.

Paragraph 4 – Elimination of risks for workers in dangerous or unhealthy occupations

The Committee notes the information provided in Finland's report.

In its previous conclusion under the 1961 Charter (Conclusions XVI-2, p. 250) it found that the situation was not in conformity with Article 2§4 of the 1961 Charter as workers exposed to radiation in the health sector were not entitled to reduced working hours or additional paid holidays. This was the follow up to its decision on the merits in STTK ry and Tehy ry v. Finland, Complaint No. 10/2000. In this case taken under Article 2§4 of the 1961 Charter the Committee considered that exposure to radiation, even at low levels, is not completely safe. Radiation-related work in the health sector must therefore be considered as dangerous and unhealthy within the meaning of this provision of the 1961 Charter. It follows that workers in this sector should have been entitled to reduced working hours or additional paid holidays under the 1961 Charter.

The Committee recalls that the text of Article 2§4 in the 1961 Charter was amended in the Revised Charter. The first part of Article 2§4 under the Revised Charter requires states to eliminate risks in inherently dangerous or unhealthy occupations. This part is closely linked to Article 3 of the Charter (right to safe and healthy working conditions, see *infra*). Article 3 requires states to introduce policies and measures aimed at improving health and safety at work and preventing accidents and threats to health, particularly by reducing to a minimum risk factors in the working environment.

In assessing compliance with Article 2§4, the Committee therefore refers to its conclusions relating to the right to safe and healthy working conditions in general (Conclusions 2005, Statement of Interpretation on Article 2§4, p. 297).

As regards workers in the radiation sector the Committee assesses whether measures have been taken to ensure the quality of the equipment, appropriate training of staff, and appropriate exposure time. Where these conditions have been met there is no need to provided compensation in the form of reduced working hours and additional holidays. The Committee asks to receive information on all measures taken in occupations involving exposure to ionising radiation.

However where there have not been met the second part of Article 2§4 requires states to ensure that some form of compensation is received by workers exposed to risks where it has not yet been possible to eliminate or sufficiently reduce these risks despite the application of the aforementioned preventive measures or in the absence of their application.

The aim of the compensation must be to offer those concerned sufficient and regular time to recover from the associated stress and fatigue, and thus maintain their vigilance (Conclusions III, Ireland, p. 15).

Article 2§4 mentions two forms of compensation: reduced working hours and additional paid holidays. In view of the emphasis in this provision on health and safety objectives, the Committee considers that other approaches to reducing exposure to risks may also be in conformity with the Charter (Conclusions 2005, Statement of Interpretation on Article 2§4, as above).

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

Paragraph 5 – Weekly rest period

The Committee notes the information provided in Finland's report. The report in fact simply refers to previous reports.

The Committee recalls that it previously asked for further information on a number of issues. The Committee repeats its request for the following information:

– under Section 32 of the Working Hours Act the provisions on weekly rest may be derogated from to permit work during the weekly rest period in exceptional cases. As the worker may agree to receive extra pay for such work instead of compensatory rest, the Committee again asks whether this may effectively result in the worker working more than twelve consecutive days;
– certain categories of workers do not come within the scope of the Working Hours Act, but are covered by different legislation: the Act on the Employment of Domestic Employees, the Seamen's Working Hours Act, the Act on Working Hours on Vessels in Domestic Traffic, the Decree on the Working Hours of Defence Forces Staff. Some other categories outside the scope of the Working Hours Act are covered by collective agreements. The Committee asks that the next report contain details of the provisions relating to the weekly rest period in these acts and collective agreements.

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

Paragraph 6 – Information on employment contract

The Committee notes the information provided in Finland's report.

The Employment Contracts Act provides that an employer must provide an employee with whom he has concluded an indefinite contract or a contract exceeding one month, with written information on the principle terms and conditions of employment by the end of the first pay period, unless the terms are contained in the employment contract.

The information must include at the least the place of work, the commencement of the employment, the duration if for a fixed term, the trial period, the employee's principle duties, the collective agreement applicable to the employment, the grounds for determination of pay and other benefits, the remuneration period, the regular working hours and manner of determining annual holiday, the period of notice or the grounds for determining it. According to the report the grounds listed in the Act are not exhaustive and the employer must consider whether there are other conditions which are relevant and therefore should be included.

The Committee notes the information relating to state and local authority officials.

The Committee concludes that the situation in Finland is in conformity with Article 2§6 of the Revised Charter.

Paragraph 7 – Night work

The Committee notes the information provided in Finland's report.

The Working Hours Act (605/1996) defines night work as meaning work carried out between 23.00 and 06.00, it is only possible to have night work performed in such fields and duties where it is necessary in society or required by the nature of the work or for other particular reasons. The Working Hours Act sets out the types of work in which night work is allowed. An employee can only be required to work a limited number of consecutive night shifts.

Under section 26 of the Working Hours Act, an employer must notify the labour protection authorities of regular night work. In particularly dangerous or physically or mentally highly stressful work laid down by decree or agreed upon by collective agreement, working hours may not exceed eight hours per day if the work is carried out at night.

Under the provision of the Occupational Safety and Health Act (738/2002) on the employers' general duty to exercise care, employers are required to take care of the safety and health of their employees while at work by taking the necessary measures. For this purpose, employers shall consider the circumstances related to the work, working conditions and other aspects of the working environment as well as the employees' personal capacities. Section 30 of the Act contains more detailed provisions on the employers' obligations in respect of night work, including meals.

The Committee asks for further information on the possibility for employees to transfer to daytime work.

The Committee concludes that the situation in Finland is in conformity with Article 2§7 of the Revised Charter.

Article 3 – Right to safe and healthy working conditions

Paragraph 1 – Health and safety and the working environment

The Committee takes note of the information contained in the Finnish report.

The Ministry of Social Affairs and Health is responsible for implementing the national safety and health strategy. The strategy is monitored at three year intervals. A follow-up report on the national strategy in this field published in 2004 describes the primary objectives in occupational safety and health as: maintaining and promoting workers' working ability and functional capacity; preventing occupational accidents and diseases; preventing work-induced musculoskeletal disorders; promoting mental well-being at work; promoting workers' capabilities to cope with their work and promoting management of work.

New legislation has placed additional requirements on the employer as regards the identification and assessment of the risks involved in and caused by work. According to the aforementioned follow-up report, occupational safety and health authorities have observed that the use of methods to identify and assess risks at workplaces, required by the revised legislation, has increased. The report also mentions a number of specific programmes and campaigns on occupational health and safety carried out during the reference period.

Over and above the information provided in the report, the Committee recalls that the scope of Article 3§1 requires States to also provide information on the following questions:

– whether there are strategies for making occupational risk prevention an integral aspect of the public authorities' activity at all levels;
– the State's involvement in research and training with a view to improving occupational health and safety.

The Committee therefore asks the next report to provide information on these matters.

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

Paragraph 4 – Occupational health services

The Committee takes note of the information provided in the Finnish report.

The Occupational Health Care Act (section 7) stipulates that the employer may organise occupational health care services by acquiring them from a health centre referred to in the Primary Health Care Act (66/1972) or from another unit or person entitled to provide occupational health care services, by arranging such services internally within the company or by setting up inter-company services together with other employers.

A study entitled "Occupational Health Services in Finland 2000" showed that there were a total of 1 038 occupational health centres in the country, including branches, at the end of 2000. About half of them were units run by companies themselves, one fourth were operated in connection with health centres maintained by municipalities (local authorities), and about one fifth in connection with private clinics. Of all occupational health centres, 6 % were run jointly by several companies. The Committee asks the next report to confirm if all workers in all branches of economic activity have access to occupational health services.

Pending receipt of the information requested, the Committee concludes that the situation in Finland is in conformity with Article 3§4 of the Revised Charter.

Article 4 – Right to a fair remuneration

Paragraph 2 – Increased rate of remuneration for overtime work

The Committee takes note of the information contained in the Finnish report.

It notes that there has been no change to the situation which was previously found (Conclusions XVI-2, p. 253) not to be in conformity with Article 4§2 of the Revised Charter.

The Committee concludes that the situation in Finland is not in conformity with Article 4§2 of the Revised Charter on the following grounds:

– there is no evidence that all collective agreements derogating from the provisions of the Working Hours Act afford a level of protection in compliance with Article 4§2;
– family day carers are not covered by provisions on overtime remuneration.

Paragraph 3 – Non-discrimination between men and women workers with respect to remuneration

In the General Introduction to Conclusions 2002 on the Revised Charter, the Committee indicated that "since the right to equality under Article 20 of the Revised Charter covers remuneration, the Committee will no longer examine the national situation in this respect under Article 4§3 (right to equal pay). Consequently, States which have accepted both provisions, are no longer required to submit a report on the application of Article 4§3".

Therefore, the Committee decides to adopt the same conclusion under both provisions in respect of equal pay. Consequently, as it did under Article 20 (Conclusions 2006, pp. 283-284), it concludes that the situation in Finland is in conformity with Article 4§3 of the Revised Charter.

Paragraph 5 – Limitation of deduction from wages

The Committee takes note of the information provided in Finland's report.

It notes in particular that, according to the report, deductions from wages for all employees are authorised only under the conditions and within the limits prescribed by the legislation, particularly the Employment Contracts Act, the State Civil Servants' Act, the Act on Civil Servants in Local Government and the Decree on Protected Portions in the Garnishment of Wages and Salaries. The amount remaining must be at least equal to that of the minimum pension for a single worker (€ 567 in January 2006), subject to the number of dependants for whom the worker must provide.

The Committee asks for the next report to contain the references and relevant extracts of the legislation mentioned above.

Pending receipt of the information requested, the Committee concludes that the situation in Finland is in conformity with Article 4§5 of the Revised Charter.

Article 8 – Right of employed women to protection

Paragraph 2 – Illegality of dismissal during maternity leave

The Committee notes the information provided in Finland's report.

Prohibition of dismissal

There has been no change to the situation previously found (Conclusions XVII-2, pp. 224-225) to be in conformity with the 1961 Charter.

Consequences of unlawful dismissal

The Committee previously found *(ibid.)* that the situation was not in conformity with this provision under the 1961 Charter on the grounds that legislation made no provision for the reinstatement of women unlawfully dismissed on grounds related to pregnancy, or maternity leave and that compensation payable in such cases was subject to a ceiling.

The amended Act on equality between Women and Men 232/2005 removes the ceiling on the compensation that may be awarded in such cases. However legislation still makes no provision for reinstatement. Therefore despite the changes made, the situation is not in conformity with the Revised Charter.

Conclusion

The Committee concludes that the situation in Finland is not in conformity with Article 8§2 of the Revised Charter on the grounds that legislation makes no provision for the reinstatement of women unlawfully dismissed on grounds of pregnancy or whilst on maternity leave.

Paragraph 4 – Regulation of night work

The Committee notes the information provided in Finland's report.

There is no specific regulation of night work for pregnant women, women who have recently given birth or women nursing their infants. Night work is subject to general regulation (see Conclusion 2007) Night work is subject to Article 8 of the Occupational Safety and Health Act No. 738/2002 which imposes on employers a general duty of care, and requires the employer to take into account the employee's personal capacities. Section 30 of the Act requires employers to provide employees with an opportunity to move to daytime work in order to eliminate health risks for the employee.

The Employment Contracts Act No. 55/2001 requires the employer to transfer a pregnant woman to day time work where night work has adverse effects on her health or on the health of the unborn child. The Act further provides for moving forward of maternity leave where it is not possible to eliminate of health risks in employment.

The Committee concludes that Finland is in conformity with Article 8§4 of the Revised Charter.

Article 9 – Right to vocational guidance

The Committee takes note of the information in the Finnish report and refers to its previous conclusion for a general description of the guidance system.

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 in the education system

a. Functions, organisation and operation

In reply to the Committee, the report states that vocational guidance is provided free of charge in two main forms, namely counselling for school pupils and advice to the public provided by the public labour services. The Ministry of Labour also has data bases on the classes and training on offer while the National Education Board administers an information system on the subject. The two bodies also work together to provide vocational guidance services.

Particular attention is paid to pupils dropping out of the education system, who, among other things, are invited to one-to-one consultations in the form of workshops.

The Committee notes that private sector operators offer guidance services but they cover only a small share of the market.

In 2003 the National Education Board launched a project to improve information services and guidance and training counselling in basic, upper secondary and adult education. The project was scheduled to continue until 2007. The Committee asks to be informed of the outcome of the project.

The Committee asked previously (Conclusions XVI-2, p. 259) whether students are obliged to follow the advice received through guidance, and if the advice is compulsory, what the consequences of non-compliance are. In the absence of any reply, it repeats its question.

b. Expenditure, number of staff and number of persons assisted

The Committee does not have any up-to-date information on total expenditure on vocational guidance or on staffing. It asks for this information to be provided systematically in each report.

Vocational guidance in the labour market

a. Functions, organisation and operation

The public employment services (employment offices) provide guidance in the labour market throughout the country, aimed both at adults, whether or not they are employed, and at young people. They also make their services available to enterprises.

According to the report, the Ministry of Labour has conducted a number of studies on the efficiency of the training courses on offer and the number of jobseekers who find work having attended vocational training courses. These have shown that training does have a positive effect on access to employment.

The Committee also notes that a bill for the reform of the public employment services has just been prepared. Among the new measures it would introduce are services for the most disadvantaged jobseekers. The Committee asks for more information on the implementation of this bill.

b. Expenditure, number of staff and number of persons assisted

According to the report, the public employment offices employed a staff of about 2 700 in 2004, including 273 educational advisors. The number of vocational guidance psychologists employed by these offices decreased from 295 to 253 during the reference period. During the reference period, there were 122 employment offices. The number of persons who received vocational guidance decreased from 33 150 (of whom 22 049 were women) in 2002 to 31 663 (of whom 20 711 were women) in 2004.

The Committee does not have any up-to-date information on expenditure on vocational guidance. It asks for this information to be provided systematically in each report.

Dissemination of information

The Committee notes the widespread use of the Internet to provide information on vocational guidance. The Ministry of Labour in particular has established electronic guidance and information services on career choices including data bases on jobs and professions and information on higher education and training programmes (through the AVO and A-URA portals) for young people and adults. The Ministry of Labour has also set up an Internet site called the "Jobline" which offers advice to jobseekers.

The National Education Board also publishes an annual vocational training guide.

Conclusion

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

Article 10 – Right to vocational training

Paragraph 1 – Technical and vocational training and the granting of facilities for access to higher technical and university education

The Committee takes note of the information in the Finnish report and points out that it does not answer the questions put in the previous conclusion (Conclusions XIV-2, p. 263).

Under Article 10§1, national reports must:

– report on the most recent measures taken to foster vocational training, including general and vocational secondary education, university and non-university higher education, apprenticeship and continuing education (systems are described in full in the special Eurydice and Cedefop databases);
– describe the pathways between secondary vocational training and university or non-university higher education;
– give an outline of the mechanisms for the recognition of skills and work experience acquired in the course of vocational training or activities carried out to gain a qualification or access to general or technical courses;
– describe 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;
– provide an overview of the mechanisms for the recognition of qualifications obtained through continuing vocational training and education
– give statistics showing the success rate of students in higher education;
– state the proportion of graduates who find employment and how long it takes for them to find their first skilled job

If access to higher technical or university education is to be based solely on individual aptitude, this clearly implies setting up educational structures which facilitate the recognition of knowledge and experience and transfers from one type or level of education to another; it also implies that registration fees or other educational costs do not create financial obstacles for some candidates.

The Committee asks for a detailed description of the entire education and training system based on the above guidelines and the Form for Reports. If the necessary information is not forthcoming, there will be nothing to show that the situation is in compliance with Article 10§1 of the Charter.

Measures to facilitate access to education and their effectiveness

In its previous conclusion *(ibid.),* the Committee noted that, in 2000, there had been 277 institutions providing basic vocational education, and that the number of institutions and the number of students attending them had decreased. The Committee notes from another source[1] that in 2006, the number of these institutions had decreased once again since 2005 and now came to 228. It asks once again what the explanation for this sharp decline is and would like the next report to contain more detailed figures covering the entire reference period.

The Committee notes from another source[1] that the number of students attending university and higher technical education establishments increased from 291 079 in 2002 to 305 893 in 2004. The Committee asks again whether measures are planned to allow a larger number of people with vocational qualifications to enter university or the vocational streams of higher technical education establishments.

The Committee notes from Eurostat data that Finland allocated 5.8 % of its GDP in 2002 to education at all levels. The European Union average in 2002 was 4.9 %.

Conclusion

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

---

[1]. Statistics Finland (www.stat.fi).

Paragraph 2 – Apprenticeship

The Committee notes that the Finnish report does not contain the information requested in the previous conclusion (Conclusions XVI-2, p. 267) on the state of apprenticeship.

The Committee notes from another source[1] that the apprenticeship system combines theoretical training at a vocational establishment with practical training in the workplace. Apprenticeship lasts one to three years. About 80 % of the total time of the apprenticeship is spent in the workplace. Theoretical training varies between 30 and 50 days per year. Apprenticeship contracts are negotiated between the employer, the apprentice and the training centre. The employer appoints a manager in the company to act as apprenticeship supervisor, for whom vocational colleges organise in-service training. Employers pay wages to apprentices and hold an appraisal meeting with them every four months. The contract may be terminated by either party during the four-month probationary period and by mutual agreement thereafter if the company is experiencing financial problems or if any of the circumstances referred to in the relevant labour law arise.

The Committee notes that the number of apprentices has declined – in 2000 there were 27 371 in all, whereas in 2004 there were only 18 136[2]. It asks what measures are being taken to increase the number of apprentices and if there are enough apprenticeship places.

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

Paragraph 3 – Vocational training and retraining of adult workers

The Committee takes note of the information in the Finnish report.

Employed persons

According to the report, the Public Employment Service Act (No. 1295/2002) contains provisions on adult education intended to promote the acquisition of vocational skills. Training is intended mainly to help participants keep their jobs but also to promote mobility and match supply to demand in the labour market. The Ministry of Labour spends about € 200 million on this type of training per year, some € 150 million of which goes on vocational training and the other € 50 million of which is allocated to preparatory labour market training.

In reply to the Committee's question on preventive measures against the deskilling of still active workers at risk of becoming unemployed as a consequence of technological and/or economic progress, the report states that, for the period from 2003 to 2007, the Ministry of Education, the Ministry of Labour and labour market organisations have introduced a training programme called the "Noste programme" to improve adults' qualifications. It is designed for workers aged 30 to 59 who have acquired solid work experience but do not have any basic training. In 2003, the Ministry of Labour introduced another programme entitled "AIKOO" to increase skilled labour, guide adults to train more effectively and increase their motivation. The aim of this project is to help adults without any basic vocational training to find an appropriate training course and to establish career planning services. The Committee asks for information in the next report on how these programmes have been implemented and how many people have received training.

The Committee notes from another source[3] that 1.7 million people take part in adult education every year, in other words half of the population of working age. The Ministry of Education's aim is to increase this participation rate to 60 % by 2008. The Committee asks for the next report to include information on developments in this area.

In the absence of any reply, the Committee asks again whether there is legislation authorising individual leave for training and, if so, under what conditions and on whose initiative, how long it lasts and whether it is paid or unpaid.

---

[1]. www.keuda.fi.

[2]. Eurydice database (www.eurydice.org).

[3]. Ministry of Education site (www.minedu.fi).

Unemployed persons

According to Eurostat data, the unemployment rate was 9 % in 2003 (when the EU average was 9.1 %) and 8.8 % in 2004. Unemployment among young people under 25 was 21.8 % in 2003 and 20.7 % in 2004 (the European Union average in 2003 was 16.3 %).

Under section 3 of the Public Employment Service Act (No. 1295/2002), the public employment service is required to offer unemployed people training to help them acquire the vocational skills needed to gain access to the labour market. The Committee asks what types of training are on offer and what percentage of unemployed people take part.

The Committee repeats its request for the next report to give the figure for total spending on continuing training. It also asks for detailed information on how the cost of vocational training is shared between public bodies (central and other authorities), unemployment insurance systems, enterprises and households.

Conclusion

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

Paragraph 4 – Long term unemployed persons

The Committee takes note of the information in the Finnish report.

In its last conclusion on Article 1§1 of the Charter (Conclusions 2006), the Committee noted that the proportion of long-term unemployed as a percentage of all unemployed people had been 24 % at the end of 2004, in other words significantly lower than the EU average (45.3 %).

Under the Public Employment Service Act (No. 1295/2002), the long-term unemployed are entitled to training to help them acquire the vocational skills needed to gain access to the labour market. The Committee asks for the next report to include detailed information on all training measures for the long-term unemployed.

The report states that in 2004, some 655 long-term unemployed persons took part in adult training courses. The Committee asks for detailed figures on the proportion of unemployed people attending training courses who are long-term unemployed.

It also asks how the financial burden of continuing training for the long-term unemployed is shared among public bodies, employers and households.

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

Paragraph 5 – Full use of facilities available

The Committee takes note of the information in the Finnish report.

*Fees and financial assistance (Article 10§5.*a *and* b*)*

The Committee previously (Conclusions XVI-2, p. 273) found that the situation was not in conformity with the Charter in view of the length-of-residence requirements imposed for entitlement to financial assistance for training. It noted that, under the Study Grants Act, non-Finnish nationals were entitled to study grants if they resided permanently in the country or, to be more precise, if they had lived there for at least two years for purposes other than studying. The two-year residence requirement was waived for refugees, asylum-seekers and persons who had special ties with Finland, had moved to Finland before the age of 18 or whose parents or adoptive parents resided permanently in Finland. Less strict rules were applied to EU nationals in that they were treated in the same way as Finnish citizens if they were spouses or children of migrant workers, the studies they planned to pursue were closely linked with the work they were doing in Finland or they had become unemployed through no fault of their own while working in Finland. In the absence of new information on this subject in the report, the Committee reiterates its finding of non-compliance.

*Training during working hours (Article 10§5.*c*)*

In reply to the Committee, the report states that time spent on training is counted as ordinary working hours only if the training is necessary for the employee to perform his or her tasks, it is provided in the

workplace – and elsewhere only for practical reasons –, it takes place during normal working hours and it is planned in advance. Provision for training to be counted as normal working hours may also be made in collective agreements.

*Efficiency of training (Article 10§5.*d*)*

On the matter of the supervision and evaluation of the efficiency of apprenticeship, the Committee noted in its previous conclusion *(ibid.)* that performance is assessed by means of a personal study schedule and a certificate issued on completion of the apprenticeship. In the absence of any reply, the Committee asks again for more details in the next report.

Conclusion

The Committee concludes that the situation in Finland is not in conformity with Article 10§5 of the Revised Charter because nationals of other states party residing or working lawfully in the country are not guaranteed equal treatment with regard to financial assistance for training.

Article 11 – Right to protection of health

Paragraph 1 – Removal of the causes of ill-health

The Committee takes note of the information in the Finnish report. It refers to its previous conclusions for a general description of the health system.

State of health of the population – General indicators

Life expectancy and principal causes of mortality

According to the report, average life expectancy in 2004 was 75.3 for men and 82.3 for women (the European average[1] in 2004 was about 72 for men and 80 for women). The mortality rate in 2004[2] was 9.1 per thousand, compared with a European average[1] in 2004 of 9.5 per thousand.

Diseases of the circulatory system and cancer are still the main causes of death but, according to the report, the number of deaths attributable to these causes has considerably declined. Deaths due to alcohol abuse, by contrast, increased during the reference period.

Infant and maternal mortality

According to another source[2], the infant mortality rate in Finland in 2004 was 3.3 per thousand (the European average[1] in 2004 was 4.6 per thousand). The Committee notes from the report that the maternal mortality rate declined from 5.3 deaths per 100 000 live births in 2002 to 4.8 in 2004 (the European average[1] was between 5 and 6 per 100 000 in 2004).

Health care system

Access to health care

The main reforms introduced under the National Health Project, which is scheduled to continue until 2007, relate to training for health professionals (dentists, doctors and nurses in particular have attended special courses) and the sharing of responsibilities with specialised care units at local level, including laboratory operations.

In reply to the Committee, the report states that the Primary Health Care Act was recently amended to improve the functioning of primary health care, providing faster access to treatment for patients and more clearly defining the responsibilities of municipalities in protecting people's health. Given, however, that this amendment was made outside the reference period, the Committee will assess its impact in its next conclusions.

In reply to the Committee's question on the subject, it is stated in the report that amendments to the 1992 Act on the Status and Rights of Patients were adopted in 2004. The Committee asks for information on their practical impact in the next report.

With regard to the consolidation of health care funding, it is pointed out in the report that since 2003, municipalities have been awarded state subsidies for the implementation of projects designed to improve the quality of health services.

The Committee previously asked (Conclusions XVII-2, pp. 226-228) to be informed about the implementation of the proposals by the working group on the development of child health clinic activities at national level. In the absence of any information in the report, the Committee repeats its question.

In its last conclusion *(ibid.),* the Committee asked for up-to-date information about the situation in law and in practice as regards access to care for all disadvantaged groups. In the absence of any further information, it repeats its request.

In reply to the Committee's question on waiting lists, the report states that the legislative amendments on the status and rights of patients adopted in 2004 were aimed in particular at improving the transparency of waiting list management. The Committee asks for the next report to describe what impact this has had on patients. The report contains data showing that the management of waiting

---

[1]. EUROSTAT site: http://epp.eurostat.ec.europa.eu/.

[2]. Site of the French National Institute of Demographic Studies (*INED*): www.ined.fr.

lists has improved, but these figures do not relate to the reference period. It asks for these figures to be included in the next report.

The Committee asked previously *(ibid.)* for detailed information on the reimbursement of pharmaceuticals. It repeats its request.

Health professionals and equipment

The report states that there were a total of about 9 500 general practitioners in 2004, some of whom worked in specialised health care. At the same time, the Committee notes an apparent discrepancy with the density of doctors per inhabitant, since it is stated that, during the reference period, there were 2.6 general practitioners for every 1 000 inhabitants, or 260 per 100 000 inhabitants (the European average[1] in 2002 was 328 doctors per 100 000 inhabitants).

The Committee notes that the density of doctors, dentists and nurses is less than the one of the European average and would asks for the government's comments on these figures. No information is given on the number of hospital beds and so it asks for up-to-date statistics in the next report.

Conclusion

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

Paragraph 2 – Advisory and educational facilities

The Committee notes the information in the Finnish report.

Developing a sense of individual responsibility

The Committee has previously (Conclusions XVII-2, pp. 228-229) found the situation to be in conformity.

Counselling and screening

The Committee has also previously *(ibid.)* found the situation to be in conformity.

It also asked for detailed information on the implementation of the measures to promote pupils' health in schools taken as part of a national action plan. In the absence of a response the Committee therefore asks for this information to be included in the next report.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Finland is in conformity with Article 11§2 of the Revised Charter.

Paragraph 3 – Prevention of diseases

The Committee notes the information in the Finnish report.

Preventing avoidable risks

Reduction of environmental risks

The Committee asked previously (Conclusions XVII-2, pp. 229-231) for detailed, up-to-date information on the implementation of the Environmental Protection Act (No. 86/2000), which covers air, water, soil and noise pollution. In the absence of any information in the report, the Committee repeats its question.

It also asks for the next report to provide information on arrangements to keep the public informed.

Ionising radiation – In reply to the Committee, the report states that under Act No. 1142/1998, the Radiation Act (No. 591/1991) has been amended to implement two Euratom Directives on safety measures and exposure to radiation. Furthermore, the aforementioned Radiation Act complies with

---

[1]. *Ibid*.

the requirements of the International Commission on Radiological Protection (ICRP) and Directive 96/29/Euratom[12].

The Committee asks for additional information on the frequency of inspections by the radiation and nuclear safety authority. It also asks whether regular checks are carried out for radioactive contamination of water, air, soil and food.

Asbestos – The Committee has found previously *(ibid.)* that the situation is in conformity with the Revised Charter.

Food safety

According to the report, Decree No. 1115/2001 requires that anyone working in the food hygiene field must have the requisite qualifications, in other words that they must have passed a specific examination.

With regard to food hygiene standards and the mechanisms set up to ensure that these are observed throughout the food chain, it is stated in the report that several specific laws intended to transpose Directives 178/2002/EU and 852/2004/EU into domestic law were adopted very recently. Since these laws do not relate to the current reference period, the Committee will assess their impact in its next conclusions.

Measures to combat smoking, alcoholism and drug addiction

Smoking – The Committee repeats the question it put in its previous conclusion *(ibid.)* concerning the entry into force of the amendment to Finland's anti-smoking legislation to make the ban on tobacco sales to persons under the age of 18 more effective.

It notes from another source[3] that the Finnish government is planning to ban smoking in public places (hospitals, schools and government buildings), on public transport, at work and, partly at least, in restaurants and bars. The Committee asks whether a total ban on smoking in restaurants and bars is also being considered.

According to the report, 27 % of men and 20 % of women smoked every day in 2004. Given that one of the main aims of the Health 2015 programme adopted in 2001 was to reduce the number of 16 to 18 year olds who smoke by 15 %, the Committee asks for information on the progress made in the next report. It also asks whether there are awareness-raising campaigns on the dangers of smoking.

Alcoholism – The report draws attention to the launch by the government, in 2004, of the 2004-2007 Finnish Alcohol Programme. Its aim is to co-ordinate the government's activities with those of other partners in this field. The Committee repeats the request it made in its previous conclusion *(ibid.)* for up-to-date facts and figures on alcohol consumption, through which it can gauge the progress made.

Drug addiction – There being no information on this subject in the report, the Committee also repeats the request it made in the previous conclusion *(ibid.)* for up-to-date facts and figures. It also asks for the next report to describe any awareness-raising campaigns carried out in this area, especially those relating to public health and the prevention of AIDS, along with any campaigns to combat alcoholism.

Preventive measures

Epidemiological monitoring

The Committee has found previously *(ibid.)* that the situation is in conformity with the Revised Charter.

The Committee asks whether any particular attention is paid to the groups most at risk of contracting AIDS (such as young people and intravenous drug users).

---

[1]. Council Directive 96/29/Euratom of 13 May 1996 laying down basic safety standards for the health protection of the general public and workers against the dangers arising from ionising radiation, Official Journal No. L 159 of 29/06/1996, pp. 0001-0114.

[2]. Collective Complaint No. 10/2000, They ry and STTK ry v. Finland, decision on the merits, §25.

[3]. "European Trends towards Smoke-Free Provisions", published by the European Network for Smoking Prevention (ENSP), 2006.

Immunisation

According to the report, the vaccination coverage rate for polio, diphtheria and tetanus among children aged 8 to 12 averages between about 95 and 98 %.

Traffic accidents

There is no information on this point. The Committee points out that states must take steps to prevent accidents. The main sorts of accident covered are road accidents, domestic accidents, accidents at school, accidents during leisure time, including those caused by animals (Conclusions 2005, Romania, pp. 603-606), and accidents at work. Trends in accidents at work are considered from the standpoint of health and safety at work (Article 3).

Conclusion

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

Article 14 – Right to benefit from social welfare services

Paragraph 1 – Provision or promotion of social welfare services

The right to benefit from social welfare services provided for by Article 14§1 requires Parties to set up a network of social services to help people to reach or maintain well-being and to overcome any problems of social adjustment. The Committee reviews the overall organisation and functioning of social services under Article 14§1.

Social services include in particular counselling, advice, rehabilitation and other forms of support from social workers, home help services (assistance in the running of the home, personal hygiene, social support, delivery of meals), residential care, and social emergency care (shelters). Issues such as childcare, childminding, domestic violence, family mediation, adoption, foster and residential childcare, services relating to child abuse, and services for the elderly are primarily covered by Articles 7§10, 16, 17, 23 and 27. Co-ordination measures to fight poverty and social exclusion are dealt with under Article 30 of the Revised European Social Charter, while social housing services and measures to combat homelessness are dealt with under Article 31 of the Revised European Social Charter.

The provision of social welfare services should concern all those in need, in particular the vulnerable groups and individuals who have a social problem. Groups which are vulnerable – children, the family, the elderly, people with disabilities, young people with problems, young offenders, refugees, the homeless, alcohol and drug abusers, victims of domestic violence and former prisoners – should be able to avail themselves of social services in practice. Since many of these categories are also dealt with by more specific provisions of the Charter, under Article 14 the Committee reviews the overall availability of such services and refers to those other provisions for the detailed analysis of the services afforded. This overall review follows the criteria mentioned below as regards effective and equal access to, and quality of the services delivered as well as issues of rights of clients and participation.

The right to social services must be guaranteed in law and in practice. Effective and equal access to social services implies that:

– *the general eligibility criterion regulating access to social services is the lack of personal capabilities and means to cope. The goal of welfare services is the well-being, the capability to become self-sufficient and the adjustment to the social environment of the individual;*
– *an individual right of access to counselling and advice from social services shall be guaranteed to everyone likely to need it. Access to other kind of services can be organised according to eligibility criteria, which shall be not too restricted and at any event ensure care in case of urgent need;*
– *the rights of the client shall be protected: any decision should be made in consultation with and not against the will of the client; remedies must be available for those who wish to complain about social welfare services and there must be a right to appeal to an independent body where allegations of discrimination and violation of human dignity are made;*
– *social services may be provided subject to fees, fixed or variable, but they must not be so high as to prevent the effective access of these services. For persons lacking adequate financial resources in the terms of Article 13§1 such services should be provided free of charge;*
– *the geographical distribution of these services shall be sufficiently wide;*
– *recourse to these services must not interfere with people's right to privacy, including protection of personal data.*

Social services must have resources matching their responsibilities and the changing needs of users. This implies that:

– *staff shall be qualified and in sufficient numbers;*
– *decision–making shall be as close to users as possible;*
– *there must be mechanisms for supervising the adequacy of services, public as well as private.*

The Committee takes note of the information in the Finnish report, which indicates the legislative developments occurred in the field of the provision of social services. In particular, Section 17 of Act No. 938/2005, which has been adopted outside the reference period, defines the services that municipalities must provide.

The Committee, however, refers to its previous conclusion (Conclusions XVII-2, pp. 232-235) where it considered the situation in conformity pending certain information. The report does not answer the questions posed by the Committee; therefore it reiterates its request for this information.

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

Paragraph 2 – Public participation in the establishment and maintenance of social welfare services

Article 14§2 requires States to provide support for voluntary associations seeking to establish social welfare services. This does not imply a uniform model, and States may achieve this goal in different ways: they may promote the establishment of social services jointly run by public bodies, private concerns and voluntary associations, or may leave the provision of certain services entirely to the voluntary sector. The "individuals and voluntary or other organisations" referred to in paragraph 2 include the voluntary sector, private individuals, and private firms.

The Committee examines all forms of support and care mentioned under Article 14§1 as well as financial assistance or tax incentives for the same purpose. It also verifies that the Parties continue to ensure that services are accessible on an equal footing to all and are effective, in keeping with the criteria mentioned in Article 14§1. Specifically, Parties must ensure that public and private services are properly co-ordinated, and that efficiency does not suffer because of the number of providers involved. In order to control the quality of services and ensure the rights of the clients as well as the respect of human dignity and basic freedoms, effective preventive and reparative supervisory system is required.

Article 14§2 also requires States to encourage individuals and organisations to play a part in maintaining services. The Committee looks at action taken to strengthen dialogue with civil society in areas of welfare policy which affect the social welfare services. This includes action to promote representation of specific user–groups in bodies where the public authorities are also represented, and action to promote consultation of users on questions concerning organisation of the various social services and the aid they provide.

The Committee takes note of the information in the Finnish report.

The Committee refers to its previous conclusion (Conclusions XVII-2, pp. 235-237) where it considered the situation to be in conformity with the Charter pending information on effective and equal access to social services provided by non-state providers. The report indicates that non-state providers represent respectively 17 % and 5 % of health care and social services providers. They provide services like the state providers in fields such as counselling, child care, housing, nursing and rehabilitation. In 2002, the cost of private social services amounted to about 1.2 million € and nearly 65 000 persons were employed by private service providers. Non-state providers are necessary to ensure the extension of the network of services to the whole territory.

Eligibility criteria are set by municipalities based on the principle that everyone must have access to the services irrespective of social and financial situation. Services are primarily destined for residents, but in case of emergency they can also be granted to other persons staying in the municipality. According to Act No. 734/1992, certain services are free such as child guidance and family counselling, special care for persons with disabilities, certain forms of child care, sheltered work, and out-patient social work with intoxicant abusers. A fee may be requested from beneficiaries in accordance with the individual's ability to pay. The report indicates that fees collected represent less than 8 % of the financing of municipal social and health services. The Committee asks whether these rules on fees also apply to services of non-state providers.

Supervision of non-state service providers is regulated by ad hoc legislation: the state provinces offices and local authorities are responsible for this supervision. An audit exercise found out that private service providers comply with the regulations, but that supervision could be more effective with an increased national guidance and co-ordination for the provinces and local authorities involved. Recommendations have been made to this end and the Committee asks for information on the follow-up given to them.

Pending receipt of the requested information, the Committee concludes that the situation in Finland is in conformity with Article 14§2 of the Revised Charter.

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

Paragraph 1 – Vocational training for persons with disabilities

The Committee takes note of the information provided in the Finnish report.

According to the report, in 2004, the total number of persons with disabilities eligible for statutory disability benefit was 203 000. 72 000 (31 %) were of working age (16-65). Entitlement to the disability benefit requires a substantial disability. In addition, there are other persons who need support and services for different functions.

The report indicates 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.

Education

The Committee recalls that, as stated in the Autism-Europe decision (Autism-Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, §48), "the underlying vision of Article 15 is one of equal citizenship for persons with disabilities and, fittingly, the primary rights are those of "independence, social integration and participation in the life of the community. Securing a right to education for children and others with disabilities plays an obviously important role in advancing these citizenship rights". Under Article 15§1, the Committee therefore considers necessary the existence of non-discrimination legislation as an important tool for the advancement of the inclusion of children with disabilities into general or mainstream educational schemes. Such legislation should, as a minimum, require a compelling justification for special or segregated educational systems and confer an effective remedy on those who are found to have been unlawfully excluded or segregated or otherwise denied an effective right to education. Legislation may consist in general anti-discrimination legislation, specific legislation concerning education, or a combination of the two.

It should be noted that, in the view of the Committee, Article 15 applies to all persons with disabilities regardless of the nature and origin of their disability and irrespective of their age. It thus also covers both children and adults who face particular disadvantages in education, such as persons with intellectual disabilities.

The Committee recalls from its previous conclusion that the Constitution guarantees equal treatment for persons with disabilities. It also notes that the 1998 Basic Education Act (Section 17) guarantees equal education to every child and in this context promotes inclusive education for children with disabilities. The Committee asks whether this act explicitly prohibits non-discrimination and if it requires a compelling justification for placing children in special or segregated educational systems. It also asks whether mainstreaming is guaranteed in general upper secondary education.

Pupils who have a moderate learning or adjustment difficulties are entitled to special-needs education alongside other teaching; they have not however the status of children in special-needs education. Pupils who owing to a disability, illness, delayed development, or emotional disturbance may be admitted or transferred to special-needs education. As far as possible special-needs education shall be organized in conjunction with other education or else in a special-needs classroom or, when mainstreaming is not possible, in some other appropriate facility. The primary objective is that children with disabilities attend the nearest school as any other child.

For pupils in special-need education, school authorities must prepare an individual teaching plan which defines those interpretation and assistant services and other teaching and student welfare services, means of communication and aid material, which are necessary for the pupil's participation in school.

Children with disabilities are also entitled to start school one year earlier to compensate for their disabilities; moreover, morning and afternoon activities funded by state funds can be arranged for pupils in special-need education.

Parents or carers of the pupil are consulted before his admission or transfer to special-needs education. Section 42 of the Basic Education Act provides for the possibility of lodging an appeal against the decision taken against the will of parents/carers with the state provincial office. A further

appeal against the decision taken by the state provincial office can be lodged with an administrative court. The Committee asks whether the victim may ask for compensation for the damage suffered as a result of the discrimination, as well as information on the existing case law.

According to the report, in 2003, altogether 124 137 pupils received part-time special-needs education. A total of 36 839 pupils, i.e. 6.2 % of the age group had been attending or transferred into special-needs education. The Committee asks what percentage of these pupils receives education through the mainstream education system structure, as well as the percentage among them of children with intellectual disabilities. It also asks the next report to provide figures on mainstreaming in general upper secondary education.

The Committee reiterates its question as to whether general teacher training includes a module on special educational needs

Vocational training

The Committee notes from the report that mainstreaming applies also at secondary vocational education. General vocational institutions arrange special-needs education primarily in teaching groups common to all students or in special groups. Vocational special education institutions cater for the most difficult students and are responsible, also financially, for providing them with the adequate resources to follow education. The Committee asks whether the Act on Vocational Education (No. 630/1998) explicitly prohibits non-discrimination, as well as provides remedies against discrimination.

Students with disabilities are provided with an individual teaching plan, which defines the support measures needed, such as interpretation and assistant services and other teaching and student welfare services, means of communication and aid material, which are necessary for their participation in teaching. The Act on Services and Assistance for the Disabled contain provisions on services and support measures for persons with disabilities. Students are entitled also to free of charge residence halls, daily meals and the necessary weekly travel at home.

According to the report, in 2005, about 14 500 students were in special-needs education, of which 10 600 studied at general vocational education institutions and 3 900 in special education institutions.

The Committees recalls that under Article 10 of the Revised Charter it regards vocational training as encompassing all types of higher education including university education. It considers that this interpretation applies *mutatis mutandis* to Article 15. It therefore reiterates its question about access of persons with disabilities to higher education.

The report provides also information on other kinds of vocational training provided in the context of rehabilitation available to persons with disabilities. Vocational rehabilitation may be organised by the labour administration, municipalities, and the Social Insurance Institution of Finland. Education and training arranged as vocational rehabilitation may be vocational education or training (basic, further or supplementary training) or general education. The Social Insurance Institution compensates the rehabilitee for reasonable and necessary costs of education and training through the payment of a rehabilitation allowance. In 2004, 3 000 young persons under 25 years of age received vocational rehabilitation through the Social Insurance Institution.

Conclusion

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

Paragraph 2 – Employment of persons with disabilities

The Committee takes note of the information provided in the Finnish report.

According to the report, in 2004, the total number of persons with disabilities eligible for statutory disability benefit was 203 000. 72 000 (31 %) were of working age (16-65). Entitlement to the disability benefit requires a substantial disability. In addition, there are other persons who need support and services for different functions.

In 2004, around 70 000 persons with disabilities were placed either in the open market (42 933), or in education or training (8 500), or in other supportive measures.

Non-discrimination legislation

During the reference period the Non-Discrimination Act (No. 21/2004) was adopted in order to introduce the prohibition of direct and indirect discrimination in employment and training on the ground of, *inter alia,* disability. Discrimination is prohibited with respect to recruitment, employment and working conditions, promotion, access to training and guidance, and membership or involvement in trade unions activities.

The Committee recalls that non-discrimination legislation must provide for the adjustment of working conditions (reasonable accommodation) in order to guarantee the effectiveness of non-discrimination legislation in the field of employment. It notes that the Non-Discrimination Act provides that a person commissioning work or arranging training shall, where necessary, take any reasonable step to help a person with disabilities to gain access to work or training, to cope at work and advance in his career. In assessing what is reasonable, attention must be given to the cost of the steps, to the availability of public funds, and the financial position of the person commissioning work or training. Upon application, employers may receive benefits by the labour administration to make special arrangements of working conditions (work machines, working methods, equipment and working environment).

In order to assess whether the right to non-discrimination in employment is effectively guaranteed for persons with disabilities, the Committee asks how reasonable accommodation is implemented in practice, whether there is case law on the issue and whether reasonable accommodation has prompted an increase in employment of persons with disabilities in the open labour market.

Measures to promote employment

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

Employment offices provide job seekers with disabilities vocational guidance to promote their access to employment and training and arrange labour market training for them. In 2004, 5 826 job seekers, i.e. 18 % of all clients, received guidance, the outcome was an education training plan (32 %), a work plan (22 %), or another plan (34 %). To support job seekers to remain in work, employment offices also arrange examinations of their capacity, work and training try-outs, coaching for work. They can hire a work coach for 60 days for this purpose.

Employment of persons with disabilities in the open market is supported by means of vocational education and training and by granting employers subsidies for employing persons with disabilities. The Committee refers to its conclusion under Article 15§1 for vocational education and training. Employers may receive subsidies both for reasonable accommodation of the working position and wage subsidy (€ 430-770) for maximum two years. The report indicates that the pay of workers is adjusted to reflect their work performance or their other incomes.

The Act on the Public employment Service (No. 1295/2002) contains provisions on vocational rehabilitation arranged by the labour administration. The primary goal is to provide people at risk of incapacity to work, also due to disability, to improve or maintain their employment through early rehabilitation. Vocational rehabilitation includes examinations of capacity, vocational training, work and training try-outs, coaching for work. Similar measures are put in place by the municipalities for those persons with disabilities who have difficulties in finding employment through the employment services.

Vocational rehabilitation for persons with disabilities is also organised by the Social Insurance Institution of Finland for persons whose disability may become an impediment for working and an allowance paid for the period spent in rehabilitation. In 2004, the Social Insurance Institution provided vocational rehabilitation to 17 000 persons; approximately 60-70 % of participants were placed in the open labour market.

The 2004 Act on Social Enterprises reorganised sheltered employment. These enterprises must have at least 30 % of persons with disabilities as employees. They are commercial enterprises, but they receive wage subsidies and project subsidies. However, the wage subsidy (€ 430-770) cannot be paid longer than six months.

The Committee recalls that Article 15§2 of the Charter requires that persons with disabilities be employed in an ordinary working environment. Sheltered employment facilities must be reserved for

those persons who, due to their disability, cannot be integrated into the open labour market. They should aim nonetheless to assist their beneficiaries to enter the open labour market. The Committee asks the next report to indicate the measures introduced to enable the integration of persons with disabilities into the ordinary labour market and the general rate of progress into it.

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.

Finally, persons with disabilities may participate in "exemplary employment", which is occupation as therapy and does not constitute an ordinary employment relationship. It targets persons with disabilities who cannot enter a supported employment relationship. The worker receives pension income and in addition he/she may receive incentive pay (maximum € 12 per day). At the end of 2003, 290 special employment units employed about 13 100 persons with severe disabilities.

Conclusion

Pending receipt of the requested information, the Committee concludes the situation in Finland is in conformity with Article 15§2 of the Revised Charter.

In accordance with Article 21-1§3 of the Committee's Rules of Procedure, a dissenting opinion of Mr J-M. Belorgey, General Rapporteur of the Committee, is appended to this conclusion.

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

The Committee takes note of the information provided in the Finnish report.

Non-discrimination, other legislation and integrated programming

The Committee observes that several acts regulate issues such as housing, transport, telecommunications and cultural and leisure activities for persons with disabilities, but there is no general anti-discrimination law on disability covering explicitly these issues.

The Committee recalls that the right of persons with disabilities to social integration provided for by Article 15§3 implies that barriers to communication and mobility be removed in order to enable access to transport (land, rail sea and air), housing (public, social and private), cultural activities and leisure (social and sporting activities). To this purpose 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. Therefore it finds the situation not in conformity with the Charter.

The Committee also recalls that policy measures to achieve the goals of social integration and full participation of persons with disabilities must be co-ordinated and asks the next report to provide information on the integrated programming of the policy for disabled persons.

Consultation

According to the report, the National Council on Disability is a permanent channel of co-operation between the authorities and the disabled and disability organisations. It deals with the planning, the development and the implementation of policies. Similar bodies are also present at municipal level. Representatives of disabilities organisations also participate in the drafting of legislation concerning the disabled.

Forms of economic assistance empowering persons with disabilities

Several forms of economic assistances are available under different pieces of legislation. They consist of: the child disability allowance (up to the age of 16), the disability allowance (from the age of 16), the different kinds of rehabilitation allowances provided under the earning-related pensions scheme, or by the Social Insurance Institution of Finland. The rehabilitation allowances may differ according to the age and may be completed by additional benefits.

Measures to overcome barriers

Technical aids

From the information provided in the report under Article 15§1, the Committee notes that pupils and students are provided with technical aids. It asks whether they are given free of charge and whether also other categories of persons with disabilities are entitled to free technical devices or if they must contribute towards their cost.

According to the report, services and supportive measures based on the Act on Services and Assistance for the Disabled supplement general services when these are not sufficient or suitable for a person with disabilities.

The Committee asks information on what these support services consist of and whether they are provided by the State or by other organizations. It also asks whether they cover services such as home help, personal assistance programmes, etc., in order to enable persons to live in their own homes. It also wishes to know what the costs for such support services, if any, to be borne by the disabled are.

Communication

Interpretation services are available for persons with hearing or speech impairments, including distant interpretation for rural areas.

The Committee requests information on measures adopted to overcome barriers to communication for persons with disabilities, i.e. in the telecommunication system and in the provision of information by public services including new technology (public web sites) as well as internet service providers. It also request information on the legal status of sign language.

Mobility and transports

The authorities implement strategies to promote the accessibilities of environments and services to all users, including those with disabilities. According to the Land Use and Building Act (No. 132/1999), every building must be suitable for persons whose mobility is reduced. Administrative and services buildings, commercial and service premises must equally be accessible to persons with disabilities.

Public transport is supplemented with transport services for people with severe disabilities. Travel services centres have been established for this purpose. The Committee asks whether persons with reduced mobility are entitled to special fares or required to bear the extra costs of any special facilities. It also asks what measures have been taken with respect to rail, sea and air transport means.

Housing

Residential buildings must also respect the accessibility requirements of the Land Use and Building Act (No. 132/1999). The 2004 Decree on Housing Design provides that multi-storey buildings with access to apartments at the third floor or higher must have a lift suitable for wheelchairs and walking frames with wheels.

The Act on Residential Renovation and Energy Saving Grants (No. 1021/2002) lays down rules for receiving grants for housing repairs, lift construction and removal of obstacles to mobility. Grants are awarded on the basis of social considerations and means-tested and they can cover up to 40 % of the acceptable repair cost, or a higher percentage when they are particularly necessary. Grants are also provided to housing corporations and owners of rented houses.

The Act on Subsidies for Improving Housing Conditions for Special Groups (No. 1281/2004) provides for subsidies for the building, acquirement, and modernization of subsidized rental houses and dwellings intended for, *inter alia,* persons with disabilities. These grants may be coupled with interest subsidy loans.

The Committee asks the next report to provide information about the implementation of these pieces of legislation, the number of beneficiaries and the results achieved in promoting accessible housing.

Cultural and leisure activities

The report indicates that accessibility for all to culture is an underlying principle of cultural policy in Finland, but it does not explain how this is put in to practice. The Committee asks therefore that this information to be provided in the next report.

In the years 2003-2005 a programme for developing sporting opportunities for special groups, including persons with disabilities, was prepared by the Ministry of Education. The goal is to develop equality in sports services. The local sport authorities, schools, and sport organisations are all involved in developing sporting activities for persons with disabilities. In school, physical education is arranged in order to meet the needs of these children.

Conclusion

The Committee concludes that the situation in Finland is not in conformity with Article 15§3 of the Revised Charter on the ground that there is no anti-discrimination legislation for persons with disabilities covering issues such as housing, transport, telecommunications and cultural and leisure activities.

Article 17 – Right of children and young persons to social, legal and economic protection

Paragraph 1 – Assistance, education and training

The Committee takes note of the information provided in the Finnish report.

Status of the Child

The Committee recalls that the situation, which was found to be in conformity with the 1961 European Social Charter, has not changed.

New legislation adopted in 2003 set the age limit concerning the right of minors to be heard in administrative issues at 15 years. The minor can then be heard separately in an issue which concerns him/her or his/her rights.

Education

Article 17§1 of Revised Charter contains a reference to the right to education and paragraph 2 guarantees the right to free primary and secondary education. Therefore Article 17 as a whole requires states to establish and maintain an education system that is both accessible and effective. States need to ensure a high quality of teaching and that there is equal access to education for all children, in particular vulnerable groups, including children in rural areas.

The Committee notes from another source[1] that, in accordance with the Constitution of Finland, everyone has the right to basic education free of charge. Provisions on the duty to receive education are laid down by law. According to the Constitution, the public authorities shall, as is provided in more detail by the law, guarantee for everyone an equal opportunity to receive other educational services in accordance with their ability and special needs, and an opportunity to develop themselves without being prevented by economic hardship. This provision, which is enacted in section 16, subsection 2, of the Constitution, gives individual citizens the right to lifelong education. The right is not guaranteed as a subjective right in the way basic education is guaranteed, but the provision implies that the public authorities are under an obligation to make the practical arrangements required to ensure that a variety of educational services are available in the country.

According to the Act on Basic Education (No. 1288/1999), a child who attends class shall have a statutory right to receive education and counselling based on the curriculum on working days. The education shall be arranged so that it corresponds to the child's age and capabilities. The Act on Upper Secondary Schools (No. 629/1998) and the Act on Vocational Education (No. 630/1998) regulate secondary education.

The Committee wishes to receive statistics in the next report on the number of public and private schools, the geographical distribution of schools in urban and rural areas, the average class sizes and the ratio teacher per pupil. It asks for figures on primary and secondary school enrolment, as well as information on measures aimed at raising the quality of education and facilities at schools and on mechanisms to monitor and ensure the adequacy of the educational system

The Committee recalls that under Article 17§1 equal access to education must be ensured for all children, in particular attention should be paid to children from vulnerable groups such as children from minorities, children seeking asylum, refugee children, children in hospital, children in care, pregnant teenagers, teenage mothers, children deprived of their liberty, etc. Children belonging to these groups must be integrated into mainstream educational facilities and ordinary educational schemes. Where necessary special measures should be taken to ensure equal access to education for these children. However, special measures for Roma children should not involve the establishment of separate schools or classes reserved to this group.

The Committee notes from another source[2] that the legislation on education provides for education in Sami; however, in practice, teaching in Sami is mostly available at lower comprehansive level. Upper secondary schools do not provide education in Sami because the leaving examination is taken in Finnish or Swedish.

---

[1]. Report of Finland submitted under the UN Convention on the Rights of the Child, CRC/C/129/Add.5, 5 January 2005, in www.ohchr.org.

[2]. *Ibid*.

As regards Roma children, they belong to statutory education, but their attendance is low and drop-out particularly high. Out of the estimated 10 000 Roma children of statutory school age only 1 700 are in comprehensive schools and only 250 of them are taught Romani language. Several measures, such as the development of teaching material in Romani, the specific training of teachers, as well as methods to prevent social exclusion and drop-out, have been implemented. The Committee asks the next report to provide information on the results achieved, as well as whether Roma children are generally integrated into mainstream education or attend special classes.

As regards the integration of children with disabilities into mainstream education, the Committee refers to its conclusion under Article 15 of the Revised Charter.

Protection of children from ill treatment and abuse

The Committee recalls that the situation, which was found to be in conformity with the charter, has not changed. The Child Custody and Right of Access Act (No. 361/1983) provides that a child must not be subdued, corporally punished or otherwise humiliated.

Children in public care

In reply to the Committee, the report explains that, according to the Child Welfare Act, children taken into substitute care are placed in foster family care, institutional care or other care, which latter consists in professional foster home care.

Foster family care is opted for children whose upbringing does not require any particular professional skills. The financial support payable to foster parents and their rights and obligations are set into an agreement concluded between the foster parents and the municipality. Municipalities are also obliged to organise training and work guidance for foster parents. In 2004, foster parents received per month a fee of € 565 on average and an average expenses compensation of € 400.

Professional foster homes care for maximum four or seven persons at the time, if they are siblings or members of the same families. Generally, foster homes cater for children who need more demanding care and upbringing. Foster homes are given a licence from the relevant state provincial office or by the municipality concerned. To receive the licence they shall have adequate structures and staff.

A child welfare institution may have one or more residential units, each accommodating maximum 8 children. The unit must have sufficient personnel, at least five employees responsible for care and upbringing.

In 2004, 5 553 children and young people where in foster family care, while 9 151 children and young people were placed in institutional care of professional foster homes.

According to the report, the percentage of private services in foster care of children has increased to reach two thirds. Private child welfare services are supervised by the relevant State Provincial Offices and the municipalities which arrange the services. The supervisory authorities are entitled to visit the units and to make inspections there. The State Provincial Office may also require the municipal social welfare board to inspect the unit. Such board is at any event in charge of controlling that the child who has been placed in care receives the right services in compliance with the relevant legislation. The municipalities may arrange social welfare and health care functions by purchasing the necessary services from the state, from another municipality, or another public or private provider. If it is purchased by a private provider the municipality shall verify that the services meet the standards required of corresponding municipal activities.

In reply to the Committee, the report indicates that children may file themselves complaints against the care and upbringing.

Young offenders

In Finland, relatively few prisoners and remand prisoners are younger than 18 years of age. This is partly because of a provision in the Penal Code (520/2001) according to which a person may not be sentenced to an unconditional imprisonment if he or she was under 18 years of age at the time when the offence was committed, unless it is called for by weighty reasons.

In reply to the Committee, the report indicates that, during 2002-2004, the number of young people in police custody was on average 100 for children under 14 years of age and 2 250 for young people aged 15-17. On average 45 were

subject to pre-trial detention, the majority of them for less than one week. In 2002-2004, around 2 350 young people were imprisoned every year for an average of 1.39 days.

The Committee asks to be systematically informed on the number and age of minors under arrest, being imprisoned or placed in disciplinary institutions and what were the offences committed by them, as well on how many are subject to pre-trial detention, for what type of offences, what is the length of pre-trial detention and under which conditions it is carried out, in particular as regards the possibility of visits during this period.

It also reiterates its question about the follow-up given to the Juvenile Punishment Experiment Act.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Finland is in conformity with Article 17§1 of the Revised Charter.

Paragraph 2 – Free primary and secondary education – Regular attendance at school

The Committee takes note of the information provided in the Finnish report.

In accordance with the Constitution of Finland, everyone has the right to basic education free of charge. Basic education (primary and lower secondary education) is compulsory until the age of 16.

The Committee recalls that hidden costs such as books or uniforms must be reasonable and assistance must be available to limit their impact on the most vulnerable groups. It asks the next report to provide information on the amount of these costs and whether assistance is available for those who cannot afford to bear them.

The Committee recalls that under Article 17§2 States are required to encourage school attendance and to actively reduce the number of children dropping out or not completing compulsory education and the rate of absenteeism.

According to the report, pupils who need support in their studies may be provided with a teaching plan that describes any possible support measures, such as remedial teaching. These pupils are given guidance counselling, which is intended to prevent learning difficulties and further exclusion from education and working-life at the end of compulsory schooling.

The Committee notes from another source[1] that, according to a study carried out in 2003 on social exclusion, out of the 61 000 children who finished comprehensive school in spring 2003, approximately 3 000 were socially excluded or at risk of becoming marginalized. Prevention of social exclusion therefore should start as early as possible (early intervention). Pupils with poor school performance or who do not manage to get a school-leaving certificate are at risk of social exclusion after they have completed comprehensive school.

Good results have been obtained from the so-called *"oma ura"* classes ("creating one's own career") designed to serve the needs of young people at risk of exclusion. The first classes were founded at the beginning of the 1990s on the initiative of the Mannerheim League for Child Welfare. At the moment, 30 classes are active. *"Oma ura"* classes integrate school attendance with practical training at a workplace that meets the interests of the young person, and learning takes place mainly in other places than the school.

The Committee asks to be further informed on measures taken to tackle with school drop-out or poor performance.

Pending receipt of the information requested, the Committee concludes that the situation in Finland is in conformity with Article 17§2 of the Revised Charter.

---

[1]. Report of Finland submitted under the UN Convention on the Rights of the Child, CRC/C/129/Add.5, 5 January 2005, in www.ohchr.org.

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

Paragraph 1 – Applying existing regulations in a spirit of liberality

The Committee takes note of the information provided in the Finnish report.

Foreign population and migratory movements

The Committee notes from another source[1] that on 31 December 2004, there were 108 300 foreign nationals in Finland, amounting to 2.1 % of the population (as compared to 1.8 % in 2000). Nationals of the Russian Federation, Sweden and Estonia still made up a large share of these immigrants, accounting for 43 % of the foreign population on a more or less constant basis between 2000 and 2004. Foreign labour followed the upward trend and amounted to 1.9 % of Finland's working population in 2004, compared to 1.6 % in 2000.

Work permits

The Committee calls to mind that under Finland's Aliens Act (No. 378/1991 regarding foreigners), all people except nationals of the states party to the Agreement on the European Economic Area must, in principle, hold a work permit to be entitled to engage in a gainful occupation in Finland (Conclusions XVII-2, pp. 241-243). The Committee would also point out that, with the exception of Cypriot and Maltese nationals, the right to free movement of workers from the other states which joined the European Union in 2004 was restricted for a transitional two-year period. The Committee notes that Finland did not extend this period.

The Committee notes from the report that the new Aliens Act (301/2004 regarding foreigners) requires nationals from states which are not parties to the Agreement on the European Economic Area to obtain an "employee's" or a "self-employed worker's" residence permit depending on whether they wish to be employed by a company or set up their own business. These permits may be temporary or permanent. After two years of residence in Finland, foreign nationals with temporary residence permits of either type may apply for a permanent residence permit if they still satisfy the conditions required of them for the granting of the initial permit. The Committee asks for the next report to contain more details on the different categories of employees' and self-employed workers' residence permits, particularly with regard to their length of validity.

According to the report, some categories of residence permit give their holders only a limited right to work. The Committee notes from another source[2] that this applies in particular to persons with a residence permit for studies. The Committee notes from the same source that persons who have obtained a permanent residence permit for reasons other than work, as well as those issued with temporary residence permits for the purposes of humanitarian protection or immigration on humanitarian grounds, those with permits because of a family tie or those with fixed-term permits to work as professionals in the science, culture or art fields[3] are entitled to engage in a paid work. The Committee asks whether these people enjoy the same exemption with regard to self-employed work.

The Committee notes, lastly, that some categories of people are entirely exempted from the requirement for a residence permit to be entitled to work in Finland. Since the introduction of the new Act No. 301/2004 about foreigners, this has included berry and fruit pickers working for no more than three months in Finland[4].

Relevant statistics

In reply to the Committee's question, the report states that the high rate of rejections of applications for work permits from Turkish nationals was justified mainly by the needs of the labour market, but also by the fact that the working conditions offered by employers were incompatible with the minimum standards required by Finland's general collective agreement.

The Committee asks for the restrictions that result in rejections of applications for work permits – which have become employee's or

---

[1]. Trends in International Migration, OECD, 2006 edition.

[2]. www.mol.fi.

[3]. The latter two categories were introduced by Act No. 301/2004 (Section 79).

[4]. Under Act No. 301/2004 (Section 81).

self-employed worker's residence permits under the current system – to be applied in a liberal spirit in accordance with the requirements of Article 18§1.

According to the report, during the period prior to the entry into force of Act No. 301/2004 about foreigners, the employment authorities assessed 54 016 applications for work permits, 49 320 of which it approved. However, these figures do not reflect the number of work permits actually issued because applications may still be rejected even if the employment authorities have approved them. The same applies to the period since the entry into force of Act No. 301/2004; the employment authorities gave 2 265 decisions during this period, 2 104 of which were positive.

The Committee would reiterate that the assessment of the degree of flexibility and hence conformity with Article 18§1 is based on statistics showing the refusal rates for work permits for both first-time and renewal applications (Conclusions XVII-2, Spain, pp. 745-747). It asks for the next report to provide statistics, broken down by country of origin, for numbers of applications for employees' and self-employed workers' residence permits, showing those granted, rejected and renewed and covering all the nationals of states party to the Charter and the Revised Charter but not party to the Agreement on the European Economic Area.

Conclusion

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

Paragraph 2 – Simplifying existing formalities and reducing dues and taxes

The Committee takes note of the information provided in the Finnish report.

Administrative formalities

Issuing of residence permits for work

The Committee notes from the report that applications for an employee's residence permit may be made either by the employers or by foreign workers themselves. The application may be lodged with the Finnish representation in the worker's country of origin, the employment authorities or the district police. In all cases, the authority that issues the permit is the National Immigration Office.

The Committee notes from another source[1] that the self-employed worker's residence permit is issued by the National Immigration Office or by the district police.

The Committee asks for more information on the different formalities for obtaining an employee's or a self-employed worker's residence permit (documents required, conditions, etc.) depending on whether the application is made in Finland or the foreign worker's country of origin.

Work and residence permit

The Committee notes that under the new Aliens Act, work and residence permits are obtained during one and the same process, as the two are merged into a single document.

Renewal of residence permits

Noting the lack of information about the conditions for renewal of residence permits for employees or self-employed persons, the Committee asks for the next report to give details of the legislation in this respect.

Waiting times

According to the report, the new Aliens Act has made it possible to speed up the processing of applications relating to foreign labour. The Committee asks for the next report to describe exactly how it has done so and, in so far as possible, to provide approximate figures in this respect.

---

[1]. www.mol.fi.

Chancery dues and other charges

The report states that, on the basis of the actual costs incurred by the authorities for the processing of applications for permits, a first permit usually costs € 175 and a renewal € 100. It is pointed out that these sums are generally lower than the actual processing costs. The Committee asks whether the same is charged both for employees' and for self-employed workers' permits and whether it is planned to reduce these charges.

Conclusion

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

Paragraph 3 – Liberalising regulations

To be examined during the 223 session

The Committee takes note of the information provided in the Finnish report.

Access to the national labour market

The Committee notes firstly that Act No. 301/2004 has reduced the area of competence of employment authorities because they are no longer required to appraise applications from certain categories of foreign worker. This is the case, in particular, for fruit and berry pickers working for no more than three months in Finland (see the Committee's conclusion under Article 18§1).

The Committee notes again that Act No. 301/2004 has changed nothing as regards the actual powers of employment authorities within their field of competence; just as in the former system, the relevant authorities may not issue an employee's residence permit unless the employment authorities give their prior approval having checked that certain employment-policy criteria have been observed. The employment authorities give their approval where there is no equivalent labour available on the national labour market. They also check whether the terms and conditions of the employment concerned comply with applicable Finnish regulations (Conclusions XVII-2, pp. 245-247). According to the report, when they examine applications for employees' residence permits, the employment authorities must take account of the aims of the new system, which are to make more workers available while catering for the legal protection of employers and foreign workers on the one hand and helping members of the workforce already on the labour market to find work on the other. Once the employment authorities have given their approval, the National Immigration Office assesses whether the general requirements for the award of a residence permit have been met and, if so, it grants the application. The Committee notes that one of the main reasons for the rejection of applications is that the applicant is considered to constitute a threat to law and order, safety or public health.

From another source[1] it notes that the residence permit for self-employed persons is granted only after an appraisal by the regional employment and economic development office of the viability of the economic activity that the foreign national proposes to engage in. The National Immigration Office or the district police then assess whether the general requirements for the award of a residence permit have been met and, if so, they grant the application.

Exercise of the right to employment

The Committee notes from the report that employees' residence permits are granted for one or more occupational sectors. Employees may change jobs in the sector(s) for which they have been granted a permit as well as changing their workplace. Employees' residence permits may, however, be granted for a single employer only, for specific reasons. The Committee asks what reasons are deemed to justify this exception to the rule and whether and under what conditions the holders of residence permits for self-employed persons may change their sector of activity.

Consequences of loss of job

The Committee infers from the information provided in the report that loss of job does not lead to the withdrawal of the related residence permit. Foreign workers may look for a new job for the period for which their residence permit is valid. However, permits may not be extended for the sole reason that the person concerned is looking for a job. The Committee points out once again that, in the event of

[1]. www.mol.fi.

job loss, Article 18 of the Charter requires that residence permits are extended so that the person concerned has enough time to find another job. It asks whether any measures are planned to liberalise the said regulation.

The Committee also asks whether the residence permit of foreign workers who appeal against their dismissal may be extended pending a court decision.

Although the Committee has already been able to observe, on the basis of the information provided, that measures were taken during the reference period to liberalise the legislation governing the employment of foreign workers, there are so many outstanding questions that it is not in a position to assess the situation as a whole.

Conclusion

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

Paragraph 4 – Right of nationals to leave the country

The Committee notes from the Finnish report that the situation which it previously considered to be in conformity with the Charter is unchanged. The Committee recalls that the only restrictions on the right of nationals to leave the country are those necessary for the proper conduct of judicial proceedings or for the execution of a sentence, or for the fulfilment of obligations in respect of military service, restrictions which it considered to be in accordance with the conditions of Article G.

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

Article 21 – Right of workers to be informed and consulted

The Committee takes note of the information provided in the Finnish report.

The Committee previously held the situation to be in conformity with Article 2 of the 1988 Additional Protocol and notes moreover that the scope of the Act on Co-operation within Undertakings (725/1978) governing the right of workers to information and consultation has been broadened as regards the topics subject to the consultation procedure. Thus, the Committee holds the situation also to be in conformity with Article 21 of the Revised Charter. It nevertheless asks the next report to provide updated information on the rules governing the right of workers to be informed and consulted within the undertaking.

The Committee concludes that the situation in Finland is in conformity with Article 21 of the Revised Charter.

Article 22 – Right of workers to take part in the determination and improvement of the working conditions and working environment

The Committee takes note of the information provided in the Finnish report.

The Committee previously held the situation concerning the right of workers to take part in the determination and improvement of working conditions and working environment to be in conformity with Article 3 of the 1988 Additional Protocol.

As regards participation in the determination of working conditions within the undertaking, it notes that the scope of the relevant Act on Co-operation within Undertakings (725/1978) has been broadened as regards the topics subject to co-determination. As far as the participation of workers in the protection of health and safety within the undertaking is concerned, the Committee examined the corresponding stipulations of the Occupational Safety Act No. 299 of 1958 (amended by Act No. 144 of 1993) and the Act on the Supervision of Labour Protection and Appeal Procedure in Matters concerning Labour Protection (131/1973) in its previous conclusions. The report refers to new legislation in this context such as the Occupational Safety and Health Act (738/2002) as well as the Act on the Supervision of Occupational Safety and Health and Co-operation on Occupational Safety and Health at Workplaces (44/2006) which took effect on 1 September 2006, i.e. outside the reference period, and which replaced the Act on the Supervision of Occupational Safety and Health and Appeals in Occupational Safety and Health Matters (131/1973).

The Committee asks the next report to provide updated information on the rules governing the participation of workers in the determination of the matters referred to in Article 22 of the Revised Charter.

Pending receipt of the information requested, the Committee concludes that the situation in Finland is in conformity with Article 22 of the Revised Charter.

Article 23 – Right of elderly persons to social protection

The Committee takes note of the information in the Finnish report.

The Committee recalls that under this provision States are required to put in place non-discrimination legislation (or similar legislation) protecting elderly persons against discrimination on grounds of age. In addition, given that elderly persons sometimes have reduced decision making powers, procedures for 'assisted decision making' should also exist in law. As the report provides no information on these points, the Committee reiterates its request for a clarification in the next report on whether such non-discrimination legislation exists and on whether there are rights in the law for elderly persons with reduced capacity.

The Committee notes that the level of national expenditure for social protection and services for the elderly accounted for around 32 % of all social expenditure during the reference period, which is considered sufficient for the purposes of this provision.

Adequate resources

The report indicates that the pension system for the elderly has remained unchanged during the reference period. The statutory pension, consisting of a national pension and an earnings-related pension, constitutes the basic income for the elderly. The income support system, for which municipalities are responsible, guarantees income security in the last resort. Old-age pensioners living at home may also obtain care allowance on account of particular expenses and their need for assistance. Those in institutional care are entitled to retain their pension.

As regards the amount of pensions, the Committee noted in its previous conclusion that the average level of pensioner households' income corresponded to about 90 % of the income of economically active households. However, the Committee recalls that in its previous conclusion under Article 12 (Conclusions 2006) it found that the situation was not in conformity with Article 12§1 of the Revised Charter on the grounds that the minimum full national pension for a single person was inadequate. The Committee notes that this is in fact the minimum pension payable and probably only a small number of persons are affected. The Committee therefore asks how many persons would receive only the minimum pension and whether such persons would be entitled to additional forms of assistance.

In reply to the Committee, the report states that that the amount of the national pension is reduced when a person has received a pension from abroad. The amount of a national pension depends on the time during which a person has resided in Finland. In the calculation of this time, the periods when the applicant has obtained a pension from abroad are not taken into account. Thus, a period of the applicant's residence in Finland during which he/she has obtained a pension from abroad does not entitle him/her to a national pension. However, statutory pensions which a person has obtained from another European Union member state or a state applying European Community legislation, and which are based on the person's own time of residence or insurance period, do not reduce the national pension.

The report reiterates that the residence requirement for obtaining a national pension is three years' for Finnish nationals (and nationals from European Union member states and of states applying European Community legislation, refugees and stateless persons). For foreign nationals, the required minimum time of residence in Finland is five years. However, a Government bill to Parliament tabled in 2005 is proposing a shortening of the five years' residence requirement applicable to foreign nationals. The bill proposes that all people residing in Finland, irrespective of nationality, should be subject to the same requirement of three years' residence. These legislative amendments will enter into force at the beginning of 2007. The Committee asks to be kept informed on the implementation of this proposed amendment.

Services and facilities

Municipalities are responsible for arranging services for the elderly, by producing the services themselves or purchasing them from the private sector. They are also responsible for supplying information on them. The report indicates there were no legislative changes concerning the content of services for the elderly during the reference period. However, as from 1 January 2004, municipalities may also arrange social welfare and health services by granting their clients vouchers that entitle them to services rendered by private providers. The legislation is intended to improve especially the access of elderly people to home-help services. If a client does not want to use a service voucher, the

municipality will arrange services for him/her in another manner. The municipalities are also responsible for supervising and ensuring the quality of services purchased from the private sector.

Informal care is a statutory form of support arranged by municipalities according to their resources. At the end of 2004, 3.4 % of the population over 75 years of age were covered by this discretionary form of support. The support consists of a fee payable to the carer and a number of services provided to the person cared for. The care may be arranged for instance in a home for the elderly or a hospital or at home by means of home-help services. The Committee asks what is the level of financial assistance granted to persons caring for the elderly under this scheme.

The report indicates that in 2003, the proportion of costs borne by elderly persons for municipally arranged services was 14.7 % in home-help services, 18.4 % for care in homes for the elderly and 9.5 % for other social services for the elderly and the disabled. It is also stated that elderly people purchase some services privately. In such cases, they are entitled to a deduction in taxation in respect of nursing and caring services.

Health care

In reply to the Committee's request for more information on day care provision for persons with dementia and related illnesses, the report states that the extent and availability of day care activities for demented people varies from one municipality to another. In addition to municipalities, there are also organisations and associations, for example local dementia associations, which arrange day care activities. However, no statistics are available on such activities. The Committee considers that this information is not sufficient to assess compliance with this part of Article 23. It therefore asks the next report to provide more detailed information on the health care programmes and services available for persons with dementia, and in particular to clarify whether such services are provided on a statutory requirement or a discretionary basis.

The Committee recalls that Article 23 requires the availability of health care programmes and services specifically aimed at the elderly, as well as guidelines on healthcare for them. It therefore reiterates the questions on this point that were raised in the previous conclusion, and in particular wishes to receive information on whether there exist health care programmes directed to the different problems which the elderly may suffer from, besides dementia, such as depression, neurosis or obsession.

Housing

The housing needs of elderly persons are to some extent taken into account in the provisions and social benefits which apply to disabled persons. Accessibility has been improved in both public and private housing construction by state-subsidised construction of lifts and the renovation of existing ones. The report states that during the reference period, approximately 12 000 homes of elderly people were renovated with grants from the Housing Fund. In addition, housing loans and interest subsidised loans, also granted by the Housing Fund, were used for the construction of approximately 1 700 new dwellings and service flats for elderly people. The Committee takes note of the significant growth and availability of service-housing units for the elderly, which increased by 56 % during the reference period.

Institutional care

The proportion of persons over 75 years in institutional care decreased by 23 % during the reference period, in part due to the increased building of service-housing flats for the elderly. At the end of 2004, 7 % of persons over 75 were in institutional care (either municipally arranged homes for the elderly or health centre wards). The number of homes for the elderly was 400, and that of health centres 200 (staffed respectively by 20 560 and 21 920 persons). The report states there are no statistics or registers on applications and waiting lists for entry into an institutional facility, although some municipalities do have queues. Given that a sufficient supply of institutional facilities is an important element in assessing conformity with this provision, the Committee asks the next report to provide an estimate of the number of elderly persons which are waiting for a place in an institutional facility.

In reply to the Committee's question, the report states there are no statistics on elderly persons of foreign origin in institutional care. The number of immigrants over 55 years who live in Finland is approximately 10 000, and very few of them are in institutional care.

The Committee has previously noted that the State Provincial Offices are responsible for supervising the operation and quality of public and private institutional care facilities. It nevertheless wishes to

know if the system is based on the licensing of such institutions, and if so, whether there have been any cases of warnings or withdrawal of a licence for poor quality of services or inadequate treatment of elderly people in such institutions.

The Committee also notes there is neither specific legislation on compulsory care of elderly people nor any recommendations on the use of physical restraint. According to the report, the supervision of institutions, legislation on the status of clients/patients and training of staff are key elements in ensuring appropriate use of physical compulsion. The Committee asks if the aforementioned legislation on the status of clients/patients contains any guidelines or criteria on the use of physical restraints on elderly persons.

Conclusion

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

Article 24 – Right to protection in cases of termination of employment

The Committee points out that Article 24 of the Revised Charter requires states to draw up termination of employment rules for all persons who have a contract of employment. In its appraisal of whether the rules on termination of employment are in conformity with Article 24 the Committee will examine:

– *valid reasons for termination of employment within the general rules on termination, and more rigorous safeguards against certain forms of dismissal (Article 24.*a *and Appendix/Article 24);*

– *penalties for unfair dismissal and the nature of the body empowered to impose them (Article 24.*b*).*

The Committee notes the information in Finland's report.

Scope

The Committee notes that the protection against dismissals in the Employment Contracts Act also applies to workers with fixed term contracts.

As regards employees in general there may be a trial period at the beginning of the employment during which period the employer may terminate the contract of employment having to base the termination on the prescribed grounds in the Employment Contracts Act. However the termination of an employment contract on the basis of the trial period may not be based on discriminatory grounds, or on grounds, which are otherwise irrelevant with regard to the purpose of the trial period. The employer may terminate an employment contract only on grounds related to the person or the performance of an employee, which give the employer reason to deem that the employee does not meet his requirements for the post. The maximum duration of a trial period is four months.

Obligation to provide a valid reason for termination of employment

According to the Employment Contracts Act the dismissal of an employee on an indefinite contract may only be based firstly on grounds related to the employee's conduct. The employer may give notice to the employee for reasons related to the employee's conduct only if the reasons are *proper and weighty*. A proper and weighty reason related to the employee' conduct refers to a serious violation or negligence of the obligations provided by the employment contract. These reasons include negligence of the obligation to work and obvious carelessness in duties, refusal to work, disobeying of orders, dishonesty and lack of confidence resulting from it, and unbusinesslike behaviour.

In addition, it is required that the employee's actions seriously violate the obligations required of him by the contract and the act. The grounds for notice may be related to the employee's ability to work, if his abilities change essentially and prevent the employee from performing his duties.

Prohibited grounds for giving notice provided by the act are:

1. illness, disability or accident of the employee, unless the working capacity of the employee has reduced substantially and for such a long term that it would be unreasonable to require that the employer continued the contractual relationship;
2. the employee's participation of in industrial action arranged by an employee organisation or in accordance with the Collective Agreements Act;
3. the employee's political, religious or other opinions or participation in social activity or association activity; and
4. as a reprisal for an employee's resort to means of legal protection.

Prior to giving an employee notice of dismissal related to his/her conduct an employer is obliged to caution the employee except in cases where the grounds for giving notice a such a serious violation of the employment relationship that it cannot be considered reasonable for the employer to continue the contractual relationship.

When assessing grounds for giving notice due to the employee or related to the employee's person, the employer must consider whether it is possible to avoid the termination of the employment contract by giving the employee other work. The obligation to offer other work does not, however, apply when the employee has violated his obligations so seriously that is cannot be considered reasonable for the employer to continue the employment relationship.

In addition to grounds due to the employee, the employer may terminate an employment contract on production-related or financial grounds. In order for the ground for giving notice to be proper and weighty, the available work must have substantially and permanently declined for financial or production-related reasons or because of reorganization of the employer's business.

The employer does not have a proper and weighty financial or production-related ground for termination, if the employer has either before or soon after terminating an employment contract hired a new employee to similar duties than that of the terminated employee even though the employer's operating conditions have not changed during the equivalent period. Similarly, the employer does not have grounds for termination if the reorganisation of work has not caused actual reduction of work.

In addition the validity of the grounds should also be assessed also on the basis of whether the employer can offer the employee *other work* instead of terminating the employee's employment contract. The employer has the obligation to look for other work for the employee under threat of being given notice from the entire employer enterprise or community. If an employer exercises control over personnel matters in another enterprise or corporate body, cannot offer the employee other work within the original enterprise, has to clarify whether he can fulfill his obligation to offer work or training by offering the employee work in other enterprises or communities under his authority.

The obligation to offer other work involves also *an obligation to provide training*.

The employer has to provide all the training necessary in order for the employee to be able to accept new duties. The condition is, however, that the training must be suitable and reasonable from the employer's perspective.

To help it assess the extent to which reasons regarded in practice by employers as justifying termination of employment constitute valid reasons permitted by Article 24 of the Revised Charter, the Committee asks for the next report to include any significant case law of the courts in dismissal cases.

The Committee considers that dismissal on grounds of age will not constitute a valid reason for termination of employment except in accordance with a valid retirement age justified by the operational requirements of the undertaking, establishment or service. States should take adequate measures to ensure protection for all workers against dismissal on grounds of age.

The Committee asks for full information on dismissal on the grounds that the employee has reached the retirement age.

When the employer terminates the employment contract for reasons related to the employee, the employer has to provide the employee with an opportunity to be heard concerning the grounds for termination before effecting the termination. Before terminating of the employment contract on production-related and financial grounds, the employer has to, as soon as possible, explain to the employee the grounds for and the alternatives to being given notice. The notice of termination of the employment contract has to be given to the employee in person. If this is not possible, the notice may be delivered by letter or electronically. On the employee's request, the employer has to notify the employee in writing of the date of the termination of the employment contract, and the grounds for giving notice or cancellation, which the employer knows to have caused the termination of the contract.

Prohibited Dismissals

The Committee points out that a series of provisions in the Charter and Revised Charter require more rigorous safeguards against dismissal on certain grounds:

- *Articles 1§2; 4 §3 and 20: discrimination;*
- *Article 5: trade union activity;*
- *Article 6§4: participation in a strike;*
- *Article 8§2: maternity;*
- *Article 15: disability;*
- *Article 27: family responsibilities;*
- *Article 28: workers' representation.*

Most of these reasons are also listed in the Appendix under Article 24 as reasons which do not justify dismissal. However, the Committee will continue to check whether national situations are in conformity with the Revised Charter in regard to these reasons when it examines the reports on each of these provisions. It will thus restrict its consideration of more rigorous protection against dismissal to the

reasons listed in the Appendix under Article 24 which are not referred to elsewhere in the Revised Charter, namely:

– *"the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities". The Committee considers that national legislation should contain an express safeguard, in law or case law, which protects employees against retaliatory dismissal if they turn to the courts or another competent authority to enforce their rights;*

– *"temporary absence from work due to illness or injury".*

The Committee notes that retaliatory dismissal is expressly prohibited by the Employment Contract Acts as is dismissal based on illness, disability or accident of the employee, unless the working capacity of the employee has reduced substantially and for such a long term that it would be unreasonable to require that the employer continue the contractual relationship.

Remedies and Sanctions

Employees who believe they have been unlawfully dismissed may take a case before the courts and seek compensation. Compensation is limited in most cases to an amount equal to 24 months pay, and must amount to a minimum of 3 months pay. However the Committee wishes to know whether in exceptional cases this limit may be exceeded.

Conclusion

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

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

The Committee takes note of the information in the Finnish report.

Protection of workers' claims in the event of the insolvency of their employer is afforded by a combination of the Pay Security Act (No. 866/1998) and the Unemployment Benefit Financing Act (No. 555/1998).

The Committee notes from the report that the definition of insolvency is given in the Pay Security Act. According to the Act, employers are considered insolvent under the following circumstances:

– they have been declared bankrupt;
– they are not able to honour their financial commitments and have been divested of their assets;
– they have failed to pay taxes deducted at source or employers' contributions on time;
– they cannot be contacted or have wound up their activities, thereby preventing any claims from being recovered;
– their insolvency has been established beyond dispute by the authority responsible for ensuring implementation of the Pay Security Act.

It notes that the definition of insolvency given in the Pay Security Act covers additional cases to those described in the European directive on the protection of employees in the event of the insolvency of their employer[1]. In particular, the Finnish definition does not require the opening of formal insolvency proceedings against the company in question.

Where their employers' are insolvent, workers' claims are protected by an unemployment insurance fund established by the Unemployment Benefit Financing Act cited above. Protection is guaranteed for all claims arising from an employment relationship in accordance with the Employment Contracts Act (No. 55/2001), including claims in respect of paid leave and amounts due in respect of other types of paid absence relating to a prescribed period.

The Committee is led to understand that pay security does not apply to social security or welfare contributions. It asks for the next report to confirm this. It also wishes to know if claims arising from the termination of an employment contract during the so-called observation period following an order for judicial reorganisation or liquidation are also covered by the law in force.

Under the Act of 1998, the application for payment of a claim must be submitted within three months of its falling due or, in the case of an indemnity or financial compensation due under the law or a contract, within three months of the date of the court ruling or the conclusion of the contract concerned.

According to the report, amounts due may not exceed € 15 200.

According to the report, all categories of workers are covered by the law in force. The Committee asks for the next report to state whether part-time employees, employees on fixed-term contracts and persons on temporary contracts are also covered by the legislation.

The Committee points out that, under the appendix to Article 25, it is possible for states party to exclude certain categories of workers from the protection provided in this provision by reason of the special nature of their employment relationship. The report states that the Pay Security Act only covers employees working in Finland or those residents in Finland but working abroad in the service of a Finnish employer, on condition that they do not receive benefits from another state.

Conclusion

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

---

[1]. Directive 2002/74/EC of the European Parliament and of the Council amending Council Directive 80/987/EEC on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer, Official Journal L 270 of 08/12/2002, pp. 0010-0013.

Article 26 – Right to dignity at work

Paragraph 1 – Sexual harassment

The Committee takes note of the information in the Finnish report.

With regard to legal protection, the Committee notes that the Occupational Safety and Health Act (738/2002) refers to harassment or other inappropriate treatment of an employee that occurs at work and causes hazards or risks to the employee's health.

The report lists examples of offensive behaviour that could constitute sexual harassment. The Committee considers that the effectiveness of the legal protection against sexual harassment depends also on how the applicable legal provisions are interpreted by national courts. It therefore asks for future reports to provide information on relevant case law.

Liability of employers and means of redress

The Occupational Safety and Health Act requires employers that are not themselves responsible for sexual harassment to take all necessary steps to put an end to harassment or other inappropriate conduct posing a risk to an employee's health as soon as it is suspected. Such steps may range from a simple warning to outright dismissal of the employee concerned. Employers that fail to meet their obligations face penalties under the Criminal Code ranging from a fine to one year's imprisonment.

The Equal Opportunities Act (609/1986) also requires employers to intervene in the event of undesired behavior of a non-sexual nature based on the sex of the victim. Employees whose employers fail to comply with their obligations under this legislation may refer the matter to the Equality Ombudsman, who is responsible for overseeing its application. The Committee asks for information on how and in what circumstances cases are referred to the Ombudsman.

It appears from the report that taken in combination, these provisions not only prohibit sexual harassment by employers but also require the latter to establish appropriate internal regulations and procedures to prevent sexual harassment and identify any cases of this sort.

The Committee asks whether employers can be held liable towards persons working for them who are not their employees, such as sub-contractors and self-employed persons, and who have suffered sexual harassment committed on their business premises or by employees answerable to them (Conclusions 2007, Italy, Article 26§1). It also asks whether employers' liability for workers, whether or not their employees, also applies in cases of sexual harassment suffered by persons not working for them, such as customers and visitors.

Burden of proof

The Equal Opportunities Act provides for the burden of proof to be shared between the employee and the employer or the presumed perpetrator of the harassment when this is not the employer. Complainants who consider themselves to be victims of harassment must establish a presumption that this did occur and defendants must prove that harassment did not take place.

Damages

The Equal Opportunities Act authorises the victims of harassment or discrimination to bring actions for damages against their employers to obtain compensation for pecuniary and non-pecuniary damage suffered.

The Committee notes from another source[1] that damages may be paid as compensation for financial losses and material and non-material damage suffered by victims. The amount is not determined in advance but depends on various factors, such as whether and to what extent the offence was intentional. The Equal Opportunities Act sets the minimum damages at € 3 000, but no maximum is laid down. The Committee notes that obtaining damages under that Act does not prevent plaintiffs from also seeking damages under the Tort Liability Act and the Criminal Code.

The Committee also asks whether employees who have been dismissed following sexual harassment are entitled to challenge the dismissal in the courts and whether the latter can order their

[1]. The Equal Opportunities Act, Ministry of Social Affairs and Health publications on equality of the sexes, 2005.

reinstatement and, where appropriate, the payment of compensation for lost income suffered during their enforced absence.

Prevention

According to the report, employers' and employees' organisations have published a joint brochure on sexual harassment which has been widely circulated.

The Committee notes that Article 26§1 also requires states party to take adequate preventive measures against sexual harassment In particular, they should inform workers about the nature of the behaviour in question and the available remedies. The Committee asks what other preventive measures have been introduced by the government and what steps have been taken to make the public more aware of the problem of sexual harassment.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Finland is in conformity with Article 26§1 of the Revised Charter.

Paragraph 2 – Moral harassment

The Committee recalls that, irrespective of admitted or perceived grounds, harassment creating a hostile working environment characterized by the adoption towards one or more persons of persistent behaviors which may undermine their dignity or harm their career shall be prohibited and repressed in the same way as acts of discrimination. And this independently from the fact that not all harassment behaviors are acts of discrimination, except when this is presumed by law.

The Committee considers that there is no requirement for a state's legislation to make express reference to harassment where that state's law encompasses measures making it possible to afford employees effective protection against these phenomena. This protection must include the right to appeal to an independent body in the event of harassment, the right to obtain adequate compensation and the right not to be retaliated against for upholding these rights. It further considers that, from the procedural standpoint, effective protection of employees may require a shift in the burden of proof to a certain extent, making it possible for a court to find in favour of the victim on the basis of sufficient prima facie evidence and the conviction of the judge or judges.

The Committee therefore asks to receive precise information on laws, administrative acts or case laws' motivations to implement these two aims, independently from the facts being or not held to be discriminatory.

The Committee takes note of the information in the Finnish report.

The Occupational Safety and Health Act (738/2002) is the main source of protection for employees against non-sexual harassment.

With regard to legal protection, the Committee notes that the Act refers to harassment or other inappropriate treatment of an employee that occurs at work and causes hazards or risks to the employee's health.

The report lists examples of offensive behaviour that could constitute harassment. The Committee considers that the effectiveness of the legal protection against harassment depends also on how the applicable legal provisions are interpreted by national courts. It therefore asks for future reports to provide information on relevant case law.

The Equal Opportunities Act (609/1986) also requires employers to intervene in the event of undesired behavior of a non-sexual nature based on the sex of the victim. Employees whose employers fail to comply with their obligations under this legislation may refer the matter to the Equality Ombudsman, who is responsible for overseeing its application. The Committee asks for information on how and in what circumstances cases are referred to the Ombudsman.

Liability of employers and means of redress

The Committee asks whether employers can be held liable towards persons working for them who are not their employees, such as sub-contractors and self-employed persons, and who have suffered harassment committed on their business premises or by employees answerable to them (Conclusions

2007, Italy, Article 26§1). It also asks whether employers' liability for workers, whether or not their employees, also applies in cases of harassment suffered by persons not working for them, such as customers and visitors.

The Committee notes from the information in the report concerning Article 26§1 that under the Equal Opportunities Act employees who consider themselves to be the victims of sexual harassment may refer the matter to the Equality Ombudsman, who is responsible for overseeing the Act's application. It asks whether the same right of referral to the Ombudsman applies to cases of non-sexual harassment.

Burden of proof

The Committee asks where the burden of proof lies when those concerned are seeking legal protection.

Damages

The Committee asks whether, under the Occupational Safety and Health Act, victims of harassment can bring actions for damages against their employers to obtain compensation for pecuniary and non-pecuniary damage suffered.

The Committee points out that compensation must be sufficient to make good the victim's pecuniary and non-pecuniary damage and act as a deterrent to the employer. It asks how much compensation may be awarded so as to be able to determine whether this is sufficient to make good the damage to victims and act as a deterrent to employers.

It also refers to the question in its conclusion on Article 26§1 concerning the reinstatement of employees.

Prevention

The Committee notes from the information in the report concerning Article 26§1 that employers' and employees' organisations, assisted by the Ombudsman, have published a joint brochure on sexual harassment which has been widely circulated. It asks whether similar steps have been taken with regard to other forms of harassment.

The Committee notes that Article 26§2 also requires states party to take adequate preventive measures against harassment. In particular, they should inform workers about the nature of the behavior in question and the available remedies. The Committee asks what other preventive measures have been introduced by the government and what steps have been taken to make the public more aware of the problem of harassment in the workplace.

Conclusion

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

Article 27 – Right of workers with family responsibilities to equal opportunities and equal treatment

Paragraph 1 – Participation in professional life

The Committee takes note of the information provided in the Finnish report.

Employment, vocational guidance and training

*The Committee recalls that the aim of Article 27§1.*a *of the Revised Charter is to provide people with family responsibilities with equal opportunities in respect of entering, remaining in and re-entering employment. It underlines that persons with family responsibilities may face difficulties on the labour market due to their family responsibilities. Therefore, measures need to be taken by States to ensure that workers with family responsibilities are not discriminated against due to these responsibilities and to assist them to remain in, enter and re-enter the labour market, in particular in the field of vocational guidance, training and re-training.*

Pursuant to Chapter 4, Section 9 of the Employment Contracts Act, employees have in general the right to return to their previous job position following expiry of a family leave (i.e. maternity, parental and child care leave). In the event this is not possible, the employee shall be offered a job equivalent or similar to the job description in his employment contract. Should the employee need special skills for the performance of his or her job, the employer shall ensure guidance, instruction and training in order to allow the employee to adapt to changes in the working environment and working conditions. The Committee asks that the next report provide further information on the implementation of the said provision of the Employment Contracts Act in practice as well as on specific measures taken in the field of vocational guidance and training for persons with family responsibilities and any other measures taken to assist them to enter, remain in and re-enter employment.

Conditions of employment, social security

*The Committee recalls that the aim of Article 27§1.*b *is to take into account the needs of workers with family responsibilities in terms of conditions of employment and social security. Measures need to be taken to implement this provision, especially measures concerning the length and organisation of working time. Furthermore, workers with family responsibilities should be allowed to work part-time or to return to full time employment.*

The report states that in addition to family leaves, different working time arrangements such as part-time work, telework etc. may be implemented with a view to facilitating the conciliation between work and family life and the Committee asks the next report to provide further details on the scope and implementation in practice of such measures. It notes in this context that Chapter 4 Section 2 of the Employment Contracts Act stipulates that employer and employee may agree on part-time work and its terms during the parental allowance period as set out in Section 23(2) of the Sickness Insurance Act and wishes the next report to specify what are the corresponding rules and how they are implemented in practice.

The Committee further asks whether workers with family responsibilities are guaranteed equal treatment as regards benefits paid by the employer to his employees.

The Committee also wishes to know whether periods of leave due to family responsibilities are taken into account for determining the right to pension and for calculating the amount of pension.

Child day care services and other childcare arrangements

*The Committee recalls that the aim of Article 27§1.*c *is to develop or promote services, in particular child day care services and other childcare arrangements, available and accessible to workers with family responsibilities.*

It notes from the report that parents may choose one of the existing child care support facilities following expiry of parental leave. Every child has the right to a day care place to be provided by the municipality of residence until it starts school. Families pay a municipal day care fee determined on the basis of their incomes and the number of family members. This fee shall not exceed the maximum sum of € 200 per month per child. Families with low incomes are granted the child day care free of charge. According to the report, in this way day care services are accessible to all families irrespective of income.

Alternatively, parents may choose private day care and obtain a private day care allowance for covering its costs. The basic allowance is a fixed monthly sum paid for each eligible child and supplement payments may be granted to low-income families.

Families with children under three years of age in which one of the parents takes child care leave in order to look after the child at home may obtain a child home care allowance. The allowance is paid for the family's children under three years of age and further children under school age. The basic allowance is a fixed monthly sum paid for each eligible child, and it is slightly higher for the youngest child and the children under three years than for the elder siblings. An additional family-specific supplement is payable to low-income families.

The Committee takes note of the various child day care services and arrangements available to workers with family responsibilities. It asks that the next report provide information on the family services and arrangements available for workers with caring responsibilities with respect to other members of the immediate family who need care and support.

According to Chapter 4 Section 4 of the Employment Contracts Act, the parent of a disabled child or a child with a long-term illness in need of particular care and support may be granted partial child care leave until the child turns 18. Employer and employee shall agree on the details of its implementation (see also the Committee's conclusion under Article 27§2). Pursuant to Chapter 4 Section 6 of the Employment Contracts Act, parents are entitled to a maximum temporary child care leave of 4 days, if their child under 10 years falls suddenly ill. Chapter 4 Section 7 of the same Act stipulates that parents shall be entitled to temporary absence from work if their immediate presence is necessary due to, *inter alia,* an illness or accident suffered by their family and the Committee asks to which extent and for which periods these provisions enable parents to reduce or cease their professional activity because of serious illness of a child or a member of the immediate family who need care and support.

Conclusion

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

Paragraph 2 – Parental leave

The Committee notes the information provided in the Finnish report.

Chapter 4 of the Employment Contracts Act contains the provisions pertaining to family leave which comprises maternity, paternity and parental leave, child care leave and partial and temporary child care leave (see also the conclusion under Article 27§1).

Chapter 4, Section 1 of the said Act stipulates that employees are granted maternity, paternity and parental leave for which they are paid a daily allowance as stipulated in the Sickness Insurance Act.

Maternity leave lasts 105 working days. Paternity leave amounts to 18 days. It can be taken during maternity or parental leave in up to four stages. Parental leave lasts 158 working days. It is extended by 60 weekdays per child in the case of multiple births. In the case a child is born prematurely, parental leave amounts to 208 working days. Parents can take their parental leave entitlement in up to two turns of a minimum of 12 days each. They have to notify their employers about their parental leave plans at least two months beforehand.

Employees are further entitled to child care leave for the purpose of caring for children under the age of 3. Child care leave can be taken in one or two periods of at least one month, unless employer and employee agree on a different repartition. According to the report, the leave may in principle be taken by only one parent at a time. However, if one parent is on maternity or paternal leave, the other parent is entitled to simultaneously take child care leave. Partial child care leave may be granted to an employee having worked for the same employer for a period of at least six months during the twelve months preceding the leave and may last up to the end of the child's second year of basic compulsory education. Under specific circumstances partial child care may be extended until the end of the child's third school year. The employer may not refuse to grant partial child care unless the granting of the leave would cause serious inconvenience to the production or service operations of the enterprise. The employer and the employee shall agree on the details of implementation of the leave. Child care leave is unpaid, but an employee on child care leave may apply for child home care allowance (see the conclusion on Article 27§1).

The Committee asks whether the aforementioned rules apply to all categories of workers such as e.g. part-time workers.

Pending receipt of the information requested, the Committee concludes that the situation in Finland is in conformity with Article 27§2 of the Revised Charter.

Paragraph 3 – Prohibition of dismissal for reasons relating to family responsibilities

The Committee takes note of the information provided in the Finnish report.

According to the Appendix to the Revised Charter, the notion of "family responsibilities" is to be understood as obligations in relation to dependent children and also other members of the immediate family who need care and support. The purpose of Article 27§3 is to prevent these obligations from restricting preparation for and access to working life, exercise of an occupation and career advancement.

Pursuant to Chapter 7 Section 9 of the Employment Contracts Act it is unlawful for an employer to terminate an employment contract on the ground of the employee's pregnancy or because the employee is exercising his/her right to family leave (i.e. maternity, paternity and parental leave, child care leave and partial and temporary child care leave) as stipulated under Chapter 4 of the said Act. In the event an employer terminates the employment contract of a pregnant employee or of an employee who is on family leave, the dismissal is considered to be unlawful unless the employer can provide evidence, that it was based on other valid grounds.

The Committee requests that the next report provide information on legal measures taken in Finland to ensure that an employee shall not be dismissed because of his/her obligations with respect to dependent children (also in cases where pregnancy, maternity and parental leave do not apply) as well as other members of the immediate family (elderly parents, for example) that require care.

The Committee recalls that Article 27§3 of the Revised Charter requires that courts or other competent bodies are able to order reinstatement of an employee unlawfully dismissed and/or a level of compensation that is sufficient both to deter the employer and proportionate to the damage suffered by the victim and should not be subject to a ceiling.

It notes from the report submitted under Article 8§2 of the Revised Charter that the Employment Contracts Act does only provide for compensation and not for reinstatement and considers the situation not to be in conformity with the requirements of Article 27§3 of the Revised Charter in this respect.

As regards the compensation to be paid, the report refers to Section 7 of the Act on Equality between Women and Men, as amended with effect as from 1 July 2005, i.e. outside the reference period. The said Act prohibits direct and indirect discrimination based on gender. The notion of direct discrimination includes different treatment of employees on the ground of gender, pregnancy or childbirth whereas the notion of indirect discrimination comprises different treatment on account of parenthood or family responsibilities. An employer violating the prohibition on discrimination under the said Act may be ordered to pay a compensation to the employee the minimum of which amounts to € 3 000 and which is not subject to a ceiling. The Committee asks whether this provision applies to unlawful dismissals of workers on the ground of their family responsibilities and, should this be the case, wishes the next report to provide relevant decisions delivered by the competent national courts, if any.

The Committee concludes that the situation in Finland is not in conformity with Article 27§3 of the Revised Charter on the ground that legislation makes no provision for the reinstatement of workers unlawfully dismissed on grounds of their family responsibilities.

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

Article 28 of the Revised Charter guarantees the right of workers' representatives to protection in the undertaking and to certain facilities. It complements Article 5, which recognises, inter alia, *a similar right in respect of trade union representatives.*

According to the Appendix of Article 28, the term "workers representatives" means persons who are recognised as such under national legislation or practice. States may therefore establish different kinds of workers' representatives other than trade union representatives.

The Committee takes note of the information provided in the Finnish report.

The Committee observed in its last conclusion under Article 5 of the Revised Charter (Conclusions 2006) that where collective agreements make no provision for shop stewards, the employees are entitled to elect representatives from among themselves, the status and responsibilities of whom are stipulated in the Employment Contracts Act. Employees may by a majority decision authorise these representatives to represent them on matters relating to working conditions and employment relationships.

Pursuant to the Act on Co-operation within Undertakings (see also the Committees' conclusions under Articles 21 and 22 of the Revised Charter) employees' representatives comprise any person elected in accordance with the relevant collective agreement as shop steward, liaison officer, contact person or an elected representative pursuant to the corresponding provisions of the Employment Contracts Act. Furthermore, the Act on Co-operation within Undertakings also stipulates that in the event groups of employees are not represented by shop stewards, liaison officers or contact persons, they shall be entitled to elect a person to represent them in the co-operation procedure with the employer.

The report further states that the Act on the Supervision of Occupational Safety and Health and Co-operation on Occupational Safety and Health at Workplaces (44/2006) which took effect on 1 September 2006, i.e. outside the reference period, contains regulations concerning occupational safety and health delegates.

The Committee notes that during the reference period Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees[1] has been transposed into national law by the Act on Employee Involvement in European Companies (758/2004) that entered into force on 8 October 2004.

Protection of worker representatives

Pursuant to Chapter 5, Section 2 in connection with Chapter 7, Section 10 of the Employment Contracts Act, employers are prohibited from dismissing shop stewards or elected representatives unless they are in serious breach of their obligations and the majority of the employees they represent approve to the dismissal. According to Chapter 13, Section 4 of the Employment Contracts Act, protection from dismissal continues to apply for a period of six months following the end of the representative's mandate.

The report specifies that a similar protection applies to representatives elected pursuant to the Act on Co-operation within Undertakings and to shop stewards in the government sector. Violation of the rights of an employee representative is criminalised in the Penal Code (Chapter 47, section 4).

As regards the protection of employees' representatives under the aforementioned Act on Employee Involvement in European Companies (758/2004), the report states that the corresponding provisions of the Act are similar to the stipulations regarding shop stewards and elected representatives under the Employment Contracts Act and the Act on Co-operation within Undertakings.

The Committee asks who has the burden of proof in the event of a court procedure regarding a dismissal and whether unlawfully dismissed workers' representatives are entitled to seek reinstatement and to receive compensation.

Pursuant to Section 2 of the Employment Contracts Act, employers are prohibited from discriminating against employees on the basis of their political or trade union activity. The same prohibition is laid

---

[1]. Official Journal L 294, 10/11/2001, pp. 22-32.

down in the State Civil Servants' Act and the Act on Civil Servants in Local Government. The Committee asks the next report to provide more detailed information on protection of employee representatives against prejudicial acts other than dismissal.

The Committee further wishes to know what are the rules regarding the protection of health and safety delegates, in particular as regards the aforementioned Act on the Supervision of Occupational Safety and Health and Co-operation on Occupational Safety and Health at Workplaces (44/2006) which took effect on 1 September 2006.

Facilities for worker representatives

Pursuant to Chapter 13, Section 2 of the Employment Contracts Act, the employer must allow employees and their organisations to use suitable facilities under the employer's control free of charge during breaks and outside working hours in order to deal with employment issues and matters forming part of the function of trade unions.

Chapter 13, Section 3 of the said Act stipulates that elected employees' representatives are entitled to be released from work for a period sufficient to exercise their function. Moreover, the Act provides that the employer must compensate for any loss of earnings caused thereby. The report states that in respect of shop stewards elected under collective agreements, the corresponding stipulations are contained in shop steward agreements linked to the collective agreements.

Pursuant to the Act on Co-operation within Undertakings, the employer shall release staff representatives from their work for the time needed to participate in the co-operation procedure regulated under the Act and compensate them for any consequent loss of earnings. The report states that similar regulations are included in the Act on Co-operation within Government Agencies and Public Services and, in respect of local authorities, in their general agreement on a co-operation procedure.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Finland is in conformity with Article 28 of the Revised Charter.

Article 29 – Right to information and consultation in collective redundancy procedures

The Committee notes the information provided in Finland's report. The Committee has also consulted the European Commission report on the Implementation in Finland of Council Directive 98/59/EC of 20 July 1998 on collective redundancies, for further information.

Definition and scope

The Employment Contracts Act provides that employers may collectively dismiss employees where the operating conditions of an undertaking compel it to on financial or production related grounds. The Act on Co-operation within Undertakings (Codetermination in Companies Act) provides for the procedure to be followed where the undertaking is of a certain size: normally to undertakings employing more than 30 employees. However certain of the consultation provisions of the Act apply to undertakings normally employing between 10 and 20 persons and where the employer is considering dismissing 10 employees.

Prior to implementing redundancies an employer must consult with worker representatives.

Information and consultation

Under the Act on Co-operation within Undertakings (Codetermination in Companies Act) an employer must notify the staff representatives of all relevant information on the situation including the reasons for the proposed redundancies, the number and categories of the workers to be made redundant, the period of time over which the redundancies are to take place and the criteria for selection of workers to be made redundant. Then the employer is obliged to enter into negotiations, the minimum period for negotiations concerning redundancies affecting at least ten workers is six weeks, where fewer workers are concerned the period is seven days. The negotiations must be conducted with a view to reaching an agreement.

The Committee seeks confirmation that the negotiations also include ways to mitigate the effects of the redundancies.

An employer is obliged to notify the authorities of planned redundancies and forward to them the proposal for consultation. The collective redundancies may not take place less than thirty days after notification to the competent authority.

Sanctions and preventative measures

The Committee notes that the legislation provides that compensation may be awarded to employees made redundant where an employer fails to respect the co-operation procedures. Compensation may be up to 20 times the employee's monthly pay.

The Committee wishes to receive further information on the procedures available to employees who believe that they have been made redundant in breach of the information and consultation requirements.

The Committee also asks if there are any preventive measures available; where the employer fails in his duty to consult the workers' representatives before making employees redundant, to ensure that this does not happen before the consultation requirement has been fulfilled.

The Committee notes that in July 2005, outside the reference period new legislation which amends the situation entered into force. It asks the nest report to provide full information on this legislation.

Conclusion

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

Article 30 – Right to protection against poverty and social exclusion

The Committee takes note of the information contained in the Finnish report.

Measuring poverty and social exclusion

The Committee notes that Finland applies concepts and indicators of income poverty agreed jointly by the EU member states. A person is considered income poor, if her/his household's disposable yearly income per consumption unit is lower than 50 or 60 % of the median income of all households (i.e. the median of the disposable yearly income per consumption unit). The indicators are designed for the preparation of National Action Plans Against Poverty and Social Exclusion (NAP). Finland has no "official definition of poverty", but rather firmly established methods are used currently in statistics (Statistics Finland, Eurostat). In administrative decisions the definition of poverty is often based on eligibility for the basic income support benefit guaranteed by the Act on Social Assistance.

The Committee notes from the NAP[1] that the concept of poverty is usually associated with an inadequate material standard of living, usually measured by income, consumption level or assets. According to the NAP poverty is equated with a low income and lack of assets. But shortage of money is only an indirect indicator of deprivation. Recently, low income is described more precisely as a 'poverty risk', indicating the high correlation between a low income and a state of deprivation translating into low quality of life. The concepts of 'poverty' and 'poverty risk' are restricted to the study of income poverty, while 'deprivation' or 'exclusion' are used instead when discussing extensive and immediate shortcomings in living conditions, living habits and quality of life. 'Exclusion' as a concept denotes an accumulation of deprivation. 'Risk', 'threat' and 'danger' of exclusion are different descriptions of the same state of affairs which, like poverty risk, affects different population groups in different ways. Exclusion is usually triggered by social risks such as insolvency, declining health, unemployment, homelessness, insufficient education or other social problems. Risks of exclusion can never be wholly eliminated, but the extent and depth of problems arising from the materialisation of such risks, and the accumulation of exclusion risks on the level of the individual can be reduced through policy measures in social welfare, health, education, employment, housing and the economy.

The Committee notes that, in 2001, 554 000 households were below the poverty level. The Committee notes that this number has been increasing since 1990 when it amounted to 395 000 households. The Committee also notes from the Action Plan that a number of persons living in households below the poverty level, based on net factor income alone amounted to 39.6 % of the population in 2001. 8.5 % of the population received income support in 2001.

The Committee notes from Eurostat that at risk of poverty rate (cut-off point being 60 % of the median equivalised income after social transfers) amounted to 11 % in the reference period. It also notes that before cash social transfers (including pensions) at-risk-of-poverty rate (cut-off point being 60 % of median equivalised income after social transfers) equalled 40 % in 2001 and 42 % in 2004. The same indicator with pensions excluded from social transfers amounted to 29 % both in 2001 and 2004.

Approach to combating poverty and social exclusion

The Committee notes that The National Action Plan is based on the basic welfare policy concept which is widely accepted by the Finnish population and which has proven efficient in international comparison. The new Government Programme emphasises that the prevention of social exclusion and poverty. This requires an active employment policy, an improvement in the preconditions for entrepreneurship, and the continuation and strengthening of agreement-based co-operation, particularly between labour market organisations and interest groups. The reform policy promotes social equality and cohesion and is based on the tried and tested principle of political co-operation. By pursuing a policy of work, entrepreneurship and joint responsibility, the Government is further advancing the welfare state and welfare society which were successfully built up in previous decades. The employment policy strategy is outlined in Finland's National Action Plan for Employment, following the EU Employment Guidelines. The strategic outlook for social protection over the next decade can be summarised in the four guidelines approved by the Ministry of Social Affairs and Health promoting health and functional capacity, increasing the attractiveness of working life, preventing and treating social exclusion and providing functioning services and reasonable income security.

---

[1]. http://europa.eu.int/comm/employment_social/social_inclusion/docs/napincl_03_fi.pdf.

The general objective of social protection is to safeguard the welfare and equality of the population so that every person has the opportunity to live a life of dignity and to use and develop his skills and capabilities at the various stages of life.

The Committee notes from the report that for the prevention of poverty and social exclusion of people with low incomes or people in different risk situations, such as unemployment or sickness, these people are primarily granted cause-related benefits intended for such situations, and their housing expenses are compensated for by housing allowance systems. In the last resort, their enjoyment of a life of dignity is safeguarded by the income support system.

Housing of low-income people is supported by means-tested housing allowance systems. All population groups and forms of possession of dwellings are eligible for a housing allowance. In practice, more than half of all general housing allowances are paid to families with children, and two thirds of this part are paid to single parents. There are separate housing allowance systems for pensioners and students. Additionally, housing is supported by means of interest rate deductions in taxation. This support is not means-tested, and in practice it, too, is largely paid to families with children.

The Committee notes from Eurostat that € the total spending on social protection amounted to € 36.909 million in 2002 and to € 40.572 million in 2004. These amounts made 25.6 % and 26.7 % of GDP respectively.

The Committee recalls that in the meaning of Article 30 of the Revised Social Charter the Governments are requested to take measures to address the multidimensional poverty and exclusion phenomena. These measures should strengthen entitlement to social rights, their monitoring and enforcement, improve the procedures and management of benefits and services, improve information about social rights and related benefits and services, combat psychological and socio-cultural obstacles to accessing rights and where necessary specifically target the most vulnerable groups and regions. The Committee would like to receive more information about impact of all measures in terms of reducing poverty and exclusion. It therefore asks that each report on this provision contain information on measures implemented in all the areas referred to article 30, such as employment, housing, training, education and culture, including where possible quantified indicators of the means deployed and the results achieved for each of the measures concerned. Also, special attention should be paid to measures concerning justice, indebtedness and the most vulnerable groups and regions.

Supervision and evaluation

The Committee notes from the report that the representatives of labour market organisations and independent non-governmental organisations in the social and health sectors participate in working groups preparing national action plans related to EU co-operation. Furthermore, they have participated in seminars held in connection with the preparation of these plans and reports on their implementation, issued opinions and submitted initiatives.

The Committee notes from the expert evaluation of measures in the various sectors (Appendix 2 of the Action Plan) that the complexity of the income support system remains problematic. Repeated changes in housing allowance, labour market support and income support render the system less transparent. In the health sector, according to the evaluation, the health of the poor, the deprived and the uneducated is worse than average and premature deaths are common. It is recommended that the focus is on the provision of services and their availability. Housing still remains a problem and the existing link between housing and exclusion could be given a greater focus.

The Committee asks that the next report contain more detailed information on how individuals and organisations are involved in reviewing anti-poverty measures, including specific examples.

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

Article 31 – Right to housing

Paragraph 1 – Adequate housing

The Committee takes note of the information provided in the Finnish report.

According to section 19 of the Finnish Constitution (Act No. 731/1999), the public authorities shall promote the right of everyone to housing and the opportunity to arrange their own housing. There is no subjective right to obtain a dwelling by turning to public authorities, except for special categories such as persons with severe disabilities and children. The Child Welfare Act (No. 683/1983) sets the obligation for local authorities to correct deficiencies in housing conditions or providing housing according to need when these factors put at risk the rehabilitation of a child and family or affect the situation of a young person in the process of becoming independent who had been client of social welfare services before the age of 18.

Criteria for adequate housing

The Act on the Development of Housing Conditions (No. 919/1985) guarantees to all people residing permanently in Finland an opportunity of reasonable housing. This means that every household should have a dwelling corresponding to the size of the household and the personal needs of its members, and that the dwelling should be appropriate, healthy and well-functioning.

A dwelling is defined to include all basic amenities if it is equipped with piped water supply, drains, supply of warm water, indoor plumbing toilet, washing spaces, and central or electric heating.

Further legislation details the characteristics which every building shall respect. The Land Use and Building Act (No. 895/1999) requires that residential buildings should fit in with the environment, there must be sufficient natural light, the space intended for residential use shall be fit for the purpose, and the design of dwellings shall promote functionality. Adequate outdoors areas shall also be provided.

The Ministry of the Environment Decree on Housing Design contains also more detailed provisions concerning minimum floor area; minimum height of rooms; windows; availabilities of space for resting, eating and cooking, and bathing; toilet and basic equipment for cooking and bathing; storage facilities.

Section 117 of the Land Use and Building Act also lays down that constructions must in any case comply with good building practice, such as standards on housing design and construction quality. A building permit is needed for both new construction and renovation. Anyone who undertakes a construction project must ensure that the building is designed and constructed in compliance with regulations and provisions concerning construction, and the granted building permit. During construction work, the building supervision authorities make inspections.

The Committee recalls that the criteria for adequate housing should apply to both rented and owner-occupied dwellings. It asks whether this is the case in Finland.

The report indicates that, in 2004, 90 % of households lived in dwellings which owned all basic amenities. The percentage of households living in overcrowded dwellings, which means more than one person per room including the kitchen, were 4.3 % in 2003.

Responsibility for adequate housing

Social welfare legislation obligates social welfare authorities to improve housing and living conditions in municipalities and to co-operate with other authorities. Every applicant for housing services is individually assessed and a care and service plan drawn.

According to the report, if a building has deteriorated or being altered without a building permit, the local municipal building supervision authorities may require the building to be restored to meet the existing building permit. The authority may order the restoration under penalty of a fine. If the building has a defect that causes detriment to the health of its residents or users, the municipal health inspector may order the defect to be eliminated. The Committee asks whether this also applies to the control of exposure to lead and asbestos.

Legal protection

The Committee recalls that the effective right to adequate housing implies its legal protection. This means that tenants or occupiers are given access to affordable and impartial judicial remedies. The

present report does not provide information on this issue, to the exception of a case in which the Deputy Parliamentary Ombudsman requested local authorities to improve the conditions of a residential home. Therefore the Committee asks how the right to adequate housing is legally protected, in particular, to what extent judicial and non-judicial remedies are available, also in case of excessive waiting-time for access to housing. It also asks information on existing case law.

Conclusion

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

Paragraph 2 – Reduction of homelessness

The Committee takes note of the information provided in the Finnish report.

Emergency and longer-term measures to reduce homelessness

The report indicates that people living in defective dwellings or at weaker protection against termination of tenancy are more common among social welfare clients than the rest of the population. A part of homeless (approximately 30 %) are generally repeated or long-term social services clients, who are difficult to settle in normal rental dwellings. This group includes aged and disabled persons, ill municipal residents, and persons returning from institutions.

According to the report, since the late ’80s special measures have been added to general housing and social policy to reduce homelessness. This allowed reducing the number of homeless from roughly 20 000 in 1990 to 9 988 in 1999 and as low as 7 650 in 2004. The greatest reduction took place in the Helsinki area. Similarly, homeless with families reduced from 777 to 360 in the same time-span.

The combination of measures taken to reduce and prevent homelessness includes a supply of dwellings at affordable rents, a well-functioning service systems and sufficient subsistence means. Moreover, urgency solutions, such as overnight shelters, day centres, supported flats, supported homes and small flats intended to permit independent living are available. Municipalities shall ensure that measures are taken to developing housing conditions for the homeless.

At the end of the ’80s, it was introduced a system for acquisition of dwellings at affordable rents. The system combines the use of public funds for acquiring the supported dwellings and the provision of housing services. About 40 000 supported dwellings are currently available. Moreover, in 2002, an action plan to reduce homelessness for the years 2002-2005 was launched. It aimed at arranging 4 000 dwellings for homeless people and to ensure support services. According to the report, 3 000 dwellings have already been built or acquired or being planned.

The action plan has been implemented by 16 non-profit organisations and foundations, which are developers and owners of real estates, providers of services and NGOs. Much of the funding to implement the action plan came from Finland’s Slot Machine Association (RAY). It provided roughly 31.7 million € in investments grants, which permitted the construction or acquisition of 1 200 dwellings.

The social welfare services have introduced specific services for improving the situation of homeless and people in difficult housing situations. They consist in financial and debt counselling, social work with intoxicant abusers and mental disabled, building of individual paths after returning from institutions, management of crisis situations (centres for men and mother-and-child homes and shelters for battered family members). This work is done by municipalities, organisations and foundations and increasingly also service businesses.

Ensuring financial subsistence is the third group of measure to prevent homelessness and the Committee refers to its conclusion under Article 31§3 for the details on the system.

The Committee takes note of the combination of measures implemented by Finland and consider the situation in conformity with Article 31§2. It also notes that a regional development plan on housing service for the homeless for 2005-2007 has been launched, as well as other initiatives to tackle the problem, and it asks the next report to provide information about the results achieved.

Forced eviction

Under Article 31§2, States must set up procedures to limit the risk of evictions and to ensure that when these do take place, they are carried out under conditions which respect the dignity of the persons concerned.

Forced eviction can be defined as the deprivation of housing which a person occupied due to insolvency or wrongful occupation. Legal protection for persons threatened by eviction must include, in particular, an obligation to consult the parties affected in order to find alternative solutions to eviction and the obligation to fix a reasonable notice period before eviction. The law must also prohibit evictions carried out at night or during the winter period, provide legal remedies and offer legal aid to those who are in need of seeking redress from the courts. Procedural safeguards are of great importance. Compensation for illegal evictions must also be provided. When an eviction is justified by the public interest, authorities must adopt measures to re-house or financially assist the persons concerned.

The report provides an explanation of the rules regulating the terms of lease agreements (Act on Residential Lease, No. 481/1995). When a landlord gives notice, a minimum of three months period of notice is obligatory. The tenant may have recourse to the court to have it declaring the notice ineffective if the requested rent or stipulation on determining the rent would be considered unreasonable or there is no justifiable reason for termination. If the court upholds the tenant's request the lease shall continue on its previous terms; in the contrary, the court will decide the date on which the lease shall be terminated and require the tenant to move out thereupon.

Justifiable reasons to rescind the lease agreement includes: the tenant does not pay the rent; the tenant has transferred or given the dwelling to a third person; the apartment is used for other purposes than those provided in the agreement; the tenant creates nuisance; the tenant fails to take good care of the apartment; the tenant violates provisions or regulation for the maintenance of public health and order in the apartment.

A deferral of the removal date up to one year can be given by the court if the tenant with a non-fixed term lease encounters substantial difficulties in obtaining another dwelling. Housing counselling for prevention of eviction is also part of the housing services provided by the social welfare services. The Enforcement Act (No. 679/2003) also provides that if children or persons in need of immediate care reside in the household to be evicted and there is uncertainty about new housing arrangements for them, the officer taking the enforcement measures shall inform without delay the local housing and social welfare authorities in order to arrange a replacement accommodation.

Dwellings rented under the Housing Companies Act (No. 809/1991) can also be taken over by the company if the tenant does not pay the due maintenance charge, he cares badly for the apartment, he used the dwelling for illicit purposes, he creates nuisance, he violates the rules necessary to maintain order in the company's facilities.

The Committee considers that certain elements of the Finnish system on evictions (prolonging of the date for removal, support to find alternative solutions by municipal authorities) are in conformity with respect to the principles laid down by Article 31§2. However, it asks additional information on how the law provides legal remedies and offer legal aid to those who are in need of seeking redress from the courts, and compensates for illegal evictions. Procedural safeguards are held being of great importance.

The Committee points out that "the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not only theoretically, but also in fact" (complaint No. 1/1998, International Commission of Jurists v. Portugal, decision on the merits, 9 September 1999, §32). It therefore asks the next report to provide practical information on the implementation of the legal framework, as well as on the rate of judicial decisions of forced eviction.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Finland is in conformity with Article 31§2 of the Revised Charter.

Paragraph 3 – Affordable housing

The Committee takes note of the information provided in the Finnish report.

Social housing

State-subsidised rented housing corresponds to social housing sector in Finland though this is not a commonly employed term. The report indicates that the number of applicants for this kind of dwellings

lowered in the period 2000-2004 mainly due to the more favourable financing conditions for freehold flats. In 2003, 86 000 such dwellings were available and applicants were 198 300, which is a rate of 2.3 applicants per dwelling. In rural areas a growing stock of subsidised rental housing is vacant.

The construction of new subsidised rental dwellings is carried out by municipalities through municipally owned companies and non-profit corporations, insurance companies and housing companies. The Housing Fund of Finland grants the state-subsidised housing loans and grants. The subsidised dwellings shall be kept in original use for a fixed period (40 years).

The Committee notes from another source[27] that a truly public rental sector of 42 000 dwellings is owned by the Helsinki municipality. These dwellings were financed with state loans and are preferentially allocated to homeless households.

The Committee notes the measures implemented for the provision of housing of an adequate standard, including social housing, and it asks the average waiting-time before being allocated social housing and the rate of applications fulfilled. It also asked what length of waiting time was considered excessive and what remedies were available.

Housing benefits

According to the report, the housing benefits policy is based on the principle that housing expenses should be reasonable in proportion to the size of the household and its disposable income. Housing subsidies are granted on the basis of the applicant household financial situation (income and property) and the need for housing and its urgency. The composition of the household is of minor significance.

Along with the state-subsidised loans, subsidised interests, and state guarantees, housing allowances are granted. Anyone who raise a loan for building or acquire a freehold dwelling may have recourse to subsidised interests on the loan and a state guarantee of up to 20 % of the loan (not more than € 25 250 per dwelling). Tax deductions are also available, especially for first time buyer. Housing allowances are paid under three different systems: general housing allowance, housing allowance for pensioners, and housing supplement for students.

Housing allowances are granted on application and eligibility criteria are the income, housing expenses and property of the applicant and his/her family. Allowance is provided to all eligible applicants by the local offices of the Social Insurance Institution (KELA). Housing allowance decisions may be appealed against the Appeal Tribunal or the Student Financial Aid Appeal Board and their decisions may be appealed in front of the Insurance Court.

In the 2001-2004, on average 480 000 housing allowances were paid, of which 154 000-159 000 as general allowances. The total expenditure in housing subsidies amounted to € 1.5 billion, 63 % of which consisted in housing allowances, 12 % in production subsidies and grants, and 25 % of interest deduction in taxation.

When after the payment of housing allowance the person's own income is still insufficient, income support is provided as last-resort assistance to ensure access to housing. Income support is paid by municipalities and it may cover those housing expenses not calculated in the housing allowance. The decisions of municipalities may be appealed to the Administrative Courts, whose decisions may be in turn appealed to the Supreme Administrative Court. Income support was paid, in 2004, to 251 000 persons.

Housing benefits are granted for dwellings located in Finland and to households living in them independently from the nationality of the residents. The condition to be fulfilled is permanent residence in Finland, which is acquired after six month of residence. The Committee considers that the situation is in conformity with the Charter.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Finland is in conformity with Article 31§3 of the Revised Charter.

---

[27]. C. Donner, Finland, in Housing Policies in the European Union, Theory and practice, 2002, p. 240.