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European Social Charter

European Committee of Social Rights

Conclusions 2016

FRANCE

This text may be subject to editorial revision.

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

The following chapter concerns France, which ratified the Charter on 7 May 1999. The deadline for submitting the 15th report was 31 October 2015 and France submitted it on 23 December 2015. The Committee received on 22 December 2015 observations from the International Organisation of Employers (IOE) expressing its perspective on the application of Article 24. On 29 August 2016 a request for additional information regarding Articles 18§3 and 18§4 was sent to the Government which submitted its reply on 30 August 2016.

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

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

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

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

The conclusions relating to France concern 20 situations and are as follows:

– 10 conclusions of conformity: Articles 9, 10§1, 10§2, 10§4, 18§1, 18§2, 18§3, 18§4, 20, 25;

– 6 conclusions of non-conformity: Articles 1§2, 1§4, 10§5, 15§1, 15§2, 15§3.

In respect of the other 4 situations related to Articles 1§1, 1§3, 10§3 and 24 the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by France under the Charter. The Committee requests the Government to remedy this situation by providing the information in the next report.

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

Article 20

- Act 2012-1189 of 26 October 2012 on establishing "jobs for the future" strengthens the role of collective bargaining with regard to occupational equality between and equal remuneration of women and men.

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

- the right to safe and healthy working conditions (Article 3),
- the right to protection of health (Article 11),
- the right to social security (Article 12),
- the right to social and medical assistance (Article 13),
- the right to benefit from social welfare services (Article 14),
- the right of elderly persons to social protection (Article 23),
- the right to protection against poverty and social exclusion (Article 30).

The deadline for submitting that report was 31 October 2016.

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

Article 1 - Right to work

Paragraph 1 - Policy of full employment

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

Employment situation

The Committee notes from Eurostat, that the GDP growth rate decreased significantly from 2011 (2.1%) to 2012 (0.2%). The GDP growth rate increased in 2013 (0.7%) before decreasing again in 2014 (0.2%). The GDP growth rate was considerably below the EU 28 average which stood at 1.4% in 2014.

The overall employment rate remained relatively stable during the reference period (2011 – 63.9%; 2014 – 64.3%). The overall employment rate stood at about the EU 28 average of 64.9% in 2014.

The male employment rate decreased slightly (68.3% in 2009; 67.7% in 2014). This was below the EU 28 average rate of 70.1% in 2014. The female employment rate increased slightly (2009 – 59.8%; 2014 – 60.9%). This rate was above the EU 28 average which stood at 59.6% in 2014. The employment rate of older workers increased considerably from 39.0% in 2009 to 47.0% in 2014 which was still below the EU 28 average of 51.8% in 2014.

The unemployment rate increased from 9.2% in 2011 to 10.3% in 2014, which was just about the EU 28 average of 10.2%. The youth unemployment (% of active population aged 15-24) increased from 22.7% in 2011 to 24.2% in 2014. The same trend could be observed with respect to the long-term unemployment rate (% of active population aged 15-74) which increased from 3.8% in 2011 to 4.4% in 2014.

The Committee notes that the GDP growth rate remained considerably below the EU average rate. The employment and unemployment indicators remained relatively stable albeit at a high level such as the youth unemployment rate.

Employment policy

During the reference period, the Government has initiated a number of labour market reforms to address the employment situation. The most important one was the 'Responsibility and Solidarity Pact' implemented as a contribution to enhance social dialogue in the country and aimed at maximising the positive impact on employment by introducing new flexibility elements.

The Committee takes note from the replies given to the specific questions raised in its previous Conclusions, namely on the employment policies for the youth and the long-term unemployed. With respect to employment policies for the youth, one the important measures taken is called the 'Jobs for the future'. This scheme is mainly used in the social economy and by local Authorities with the intention to provide the youth with a first job with a strong emphasis put on training. In 2014, 187 000 'Jobs for the future' were created.

The Government is also implementing the 'Youth Guarantee' scheme. The 'Youth Guarantee' scheme follows a European Union decision taken in 2013 with a view to reducing the youth unemployment. The scheme was in 2014 still in a trial phase with a target of 10 000 young people to get employed. The scheme will be applied nationwide in 2016.

With respect to long-term unemployed, the Committee notes that a number of measures have been undertaken by the Government in particular letting long-term unemployed benefit from subsidised contracts in the private sector (40 000 in 2014).

According to Eurostat, public expenditure on active labour market policies in France amounted to 3.2% of GDP in 2013 which was well above the EU 28 average (where in 2011 the average public spending on active labour market measures as a percentage of GDP that year was 1.8%).

The Committee takes note of the labour market measures taken. However, they have not been sufficient to have an impact on the unemployment rates. In the next report, the Committee requests information on how these measures were adapted.

Conclusion

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

Article 1 - Right to work

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

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

1. Prohibition of discrimination in employment

The Committee notes the information in the report submitted by France and in the addendum to the report concerning Article 1§2 of the Charter.

The Committee examined the legal framework in its Conclusions 2008 and 2012.

The Committee previously noted that, in 2012, the Ombudsman for Children, the High Authority for Combating Discrimination and Promoting Equality (HALDE) and the National Commission for Police Ethics were replaced by the office of the Defender of Rights. It asked for information on the work of the Defender of Rights to combat discrimination in employment (Conclusions 2012).

The report states that discussions are currently under way on a draft bilateral agreement between the Defender of Rights and the Ministry of Labour, Employment, Vocational Training and Social Dialogue, which would follow on from the joint ministerial circular DPM/ACI 2007-12 of 5 January 2007 on relations between the labour inspectorate and the HALDE.

The Committee notes from the 2015 report of the European Equality Law Network that the office of the Defender of Rights is empowered to investigate individual and collective complaints, following requests from individuals, NGOs, trade unions or members of parliament, and to request explanations from any public or private person, including communication of documents or any information providing evidence of the facts. Its means of dealing with complaints are mediation, recommendations to the state or private parties, whether individual or general, and the presentation of observations as *amicus curiae* and submission of its investigation files to all jurisdictions, unilaterally or at the request of the court or the parties. The Committee also notes that, according to the Defender of Rights' official site, he or she is authorised to "defend" persons who have problems with public or private security forces, persons who have difficulties in their dealings with public authorities, and children whose rights are not respected.

The Committee asks for detailed information in the next report on the Defender's terms of reference and powers regarding cases of employment discrimination, with particular regard to the nature of these cases and the action taken on them. It wishes to know whether any person, whether public or private, who considers that they have been the victim of employment discrimination by a public authority or agency or by a private individual or undertaking can bring the case before the Defender of Rights.

The Committee asked in its 2008 Conclusions whether there was an upper limit to the compensation that could be awarded in cases of discrimination. The report states that employees who have been dismissed on discriminatory grounds are entitled to reinstatement in their jobs or posts. If they do not wish to be reinstated, they can apply to the relevant court to make good in full the damage sustained. This compensation, the level of which is at the court's discretion and for which there is no ceiling, may not be less than the last six months' salary or wage (Article L. 1134-4 of the Labour Code). This compensation for unfair dismissal is in addition to the compensation for dismissal that employers must pay under Article L 1234-9 of the Labour Code, the level of which depends on the employee's salary or wage.

With regard to the access of foreign nationals to public service jobs, the report states that Section 5 *bis* of the Civil Servants (Rights and Obligations) Act (No. 83-634 of 13 July 1983) stipulates that "*nationals of the member states of the European Union and states parties to*

the Agreement on the European Economic Area other than France shall have access, under the conditions provided for in the general staff regulations, to the relevant bodies, categories and posts. However, they cannot be appointed to posts whose functions are not separable from the exercise of sovereignty that is entailing direct or indirect involvement in the exercise of the public authority prerogatives of the state or of local authorities."

Non-EU nationals are not eligible for established civil servant status but may be recruited as non-established officials under normal employment law conditions, with no discrimination on grounds of their nationality. However, they are not eligible for posts whose functions are inseparable from the exercise of sovereignty and or involve the exercise of public authority or the safeguarding of the state's general interests. Non-EU nationals may be freely recruited in the higher education and research sectors and in the medical field. For example, the higher education and research codes authorise the recruitment of non-EU nationals for certain categories of research staff or as head of a university.

The Committee noted in its last conclusion that, in 2009, the HALDE had recommended the removal of citizenship requirements for access to certain posts in the public and private sectors, in particular for employment in the three public service branches (HALDE, council decision 2009-139 of 30 March 2009). It asked for further information on the posts involved and the measures taken in response to this recommendation.

The report states that the professions listed by the HALDE in its report include three regulated legal professions coming under the responsibility of the Ministry of Justice, namely those of advocates, notaries and court officials (registrars and bailiffs – *huissiers de justice*).

According to the report, court officials and notaries exercise sovereign prerogative powers. Court officials with responsibility for implementing judicial decisions are the only profession with authority to enforce these decisions and to apply protective attachment orders. To do so, they may require the support of law enforcement officials, which the state must provide. These duties therefore fall within the ambit of sovereign prerogative powers. According to the Constitutional Court in decision No. 2014-429 QPC of 21 November 2014, notaries also exercise sovereign prerogative powers and have the status of public officials and officers of the court. They exercise sovereign powers and accordingly fall outside the scope of the HALDE's recommendation. The report adds that the French nationality condition for notaries was abolished in Decree No. 2011-1309 of 17 October 2011, so that the profession of notary is now open to French citizens and those of the European Union and member states of the European Economic Area.

The report states that in France the profession of advocate is open only to French citizens and those of the European Union and member states of the European Economic Area, refugees and stateless persons and nationals of any state that grants reciprocal treatment to French advocates. It adds that any member state of the World Trade Organisation, and thus of the General Agreement on Trade in Services (GATS), which covered 161 countries in April 2015, is considered to fulfil this reciprocity condition.

The Committee again recalls that, under Article 1§2 of the Charter, while it is possible for states to make foreign nationals' access to employment on their territory subject to possession of a work permit, they cannot issue a general ban on nationals of states parties occupying jobs or posts for reasons other than those set out in Article G. That article provides that restrictions of the rights safeguarded in the Charter are acceptable only if they are prescribed by law, serve a legitimate purpose and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of the public interest, national security, public health or morals. The only jobs from which foreigners may be banned therefore are those that are inherently connected with the protection of the public interest or national security and involve the exercise of public authority (Conclusions 2012, Albania).

The Committee considers that the restrictions on access to the profession of advocate applicable to non-EEA nationals are excessive, which constitutes discrimination based on nationality.

The Committee asks for information in the next report on positive measures/actions taken to combat all forms of discrimination in employment.

2. Prohibition of forced labour

The report states that Law No. 2013-711 of 5 August 2013 transposed Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims into the Criminal Code. Currently, forced labour is punishable by 7 years' imprisonment and a fine of €200 000 or, if a victim's vulnerability or state of dependence are obvious or known to the perpetrator, 10 years' imprisonment and a fine of €300 000. Furthermore, on 25 May 2014, a National Action Plan against Human Trafficking for 2014-2016 was adopted by the French Cabinet so as to establish a true public policy to combat this problem in all its forms.

Work of prisoners

The Committee notes from the report that work has not been compulsory for prisoners since 1987. Applications to work by prisoners are examined by a special multidisciplinary committee (*CPU*), whose deliberations are based in particular on the number of jobs available in prisons and prisoners' means (Articles D 90 et seq. of the Code of Criminal Procedure). In a general drive for integration, the prison authorities set themselves targets to assist the poorest prisoners, promoting access to remuneration through work or to vocational training. If no paid activities are available, the prison authorities aim to ensure satisfactory material conditions of detention (Circular of 17 May 2013 on measures to combat poverty in prison). Article D. 347-1 of the Code of Criminal Procedure sets out criteria which can be used to identify the persons concerned and gives details of the type and amount of support that may be allocated. Under Article 27 of Law No. 2009-1436 of 24 November 2009, the prison authorities are also required to develop activities "falling into one of the following categories: work, vocational training, education, programmes to prevent repeat offending and educational, cultural, socio-cultural, sports and physical activities" (new Article R.57-9-1 of the Code of Criminal Procedure). Prisoners must take part in at least one of these activities (Article 27 of the Prisons Law).

The report states that an individual hourly wage must be paid both for work carried out on behalf of the prison (general services) and for production activities (through private companies working with prisons or the industrial unit of the prison work department – *SEP-RIEP*) (Article 32 of the Prisons Law). Participation in occupational activities gives rise to the preparation of a formal employment agreement by the prison authorities setting out prison workers' rights and obligations at work and their working conditions and pay. The prison governor ensures that appropriate measures are taken to guarantee equal treatment in access to and maintenance in occupational activities for prisoners with disabilities (Article 33 of the Prisons Law).

The Committee refers again to its Statement of Interpretation on Article 1§2 (Conclusions 2012) and asks for up-to-date information in the next report on the social protection of prisoners during their imprisonment (covering employment injury, unemployment, health care and old age pensions).

Domestic work

In its previous conclusion, the Committee noted the judgment of the European Court of Human Rights of 10 October 2012 in the case of C.N. and V. v. France (application no. 67724/09) in which it was held that France had not put in place a legislative and administrative framework making it possible to fight effectively against servitude and forced

labour. In this context it referred to its Statement of Interpretation on Article 1§2 in the General Introduction to Conclusions 2012. The Committee notes that the report does not answer the questions it put on domestic work in its Statement of Interpretation. Consequently, it repeats its request for relevant information in the next report on the matters raised in this Statement of Interpretation, in which it drew attention to the existence of forced labour in the domestic environment and in family businesses, particularly for information on the laws enacted to combat this type of forced labour or on the steps taken to apply such provisions and monitor their application. It asks in particular whether the homes of private individuals who employ domestic staff may be inspected and if foreign domestic staff have the right to change employer in the event of abuses or if they lose their residence rights when they leave their employer.

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

Minimum periods of service in the Armed Forces

The Committee asks for up-to-date information in the next report on the impact of studies or training courses followed by military personnel on the duration of their service in the armed forces and on the possible financial repercussions of early termination of service.

Requirement to accept the offer of a job or training

The Committee notes that the report does not answer the questions it put on the requirement to accept the offer of a job or training in its Statement of Interpretation on Article 1§2 in the General Introduction to Conclusions 2012. Consequently, the Committee repeats its request for relevant information in the next report on the matters raised in the Statement of Interpretation, particularly on the remedies available for the persons concerned to dispute decisions to suspend or withdraw unemployment benefit. The Committee points out that if the information is not provided in the next report, there will be nothing to establish that the situation is in conformity with Article 1§2 regarding the obligation to accept a job offer or training or lose unemployment benefits.

Privacy at work

The Committee notes from the report that while it is lawful in France for employers to monitor their employees' activities using new technologies, such monitoring must respect the limits set by the relevant legislation, particularly with regard to the right to respect for private life, the requirement for proportionality between the aim pursued and restrictions to individual freedoms and the need for fair dealing and good faith in employment relations. It also notes the guarantees of respect for privacy afforded in the context of teleworking, particularly:

- Article 6 of the extended National Inter-Occupational Agreement of 19 July 2005, transposing the European Framework Agreement on Telework of 16 July 2002 into domestic law, thus requiring employers to establish with their employees the hours during which they may be contacted and to inform them about any monitoring mechanism which has been set up, which must be relevant and proportionate and have been presented to and approved by the works council or, failing that, the representatives of staff in the companies equipped with such systems;
- the provisions of the Labour Code (Articles L.1222-9 to 11 and L.3171-4) which set out and explain the rules applying to telework, particularly: the rules on the transition to telework and the return to conventional work, the reciprocal obligations, particularly the restrictions on the use of computer equipment or tools and the penalties for failure to comply with these restrictions, the means of establishing with employees the hours during which they can be contacted, monitoring of compliance with timetables and the regulations on working hours,

whose details are fleshed out in the relevant collective agreement or employment contract or any addendum thereto, and the calculation of overtime.

The Committee takes note of the information provided on the means of monitoring employees' activities and the tools available and on the arrangements governing teleworking. Referring to its Statement of Interpretation on Article 1§2 in the General Introduction to Conclusions 2012, the Committee asks for information in the next report on measures taken by the state to ensure that employers give due consideration to workers' private lives in the organisation of work and that all interferences are prohibited and where necessary sanctioned.

Conclusion

The Committee concludes that the situation in France is not in conformity with Article 1§2 of the Charter on the ground that the restrictions on access to the profession of advocate imposed on non-EEA nationals are excessive, which constitutes discrimination based on nationality.

Article 1 - Right to work

Paragraph 3 - Free placement services

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

Pôle Emploi is the main public employment service in France. Its tasks are set out in Article L. 5312-1 of the Labour Code. With 54,000 staff, about a thousand offices and a €5 billion budget, it is the largest state operator in the country. It is financed by the State (30%) and by the national unemployment benefit management body, the UNEDIC (70%) and its funds increased by €630 million between 2009 and 2014. Its tasks and funding are organised on a regular basis through a tripartite agreement between the state, *Pôle Emploi* and the UNEDIC. The report states that there have been two successive increases in the staff of *Pôle Emploi*, namely 2,000 new permanent contracts decided on in July 2012, financed in full by the State, and a further 2,000 in September 2013, with two-thirds funding from the State. It is also stated that the grant for public service costs paid by the state to *Pôle Emploi* amounted to €1,519 billion in 2014.

Pôle Emploi is not the only body to provide employment services. Many other bodies operate simultaneously on the labour market including local task-forces, the *Cap-emploi* network, local integration and employment plans (PLIEs), private employment agencies, job search websites and social networks. With regard to private agencies, in reply to the Committee's question on the subject, the report provides the following information: (a) the conditions for the use of these agencies are set out in a tripartite agreement between the state, the UNEDIC and *Pôle Emploi*; (b) the governing board of *Pôle Emploi* has the task of deliberating on the conditions for the use of private agencies in accordance with the approach decided on in the tripartite agreement; (c) the use of private agencies is regularly reviewed; (d) even when a jobseeker is referred to a private agency, *Pôle Emploi* continues to intervene; (e) the principle that public employment services are free of charge applies to private agencies.

The Committee notes that between January 2009 and January 2015, the number of persons on *Pôle Emploi's* lists increased from 3.9 million to 6.2 million, or by 58% (source: *Pôle Emploi and the Directorate of Research, Studies and Statistics (DARES), Monthly national reports on job applications and offers – data adjusted according to seasonal variations and variations in numbers of working days per quarter (CVS-CJO)*). In its 2014 Activity Report, *Pôle Emploi* states that 3.6 million people found work using its services and that 2.2 million recruitments were completed thanks to its assistance. On this subject, the Committee notes that in its thematic report on "*Pôle Emploi's* response to mass unemployment" published in July 2015, the *Cour des comptes* (national audit office) states that if we take account of all the means of recruitment used by jobseekers, according to statements by jobseekers who found work again in June 2014, *Pôle Emploi* was directly responsible for their return to work in only 12.6% of cases.

Pôle Emploi presents the results of a statistical model, according to which, after the effect of the economic situation is taken out of the equation, hiring for long-term jobs was 16% higher in 2014 than for the period 2003-2011, and this, according to the public operator, shows that there has been a positive development owing to its activities. In this connection, the *Cour des comptes* observes: (a) that it is impossible to distinguish in this figure what is the specific result of *Pôle Emploi's* activities as opposed to all other outside factors, such as changes affecting the functioning of the labour market, the actions of other operators or individual conduct; (b) that the same indicator was significantly negative for the long-term unemployed (-4.3%); (c) that the percentage of unfilled vacancies rose from 7.3% in 2008 to 16% in 2013; and (d) that there has been a sharp decline in the average number of jobseekers recommended to employers by *Pôle Emploi* and subsequently taken on (see the thematic report referred to above). The Committee asks that the next report provides comments on the abovementioned points. It also asks that the next report provide data on the placement

rate (i.e. placements made by the employment services as a share of notified vacancies) and the average time taken to fill vacancies, for the different years of the reference period.

In reply to a question from the Committee, the report states that since June 2013, the aims of the new range of services on offer to companies has shown a significant change in approach. Pursuant to the tripartite agreement between the state, the UNEDIC and *Pôle Emploi* for 2012-2014 and *Pôle Emploi's* internal strategic plan for 2015, it satisfies a desire in particular to experiment with new forms of organisation and services intended to improve the quality and efficiency of the services provided for companies. It is stated that the new range of services on offer to companies is intended to place more emphasis on good relations with employers as a means of more effectively attaining jobseekers' placement goals. However, in the same report it is also pointed out that the increase in unemployment in recent years has prompted *Pôle Emploi* to give priority to its relations with jobseekers when allocating its resources and that this has occurred to the detriment of its relations with employers, which takes up only 7 to 8% of its staff's working hours.

The Committee asks the next report provides data on the number of employment services staff in relation to the number of job seekers for the different years of the reference period.

The Committee finds that the official information used in order to assess the effectiveness of employment services in France is not assessed in the same way by *Pôle Emploi* and *Cour des Comptes*. More generally, it notes that the impact of labour market measures adopted during the reference period on the unemployment rates, assessed under Article 1§1, seemed not to be sufficient.

Conclusion

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

Article 1 - Right to work

Paragraph 4 - Vocational guidance, training and rehabilitation

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

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

The Committee considered the situation to be in conformity with the Charter as regards measures concerning vocational guidance (Article 9) .

It deferred however its conclusion as regards measures relating to vocational training and retraining of workers (Article 10§3) and found that the situation was not in conformity with the Charter as regards vocational training for persons with disabilities (Article 15§1) on the ground that it has not been established that the right of persons with disabilities to education and vocational training is guaranteed. Accordingly, the Committee considers that the situation is not in conformity with Article 1§4 on the same ground.

Conclusion

The Committee concludes that the situation in France is not in conformity with Article 1§4 of the Charter on the ground that it has not been established that the right of persons with disabilities to vocational training is guaranteed.

Article 9 - Right to vocational guidance

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

The report indicates that equal treatment with respect to vocational guidance is ensured for all those residing or working lawfully in France.

The Committee also previously noted (Conclusions 2008, 2012) that information on vocational guidance is disseminated by the bodies responsible for vocational guidance in the education system and in the labour market.

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

Vocational guidance within the education system

The Committee previously noted (Conclusion 2012) the establishment in 2009 of a public vocational guidance service and the implementation of a plan for co-ordinating state vocational guidance networks, under the responsibility of the Adviser for Information and Guidance (DIO). In particular, information and guidance centres (CIO) are responsible for the following: receiving the general public, primarily including school pupils and their families; information about studies, vocational training, qualifications and occupations; individual counselling; observing and analysing local changes in the education system and labour market trends and producing summary documents for teaching staff and pupils; arranging exchanges and discussions involving education system partners, parents, young people, local decision-makers and business leaders.

Further reforms to the guidance system were adopted in 2013 during the reference period (framework and planning law on the reform of the education system of 8 July 2013; law on higher education and research of 22 July 2013). The report refers to the main changes affecting guidance in the education system, in particular the introduction of a *Bac-3/Bac+3* continuum covering senior secondary education and the first three years of higher education and the establishment of a pathway introducing junior and senior secondary pupils to the world of work (*parcours Avenir*). It also notes the establishment in 2014 of a regional guidance service (law of 5 March 2014 on vocational training, employment and social democracy). The aim here is to provide information on training and vocational integration for all individuals, regardless of their age or circumstances (in training, on integration programmes, in employment, etc.). After being trialled in eight regions from September 2013, the new service was due to be rolled out nationwide from 2015. According to the report, central government determines at national level the guidance policy for pupils and students in schools and higher education institutions, while the regions have the task of networking all the services, agencies and measures concerned by lifelong vocational guidance (see details below).

According to the report, in 2015 (outside the reference period), there were 524 information and guidance centres (CIOs), including 294 state CIOs. 3 614 guidance counsellors work in the centres. Some 5.8 million pupils in 11 526 schools are covered. The activities of the guidance counsellors and information and guidance centre managers are broken down between pupils and students (52.4%), teaching staff (40.2%), parents (5.7%) and young people not in school or adults (1.7%). The Committee requests that the next report provide information on the budget allocated to vocational guidance in the education system. For it to be able to assess the conformity of the situation with Article 9 of the Charter, the reports must systematically provide up-to-date information on resources, staff and the number of beneficiaries of vocational guidance services.

Vocational guidance in the labour market

The report indicates that the guidance system was reviewed in 2014 and the regions were assigned the role of co-ordinating all services, agencies and measures concerned with lifelong guidance (CIOs, the national information office on education and vocational training opportunities (*Onisep*), local task forces for young people, local job centres, youth information network, bodies which collect funds for vocational training, etc.). The individual tiers remain attached to their respective administrative bodies and retain their own statutes and remits, but they pool their skills and resources in order to meet public needs and expectations more effectively. The regions are also responsible for establishing career development counselling (CEP), through which information is provided about the validation of experience. Employees, job-seekers and school leavers now have access free of charge to this new support service. Five operators were chosen under the law of 5 March 2014 to implement the system: the *Pôle emploi* employment office, the association for the employment of managers (APEC), the network of placement services for persons with disabilities (*Cap emploi*), the local task forces for young people (*missions locales*) and the joint agencies collecting funds for individual leave for training (*Opacif*).

The Committee recalls that under Article 9 of the Charter vocational guidance must be provided:

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

It asks for up-to-date information on these items to be systematically provided in all future reports, especially figures on the resources, staff and number of beneficiaries of vocational guidance in the labour market. It reserves its position on this point in the meantime.

Conclusion

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

Article 10 - Right to vocational training

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

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

Secondary and higher education

According to the report, each year there are around 800,000 students in vocational education at all levels, from professional aptitude certificate (CAP) to the vocational masters degree. The Committee asks what is the proportion of these students out of the overall number of students.

The Committee notes that vocational education has recently undergone a number of changes with a view to modernising the relations between the world of education and the labour market. According to the report, the aim of vocational education is to contribute to the improvement of economic and social situation, facilitate growth and reduce social inequalities. The Law on orientation and programming of 2013 has introduced a new dynamic in vocational education through the creation of the 'campus of professions and qualifications', which aims at facilitating the integration in the labour market.

The 'campus of professions and qualifications' aims at helping students, apprentices and adults advance in their professional carrier offering them training possibilities. Strengthening the identity and visibility of the campus of professions and qualifications as well as its links with local businesses facilitate active and positive guidance of students and continuing education.

The definition of 'the campus of professions and qualifications' and its modalities were clarified by Decree No. 2014-1100 of 29 September 2014. The campus focuses on those industries where the growth potential is high. According to the report, eventually, the campus will be extended to all sectors where jobs are created (construction and civil engineering, energy) as well as the sectors of the future.

With a view to strengthening the link between the education system and the labour market, the Ministry of National Education, Higher Education and Research (MENESR) also created a new forum for dialogue- the National Council for Education and Economy (NCEE), by order of 25 June 2013. This forum aims at formulating proposals for strengthening vocational education in the areas where education and the labour market interact closely.

The Committee notes that the Directorate General of Administration and Public Service produces each year a circular of priorities of vocational training and coordinates the actors at interministerial level.

Measures to facilitate access to education

In reply to the Committee's question concerning access to vocational education, the report states that non-EEA nationals must be in a possession of a valid residence permit and must be registered at the employment services in order for them to benefit from vocational education courses. The Committee also takes note of different types of residence permits authorising vocational training combined with employment.

The Committee notes from Eurydice (Overview, France, 2016) that *le droit individuel à la formation* (individual right to training) enables any salaried employee with a permanent employment contract (CDI) to have the right to 20 hours of accumulative training over six years. Unless otherwise stipulated, the training is done outside of working hours and is paid for by the employer according to specific terms.

The Committee further notes from Eurydice that in 2012, total domestic expenditure on education came to € 139,4 billion, 6.9% of the GDP. The State finances over half of domestic expenditure on education (58.5% in 2012).

The Committee wishes to be informed of the total spending on vocational education. It also asks whether there are any registration fees to enroll in vocational training.

Conclusion

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

Article 10 - Right to vocational training

Paragraph 2 - Apprenticeship

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

According to the report, youth affairs is one of the priorities of the Government, in particular as concerns youth unemployment. Therefore, apprenticeships have also become one of the priorities of the education policy. According to the report with 62,3% of apprentices having found a stable employment at the end of apprenticeship, the latter has proved to be an effective means for finding an employment.

According to the report, with the Law of 5 March 2014 on Vocational Training employment and social democracy major advances in the area of apprenticeships have been achieved, such as entrusting the Apprenticeship Training Centres (CFA) the task of providing the guidance to the youth. Moreover, the Law has created the possibility of signing an apprenticeship contract of unlimited duration.

The Committee notes that at July 2014, € 200 million were spent on measures to support apprenticeships. Namely, the simplification of the apprenticeship tax system allowed the companies to allocate additional € 160 million to apprenticeships and the companies with less then 250 employees received the support at the amount of € 1,000 to recruit the first apprentice.

The development of apprenticeship and learning in alternance in higher education is also a priority of the apprenticeship relaunch plan. The Committee notes that by 2017 the objective is to reach 150,000 apprentices.

The Government also oversees the development of apprenticeship contracts by apprenticeship developers, whose mission is to encourage companies to recruit an apprentice and to keep him/her until the end of the contract. Between 2009 and 2014 187,300 businesses have been approached and 44 500 contracts have been signed, with the State support amounting to € 4 million. This increase in the number of apprentices is expected to continue after the signing in May 2014 of three new agreements (with the Assembly of French Chambers of Commerce and Industry, the Permanent Assembly of Chambers of Trades and Crafts and the Committee of Coordination of Apprenticeships in construction and public works).

The Committee further takes note of activities aimed at promoting apprenticeships in the public sector, such as the apprenticeship development plan of 2015. According to the report, promotion of apprenticeship means giving young people a better chance of finding employment thus reducing social inequalities and discrimination. It also means upgrading the skills of professionals who supervise apprentices and also contributes to a broad and diversified recruitment in public service. The Committee wishes to be informed of the implementation of the development plan.

Conclusion

The Committee concludes that the situation in France is in conformity with Article 10§2 of the Charter.

Article 10 - Right to vocational training

Paragraph 3 - Vocational training and retraining of adult workers

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

In reply to the Committee's question, the report states that the equality of treatment as regards access to vocational training for adult workers is guaranteed for all persons legally resident or regularly working in France.

Employed persons

The Committee notes from the report that the Law of 5 March 2014 concerning Vocational Training, Employment and Social Democracy makes a global review of the system with a view to introducing reforms, in particular, as concerns access to training as well an individualised approach (personal training account), which gives each person the possibility to use 150 hours of continuing training which provides for that person the possibility to attain the best professional qualification.

According to the report, this new tool makes it clear that, in addition to the fundamental right to initial training, there is a right to continuous training and that it is attached to the person, not his/her employment contract.

The law changes the logic of funding by moving away from an obligation to finance the training to an obligation to train. The law simplifies also the tax collection system by establishing a single contribution rate of 1% for all employers with more than 10 employees.

The law also places the vocational training at the heart of social dialogue in the company, through the introduction of biannual talks on the professional development of each employee. The law also profoundly transformed the governance rules and the regional vocational training system allowing all actors (State, social partners and regional councils) to develop new tools for consultation.

The Committee asks the next report to provide information about the percentage of employed persons who underwent continuing training at the workplace as part of the preventive measures against deskilling of still active workers at risk of becoming unemployed as a consequence of technological and/or economic development.

Unemployed persons

The Committee notes from Eurydice (Overview, France) that the training of unemployed people is mainly directed by the *Pôle Emploi* (the Governmental agency that registers unemployed people, and helps them find a job), which directs individuals looking for a job towards trainings. Training programmes are given by the most important training institutions. However, these institutions have a primary purpose of general continuing training, the unemployed being part of it. There is no training institution that specifically targets unemployed people. Unemployed individuals keep their unemployment benefits during their training. Specific allocations are also available for unemployed people in training.

The Committee asks the next report to provide information about the percentage of unemployed persons who underwent continuing training and the activation rate – i.e. the total number of the annual average number of previously unemployed participants in active measures divided by the number of registered unemployed persons and participants in active measures.

Conclusion

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

Article 10 - Right to vocational training

Paragraph 4 - Long term unemployed persons

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

The Committee notes that the proportion of job seekers registered with the *Pôle Emploi* employment office for over a year, which is an indicator of long-term unemployment, rose from 40.1% in 2011 to 42.9% in 2013. In particular, young people and older people are increasingly severely affected: the proportion of under 25-year-olds still registered with *Pôle Emploi* a year after becoming unemployed rose from 29.4% to 32% and that of persons aged over 50 years from 56.2% to 58.2% (source: *Cour des comptes* (national audit office) – Thematic report on *Pôle Emploi*'s response to mass unemployment, July 2015*).*

In its previous conclusions (Conclusions 2012), the Committee asked for specific information as to measures concerning vocational training for the long-term unemployed. The report indicates that two types of *professionalisation contracts* have been introduced: a) "new career" and b) "new opportunity" contracts. The Committee requests that the next report provide information on the activation and implementation of these contracts and on the actual contribution they make to combating long-term unemployment.

The Committee requests that the next report provide an assessment of the contribution of Act No. 2014-288 on vocational training, employment and social democracy to combating long-term unemployment, information on the activation rate of long-term unemployed personsand and indicate, more particularly, the number of long-term unemployed who have undergone training during the reference period. In this connection, the Committee considers a person who has been without work for twelve months or more to be long-term unemployed (Conclusions 2003, Italy).

In the conclusion adopted in 2008 (Conclusions 2008), the Committee asked whether equality of treatment was ensured for nationals of other States Parties lawfully resident or working in France as regards training for the long-term unemployed. This question was reiterated in the previous conclusions (Conclusions 2012). In this respect, the Committee notes the information provided in the report under Article 10§3 with respect to the access to vocational training of non-EU nationals.

Conclusion

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

Article 10 - Right to vocational training

Paragraph 5 - Full use of facilities available

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

Fees and financial assistance

In its previous conclusion (Conclusions 2011) the Committee concluded that the situation in France was not in conformity with Article 10§5 of the Charter on the ground that equal treatment of nationals of other States Parties lawfully resident or regularly working in France was not guaranteed as regards access to scholarships granted on the basis of social criteria for higher education.

The Committee notes from the report that higher education scholarships awarded on the basis of social criteria are granted to students facing financial difficulties which may prevent them from pursuing higher education. The scholarship is an additional support to the family. As such, it cannot substitute for the obligation as defined in Articles 203 and 371-2 of the Civil Code which require parents to ensure the maintenance of their children, even as adults, as long as they are not able to meet their own needs. The revenues of the family are taken into account in determining the amount of scholarship.

The Committee takes note of the categories of students who are eligible for scholarships. The French or EEA nationals can apply for scholarships if they have previously had an employment in France, of a real and effective nature. They should also prove that one of their parents has received revenues in France. These two requirements are waived if an applicant can show a certain degree of integration in France, which is assessed on the basis of the length of residence (one year minimum).

The non-EEA students must be in a possession of a temporary residence permit and be domiciled in France for two years and have demonstrated that their fiscal residence has been in France for two years.

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

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

The Committee considers that the situation is not in conformity with the Charter because there is a length of residence requirement of two years for non-EEA nationals to apply for scholarships granted on the basis of social criteria for higher education.

The reform of the system of scholarships for higher education has aimed at improving the living conditions of students and specifically focused on three categories of students, such as those who come from families with modest income, those who are obliged to work alongside studying, thus reducing their chances to succeed and those who are in an autonomous situation due to family ruptures.

Efficiency of training

The Committee recalls that under Article 10§5 of the Charter States must evaluate their vocational training programmes for young workers, including the apprenticeships. In particular, the participation of employers' and workers' organisations is required in the supervision process. In its previous conclusion the Committee asked how vocational training was evaluated and it notes that the report does not provide information in this respect. The Committee therefore concludes that it has not been established that there is a mechanism to evaluate the efficiency of vocational education.

Conclusion

The Committee concludes that the situation in France is not in conformity with Article 10§5 of the Charter on the grounds that:

- there is a length of residence requirement of two years for non-EEA nationals to qualify for scholarships granted on the basis of social criteria;
- it has not been established that there is a mechanism to evaluate the efficiency of vocational education.

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

Paragraph 1 - Vocational training for persons with disabilities

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

France ratified the UN Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol on 18 February 2010. These instruments came into force in France on 20 March 2010. The first report on the implementation of the CRPD was published in 2016 (outside the reference period). According to this report, it was estimated in 2006 (outside the reference period) that some 5% of children with disabilities did not attend school, or between 5 000 and 20 000 children. The report to the CRPD Committee also acknowledges that there is a lack of reliable data in the area and refers to the new measures planned following the National Conference on Disability of 2014.

The Committee refers to the detailed data given below concerning the number of pupils with disabilities who are in mainstream and special schools, while noting that the report does not provide any of the other data requested previously (Conclusions 2012), which are needed to assess the effectiveness of equal access to education and vocational training. It asks therefore for up-to-date information on the total number of persons with disabilities to be included systematically in future reports, including: the number of children concerned; the numbers of students with disabilities in mainstream and in special education and vocational training; the percentage of students with disabilities entering the labour market following mainstream or special education and/or training; the number of persons with disabilities (children and adults) living in institutions and; any case law or complaints lodged with the relevant authorities with respect to discrimination on the ground of disability in the field of education and training.

The report also presents information about the Third Autism Plan (2013-2017), training and awareness-raising for teachers, and mainstream education (at school and in higher education) for pupils and students with autism spectrum disorders. In this connection, with regard to the collective complaints by International Association Autism-Europe (IAAE) v. France, Complaint No.13/2002, decision on the merits of 4 November 2003, and by *Action Européenne des Handicapés* (AEH) v. France, Complaint No. 81/2012, decision on the merits of 11 September 2013, the Committee would point out that it found the situations concerned not to be in conformity with the Charter (Findings 2015) and that the next follow-up assessment will be made on the basis of the information to be provided in October 2017.

Definition of disability

The report does not mention any changes with regard to the definition of disability, which the Committee found previously to be in conformity with the Charter (Conclusions 2008, 2012).

Anti-discrimination legislation

The Committee refers to its previous conclusions (Conclusions 2008, 2012) for a description of the legislation and regulations on measures to combat discrimination on the ground of disability. It notes from the report of the Public Defender of Rights (*2005-2015: 10 years of activities championing the rights of persons with disabilities)* that disability was the second most common ground for complaints of discrimination filed with the Defender in 2014 and that 3.3% of these complaints related to education.

Education

The report states that the Law of 8 July 2013 introduced the principle of inclusive school for all pupils without discrimination. It also points out that Law No. 102/2005 already provided for the right of everyone to education in a mainstream school as close as possible to his or her home and to a continuous and appropriate course of schooling (see Conclusions 2008 and

2012). According to their degree of disability, as assessed by the Commission for the Rights and Self-Reliance of People with Disabilities (CDAPH), children with disabilities are educated:

- individually, in mainstream establishments, possibly with a specialist assistant;
- with other pupils with disabilities, in special classes in mainstream schools (school integration classes (CLISs) at primary level or local inclusive education units (ULISs) at secondary level or, since 2014, teaching units – UEs);
- or in special schools (medico-social establishments and services).

According to the report, parents are increasingly involved in decisions about their children's educational choices and the establishment of personalised education plans (PPSs). The report describes the measures taken in late 2014 and early 2015 to harmonise and standardise PPSs and set up a personalised support plan (PAP) for pupils with serious, long-term educational problems linked to learning disabilities (Law of 22 July 2013, Decree of 18 November 2014, Circular No. 2015-016 of 22 January 2015). The report also gives details of measures taken to improve teacher training (particularly through the M@gistère Platform, a distance learning system set up in 2014) and to professionalise the job of school assistant to a person with disabilities. Some 41 000 people had been recruited for this purpose as of 1 October 2014. Training courses have been set up for them and their professional status has been changed (under Article 917-1 of the Education Code) to enable them to be recruited on an indefinite-term contract after six years' service. According to the report, this measure should ultimately benefit over 28 000 people, 5 000 of whom were already scheduled to be on indefinite-term contracts from the end of the 2014-2015 school year onwards.

According to the report, in September 2014/2015, a total of 330 247 pupils with disabilities were attending school in France, 259 941 of whom were in a mainstream school – nearly 79%.The number of pupils with disabilities attending mainstream schools continues to increase every year by over 8%. It is at secondary level where the progress is most striking, and in higher education, where the number of students with disabilities rose between 2005 and 2015 from 8 000 to 18 200, two-thirds of whom are given special support.

The Committee takes note of this information, while also noting that it does not always make it possible to identify how many people with disabilities do not have access to education. Nor does the report answer the questions put previously (Conclusions 2008 and 2012) on the drop-out and success rates of children with disabilities compared to others, or state what qualifications can be achieved through special education and whether these qualifications are recognised for the purposes of pursuing studies or accessing vocational training or the open labour market.The Committee asks for this information to be provided in the next report and considers in the meantime that it has not been established that the right of persons with disabilities to education is guaranteed.

Vocational training

The Committee refers to its previous conclusions (Conclusions 2012) for a description of the types of vocational training on offer in the mainstream system (vocational upper secondary schools and apprentice training centres) and in special establishments (regional adapted education schools (EREAs); institutes for blind or deaf people; medico-educational and medico-vocational training centres; ONAC centres and vocational rehabilitation centres (CRPs)). It notes from the report that activities have been set up for young people with special needs including those with disabilities to help them get on to work experience placements and provide them with training and vocational integration support. The report does not provide any up-to-date data on the number of people receiving vocational training through the various existing facilities in mainstream or special establishments. The Committee asks for these data to be included in the next report.

The Committee notes the information in the report concerning support measures for students with disabilities in higher education (Article L. 123-4-1 of the Education Code, the Charter on University and Disability of 2012, Articles 47 and 50 of Law No. 2013-660 of 22 July 2013 and the guide on assistance and support for students with disabilities). These measures include the establishment in all universities of a one-stop service for students with disabilities and special arrangements including adjustments to examination papers in accordance with disabled student support plans (PAEHs). In 2014, there were a total of 18 200 students with disabilities in higher education establishments (universities, preparatory courses for entrance to *grandes écoles* and *grandes écoles*), and this is an underestimate according to the report as it only includes students who have notified the university authorities of their disability so as to have their courses or their training adjusted. On average, the number of students with disabilities increases by 14% each year. The report also gives details of the measures taken to improve the level of education of persons with disabilities, activities targeting some specific disabilities and the accessibility of establishments, and measures to promote access to the cultural professions among students with disabilities.

The Committee takes note of the various measures taken or being implemented, as detailed in the report, to facilitate the integration of persons with disabilities and to enable them to attend mainstream vocational training courses. It notes, however, that the report still does not answer the questions put previously (see Conclusions 2007, 2008 and 2012) on the number of people receiving vocational training in a mainstream or a special establishment compared to the number of requests for admission and on the percentage of students with disabilities entering the labour market following mainstream or special education and/or training. The Committee asks for this information to be included in the next report and considers in the meantime that it has not been established that the right of persons of disabilities to vocational training is guaranteed.

Conclusion

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

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

Paragraph 2 - Employment of persons with disabilities

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

Employment of persons with disabilities

No figures are supplied in the report for the number of persons with disabilities in France, or the number of such persons of working age. The Committee asks for these data to be included in the next report. It notes from other sources (www.talenteo.fr; ANED country profile, European Semester 2015/2016) that the estimated number of persons with disabilities in France was 12 million. According to the 2011 official data from the National Institute of Statistics and Economic Studies (INSEE), 2 million people aged 15 to 64 years living in ordinary households in metropolitan France declared that they were officially recognised as being covered by the quota obligation to employ workers with disabilities (OETH). In spite of this, only 35% of persons aged 15 to 64 recognised as having disabilities were in employment, compared to 64% of the population as a whole. The majority of persons recognised as having disabilities (56%) were considered inactive as defined by the International Labour Office and their unemployment rate was 21%, i.e. over double the rate for all persons of working age (9%). The long-term unemployment rate (after over two years) stood at 41%, as against 17% for the population as a whole.

The report states that in 2012 there were 361 700 workers with disabilities (-1.6%, as compared to 2011) in 100 300 private sector enterprises. The proportion of workers with disabilities in the economically active population in the private sector was 3.1% (direct employment rate). As at 1 January 2013, in 10 596 public sector organisations, there were 209 909 workers with disabilities (+5.6%, as compared to 2012), or 4.9% of the economically active population in the public sector. In 2014, 31 000 workers with disabilities were employed in 718 “adapted enterprises”, i.e. open labour market facilities where at least 80% of staff are workers with disabilities with a working capacity of at least 30%. In the sheltered sector, in 2014 there were 119 107 workers with disabilities working in 1 349 assisted employment centres (ESAT), which cater for persons with disabilities with a working capacity of no more than a third of that of an able-bodied worker. At the end of 2014, of a total of 5 593 700 job-seekers (+6.1%, compared to 2013), 8.1% had a disability, i.e. 452 701 (+9.5%, compared to 2013).

The report provides no information about persons with disabilities who are self-employed or work in companies with fewer than 20 employees, which are not subject to the 6% statutory quota. The Committee requests that this information be included in the next report. In addition, it requests that the next report provide comparable data for the same year during the reference period for the various categories of workers considered.

Anti-discrimination legislation

The Committee refers to its previous conclusions (Conclusions 2008, 2012) for a description of Law No. 102/2005 and the other provisions to combat discrimination on the grounds of disability. It notes that the report does not provide the clarification requested regarding the scope of the reasonable accommodation requirement. It requests that the next report explain whether the requirement actually only applies to persons officially recognised as being covered by the quota obligation to employ workers with disabilities or to all persons with disabilities. In addition, it reiterates its request for information on the remedies available to persons with disabilities not covered by the obligation to provide reasonable accommodation.

The report states that employers may be exempted from the requirement if they prove that the reasonable accommodation measures involve an excessive burden, in particular given the financial support available to them and their companies’ size and organisational

arrangements. The authorities acknowledge in the report that relatively few employers are familiar with the reasonable accommodation principle and the resulting obligations and that implementing the requirement is difficult because each situation has to be examined on a case-by-case basis, as the concepts of “appropriate measure” and “disproportionate burden” are not defined by law. According to the report, a “practical guide” illustrated with examples of best practice is in the process of being drawn up, on the initiative of a working group comprising operators on the ground, associations representing people with disabilities and legal experts.

With regard to available case-law on reasonable accommodation, the report states that, since 2005, the Ombudsman has been entitled to submit observations in the context of appeals brought by complainants. 20.80% of the complaints lodged in 2014 with the institution regarding discrimination involved disability. 37% of those complaints concerned employment (16.8% private sector and 20.19% public sector). The Committee takes note of the examples of case law mentioned in the thematic report on disability published in 2015 by the Ombudsman. In particular, it notes that the Court of Cassation considers dismissal on the grounds of an employee’s incapacity void if it is the result of an employer’s repeated refusal to follow the occupational physician’s recommendations on workplace accommodation measures (Court of Cassation, Social Division, 25 January 2012, No. 10-30637). Moreover, pursuant to Article L.1133-3 of the Labour Code, the Ombudsman also regards as discrimination employers’ failure to satisfy their obligation to reassign employees declared unfit unless they prove that this was not possible. According to the Ombudsman, failure to provide reasonable accommodation measures or reassign workers may thus constitute discrimination under employers’ reasonable accommodation obligation. The Committee requests that the next report provide up-to-date examples illustrating how the reasonable accommodation requirement is interpreted and applied in practice and whether it has prompted an increase in employment of persons with disabilities in the open labour market. It also wishes to know whether damages are available for discriminatory measures other than dismissal. It considers in the meantime that it has not been established that the right to reasonable accommodation in the workplace is effectively guaranteed to persons with disabilities.

Measures to encourage the employment of persons with disabilities

The report states that under Law No. 87-517 of 10 July 1987, any private or public organisations with at least 20 employees must employ a number of workers with disabilities equivalent to at least 6% of their total staff. Employers who do not comply with this quota must pay an annual contribution to the fund for the integration of persons with disabilities in the public sector (FIPHFP). The level of the contribution is proportionate to the discrepancy between the number of persons with disabilities employed and the statutory requirement. The FIPHFP provides support to help persons with disabilities find and stay in employment in the public sector (for details, see Conclusions 2008 and 2012).

In the private sector, in 2012, only 27% of companies met their statutory requirement to employ workers with disabilities, 11% had concluded approved agreements, 40% employed at least one worker with disabilities and had recourse to sub-contracting and/or contributed to AGEFIPH (association managing funds for the vocational integration of persons with disabilities) and 22% did not employee any workers with disabilities. The number of private employers contributing fell from 2011 to 2012 (from 46 413 to 42 468), but rose by 1% in 2013 (42 893), while the level of contributions to the FIPHFP continued to fall (€476 million in 2011, €441 million in 2012, €421 million in 2013).

In the public sector, in 2013, 54.84% of employees met the 6% quota, 39.77% employed workers with disabilities but did not fully meet the quota and 5.39% only paid the contribution to the FIPHFP. The number of employers contributing fell (from 5 660 in 2011 to 4 910 in 2013), as did the level of contributions to the FIPHFP (€164 million in 2011; €149 million in 2012; €131 million in 2013).

The Committee takes note of the details given in the report concerning expenditure, which rose (€181 million in 2014, as against almost €161 million in 2013 and almost €127 million in 2012) and of the steps taken by the FIPHFP during the reference period to foster employment in the public sector. In particular, the report states that the multiyear recruitment plans for workers with disabilities (2007-2013) resulted in 7 038 additional persons with disabilities being recruited in government departments. In more general terms, the report states that in 2014, a total of 21 666 workers with disabilities were recruited (17 810 in 2013) and 14 324 were kept in employment (16 865 in 2013).

The Committee notes from France's report on implementation of the UNCRPD that a pact on the employment of persons with disabilities in adapted enterprises for the period 2012 to 2014 was agreed by the government, the national union of adapted enterprises (UNEA) and several disability associations and federations on 22 December 2011 in order to give new momentum to the sector with three goals: 3 000 additional job support measures staggered over three years, improve the skills of workers with disabilities (expand vocational training) and modernise the sector. The same report indicates that France spent over 2.7 billion euros on the sheltered sector in 2014 to fund the operation of the ESAT centres and help pay the workers with disabilities whom they employ. However, the report does not supply the information requested since 2008 regarding the impact of the measures taken on the transfer rate to the open labour market and regarding the number of persons with disabilities who benefited from social assistance with everyday life (SAVS) and medical and social services for adults with disabilities (SAMSAH). The Committee repeats these questions.

The Committee refers to the data which it assessed in its previous conclusions (Conclusions 2012, 2008 and 2007) and notes that there has been no progress in the situation regarding the employment of persons with disabilities compared to that of the population as a whole, except in the case of employment in the public sector: compared to the figures in Conclusions 2007, the employment rate in public sector bodies subject to the 6% quota has increased from 4.2% to 4.9%. Overall, the unemployment rate among persons with disabilities has risen (it stood at 19% in 2007) and the 6% quota is far from being achieved in spite of the measures taken. On the contrary, in the private sector the situation has deteriorated: compared to the figures in Conclusions 2007, the employment rate of persons with disabilities has fallen from 4.2% to 3.1%. Moreover, the report does not provide replies concerning several points indicated above. The Committee reiterates its questions and considers in the meantime that it has not been established that persons with disabilities are guaranteed effective equal access to employment.

Conclusion

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

- it has not been established that the right to reasonable accommodation in the workplace is effectively guaranteed to persons with disabilities and
- it has not been established that persons with disabilities are guaranteed effective equal access to employment.

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

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

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

Anti-discrimination legislation and integrated approach

Law No. 102/2005 of 11 February 2005 on the equal rights and opportunities, participation and citizenship of persons with disabilities and its implementing regulations contain a number of provisions to make persons with disabilities more independent in the various areas covered by Article 15§3. In reply to the Committee's question (Conclusions 2012), the authorities acknowledge in the report that in spite of the substantial progress made, the objectives set for 2015 in terms of accessible premises have not been achieved (only 50 000 of 1 million old buildings open to the public have been made accessible, although 230 000 new premises have been built complying with the new accessibility rules). According to the report, in order to give fresh momentum to the accessibility policy, a planning document (planned accessibility schedule) was being studied in 2015 (outside the reference period). This new measure should include administrative or criminal penalties in the event of non-compliance. The Committee requests that the next report include relevant up-to-date information on the measures taken and the results achieved.

The Committee notes from France's first report on implementation of the United Nations Convention on the Rights of Persons with Disabilities that proceedings may be brought in the event of discrimination on the grounds of disability (Article 225-2 of the Criminal Code). Persons with disabilities may also apply directly to the Ombudsman with a view to defending their rights and combating the various types of discrimination.

Consultation

The Committee refers to its previous conclusions (Conclusions 2008, 2012) for a description of the existing consultation machinery, in particular the National Advisory Council for Persons with Disabilities. It asks that the next report provide updated information on this issue.

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

The report refers to the provisions concerning income, taxation and pensions designed to ensure an adequate standard of living for persons with disabilities. In particular, in terms of benefits specifically intended for persons with disabilities, the report mentions the means-tested allowance for adults with disabilities (AAH) paid to persons with a permanent incapacity rate of between 50% and 79% or of at least 80% who suffer a substantial and long-term restriction in terms of access to employment. The maximum amount of the allowance was €790.18 per month in 2014, with the total spent by the state being €8.5 billion. There were 916 700 beneficiaries in metropolitan France as at 31 March 2012. This non-contributory benefit may be paid along with an income supplement (€179.31 per month in 2014) or a supplementary allowance for independent living (€104.77 per month in 2014). In its previous conclusion (Conclusions 2012), the Committee also took note of the educational allowance for children with disabilities (€129.99 in 2014) and the disability compensatory benefit.

The report also refers to certain tax benefits (specific deductions from income tax and tax on property transactions; exemption from the TV licence and, on a means-tested basis, housing tax and property tax; exemption from income tax of most allowances, benefits and pensions for persons with disabilities; specific tax reductions and credits, etc.). With regard to retirement, the report states that, with effect from 2010, persons who have worked in spite of

having a permanent incapacity rate of at least 80% or who have been officially recognised as workers with disabilities are entitled to take early retirement.

Measures to overcome obstacles

Technical aids

The Committee previously noted that Law No. 2005/102 provides, inter alia, for the payment of the cost of certain technical aids and asked for information about the financial contributions which persons with disabilities must make themselves and about any aids to which they may be entitled free of charge (Conclusions 2008, 2012). Insofar as the report still does not answer these questions, the Committee considers that it has not been established that the situation is in conformity with the Charter in this respect.

Communication

The Committee refers to the measures described in its previous conclusions (Conclusions 2008, 2012) and takes note of the new measures mentioned in the report, i.e.:

- the launch of national trials to facilitate access to telephony for the deaf and hearing impaired and speech impaired;
- the provision since October 2013 of systematic subtitling/audio-description systems for all public communication television adverts;
- the setting up in 2014 of an interdepartmental working group on digital accessibility with a view to making public and private-sector websites more accessible;
- the setting up of an interdepartmental working group involving television channels and associations with a view to increasing the accessibility of television news programmes with French sign language;
- the development of measures to facilitate access by persons with disabilities to public services, the electoral process, public and government information and consumer products and services.

The Committee requests that the next report include updated information on this point and on the results achieved.

Mobility and transport

The report states that in 2015 (outside the reference period) almost 20% (25 000 out of 130 000) stops served by urban transport networks were accessible. However, the 50 000 stops served by non-urban transport still need to be made accessible. In the rail transport sector, 73 of the 160 main stations have accessible passenger buildings and 38 have accessible platforms. Of the 2 832 regional stations, 160 currently have accessible passenger buildings and 136 have accessible platforms. The national rail operator (SNCF) also provides an “Access Plus” service for persons with disabilities, enabling them to prepare their trips and be accompanied to their seats/places on trains. The service is currently available in 554 stations. The report points out that underground rail networks are exempted from the accessibility requirement, provided that they draw up accessibility master plans and offer alternative transport. In Paris, therefore, the bus network is accessible (90% of stops and all vehicles) and serves as alternative transport for the underground network, which is not accessible. Moreover, all new dedicated public transport routes built since 2005 are accessible. Substantial progress has been made concerning urban transport rolling stock. 94% of urban buses had low floors in 2014, 84% were fitted with retractable ramps, 75% had audio stop announcement systems and 80% had visual stop announcement displays. In the case of non-urban transport, 79% of vehicles aged less than five years have accessibility mechanisms for persons with disabilities, 50% have visual stop announcement displays, 46% have audio stop announcement systems and 47% have reserved seats (November

2014 figures). In the case of rail transport, rolling stock purchased after 2008 (for instance, Regiolis and Regio2N TER regional trains) complies with the relevant European regulations. Existing rolling stock is gradually being upgraded to bring it into line with accessibility standards. The Committee takes note from the Ombudsman's report of findings of discrimination in access to air transport, which resulted in penalties for the carrier (Court of Cassation, Criminal Division, of 15 December 2015).

With regard to fare policies, which are a matter for the authorities organising transport at urban, *département* or regional level, the report indicates that 65% of *département* councils, 90% of urban transport organising authorities and 95% of regional councils grant persons with disabilities or reduced mobility special fares on their respective transport networks. In the case of domestic rail transport, the fare policy of SNCF, which runs national and regional passenger services on the national rail network, provides for reduced fares for the person accompanying a person with disabilities. Moreover, the 2005 legislation provided that the cost of alternative transport for users with disabilities must not exceed the cost of existing public transport, both in the case of alternative transport for an underground rail network and when it is proven that making a stop accessible is technically impossible.

The Committee takes note of the measures taken or being implemented; however, it notes that those taken previously have not produced the expected results and that most public transport is still inaccessible for persons with disabilities or reduced mobility, in spite of the objectives laid down in the 2005 law. It therefore considers that the situation in this respect is not in conformity with Article 15§3 of the Charter on the ground that persons with disabilities are not guaranteed effective access to transport.

Housing

Among the measures which the authorities intend organising and developing as regards housing, the report mentions "host families", i.e. accommodating persons with disabilities in the homes of approved private individuals who are not members of their families in return for payment for the services provided, an allowance covering regular upkeep costs and rent for the part of the dwelling occupied. The report also mentions semi-autonomous housing solutions (various types of sheltered accommodation) which enable persons with disabilities (in particular, mental disabilities) to live alone, while receiving social support and the services of care assistants to deal with daily tasks and provide a safe and friendly environment. The Committee requests that the next report indicate how many places are currently available in the various types of accommodation for persons with disabilities. It also asks for up-to-date information on the allocation of suitable social housing units to persons with disabilities and for details of the housing assistance available for persons with disabilities.

In addition, the Committee notes that in a general recommendation issued on 11 February 2013 (decision no. MLD-2013-16), the Ombudsman found that "the effectiveness of persons with disabilities' right to housing is currently hampered by the inadequate supply of housing for meeting the demand from the poorly housed in general and the inaccessibility of the housing stock for persons with disabilities." He recommended that the Minister for Regional Equality and Housing make it illegal both to refuse to allow tenants or co-owners to have accessibility work carried out on dwellings or buildings when funding was available for such work (grants from the national housing agency (ANAH), 1% housing loans, etc.) and also for owners to demand that dwellings made accessible for the needs of tenants with disabilities be restored to their previous state. The Committee requests that the next report indicate the steps taken to give effect to this recommendation.

Culture and leisure

Under Article 41 of Law No. 2005/102, all existing establishments open to the public had ten years to meet requirements set for persons with disabilities to enter and move about in the

parts open to the public. The report states that this objective, which concerns cultural and sporting establishments among others, has not been met (see above).

With regard to access to participation in sports, the report states that the ministry responsible for sports has introduced a strategy, administrative arrangements and human and financial resources to foster access by persons with disabilities to sports activities. This policy involves direct support for measures to develop sports participation. In 2014, the National Centre for the Development of Sport (CNDS) provided funding of €7.67 million for local projects. The sum included €850 000 for specially adapted sports equipment. The Committee takes note of the human resources deployed (31 state sports counsellors, one general delegate to the French Paralympic and Sports Committee; 149 qualified sports staff and 80 CNDS posts) and of the investments in making sports facilities accessible (52 projects supported in 2014 for a total amount of €2 million, or an average support rate of 29.7%). It also notes the establishment of a support fund for audiovisual production and promotion concerning sports for persons with disabilities and the funding of activities in connection with the participation by the French team in the Rio 2016 Paralympic Games. The report indicates that the funding of measures concerning sport for persons with disabilities increased sharply towards the end of the reference period and that the French Paralympic and Sports Committee (CPSF) receives annual funding of €765 000 from central government. With regard to the upgrading and refurbishment of facilities to make them accessible, the report indicates that the assessment criteria were changed in 2013 and that, according to the new criteria, in 2015 (outside the reference period) 59.7% of the 268 500 sports facilities had grounds/practice areas accessible to persons with disabilities or reduced mobility and 23.5% of the 21 000 facilities with stands had adapted seating. The government spent €2 million on the relevant measures.

With regard to promotion of access by persons with disabilities to cultural activities, the report mentions measures to facilitate access to reading, the cinema and culture, in particular with the goal of accessibility of cinemas and improvements in access to reading through redefinition of the exception to copyright and its extension to several disabilities. The Committee requests that the next report include updated information on this point, in particular on the results achieved.

Conclusion

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

- it has not been established that persons with disabilities have effective access to technical aids;
- persons with disabilities are not guaranteed effective access to transport.

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

Paragraph 1 - Applying existing regulations in a spirit of liberality

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

It notes that all nationals of European Economic Area (EEA) member States have free and full access to the labour market and are exempt from the requirement to obtain a work permit, as are their family members. Work permits are required for nationals of the following States Parties to the Social Charter: Albania, Andorra, Armenia, Azerbaijan, Bosnia-Herzegovina, Croatia (until 1 July 2013), Georgia, Republic of Moldova, Montenegro, Russian Federation, Serbia, "the Former Yugoslav Republic of Macedonia", Turkey and Ukraine.

Work permits

The Committee notes that, during the reference period, the legislation remained unchanged. It refers to its previous conclusion (Conclusions 2012) in which it noted the arrangements under which foreign workers can be recruited, especially nationals of States Parties to the Charter, in accordance with the law on immigration and integration (law of 24 July 2006).

Relevant statistics

In its previous conclusion (Conclusions 2012), the Committee found that the situation of France was not in conformity with the Charter on the ground that it had not been established that the existing regulations concerning the right to engage in a gainful occupation were applied in a spirit of liberality. It requested that the next report indicate the number of work permits granted to nationals of non-EEA States, as well as the rate of refusals to grant such permits to nationals of these same States. This information is important in ascertaining the degree of flexibility when applying the existing regulations governing access to the national labour market.

In response to the Committee's request, the report provides statistics on work permits granted and refused, obtained from the foreign labour force services. The report states that France has recorded a favourable trend in the implementation of its regulations governing engagement in an occupation by foreigners, in that the work permit refusal rate (all procedures combined) fell from 14.8% in 2013 to 14.3% in 2014.

To supplement the above statistics, in 2013 France issued a total of 43,251 work permits and refused 7,536, as compared with 38,047 work permits granted and 6,349 refused in 2014. The Committee takes note of this information concerning part of the reference period, but also notes that the report does not state whether the data provided relate specifically to nationals of non-EEA States Parties to the Charter. The Committee also notes that the data provided are not broken down by type of work permit and by nationality, and do not distinguish between first grants and renewals of permits. In this regard, the Committee points out that the degree of liberality in applying the existing rules is determined on the basis of statistics regarding the work permit refusal rate for both first applications and renewal applications. The Committee also notes that the report does not indicate the reasons for refusal and would like to receive details of the rate of refusals based on the European preference rule.

The Committee also notes that, according to the OECD Report, International Migration Outlook 2015, 18,000 residence permits were issued to migrant workers in 2013, representing an increase of 11% in labour migration. According to the initial estimates for 2014, labour migration has risen by nearly 10%. However, the OECD report also states that according to the estimates of the Institut national de la statistique et des études économiques (Insee) for 2011/2012, flows from outside the European Economic Area

account for only a minority of all immigrants, whereas immigration from within the EU is more dominant.

Taking into account these informations, the Committee requests that the next report contain relevant data on the number of work permit applications (distinguishing between first grants and renewals) made by nationals of non-EEA States Parties to the Charter, and the rates of acceptance and refusal of these applications during the reference period. In the meantime, in view of the low overall refusal rate mentioned above, it considers that the situation of France is in conformity with Article 18§1 of the Charter.

Conclusion

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

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

Paragraph 2 - Simplifying existing formalities and reducing dues and taxes

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

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

The Committee notes that in order to work as an employee in France, a work permit must be obtained by obtaining a long-term visa allowing the holder to engage in a gainful occupation and having a contract of employment which has been endorsed by the department responsible for foreign labour. Once a work permit has been obtained, an "employee" temporary residence permit (contract with a duration equal to or greater than twelve months) or temporary residence permit marked "temporary worker" (contract with a duration of less than twelve months) is issued. Applications for long-term visas/residence permits must be submitted to a diplomatic mission in the country of origin. Within three months following entry to France, the long-term visa/residence permit must be validated by the French Office for Immigration and Integration, and a medical examination must be undergone at the same time. Failure to satisfy this requirement can lead to withdrawal of the work permit. If the person wishes to stay in France for a period exceeding one year, (s)he must submit an application for a residence permit to the local prefecture during the two months preceding the date of expiry of the visa. The Committee notes that a single application is now sufficient to obtain a single residence permit authorizing an activity as an employed person and a work permit.

In reply to a question from the Committee concerning the rules applying to self-employed persons to engage in self-employment in France, the report states that a person may receive a temporary residence permit if he wishes to pursue an activity in France that is not subject to work authorisation (especially the liberal professions). The applicants must obtain a long-stay visa in their country of residence (unless they change their status). The card, which is issued to him/her, bears the mention of his activity. It is valid for a maximum of one year and is renewable.

The Committee also asked how long it takes for the various residence and work permits to be issued. The report does not answer this question. The Committee reiterates this request and points out that the times taken to obtain the required permits (residence/work permit) must be reasonable.

Chancery dues and other charges

The report states that all employers who recruit foreign workers must, when the foreign national enters France for the first time or gains admission to reside there as a worker for the first time, pay a charge to the French Office for Immigration and Integration (OFII), the amount of which varies according to the nature of the permission to work. Where the period of employment is greater than or equal to twelve months, the amount of the charge payable by the employer is 55% of the monthly wage that is paid to the foreign worker, up to a limit of 2.5 times the minimum monthly wage. Where the worker is hired for a temporary job with a duration that is greater than three months and less than twelve months, the charge is €74 if the monthly wage is equal to the minimum monthly wage, €210 if the monthly wage is greater than the minimum monthly wage, and €300 if the monthly wage is more than one and a half times the minimum monthly wage. The Committee notes that these charges have not changed since 2012. It asks that the next report explain the reasons justifying the amount of tax to be paid by the employer on the employee's first entry into France.

The charge payable by foreign workers is €241 when they obtain their first temporary residence card marked "employee" or "employee on assignment". The Committee notes that the amount of the charge has trebled since 2012 and the report does not provide any

explanation for this. The sum of €241 is requested from recipients of a “skills and talents” or “scientist-researcher” card. With regard to this charge, the Committee notes that there has been a reduction since 2012. Temporary and seasonal workers are exempt from paying it. The charge is €87 to renew a temporary residence permit marked “employee”, “temporary worker” or “scientist-researcher”, and €181 to renew a multi-year “scientist-researcher” permit. Seasonal workers are exempt from paying.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in France is in conformity with Article 18§2 of the Charter.

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

Paragraph 3 - Liberalising regulations

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

Access to the national labour market

The Committee notes that the legislation remained unaltered during the reference period. The Committee refers to its previous conclusion (Conclusions 2012) in which it noted the procedures which could be followed for recruiting foreign workers, in particular nationals of States Parties to the Charter, under the law on immigration and integration (Law of 24 July 2006).

In its previous conclusion, the Committee requested information in the next report on the number of applications for work permits submitted by nationals of non-EEA States Parties to the Charter, as well as on the grounds for which work permits were refused to them. As the report does not provide the relevant information, the Committee reiterates its request. In this respect, the Committee observes that should refusals always or in most cases derive from the application of rules like the so-called "priority workers" rule, under which a State will consider requests for admission to its territory for the purpose of employment only where vacancies cannot be filled by national or Community manpower, with the effect of discouraging nationals of non-EEA States from applying for work permits, this would not be in conformity with Article 18§3, since the State would not comply with its obligation to liberalise regulations governing access to the national labour market with respect to nationals of non-EEA States Parties to the Charter.

With regard to liberalisation of the formalities concerning the recognition of certificates and qualifications, the Committee notes the circular of 31 May 2012 on access to the labour market by foreign graduates, which gives foreign graduates greater access to work permits by urging prefects to "facilitate procedures for students and respond quickly to their applications to change status." Nevertheless, it requests information on the number of foreign certificates, qualifications and diplomas recognised during the reference period for non-EEA nationals.

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

The Committee points out that, under Article 18, loss of employment must not lead to the cancellation of residence permits (Conclusions 2008, Germany) thereby obliging workers to leave a country as soon as possible. In these circumstances, Article 18 requires the validity of residence permits to be extended to provide sufficient time for workers to find new jobs (Conclusions 2008, Sweden).

In its conclusion on this provision (Conclusions 2001), the Committee noted that if foreign nationals were redundant at the time of applying for the renewal of their work permits, their temporary residence permits are renewed for one year (Article R 341-3-1 of the Labour Code). The Labour Code further provides that, if the foreigners are still unemployed at the end of that year, the assessment of their renewal applications takes into account their entitlements under the compensation scheme for workers involuntarily made redundant.

The Committee notes from the additional information provided by the French Government that the principle stated in Article L.311-8 of the Code on the Entry and Stay of Aliens and Asylum Seekers (Immigration Code) provides that the "skills and talents" temporary residence permits and residence permits are revoked if the holders cease to meet any of the conditions required for their issuance. Notwithstanding this provision, "employee", "temporary worker" or "European Blue Card" temporary residence permits may not be withdrawn on the ground that the foreigners have been involuntarily made redundant.

The Labour Code provides that the validity of work permits constituted by “employee” or “European Blue Card” residence permits is extended by one year if, on the date of their first renewal, the foreign workers are involuntarily redundant. If their unemployment continues beyond the extension period, applications for renewal of “employee” or “European Blue Card” temporary residence permits are examined on the basis of the entitlements of the persons concerned under the compensation scheme for workers involuntarily made redundant.

The Committee notes that there have been no changes in the situation which it previously considered (Conclusions 2012) to be in conformity with Article 18§3.

Conclusion

The Committee concludes that the situation in France is in conformity with Article 18§3 of the Charter.

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

Paragraph 4 - Right of nationals to leave the country

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

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

Conclusion

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

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

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

Equal rights

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

It examined the legislation on equality between women and men in its Conclusions 2008 and 2012. The report provides information on changes intervened during the reference period.

Act 2012-1189 of 26 October 2012 on establishing "jobs for the future" strengthens the role of collective bargaining with regard to occupational equality between and equal remuneration of women and men. Firms with at least 50 employees must now fulfil their bargaining obligations with regard to occupational equality by concluding undertaking-level agreements on the subject. Failure to conclude such an agreement incurs payment of a financial penalty, under Section 99-I of Act 2010-1330 of 9 November 2010. The conclusion of a branch agreement on equality between women and men does not absolve firms so affected from liability for this financial penalty. Once a warning has been issued by the labour inspectorate, the amount of the penalty is determined by the regional director of business, competition, consumer affairs, labour and employment. The penalty may reach 1% of the gross salary expenses.

The Committee previously asked about the impact of Act 20101-1330 of 9 November 2010, particularly on collective agreements on gender equality.

The Committee notes that, according to the report submitted by the government to the Higher Council for Occupational Equality on the results of activities to promote occupational equality between women and men over the period 2012-2015, considerable use has been made of this penalty, which in more than half the cases concerned led to the regularisation of the situation. The report adds that the number of branch agreements on equality rose from 122 in 2013 to 140 in 2014, of which six were specifically concerned with occupational equality and equal pay (9 in 2013, 19 in 2012 and 27 in 2011) and at least 134 others dealt with this subject (compared with 113 in 2013, 164 in 2012 and 140 in 2011). Occupational equality and equal pay are also the subject of more wide-ranging negotiations.

With more specific regard to the measures concerning collective bargaining in equality matters taken since the passing of Act 2010-1330 of 9 November 2010:

- Act 2014-873 of 4 August 2014 on real equality between women and men introduced an additional penalty for failure to reach an agreement or produce an action plan, namely a ban on tendering for public procurement contracts (Article L. 2242-5 of the Labour Code);
- the Act also strengthened and simplified undertakings' negotiation obligations with regard to equality as follows:
- negotiations on the objectives of occupational equality between women and men (Article L. 2242-5) and on salaries and wages (L. 2242-7) are now the subject of a single annual negotiating process;
- in the absence of an agreement, the compulsory annual negotiations on salaries and wages will also be concerned with identifying and programming measures to remove inequalities in pay between women and men;
- the content of reports on undertakings' financial situation or of single undertaking reports (on which the triennial negotiations on occupational equality are based) has been extended: they must now provide information on the respective situations of men and women with regard to occupational safety and health, differences in pay and career progression in terms of age, qualifications and

seniority, and changes in the respective promotion rates of women and men within the undertaking by occupation;

- in the event of a generalised difference in the pay of women and men within a particular branch, the social partners must make it a priority to reduce the gap. They must also consider the criteria used to define the various posts/jobs concerned with a view to identifying and modifying those that are likely to lead to discrimination between women and men (Article L. 2241-7 as amended by Section 2 of Act 2014-873).

In the case of pay comparisons between undertakings, the Committee refers to its conclusion 2014 on Article 4§3, where it found that the situation in this regard was in conformity with the Charter. It recalls that it considers the right to equal pay from the standpoint of Articles 20 and 4§3 of the Charter every two years, under the auspices of thematic groups 1, "Employment, training and equal opportunities", and 3, "Labour rights". The Committee had previously noted that, in connection with the labour law concept of an economic and social unit, the Court of Cassation stated that, when determining the remuneration of an employee in a unit composed of persons in different legal situations, the remuneration conditions of this employee cannot be compared with those of other employees in the unit unless those conditions have been established by law or in a collective agreement, and in the case where the work of these employees is carried out in the same establishment (Cass soc, 1 June 2005; Cass soc, 2 June 2010).

The Court of Cassation therefore gives precedence to the situation of the legal entity, although recognising, as an exception, that if the remuneration is fixed by a collective agreement applicable to all the economic and social unit's entities the equality principle applies. The Court also seems to suggest that, in the case of employees working in the same establishment of the economic and social unit, the principle of equal pay applies even if those employees belong to legally separate entities within the unit. Differences in the pay of employees within different establishments of the same enterprise can therefore only be justified by objective factors, whose reality and relevance must be subject to judicial oversight (Conclusions 2014, article 4§3).

Equal opportunities

The Committee notes from Eurostat data that the pay gap between women and men was 15.6% in 2011, 15.4% in 2012 and 15.3% in 2013 and 2014. The male employment rate fell slightly, from 68.3% in 2009 to 67.7% in 2014. This is below the average of the 28 EU countries, which was 70.1% in 2014. The female employment rate rose slightly, from 59.8% in 2009 to 60.9% in 2014, which is above the average for the 28 EU countries of 59.6% in 2014.

The Committee notes the measures taken since 2012 by the Government to encourage public employers to set a good example with regard to equality between women and men in their sector of activity. The report states that, on 8 March 2013, under the aegis of the Prime Minister and the minister responsible for the public service, all the public employers and representative trade unions signed a protocol of agreement on occupational equality between women and men in the public sector. The agreement applies to 5.4 million public officials and specifies fifteen measures under four main headings: social dialogue as a key element for securing occupational equality, equal career prospects and remuneration, a better balance between occupational and private lives and preventing violence and harassment in the work place. The report then describes the measures that have already been implemented. In addition, each autumn equality conferences are held, at which ministers report on progress made on their equality action plans, while objectives and achievements in this field are also discussed each spring at human resources planning conferences. The new human resources objective in 2015 was to reduce pay gaps between women and men. According to the report, econometric studies on such differentials show

that there is still a difference of 12% between the average salaries of men and of women in the public sector, compared with 19% in the private sector.

The report also provides information on the outcome of the 2013 regulations on a balanced appointment system. Since 1 January 2013, there has been a statutory requirement for each sex to benefit from at least 20% of appointments of new staff to senior administrative and management posts in the state, local and regional government and hospital branches of the public service. This figure was raised to 30% on 1 January 2015 and will be 40% from 2017. The first results available for 2014, relating to senior posts in the state public service, show that the rate of female appointments was almost the same as in 2013, with 33% of new appointments to posts of deputy director, head of department, project director and senior expert in the central administration going to women (61 women out of the 183 appointments concerned). Of the 120 first appointments to senior management posts in 2014, 29% concerned women.

The Committee asks for up-to-date information in the next report on practical measures introduced and action taken during the reference period to promote gender equality, particularly equal pay for work of equal value, and to reduce the gender pay differential, and information on the results obtained in the public and private sectors.

It also asks for information on the activities of the labour inspectorate to monitor compliance with the legislation on equality between women and men in practice.

Conclusion

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

Article 24 - Right to protection in case of dismissal

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

Scope

The Committee notes, with regard to the question of whether exclusion from protection against dismissal can exceed four months, that the report states that probation periods are governed by Law No. 2008-596 of 25 June 2008, which lays down the following maximum periods (Articles L. 1221-19 et seq. of the Labour Code):

- two months for manual workers and clerks,
- three months for foremen and technicians,
- four months for managerial staff.

The maximum period may be extended once, but the overall duration must not exceed:

- four months for manual workers and clerks,
- six months for foremen and technicians,
- eight months for managerial staff.

These maximum periods must be complied with in new collective agreements concluded after the publication of the law, but longer periods remain applicable for agreements concluded before then, subject to the case-law of the Court of Cassation.

The Committee notes in this connection that the Court of Cassation assesses the reasonableness of probation periods with regard to the qualifications of the workers. For instance, in a decision of 11 January 2012 (JurisData No. 2012-000188), the Court of Cassation held that a probation period of one year, including extensions, during which a worker was not covered by the regulations governing dismissal, was unreasonable and, in a decision of 10 May 2012 (JurisData No. 10-28.512) that a non-extendable probation period of six months for a sales assistant was also unreasonable. However, in a decision of 24 April 2013, the Court of Cassation held that a total probation period of nine months (without extension) was reasonable for a managerial post (JurisData No. 12-11.825). Moreover, many collective agreements have been renegotiated since 2008 and brought into line with the statutory maximum periods.

The Committee asks what are the reasons for extending the probation period.

Obligation to provide valid reasons for termination of employment

In its previous conclusion (Conclusions 2012), the Committee asked whether the law provided for automatic termination of employment at the age of 70 and also what rules applied in the public sector.

The report states that the French Labour Code does not provide for automatic termination of employment at the age of 70. Article L. 1237-5 of the Labour Code allows but does not require employers to terminate the employment contracts of employees who have reached the age to retire on a full pension. Article 90 of Law No. 2008-1330 of 17 December 2008 on the financing of social security for 2009 introduced an annual procedure for determining employees' intentions: employers may ask employees in writing (before their 67th birthdays and up to their 69th) whether they "*intend voluntarily to leave the company and claim an old-age pension*". If the employees wish to stay on, employers may not force them to retire.

Employers may only automatically terminate employment contracts as from employees' 70th birthdays. The Labour Code does not lay down any particular procedures. If there are no relevant provisions in the collective agreements applicable in the companies concerned, employers may notify employees in the manner of their choice.

In the public sector, barring exceptions, civil servants and contract workers who reach the age limit must stop work and claim their retirement pensions. For those born in or after 1955, the age limit is set at 67 years. Some exceptions to this limit are allowed: staff with

dependent children or incomplete contribution records may remain in employment for a limited period, which varies according to their particular circumstances. The authorities may reject corresponding requests in the interests of the service. Exceptions are also possible, in the interests of the service, in the case of certain senior posts.

The Committee points out that, under Article 24, dismissal of employees at the initiative of employers on the ground of age will not constitute a valid reason for termination of the employment unless a termination is, within the context of national law, objectively and resonably justified by a legitimate aim such as legitimate employment policy, labour market objectives or the operational requirements of the undertaking, establishment or service and provided that the means of achieveing that aim are appropriate and necessary. The Committee wishes the next report to provide information on what justifies the legislator's motivation to authorise termination of employment at the initiative of the employer on the sole ground that the employee reached the age of 70.

Prohibited dismissals

In its previous conclusion (Conclusions 2012), the Committee asked what rules applied when an employee had filed a complaint, participated in proceedings against an employer involving alleged violation of laws or regulations or appealed to competent administrative authorities (retaliatory dismissal).

The report states that, in general, it is prohibited to penalise, dismiss or discriminate against employees who have, in good faith, related or testified the existence of elements of an offence or a crime that came to their knowledge in the course of their duties (Article L. 1132-3-3 of the Labour Code). Dismissals on that ground will be annulled by the courts (Article L. 1132-4). The law provides that dismissals of employees following legal proceedings brought by them or on their behalf concerning discrimination (Article L. 1134-4) or failure to comply with the provisions relating to equality at work between women and men (Article L. 1144-3) are void when it is established that there were no real or serious grounds for the dismissals and that they actually constituted measures taken by employers in response to the relevant proceedings. In that case, the employees are entitled to be reinstated. If they do not wish to continue to fulfil the employment contracts, the employees are entitled to compensation equivalent to at least six months' wages in addition to severance payments. Dismissals for reporting bullying (Article L. 1152-3) or sexual harassment (Article L. 1153-4) are also void. The dismissal of whistle-blowers in various areas (corruption, health safety of certain health products, serious threats to health or the environment and conflicts of interest) is also prohibited by law.

Remedies and sanctions

The Committee recalls that, under Article 24, economic reasons for dismissal must be based on the operational requirements of the undertaking, establishment or service. Assessment relies on the domestic courts' interpretation of the law. The courts must have the competence to review dismissal cases on the basis of the economic facts underlying the reasons for dismissal and not just of points of law (Conclusions 2012, Turkey). Article 24 of the Charter requires a balance to be struck between employers' right to direct/run their businesses as they see fit and the need to protect the rights of employees.

The Committee notes that there were no changes in the rules applicable in the case of dismissal on personal grounds during the reference period (2011-2014). However, Law No. 2013-504 of 14 June 2013 on the protection of employment radically reformed the rules applicable to collective redundancy on economic grounds. Article 18 radically altered the rules applicable to collective redundancy, placing greater emphasis on social dialogue, and strengthened the role of the labour authorities as partners for the company stakeholders, in particular by assigning them the power to validate or approve employment protection schemes. The legislation reformed the rules on consulting staff representatives so as to

increase their powers and took account of the new powers assigned to the labour authorities; any challenges to administrative decisions validating or approving such schemes must be brought in the administrative courts, which must rule on them within three months. In addition, the lawfulness of collective redundancy procedures may not be challenged separately from proceedings concerning the administrative decisions (L. 1235-7-1). However, the employees dismissed may still challenge the individual dimension and the grounds of their dismissal in employment tribunals (L. 1235-7).

With regard to the question of the provisions regarding the burden of proof, which should not rest entirely on the complainant but be appropriately shared between employees and employers, the report states that in the event of challenges to dismissals, both regarding the lawfulness of the procedures followed and the real and serious nature of the grounds given by employers, the law provides that the courts must reach their decisions in the light of the information brought forward by the parties and after ordering any investigations they deem necessary. Employees are given the benefit of any doubt (Article 1235-1 of the Labour Code). The law also provides for a shift in the burden of proof in discrimination and whistle-blowing cases. In such cases, employees provide evidence making it reasonable to suppose that they have witnessed punishable acts, offences or crimes. Employers must then show that their decisions were based on objective considerations entirely unconnected with the employees' evidence.

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

Conclusion

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

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

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

In its previous conclusions (Conclusions 2008 and 2012), the Committee considered the legislation governing the protection of workers' claims in the event of insolvency of their employer. It notes that the situation which it previously found to be in conformity with the Charter has not changed.

In reply to the Committee's question concerning changes since the previous report, the report indicates that there were no reforms of the operation or organisation of the Association for the Management of Employee Claims (AGS) during the reference period (2011-2014). Nevertheless, some changes in the way the AGS takes action and in its role did take place as a result of the adoption during that period, on the one hand, of Law No. 2013-504 of 14 June 2013 on the protection of employment, which radically reformed the rules applicable to collective redundancy on economic grounds, and, on the other, of Order No. 2014-326 of 12 March 2014 reforming the prevention of business difficulties and collective procedures.

The report states that the action of the AGS has been linked with the new procedure for the approval of employment protection schemes (collective redundancies) by the administrative body established under the Law of 14 June 2013. The role of the AGS has also been adjusted in connection with various changes made to collective procedures by the Order of 12 March 2014. For instance, in the case of procedures initiated since 1 July 2014, commercial courts must consult the AGS on the appointment of liquidators when businesses with at least 50 employees are concerned. At the same time, the practice which the AGS had established in recent years of having itself appointed as inspector in procedures concerning businesses with over 100 employees to ensure the smooth conduct of the operations and the actual recovery of its advances was confirmed by the order of 12 March 2014, which also applied it to financial administrative bodies and social security institutions.

Lastly, the Committee notes from the report that, under Law No. 2015-990 of 6 August 2015 on growth, economic activity and equal opportunities, the AGS is now able to consult the common national social protection register (RNCPS) provided for in Article L.114-14-1 of the Social Security Code.

Conclusion

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