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European Social Charter

European Committee of Social Rights

Conclusions 2016

BULGARIA

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 Bulgaria, which ratified the Charter on 7 June 2000. The deadline for submitting the 14th report was 31 October 2015 and Bulgaria submitted it on 7 January 2016. The Committee received on 22 December 2015 observations from the International Organisation of Employers (IOE) expressing its perspective on the application of Article 24.

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

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

Bulgaria has accepted all provisions from the above-mentioned group except Articles 9, 15 and Article 18§§1 to 3.

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

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

- the right to bargain collectively – joint consultation (Article 6§1),
- the right of workers to take part in the determination and improvement of working conditions and working environment (Article 22)

The conclusions relating to Bulgaria concern 10 situations and are as follows:

– 3 conclusions of conformity: Articles 1§3; 18§4; 25;

– 4 conclusions of non-conformity: Articles 1§§1 and 2; 22, 24.

In respect of the other 3 situations related to Articles 1§4, 6§1 and 20, 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 Bulgaria under the Charter. The Committee requests the Government to remedy this situation by providing the information in the next report.

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 Bulgaria.

Employment situation

According to Eurostat, the GDP growth rate decreased from 2011 to 2012 from 1.6% to 0.2%. In 2013, the GDP growth rate reached again 1.3% and amounted to 1.5% in 2014 which was about the EU 28 average which stood at 1.4% in 2014.

The overall employment rate increased slightly during the reference period, namely from 58.4% in 2011 to 61.0% in 2014. However, the rate remained below the EU 28 average rate of 64.9% in 2014.

The male employment rate decreased from 66.9% in 2009 to 63.9% in 2014. It was well below the EU 28 average rate of 70.1% in 2014. The female employment rate remained practically stable (2009 – 58.3%; 2014 – 58.2%) and was still below the EU 28 average rate of 59.6%. The employment rate of older workers increased nearly 4% from 46.1% in 2009 to 50.0% in 2014 approaching the EU 28 average rate of 51.8% in 2014.

The unemployment rate remained relatively stable by increasing 0.1% from 11.3% in 2011 to 11.4% in 2014 which was still higher than the EU 28 average rate of 10.2%.

The youth unemployment rate stayed at a high level even though it decreased from 25.0% in 2011 to 23.8% in 2014.

During the reference period the long-term unemployment rate (as a percentage of the active population aged 15 – 74) increased from 6.3% in 2011 to 6.9% in 2014.

The Committee notes that Bulgaria's economic situation stabilised during the reference period by a relatively robust growth rate. However, the labour market situation remained fragile with still a relatively high youth unemployment rate.

Employment policy

The Committee notes that only little information was provided in the report. The Committee draws the attention of Bulgaria to its Conclusions 2013, where a '*Statement on information in national reports and information provided to the Governmental Committee'* was issued. In that statement, the Committee requests '*the States Parties to always include in the report any relevant information previously provided to the Governmental Committee …… and of course to indicate any developments or changes that may have intervened in the period since the information was provided to the Governmental Committee.*'.

The Committee notes from the relevant country reports prepared by the European Commission, that Bulgaria is gradually emerging from the crisis, however with no prospects for a broad-based recovery. Despite reforms undertaken with respect to active labour market policies, further improvement in matching people with vacancies is hindered by poor prioritisation, targeting and sustainability of measures. The Committee also notes from the said country reports, that 2014 was Bulgaria's first year of the actual implementation of the Youth Guarantee Implementation Plan. Less than half of the young people registering for the plan received an offer within 4 months. (European Economy, Macroeconomic Imbalances Bulgaria, 2014).

Concerning Active Labour Market Policies, only 12.1% of registered unemployed took part in the relevant programmes.

According to Eurostat, public expenditure on active labour market policies in Bulgaria amounted to 0.57% of GDP in 2011 which was well below the EU 28 average (where the average public spending on active labour market measures as a percentage of GDP that year was 1.8%).

The Committee takes note of the information provided on the various labour market measures and how their effectiveness is to be evaluation. The Committee repeats its request to receive concrete results of these evaluations in the next report.

Conclusion

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

Article 1 - Right to work

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

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

1. Prohibition of discrimination in employment

In its previous conclusion, the Committee took note of the different situations where a difference in treatment on grounds of age is possible within the limits set by Section 7 of the Protection against Discrimination Act. The Committee asked how the courts interpret these limits and what exactly constitutes age discrimination.

The report indicates that according to Section 1 paragraph 1 item 1 of the Protection against Discrimination Act (PADA), setting a minimum and maximum age for access to employment does not constitute discrimination where such difference in treatment is an essential and determinant professional requirement due to the nature of the work or the conditions under which it is performed, the aim is legitimate and the requirement does not exceed what is necessary to accomplish the work. The report adds that any difference in treatment based on age does not constitute discrimination provided that the above mentioned requirements are met cumulatively. The Committee asks information on the case law of the high courts with regard to age discrimination in employment.

With regard to the amount of compensation that may be awarded in discrimination cases, the Committee previously asked clarifications on the relationship between the provisions of the Labour Code and those of the Protection against Discrimination Act (Conclusions 2008). In its previous conclusion, the Committee concluded that the situation in Bulgaria was not in conformity with Article 1§2 of the Charter on the ground that the upper limit on the amount of compensation that may be awarded in discrimination cases may preclude damages from making good the loss suffered and from being sufficiently dissuasive (Conclusions 2012).

The Committee takes note of the information provided in the report and by the representative of Bulgaria to the Governmental Committee (Report concerning Conclusions 2012).

The report indicates that the victim of discrimination can claim compensation for non-pecuniary damages which is determined "*ex aequo et bono*" by the court (Section 52 of the Obligations and Contracts Act). The representative of Bulgaria to the Governmental Committee stated that Section 225, paragraph 1 of the Labour Code provides in cases of unlawful dismissal, for compensation of maximum the equivalent of 6 months of the employee's previous gross salary. However, under Section 71 of the Protection against Discrimination Act individuals who believe they have been discriminated against, inter alia in employment, may bring their cases before the civil courts and may seek and receive a compensation for damages caused by the violation. Compensation may be awarded for both material and non-material damages – affected honor, dignity, pain and suffering. Compensation shall be determined on an equitable basis. The texts of Section 225, para 1 of the Labour Code and Section 71, para 1, items 1-3 of the Protection against Discrimination Act complement each other, claims may be brought under both pieces of legislation. Judicial practice accepts that the concept of "equity" is not abstract, and when determining fair compensation should be considered and discussed all specific circumstances that are relevant for the amount of compensatio to be fair. Therefore, it was stated by the representative of Bulgaria to the Governmental Committee that there are no limits to compensation awarded under this legislation.

The Committee requests that the next report provide updated and detailed information on the number of discrimination cases brought before the courts and the Commission for Protection against Discrimination, with specific indications regarding their nature and outcome, sanctions applied against the employers and compensation paid to the employees.

In reply to the Committee's question regarding the activities of the Agency for Persons with Disabilities (Conclusions 2012), the report provides information on the Agency's functions, the impact of its activities and its economic resources and funding. The report further presents the specific activities, the number of persons concerned and the funds allocated to the National Programme for Training and Employment of People with Permanent Disabilities for the period 2012- 2014. For example, in 2014, the Programme provided employment to 155 persons with permanent disabilities. Further data are provided in the report with regard to the results/implementation of the Interest –free Loans Programme aimed at helping people with disabilities to cultivate an entrepreneurial mind-set and develop their own business. In 2012, interest was reimbursed to 69 persons with disabilities who were borrowers under the "Micro-credit Guarantee Fund".

The Committee previously took note of the 2012-2020 National Strategy for the Integration of Roma and the Action plan for its implementation, published in November 2011. It asked for a mid-term review of this strategy to combat discrimination in the employment of Roma (Conclusions 2012). The report provides detailed information on the measures, programmes and positive actions taken during the period 2012-2014 concerning the training and employment of persons of Roma origin. In connection with the implementation of the National Action Plan for the National Roma Integration Strategy of the Republic of Bulgaria (2012-2020) and the international initiative Decade of Roma Inclusion 2005-2015, the plan for 2014 envisaged the involvement of 17,550 unemployed people of Roma origin registered in the Labour Office Directorates (LOD) in various activities to increase their competitiveness in the labour market, providing employment and promotion of their entrepreneurial culture. The plan is performed at 160%, covering 28 0594 persons. Compared to 2013, when 24 608 unemployed Roma were covered by the various activities, there is an increase of 21%.

With regard to the access of foreign nationals to public service posts, the Committee concluded previously that the situation was not in conformity with Article 1§2 of the Charter on the ground that Swiss nationals and nationals of States Parties to the European Social Charter which are not members of the European Union or of the European Economic Area may not be employed in public service posts, which constitutes discrimination on grounds of nationality.

The Committee takes note of the information provided in the report and by the representative of Bulgaria to the Governmental Committee (Report concerning Conclusions 2012) on this point. The report indicates that Article 7 (1) of the Civil Servants Act in its current version states that a civil servant may be a person who is a Bulgarian citizen, a citizen of another Member State of the European Union, of another state – party to the Agreement on the European Economic Area or the Swiss Confederation. Until 2008, only Bulgarian citizens had the possibility to be appointed as civil servants. After the accession of Bulgaria to the EU, and in order to comply with the principles of free movement of people, citizens of other Member States of the EU, of a state-party to the Agreement on the European Economic Area or the Swiss Confederation may also be appointed as civil servants.

The report further indicates that the Commission for Protection against Discrimination, has expressed an opinion (Decision № 202/2012, Third Panel) by

which it stated that the prohibition on third-country nationals from being employed under a service contract aims to preserve the national sovereignty.

According to Article 2 of the Civil Servants Act, "civil servant" means a person who, by virtue of an administrative act on appointment, occupies a salaried tenured position in the state administration and assists a body of state power in the exercise of the powers thereof. The representative of Bulgaria to the Governmental Committee stated that according to Bulgarian legislation there is a difference between those employed under employment contracts and those in a civil service relationship. In cases of persons employed under employment contracts the Labour Code applies, and for those appointed under a civil service relationship the Civil Servants Act applies (Report of the Governmental Committee concerning Conclusions 2012). The Committee asks whether the prohibition on third-country nationals from being employed in the civil service applies to both categories of employees – in particular whether the restriction applies to the persons employed under an employment contract regulated by the Labour Code – and how many persons correspond to each of the two categories mentioned above in the public service.

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

The Committee notes that there is a general ban on the access to civil service posts for nationals of States Parties to the European Social Charter which are not members of the European Union or the EEA. The Committee understands that this prohibition refers to all types of posts/jobs in the civil service and not only to those that are inherently connected with the protection of the public interest or national security and involve the exercise of public authority. It therefore notes that the situation in Bulgaria has not changed and it is still not in conformity with Article 1§2 of the Charter on this point.

2. Prohibition of forced labour

The Committee notes from the report that Article 48, paragraph 4, of the Constitution prohibits forced labour and that Bulgaria has ratified two ILO Conventions on the subject: the Forced Labour Convention (No. 29) and the Abolition of Forced Labour Convention (No. 105).

In its previous conclusion (Conclusions 2012), the Committee asked for information on the rules governing railway management staff as they contained coercive provisions which could be incompatible with the ban on forced labour. Since the Committee first noted that such provisions existed (Conclusions 2004), there has been no information on the subject in any of the subsequent reports. As the current report also fails to meet its request, it concludes that the situation is not in conformity with Article 1§2 of the Charter on the ground that it has not been established that the rules governing railway management staff do not contain coercive provisions incompatible with the prohibition of forced labour.

Work of prisoners

The Committee notes from the report that prisoners cannot be forced to work but that there are incentives to do so, for example the fact that when calculating the term of sentence served, two days of work count as three days of imprisonment (Article 41, paragraph 3, of the Criminal Code). The following types of work are available to prisoners:

- paid work – prisoners receive only a part of the pay due for the work completed, as determined by the Minister of Justice, but this may not be less than 30% of the salary ordinarily paid to a non-prisoner;
- unpaid work – voluntary work with the prisoner's written consent, performed outside working hours or on public holidays and taken into account when calculating the length of imprisonment (prison cleaning, maintenance of public spaces, repair of damage caused by fire and natural disaster, prevention of accidents and other activities) and on-call time for the maintenance of the order and hygiene of the prison, which is not counted as working hours;
- overtime with extra pay.

The Committee also notes that paid work is regulated by the Execution of Punishments and Detention in Custody Act (EPDCA), amended in 2012-2014. Under this act, absence from work caused by a work accident or an occupational disease is regarded as working hours. Women prisoners are entitled to maternity leave in the event of pregnancy or childbirth within the limits usually set for women outside prison. Such leave is regarded as working time. Prisoners do not work at weekends apart from those engaged in service or community work activities or in response to accidents or natural disasters, in which case the work is regarded as overtime. The same law covers unpaid work.

Domestic work

The Committee notes that the report does not answer the questions it put on domestic work 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 this Statement of Interpretation, in which it drew attention to the existence of forced labour in the domestic environment and in family businesses, particularly 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.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 of the Charter regarding prohibition of forced labour in respect of domestic workers and within family businesses.

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

Minimum periods of service in the Armed Forces

In its previous conclusion (Conclusions 2012), the Committee pointed out that any minimum period of service in the armed forces had to be of a reasonable duration and in cases of longer minimum periods due to any education or training that an individual had attended, the length had to be proportionate to the duration of the education and training. Likewise any fees/costs to be repaid on early termination of service had to be proportionate. Since the report does not provide any information on the situation of Bulgaria in this respect, the Committee asks for up-to-date information on the subject in the next report.

Requirement to accept the offer of a job or training

The Committee notes from the report that persons lose the right to be registered as unemployed if they reject a suitable job offer or refuse to take part in programmes or activities to promote employment, training courses or projects financed by European or other international funds (Article 20, paragraph 2(4), of the Employment Promotion Act, as amended, SG, No. 26/2008). For a period of up to 18 months from an unemployed person's registration with the Labour Office Directorate, "suitable work" is defined as any work which is compatible with the person's education, qualifications and state of health and is located nearby or no more than 30 km away provided that there is appropriate public transport. After this period, "suitable work" is any work that is compatible with the person's state of health and satisfies the above proximity requirements. Employers are required to notify the Employment Agency of all rejections of suitable job offers within 7 working days.

Referring to its Statement of Interpretation on Article 1§2 in the General Introduction to Conclusions 2012, the Committee asks for information on the remedies available for the persons concerned to dispute decisions to suspend or withdraw unemployment benefit.

Privacy at work

The Committee reiterates that the right to undertake work freely includes the right to be protected against interferences with the right to privacy. As the report does not provide any information in this respect, 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 (Statement of Interpretation on Article 1§2, Conclusions 2012).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 of the Charter regarding respect for the right to privacy at work.

Conclusion

The Committee concludes that the situation in Bulgaria is not in conformity with Article 1§2 of the Charter on the grounds that:

- the restrictions on the access of foreign nationals of States Parties to the European Social Charter, other than EEA, to civil service posts are excessive and therefore constitute a discrimination on grounds of nationality;
- it has not been established that the rules governing railway management staff do not contain coercive provisions incompatible with the prohibition of forced labour.

Article 1 - Right to work

Paragraph 3 - Free placement services

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

The report states that as a result of the overall activity of the Employment Agency (EA), 239,660 unemployed persons started work in 2014; it also indicates that as a result EA's actions as public mediator in the labour market during the same year: a) the registered unemployment rate in the country was 11.2% on average, against a target of 12.2% laid down in the Action Plan of EA; b) the monthly average number of unemployed persons registered in labour offices was 366,470 persons (4,910 less than in 2013). Concerning the period 2011-2013, from another source (*Europe 2020: National Reform Programme 2014 update* – document published by the Ministry of Finances in April 2014 in the framework of the 'European Semester' of the European Union), the Committee notes the following figures; as regards individuals who found jobs with the intermediation of the Labour Office: 165,191 in 2011; 183,339 in 2012; 204,812 in 2013; as regards individuals who found jobs without the intermediation of the Labour Office: 44,532 in 2011; 41,343 in 2012; 44,908 in 2013. The Committee notes that in 2013, the placement rate dropped to 82% (the placement rate was around 87% on average for the period 2007-2010). It asks to be informed on the reasons of this decrease. The Committee asks that specific data on the placement rate (i.e. placements made by the employment services as a share of notified vacancies) and respective market shares of public and private services for the different years of the reference period are provided in the next report.

The Committee notes that in its Recommendation on the National Reform Programme 2014 of Bulgaria, of 8 July 2014 (2014/C 247/02), the Council of the European Union considers that "There has been only very limited progress in strengthening the capacity of the Employment Agency". The Council therefore recommends that Bulgaria take action within the period 2014-2015 to "Improve the efficiency of the Employment Agency by developing a performance monitoring system ...".

In the same framework, the Committee notes that the country report on Bulgaria by the European Commission [document COM(2015) 85 final of of 26 February 2015], contains the following observations: the links between the Public Employment Service (PES) and employers are deficient; the activation of registered unemployed people was one of the lowest in the EU, at 6.5% in 2012; a large, and increasing, caseload hampers provision of high-quality support to jobseekers; the appropriate institutional coordination and integration between various employment offices is lacking; the Employment Agency has limited engagement with the primary labour market, with jobseekers being more likely to be referred to subsidised employment and only limited access being provided to information on more sustainable jobs. The Committee asks that the next report comments on these observations.

The Committee notes that in *Europe 2020: National Reform Programme – 2015 update*, the Government provides the following information: to strengthen the capacity of the Employment Agency (EA), in 2014 measures were taken to enhance the system for monitoring of activities, to improve mediation services by conducting labour exchanges, setting up information terminals for provision of e-services, conducting training events, consulting, etc. In order to facilitate the access to mediation services of unemployed individuals from remote locations, 54 remote workplaces were opened in 2014, and thus their total number reached 548. They operate under 80 labour offices on the territory of 154 municipalities. In the same document, the Govenrment states that in order to promote motivation for work by

identifying deficits of unemployed people and for acquisition of knowledge and skills for job search and presentation before employers, a total of 4,632 Job Search Ateliers were conducted during [2014] and 26,747 unemployed, most of whom from the employment policy target groups, took part in them. As a result of the measures taken, in 2014 161 thousand unemployed started work on the primary labour market (this was by 22 thousand or 15.8% more than the previous year). In 2014, 3,020 training events for EA staff were held to improve the provision of services to clients (employers and jobseekers) in the employment system. The Committee takes note of this information.

The Committee also takes note of the information contained in the abovementioned document on the measures to be implemented by the Government as from 2015 with respect to employment services. It asks that these measures and the related implementaion process are described in the next report.

Conclusion

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

Article 1 - Right to work

Paragraph 4 - Vocational guidance, training and rehabilitation

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

Article 1§4 guarantees the right to vocational guidance, continuing vocational training for employed and unemployed persons and specialised guidance and training for persons with disabilities. It is complemented by Articles 9 (right to vocational guidance), 10§3 (right of adult workers to vocational training) and 15§1 (right of persons with disabilities to vocational guidance and training), which contain more specific rights to vocational guidance and training. However, as Bulgaria has not accepted these provisions, the Committee assesses the conformity of the situation under Article 1§4.

Equal treatment

The Committee previously found (Conclusions 2008, 2012) that the situation was not in conformity with the Charter insofar as foreign nationals of other States parties to the Charter could have access to vocational guidance, training or rehabilitation only if they had a permanent residence permit, that is after being lawfully resident in Bulgaria for at least five years without interruption.

The authorities point out in the report that, pursuant to the Employment Promotion Act, as amended, access to vocational guidance and training is granted not only to job-seekers holding a permanent residence permit but also to those who have been granted the right of asylum or a refugee or humanitarian status; to third country nationals who are members of the family of Bulgarian, EU, EEA or Swiss nationals or of foreign long-term residents; to holders of a EU Blue Card who get unemployed within three months or want to change their employer and to "persons enjoying such rights as provided for in an international treaty whereto the Republic of Bulgaria is a party". The Committee takes note that foreign nationals' access to vocational guidance, training and rehabilitation is no longer subject to a length of residence requirement and considers therefore that the situation is in conformity with the Charter on this point. It asks nevertheless whether equality of treatment is also ensured in respect of such access for employed people.

Vocational guidance

The report does not provide any information on vocational guidance. The Committee refers to its previous conclusion (Conclusions 2012), where it noted that vocational guidance was provided by the Employment Agency departments and/or the information and advisory units related thereto, pursuant to the Employment Relations Act, as well as in institutions licensed pursuant to the Vocational Education and Training Act.

The Committee asks the next report to provide detailed and updated information on the vocational guidance services provided in Bulgaria, their funding, staffing and number of beneficiaries. It reserves in the meantime its position on this point.

Continuing vocational training

The Committee notes from the information provided in the report in respect of Article 1§1 of the Charter that the updated Employment Strategy of the Republic of Bulgaria 2013-2020 provides for a gross assessment at least once every three years of the impact of the programs and measures for employment and training funded by the state budget as well as net-evaluation at least once in 5 years. The report also indicates, in respect of Article 1§3 of the Charter, that 10 619 persons were included

in training programmes and training and career guidance for adults in 2014. About 53 000 persons (around 32 000 unemployed persons and over 21 000 employed persons) were included in training for professional qualification and key competencies. Specific training activities were organised in favour of Roma population.

The Committee asks the next report to provide detailed and updated information on the continuing vocational training services available to employed or unemployed adults, their funding, staffing and number of beneficiaries. It reserves in the meantime its position on this point.

Guidance and vocational training for persons with disabilities

The Committee notes from the information provided in respect of Article 1§2 of the Charter that a number of measures specifically addressed at persons with disabilities were implemented under the National Programme for Training and Employment of People with Permanent Disabilities, namely: Motivation training – for acquiring skills and for successful behaviour in the labour market; Training for acquiring and improving core competences; Training for acquiring professional qualification; Provision of employment for a period of 36 months and social security for unemployed persons with permanent disabilities. According to the report, in 2012 the above-mentioned Programme contributed to the employment of 2076 people with permanent disabilities, including 413 new entrants in the programme. 1748 persons worked on average per month. The spending amounted to BGN 6 683 026 (€ 3 416 260 at the rate of 31 December 2014). In 2013, the persons with permanent disabilities included in the Programme were 1592; 1818 persons worked on average per month and the spending amounted to BGN 7 878 881 (€ 4 027 560). In 2014, the Programme provided employment to 155 persons with permanent disabilities; 1762 persons worked on average per month and the spending amounted to BGN 7 941 527 (€ 4 059 590).

The Committee asks the next report to provide full and updated information on the vocational guidance and training services aimed specifically at persons with disabilities; how many persons with disabilities make use of these services and whether discrimination on the ground of disability in the field of guidance and training is explicitly prohibited in the legislation. It reserves in the meantime its position on this point.

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 1 - Joint consultation

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

The Committee takes note of the information submitted by Bulgaria in response to the conclusion that it had not been established that that joint consultative bodies exist in the public service (Conclusions 2014, Bulgaria).

Under Article 6§1 consultation must take place on several levels: national, regional/sectoral. It should take place in the private and public sector (including the civil service) (Conclusions III (1973), Denmark, Germany, Norway, Sweden, *Centrale générale des services publics (CGSP)* v. Belgium, Complaint No. 25/2004, decision on the merits of 9 May 2005, §41).

The Committee had previously noted that an interdepartmental working group was set up with the mission to develop amendments to the Civil Service Act and the Law on Railway Transport in order to meet the standards of the Council of Europe and International Labour Organisation (Conclusions 2014).

According to the report in September 2015, the Council of Minister adopted a Decision approving the draft Law amending and supplementing the Civil Servant Act. The proposed amendments to the Civil Servant Act regulate the right of civil servants to bargain collectively and strike. The legislation was adopted by Parliament in 2016.

The Committee asks the next report to provide further information on the above mentioned legislation, and in particular the provisions on joint consultation.

Conclusion

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

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 Bulgaria.

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

Conclusion

The Committee concludes that the situation in Bulgaria 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 Bulgaria.

Equal rights

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

The Committee recalls that it has examined the legal framework in its previous conclusions (Conclusions 2012 on Article 20 and Conclusions 2014 on Article 4.3). It noted that Article 243(1) of the Labour Code guarantees that women and men shall be entitled to equal pay for equal work or work of equal value. Moreover, Article 14 of the Protection against Discrimination Act provides that the employer shall ensure equal remuneration for equal or equivalent work. The assessment criteria determining labour remuneration and the assessment of work performance shall be equal for all employees and shall be determined by collective agreements. Article 14 applies to all types of remuneration, regardless of whether paid directly or indirectly, in cash or in kind.

The report indicates that a new draft law on gender equality was developed and discussed in 2015. The draft law has been prepared pursuant to national programming documents and Bulgaria's commitments under international treaties and is trying to respond to the need to ensure gender equality through statutory regulation of the national mechanism for implementing a unified state policy in this area. The Committee requests that the next report provide information on any developments with regard to the draft law on gender equality.

In its previous conclusion, the Committee asked how judicial bodies (and the Commission for Protection against Discrimination) interpret and apply the principle of equal pay in claims related to unequal pay. The report provides examples of case law of the Commission for Protection against Discrimination and the courts in cases related to unequal pay.

The Committee previously asked whether in all gender discrimination cases there is a shift in the burden of proof (Conclusions 2012). The report does not provide any information in this sense. The Committee notes from the European Equality Law Network that on 25 March 2015, the Parliament adopted at second hearing (final) a bill to amend Section 9 of the Protection Against Discrimination Act on the shift of the burden of proof. Section 9 as amended provides that "In proceedings for protection against discrimination, after the party claiming to have been discriminated against, *produces* (*presents*) facts from which an *inference* that discrimination is at hand can be made, the respondent party has to prove that the principle of equal treatment was not breached".

With regard to the compensation granted to victims in cases of gender discrimination, the Committee previously concluded that the situation in Bulgaria is not in conformity with Article 20 of the Charter on the ground that there is a predetermined upper limit on compensation for employees who are dismissed as a result of sex discrimination which may preclude damages from making good the loss suffered and from being sufficiently dissuasive.

The Committee refers to its Conclusion on Article 1§2 where it noted that under Section 71 paragraph 1 items 1-3 of the Protection against Discrimination Act, individuals who believe they have been discriminated against, *inter alia* in employment, may bring their cases before the civil courts and may seek and receive

a compensation for damages caused by the violation. Compensation may be awarded for both material and non-material damages – affected honor, dignity, pain and suffering. Compensation shall be determined on an equitable basis. The procedure for awarding compensation is based on tort law provisions and principles – Article 45 et seq. of the Law on Contracts and Obligations. The Committee further notes from the Country Report on Gender Equality 2015 of the European Equality Law Network, that in practice there is no case law on compensation awarded for sex discrimination. The same source indicates that in practice the amount of compensation for moral damages is very low. The Committee asks that the next report provide examples of compensation granted in cases of sex discrimination in employment. Meanwhile, it reserves its position on this point.

In its previous conclusion, the Committee asked on whether pay comparisons beyond individual firms are possible (Conclusions 2012). The report does not provide any information on this point. The Committee recalls that it examines the right to equal pay under Article 20 and Article 4§3 of the Charter, and does so therefore every two years (under thematic group 1 "Employment, training and equal opportunities", and thematic group 3 "Labour rights"). Articles 20 and 4§3 of the Charter require the possibility to make pay comparisons across companies (Conclusions 2010, France). At the very least, legislation should require pay comparisons across companies in one or more of the following situations:

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

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

In the light of the above mentioned, the Committee reiterates its question whether in equal pay litigation cases it is possible to make pay comparisons outside the company directly concerned. It reserves its position on this point.

Equal opportunities

The Committee notes that according to Eurostat, the unadjusted pay gap was 13% in 2011, 14.7% in 2012, and slightly decreased to 13.5% in 2013 and to 13.4% in 2014, which was lower than the average 16.1% for the 28 European Union countries.

The report provides statistics with regard to the levels of gender pay gap in different economic activities. According to the data provided by the National Statistical Institute, the wage gap is the widest in sectors like manufacturing, finance and insurance, health care and social work, culture, sport and entertainment. The

Committee notes that in the field of health care and social work, the wage gap was over 30% in 2012 and 2013.

The Committee asked what steps were taken to reduce the wage gap between women and men (Conclusions 2012). The report indicates that the measures in the field of equality of men and women for achieving gender equality and the process of strengthening the national gender equality infrastructure are planned annually. In 2012, within the project "*Improving the capacity of the public administration to implement gender mainstreaming approach in national policies and programmes*", MLSP developed Best Practices Manual from international experience of applying the gender mainstreaming approach in which best practices of ensuring equal pay for work of equal value have an important place.

The Committee noted that on 15 December 2011, the Council of Ministers adopted a national action plan to encourage gender equality. It asked information on the impact of this action plan in the fields of employment and training. The report provides information on the measures and programmes developed during the reference period and their impact on the employment of women.

The Committee asks the next report to provide comprehensive information on all measures taken to eliminate *de facto* inequalities between men and women, including positive actions/ measures taken. It asks in particular information on their implementation and impact on combating occupational sex segregation in employment, increase women's participation in a wider range of jobs and occupations, including decision-making positions, and to reduce the gender pay gap.

Conclusion

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

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

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

The Committee takes note of the information submitted by Bulgaria in response to the conclusion that it had not been established that the right of workers to take part in the determination and improvement of the working conditions, work organisation and working environment is ensured. (Conclusions 2014, Bulgaria).

Under Article 22 workers and/or their representatives (trade unions, worker's delegates, health and safety representatives, works councils) must be granted an effective right to participate in the decision-making process and the supervision of the observance of regulations in all matters referred to in this provision, such as:the determination and improvement of the working conditions, work organisation and working environment (Conclusions 2007, Armenia).

Information was previously submitted relating to health and safety at under this heading, but no information as regards the right of workers to participate in the determination of working conditions, work organization and work environment was provided (Conclusions 2014, Bulgaria).

The report provides no information on the issue requested. Therefore the Committee is obliged to reiterate its previous conclusion**.**

Conclusion

The Committee concludes that the situation in Bulgaria is not in conformity with Article 22 of the Charter on the ground that it has not been established that the right of workers to take part in the determination and improvement of the working conditions, work organisation and working environment is ensured.

Article 24 - Right to protection in case of dismissal

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

Scope

The report explains that contract under Article 70, Paragraph i of the Labour Code is concluded with a period of probation up to 6 months to assess the suitability of the employee to perform the work or whether it is appropriate for him/her and it is not a separate ground for the conclusion of an employment contract. Therefore the report states that this falls under the categories of employees specified in the appendix for Article 24 (Paragraph 2, b), who can be excluded from the full or partial protection under Article 24 of the Charter.

The Committee reiterates that exclusion of employees from protection against dismissal for six months or 26 weeks in view of probationary period is not reasonable if applied indiscriminately, regardless of the employee's qualification (Conclusions 2005, Cyprus), and therefore the situation is not in conformity with Article 24 of the Charter as it goes beyond what is permitted by the Charter. The Committee asks whether other categories of workers can be excluded from the protection against dismissal.

Obligation to provide valid reasons for termination of employment

The Committee notes that protection against dismissal of employees working under an employment contract is governed by Article 333 of the Labour Code, which establishes the so called "preliminary protection" in case of dismissal, a precondition that the employer is obliged to comply with when carrying out dismissal of employees. The preliminary protection precedes the commission of dismissal and aims to put the performance of the dismissal subject to obtaining prior authorisation – requested in writing by the employer from certain government body (i.e. the respective regional labour inspectorate for the cases under Paragraph 1 and Paragraph 5 of Article 333 of the Labour Code and the relevant trade union body in the ease of Paragraph 3 and Paragraph 4 of Article 333). The prior authorisation for dismissal does not in itself make the dismissal legal, as it may be illegal if other requirements of law are violated, but the dismissal is illegal if such approval has not been requested or, where requested, was never given, or not given before dismissal. The authorisation does not block the way to challenge the dismissal in court under Article 344 of the Labour Code. The protection applies to employees with employment contract (without the contract for additional work (Article 334, Paragraph 2 of Labour Code) and to employment relationship resulting from competitive examination (Article 336 of Labour Code). It does not apply to termination of an employment relationship resulting from an election (Article 339a of Labour Code). Protection under Article 333 is assessed at the time of the delivery of the order of dismissal.

Concerning the termination of the employment at the initiative of the employer on the sole ground that the employee has the pensionable age, the Committee notes that in the amended Labour Code (promulgated, SG No. 7/2012) employer's option to terminate the employment contract upon acquisition of entitlement to old-age pension is dropped. Employer's option to terminate the employment relations with professors, associate professors and doctors of science when they reach 65 years of age is not connected with acquiring entitlement to pension.

The Committee recalls that the termination of employment at the initiative of the employer for some categories of employees, on the sole ground that the they have

the pensionable age, which is permitted by law, is not justified. Therefore the Committee considers the situation not in conformity with the Charter.

Prohibited dismissals

The Committee reiterates its previous question (Conclusions 2012) whether a time limit is placed on protection against dismissal in case of illness.

According to the report, protection under Article 333, 1, Item 4 of the Labour Code applies when the employee started using authorised leave, which includes temporary sick leave. The employer can dismiss only with the prior permission of the labour inspectorate an employee who began using the permitted leave. The employee is obliged to notify the employer in due time in cases where the employee began taking leave for temporary disability based on a sick note, which leave was subsequently extended. The protection of the employee is excluded only if he/she intentionally conceals that fact and tails to fulfil his obligation under Article 9, Paragraph 2 of the Ordinance on Medical Examination (Repealed) to present the new sick note or to notify the employer the sick leave within two working days of its issuance. Decision No. 1529 2006 of 111 Civil Division of the Supreme Court of Cassation in civil case No. 261/2004, which has binding force, states that once employee was at work and the order of dismissal was served to him/her at his/her workplace, he/she does not enjoy prior protection, even if holding a sick note for that same day.

The Committee understands that there is not a full protection against dismissal in case of illness and asks the next report to confirm whether its understanding is correct.

The Committee recalls that under Article 24 termination of employment should be prohibited on the ground that the employee has filed a complaint or participated in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities (retaliatory dismissal). It asks what rules apply in this regard.

Remedies and sanctions

The Committee notes that under the provisions of Article 358, Paragraph I, Item 2 and Paragraph 2, Item l of the Labour Code, claims in labour disputes concerning termination of employment must be made within two months from the date of termination.

The Committee recalls that Article 24 of the Charter requires that courts or other competent bodies are able to order adequate compensation, reinstatement or other appropriate relief. In order to be considered appropriate, compensation should include reimbursement of financial losses incurred between the date of dismissal and the decision of the appeal body ruling on the lawfulness of the dismissal, the possibility of reinstatement and/or compensation sufficient both to deter the employer and proportionate to the damage suffered by the victim.

Article 225, para 1, of the Labour Code, provides for compensation in cases of unlawful dismissal from the employer of an amount equal to the worker's pay for the period of unemployment caused by reason of the said dismissal, but not more than six months. This provision covers not only the cases of award of compensation, in case of unlawful dismissal due to discriminatory reasons, but also applies to all grounds for termination of employment stipulated in the Labour Code, 'raking into account the conclusions of the European Committee of Social Rights, in 2009 the Ministry of Labour and Social Policy initiated legislative amendments and prepared a draft Law amending and supplementing the Labour Code to repeal this 6 months

restriction regulated by Article 225, para. 1., but due to objections by the Ministry of Finance and the Ministry of Defence the proposal was not accepted. The Committee therefore notes from the report that there has been no follow up to these developments and the compensation for unlawful dismissal is still limited to 6 months' wage.

The Committee notes that the interpretative judgement adopted by the Supreme Court of Cassation (which is binding on judicial and executive bodies, on local government bodies, as well as on all bodies issuing administrative acts) at the beginning of 2013 enacts that in cases of nonperformance of an obligation resulting from a contract, the Court may award compensation for non-material damages which are a direct and immediate consequence of the tort. That type of compensation has no upper limit (Obligations and Contracts Act, Code of Civil Procedure). On the ground that the labour relationships are also contract relationships it means that in eases of unlawful dismissal the employee disposes of another essential tool for civil protection the claim under the Obligations and Contracts Act. The Committee asks under which specific circumstances alternative legal avenue are provided.

The Committee asks whether the law provides for a possibility of reinstatement.

Conclusion

The Committee concludes that the situation in Bulgaria is not in conformity with Article 24 of the Charter on the grounds that employees undergoing a probationary period of 6 months are not protected against dismissal.

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 Bulgaria.

In its previous conclusion (Conclusions 2008 and 2012) the Committee took note of the legislation governing the protection of workers' claims in case of insolvency of their employer and deferred its conclusion and requested additional information.

In its previous conclusion the Committee asked if the right to guaranteed receivables which arises on the date of the Court decision for initiating the insolvency proceedings with the employer, is also guaranteed in "situations where there has been no formal declaration of insolvency and the enterprise has not been placed in receivership as well as in those cases where the employer's assets are insufficient to justify the opening of formal insolvency proceedings".

The Committee notes from the report that Section 4 of the Law for Guaranteed Receivables of Workers and Employees on Insolvency of the Employer provides for guarantees for the outstanding receivables due under the employment relationship. The employees have the right to receive their earned but unpaid remunerations and compensations (where this occurs after 1 January 2005) if their employment is:

- with an employer who has been actively performing his/her scope of business at least 6 months prior to the insolvency declaration.
- not terminated before the publication of the ruling for the declaration of the employer's insolvency.
- terminated in the last three months prior to the date of the declaration of the insolvency.

The Committee further notes that Section 6 of the law states that "the right to guaranteed receivables of the employees under Section 4, paragraph 1 shall occur on the date of entering into the trade register of the court decision for:

- 1. instituting bankruptcy proceedings;
  2. instituting bankruptcy proceedings with simultaneous declaring of bankruptcy;
  3. (amended – SG No. 18/2011) instituting bankruptcy proceedings, issuing a decree for termination of the activity of the undertaking, declaring of the debtor in bankruptcy and suspension of the proceedings because of insufficiency of the assets for covering the expenses for the proceedings.

The report indicates that a necessary condition, if not a *sine qua non*, for the origination and exercise of the rights under Section 4 of the *Guaranteed Employee Receivables in case* of Employers' Bankruptcy Act, is the existence of a court decision having the force of res *judicata for opening of employer bankruptcy proceedings*. In this respect the Committee asks what happens to the worker's claims, in situations where there is not a Court decision yet (recovery decision) having the force of *res judicata* for opening of employer bankruptcy proceedings.

In its previous conclusion the Committee also asked to know what is the average time that elapses between the filing of claims and the actual payment of the sums.

The report indicates that there is a legal maximum period of two months and 21 days between presentation of claims and payment of sums due to the workers. The Committee considers that this is a reasonable period. It asks for an estimate of the overall percentage of workers' claims that are satisfied through the guarantee system.

Conclusion

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