



January 2017

European Social Charter

European Committee of Social Rights

Conclusions 2016

IRELAND

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 Ireland, which ratified the Charter on 4 November 2000. The deadline for submitting the 13th report was 31 October 2015 and Ireland submitted it on 21 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.

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

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

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

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

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

- the right to a fair remuneration – increased remuneration for overtime work (Article 4§2).

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

– 11 conclusions of conformity: Articles 1§1, 1§3, 9, 10§2, 10§4, 15§2, 18§1, 18§3, 18§4, 20 and 25;

– 5 conclusions of non-conformity: Articles 1§2, 4§2, 15§3, 18§2 and 24.

In respect of the other 5 situations related to Articles 1§4, 10§1, 10§3, 10§5 and 15§1 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 Ireland 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 Ireland.

Employment situation

The Committee notes from Eurostat, that the GDP growth rate decreased from 2011 (2.6%) to 2012 (0.2%). The GDP growth rate recovered in 2013 (1.4%) before increasing sharply in 2014 (5.2%). In 2014, the GDP growth rate was well above the EU 28 average which stood at 1.4%.

The overall employment rate increased during the reference period (2011 – 58.9%; 2014 – 61.7%). The overall employment rate stood still below the EU 28 average of 64.9% in 2014.

The male employment rate remained stable (66.5% in 2009; 66.9% in 2014). This was still below the EU 28 average rate of 70.1% in 2014. The female employment rate decreased slightly (2009 – 57.4%; 2014 – 56.7%). This rate was below the EU 28 average which stood at 59.6% in 2014. The employment rate of older workers increased from 51.3% in 2009 to 53.0% in 2014 which was above the EU 28 average of 51.8% in 2014.

The unemployment rate decreased from 14.7% in 2011 to 11.3% in 2014, which was above the EU 28 average of 10.2%. The youth unemployment rate (% of active population aged 15-24) decreased considerably from 29.1% in 2011 to 23.9% in 2014. The same trend could be observed with respect to the long-term unemployment rate (% of active population aged 15-74) which decreased from 8.7% in 2011 to 6.7% in 2014.

The Committee notes that the growth rate stabilised with a sharp increase at the end of the reference period. Following that, the unemployment indicators showed a positive trend with the youth unemployment rate decreasing by more than 5%.

Employment policy

The Committee notes from the report that employment policies were delivered by the update on the *Pathways to Work Strategy* and the *Youth Guarantee Implementation Plan*. The *Pathways to Work Strategy* was first launched in 2012. Its intention was to reverse by 2015 the dramatic rise in numbers of unemployed jobseekers that took place during the economic crisis. The Committee also notes the first Action Plan for Jobs (APJ) also launched in 2012 and aimed to address the unemployment crisis and to increase the number of people at work.

According to Eurostat, the average public spending on active labour market measures as a percentage of GDP stood at 3.3% in 2011 compared to 1.8% at the EU 28 level. In 2013, the average public spending on active labour market measures decreased slightly to 3.0%, but remained well above the EU 28 level.

In reply to its question on assessment of outcomes of Irish active labour market programmes, the Committee notes from the report that the Irish Government is committed to undertake a comprehensive economic evaluation of the impacts on employment outcomes of a range of Pathways to Work reforms including Active Labour Market Programme. The Committee requests this assessment of outcomes to be included in the next report.

Conclusion

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

Article 1 - Right to work

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

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

1. Prohibition of discrimination in employment

The Committee examined the legal framework with regard to prohibition of discrimination in employment in its Conclusions 2006 and 2012. It noted that the Employment Equality Act 1998 as amended by the Equality Act 2004 prohibits discrimination in employment on grounds of race, religious beliefs, disability, sexual orientation, gender, age, marital status, family status and membership of the Traveller Community. The Unfair Dismissals Act prohibits dismissal on grounds of political opinion. The Equality Act prohibits both direct and indirect discrimination on the prohibited grounds and the prohibition applies to all areas of employment including recruitment, dismissal and training.

With regard to the ceiling of compensation that may be awarded in employment equality cases (other than on the ground of gender) the Committee considered that a maximum amount corresponding to 2 years pay or 40,000 € may preclude damages from making good the loss suffered and from being sufficiently dissuasive and it therefore considered that the situation was not in conformity with Article 1§2 on this point (Conclusions 2006 and 2012).

The report indicates that according to the amendment brought by the Civil Law (Miscellaneous Provisions) Act 2011 (No. 23 of 2011), in the case of an employed complainant, or a prospective employee, the maximum amount that can be ordered by the Workplace Relations Commission is 104 times the amount of the claimant's weekly remuneration (i.e. 2 years pay), or €40,000.

The Committee notes however that the situation has not changed and that the maximum amount of compensation to be awarded in discrimination cases may preclude damages from making good the loss suffered and from being sufficiently dissuasive. Therefore, the Committee concludes that the situation is still not in conformity with Article 1§2 on the ground that the upper limits on the amount of compensation that may be awarded in discrimination cases (with the exception of gender discrimination cases) may preclude damages from making good the loss suffered and from being sufficiently dissuasive.

As regards discrimination on grounds of nationality, the Committee has repeatedly requested information on occupations or employment categories reserved for nationals (Conclusions 2006 and 2012). The report does not provide the requested information. In the absence of any information on this point, the Committee concludes that the situation is not in conformity with Article 1§2 on the ground that it has not been established that foreign workers have access to employment in the public service with no discrimination.

With regard to supervision, the Committee previously noted that the Equality Tribunal was established as a quasi-judicial body for the purpose of investigating complaints under the Employment Equality Act 1998-2011 and the Equal Status Act 2000-2012, on all nine grounds. Its decisions are binding and may be appealed to the Labour Court (Conclusions 2012).

The report indicates that the Equality Authority has been merged with the Irish Human Rights Commission to form the Irish Human Rights and Equality Commission. The Irish Human Rights and Equality Commission (IHREC), which was established on 1 November 2014, is an independent body mandated to work towards the elimination of discrimination, promote equality of opportunity, provide information to the public on a number of matters and review various legislative enactments. IHREC will support public bodies in placing equality and human rights consideration at the heart of decision making. A significant innovation in the Irish Human Rights and Equality Commission Act 2014 is the introduction of a positive duty on public bodies to have due regard to human rights and equality in their work and

conduct their business in a manner consistent with individual human rights (Section 42). The Commission will assist public bodies to comply with the positive duty, including by producing guidelines and codes of practice. The Committee notes from the Report 2015, Ireland, of the European Equality Law Network that IHREC also has the power to instigate litigation on its own behalf or to assist a litigant. It is authorised to conduct inquiries, and carry out equality reviews.

The report further indicates that following the enactment of the Workplace Relations Act 2015, a number of formerly separate forums for seeking redress on employment-related issues, including the Equality Tribunal which dealt with discrimination issues, have been amalgamated into a single body, the Workplace Relations Commission. Thus, the activities of the Labour Relations Commission, the National Employment Rights Authority, the Equality Tribunal and the first instance functions of the Employment Appeals Tribunal and the Labour Court will be merged into a new Body of First Instance, to be known as the Workplace Relations Commission (WRC). The appellate functions of the Employment Appeals Tribunal will be incorporated into an expanded Labour Court. The WRC has statutory jurisdiction for facilitating the resolution of disputes under approximately 40 separate pieces of employment, equality and industrial relations legislation.

The Committee asks the next report to provide information on any concrete positive measures/actions taken or envisaged to promote equality in employment and to combat all forms of discrimination in employment.

2. Prohibition of forced labour

Work of prisoners

The Committee notes that the report does not answer the questions on prison work put in its previous conclusions and 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 stated that “Prisoners’ working conditions must be properly regulated, particularly if they are working, directly or indirectly, for employers other than the prison service. In accordance with the principle of non-discrimination enshrined in the Charter, this regulation, which may be carried out by means of laws, regulations or agreements (particularly where companies act as subcontractors in prison workshops), must concern pay, hours and other working conditions and social protection (in the sphere of employment injury, unemployment, health care and old age pensions)”.

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 and on the steps taken to apply such provisions and monitor their application.

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 previously found Ireland not in compliance with Article 1§2 of the Charter, on the grounds that army officers could not seek early termination of their commission unless they repaid to the state at least part of the cost of their education and training, and the decision to grant early retirement was left to the discretion of the Minister of Defence, which

could lead to a period of service which would be too long to be regarded as compatible with the freedom to choose and leave an occupation. This reason for non-conformity has remained unchanged since 1998 (Conclusions XIV-1) and the report does not refer to any change.

The Committee notes that at the meeting of the Governmental Committee in 2013, the representative of Ireland confirmed that there had been no change in respect of the requirements relating to the retirement of Commissioned Officers from the Permanent Defence Forces of Ireland since the finding of non-conformity. Ireland's arguments for not being in a position to change centre on the need to maintain a minimum level of service, in a country where the number of military personnel is small compared with other states. Nevertheless, the Department of Defence confirmed to the Committee that no officer of the Permanent Defence Force had, since 1992, had an application to retire refused by the Minister.

The Committee decides to uphold its finding of non-conformity on this point.

Requirement to accept the offer of a job or training

The Committee notes from the report that an individual working in Ireland who loses their job may be entitled to Jobseeker's Benefit provided they have sufficient social insurance (PRSI) contributions and is available for and actively seeking employment. An EEA national may combine their social insurance contributions paid in another EU country to help them qualify for Jobseeker's Benefit. If an individual is not entitled to Jobseeker's Benefit they may apply for Jobseeker's Allowance. In order to be eligible for this payment an individual must be unemployed, satisfy a means test and be available for and actively seeking employment. In both schemes there is a disqualification where a person has refused an offer of suitable employment. When arriving at a decision on whether this disqualification should apply to a recipient of Jobseeker's Benefit, a Deciding Officer will make a judgment on whether the offer was a suitable offer of full-time employment. In making a decision, a Deciding Officer will have regard to the person's skills, qualifications and experience, the length of time they have been unemployed and the availability of job opportunities in the locality. Should a person place restrictions on the distance they are willing to travel to avail of employment, the Deciding Officer will take into consideration the availability of public/private transport and whether these restrictions are reasonable. Should the Deciding Officer consider the restrictions to be unreasonable, they may decide to disqualify the individual from Jobseeker's Benefit. The report further indicates that in all cases Deciding Officers assess each case on its individual merits and that a Deciding Officer's decision can be appealed to the Social Welfare Appeals Office. While they are awaiting the outcome of their appeal, the individual concerned may be entitled to Supplementary Welfare Allowance.

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).

Conclusion

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

- the upper limits on the amount of compensation that may be awarded in discrimination cases (with the exception of gender discrimination cases) may in certain situations preclude damages from making good the loss suffered and from being sufficiently dissuasive;

- it has not been established that foreign workers have access to employment in the public service with no discrimination;
- army officers cannot seek early termination of their commission unless they repay to the state at least part of the cost of their education and training, and the decision to grant early retirement is left to the discretion of the Minister of Defence, which could lead to a period of service which would be too long to be regarded as compatible with the freedom to choose and leave an occupation.

Article 1 - Right to work

Paragraph 3 - Free placement services

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

The Committee deferred its previous conclusion, asking that the next report specify the placement rate – i.e. the number of placements made by the National Training and Employment Authority (FÁS) as a percentage of the total vacancies notified to FÁS”. It also asked again for information on the market share of placements by FÁS and private employment agencies, indicating their respective total number of placements as a proportion of the total number of persons recruited on the labour market. In this respect, the Committee notes that FÁS has been dissolved. From 1st January 2012, employment services and employment Programmes (including community employment), supported employment, job clubs, job initiative) were transferred to the Department of Social Protection (DSP). Social welfare and public employment services are being integrated in one-stop-shops (INTREO), linking benefit entitlements more closely with the activation services.

In response to the Committee’s question concerning the number of placements made by the employment services, the report indicates that according to a survey undertaken by the DSP’s National Call Centre’s (NCC) for July to December 2014, in terms of vacancy filling, 76% (32 employers) had successfully filled at least one of their vacancies by the time of the survey (within eight weeks of notification) – 7% of the employers had more than one post in the vacancy that they had advertised with the NCC – while 17% had not and 7% did not say. The report also indicates that employers who had filled their vacancies were asked whether the vacancy had been filled by an employment services-referred candidate. Of employers with filled vacancies, 29% of employers did not know if the selected candidate had come via the employment services. 45% of employers who had filled their vacancy said that they had done so with an employment services-referred candidate. The Committee asks that the next report provides data on the placement rate (i.e. placements made by the employment services as a share of notified vacancies) for the different years of the reference period. In reference to the Committee’s request to supply data on the market share of placements by public and private employment agencies, the report states that this data is not available. The Committee asks that this information is provided in the next report.

From the document *Ireland National Reform Programme 2015*, published by the Government in the framework of the EU-European Semester initiative, the Committee notes that "the roll-out of integrated public employment and benefits services through the INTREO ‘one-stop-shop’ model has been progressing throughout 2014. It is expected that all local offices will operate to the INTREO model no later than end 2015". According to the abovementioned document, in 2014, 186,900 people were referred to group engagements, up from 130,100 in 2013. 169,200 people attended initial one-to-one interviews and a further 164,000 follow-up one-to-one interviews were also completed. The same document indicates that in 2014, there were 186,900 group engagement sessions, of which approximately 56,000 were with the long-term unemployed, and 169,000 initial one-to-one guidance interviews were held, of which approximately 47,000 were with long-term unemployed.

According to the European Commission’s *Country Report Ireland 2015* [COM(2015) 85 final] of 26 February 2015, a comprehensive evaluation of INTREO activation processes will be undertaken in 2015; this will include an econometric evaluation of the effectiveness of reforms, an assessment of the implementation of reforms and a qualitative evaluation to capture customer and staff satisfaction. Specific activation programmes will also be evaluated in 2015 and 2016. The Committee asks that information on this evaluation process is contained in the next report.

The Committee notes that in its Recommendation of 14 July 2015 on the *2015 National Reform Programme of Ireland and delivering a Council opinion the 2015 Stability Programme of Ireland* (2015/C 272/12), the Council of the European Union considers that

"activation reforms have made significant progress in recent years, but some concerns remain about the effectiveness of existing activation policies and training programmes, and of the ability of employment services to deliver on the scale required". The Committee asks that the next report comments on these observations.

As regards the vacancy advertising services, the report indicates that 'JobsIreland.ie' is the DSP's National Employment portal. It is a no cost service for employers. It provides access to potential employees by offering a free recruitment service for employers to advertise their job vacancies on its website and across the DSP's national network of INTREO offices. The service is available to all employers irrespective of size or industry sector. In 2014, the Jobs Ireland service advertised a total of 111,385 job vacancy positions across all industries and sectors in Ireland. According to the report, the DSP is engaged in a programme to modernise its services. Advances in technology and availability of upgraded management information systems should further enhance the online service available to all users.

Conclusion

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

As Ireland 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 to vocational training for persons with disabilities (Article 15§1). For the same reasons, the Committee defers its conclusion on Article 1§4.

Conclusion

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

Article 4 - Right to a fair remuneration

Paragraph 2 - Increased remuneration for overtime work

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 Ireland in response to the conclusion that it had not been established that the right to an increased remuneration for overtime work was guaranteed to all workers (Conclusions 2014, Ireland).

Article 4§2 requires that work performed outside normal working hours be paid at a rate higher than the normal wage. Granting leave to compensate for overtime (instead of granting an increased remuneration) is in conformity with Article 4§2, on condition that this leave is longer than the overtime worked. The right of workers to an increased rate of remuneration for overtime work can have exceptions in certain specific cases. These "specific cases" have been defined as state employees, and management executives of the private sector (Conclusions X-2 (1990), Ireland).

The report states that a statutory Code of Practice on Overtime in areas covered by the Joint Labour Committees (JLCs) and Registered Employment Agreements (REAs) is currently in preparation which should address the range of appropriate rates for overtime and the conditions under which they should become payable, including the number of hours worked before and entitlement to overtime payments would arise. While the Code is being developed two JLCs agreed proposals on pay and other terms and conditions of employment for their sector (Contract Cleaning and Security) and these were signed into law on 1 October 2015 by means of Employment Regulation Orders. Both Orders provide for overtime rates and terms which apply to all workers in those respective sectors.

While acknowledging this information and wishing to be informed of the statutory Code of Practice as eventually adopted, the Committee notes that the report still does not contain the requested details on increased remuneration (or time off as the case may be) as agreed in collective agreements covering a significant part of the labour market. Therefore, it can only reiterate its previous conclusion.

Conclusion

The Committee concludes that the situation in Ireland is not in conformity with Article 4§2 of the Charter on the ground that it has not been established that the right to an increased remuneration for overtime work is guaranteed to all workers

Article 9 - Right to vocational guidance

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

In its previous conclusions (Conclusions 2007 and 2012), the Committee found the situation not to be in conformity with the Charter on the ground that access to vocational guidance for nationals of the other States Parties which are not members of the European Union was not guaranteed. It notes from the information submitted to the Governmental Committee (Governmental Committee report concerning Conclusions 2012) that there is no restriction due to residency on accessing vocational guidance and information services provided by the Adult Education Guidance Initiative services or the FÁS, the National Training and Employment Authority. The Committee finds that the situation is in conformity with Article 9 in this respect.

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

Vocational guidance within the education system

The Committee refers to its previous Conclusion (Conclusions 2007 and 2012), where it noted that Section 9 (c) of the Education Act 1998 requires schools to ensure that “students have access to appropriate guidance to assist them in their educational and career choices”. According to the information previously provided, guidance at school is organised mainly by the Department of Education and Skills (DES). The work of guidance counsellors in schools is supported by the National Centre for Guidance in Education. In addition, professional development is provided through the Institute of Guidance Counsellors and a professional supervision service is funded by the DES to support staff in their counselling role. Schools have also access to a National Educational Psychological Service, and to an advisory service provided by Special Educational Needs Organisers employed by the National Council for Special Education. Information on vocational guidance within the education system is available to anybody through the Qualifax database of all the available post-secondary-school guidance courses (<http://www.qualifax.ie/>); a private sector development portal providing information on occupational profiles, role models and trends in different careers (<http://www.careersportal.ie/>); and a website managed by the FÁS (<http://www.careerdirections.ie/>).

The report indicates that the Further Education and Training Act 2013 has established a new Further Education and Training Authority called SOLAS (*An tSeirbhís Oideachais Leanúnaigh agus Scileanna*), in replacement of the FÁS, under the aegis of the Department of Education and Skills. It is responsible, in conjunction with sixteen Education and Training Boards (ETBs), for funding, planning and co-ordinating training and further education programmes. In addition, guidance on education programmes for adult learners is provided through the the Adult Educational Guidance.

The report indicates that in 2015 (out of the reference period), it was estimated that €6,661,367 would be allocated to the Adult Education Guidance Initiative. It does not provide however any other information concerning the human and financial resources allocated to vocational guidance within the education system and the number of beneficiaries during the reference period.

The Committee recalls in this respect that 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.

The Committee asks for up-to-date information on these items to be systematically provided in all future reports.

Vocational guidance in the labour market

As the Committee previously noted (Conclusions 2007), vocational guidance in the labour market is delivered through the National Employment Service (NES), which consisted of two strands, the Local Employment Services (LES), operating through a network of offices and outreach centres, and the FÁS Employment Services, operating through a regional network. It notes from the report that, following the dissolution of the FÁS, its employment services function was transferred to the Department of Social Protection (DSP) on January 1st 2012.

The report refers to the setting up of Intreo, a streamlined service provided by the Department of Social Protection, which offers practical, tailored employment services and supports for jobseekers and employers alike. Supports offered to jobseekers include: expert assistance and advice on employment, training and personal development opportunities; a focus on individual needs to assist jobseekers enter the workforce; self-service facilities to provide information and guidance on employment and training opportunities; access to information on job vacancies through jobsireland.ie. The Department of Social Protection (DSP) also contracts for the provision of the Local Employment Service (LES) with 25 organisations. The LES provides a local gateway, or access point, to the full range of services and facilities that are available to help jobseekers to enter or return to employment, including through group information sessions and one to one activation interviews (see the report for details).

The Committee refers to the criteria for assessing conformity with Article 9 of the Charter already mentioned above and notes that, in the absence of information on these points, it cannot assess the effectiveness of vocational guidance services in Ireland. It accordingly asks that the next reports systematically contain figures on the expenditure, staffing and the number of beneficiaries of vocational guidance in the labour market.

Conclusion

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

Secondary and higher education

The Committee takes note of the Education and Training Board Act which was enacted in 2013. The Further Education and Training Authority (SOLAS) and 16 Educational and Training Boards (ETB) were established. SOLAS funds, coordinates and monitors publicly funded further education and training.

The Committee further notes that the new strategic framework subsequently emerged for the Further Education and Training Sector (FET) in 2014. According to this framework, the funding priorities for the SOLAS are the provision of further education and training (FET) to skill, re-skill and up-skill unemployed persons as well as a diverse range of individuals seeking personal, social and development skills to enable them to engage or re-engage in learning.

The Committee takes note of Post Leaving Certificate (PLC) programme, which is in place for learners over 16 years of age who have completed their Leaving Certificate and for adults returning to education for the purpose of identification of a career path and/or progression to higher education.

The PLC programme provides successful participants with specific vocational skills to enhance their prospects of securing lasting, full-time employment, or progression to other studies. According to the report, the latest estimates indicate that 33,350 individuals will commence PLC programmes in 2015.

Providers of PLC programmes must demonstrate a labour market justification for their programmes. Therefore programme content must be relevant to labour market needs and/or progression to further studies.

The Committee further takes note of the Back To Education Initiative (BTEI), the overall aim of which is to increase the participation of young people and adults with less than second level education in a range of part-time accredited learning opportunities leading to awards on the National Framework of Qualifications (NFQ) to facilitate their access, transfer and progression to other education or employment pathways.

The BTEI enables providers to maximise participation through providing a wide range of flexible study options enabling the learner to combine family, work or personal responsibilities with learning opportunities.

According to the report, in 2014 29,911 individuals participated on BTEI of which 39% gained certification and 20% were employed including self-employment. According to the report, providers continue to maintain a strong focus on recruitment of unemployed people: 43% of participants in 2014 were unemployed.

The Committee notes that the total expenditure on further education programmes in 2014 stood at € 416 million.

Measures to facilitate access to education and their effectiveness

In its previous conclusion (Conclusions 2012) the Committee found that the situation in Ireland was not in conformity with Article 10§1 of the Charter on the ground that the indirect discrimination of nationals of other states party due to the length of residence requirements did not guarantee equal access to higher vocational education for all.

In its Conclusions 2007 the Committee noted that a one year length of residence requirement applied to everyone for access to higher vocational education, but not for

secondary education. Nationals and non-nationals were thus treated in the same way. The Committee considered that this amounted to indirect discrimination, since nationals of other parties lawfully residing or working in Ireland were potentially more affected than Irish nationals.

The Committee notes from the report of the report of the Governmental Committee (GC (2013) 20, § 236-239) that for courses run by Vocational Educational Committees the following categories of non-Irish nationals are treated on the same basis as Irish nationals in terms of access to vocational training programmes within the Further Education Sector:

- EU nationals;
- persons who have refugee status in Ireland;
- persons in the State as the spouse of an EU national, where the EU national has moved from one country to another within the EU to work;
- persons (including their dependent spouse and children) who have been granted leave to remain in the State on humanitarian grounds;
- persons who have permission to remain in the State as the parents of a child born in Ireland;
- those asylum applicants who have a letter from the Asylum Division of the Department of Justice and Equality stating that they are eligible to seek work.

With regard to persons who do not meet the nationality requirements, vocational training is available to those who have demonstrated a degree of integration into the State by meeting a residency requirement (one year). However, a number of vocational training courses do not contain any residency requirement. For example, the Vocational Training Opportunities Scheme operated by Vocational Educational Committees provides vocational training to unemployed persons aged 21 and over. It has a requirement that the person be unemployed for 6 months or more i.e. in receipt of welfare payments. There is no requirement as to length of residency.

Accordingly, limitations on access to vocational training may apply to foreign nationals who do not meet the above nationality requirements or have not demonstrated the required degree of integration into the State by meeting a residency requirement.

The Committee further notes from the report that the residency requirement is a condition that applies equally to Irish nationals and to non-Irish Nationals. The focus for non-Irish nationals, in the first instance for the education and training system, as in the school system, is on achieving competence in the language of instruction.

The Committee understands that one year prior residence requirement is equally imposed on both non-Irish nationals, who do not meet the nationality requirements and Irish nationals (including the above listed categories of non-Irish nationals who are treated on the same basis as Irish nationals), for access to higher vocational education. The Committee asks if this understanding is correct and in the meantime reserves its position on this issue.

Conclusion

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

Article 10 - Right to vocational training

Paragraph 2 - Apprenticeship

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

The Committee notes from the report that SOLAS, Ireland's Training and Employment Authority, has statutory responsibility for the coordination and control of designated apprenticeships under the Industrial Training Act 1967 and the Labour Services Act 1987. Apprenticeship is demand driven alternance educational and training programme for employed people aimed at developing the knowledge, skills and competence of the apprentice to perform effectively as a craftsperson in industry, to respond appropriately to technical change, and to provide a basis for progression in education and training. SOLAS develops apprenticeship programmes in partnership with employers, trades unions, the Department of Education and Skills, the Education and Training Boards and the Institutes of Technology (public higher education institutions).

The Review of Apprenticeship was published in December 2013 which outlined a broad range of recommendations. One key recommendation of the Review of Apprenticeship, with the aim of underpinning a new apprenticeship system, was the establishment of the Apprenticeship Council. In November 2014 the Minister of Education and Skills formally established the Apprenticeship Council. The Apprenticeship Council received 86 separate submissions for new apprenticeships from 48 different organisations. To manage the evaluation process the Apprenticeship Council established a panel to evaluate all submitted proposals. During the evaluation process, panel members were required to act impartially and independently of any company, agency or other group involved in proposing a new apprenticeship. The evaluation panel's work was monitored by an independent process auditor.

The Committee notes from Cedefop (Apprenticeship-type schemes and structured work-based learning programmes, Ireland 2014) that apprentices are employees of companies with an apprenticeship contract. They receive a wage which varies by year of apprenticeship and is a percentage of the fully qualified craft worker wage. During the phases of on-the-job training, the employer pays apprentices' wages and bears whatever other costs are incurred. During the periods of off-the job training and education, the State, through SOLAS, pays an allowance to apprentices, equivalent to their wages. Apprenticeship training costs are funded through the National Training Fund, which in turn is funded through a payroll tax of 0.7% from the relevant industries. The Committee notes that in 2013 there were 1,929 new apprentice registrations.

Conclusion

The Committee concludes that the situation in Ireland 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 Ireland.

Employed persons

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

The Committee wishes to receive updated information regarding the existence of legislation on individual leave for training and its remuneration. It also wishes to be informed of the sharing of the burden of the cost of vocational training among public bodies, unemployment insurance systems, enterprises and households as regarding continuing training.

Unemployed persons

The Committee notes from the report that while all further education and training programmes are open to unemployed people, the main programme targeted at the unemployed is the Vocational Training Opportunities Scheme (VTOS) programme. The latest statistics for Further Education programmes in 2014 are as follows: 71% (4,062) of VTOS learners were unemployed. The majority (85%) of Youthreach learners entered the programme after leaving school early. 43% (12,862) of Back to Education Training Initiative (BTEI) learners were unemployed – 47% (20,162) of Adult Literacy learners were unemployed. 26% (12,528) of Community Education learners were unemployed.

The Committee takes note of different training opportunities, such as Bridging Foundation Training, which aims at giving clients with lower level skills the foundation necessary to allow them enter the labour market or to prepare them to progress to specific skills development. These courses can include a confidence-building or literacy component. The duration of the training is 13-18 weeks.

Specific Skills Training courses allow job seekers or job changers the opportunity to acquire specific job related skills and formal vocational qualifications to facilitate re-entry to the workforce. The duration of the training is 4-26 weeks.

Blended Learning are designed to give a flexible response to the specific skills needs of job ready individuals who require training interventions with certification to assist them to re-enter the labour market.

In its previous conclusion (Conclusions 2012) the Committee found that the situation in Ireland was not in conformity with Article 10§3 of the Charter on the ground that there was indirect discrimination of nationals of other states party residing or working lawfully in the country due to the length of residence condition for access to continuing education.

According to the report, the residency requirement is a condition that applies equally to Irish nationals and to non-Irish Nationals. The focus for non-Irish nationals, in the first instance for the education and training system, as in the school system, is on achieving competence in the language of instruction and that all non-Irish nationals are eligible to receive English as an Additional Language (EAL) training through the Education and Training Board Adult Literacy provision from the time of their arrival. The Committee refers to its conclusion on Article 10§1 and reserves its position on this issue.

The Committee wishes to be informed of the activation rate – i.e. 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 Ireland.

The Committee takes note of *Momentum*, a new contracted payment-by-results training programme, which sought to align the training needs of unemployed jobseekers with the workforce requirements of employers. It is a publically funded initiative delivered in partnership with both public and private education and training providers who have developed linkages with employers. *Momentum* supports both the Government's *Action Plan for Jobs* and *the Pathways to Work Strategy*. The report points out that *Momentum* ensures in particular that: a) young persons are given the chance to gain certification and work experience, and thus enhance their chances of benefiting from labour market opportunities; b) long term unemployed persons needed to be assisted to re-skill and prepare themselves for occupations in growing sectors of the economy.

From another source (*Ireland National Reform Programme 2015*, published by the Government in the framework of the EU-European Semester initiative), the Committee notes that *Momentum* was implemented in 2013 and repeated in 2014 and provided places to around 12,000 unemployed jobseekers. From the same source, the Committee notes that in 2014 some 57,000 places on a range of further and higher education courses were reserved for the long-term unemployed and that during the same period places on existing programmes were specifically reserved for young people who are already long-term unemployed. The Committee asks that the next report provide information on the impact of these training measures on the activation rate of long-term unemployed persons for the different years of the reference period.

Conclusion

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

Fees and financial assistance

In its previous conclusion (Conclusions 2012) the Committee concluded that the situation in Ireland was not in conformity with Article 10§5 of the Charter on the ground that nationals of other States Parties lawfully resident or working in Ireland were not treated equally with respect to fees (non-EU nationals) and financial assistance (EU and non-EU nationals). More specifically, the Committee noted that the candidate's parents or the candidate himself (where a mature student) must have been ordinarily resident in the administrative area of the Local Authority for one year in order to be eligible for maintenance grants. This rule applies to Irish nationals, EU nationals and non-EU nationals who are married to an Irish national, or a EU national, or is the child of such a person. EU nationals who do not satisfy this condition, but who have been ordinarily resident in an EU Member State for one year and for a purpose other than receiving full-time education, are eligible to apply for a means-tested grant covering fees. The Committee inferred from this that non-EU nationals do not receive any form of financial assistance with tuition fees, nor with maintenance unless they satisfy the above rule concerning marriage or birth.

The Committee notes from the report of the Governmental Committee that with regard to fees and financial assistance for vocational training, the majority of courses run by FÁS, the Training and Employment Authority (now SOLAS), and by the Vocational Educational Committees are provided free of charge. Fees apply to university courses, courses run by similar third-level institutions.

The main conditions of the free fees element of the student grants scheme are that students must be first-time undergraduates, meet the nationality clause of the scheme in their own right. In order to meet the nationality criteria of the schemes students must meet the terms of one of the following categories:

- Be a national of an EU Member State, a state which is a contracting state to the EEA Agreement, the Swiss Confederation;
- Persons who have official refugee status in this State. Time spent from date of official lodgement of application papers for refugee status will be included for the purpose of meeting the three year residency requirement;
- Family members of a refugee who are granted permission by the Minister for Justice and Law Reform to enter and reside in the State;
- Persons who have permission to remain in the State as a family member of a European Union citizen;
- Persons who have been granted Humanitarian Leave to Remain in the State (prior to the Immigration Act 1999); or
- Be a person in respect of whom the Minister for Justice and Law Reform has granted per-mission to remain following a determination not to make a deportation order.

Accordingly, fees would apply to foreign nationals who do not meet the above nationality requirements.

The Committee further notes that as regard access to maintenance grants, the requirements are in line with Emigration policy. Access to maintenance grants is available to those who meet the nationality requirement and have demonstrated the required degree of integration into the State by meeting the residency requirement.

As regards fees for education (student grants scheme), the Committee understands that all students must meet the nationality clause of the scheme to be eligible for a means-tested grant covering fees. The Committee asks whether nationals of other States Parties (in

particular non-EEA nationals), who have already been lawfully resident or regularly working in Ireland prior to commencing their studies, would be eligible for a means-tested grant covering fees without a length of residence requirement.

As regards maintenance grants, the Committee understands that to be eligible, nationals of other States Parties (in particular non-EEA nationals) must have demonstrated the required degree of integration into the State by meeting the residency requirement. The Committee asks whether there is a length of residence requirement imposed.

Training during working hours and 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 holds that if this information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter.

The Committee wishes to be received updated information concerning whether the time spent on training is included in working hours.

Conclusion

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

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 Ireland.

The Committee observes that to assess children and adults' effective equal access to education and vocational training, it should be systematically informed of the data concerning the total number of persons with disabilities, including the number of children; the number of students with disabilities following mainstream and special education and vocational training respectively; the percentage of students with disabilities entering the labour market following mainstream or special education and/or training. It asks that the next report contain such information.

According to the 2012 report by the Academic Network of European Disability Experts (ANED), the proportion of people with disabilities (aged 30-34) having completed tertiary level education was 29.8% compared to 61.7% for non-disabled people. The percentage of young people with disabilities aged 18 to 24 leaving school early was 16.5%, compared to 6.6% for non-disabled people.

Definition of disability

The report does not contain any information on the definition of disability. The Committee previously considered the situation to be in conformity with the Charter.

Anti-discrimination legislation

The report does not contain any information on this point. The Committee refers to its previous conclusion (Conclusions 2012 and 2008) for a description of the legal framework which it considered in conformity with the requirements of Article 15 §1.

Education

In its previous conclusion (Conclusions 2012), the Committee enquired about the success rate for children with disabilities as regards access to vocational training, further education and entry into the ordinary labour market. In the absence of the requested information, the Committee reiterates its question.

The Committee points out that in order to assess such statistics, the Committee needs to know the total number of students with disabilities, and the proportion of such children attending mainstream and special education, as well as the nature of their special needs. The Committee reiterates the question on these points and stresses that should this information not be provided in the next report, nothing will establish that the situation of Ireland is in conformity with Article 15§1.

Vocational training

In its previous conclusion, the Committee asked for further information on how non-discrimination was ensured in higher education, including the number of students with disabilities, reasonable accommodation measures, success rates.

The Committee notes that the percentage of people with disabilities having completed tertiary level education increased over the reference period (5.5% in 2013 compared to 4.7% in 2009). The number of people with disabilities opting for special training decreased during the period 2009-2012, although the total number of available places remained unchanged.

The report indicates that the HEA Fund for Students with Disabilities allocates funding to further and higher education colleges for the provision of services and support to full time students with disabilities.

The Committee notes that the Further Education and Training Act adopted in 2013 provided for the establishment of the new Further Education and Training Authority in Ireland (entitled "SOLAS"), in place of the National Training and Employment Authority (FAS), under the aegis of the Department of Education and Skills. This new body is responsible for funding, planning and coordinating training and further education programmes in co-operation with 16 Education and Training Boards.

According to the report, the Education and Training Boards offer a wide range of vocational training programmes, services and measures for supporting people with disabilities provided they meet the entry criteria. The report observes that the nature of the disability determines the measures offered (special assistance, extended training, adaptive equipment, enhanced programme, etc.) and that all programmes lead to nationally recognised certification. In 2013, 3 234 persons with disabilities benefited from specialised training programmes financed by the National Training and Employment Authority.

The report also presents the "Youthreach" programme for young people aged 15-20 who have left school early without qualifications or with incomplete qualifications. The programme proposes two years' integrated education, training and work experience. The Committee notes that in 2014, 2 843 people took part in the Programme after having dropped out of school; 249 were people with disabilities.

Conclusion

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

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 Ireland.

Employment of persons with disabilities

According to the 2011 Population Census, 33% of the Irish population were people of working age who had already held a job and had a disability.

According to the 2012 report by the Academic Network of European Disability Experts (ANED), the percentage of women with disabilities aged 20 to 64 in employment was 28.2% compared to 59.7% for non-disabled women and for men it was 27.7% compared to 66.6% for non-disabled men. The unemployment rate of women with disabilities was 20.8% compared to 11.9% for non-disabled women, while the unemployment rate for men with disabilities was 40.5% compared to 25.4% for non-disabled men.

Anti-discrimination legislation

The Committee refers to its previous conclusion (Conclusions 2012) for a description of the legal framework which it considered in conformity with the requirements of Article 15 §2.

Measures to encourage the employment of persons with disabilities

In its previous conclusion (Conclusions 2012), the Committee enquired about the general rate of progression of persons with disabilities from sheltered employment to the open labour market. As there is no reply in the report, the Committee reiterates its question.

It also asked whether trade unions were active in sheltered employment facilities and for information on the requirements set by legislation about the calculation of wages paid to persons working in sheltered employment where production is the main activity. In the absence of a reply, the Committee reiterates its request.

According to the report on 1st January, 2012 the operational responsibility for Employment Services and Programmes transferred from the FÁS to the Department of Social Protection (DSP), which works in close co-operation with the new further education and training authority (entitled "SOLAS") and the Education and Training Boards. The Department of Social Protection is responsible assisting people with disabilities with finding paid employment or preparing them for employment through a training or employment programme. Provided they meet the entry criteria, people with disabilities have access to a whole range of training and employment programmes and services.

The report also indicates that people with disabilities can contact a DSP Intreo Office or call into Local Employment Service Office to meet with an Employment Services Officer/Mediator who will provide them with full information, advice and guidance in relation to training and employment. A specialist EmployAbility Service is responsible for improving the employment of job seekers with a disability who are able to work a minimum of 8 hours per week and need the support of a professional adviser. The service is open to people between the ages of 18 to 65. The Committee asks how many people with disabilities have been able to take advantage of this service.

According to the report, services for people with disabilities are mainstreamed within the context of the services provided by the Department of Social Protection to help people with disabilities find work. Programmes and services include employment support measures, wage subsidy schemes and programmes aiming at providing work experience. The report mentions measures to facilitate the employment of people with disabilities, for example:

- The Reasonable Accommodation Fund assists employers to take appropriate measures to enable a person with a disability to have access to employment by

providing a range of grants (the workplace equipment/adaptation grant, the job interview interpreter grant, the employee retention grant, etc.). The report presents a grant designed to support any additional costs, related to the disability, incurred by private sector employers employing or retaining an employee with a disability (maximum € 6 350). Public sector employers must adapt workplaces at their own expense.

- The Wage Subsidy Scheme provides financial incentives to private sector employers to hire people with a disability for at least 20 hours a week. The Committee refers to its previous conclusion for a detailed description of this measure. In 2014, 1 550 persons took advantage of this programme for a total of € 12.59 million.

In its previous conclusion, the Committee asked whether the reasonable accommodation obligation had given rise to cases before the courts and whether this had prompted an increase in the employment of persons with disabilities in the open labour market. It had also stated that if the necessary information was not provided in the next report, there would be nothing to show that the situation in Ireland is in compliance with Article 15 §2. In reply the report states that there is very limited case law on reasonable accommodation and provides a number of examples. Reasonable accommodation includes the possibility of flexible or reduced working hours and other adjustments to working conditions.

The report also mentions other measures designed to encourage and facilitate integration into the labour market: the funding of awareness-raising actions in business enterprises; the Disability Activation Project, which was launched in 2012 and completed on 30 April 2015, which involved people aged 16 to 65 years receiving disability/illness welfare payments (some 2 100 recipients); Supports for Graduates with Disabilities; the Community Employment programme, designed to enhance the employability and mobility of disadvantaged and unemployed persons with work experience.

The report also states that in October 2015 (outside the reference period) the Government published a Comprehensive Employment Strategy for people with disabilities. The Committee asks that the next report contain information on the implementation of this strategy and the results obtained.

Conclusion

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

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

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

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

Anti-discrimination legislation and integrated approach

The Committee refers to its previous conclusion (Conclusions 2012) for a description of the legal framework which it considered in conformity with the Article 15 §3 of the Charter.

Consultation

In its previous conclusion, the Committee asked for more information on the outreach of the Centre of Excellence in Universal Design and whether people with disabilities were involved in its work. In reply, the report indicates that the Centre is part of the National Disability Authority, which includes people with disabilities on its board and considers disability interests in all aspects of its work. The report points out that Authority provides the secretariat to the Disability Stakeholders Group, which was established by the Government to ensure that people with disabilities were involved in the monitoring of the implementation of the National Disability Strategy.

The report also states that in 2015 (outside the reference period), the Ministry of Justice and Equality launched a consultation process aimed at developing a new National Disability Inclusion Strategy. Consequently the Committee asks that the next report provide information on the implementation of this strategy.

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

In its previous conclusions (Conclusions 2012 and 2007), the Committee asked for information on the benefits and other forms of financial assistance to which persons with disabilities may be entitled. In reply, the report describes all the allowances and other forms of financial assistance for which people with disabilities may apply, for example:

- Allowances are available under the Occupational Injuries Benefit Scheme.
- The Invalidity Pension is intended for people who cannot work because of a long-term illness (at least 12 months) or who are permanently incapable of work accompanying by a free travel pass and if living alone by the Living Alone Allowance.
- Disability Allowance: paid to people, aged between 16 and 66. A person in receipt of Disability Allowance is also entitled to a free travel pass and if living alone to a Living Alone Allowance.
- The Blind Pension: paid to Irish nationals aged between 18 and 66 accompanying by a free travel pass including a companion.
- Supplementary welfare benefits comprising: Supplementary Welfare Allowance, which comprises several elements, for example Rent, Diet and Heating Supplements, Exceptional Needs Payments, and Urgent Needs Payments. The report points out that people with disabilities who have additional dietary or heating costs consequent on their disability may be entitled to a dietary or heating supplement.

Measures to overcome obstacles

Technical aids

In its previous conclusion, the Committee asked that the next report contain information on this subject. In the absence of a reply, the Committee reiterates its request.

Communication

In its previous conclusion, the Committee asked for further information on the concrete effects of the Sectoral Plan of the Department of Communications, Energy and Natural Resources. As the report does not address this issue, the Committee reiterates its question.

The Committee also asked for information concerning information and communications technologies. In the absence of a reply, the Committee reiterates its question.

With regard to sign language, the report explains that the Programme of the current Government includes a commitment to "examine different mechanisms to promote the recognition of Irish sign language". The recommendations of the deaf community should be reflected in the new National Disability Inclusion Strategy. The Committee asks that the next report provide information on the progress made in sign language.

Mobility and transport

The report does not provide any information on this point. In its previous conclusions, the Committee noted that the Department of Transport's Sectoral Plan was developed in accordance with the provisions of the Disability Act 2005 and addresses the accessibility needs of people with mobility, sensory and cognitive impairments across all modes of transport. This Plan is expected to be completed by 2015 (outside the reference period). The Committee also notes from the database of the Academic Network of European Disability experts (ANED) that transport remains inaccessible to people with disabilities, in particular outside major metropolitan areas. The Committee invites the next report to clarify this point.

Housing

In its previous conclusion, the Committee asked to be informed of the implementation of measures under the National Housing Strategy 2011-2016 for People with a Disability. As the report does not contain any information on this point, the Committee reiterates its request.

Culture and leisure

In its previous conclusion, the Committee asked for further information concerning access to sports activities. As the report does not address this issue, the Committee reiterates its question.

Conclusion

The Committee concludes that the situation in Ireland is not in conformity with Article 15§3 of the Charter on the ground that it has not been established that persons with disabilities have effective access to technical aids, communication, transport, housing as well as to culture and leisure activities.

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 Ireland.

The report indicates that there remain no restrictions to the access of nationals from EEA countries to the Irish labour market, including Croatian nationals since Croatia's accession to the EU on 1st July 2013.

Work permits

The report indicates that a number of changes have been made to the employment permits system in Ireland. The Employment Permits Acts 2003 and 2006 have been amended by the Employment Permits (Amendment) Act 2014 to respond to current developments in the economy, shoring up protections for non-EEA nationals who choose to work in Ireland and providing, through the creation of nine new employment permit types, for a variety of employment scenarios.

The nine permit types are:

- Critical Skills Employment Permit to facilitate the access of highly skilled non-EEA professionals to opportunities in the Irish labour market – holders of Critical Skills Employment Permits may apply for immediate family unification, and their family members may avail of a specific category of employment permit, should they choose to work in Ireland. On completion of the period of the employment permit, where the holder has conformed to the terms of its issue, the foreign national may be granted an immigration status that allows him/her to work in the State without requiring an employment permit. The skills for which a Critical Skills Employment Permit may be issued are included on the Highly Skilled Occupations List and fall into a number of categories – financial, medical, engineering and ICT;
- General Employment Permit provided for skills of a more general nature where it is proven, through a Labour Market Needs Test (LMNT), that the employer was unable to fill the position from the Irish/EEA labour market, and where the occupation is not on the Ineligible Categories of Employment for Employment Permits list;
- Dependant/Partner/Spouse Employment Permit to allow the immediate families of highly skilled individuals holding Critical Skills Employment Permits to access the labour market. No LMNT is applied to this permit type, it attracts no fee, and the Ineligible Categories List is not applied. These employment permits may be issued for part-time and full-time employment;
- Intra-Company Transfer Employment Permit to enable companies to transfer staff between foreign and Irish affiliates on a temporary basis (up to five years) while maintaining the permit holder's employment contract with the foreign employer. No LMNT is applied to this permit type;
- Contract for Service Providers Employment Permit to enable the staff of a contracted foreign company to work temporarily in Ireland, to fulfil their duties under the terms of a contract held with an Irish company. An LMNT is required, where the occupation is not on the Highly Skilled Occupations List, before such a permit can be issued;
- Reactivation Employment Permit to allow foreign nationals who originally had an employment permit but who have fallen outside of the Employment Permits system through no fault of their own to apply for a new permit. No LMNT is applied, and the Ineligible Categories of Employment List is waived;
- Exchange Agreement Employment Permit to allow foreign nationals to participate in specified exchange programmes, such as the Fulbright programme, on a

reciprocal basis. No LMNT is applied. The current duration of this employment permit is twelve months;

- Sports & Cultural Employment Permit to enable sports and cultural undertakings to employ foreign nationals with specialised skills in those spheres. No LMNT is applied;
- Internship Employment Permit to allow students of foreign institutions to undertake temporary employments here, where the employment is on the Highly Skilled Occupations list and the internship is an essential part of their degree programme. No LMNT is applied; the maximum duration of this permit type is twelve months.

In addition to the clarity provided to applicants by the introduction of these clearly purposed employment permit types, the 2014 Amendment Act also provides for a number of balances to avoid disruption to the Irish labour market and to fulfil our EU obligations regarding community preference under the Treaties:

- the LMNT ensures that the employment is advertised in the first instance to EEA nationals;
- an employer who wishes to employ a non-EEA national on the basis of an employment permit is required to ensure he/she has a staff comprising at least 50% EEA nationals. The 50:50 rule operates to support integration of non-EEA nationals, and to minimise the possibility of advantage being taken of a workforce unfamiliar with Irish labour norms.

The report also indicates that the average unemployment rate is also relatively high across Eurozone countries. Therefore, it is imperative that every opportunity is afforded to Irish and other EEA nationals to fill employment vacancies, in the first instance. In accordance with EU obligations, employment permits policy is calibrated to encourage the meeting of general labour and skills needs from within the workforce of the European Union (and other EEA countries). Economic migration policy for nationals from outside the EEA is vacancy-driven rather than based on quotas or points, which means that the core of the policy is the offer of a job. Where the relevant criteria are met in relation to a specific job offer, an employment permit may be granted.

Relevant statistics

In its last conclusion (Conclusions 2012), the Committee deferred its decision and asked for information on the number of work permits granted to applicants from non-EEA States, as well as on work permit refusal rate with respect to applicants from such States, as this information is relevant in order to assess the degree of liberality in applying existing regulations governing access to national labour market. In this regard, the Committee observed that an absence or an extremely low number of work permits granted to nationals of non-EEA States Parties to the Charter, together with a very high work permit refusal rate with respect to applicants from such States, due to the application of rules like the so called “priority workers” rule (according to which a State will consider requests for admission to its territories for the purpose of employment only where vacancies cannot be filled by national and Community manpower), would not be in conformity with Article 18§1, since it would indicate an insufficient degree of liberality in applying existing regulations with respect to the access to the national labour market of nationals of non-EEA States Parties to the Charter.

The OECD report, International Migration Outlook 2015, on migration prospects, shows that following the enlargement of the EU, the number of work permits granted to non-EEA nationals has steadily decreased. In 2003 there were 48,000 work permits for non-EEA nationals and in 2014 only 5,500 permits.

The report indicates the relevant number on work permits granted as well as on work permit refusal rate with respect to applicants from non-EEA States, showing a decrease in the refusal rate during the period of reference, as follows: in 2011, 268 permits were granted, 61

were refused, with a refusal rate of 17%; in 2012, 279 permits granted, 49 refused, with a refusal rate of 15%; in 2013, 285 were granted, 39 refused, with a refusal rate of 12%; in 2014, 359 granted, 22 refused with a refusal rate of 6%. The Committee notes that the report does not make the difference between first and renewed applications and asks for the next report to submit this information. Moreover referring to the report, in 2014, 5 495 work permits were delivered in total (similar numbers for the other years of the reference period). In this respect, the Committee notes that work permit delivered to applicants from non-EEA States Parties of the Charter accounted for around 6% of all work permits delivered. The Committee asks the next report to give explanations on this point.

The report further indicates that the statutory bases for refusing an employment permit application are set out in the Employment Permits Act 2006, as amended. Applications are refused for a variety of reasons; examples of refusal reasons are: where the applicant has not got the correct immigration permission to make an employment permit application, where the minimum annual remuneration does not achieve the prescribed level, where the prospective employer is not correctly registered with Companies Registration Office, where the prospective employee is not qualified for the position applied for or not registered with the required authority where this applies, or where the wrong type of employment permit has been applied for.

Therefore, taking into account the low work permit refusal rate with respect to applicants from non-EEA States, and the reasons given for refusing applications, the Committee considers that existing regulations governing access to national labour market in Ireland are applied in a spirit of liberality.

Conclusion

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

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

In its previous conclusion (Conclusions 2012), the Committee noted that the Employment Permits Act 2006 comprehensively set out in legislation the criteria in relation to the application, grant and refusal of employment permits. Under this act either the employer or the employee can be the applicant for an employment permit. The Committee observed that these regulations represented a simplification of earlier formalities according to which a work permit could only be issued to the employer and the worker had no possibility to apply for it or its renewal.

The report indicates that the employment permit application process was further streamlined in 2013, reducing the volume of supporting documentation required, requiring, where appropriate, a Labour Market Needs Test (LMNT) of shorter duration, and removing a number of restrictions to applicants from within Ireland if they have a valid legal status and are applying for an eligible occupation. Parties to an employment permit are now required to confirm through a Declaration included on the application form that their application meets the criteria for the type of employment permit that they are seeking. This declaration acquired a statutory footing via the Employment Permits (Amendment) Act 2014.

That Act and its supporting Regulations operate to provide a degree of clarity for applicants; the combination of simplifying the application process by reducing documentation requirements and commencing a clearly structured statutory framework for applications has had a clear positive impact on the number of successful applications received in 2013 and 2014, and this trend appears to be continuing in 2015. In order to maintain standards while simplifying the application process, an increased level of monitoring and enforcement by the investigators of the National Employment Rights Authority has been put in place.

The Committee observes that these new regulations represent a simplification of earlier formalities.

As regards the time it takes for work permit documents to be delivered, the Committee noted in its previous conclusion, that, from the report, the Department's business target is to process all correctly completed applications within 15 working days. The Committee asks for this information to be reconfirmed in the next report.

Chancery dues and other charges

In its previous conclusion (2012), the Committee considered that the fees charged for permits were excessive and therefore the situation was not in conformity with the Charter. According to the previous report, these fees ranged between € 500 and € 2,250, depending on the duration of the employment permit, whether new or renewed. The Committee notes that the fees have not changed during the reference period and reiterates that these fees are excessive.

According to Article 18§2 of the Charter, with a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Party, States Parties are under an obligation to reduce or abolish chancery dues and other charges paid either by foreign workers or by their employers. The Committee observes that in order to comply with such an obligation, States must, first of all, not set an excessively high level for the dues and charges in question, that is a level likely to prevent or discourage foreign workers from seeking to engage in a gainful occupation, and employers from seeking to employ foreign workers.

Taking into account the information provided in the report, the Committee considers that, during the reference period, the fees charged for work permits have not been reduced since its last examination of the situation, found to be not in conformity with the Charter.

Conclusion

The Committee concludes that the situation in Ireland is not in conformity with Article 18§2 of the Charter on the ground that the fees to obtain work permits are excessive.

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 Ireland.

Access to the national labour market

In its previous conclusion (Conclusions 2012) the Committee had to defer its conclusion, due to the lack of information on measures to liberalise the regulations governing the employment of foreign workers.

The Committee notes that since its last conclusion, a number of changes have been made to the employment permits system in Ireland. The report indicates that the Employment Permits Acts 2003 and 2006 have been amended by the Employment Permits (Amendment) Act 2014 to respond to current developments in the economy, providing flexibility to deal with changing labour market, and economic development needs. The Act provides for an employment permits regime shoring up protections for non-EEA nationals who choose to work in Ireland and providing, through the creation of nine new employment permit types, for a variety of employment scenarios (see article 18§1). The 2014 Act also codified access to the Irish labour market for secondments between affiliate companies and for the employees of foreign companies that have won contracts for service with Irish based companies. Furthermore, the Committee notes that the Employment Permits Act has formalised the ability of workers to change their employer and move to another employment in order to take advantage of better conditions or career opportunities. Besides, under this Act, the workers are enabled to apply and reapply for their own permits.

In its last conclusion the Committee asked for information in the next report on the number of applications for work permits submitted by nationals of non-EEA States, as well as on the grounds for which work permits are refused to nationals of non-EEA States parties to the Charter. In this respect, the Committee refers to its conclusion under Article 18§1, and notes from the report that applications are refused for a variety of reasons as provided in the Employment Permits Act 2006, such as: where the applicant has not got the correct immigration permission to make an employment permit application, where the minimum annual remuneration does not achieve the prescribed level, where the prospective employer is not correctly registered with Companies Registration Office, where the prospective employee is not qualified for the position applied for or not registered with the required authority where this applies, or where the wrong type of employment permit has been applied for.

The Committee also asked for information about the measures eventually adopted (either unilaterally, or by way of reciprocity with other States Parties to the Charter) to liberalise regulations governing the recognition of foreign certificates, professional qualifications and diplomas, with a view to facilitating the access to national labour market. The report indicates that the recognition of foreign qualifications is undertaken by NARIC Ireland, a constituent of Quality and Qualifications Ireland, a state agency operating at the behest of the Minister for Education and Skills. The Committee takes note of this information, however it reiterates its request on measures taken to liberalise regulations governing the recognition of foreign certifications, professional qualifications and diplomas, necessary to engage in a gainful occupation as employees or self-employed workers. In this respect, it asks for information on the number of recognition of foreign certificates, professional qualifications and diplomas issued to non-EEA nationals during the reference period.

Moreover, the Committee notes that persons wishing to work in a self-employed capacity in Ireland must, prior to entering Ireland, submit a business plan providing evidence that they have sufficient financial means. They must also produce a statement of good character issued by the authorities of the country in which they resided for the previous ten years, and must have a capital of € 300 000 available. The Committee previously noted the restrictive

nature of these regulations. It asked whether they apply to all categories of self-employed foreign workers. The report does not provide this information and the Committee reiterates its request.

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

The Committee notes from the report that in 2009, the Department revised its policy in relation to employment permit holders who have been made redundant. The revised policy recognises the need for a humane approach where redundancies are occurring – a permit holder made redundant will continue to have up to six months from the date of redundancy to seek alternative employment. This policy has been given a statutory footing by the Employment Permits (Amendment) Act 2014.

In addition, if the Critical Skills or General Employment Permit holder made redundant finds another job, they will be exempted from certain rules that would otherwise apply, i.e. LMNT in the case of the General Employment Permit, and eligibility criteria in relation to the job ie if they have been made redundant from an occupation that is subsequently ineligible for the type of permit that they held, because it has been added to the Ineligible Categories of Employment for Employment Permits List or it has been removed from the Highly Skilled Eligible Occupations List, and they are offered the same job by a different employer, then an employment permit application will be considered for the same employment permit type.

The Committee considers that measures have been taken to liberalise existing regulations governing the employment of foreign workers.

Conclusion

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

The Committee notes that the situation it previously (Conclusions 2012) 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 Ireland 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 Ireland.

Equal rights

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

The Committee recalls that it examined the legal framework in its Conclusions 2006 and 2012, and found that the situation was in conformity with the Charter. The Committee notes that there have been no changes to the legal framework since. It asks updated information in the next report.

Equal opportunities

The report indicates that the number of women at work in Ireland increased by a half to 885,900 in the period from 1998 to 2014, with women accounting for over 45% of the total workforce. Recent figures for the second quarter of 2015 show that the (seasonally adjusted) labour market participation rate for women was 52.5% and the unemployment rate was 8.1%, in comparison with 67.7% and 10.8%, respectively, for men. The Committee notes from the report that the gender pay gap in 2012 stood at 14.4%, which was lower than the EU average figure of 16.6%.

The report indicates that within the framework of the National Women's Strategy 2007-2016, measures were introduced to ease the burden on working parents and encourage female participation in the workforce. A specific objective of the Strategy is to reduce the gender pay gap. The results of the second EU Gender Equality Index, published by the European Institute for Gender Equality (EIGE) in June 2015 show that Ireland has made a lot of progress with the most significant improvements registered in the gender balance in decision making, reflecting increased participation of women in the labour market.

The Committee takes note of the measures undertaken to promote equal opportunities for men and women during the reference period, described in the report. Such measures were aimed to advance/promote women in decision – making roles in both the public and the private sectors, to achieve a greater sharing of family responsibilities between women and men as a key support for women's labour market participation and for their advancement into decision-making roles.

The report adds that the Equality for Women Measure (EWM) provided training to over 12,145 women between 2007 and 2013. The Department of Justice and Equality has commenced a new activity, the "Women Returning to the Workforce and Women's Entrepreneurship", with co-funding from the EU as a component of the ESF-funded Programme for Employability, Education and Learning 2014-2020 (PEEL) which is designed to assist the return to the labour market of a cohort of women who are currently detached from the labour market.

The report further indicates that the Gender Equality Division of the Department of Justice and Equality and the Irish Human Rights and Equality Commission (the national equality body, formerly the Equality Authority) have worked with the social partners, civil society and others on projects to promote work-life balance and advance gender equality in employment.

The Committee asks that the next report provide updated information on the status of women in employment. It wishes to be kept informed on the implementation of all positive actions/ measures/programs taken to promote gender equality in employment and to reduce the gender pay gap.

Conclusion

The Committee concludes that the situation in Ireland 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 Ireland.

The Committee notes that, following the enhancement of the Workplace Relations Act 2015, the relevant adjudicatory bodies for new cases under the Unfair Dismissals legislation and cases under the Employment Equality legislation will be an Adjudication Officer of the new Workplace Relations Commission and, on appeal, the Labour Court.

Scope

The Committee notes from the report that the Protected Disclosure Act 2014 amended the 'definitions' section of the Unfair Dismissals Act 1977 to 2015 to provide that a reference to 'protected disclosure' in the Unfair Dismissals Act 2014, providing that dismissal for making a 'protected disclosure' is an unfair dismissal and providing enhanced protections for the employee under the Unfair Dismissal Acts which are applicable to dismissals within the meaning of the Protected Disclosure Act. These enhanced protections include:

- employee may apply for interim relief (on application to the Court Circuit);
- the limitations relating to the length of service that usually apply in the case of the Unfair Dismissals are set aside in the case of protected disclosure;
- enhanced compensation on up to five years' remuneration can be awarded – however this compensation may be up to 25% less if the investigation of the relevant wrongdoing was not the sole or main motivation for making the disclosure. The reduction applies to both awards made for a "protected disclosure" dismissal under the Unfair Dismissals Act and for penalisation (other than a dismissal).

The Committee recalls that under Article 24 of the Charter all workers who have signed an employment contract are entitled to protection in the event of termination of employment. According to the Appendix to the Charter, certain categories of workers can be excluded, among them workers undergoing a period of probation. However, exclusion of employees from protection for six months or 26 weeks is not considered reasonable if it is applied indiscriminately, regardless of the employee's qualifications.

The Committee notes from the report that some categories of employees are not covered by the Unfair Dismissals Act 1977 to 2007, such as employees with less than one year's continuous service (with some exceptions) and employees on probation or undergoing training of up to one year's duration. In the case of statutory apprentices the Unfair Dismissal Acts do not apply if the dismissal takes place within 6 months after the commencement of the apprenticeship or within 1 month after its completion. Therefore, the Committee considers that the situation is not in conformity with the Charter.

The Committee further notes that, in order to bring a claim for unfair dismissal, an employee must have at least a year continuous service. However, an employee with less than 12 months' continuous service can still bring a claim for unfair dismissal, in accordance with the relevant law, in case of:

- "protected disclosure" with the meaning of the Protected Disclosure Act 2014;
- any matters connected with pregnancy, birth, adoptive leave, parental leave or force majeure leave; carer's leave;
- employee's entitlements, future entitlements, exercise of rights under the National Minimum Wage Act 2000
- trade union membership or activities either outside working hours or during working hours when permitted by the employer.

When determining if the employee has the necessary service to qualify under the Acts, the adjudicatory bodies may consider whether the employment of a person in a series of two or more contracts of employment, between which there were no more than 26 weeks of a break, was wholly or partly for or connected with the avoidance of liability by the employer

under the Acts. Where it so found, the length of the various contracts may be added together to assess the length of service of an employee for eligibility under the Acts.

Obligation to provide valid reasons for termination of employment

The Committee recalls that according to the Appendix to the Charter, for the purposes of Article 24 the term 'termination of employment' means termination of employment at the initiative of the employer. Therefore, situations where a mandatory retirement age is set by statute, as a consequence of which the employment relationship automatically ceases by operation of law, do not fall within the scope of this provision, but under Article 24 dismissal of the employee at the initiative of the employer on the ground that the former has reached the normal pensionable age (age when an individual becomes entitled to a pension) will be contrary to the Charter, unless the termination is properly justified with reference to one of the valid grounds expressly established by this provision of the Charter.

The Committee notes from the report that, apart from certain public sector occupations, where statutory retirement ages may apply, there is no statutory retirement age for employees in Irish legislation. The upper age limit for bringing claims under the Unfair Dismissals Act 1977 to 2007 was removed by a provision in the Equality Act 2004. Therefore a person of any age, when dismissed, may take a case under the Unfair Dismissals Act, unless she or he has reached the "normal retiring age for employees of the same employer in similar employment", if one exists. This "normal retiring age" may have been included specifically in a contract or might have come about by custom and practice in the workplace. In such circumstances, the burden of proof is on the employer to prove the "normal retiring age". Furthermore, the upper age limit of 66 years for receipt of statutory redundancy payments was removed by the Protection of Employment (Exceptional Collective Redundancies and Related Matters) Acts 2007.

The Committee asks whether statutory retirement age causes an automatic termination of the contract or it is just a ground which allows termination at the initiative of the employer.

The Committee notes that the report does not provide any answer to the Committee's request for information on judgements and decisions establishing relevant case-law showing how the provisions relating to termination of contracts are interpreted by the courts and requests the next report to provide the relevant information. The Committee considers that if such information is not provided, there will be nothing to establish that the situation is in conformity with the Charter.

Prohibited dismissals

The Committee understands that there have been no changes to the situation (Conclusion 2012). It asks for the next report to provide a full and up-to-date description of the situation.

The Committee notes that no answers are provided in the current report to the Committee's questions on whether the legislation protects workers against dismissal on the ground of temporary absence from work due to illness and what is the time limit placed on protection against dismissal in such cases. The Committee requests the next report to provide the relevant information.

Remedies and sanctions

The Committee recalls that (Statement of interpretation on Article 8§2 and 27§3, Conclusions 2011) compensation for unlawful dismissal must be both proportionate to the loss suffered by the victim and sufficiently dissuasive for employers. Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive are proscribed. If there is such a ceiling on compensation for pecuniary damage, the victim must be able to seek compensation for non-pecuniary damage through other legal avenues (e.g. anti-discrimination legislation), and the courts competent

for awarding compensation for pecuniary and non-pecuniary damage must decide within a reasonable time.

The Committee notes that in the case of unfair dismissal for having made a protected disclosure, enhanced compensation up to maximum of five years remuneration (instead of maximum two years remuneration) can be awarded.

The Committee notes that no answers to its question on whether damages for non-pecuniary loss can be recovered through other legal avenues is provided in the current report. The Committee reiterates its request for information and considers that, should the next report fail to provide the information requested, there will be nothing to establish that the situation is in conformity with the Charter on these points.

Conclusion

The Committee concludes that the situation in Ireland is not in conformity with Article 24 of the Charter on the ground that employees undergoing probation or training for one year or apprentices during the first six months are excluded from protection against termination of employment, which is not reasonably justified.

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 Ireland.

The Committee previously deferred its conclusion and requested information on how this provision of the Charter was applied.

In particular in its 2012 Conclusion,s the Committee asked what is the national average weekly wage, the average duration of the period when a claim is lodged until the worker is paid and what guarantees exist for workers that their claims will be satisfied if a company is not declared legally insolvent.

The report indicates that the purpose of the Insolvency Payments Scheme, which operates under the Protection of Employees Act 1984, which in turn derives from EU Council Directive 80/987 and 2002/74/EC, is to protect certain outstanding pay-related entitlements due to employees in the event of the insolvency of their employer. Payments are made through the Government's Social Insurance Fund (SIF) which is administered by the Department of Social Protection.

According to the report, the average weekly wage gradually increased from € 621.86 euro in 2011 to € 641.35 euro in 2014.

According to the report the average duration period from the lodgement of a completed claim until payment is granted from the insolvency payments scheme (waiting time) gradually decreased from 20 weeks in 2011 and 2012 to 10 weeks.

The report indicates that under the terms of the Protection of Employees (Employers' Insolvency) Act, an employer must become legally insolvent for employees to come within the Scheme. In situations where an employer has not become formally insolvent the employer remains responsible for payment of all employee entitlements. A review is currently being undertaken by the Department of Social Protection (DSP) to establish what can be done in respect of outstanding pay related entitlements for employees in these situations.

From another source, the European Monitoring Centre of Change (EMCC) of the European Foundation in Dublin it is reconfirmed that the Act's protection for employees, and critically, access to the SIF, is only guaranteed when the insolvency is formal, i.e. the company has been formally wound up at the Courts. When an employer is informally insolvent (no court-approved wind up), affected employees cannot get access to the SIF. However, the Minister responsible for this matter, can apply for a company to be wound up to enable affected employees get access to minimum payments through the SIF (Section 205 of the 1963 Companies Act).

The Committee asks if the provision of the Section 205 of the 1963 Companies Act, which allows the Minister to apply for a company to be wound up, to enable employees affected by insolvency of the employer to get access to minimum payments through the SI, is still in force.

The Committee notes that the Companies Act 2014 was signed into law in December 2014 and was expected to commence with effect from 1 June 2015. The Act consolidates the existing Irish Companies Acts and many of the related statutory instruments into a single statute while simultaneously introducing significant reforms to Irish company law and consolidates Irish law relating to corporate insolvency.

Conclusion

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