

European Social Charter

European Committee of Social Rights

Addendum to Conclusions XVI-2
(Ireland, Luxembourg)

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General Introduction

General Introduction

This document contains the conclusions of the European Committee of Social Rights adopted during the 202nd session (24 – 28 May 2004), concerning the 21st report presented by Ireland and the 6th report presented by Luxembourg on the application of the European Social Charter for the period from 1 January 1997 to 31 December 2000. Owing to the late submission of these reports, the Committee was unable to include these conclusions in the volumes of Conclusions XVI-2, adopted in September and December 2002.

Summary of the Committee's Conclusions

Article	IR	LU
Article 1.4	-	0
Article 2.1	0	+
Article 2.2	0	+
Article 2.3	+	+
Article 2.4	-	-
Article 2.5	0	+
Article 3.1	0	-
Article 3.2	0	0
Article 3.3	+	+
Article 4.1	0	0
Article 4.2	0	-
Article 4.3	NA	+
Article 4.4	-	NA
Article 4.5	0	0
Article 9	+	+
Article 10.1	-	+
Article 10.2	0	+
Article 10.3	-	+
Article 10.4	-	-
Article 15.1	0	0
Article 15.2	+	0

+ Conformity - Non-conformity 0 Deferral NA Non-accepted provisions

**MEMBER STATES OF THE COUNCIL OF EUROPE
AND THE EUROPEAN SOCIAL CHARTER**
Situation at 11 May 2004

MEMBER STATES	SIGNATURES	RATIFICATIONS	Acceptance of the collective complaints procedure
Albania	21/09/98	14/11/02	
Andorra	04/11/00		
Armenia	18/10/01	21/01/04	
Austria	07/05/99	29/10/69	
Azerbaijan	18/10/01		
Belgium	03/05/96	02/03/04	23/06/03
Bosnia and Herzegovina	11/05/04		
Bulgaria	21/09/98	07/06/00	07/06/00
Croatia	08/03/99	26/02/03	26/02/03
Cyprus	03/05/96	27/09/00	06/08/96
Czech Republic	04/11/00	03/11/99	
Denmark	* 03/05/96	03/03/65	
Estonia	04/05/98	11/09/00	
Finland	03/05/96	21/06/02	17/07/98 X
France	03/05/96	07/05/99	07/05/99
Georgia	30/06/00		
Germany	* 18/10/61	27/01/65	
Greece	03/05/96	06/06/84	18/06/98
Hungary	* 13/12/91	08/07/99	
Iceland	04/11/98	15/01/76	
Ireland	04/11/00	04/11/00	04/11/00
Italy	03/05/96	05/07/99	03/11/97
Latvia	* 29/05/97	31/01/02	
Liechtenstein	09/10/91		
Lithuania	08/09/97	29/06/01	
Luxembourg	* 11/02/98	10/10/91	
Malta	26/05/88	04/10/88	
Moldova	03/11/98	08/11/01	
Netherlands	23/01/04	22/04/80	
Norway	07/05/01	07/05/01	20/03/97
Poland	26/11/91	25/06/97	
Portugal	03/05/96	30/05/02	20/03/98
Romania	14/05/97	07/05/99	
Russian Federation	14/09/00		
San Marino	18/10/01		
Serbia and Montenegro			
Slovak Republic	18/11/99	22/06/98	
Slovenia	11/10/97	07/05/99	07/05/99
Spain	23/10/00	06/05/80	
Sweden	03/05/96	29/05/98	29/05/98
Switzerland	06/05/76		
"the former Yugoslav Republic of Macedonia"	05/05/98		
Turkey	* 18/10/61	24/11/89	
Ukraine	07/05/99		
United Kingdom	* 07/11/97	11/07/62	
Number of states	45	10 + 34 = 44	17 + 17 = 34
			13

The **dates in bold on a grey background** correspond to the dates of signature or ratification of the 1961 Charter; the other dates correspond to the signature or ratification of the 1996 revised Charter.

* States whose ratification is necessary for the entry into force of the 1991 Amending Protocol. In practice, in accordance with a decision taken by the Committee of Ministers, this Protocol is already applied.

X State having recognised the right of national NGOs to lodge collective complaints against it.

**Chapter 1 – Conclusions concerning
Articles 1§4, 2, 3, 4, 9, 10 and 15 of the
Charter in respect of Ireland**

Introduction

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

A presentation of this treaty, as well as general comments formulated by the Committee, figure in the General Introduction to the Conclusions¹.

The European Social Charter was ratified by Ireland on 7 October 1964, and the Revised Social Charter on 4 November 2000. The time limit for submitting the 21st report on the application of this treaty to the Council of Europe was 31 March 2002 (reference period 1997-2000) and Ireland submitted it in several parts between 13 January 2003 and 19 August 2003.

This report concerned the rights forming the first part of the “non-hard core” provisions of the Charter:

- the right to just conditions of work (Article 2),
- the right to safe and healthy working conditions (Article 3),
- the right to a fair remuneration (Article 4),
- the right to vocational guidance (Article 9),
- the right to vocational training (Article 10),
- the rights of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement (Article 15).

Ireland has accepted these articles with the exception of Article 4§3.

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

The present chapter on Ireland contains 20 conclusions¹:

- 4 cases of conformity: articles 2§3, 3§3, 9, 15§2
- 6 cases of non-conformity: articles 1§4, 2§4, 4§4, 10§1, 10§3, 10§4

In respect of the other 10 cases, that is articles 2§1, 2§2, 2§5, 3§1, 3§2, 4§1, 4§2, 4§5, 10§2 and 15§1 the Committee needs further information in order to assess the situation. It asks the Irish Government to communicate the answers to these questions before the 31 March 2006.

These are the last conclusions under the 1961 Charter. Reports by Ireland are now submitted under the Revised Charter.

¹. Article 1§4 has been considered during cycle XVI-2 because the Committee's conclusion depends on the conclusions under Articles 9, 10§3 and 15§1.

Article 1 – Right to work*Paragraph 4 – Vocational guidance, training and rehabilitation*

The Committee takes note of the information contained in the Irish report and refers to its conclusions under Article 9 (right to vocational guidance), 10§3 (right to vocational training and retraining of adult workers), and 15§1 (the right of persons with disabilities to guidance, education and vocational training).

The Committee concluded that the situation was in conformity, in respect of the right to vocational guidance, and it deferred its conclusion with regards to the right of persons with disabilities to guidance, education and vocational training (lack of information on the results achieved). It also found the situation not to be in conformity as regards access to continuing vocational training because of indirect discrimination against nationals of the other Contracting Parties to the 1961 European Social Charter and nationals of the States Parties to the Revised European Social Charter, lawfully residing or regularly working in Ireland (length of residence requirement).

The Committee concludes that the situation in Ireland is not in conformity with Article 1§4 of the Charter.

Article 2 – Right to just conditions of work

Paragraph 1 – Reasonable daily and weekly working hours

The report submitted by Ireland states that the Organisation of Working Time Act was passed in 1997 to provide for the implementation of Council Directive 93/104/EC. The Act provides for a maximum average working week for employees of 48 hours averaged over 4 or 6 months (section 15), including overtime. In accordance with sections 15 and 24 of the Act, the 48-hour average week may also be averaged over a period of up to 12 months if that reference period is provided for in a collective agreement approved by the Labour Court. The Committee asks if the 12-month reference period is frequently used in collective agreements or only in exceptional cases.

According to Section 11 of the Act, the daily rest period shall be at least 11 hours. The Committee notes that Section 11 shall not apply to shift workers each time they change shift and cannot avail themselves of the rest period and to persons employed in activity consisting of work spread out over the day. Having noted that under Section 6 of the Act exemptions from the daily rest period are possible on condition that an equivalent compensatory rest period is granted, or if this is not possible for objective reasons, "to otherwise make such arrangements as respects the employee's conditions of employment", the Committee asks to receive more details on the circumstances in which exemptions are possible and on the consequences in terms of maximum daily working time for the workers concerned.

The Committee notes that the rest and working time provisions of the Act do not apply to the Defence Forces, *Garda Siochana* (Police Force), junior hospital doctors, transport employees, persons employed in the civil protection services, persons who are engaged in sea fishing or otherwise employed at sea, family employees working on a farm or in a private house and persons who control their own working hours. It asks that the next report contain information on maximum permitted daily and weekly working hours for these groups. It also wishes to receive an estimate of the number of workers concerned and their proportion of the work force.

Rights Commissioners investigate complaints relating to working time rules and issue decisions. Either party to a Rights Commissioner decision may appeal such a decision to the Labour Court. The Labour Court will then hear the appeal and issue a determination to the

parties concerned. If the employer fails to implement a determination of the Labour Court within a further period of six weeks, the employee concerned, a trade union of which the employee is a member or the Minister for Enterprise, Trade and Employment may make application to the Circuit Court for an order directing the employer to carry out the determination in accordance with its terms. The Circuit Court may, if it considers it appropriate to do so, direct the employer concerned to pay interest on the compensation awarded where the order relates to the payment of compensation.

The Labour Inspectorate carry out investigations under the Act to ensure compliance with the working hours and rest breaks and with the record keeping requirements as provided for under the Act and under the Regulations made in 2001. Investigations take place following on from a complaint by an individual employee or other concerned person or from sectoral or targeted inspections. Targeted inspections take place throughout various employment sectors, including fast food outlets, restaurants, licensed premises, hotels, agriculture/horticulture and healthcare.

The Committee notes that the number of inspections dropped by almost half from 2000 to 2001, while in the same period the number of irregularities/breaches identified increased sharply from 30 in 2000 to 247 in 2001. It asks that the next report explain the reasons for these developments.

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

Paragraph 2 – Public holidays with pay

The Irish report recalls that there are nine statutory public holidays and states that following enactment of the Organisation of Working Time Act, 1997, there are now enhanced minimum legally enforceable entitlements for all employees to holidays and public holidays.

In respect of each public holiday, an employee is entitled to either:

- (a) a paid day off on the holiday or
- (b) a paid day off within a month or
- (c) an extra day's annual leave or
- (d) an extra day's pay

as the employer may decide.

If the public holiday falls on a day on which the employee normally works, the employee is entitled to a paid day off for the day. If the public holiday falls on a day on which the employee does not normally work, the employee is entitled to one fifth of his/her normal weekly wage for the day or to either (b) or (c) above as the employer may decide. If the employee is asked to work on the public holiday, the employee is entitled to (b) (c) or (d) above as the employer may decide.

The Committee holds that workers required to work on a public holiday must be given compensatory leave at least equivalent to the number of hours worked (see Conclusions XIV-2, p. 631) and the granting of an extra day's pay as in option (d) without compensatory leave would therefore not be in conformity with Article 2§2 of the Charter. The Committee wishes to know whether there is a service requirement on a public holiday, and if so, whether the worker required to work has the possibility, irrespective of what the employer may decide, of choosing between extra pay and a compensatory day off.

In reply to the Committee's question in the previous conclusion, the report states that part-time employees qualify for public holidays entitlement provided they have worked at least 40 hours during the five weeks ending on the day before a public holiday. Further to the question above, the Committee wishes to know whether part-time employees who qualify for public holiday's entitlement have a right to compensatory time off if they work on a public holiday.

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

Paragraph 3 – Annual holiday with pay

The Committee notes from the Irish report that the legal framework relating to paid annual holidays has changed following the entry into force of the Working Time Organisation Act, 1997. Henceforth all time worked qualifies for paid holiday time (with no qualifying period). As from the leave year 1999/2000, depending on time worked, the minimum holiday entitlement is calculated by one of the following methods:

- a) four working weeks in a leave year in which the employee works at least 1 365 hours (unless it is a leave year in which he or she changes employment);
- b) 1/3 of a working week per calendar month that the employee works at least 117 hours;
- c) 8 % of the hours an employee works in a leave year (but subject to a maximum of four working weeks).

The holidays must be given to the employee within the leave year or, with the employee's consent, within six months of the following leave year. It is the responsibility of the employer to ensure that the employee takes his/her full statutory leave allocation within the appropriate period. Employees may, with the consent of the employer, carry over holidays in excess of statutory minimum leave to a following leave year.

In reply to the Committee's question in the previous conclusion, the report states that the only situation, in which pay in lieu of holidays can be given, is where the employment ceases and some of the employee's holidays have not yet been taken. Accordingly, employees may not trade their annual leave for a pay increase.

The Committee notes that a day of sickness during holidays which is covered by a medical certificate is not counted as annual leave.

While noting that part-time workers – as other workers – earn holiday entitlements from the time work is commenced (see above), the Committee again requests a clear and full description of the position of part-time workers under the new legislation.

Finally, the Committee notes that, in general, the Act applies to any person working under a contract of employment or apprenticeship, employed through an employment agency or in the service of the State (excluding members of the *Garda Síochána* and the Defence Forces but including civil servants and employees of any local authority, health board, harbour authority or vocational education committee).

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

Paragraph 4 – Reduced working hours or additional holidays for workers in dangerous or unhealthy occupations

The Irish report recalls that there are no measures of the nature provided by Article 2§4 of the Charter and the Government is of the view that this provision is “seriously and dangerously out of date.”

The Committee is aware that Ireland ratified the Revised European Social Charter on 4 November 2000, including Article 2§4 in its new wording. However, it reiterates that according to Article 2§4, as long as the objective of eliminating all risks in the workplace has not been achieved the granting of reduced working hours or additional holidays remains an essential factor in reducing work-related accidents and diseases.

The Committee concludes that the situation in Ireland is not in conformity with Article 2§4 of the Charter as no provision is made for additional paid holidays or reduced working hours for workers engaged in dangerous or unhealthy occupations.

Paragraph 5 – Weekly rest period

The Committee notes from the Irish report that the Working Time Organisation Act, 1997 provides for a weekly rest period of 24 hours preceded by a daily rest period of 11 hours, i.e. 35 hours of continuous rest (Section 13). In lieu of granting this rest period in any period of 7 days, the employer may grant two rest periods of 24 hours each in the next following period of 7 days. If these two periods are granted consecutively they shall be preceded by the daily rest period of 11 hours. If they are not consecutive they shall each be preceded by an 11 hours rest period. The weekly rest period shall be a Sunday (if the rest period is postponed as above, at least one of the two periods shall fall on a Sunday).

From the Code of Practice on Compensatory Rest Periods and Related Matters, the Committee notes that under an exemption provided for in a collective agreement approved of by the Labour Court an employee may be permitted to work 14 consecutive 8 hour days. In those circumstances the employee, in respect of that period, has a minimum entitlement of 2 periods of 24 hours compensatory rest plus 2 periods of 11 consecutive hours daily rest. According to the Code of Practice a situation where the employee is given

3 consecutive periods of 24 hours off immediately after the 14 consecutive working days would therefore be acceptable, even exceeding the minimum requirement. The Committee considers that 12 consecutive days of work is a maximum before being granted at least two full rest days, and an arrangement as described above could only be acceptable in exceptional cases and subject to strict safeguards. It asks, what are the exact circumstances under which the weekly rest period may be postponed beyond 12 consecutive days and are there any specific safeguards in addition to approval of the collective agreement by the Labour Court (e.g. prior authorisation from the Labour Inspection).

Section 14 of the Working Time Organisation Act provides that any employee who is required to work on a Sunday and, his or her having to work on that day has not been taken account of in the determination of pay, shall be compensated as follows:

- by the payment to the employee of a reasonable allowance having regard to all the circumstances

or

- by increasing the employee's rate of pay by a reasonable amount having regard to all the circumstances

or

- by granting the employee reasonable paid time off from work having regard to all the circumstances

or

- by a combination of two or more of the above means.

The Committee takes note of the information on the Code of Practice On Sunday Working in the Retail Trade. It asks that the next report contain up-dated information on the extent of Sunday working in practice.

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

Article 3 – Right to safe and healthy working conditions*Paragraph 1 – Issue of safety and health regulations*

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

Regulations on health and safety at work

The Committee examined the general scope of the regulations in Conclusions XIV-2 (pp. 388-390).

The report supplies the information requested on preventive and protective measures in Irish regulations:

Protection against dangerous agents and substances

– Protection of workers against asbestos. The report states that, in compliance with Commission Directive 1999/77/EC of 26 July 1999, the distribution of materials containing asbestos will be prohibited. The Committee had also noted that the upper exposure limits for exposure to asbestos fibres in the air were the same as those laid down in Council Directive 83/477/EEC on the protection of workers against risks connected with exposure to asbestos during work¹, as amended by Council Directive 91/382/EEC of 25 June 1991². Despite the Committee's request, the report does not state clearly whether Ireland prohibits the use of asbestos in its most dangerous forms, namely crocidolite amphibole fibres in the workplace. It therefore repeats its question.

– Protection against ionising radiation. According to the report, Irish legislation is in line with Council Directive 96/29/Euratom of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation³, and in particular with the most recent recommendations of the International Commission on Radiological Protection (ICRP-60 published in 1990). The Committee considers that in this respect the situation in Ireland is in conformity with Article 3§1 of the Charter.

¹ Official Journal no. L 263 of 24/09/1983 p. 0025 – 0032.

² Official Journal no. L 206 of 29/07/1991 p. 0016 – 0018.

³ Official Journal no. L 159 of 29/06/1996 p. 0001 – 0114.

Protection of certain vulnerable categories of workers

In reply to the general question on measures to take account of the occupational health and safety needs of persons on fixed term and temporary contracts, the report provides information on employers' obligation to assess risks. However, there is insufficient information to assess the conformity of the situation.

The Committee notes that to be in compliance with Article 3.1 of the Charter states must introduce measures to ensure that workers on temporary and fixed term contracts receive appropriate information, training and medical surveillance, so that they are not discriminated against in terms of occupational health and safety on account of their employment status. These measures should offer those concerned effective protection from disease-causing agents, including circumstances where the risk results from several successive periods of exposure with different employers, and where necessary should include a ban on the employment of temporary employees for certain particularly dangerous activities. The Committee therefore asks the Irish authorities to indicate how the regulations apply the Charter in this regard.

Personal scope of the regulations

The report does not refer to any changes to the situation that the Committee has previously found to comply with the Charter.

Conclusion

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

Paragraph 2 – Provision for the enforcement of safety and health regulations by measures of supervision

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

Employment injuries and occupational diseases

The Committee notes from the report that the number of accidents reported to the Health and Safety Authority (HAS) rose steadily over the

reference period to 8 747 in 1999 compared with 5 260 in 1995. Compared with the trend in total employment over the period¹ these figures also show a significant increase in the frequency of accidents, from 0,4 % accidents per 100 workers in 1995 to 0,54 % in 1999. The report ascribes this increase to a lessening of the problem of under-reporting of occupational accidents.

The report confirms that the number of accidents reported to the HAS is much lower than the figure obtained from other statistical sources, in particular the Quarterly National Household Survey (QNHS), which also covers employers, the self-employed and family members. This shows 15 300 accidents in 1999; a frequency of 0,96 %, which is lower than the rate recorded by its predecessor, the Labour Force Survey (LFS), in the previous reference period. The Committee notes that this frequency resembles that in other Charter contracting parties.

According to the report, the statistical material should now be more reliable as QNHS data have been passed on to the HAS since 2002.

In order to be able to reach a conclusion, the Committee needs to know the development in the number and the frequency of fatal accidents. It requests that this information be included in the next report.

Activities of the labour inspectorate

The Committee examined the general organisation of inspection services and the system of penalties in Conclusions XIV-2 (pp. 392 and 393).

In order to reach a conclusion, the Committee requests information on the number of visits carried out by the inspection services, the companies concerned, as well as, the numbers of workers covered. It requests that this information be included in the next report.

The Committee notes that the conviction rate for prosecutions in the district courts for breaches of the occupational health and safety regulations remained high (86 % in 2001). The average fine imposed by these courts in 2001 was EUR 1 882 per case, the maximum fine for each offence being EUR 1 900. In answer to the Committee, the

¹ 1 591 100 in 1999 (1 281 100 in 1995), according to the ILO Yearbook of Labour Statistics (2001).

report state that the fine imposed is not proportional to the number of workers concerned.

Conclusion

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

Paragraph 3 – Consultation with employers' and workers' organisations on questions of safety and health

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

The Committee examined the procedures for consulting employers' and workers' organisations at national level in Conclusions XIV-2 (p. 393).

It asked for further information on consultation at company level. The report states that Section 13 of the Safety, Health and Welfare at Work Act 1989 requires employers to consult employees to enable them to co-operate effectively in promoting and developing measures to ensure their safety, health and welfare at work. Section 13 also provides for employees to select, if they so wish, a safety representative, who is entitled to any information necessary to ensure the safety and health of employees at the work place.

The Committee recalls that it has considered that "in setting up a specialist body representing workers' interests, which employers could consult in respect of health and safety measures, the right provided under Article 3§3 of the Charter is more effectively guaranteed"¹. It therefore considers that the situation is in conformity with Article 3§3 of the Charter.

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

¹ General introduction to Conclusions XIV-2, p. 48.

Article 4 – Right to a fair remuneration*Paragraph 1 – Adequate remuneration*

The Committee notes the information in Ireland's report.

The previous conclusion found that the situation was not in conformity with the Charter as the examples provided in the previous report demonstrated that a significant number of workers earned substantially less than 60 % of the estimated net national average wage. The Committee further insisted that the next report provide information on the net national average wage and net minimum wages.

The current report provides little information on net minimum wages and the net national average wage for the reference period concerned (1997–2000). Therefore the Committee has relied largely on information obtained from Eurostat.

The National Minimum Wage Act 2000 entered into force on 1 April 2000. Under the Act an experienced adult worker is entitled to a minimum hourly rate of pay, which on 1 April 2000 was 4,40 Irish punts (IEP; 5,58 €). The Committee assumes that the rates given are gross values, and asks what the net rate is. Employees under the age of 18 years were entitled to 70 % of this minimum hourly rate of pay.

Lower rates are set for those over 18 years of age but who have less than two years work experience (only employment experience acquired after the age of 18 is taken into account); 80 % of the minimum hourly rate in the first year of employment and 90 % in the second year of employment.

According to Eurostat the monthly minimum wage in Ireland in 2000 amounted to 945 € and the net average monthly earnings for a single person working in the manufacturing industry to about 1,753 €. This means that in 2000 the minimum wage amounted to 64,7 % of the net average wage. This is in principle in conformity with the Charter. The Committee refers to its question above on the net rates of the minimum wage. However those with less than two years work experience (acquired after the age of 18 years) who earn either 80 or 90 % of the minimum wage earn either 58,2 % or 51,7 % of net average earnings. The Committee wishes to know how such a wage can be considered as sufficient to guarantee a person a descent

standard of living and it asks whether in these cases the persons concerned would be entitled to any supplementary benefits.

According to the report nearly all of the 1,7 million labour force are covered by the National Minimum Wage Act. Excluded from the scope of the Act are close relatives of the employer such as a spouse, father, mother, son, daughter, brother and sister and apprentices within the meaning of the Industrial Training Act 1967 and Labour Services Act 1987. Also excluded are certain experienced adult workers named by the Labour Court in granting a temporary exemption to an employer from paying the minimum wage (minimum period of temporary exemption is three months and maximum period is twelve months). The Committee asks to be informed of the reasons for these exemptions and of the estimated number of persons excluded from or exempt temporarily from the Minimum Wage Act.

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

Paragraph 2 – Increased rate of remuneration for overtime work

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

The Organisation of Working Time Act of 1997 does not cover overtime remuneration. Hence, Irish workers do not have a statutory right to an increased rate of remuneration for overtime work. The determination of rates of payment for overtime work is generally left to the negotiation between employers and workers at the level at which basic pay and conditions of employment are normally settled (collective and individual agreements). This system has been previously found to be in conformity with the Charter on the basis of surveys showing that collective agreements effectively provided for an increased rate of remuneration or compensation through extra time off.

The present report does not provide any information on the situation in practice. The Committee is therefore not in a position to assess whether collective or individual agreements guarantee an effective implementation of Article 4§2 for all workers. Accordingly, it requests that the relevant information be provided in the next report.

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

Paragraph 4 – Reasonable notice of termination of employment

The Committee notes from the information provided in the Irish report that the situation it had previously found not to be in conformity, because the periods of notice laid down in the 1973 Act and in the regulations applying to civil servants were inadequate (Conclusions XIV-2, p 397, 398), has not changed. It therefore concludes that the situation in Ireland is not in conformity with Article 4§4 of the Charter.

Paragraph 5 – Limitation of deduction from wages

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

The Payment and Wages Act of 1991 authorizes non-statutory deductions from wages, which are permitted under the terms of the employment contract or are agreed in writing by the employee.

The Committee recalls that Article 4§5 requires that determination of deductions from wages shall not be left solely to the mere negotiation between the parties to an employment contract and that, if such negotiation is not prohibited per se, it shall be subject to precise statutory provisions, case law, government regulations or collective agreements.

It understands from the report that the only restrictions with regard to deductions from wages, other than those permitted under the terms of the employment contract or are agreed in writing by the employee, may be set in relevant collective agreements.

Accordingly, it requests information showing that collective agreements provide for an effective protection of all workers against unreasonable deductions from wages. In particular, it wishes to know whether there is any general rule, pursuant to which, after deductions from wages, workers shall not be left with less than the minimum subsistence amount.

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

Article 9 – Right to vocational guidance

The Committee takes note of the Irish report.

As Ireland has accepted Article 15 of the Charter, the measures concerning the provision of vocational guidance for people with disabilities are dealt with under that provision.

Vocational guidance within the education system (organisation, expenditure, number of staff and persons assisted)

The report does not indicate any relevant changes to the situation, which was previously held by the Committee to be in conformity with the Charter.

The Committee asks if students can choose whether or not to follow the advice received through guidance. If the advice is compulsory, the Committee asks what the consequences are in case of non-compliance by the student.

The report indicates that there is no change in the number of staff, nor in the number of beneficiaries, who are all pupils enrolled in school. Expenses for vocational guidance counsellors amounted to 25,4 million € per year.

Vocational guidance in the labour market (organisation, expenditure, number of staff and persons assisted)

According to the report, vocational guidance in the labour market is delivered through the national Employment Service (NES). This consists of two strands: the Employment Service (ES) operated by the FAS (*An Foras Aiseanna Soathar* – Training and Employment Service) and the Local Employment Service (LES). Both employment services are meant to provide a range of services to job seekers, unemployed, employers, with the LES focusing especially with the most disadvantaged on the labour market (long-term unemployed). Services consist of information, assessment, guidance and counselling. LES provide in addition to mediation services (individual in-depth counselling activity), support for training, education and employment, aftercare services and employer liaison. Unemployed people are referred to ES offices after nine months of unemployment.

The Committee asks to be systematically provided with figures on expenditure, number of staff and of persons assisted in the labour market.

Dissemination of information

The report indicates that information is diffused by the countrywide web of ES offices (FAS and LES). It concerns employment, education or training opportunities, employment legislation, etc. The NES co-ordinates participation in national fairs and has set up a phone-based vocational information service and a website.

Nationals of the other Parties

The report indicates that legally resident foreigners have the same rights of access to free primary and secondary education up to and including Leaving Certificate. Since vocational guidance is part of the teaching courses from primary to secondary-level school (12 years old and over), nationals of the other Contracting Parties to the 1961 Charter and of parties to the Revised European Social Charter are treated equally. The Committee asks whether equality of treatment is also guaranteed as regards vocational guidance on the labour market.

Conclusion

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 – Promotion of technical and vocational training and the granting of facilities for access to higher technical and university education*

The Committee takes note of the information provided by the Irish report, which indicates the main changes which occurred in the organisation and delivery of vocational education and training during the period of reference.

The Irish education and training system consists of compulsory education, second-level schools, post-second level vocational education, higher education, further and adult education.

The Committee recalls that Article 10§1 covers all kind of higher education. In view of the current evolution of national systems, which consists in the blurring of the boundaries between education and training at all levels within the dimension of lifelong learning, the Committee considers that, today, the notion of vocational training of Article 10§1 covers initial training, i.e. general and vocational secondary education, university and non-university higher education, and continuing training. University and non-university higher education are considered to be vocational training as far as they provide students with the knowledge and skills necessary to exercise a profession.

Under Article 10§1 national reports should, accordingly:

- describe the most recent measures adopted to promote vocational training, including general and vocational secondary education, university and non-university higher education, apprenticeship, and continuing training (the description of the whole system may be recovered from existing database on the topic: Eurydice, Cedefop);
- highlight the bridges between secondary vocational education and university and non-university higher education;
- outline the mechanisms for the recognition/validation of knowledge and experience acquired in the context of training/working activity in order to achieve a qualification or to gain access to general or technical education;

- underline the measures to make general secondary education and general higher education qualifications relevant from the perspective of professional integration in the job market;
- outline the mechanisms for the recognition of qualifications awarded by continuing vocational education and training;
- provide figures about the completion rate of students enrolled in higher education;
- provide figures on the employment rate of people who hold a higher-education qualification and the waiting-time for these people to get a first qualified job.

It is clear that access to higher technical or university education based solely on individual aptitude cannot be achieved only by setting up educational structures which facilitate the recognition of knowledge and experience as well as the transfer from one type or level of education to another; it also implies that registration fees or other educational costs do not create financial obstacles for some candidates.

The Committee requires that the next report provide detailed information on the entire education and training system on the basis of the above guidelines and the Form for Reports.

As Ireland has accepted Article 15, the measures concerning the training of people with disabilities are dealt with under that provision.

Secondary and further education

The Committee notes from the report that second-level schools (secondary, community/comprehensive and vocational establishments) still provide a range of courses blending general and vocational education. It therefore refers to the description it provided in its previous conclusion (Conclusions XIV-2, p.402). The Department for Education and Science is responsible for vocational education and training in second-level schools, while the Vocational Education Committees (VECs) administer vocational education and training in vocational schools and community colleges.

The Committee notes from official figures¹ that, in 2000/01, the number of students attending second level education was about

¹ Department of Education and Science, Statistics, www.education.ie .

340 000; the number of schools amounted to 750 and the number of teachers about 25 000. The great majority of pupils enrol in second-level schools and the completion rate of Senior Cycle (post-compulsory) is 81-82 %.

Further education encompasses a range of post-compulsory education and training options provided in the education sector, largely by VECs, in both schools and out-of-school settings. The main elements of further education are Vocational Preparation and Training (VPT) courses, Post-Leaving Certificate (PLC) courses, courses for early drop-out students (which will be examined under paragraph 2 of Article 10), and adult education. PLC courses (see previous conclusion for their description) regarded as a bridge into higher education, and are chosen by 20 % of an age cohort (26 658 enrolments in 2001/2002), and show 89 % progression rate either to employment or further education/training. Adult education (guidance, literacy and numeracy courses, Back to Education initiative) has been growing following the publication of the White paper on Adult education. Many different tools, such as distance learning and TV transmission, are used to reach a larger public.

Higher education

Higher education is provided by universities, technical colleges – institutes of technology, and other community or private colleges. Seven universities provide courses across a very wide spectrum of subjects, while the technical colleges and various institutions specialising in business and management are largely involved in occupationally-oriented education and training. Tuition is free at undergraduate level.

Students enrolled in third level education were about 124 000 in 2001/2002. The Committee asks the next report to provide the required figures for the last two indents of the guidelines on Article 10§1 mentioned above.

The report indicates that measures have been taken to facilitate access to higher technical and university education on the sole basis of individual aptitude as featured in the Access-related targeted initiatives. Financial support has been given to higher education institutions to carry out activities designed to enhance equal opportunities, especially focusing on access for disadvantaged,

mature and students with disabilities. The initiatives have proved to be successful.

The Committee notes that, following the 1999 Qualifications (Education and Training) Act, new qualifications bodies have been set up. Their task is to establish and maintain a framework for qualifications, as well as to develop mechanisms to facilitate the recognition of knowledge acquired through untraditional paths and transfers between different education and training sectors.

The Committee observes from Eurostat that the total public expenditure for education represented, on a yearly average, about 4,7 % of the GDP during the period of reference.

As far as equality of treatment is concerned, the report indicates in reply to the Committee that a one year length of residence requirement applies to everyone for access to third-level education, but not for second-level education. This means Irish and non-nationals alike. The Committee considers this amounts to indirect discrimination since nationals of the other Contracting Parties to the 1961 European Social Charter and nationals of the States Parties to the Revised European Social Charter, lawfully residing or regularly working in Ireland, are potentially more affected than Irish nationals by the length of residence requirement. Therefore, the situation is contrary to the Charter.

Conclusion

The Committee concludes that the situation in Ireland is not in conformity with Article 10§1 of the Charter because of indirect discrimination against nationals of the other Contracting Parties to the 1961 European Social Charter and nationals of the States Parties to the Revised European Social Charter, lawfully residing or regularly working in Ireland, who are potentially more affected than Irish persons by the length of residence required in order to access third level education.

Paragraph 2 – Promotion of apprenticeship

The Committee takes note of the information provided by the Irish report about apprenticeships and other training arrangements for young people.

The report indicates that, during the period of reference, there has been no change in respect of the legislation governing apprenticeships (the Standards-Based Apprenticeship Scheme). The Committee therefore refers to description in its previous conclusion (Conclusions XIV-2, p. 404).

In reply to the Committee's questions, the report indicates that, as yet, no amendment of the legislation concerning the minimum duration of apprenticeship has been agreed upon. The number of places available is set by employers themselves, but the FAS (Training and Employment Authority - *An Foras Aiseanna Soathar*) provides incentives for the creation of places. The number of apprentices grew from 6 324 to 7 791 during the period of reference, while wages generally rose from 33,3 % of the basic craft rate in the first year of apprenticeship to 89,8 % of this rate in the fourth year.

The report also provides information about other existing training arrangements for young people in a variety of areas. They are: FAS National Traineeship Programme, Training for Public Services, Skills Training, Training Course for first time job seekers and young employed, etc. The Youthreach programme provides two years integrated education, training and work experience for young people aged 15 and over who have left school early without qualifications or vocational training. Participants in 2001 numbered 2 641 and the progression rate to employment or further education was 74 %. The Senior Travelling Training Centres apply the same kind of training as Youthreach but with no upper age limit to the Travellers. In 2001, the number of participants was 811 and the progression rate to employment or further education was 51,2 %.

In reply to the Committee's question about equal treatment of non-nationals, the report is unclear. While it reiterates on the one hand that non-EEA nationals need a work permit to accede apprenticeship – because it is an employment contract – it indicates on the other hand that non-EEA nationals holding a work permit cannot avail themselves of the FAS services unless they possess a Stamp 4 and Leave to Remain permit. The Committee reiterates its question as to whether non-EEA nationals of the other Contracting Parties to the 1961 European Social Charter and of Parties to the Revised European Social Charter, lawfully resident or regularly working in Ireland, are granted equal access to apprenticeship and other training arrangements.

Pending the information requested, the Committee defers its conclusion.

Paragraph 3 – Vocational training and retraining of adult workers

Under Article 10§3 of the Charter, the Committee considers continuing vocational training for employed and unemployed persons, including the long-term unemployed. Accordingly, the Committee will examine only those of the activation measures for unemployed people that strictly concern training. It is under Article 1§1 of the Charter that the Committee considers activation measures for the unemployed in general terms.

Employed people

The report indicates that FAS (Training and Employment Services) provides continuing vocational training for employed people. The Committee refers to its previous conclusion for the description of certain programmes still in force (Conclusions XIV-2, p. 405). The Committee notes from another source¹ that the Specific Skill training programme was completed in 2000 by 1420 trainees, 75 % of which were subsequently in employment. The Traineeship programme gathered for about 1500 persons, 78 % of which were placed by the end of 2000. Special training programmes for return to work of women are also in place.

The Government and FAS incentive the organisation of in-company training through various training support schemes. The Committee notes from the FAS Annual Report for 2000 that this institution continued to implement a range of “sponsored” training for companies, which is financially supported by employers, and to which about 3 400 employees participated. From Eurostat, the Committee observes that, in 1999, 52 % of employees participated in some form of continuing vocational training, which was proposed by 56 % of the enterprises.

In view of the growing relevance of continuing vocational training, the Committee asks that the next report provides information on the

¹ FAS Annual Report and Financial Statement 2000, www.fas.ie/annual_report/annual_report00/contents.html.

existence of preventive measures against the deskilling of still active workers at risk of becoming unemployed as a consequence of technological and/or economic progress.

Unemployed people

From Eurostat, the Committee observes that, during the period 1997-2000, unemployed people decreased from 152 200 to 73 900, that is from the 9,9 % to the 4,2 % of the labour force (the total of employed and unemployed people in the country). The share of long-term unemployed (i.e., those persons who have been without work for 12 months or more), as a percentage of total unemployment, was 57 % in 1997 and 36 % in 2000.

FAS provides training and retraining for unemployed people and persons made redundant. Among others, the Vocational Training Opportunity Scheme (VTOS) gives unemployed people over 21 years of age and who have been unemployed for at least six months the opportunity to follow courses of two years duration. Lone parents are also targeted. According to the report, in 2001, there were 5 305 participants, mainly unemployed, and the progression rate towards employment or further education stood at around 70 %. Other training programmes specifically focus on long-term unemployed people.

From another source¹, the Committee observes that, in Ireland, the activation rate of unemployed people with respect to training measures was 7,9 % (about 18 000 participants) in 1998, 10 % (about 19 000 participants) in 1999, and 11 % in 2000. Taking into consideration the low level of this rate, the Committee asks that the next report give more information on all the training measures available for long-term unemployed people, and on how it is planned to raise the activation rate with respect to these kinds of measures.

The Committee asks that the next report provide precise information on expenditure for continuing training and occupational training.

¹ EC, Joint Employment Reports 1999, 2000 and 2001, (www.europa.eu.int). In 1998-99, the activation rate was defined as the annual average number of previously unemployed participants in active measures divided by the number of registered unemployed persons. In 2000, the activation rate is defined as the annual average number of previously unemployed participants in active measures divided by the number of registered unemployed persons and participants in active measures.

Moreover, it asks for information on the sharing of the burden of the cost of both continuing and occupational training among public bodies (state or other collective bodies), unemployment insurance systems, enterprises, and households.

In reply to the Committee's question on equal treatment of non-nationals, the report refers to its arguments under Article 10§1. The Committee therefore infers that the one year length of residence condition also applies as regards access to continuing vocational training. It recalls that any length of residence or employment requirement is contrary to the Charter.

Conclusion

The Committee concludes that the situation in Ireland is not in conformity with Article 10§3 of the Charter because of indirect discrimination against nationals of the other Contracting Parties to the 1961 European Social Charter and nationals of the States Parties to the Revised European Social Charter, lawfully residing or regularly working in Ireland, who are potentially more affected than Irish persons by the length of residence requirement in order to access continuing vocational training.

Paragraph 4 – Encouragement for the full utilisation of available facilities

Fees and financial assistance (Article 10§4 a and b)

The Irish report under Article 10§4 indicates that no fees are charged for FAS training courses, nor for second-level education and undergraduate third level education.

As far as financial assistance is concerned, the report indicates that students at third level may apply for three maintenance grants schemes. The Higher Education Grants (HEG) apply mainly to university students; the VEC Scholarship Scheme applies to students holding certain diploma level and progressing further; the Third Level Trainee Scheme applies to students pursuing diplomas and certificates courses in the technological sector. A Maintenance Grant for PLC courses also exists. All these grants are means-tested and distinguish between adjacent (students living at home) and non-adjacent (students living away from home) rates. Top-up amounts are

available under certain conditions, as is financial assistance from special funds for disadvantaged persons or persons finding themselves suddenly in economic difficulties. In the year 1999/2000, there were, respectively, about 25 000 grant holders for HEG, 5700 for VEC Scholarships, and 15 000 for Third Level Trainees.

The report indicates that training allowances are also given in the context of training programmes, such as Youthreach and Vocational Training Opportunity Scheme. The Committee asks whether this is also the case with respect to all the other forms of training.

In reply to the Committee's question on equal treatment, the report indicates 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 infers 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 recalls that, according to the Appendix to the Charter, equality of treatment shall be provided to nationals of other Parties lawfully resident or regularly working on the territory of the Party concerned. This implies that no length of residence is required from students and trainees admitted to reside in any capacity other than being a student or a trainee, or having authority to reside by reason of their ties with persons lawfully residing, on the territory of the Party concerned before starting training. This does not apply to students and trainees who, without having the above-mentioned ties, entered the territory with the sole purpose of attending training.

To this purpose, the Committee recalls that it has held that length of residence or employment requirements for financial assistance for vocational training are contrary to the provisions of the Charter (Conclusions XIII-2, Austria, p.221; XIII-3, Finland, p.324; XIV-2, Belgium, p.146, Finland, p. 238). Therefore, it concludes that the situation is not in conformity with the Charter.

Training during working hours (Article 10§4 c)

The report indicates that it is standard practice to facilitate workers to undergo training at the request of the employer during normal working hours.

Efficiency of training (Article 10§4 d)

The Committee asks for information about evaluation of training to be provided in the next report.

Conclusion

The Committee concludes that the situation in Ireland is not in conformity with Article 10§4 of the Charter on the grounds that equal treatment for non-nationals of Contracting Parties to the 1961 European Social Charter and of Parties to the Revised European Social Charter lawfully resident or regularly working in Ireland with respect to fees (non-EU nationals) and financial assistance (EU and non-EU nationals) for training is not guaranteed.

Article 15 – Right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement*Paragraph 1 – Vocational training arrangements for the disabled*

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

According to the report there is no comprehensive statistical data on the number of persons with disabilities in Ireland, although the Department of Justice, Equality and Law Reform is committed to putting arrangements in place to review and identify key statistical needs in relation to people with disabilities. The Committee therefore asks the next report to provide information on the total number of persons with disabilities, the number of compulsory school age and the number of working age. The Committee notes however that according to the Central Statistics Office of Ireland 8,3 % of the population has a disability.

On a general level the Committee notes that over the reference period there have been several important developments in the field of disability. The Employment Equality Act 1998 which entered into force in 1999 outlaws discrimination in employment and vocational training *inter alia*, on the grounds of disability (see further under Article 15§2). The Equal Status Act 2000 further prohibits discrimination (see below). The National Disability Authority (NDA), an independent statutory agency was established in 2000 to *inter alia*, act as a central, national body to assist in the coordination and development of disability policy and to implement standards for services for persons with disabilities. A mainstreaming policy for services for people with disabilities was introduced in 2000; this means the delivery of services for persons with disabilities by the same public bodies that provide these services to everybody else. Responsibility for service provision for persons with disabilities which previously lay with the National Rehabilitation Board (NRB) under the aegis of the Department of Health and Children was transferred to the Departments and agencies with general responsibility for their provision. As a result vocational training and employment services are now under the responsibility of the Department of Enterprise Trade and Employment.

General Education

The education of children with disabilities is the responsibility of the Department of Education and Science. The report states that Ireland still does not have legislation governing educational provision for students with disabilities, therefore the right of access to education is not statutorily guaranteed. However the Committee notes that the Equal Status Act 2000 explicitly outlaws discrimination in education, it asks for further information on the operation of this Act and any further measures planned to strengthen the right of children with disabilities to education.

The report provides information on the disability team of the National Educational Psychological services (NEPS) who provide support and assistance to schools and classes for children with physical and sensory impairments, as well as supporting children with disabilities in mainstream schools. This team saw over 200 children in 2000/2001 and consultations were offered to 18 schools concerning the integration of a child with a disability.

The Committee notes from the information in the report that this team seems understaffed and asks what measures have been taken to address this.

The Committee wishes to receive more comprehensive information on the total number of children with disabilities of compulsory school age, the number in special schools and the number integrated into mainstream schools (both primary and secondary) along with information on measures in place to support and facilitate integration (apart from psychological support referred to in the report), in particular for children with intellectual disabilities.

The Committee notes in this respect that the report states many pupils with disabilities do not take the state post primary examinations and in respect of young persons with visual impairments that half the adolescents concerned are unable to benefit from academic type education. It asks for the reasons for the apparent low rate of educational attainment.

The Committee asks whether general teacher training incorporates special needs education as an integral component.

Vocational Training

The report firstly provides information on various vocational training courses and pre vocational training available for different groups of young persons - post primary-with disabilities (hearing disabilities, visually impaired). It also provides information on training for people with disabilities within special facilities.

However, the Committee notes that training for persons with disabilities was restructured in 2000 and is now administered by FAS (National Training and Employment Authority) for the Department of Enterprise Training and Employment as a part of the policy on mainstreaming and asks what effect this has had on training administered in special centres referred to above. The Committee notes that the full range of FAS services are available to persons with disabilities (young persons and adults), it further notes that FAS contracts with 20 specialist training agencies to deliver training to people with disabilities from almost 60 centres throughout the country. The Department of Enterprise, Trade and Employment estimates that 80 % of the total number of persons with disabilities, in FAS funded training, are in specialist training agencies. The Committee asks whether measures are planned to further mainstream training, promote and facilitate integration of persons with disabilities into mainstream training or whether the arrangements are regarded as satisfactory.

All training programmes, directly delivered by FAS or through external providers lead to nationally recognized certification.

The Committee wishes to receive information in the next report on measures in place to enable persons with disabilities attend university.

Conclusion

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

Paragraph 2 – Placement arrangements for the disabled

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

It refers to its general remarks made under Article 15§1 on the developments in the disability field which took place over the

reference period and its questions regarding the number of persons with disabilities in Ireland.

The Employment Equality Act 1998 entered into force in 1999, it prohibits discrimination *inter alia*, on grounds of disability. It covers all areas related to employment including access to employment, conditions of employment, remuneration, promotion and vocational training. The Act allows for positive action measures intended to reduce or eliminate the effects of discrimination and under the Act an employer must do all that is reasonable to accommodate the needs of a person with a disability unless the employer can show that there is a cost to him/her other than a nominal cost. The Committee asks for further information on any relevant case law on reasonable accommodation and the notion of 'nominal cost'.

The Act also provided for the establishment of the Equality Authority and Office of the Director of Equality Investigations (ODEI). Equality cases other than those involving dismissal may be referred to the OEID, which may with the agreement of the parties refer the case to mediation. Cases not referred to mediation and non-resolved cases may be investigated by the OEID and a decision issued. There is provision for the award of redress where discrimination has found to have occurred. Decisions may be appealed to the Labour Court. Cases involving the dismissal of an employee are referred directly to the Labour Court.

Measures to promote employment

The Committee recalls a 3 % quota for the employment of persons with disabilities exists in the public sector. According to the report figures compiled in 2002 indicated that 2,8 % of those employed in the civil service have a disability, however, another survey which relied on self-definition/self declaration, indicated that 7 % of all staff have a disability. Measures are currently under discussion to improve existing policy for people with disabilities within the civil service.

As regards the wider public service the Committee notes that according to the report, while there has been an increase in the number of persons with disabilities in employment in the public service, the level is below the 3 % quota; 1,89 % in 2000. The Committee asks to be kept informed of all developments in this area.

Responsibility for the employment of persons with disabilities in the private sector now rests with the Department of Enterprise, Trade and Employment, which is developing policies based on a three dimensional approach; development of the skills of persons with disabilities, stimulating awareness among employers of the contribution of persons with disabilities can make, providing employment support to employees with disabilities and employers. Employment services for persons with disabilities are now administered by FAS (the National Training and Employment Authority).

Employment of persons with disabilities is encouraged through the existence of several measures: Employment support scheme-a wage subsidy scheme, Jobstart and workplace scheme, Workplace/equipment adaptation grant, Personal reader grant, Job interview interpreter grant, Employee retention grant, Disability awareness training support scheme, Supported employment programme.

According to the report, 984 persons with disabilities were placed in paid employment in 1999. In order to be able to better evaluate the situation, the Committee asks the next report to provide information on the estimated number of persons with disabilities in employment on the open labour market and the number benefiting from the above mentioned measures to promote employment as well as the number of persons with disabilities seeking employment.

The Committee notes from the report that training for the visually impaired was previously often orientated towards them being employed in sheltered workshops producing cane furniture and that the visually impaired are to have priority for certain telephonist posts and accordingly training is often orientated towards this. The Committee has reservations as to whether this compatible with the principle of integration and equal opportunities. It asks whether this is still the situation.

Sheltered employment is defined as employment in an enterprise established specifically for the employment of persons with disabilities, but which may also employ able-bodied people. Such enterprises operate in the commercial market place; they provide direct goods and/or services for sale in the market place and comply with all statutory requirements in relation to employment rights. Sheltered employment enterprises are to be distinguished from workshops, which do not primarily have commercial objectives and fall under the

remit of the Department of Health and Children. Approximately 34 enterprises employing 700 persons are considered as sheltered employment enterprises.

The Committee notes that sheltered employment is currently being reviewed and policy proposals will be formulated on the basis on the findings of this review, it asks to be kept informed of these.

A national network of sheltered workshops is in place for persons with disabilities who are unable to obtain employment. It is estimated that there are 8 000 persons in some 230 workshops. People in sheltered workshops retain their statutory benefits and are paid a discretionary supplementary payment by their service provider. A working group within the Department of Health and Children has drafted a Code of Practice for Sheltered Workshops. The Committee wishes to receive further information on the final Code once adopted. It recalls in this respect that it has stated, in particular in respect of production orientated work, that the right to fair remuneration and just working conditions should apply to all workers irrespective of whether they work on the open labour market or in sheltered facilities.

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

**Chapter 2 – Conclusions concerning
Articles 1§4, 2, 3, 4, 9, 10 and 15 of the
Charter in respect of Luxembourg**

Introduction

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

A presentation of this treaty, as well as general comments formulated by the Committee, figure in the General Introduction to the Conclusions¹.

The European Social Charter was ratified by Luxembourg on 7 October 1991. The time limit for submitting the 6th report on the application of this treaty to the Council of Europe was 31 March 2002 (reference period 1 January 1997 to 31 December 2000) and Ireland submitted it in several parts between 19 November 2003 and 16 September 2003.

This report concerned the rights forming the first part of the “non-hard core” provisions of the Charter:

- the right to just conditions of work (Article 2),
- the right to safe and healthy working conditions (Article 3),
- the right to a fair remuneration (Article 4),
- the right to vocational guidance (Article 9),
- the right to vocational training (Article 10),
- the rights of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement (Article 15).

Luxembourg has accepted these articles with the exception of Article 4§4.

¹ These conclusions as well as states reports can be consulted on the Council of Europe’s Internet site (www.coe.int) under Human Rights.

52 *Addendum to Conclusions XVI-2 – Luxembourg*

The present chapter on Luxembourg contains 20 conclusions¹:

- 10 cases of conformity: articles 2§1, 2§2, 2§3, 2§5, 3§3, 4§3, 9, 10§1, 10§2 and 10§3
- 4 cases of non-conformity: articles 2§4, 3§1, 4§2 and 10§4

In respect of the other 6 cases, that is articles 1§4, 3§2, 4§1, 4§5, 15§1 and 15§2, the Committee needs further information in order to assess the situation. It asks the Government of Luxembourg to communicate the answers to these questions before the 31 March 2006.

¹. Article 1§4 has been considered during cycle XVI-2 because the Committee's conclusion depends on the conclusions under Articles 9, 10§3 and 15§1.

Article 1 – Right to work*Paragraph 4 – Vocational guidance, training and rehabilitation*

The Committee takes note of the information contained in the Luxembourg report and refers to its conclusions under Article 9 (right to vocational guidance), 10§3 (right to vocational training and retraining of adult workers), and 15§1 (the right of persons with disabilities to guidance, education and vocational training).

The Committee concluded that the situation was in conformity with regards to vocational guidance and continuing vocational training, while it deferred its conclusion with regards to the right of persons with disabilities to guidance, education and vocational training (lack of information).

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

Article 2 – Right to just conditions of work*Paragraph 1 – Reasonable daily and weekly working hours*

The Luxembourg report contains replies to questions raised by the Committee in the previous conclusion concerning certain categories of workers not covered by the Act of 9 December 1970 reducing and regulating the working hours of manual workers.

With respect to hospital staff the Committee notes that a collective agreement covering all such staff in all hospitals in the country was concluded on 19 November 1997. As far as staff in the hotel and restaurant industry (the HORECA sector) are concerned the report states that the Government had given preference to the conclusion of a collective agreement between the involved parties, but since this had not been possible legislation had been drafted and sent to the social partners for an opinion in early 2002 (outside the reference period). The Committee wishes to be informed of developments in this respect.

The report also provides figures on the number of workers in agriculture, hunting, forestry, domestic services and in the HORECA sector. The Committee notes that in 2000 there were 1 230 employees in agriculture, etc., 3 187 employees worked as domestic staff and there were 10 132 employees in the HORECA sector. The total of 14 549 employees corresponds to about 6 % of all employees in Luxembourg. The report emphasises that only part of these employees are not covered by the 1970 Act, namely those who work in family businesses in the sectors concerned.

The Committee notes that with respect to reference periods for the calculation of working time an Act of 12 February 1999 amended a number of acts and regulations, including the 1970 Act. However, according to the report the new legislation has given rise to discussions concerning the interpretation and application of certain of its provisions, in particular as regards parental leave and work organisation, including the organisation of working time. The Government and the social partners were in agreement that a clarification was necessary and on 4 May 2000 the Tripartite Coordination Committee decided to set up a working group for this purpose. On 9 November of the same year, the conclusions of the working group were submitted to the Coordination Committee, which adopted them unanimously.

On this basis the Government put forward new draft legislation in February 2001 which will, *inter alia*, specify the procedure for obtaining ministerial authorisation to extend the reference period for averaging working hours beyond the period stipulated by law. The Committee asks that the next report contain full details on working time flexibility rules in view of the new legislation.

Pending receipt of the information requested, the Committee concludes that the situation in Luxembourg is in conformity with Article 2§1 of the Charter.

Paragraph 2 – Public holidays with pay

The Committee notes from the Luxembourg report, that the situation found to be in conformity with the Charter, has not changed.

It therefore concludes that the situation in Luxembourg is in conformity with Article 2§2 of the Charter.

Paragraph 3 – Annual holiday with pay

The Committee notes from the Luxembourg report, that the situation found to be in conformity with the Charter, has not changed.

It therefore concludes that the situation in Luxembourg is in conformity with Article 2§3 of the Charter.

Paragraph 4 – Reduced working hours or additional holidays for workers in dangerous or unhealthy occupations

The information contained in the Luxembourg report does not lead the Committee to take any other view of the situation than the one explained in previous conclusions (Addendum to Conclusions XIII-3, p. 24 and Conclusions XIV-2, p. 467).

It therefore concludes that the situation in Luxembourg is not in conformity with Article 2§4 of the Charter, on the ground that a reduction of working hours or the granting of additional paid holidays is not provided for Workers engaged in dangerous or unhealthy occupations.

Paragraph 5 – Weekly rest period

In reply to the Committee's question in the previous conclusion, the Luxembourg report states that legislation authorises work on Sundays in the retail trade for up to four hours on condition that the enterprise has permission to remain open on Sundays. However, according to the report Sunday opening is not a common practice with the exception of certain bakeries, petrol stations and shops in tourist areas during the high season.

The Committee concludes that the situation in Luxembourg is in conformity with Article 2§5 of the Charter.

Article 3 – Right to safe and healthy working conditions

Paragraph 1 – Issue of safety and health regulations

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

Content of the regulations on health and safety at work

The Committee examined the general scope of the regulations in Conclusions XIV-2 (pp. 469-471). The report supplies certain additional information requested on protective and preventive measures:

Protection against dangerous agents and substances

– Protection of workers against asbestos. The report states that a total ban on the use and marketing of asbestos fibres came into force in 2001. On the basis of this information and of that reported in the previous conclusion it considers that protection against asbestos-related risks in Luxembourg is in conformity with Article 3§1 of the Charter.

– Protection of workers against ionising radiation. The Committee deferred its previous conclusion because, among other reasons, it lacked information on the rules applicable to exposure to ionising radiation. It recalls that for the situation to be in conformity with Article 3§1 of the Charter, states must offer effective protection against the risks related to ionising radiation, which involves adjusting their regulations to take account of the recommendations of the International Commission on Radiological Protection (ICRP). It asks for the requested information to be included in the next report.

– Despite the Committee's request, the report includes no additional information to show that preventive and protective measures exist for all the risks that must be covered under Article 3§1 (see the list in the general introduction to Conclusions XIV-2, pp. 36-38). The Committee deferred its previous conclusion because the list of measures referred to in the previous conclusion was insufficient for it to be able to reach a conclusion. Since for the last three cycles Luxembourg has not been able to show that it is complying with this provision, the Committee considers that the situation is not in conformity with Article 3§1 of the Charter.

Protection of non-permanent workers

In answer to the general question on measures to take account of the occupational health and safety needs of persons on fixed term and temporary contracts, the report states that these employees receive the same levels of training and protection as other workers in the undertaking concerned.

The Committee points out that for the situation to be in conformity with Article 3§1 of the Charter, states must take the necessary measures to equip non-permanent workers (temporary agency workers and fixed-term workers) with information, training and medical surveillance adapted to their employment status, in order to avoid any discrimination in respect of health and safety in the workplace. These measures must ensure that such workers are afforded adequate protection, including against risks resulting from a succession of accumulated periods spent working for a variety of employers, exposed to dangerous substances, and, if necessary, must contain provisions prohibiting the use of vulnerable workers for some particularly dangerous tasks. The Committee asks the Luxembourg authorities to indicate how the regulations apply the Charter in this regard.

Personal scope of the regulations

In reply to the Committee's question, the report confirms that no sector of the economy is excluded from the scope of the occupational health and safety legislation.

The report confirms that self-employed persons are only covered by the legislation if they employ other persons. However as noted in the previous report, self-employed persons and employers are compulsorily insured by the Association for Accident Insurance, and this public body has statutory authority to impose its own accident prevention regulations. An examination of these regulations¹ shows that self-employed persons and employers are sufficiently well covered and that the situation is in conformity with Article 3§1.

¹ Consulted on the Association's Internet site (www.aaa.lu)

Conclusion

The Committee concludes that the situation in Luxembourg is not in conformity with Article 3§1 of the Charter, since no information shows that preventive and protective measures exist for all the risks that must be covered under this provision,

Paragraph 2 – Provision for the enforcement of safety and health regulations by measures of supervision

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

Employment injuries and occupational diseases

The Committee notes from the Internet site of the Association for Accident Insurance¹ that the number of recorded accidents at work, including the agricultural sector, was higher than in 1996 (29 326 cases) and rose throughout the reference period to reach 32 279 in 2000. Compared with the rise in the number of "employee units", as defined by the AAA², the figures show a decline in the frequency of accidents from 11,76 per 100 full-time equivalent employee units in 1996 to 11,08 in 2000. The frequency of fatal accidents has also declined.

The Committee notes from a publication of the European Commission³, that in 1998, in nine branches of activity⁴, the standardised number of industrial accidents and accidents on the way to and from work resulting in more than three days' absence from work per 100 000 persons in employment was 4 719, i.e. 8 613 accidents declared. The European Union average was 4 089.

¹ www.aaa.lu

² Employee units are calculated by the AAA by dividing the total number of hours worked by 2080, namely the average annual number of hours worked.

³ Eurostat, "Accidents at work in the European Union in 1998", Statistics in Focus – Population and social conditions, No.16/2001.

⁴ Agriculture, hunting, forestry; manufacturing; electricity, gas and water supply, construction; wholesale and retail trade, repair of motor vehicles and household goods; hotels and restaurants; transport and communication; financial activities, renting and business activities.

Activities of the Labour Inspectorate

The Committee examined the general organisation of labour inspectorate activities in Conclusions XIV-2 (pp. 473-474).

According to the employment and mines inspectorate's 2001 report¹, 1 296 visits were carried out to 1 107 of the 31 776 undertakings concerned. However the Committee notes that these visits covered all aspects of the inspectorate's activities. It therefore asks for the next report to supply information concerned exclusively with monitoring compliance with employment legislation, for each year of the reference period. It also asks again for the number of inspectors assigned to monitoring compliance with health and safety regulations, the number of breaches recorded, and the follow-up action taken.

Conclusion

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

Paragraph 3 – Consultation with employers' and workers' organisations on questions of safety and health

The Committee notes from the Luxembourg report that there have been no changes to the situation, which it has previously considered to be in conformity with the Charter.

It therefore concludes that the situation in Luxembourg is in conformity with Article 3§3 of the Charter.

¹ Consulted on the Inspectorate's site: www.itm.etat.lu

Article 4 – Right to a fair remuneration

Paragraph 1 – Adequate remuneration

The Luxembourg report indicates that the level of the statutory minimum wage is fixed as a function of the economic development. Thus, it is stipulated that the Government submits a proposal to Parliament every two years concerning revaluation of the minimum wage rate. According to the report the minimum wage was raised by 3,1 % on 1 January in 1997, 1999 and 2001 and by 3,5 % on 1 January 2003 (outside the reference period). The report further states that the minimum wage is subject to automatic indexation and adjustment in line with the development in consumer prices.

On 31 December 2000 the gross monthly minimum wage amounted 49 250 Luxembourg francs (LUF; 1 221 €). On 1 January 2001 it was 1 259 € and by 2002 it had risen to 1 322 €. The report states the net minimum wage for single manual workers (*ouvriers*) was 1 108 € by 1 June 2002 and it was 1 134 € for single employees (*employés*). The report points out that only single persons are liable to pay tax when they receive the minimum wage. The Committee observes that the deduction from the minimum wage of a manual corresponds to about 16 %.

From Eurostat information the Committee notes that the gross monthly average wage for a single manual worker was 2 488 € in 2000 and the corresponding net wage, i.e., after deduction of tax and social security contributions, was 1 873 €. The report does not provide information on the net value of the minimum wage in 2000, but assuming a 16 % deduction (as in 2002, see above) the estimated monthly net minimum wage for a manual worker in 2000 would have been about 1 026 €. The Committee observes that this corresponds to about 54,8 % of the net average wage which is below the threshold of 60 % established by the Committee.

The Committee acknowledges that the minimum wage does not fall far below the threshold and that the adjustment rate of was increased outside the reference period. It emphasises the importance of including in the next report detailed and up-dated information on the net value of both the average wage and the minimum wage for each year of the reference period. In addition, the Committee asks that the next report contain detailed information on any social transfers or benefits made available specifically to workers earning the minimum

wage as well as on any other factors ensuring that the minimum wage is sufficient to give the worker a decent standard of living.

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

Paragraph 2 – Increased rate of remuneration for overtime work

The Committee takes note of the information provided in the report from Luxembourg.

It recalls that, in its previous conclusion, it found that the situation was not in conformity with the Charter because as of the ninth hour of overtime work, civil servants and public sector employees did not receive either a higher rate of pay or a longer period of rest if the overtime is performed between 6 am and 10 pm or outside week ends and national holidays.

Since that there has been no change with regard to this issue, the Committee concludes that the situation in Luxembourg is not in conformity with Article 4§2 of the Charter.

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

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

In its previous conclusion, the Committee assessed the impact of several constitutional and legal provisions relating to the protection against discrimination between men and women with respect to remuneration.

It noted *inter alia* that, under the Act on equality of treatment between men and women of 8 December 1981, employees who seek to enforce their right to equal treatment are protected against retaliatory measures – in particular dismissal – from their employer. But it also noted that a similar protection is not explicitly provided in Grand Ducal Regulation of 10 July 1974 on equal pay. Accordingly, the Committee asked whether the protection in question was afforded by other legal provisions.

It appears from the present report that, although there are no specific provisions to that effect, the said Grand Ducal Regulation provides for the same level of protection of the 1981 Act because it has been adopted on the basis of the same higher legal instruments (the Constitution of Luxembourg, the Treaty of Rome and Convention N°100 of the ILO.)

The Committee takes note of this information and requests some examples of case law or of administrative decisions showing that the Grand Ducal Regulation in question is interpreted in such manner.

In its previous conclusion, the Committee further asked whether governmental agencies, social partners or other specialized bodies had elaborated some system of job evaluation, based on objective criteria, in order to ensure equal treatment between men and women with respect to remuneration.

The report states that virtually all collective agreements as well as regulations applying to civil servants use job evaluation methods based on objective criteria, such as education and professional experience, and therefore ensure equal treatment.

The Committee considers that these two criteria are too broad to allow an effective implementation of the right to equal pay for work of equal value. It further notes that there is still a gap between the average remuneration of male workers and that of female workers (according to a study attached to the report there is an average difference of 11 %, while according to Eurostat the difference of remuneration in the industrial and the services' sector is 35 %). Accordingly, it requests that Luxembourg authorities properly address the issue of objective job evaluation in order to guarantee the effective implementation of the right to equality of treatment with respect to remuneration, which they recognize in law.

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

Paragraph 5 – Limitation of deduction from wages

The Committee takes note of the information provided in the report from Luxembourg.

Pursuant to Section 5 of the Act of 11 November 1970 on assignments and attachments of remuneration for work as well as pensions and annuities, total deductions cannot exceed one tenth of the worker's wage.

In its last conclusion, the Committee asked some examples of case law relating to this provision. It notes from the report that national courts consider deductions made outside of the scope of the Act as illegal.

The Committee also noted that workers may be fined for infringing work place rules established at the employer's own initiative. It recalled that Article 4§5 requires Contracting Parties not to allow deduction from wages except under the conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards. Accordingly, it asked to be provided with some examples of case law relating to the imposition of these fines.

Noting that there is no case law on this particular issue, the report assumes that employers have not established any unilateral system of fines.

The Committee considers that given the total absence of case law and therefore of litigation, there is no evidence that employers impose unilaterally established fines on workers and that national law provides for an adequate protection against deductions from wages, which would be contrary to the Charter.

The Committee concludes that the situation in Luxembourg is in conformity with Article 4§5 of the Charter.

Article 9 – Right to vocational guidance

The Luxembourg report provides up-to-date information concerning vocational guidance. The vocational guidance service of the public employment service (ADEM – *Administration de l'Emploi*) is in charge of providing guidance within the education system and in the labour market.

According to the report, young people and adults may receive guidance individually (by interview), in classes or in groups by the vocational guidance service of the ADEM. To this purpose the ADEM has established a Vocational guidance centre (BIZ), where information is given about education and vocational training.

As Luxembourg has accepted Article 15 of the Charter, the measures concerning vocational guidance of disabled people are dealt with under that provision.

Vocational guidance within the education system

Vocational guidance counsellors of the ADEM may hold vocational guidance sessions in secondary school classes upon request of the school. In this context, the report indicates that specific projects about vocational guidance have been launched in certain secondary education establishments. These projects (*Avanti, Aide à l'orientation*) consist in the provision by counsellors of regular vocational guidance to the classes of the establishments in order to help students to work out their personal professional project.

The report also indicates that traineeships are organised to complete vocational guidance. They may consist in short training about the transition from school to active life, how to apply for a job, etc., and in longer traineeships to allow last year secondary school students to get knowledge of the labour market.

The Committee notes from another source¹ that pupils receive vocational guidance a first time at the end of primary school and a second time at the end of lower secondary school.

¹ Ministry of National Education, Vocational Training and Sport, *Que faire après la 6e année scolaire?*, in www.men.lu.

It also observes that the advice received through guidance at the end of primary school regulates access to secondary education. A guidance council composed by the inspector, the class main teacher, a secondary education teacher and a secondary technical education teacher provides the advice. A psychologist may participate upon request of the parents, but only with consultative role.

If the parents do not wish to follow the advice, two solutions are available

- an admission examination for the switch from technical secondary education to general secondary education;
- an appeal to the Appeal Commission if the pupil has been oriented to attend the preparatory classes (MO) instead of being admitted to technical secondary education.

Expenditure, number of staff and persons assisted for vocational guidance within the education system and in the labour market

The report indicates that vocational guidance expenditure grew from about 495 000 € to 595 000 €.

There were twelve staff members of the vocational service of the ADEM in 1998 and since then this has remained stable.

As for the number of beneficiaries, the report indicates that the number of visitors and classes grew respectively from 3 115 and 84 in 1997 to 3 826 and 94 in 2000. According to the report, the number of adults seeking for vocational guidance keeps growing.

The number of pupils concerned by the projects carried out in schools amounted to about 2000 since 1999.

As for traineeships in 1999/2000, there were about 2 300 participants.

Dissemination of information

The report indicates that information is diffused in the Vocational Guidance Centre through printed material (leaflets on the different professions, guides, etc.). The vocational guidance service participates to national and international forums, information days, seminars, etc.

Nationals of the other Parties to the Charter

The report indicates that nationals of the other Contracting Parties to the 1961 European Social Charter and of Parties to the Revised European Social Charter lawfully resident or regularly working in Luxembourg are equally treated with respect to vocational guidance.

Conclusion

The Committee concludes that the situation in Luxembourg is in conformity with Article 9 of the Charter.

Article 10 – Right to vocational training*Paragraph 1 – Promotion of technical and vocational training and the granting of facilities for access to higher technical and university education*

The Luxembourg report explains how, following to recent legislation (Act of 12 February 1999 on the implementation of the 1998 employment action plan [OJ A – no.13 of 23 February 1999], which has modified the Act of 4 September 1990 on technical secondary education and vocational training), the education and training system is organised and it provides figures about participation, completion rates, teachers and institutions.

The education and training system consists of compulsory education, secondary general and vocational education, and general and technical higher education.

The Committee recalls that Article 10§1 covers all kind of higher education. In view of the current evolution of national systems, which consists in the blurring of the boundaries between education and training at all levels within the dimension of lifelong learning, the Committee considers that, today, the notion of vocational training of Article 10§1 covers initial training, i.e. general and vocational secondary education, university and non-university higher education, and continuing training. University and non-university higher education are considered to be vocational training as far as they provide students with the knowledge and skills necessary to exercise a profession.

Under Article 10§1 national reports should, accordingly:

- describe the most recent measures adopted to promote vocational training, including general and vocational secondary education, university and non-university higher education, apprenticeship, and continuing training (the description of the whole system may be recovered from existing database on the topic: Eurydice, Cedefop);
- highlight the bridges between secondary vocational education and university and non-university higher education;
- outline the mechanisms for the recognition/validation of knowledge and experience acquired in the context of train-

- ing/working activity in order to achieve a qualification or to gain access to general or technical education;
- underline the measures to make general secondary education and general higher education qualifications relevant from the perspective of professional integration in the job market;
- outline the mechanisms for the recognition of qualifications awarded by continuing vocational education and training;
- provide figures about the completion rate of students enrolled in higher education;
- provide figures on the employment rate of people who hold a higher-education qualification and the waiting-time for these people to get a first qualified job.

It is clear that access to technical or university higher education based solely on individual aptitude cannot be achieved only by setting up educational structures which facilitate the recognition of knowledge and experience as well as the transfer from one type or level of education to another; this also implies that registration fees or other educational costs do not create financial obstacles for some candidates.

The Committee requires that the next report provide detailed information on the entire education and training system on the basis of the above guidelines and the Form for Reports.

As Luxembourg has accepted Article 15, the measures concerning training of people with disabilities are dealt with under that provision.

Secondary education

The Committee notes from the report that, at the completion of primary school at the age of 11, students may choose general or technical secondary education. Compulsory schooling lasts 11 years and comprises pre-primary, primary and lower general or technical secondary education.

General secondary education lasts seven years and its final certificate gives access to any kind of higher education.

Technical secondary education divides in three cycles (lower, intermediate and upper) and lasts from six to eight years depending on the branch chosen.

The intermediate and higher cycles consist of three branches:

- the vocational option, which will be dealt with under Article 10§2;
- the technician training option, which allow to enter working-life or to continue higher technical education in the sector chosen;
- the technical option, which leads to the final diploma of secondary technical education and gives access to all kinds of higher education.

According to the report, during the reference period, students attending secondary education increased from 28 483 to 30 603, two third being enrolled in technical secondary education. For all three cycles, the completion rate was on average 75 %.

Secondary technical schools were 28 and teachers numbered 3 125.

Higher education

The Committee notes that the report does not provide new information on higher general and technical education. It therefore refers to its previous conclusion for its description (Conclusions XIII-3 Add., p.54).

The Committee notes from another source¹ that in 1997/98 participants to all kinds of higher education were 2 174. It asks this information to be provided in the report for each reference period.

The Committee also asks about the measures taken to facilitate access to higher technical and university education on the sole basis of individual aptitude.

Since information is missing in the report, the Committee observes from another source² that the total public expenditure for education was, in 2001, 537 million €. The Committee asks this information for the reference period to be provided in the report, as well as which percentage it represents of the GDP.

As far as equality of treatment is concerned, in reply to the Committee's question, the report indicates that access to education and

¹ CEDEFOP, Vocational education and training in Luxembourg, 2002, p.32, in www2.trainingvillage.gr/etv/publication.

² Ministry of National Education, Vocational Training and Sport, *Les chiffres clés de l'éducation nationale*, in www.men.lu.

vocational training is open to persons holding a foreign diploma, subject to the condition that it is recognised as equivalent to the Luxembourg ones.

The Committee asks if nationals of the other Contracting Parties to the 1961 European Social Charter and of Parties to the Revised European Social Charter lawfully resident or regularly working in Luxembourg are granted equal access to all kinds of the aforementioned education and vocational training.

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

Paragraph 2 – Promotion of apprenticeship

The Committee notes from the Luxembourg report that the situation has not changed during the reference period. Apprenticeship is still integrated into the vocational option of technical secondary education and the Committee refers to its previous conclusion (Conclusions XIII-3 Add., p.56) for its description.

According to the report, a third kind of apprenticeship basically oriented on learning manual skills also exists. It lasts three years and leads to a manual skill certificate (CCM – *Certificat de capacité manuelle*).

The report indicates that, during the reference period, apprentices increased from 3 456 to 4 161.

The Committee reiterates its question as to whether there are enough training places for all applicants in the different training arrangements.

Notwithstanding the Committee's questions, the report does not indicate if work permits have been refused during the reference period to applicants for apprenticeship, if the government plans to waive that requirement, and if other conditions are required from nationals of the other Contracting Parties to the 1961 European Social Charter and of the Parties to the Revised European Social Charter lawfully resident or regularly working in Luxembourg to be granted equal access to apprenticeship. The Committee asks for this information to be provided in the next report.

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

Paragraph 3 – Vocational training and retraining of adult workers

Under Article 10§3 of the Charter, the Committee considers continuing vocational training for employed and unemployed persons, including the long-term unemployed. Accordingly, the Committee will examine only those of the activation measures for unemployed people that strictly concern training. It is under Article 1§1 of the Charter that the Committee considers activation measures for the unemployed in general terms.

The Committee notes that the Luxembourg report provides information on lifelong learning as introduced by Act of 12/02/1999 on the implementation of the 1998 employment action plan (OJ A – no.13 of 23 February 1999). Lifelong learning consists of continuing vocational training for employed and unemployed people; economic and social training for individuals (given by professional chambers and the Advanced College of Work - *Ecole supérieure du travail*); adult education (provided by the Adult Education Service – SFA); and informal education. The aforementioned Act introduced a system by which all training followed by individuals is certified and gives right to allowances.

Continuing vocational training for private sector employed people and for unemployed people is further regulated by the Act of 12 June 1999 on continuing vocational training (OJ A – no.92 of 14 July 1999).

Employed people

The report indicates that continuing vocational training for employed people is provided by the National continuing vocational education centre (CNFPC) and by vocational chambers.

The aforementioned Act of 12 June 1999 regulates in detail continuing vocational training for private sector employed people. This training aims at the adaptation, the recycling or the promotion of the workers. Access may be regulated by collective conventions or by individual enterprise's training projects. The State contributes financially to the

training by providing enterprises with direct aids or tax deductions of 10 % of the cost of their investment in training.

The Committee notes from the report that the CNFPC organise continuing vocational training for employed people on request of employers, administrations and institutions. The Committee observes from another source¹ that this training represents 20 % of its activity.

The report provides figures only on participation to continuing vocational training of workers organised by the CNFPC: participants were on average 3 250 per year during the reference period, women representing the 34 %.

From Eurostat, the Committee observes that, in 1999, 36 % of employees participated in some form of continuing vocational training.

The Committee observes from another source² that the vocational chambers (Chamber of Trades, Chamber of Commerce, Chamber of Private-sector employees, Association of Luxembourg banks and Bankers) organise general management or specific subjects training courses.

The Committee asks that the next report provide information on the number of participants to that training.

The Committee also asks whether legislation exists on the possibility of individual leave for training and, in particular, subject to what conditions, on whose initiative, of what length and in which cases it is paid or not.

In view of the growing relevance of continuing vocational training, the Committee asks that the next report provides information on the existence of preventive measures against the deskilling of still active workers at risk of becoming unemployed as a consequence of technological and/or economic progress.

¹ CEDEFOP, Vocational education and training in Luxembourg, 2002, p.60, in www2.trainingvillage.gr/etv/publication.

² Ibid, p.61.

Unemployed people

From Eurostat, the Committee observes that, during the period 1997-2000, unemployed people decreased from 4 700 to 4 300, that is from the 2,7 % to the 2,3 % of the labour force (the total of employed and unemployed people in the country). The share of long-term unemployed (i.e. those persons who have been without work for 12 months or more) as percent of total unemployment was 34,6 % in 1997 and 22,4 % in 2000.

According to the report, the CNFPC is responsible for the vocational training of unemployed people. It organises guidance, initial and vocational training for non-qualified young workers, unemployed people, beneficiaries of the minimum guaranteed income, and women who want to get back onto the job-market. Participants, who receive a yearlong training, shall be registered as jobseekers.

Other forms of training are also organised by the CNFPC and/or the Vocational Training Service of the Ministry of Education, Vocational Training and Sport, and the Employment Office on request of the employers (complementary training and resources pool training) or in the framework of co-operation agreements with social partners or other training associations.

The report indicates that, during the reference period, unemployed participating to these kinds of measures were about 900 per year.

The Committee observes that the Act of 12 February 1999 on the implementation of the 1998 employment action plan indicates two measures targeting specifically young people (under the age of 30) who are registered as unemployed since at least one month. Both measures cannot last longer than twelve months. The first is the temporary auxiliary contract (*contrat d'auxiliaire temporaire*), which aims at providing the young persons with practical knowledge of a profession; and the second one is the insertion traineeship (*stage d'insertion*), aiming at providing alternating theoretical and practical training for a profession.

The Act of 12 February 1999 also provides for the organisation of re-insertion traineeship, alternating theoretical and practical training for unemployed over 30 years old.

The Committee asks the impact of these measures on the unemployed and information on all the training measures available for long-term unemployed people.

From another source¹, the Committee observes that, in Luxembourg, the activation rate of unemployed people with respect to training measures was 12,7 % (717 participants) in 1998, 23,3 % (1 247 participants) in 1999, and 25 % in 2000.

As information is missing on expenditure for continuing vocational training of employed and unemployed people, the Committee asks that the next report provide this information.

Moreover, it asks about the sharing of the burden of the cost of vocational training among public bodies (state or other collective bodies), unemployment insurance systems, enterprises, and households as regards both continuing and occupational training.

Notwithstanding the Committee's questions, the report does not indicate if work permits have been refused during the reference period to applicants for apprenticeship, and if other conditions are required from nationals of the other Contracting Parties to the 1961 European Social Charter and of the Parties to the Revised European Social Charter lawfully resident or regularly working in Luxembourg to be granted equal access to apprenticeship. The Committee asks for this information to be provided in the next report.

Pending receipt of the requested information, the Committee concludes that the situation in Luxembourg is in conformity with Article 10§3 of the Charter.

Paragraph 4 – Encouragement for the full utilisation of available facilities

The Committee notes that the Luxembourg report does not provide any information on the content of Article 10§4. Therefore, it assumes

¹ EC, Joint Employment Reports 1999, 2000 and 2001, (www.europa.eu.int). In 1998-99, the activation rate was defined as the annual average number of previously unemployed participants in active measures divided by the number of registered unemployed persons. In 2000, the activation rate is defined as the annual average number of previously unemployed participants in active measures divided by the number of registered unemployed persons and participants in active measures.

that the situation has not changed, with the exception of information gathered from elsewhere.

Fees and financial assistance (Article 10§4 a and b)

The Committee notes from the Luxembourg report that the situation has not changed during the reference period as regards fees for education and vocational training.

As far as financial assistance is concerned, the Committee observes from another source¹ that in primary and secondary education deserving pupils, especially because of their material and family situation, can receive grants.

As regards higher education, the report does not reply to the Committee's previous questions on the grant system and on equality of treatment for non-nationals.

The Committee observes from another source² that, according to the Act of 22 June 2000 (OJ A – no.49 of 28 June 2000), higher education students can receive financial assistance under the form of grants and/or loans, with or without the charge of interests. The proportion between the grant and the loan components depends on the financial and social situation of the students and of their family, as well as on the enrolment fees.

As far as equal treatment is concerned, the Committee also notes that the law provides that anyone is eligible for financial assistance if:

- he/she is a Luxembourg national;
- he/she is an EU national falling under the material scope of Articles 7 and 12 of Regulations no. 1612/68;
- he/she is a political refugee;
- he/she is a stateless person or resident in Luxembourg for five years and holds a Luxembourg diploma or one recognised as equivalent.

¹ CEDEFOP, Vocational education and training in Luxembourg, 2002, p.70, in www2.trainingvillage.gr/etv/publication.

² Ministry of Culture, Higher Education and Research site, under item financial assistance, www.mcesr.lu.

The Committee recalls that, according to the Appendix to the Charter, equality of treatment shall be provided to nationals of other Parties lawfully resident or regularly working on the territory of the Party concerned. This implies that no length of residence is required from students and trainees admitted to reside in any capacity other than being a student or a trainee, or having authority to reside in reason of their ties with persons lawfully residing, on the territory of the Party concerned before starting training. This does not apply to students and trainees who, without having the above-mentioned ties, entered the territory with the sole purpose of attending training.

To this purpose, the Committee recalls that it held that length of residence or employment requirements for vocational training financial assistance are contrary to the provisions of the Charter (Conclusions XIII-2, Austria, p.221; XIII-3, Finland, p.324; XIV-2, Belgium, p.146, Finland, p.238).

By requiring a residence length of five years for non-EU foreigners, the situation in Luxembourg is not in conformity with the Charter.

Finally, the Committee observes from another source¹ that, as for financial assistance for individuals following continuing vocational training, they may claim against tax any expenditure on their own. The types of expenses eligible are enrolment fees, learning material, travel and board and lodging.

Taxpayers are required to provide evidence that the continuing vocational training followed was intended to improve the skills required for their current work.

Training during working hours (Article 10§4 c)

Although the report is silent, the Committee observes from Act of 12 June 1999 on continuing vocational training (OJ A – no.92 of 14 July 1999) that time spent on supplementary training at the request of the employer is included in the normal working-hours. Training organised outside the normal working-hours entitles workers to compensation in leave of absence or in cash.

¹ CEDEFOP, Vocational education and training in Luxembourg, 2002, p.72, in www2.trainingvillage.gr/etv/publication.

Efficiency of training (Article 10§4 d)

The Committee notes from the Luxembourg report that the situation has not changed during the reference period.

Conclusion

The Committee concludes that the situation in Luxembourg is not in conformity with Article 10§4 of the Charter because equal treatment for nationals of non-EU Contracting Parties to the 1961 European Social Charter and of non-EU Parties to the Revised European Social Charter lawfully resident or regularly working in Luxembourg with respect to financial assistance for training is not guaranteed.

Article 15 – Right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement*Paragraph 1 – Vocational training arrangements for the disabled*

The Committee notes the information provided in the Luxembourg.

Vocational training for persons with disabilities

The Committee asks the next report to provide information on the total number of persons with disabilities in Luxembourg, and the percentage of these who are of school age and the percentage of working age.

The Committee wishes to know what steps, if any, have been taken or are planned to move away from a medical definition of disability towards a more social definition such as that endorsed by WHO in its international classification of functioning (ICF 2001).

Education and vocational training facilities

As regards basic compulsory education, according to the report and previous reports, children with disabilities are integrated wherever possible into mainstream facilities (although this may take the form of special classes within the mainstream school). Approximately 1 % of all persons of compulsory school age attend special schools. However these children do not receive a diploma at the end of their schooling only a certificate attesting that they have completed their compulsory education.

The Committee wishes to know whether general teacher training incorporates special needs training as an integral component.

Vocational training for young persons with disabilities may take place within the mainstream schooling facilities or within special schools, special schools have agreements with certain employers in their region which assist in the provision of training.

As regards vocational training for young persons following compulsory school and for adults with disabilities, this may take the form of preparatory or pre vocational training at special centres (either public or private). Training linked to employment comes under the service for

disabled workers (STH) which is under the Labour Administration. According to the report the STH provided funding for 296 persons to undergo training in 2000. It provided training for 16 persons in 1999-2000. It is unclear to the Committee whether those attending special centres, which appear to the Committee to be run by the Ministry for Education, are funded by the STH and whether persons may be placed in these special facilities by the STH.

In order to get an overall view of the situation the Committee asks for further information on the total number of persons with disabilities integrated into mainstream vocational training facilities and those in special facilities – including all types of special facilities, not just training organised or funded by the STH, as well as measures taken to support and assist persons with disabilities attend mainstream facilities.

The Committee notes that the budget of the Ministry of Labour and Employment, *inter alia*, for the training of persons with disabilities increased from 31 592 € in 1999 to 53 476 € in 2000.

Conclusion

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

Paragraph 2 – Placement arrangements for the disabled

The Committee notes the information contained in the Luxembourg.

Measures to promote employment

The Committee notes from previous and current reports that there exist several measures in Luxembourg to promote the employment of persons with disabilities:

- recruitment quota; employers not respecting the quota are obliged to pay a sum equivalent to 50 % of the minimum social wage in respect of each person not recruited, according to the current report no such sanctions were imposed in 1999 and 2000, as employers collaborated with the service for the employment of persons with disabilities (STH).

- recruitment allowance, wage subsidy, reimbursement of social security contributions; in 1999 such measures were paid in respect of 313 persons in 2000 in respect of 312 persons.
- adaptation of workplace; in both 1999 and 2000, two persons benefited from such measures.
- six days extra leave; 410 persons in 1999 and 450 persons in 2000 benefited from such measures (these figures only concern the private sector)

Self-employment; person with disabilities who wish to establish their own business may be eligible for full or partial exemption from social security contributions, in 2000 seven persons benefited from such a measure.

The Committee notes from the current report that there are 389 persons employed in sheltered employment facilities. The Committee seeks further information on their terms and conditions of employment, including wage rates in sheltered employment as well as information on the transition rate to the open labour market. It also wishes to know to what extent trade unions are involved in sheltered employment facilities.

In 2000, 2 179 persons were recognized by the Commission for guidance and retraining (COR) as being a worker with a disability, 1 697 were economically active, at least 450 were employed in the private sector and 389 were employed in sheltered workshops. The Committee asks the next report to indicate the total number of persons with disabilities in employment including the number of persons employed under the quota system, the number of persons with disabilities employed in the state sector as well as the total number of persons of working age with disabilities.

Protection against discrimination and dismissal

According to the report that there is no particular provision made to protect workers with disabilities from dismissal. The Committee recalls that it considers that the situation of persons with disabilities requires legislation protecting them from discrimination in employment. It therefore wishes to receive information on any such legislation in Luxembourg in the next report.

Conclusion

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

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