



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

European Social Charter

European Committee of Social Rights

Conclusions XVI-2

(Netherlands)

**Conclusions concerning Articles 1§4,
2, 3, 4, 9, 10, 15 of the Charter and
Articles 2 and 3 of the 1988 Additional
Protocol in respect of the Netherlands
(Kingdom in Europe) and Article 1 in
respect of the Netherlands Antilles
and Aruba**

Introduction

The European Committee of Social Rights' function is to judge the conformity of the law and practice of States party to the European Social Charter.

A presentation of this treaty as well as general comments formulated by the Committee figure in the General Introduction to the Conclusions (www.coe.int).

The European Social Charter was ratified by the Netherlands on 22 April 1980. The time limit for submitting the 15th report on the application of this treaty to the Council of Europe was 31 March 2002 and the Netherlands (Kingdom in Europe) submitted it on 17 July 2002. It concerns the reference period 1997-2000.

This report (www.coe.int) 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), right to vocational guidance (Article 9), right to vocational training (Article 10), rights of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement (Article 15) as well as Article 2 (the right of workers to be informed and consulted) and Article 3 (the right of workers to take part in the determination and improvement of the working conditions and working environment) of the Additional Protocol. The Netherlands (Kingdom in Europe) has accepted all of these articles. As regards the Netherlands Antilles and Aruba, the Netherlands are bound by Article 1.

In accordance with Article 23 of the Charter, the Netherlands' Trade Union Confederation (FNV) submitted comments on the Dutch report.

4 Conclusions XVI-2 – *Netherlands*

The present chapter on the Netherlands (Kingdom in Europe) contains 23 conclusions¹:

- 16 cases of conformity: articles 1§4, 2§2, 2§3, 2§5, 3§1, 3§3, 4§2, 4§4, 4§5, 9, 10§1, 10§2, 10§3, 15§1, articles 2 and 3 of the Additional Protocol
- 5 cases of non-conformity: articles 2§1, 2§4, 4§1, 4§3 and 10§4

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

As regards the Netherlands Antilles, the present chapter contains one conclusion : a case of non-conformity – article 1§4

As regards Aruba, the Committee needs further information in order to assess the conformity of the situation of article 1§4.

The next Dutch report will concern the accepted provisions of the hard core articles, that is Article 1 (right to work), 5 (right to organise), 6 (right to bargain collectively), 12 (right to social security), 13 (right to social and medical assistance), 16 (right of the family to social, legal and economic protection) and 19 (right of migrant workers and their families to protection and assistance), of the European Social Charter. It concerns the reference period 2001 – 2002 and should be submitted to the Council of Europe before 30 June 2003.

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.

Netherlands (Kingdom in Europe)

Article 1 – Right to work

Paragraph 4 – Vocational guidance, training and rehabilitation

The Committee takes note of the information contained in the Netherlands report and refers to its conclusions under Article 9 (right to vocational guidance), 10§3 (right to vocational training and retraining of workers), and 15§1 (right of persons with disabilities to guidance, education and vocational training), where it found the situation to be in conformity with the Charter.

The Committee concludes that the situation in the Netherlands is 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 Committee notes from the Dutch report that there have been no changes during the reference period as regards statutory provisions on daily and weekly working time. It reiterates that the provisions of the Working Hours Act on the so-called “flexibility regulations” do not contain sufficient guarantees for collective bargaining in order to protect workers.

In reply to the Committee’s question in the previous conclusion concerning labour inspection activities, the report states that the Labour Inspectorate monitors and enforces working time regulations, whether statutory or based on consultation. The monitoring activities systematically focus on high-risk sectors and the Labour Inspectorate investigates all complaints relating to a breach of the Working Hours Act. According to the monitoring survey for 2000 less than 1 % of enterprises exceed the consultation norm (application of statutory limits requiring the consent of the workers) for weekly working hours, including overtime. The report further states that only a small proportion of warnings issued by the Labour Inspectorate upon a first inspection are converted into a definite sanction after a follow-up inspection.

The Committee takes note of the detailed information on average working hours in practice. Average working hours, including overtime, of full-time workers was 39,2 hours per week in 1999 and average hours, including overtime, of all workers was 31,3 hours in 2000 compared to 31,7 hours in 1997. As regards working time fixed by collective agreement the average was 37,3 hours per week in 1997 and 37,1 hours in 1998.

The Committee concludes that the situation in the Netherlands is not in conformity with Article 2§1 of the Charter as the “flexibility regulations” of the Working Hours Act do not contain sufficient guarantees for collective bargaining in order to protect workers.

Paragraph 2 – Public holidays with pay

The Committee notes from the Dutch report that there have been no changes to the situation during the reference period as regards public holidays with pay. It therefore concludes that the situation in the Netherlands is in conformity with Article 2§2 of the Charter.

Paragraph 3 – Annual holiday with pay

The Committee notes from the Dutch report that the legislation on annual holidays was amended outside the reference period (in 2001). It asks that the next report contain full details on the new legislation.

Having noted observations submitted by the Netherlands' Trade Union Confederation (FNV) that Section 640§2 of Book 7 of the Civil Code permits workers to forgo the minimum annual holiday under certain circumstances, the Committee asks to receive the Government's comments in this respect. It recalls that this provision of the Charter does not permit the waiving of the annual leave, even with the consent of the worker.

Pending receipt of the information requested, it concludes that the situation in the Netherlands 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 Committee notes from the Dutch report that there have been no new developments as regards reduced working hours or additional holidays in dangerous and unhealthy occupations. The Government restates its view that existing legislation protects workers to such an extent that rules on reduced working hours or additional holidays are not necessary. It considers this view to be borne out by the fact that the wording of Article 2§4 was amended in the Revised European Social Charter.

The Committee recalls that the Netherlands is a Contracting Party to the 1961 Charter and it can only reiterate that as long as risks remain in certain occupations, the obligation imposed by Article 2§4 retains its urgency. It therefore again asks the Government to ensure protection of the workers concerned by the measures foreseen by this provision of the Charter.

The Committee concludes that the situation in the Netherlands is not in conformity with Article 2§4 as there is no provision for reduced working hours or additional paid holidays in dangerous and unhealthy occupations.

Paragraph 5 – Weekly rest period

The Committee notes from the Dutch report that there have been no new developments during the reference period as regards the weekly rest period.

The report confirms that under the Working Hours Act, Sunday work is at the outset prohibited. However, derogations from this principle are possible when the nature of the work makes it inevitable or when required by the circumstances of the enterprise. Where work is performed on Sunday, workers must be given compensatory rest at another time during the following week. The report also emphasises that the maximum number of consecutive days which may be worked before being given at least 60 hours of continuous rest is 6,5 days (Section 5.3§2 of the Working Hours Act). No information is available on which sectors make particular use of this provision.

The Committee notes that about 16 % of the labour force works regularly on Sundays whereas about 73 % never works on a Sunday. Sunday work is most widespread in agriculture and in the fishing sector where 39 % of the labour force do it regularly.

The Committee concludes that the situation in the Netherlands 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 appearing in the Netherlands report.

Content of the regulations on occupational health and safety

The Committee examined the general scope of the regulations in Conclusions XIV-2 (pp. 540 to 542). The report contains the information requested on the content of preventive and protective measures in Dutch regulations:

Protection against dangerous agents and substances:

– Protection of workers against asbestos. The Committee took note in its previous conclusion of the general ban adopted in the Netherlands concerning : production, import, use, supply and sale of asbestos and any product containing it, including recycling of asbestos-containing waste (Decree No. 60 of 1997 and Order No. 63 of 1997). In the event of exposure to asbestos, threshold concentrations of asbestos fibres have been set at a lower level than that provided by Council Directive 83/477/EEC of 19 September 1983¹ on the protection of workers from the risks related to exposure to asbestos at work, as amended by Directive 91/382/EEC of 25 June 1991². In the light of this information, the Committee considers that the situation is in conformity with Article 3§1 of the Charter in this respect.

– Protection of workers against ionising radiation. An order on radiological protection (Order of 16 July 2001) was adopted during the reference period, in order to bring Dutch legislation 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. The Committee recalls for the situation to be in compliance with Article 3§1, states must offer effective protection against the risks related to ionising radiation, which involves adjusting their regulations

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.

to take account of the recommendations of the International Commission on Radiological Protection (ICRP). It considers that these recommendations are sufficiently reflected in the dose limits in Directive 96/29/Euratom and that the situation in the Netherlands is therefore in conformity with Article 3§1 in this regard.

Protection of non-permanent 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 states that the health and safety regulations apply to all employees, including those on fixed-term contracts.

The Committee notes from another source¹ that non-permanent work accounted for 9,7 % of total employment in the Netherlands, of which 3,4 % was temporary work. Most non-permanent work is to be found in the agriculture, commerce, hotel and catering industries. According to this source, a study had been made on the working conditions of temporary workers which showed in particular that these workers were more exposed to noise and physically restricting conditions than the average worker².

The Committee points out that for the situation to be in compliance 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. It indicates that 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 Dutch authorities to indicate how the regulations apply the Charter in this regard.

1 Non-permanent employment, quality of work and industrial relations, study conducted in 2002 by the European Industrial Relations Observatory On-line (consulted on the site www.eiro.eurofound.eu.int).

2 *Arbeidsomstandigheden 2000, Monitoring via personen* (2001) CBS/SZW, Den Haag.

Personal scope of the regulations

The Committee had adopted a negative conclusion since control cycle IX as self-employed workers were not covered by occupational health and safety regulations. In the light of past information which it had noted in the previous conclusion and of the information appearing in the present report, the Committee considers that it is able to re-examine the situation.

It notes first of all, that the Dutch general framework legislation on working conditions (Act No. 664 of 8 November 1980) applies to those who, while not workers or employees within the meaning of the act, perform work under the authority of another person (Article 1, subsection 2); the Committee understands that this wording takes into account the situation of “false” self-employed workers who undertake employment despite the absence of a work contract. Secondly, in accordance with Article 28 of this Act, rules adopted pursuant to Section 24 may be applied to the owners or managers of transport services and work establishments and equipment (Article 24 stipulates an employers’ specific obligations, that is it lists protective and preventive measures which must be adopted concerning the workplace and work equipment as well as measures to be taken against risks to the hygiene and health of workers). Thirdly, in application of Section 9.5 of Decree No. 60 of 15 January 1997 safety requirements regarding high-risk employment listed in the report apply equally to self-employed workers (work with electrical installations, asbestos, explosives, etc). Fourthly, the scope of several texts has been extended to cover self-employed workers, in particular: the Decree on Factories and Worksites, Dangerous Tools and Dangerous Substances Acts, Decree on Safety in Agriculture, Decree on Safety in Commercial and Non-commercial Services. Finally, application of the provisions of the framework Act and Decree on Safety in the Construction Sector include coverage under Article 2.39 of self-employed workers.

The Committee recalls that for the purposes of Article 3§1, all workers, including non-employees, must be covered by health and safety at work regulations (Conclusions I, p. 8 and Conclusions II, p. 182). It has consistently maintained this interpretation, on the grounds that employed and self-employed workers are normally exposed to the same risks in this area. The Committee notes that concerning the Netherlands, regulations currently apply to self-employed workers covering most of the risks to which they may be exposed. Considering

that the general scope of application of the regulations for self-employed workers is clearly to ensure that greater effect is given to the rights guaranteed under Article 3§1, it considers that the situation in the Netherlands as described above is in conformity with this provision.

In response to the Committee's request, the report specifies that in application of the regulations governing occupational health and safety, the term « worker » equally covers domestic staff.

Conclusion

The Committee concludes that the situation in the Netherlands is in conformity with Article 3§1 of the Charter.

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

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

Employment injuries and occupational diseases

The Committee understands from the appendices to the report that global work-related statistics are not, or no longer developed in the Netherlands, a fact which is due to change as from 2000. In the absence of the necessary statistical data, the Committee defers its conclusion as concerns the development of accidents in the workplace and occupational disease, and it asks that the next report contain all the statistics that will have been developed by the Central Bureau of Statistics (CBS) as from 2001.

In response to the Committee's question, the report confirms that in accordance with the Working Conditions Act as amended in 1998, employers must report all fatal accidents or accidents causing serious physical or mental injury to the Labour Inspectorate, and occupational diseases must be reported to the Netherlands Centre for Occupational Illness.

Activities of the labour inspectorate

The Committee examined the general organisation of inspection services in Conclusions XIV-2 (p. 545). The report indicates that in 2000, the Labour Inspectorate (which employed 787 full-time workers

in 2000) carried out 41 205 visits in 573 780 enterprises covering 36 % of the total workforce in the Netherlands (19 % in the construction sector, 23 % in sales, 25 % in the service sector, 7 % in agriculture and 21 % in industry). Despite the Committee's request, the report does not contain similar information for each year of the reference period ; as a result, the Committee is unable to assess the development of the situation. However, basing its assessment on these figures alone, in particular the ratio of visits/workers, the Committee considers that the number of inspections is sufficient and may be judged in conformity with Article 3§2 of the Charter.

Spot checks carried out in 2000 brought to light violations in 58 % of cases ; in 5,6 % an administrative fine was imposed or a report drafted. These figures are 68 % and 11,5 % respectively as concerns investigations as a result of complaints, and 48 % and 36 % as concerns investigations following accidents in the workplace. The Committee asks that the next report contain similar data for the new reference period.

In reply to the Committee's question, the report states that concerning inspections carried out in the light of Article 9.5 of Decree No. 60 of 15 January, no records are kept on whether these inspections concern employees or self-employed workers.

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 examined the structures and procedures for consulting at national level and within the firm in the previous conclusion (Conclusions XIV-2, p. 546), and concluded that these were in conformity with Article 3§3 of the Charter. However, it had deferred its conclusion pending receipt of information on the practical application of consultation at national level. In this respect the report indicates that social partners are regularly and fully informed within the Safety, Health and Welfare Committee, a tripartite body.

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

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

In its examination of the Dutch report the Committee has taken into account the detailed explanations presented by the Government during the bilateral meeting with the Committee on 29 June 1999.

The report states that in 1997 the net annual average wage represented 14 368 € increasing to 15 610 € in 2000. In comparison, the net value of the statutory annual minimum wage for workers aged 23 or over was 10 012 € in 1997 and 10 777 € in 2000 corresponding in both years to about 70 % of the net average wage. About 4 % of the all workers were in receipt of the minimum wage in 2000. The Committee considers that the minimum wage for the age group concerned meets the requirements of the Charter.

However, the Committee recalls that under the Minimum Wage and Minimum Holiday Allowance Act as amended workers under the age of 23 years are entitled only to a percentage of the adult minimum wage ranging from 30 % for 15-year olds increasing to 85 % for 22-year olds. A worker aged 18 years was thus entitled to 45,5 % of the adult minimum wage which in 2000 represented a net value of about 4 904 € annually or a mere 31,4 % of the net average wage. Notwithstanding the Government's arguments, the Committee can only reiterate that such a wage is too low to be considered fair in the meaning of this provision of the Charter.

In reply to the Committee's question in the previous conclusion, the report states that the Ministry of Employment and Social Affairs has not made use of its prerogative to set wage levels below the minimum wage in case of workers belonging to a category, "which it shall define and employed in firms, branches or professions whose continued operation or whose scale of activity it considers to be seriously threatened."

Finally, the report states that the statutory minimum wage does not apply in the public sector. The lowest pay scale fixed by collective agreement in the public sector is considerably above the minimum wage and only few workers are paid according to the lowest scales.

The Committee concludes that the situation in the Netherlands is not in conformity with Article 4§1 of the Charter as the statutory minimum

wage of workers aged between 18 and 21 years falls below the requirements of this provision.

Paragraph 2 – Increased rate of remuneration for overtime work

On the basis of the information provided in the Dutch report and in previous reports, the Committee notes that the situation with regard to the workers' right to an increased rate of remuneration for overtime work, which it previously considered to be in conformity with the Charter, has not changed.

Furthermore, it notes that, in reply to its general question on the effect of flexibility measures on remuneration and compensation for overtime work, the report states that where weekly working hours are increased by collective agreements these agreements automatically provide for additional compensatory leave periods.

It therefore concludes that the situation in the Netherlands is 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 contained in the Netherlands report.

The right to equal pay is enshrined in Section 7:646 of the Civil Code, which applies to relations between employers and employees in general, and in Section 1a(1) of the 1980 Equal Opportunities Act (WGB), which applies to public servants. The Civil Code stipulates that an "employer may not differentiate between women and men when drawing up an employment contract, [...], determining employment conditions [...]". The WGB contains a similar provision.

Section 5 of the 1994 Equal Treatment Act (AWGB), which covers all areas of discrimination, not just sex discrimination, prohibits differentiation with regard to terms and conditions of employment in the public and private sectors. All discrimination, direct and indirect, is prohibited. As a result of this open wording, this provision applies also to other parties concerned by terms and conditions of employment, such as those involved in collective bargaining.

Any clause at variance with either of these texts is considered null and void.

For the purpose of comparing employment conditions, Section 7 of the WGB stipulates that comparison should be based on “the salary normally paid in the firm where the worker on whose behalf the comparison is being made is employed, to an employee of the other sex for work of equal value, or where there is no such work, for work of comparable value”. The comparison is limited to the firm. The term salary refers to the remuneration payable by an employer to an employee in exchange for his/her work, but does not include benefits or rights linked with a pension scheme. Section 9, Sub-section 2 of the WGB stipulates that account should be taken of elements of wages other than cash in accordance with the market value that can be assigned to them.

The Committee has always considered that the principle of equality should cover all elements of pay. It considers that the idea of remuneration in the Charter, for the purpose of the application of the principle of equality between the sexes, covers “basic or minimum wages or salary plus all other benefits paid directly or indirectly in cash or kind by the employer to the worker by reason of the latter’s employment”. It considers that the exclusion of benefits or rights linked with a pension scheme from the notion of pay and therefore the application of the principle of equal treatment is too extensive and as a consequence not in conformity with Article 4§3 of the Charter.

The report refers to plans to amend the above-mentioned Section 7 to allow comparisons between different branches of the same firm. However, this amendment was found to be unnecessary in practice, as the Equality Commission’s interpretation of the notion of the firm (see *supra*) is already very broad. The Committee wishes to know the Commission’s interpretation.

Task evaluation is of the essence, Section 8 of the WGB stipulating that “the work shall be evaluated using a reliable task evaluation system – wherever possible, the system ordinarily used in the firm where the employee concerned works. Where no such system exists, the work shall be evaluated fairly, in accordance with the information available”. Task evaluation systems are widespread and exist in about

half of all firms. The Committee notes from another source¹ that task evaluation is perceived as one means of achieving equal pay for equal work. In 2000 the State Secretary for Social Affairs published research aimed at producing more objective, gender-neutral comparisons. In the opinion requested of them by the Labour Foundation (*Stichting van de Arbeid*), concerning the plan developed to achieve equal pay (NAP 2000), management and labour acknowledged their great responsibility in this field, and proposed a check-list to be used by the parties in negotiations at branch and firm level. This check-list details a number of potentially discriminatory factors.

According to the report, the remuneration gap between women and men, all sectors combined, was 23 % in 1998, compared with 26 % in 1993. As in the past, much of this difference in remuneration is explained, in decreasing order, by differences in the posts held, full-time/part-time work, age, experience, etc. Once these factors have been eliminated, the difference in pay was about 7 % in 1998 (compared to 9 % in 1993). The discrepancy was much smaller (4 %) in the public sector. While aware that statistical comparisons in this field are not very reliable, the Committee notes that the remuneration gap in the Netherlands is clearly larger than in most other European Union member states.

In its conclusion on Article 1 of the Additional Protocol to the Charter (Conclusions XV-2, p. 378), the Committee noted that one of the reasons for this difference in pay was that women worked part-time more often than men. In the Netherlands, about 15 % of collective labour agreements still do not apply to employees working “short part-time” (less than twelve hours a week).

The Committee considers that the principle that there should be no discrimination between the sexes implies that the rule of equal pay for full-time and part-time workers should be observed, since most of the latter are women and this can give rise to indirect discrimination. Accordingly, the Committee wishes to receive answers to the following questions:

1. EIRO Comparative study on gender pay equity: the case of the Netherlands, consulted on the Internet site of the European Industrial Relations Observatory (www.eiro.eurofound.ie).

- Is the hourly wage of part-time workers employed in the same type of job or in a similar job identical, as a rule, to the hourly wage of full-time workers ?
- Are there any exceptions to this principle and, if so, on what grounds?
- If pay increases with length of service, how is the latter calculated in the case of part-time workers?
- Are certain components of pay, such as premiums, bonuses, entitlements and benefits associated with complementary insurance schemes, paid as a result of employment, reserved for full-time workers?

Anyone who considers that their right to equal treatment has been violated may take the matter before a cantonal court or, if they are public servants, before the administrative tribunal. Collective action is also possible (Section 20a(1) of the WGB).

The law stipulates that when a person considers that he or she has been discriminated against and establishes evidence of possible direct or indirect discrimination, it is for the defendant to prove that there was no violation of the equal treatment principle.

The Equality Commission, composed of independent experts, is also empowered to deal with complaints, carry out investigations and hand down decisions when discrimination is alleged or suspected. Private individuals, trade unions and interest groups may all lodge complaints, request opinions and take part in proceedings before the Commission. If the Commission finds there has been discrimination, it may initiate court proceedings. The Commission's decisions are not binding.

Victims of wage discrimination may demand that their employer pay them the same wage as that paid to a member of the opposite sex for work of equal value. Civil sanctions (Civil Code provisions on civil liability) and criminal sanctions (Section 429, Sub-section 4 of the Criminal Code) are also available in the event of discrimination. Under the Criminal Code the offender is punishable by up to two months' imprisonment and a fine.

Pursuant to Section 8 of the AWGB and Section 7:647 of the Civil Code, discriminatory termination of the employment relationship, including dismissal as a retaliatory measure, in both the public and the private sector, is subject to annulment if the employee appeals against

it within two months. If the court declares the notice given to be null and void, the employment contract is still valid. No “nullity sanction” applies if the employee suffers other disadvantages than dismissal on account of action to secure equal treatment. Protection is, however, offered in such situations by the general rules of civil law on tort and good faith.

The Committee concludes that the situation in the Netherlands is not in conformity with Article 4§3 of the Charter as benefits or rights linked to a pension scheme are excluded from the notion of pay and therefore from the application of the principle of equal treatment.

In accordance with Article 14§2 of the Committee’s Rules of Procedure, a dissenting opinion of Mrs. M. JAMOULLE is appended to this conclusion.

Paragraph 4 – Reasonable notice of termination of employment

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

It notes that, during the reference period, the aspects of Dutch legislation that were previously found not to be in conformity with the Charter have been significantly amended with the entering into force of the Flexibility and Security Act of 1998.

Pursuant to the said Act, all workers (including part-time workers and home workers) shall be granted at least one-month notice of termination, regardless of their employment status. One month notice is added for each additional 5-years’ service period with the same employer.

The Committee also notes that notice of termination of employment is not required during probationary periods. It therefore asks whether the length of probationary periods is determined by law or by other means and what is its average duration.

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

Paragraph 5 – Limitation of deduction from wages

On the basis of the information provided in the Dutch report and in previous reports, the Committee notes that the situation with regard to the limitation of deductions from wages, which it previously considered to be in conformity with the Charter, has not changed.

It therefore concludes that the situation in the Netherlands is in conformity with Article 4§5 of the Charter.

Article 9 – Right to vocational guidance

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

Vocational guidance in the labour market and within the education system

The report indicates that, during the period of reference, there have been no main developments in both the education and the labour market vocational guidance systems. The Committee, therefore, refers to its Conclusions XIV-2, p.554, for the description of the Dutch vocational guidance system.

On the contrary, since 2002, i.e. outside the reference period, the situation has basically changed in the labour market as a consequence of the entry into force of the Work and Income (Implementation Structure) Act. The main features of the new system are: the abolishment of the Employment Service and its replacement with the Centre for Work and Income (CWI), the partial privatisation of the old Employment Service, and the division of tasks among public and private parties as far as the provision of vocational guidance is concerned. Basic guidance will be provided by the CWI, while private parties (Manpower and KLIQ, the old independent reintegration agency of the Employment Service) will take care of reintegration services for public-sector clients. All services will, however, remain free of charge for the final user.

The Committee notes that, being outside the reference period, it will consider this reform in detail in the next supervision cycle; accordingly, it requires the next report to provide an up-to-date description of the system.

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

In reply to the Committee's question, the report makes clear that, in the reference period, guidance services were given for free. A contribution could be asked only if the service required was not connected with reintegration.

Likewise, the report clarifies that the introduction of the "demand-directed funding" for the running of the RBAs (Regional Employment Services Boards) and the AOBs (Training and Career Advisory Centres) meant that the public-sector clients purchase services on a

“demand-driven” basis, structural institutional funding being no longer advisable. The same funding system applies in the context of the reform mentioned above.

With respect to vocational guidance in the education system, the Committee asks if students can choose to follow or not the advice received through guidance. If the advice is compulsory, the Committee asks which are the consequences in case of non-compliance by the student.

The Committee observes that the figures about expenditure available in the report concern the functioning of the new CWI and are, consequently, outside the reference period.

Dissemination of information

The report indicates that the following information about vocational guidance is available from the CWI for both counsellors and jobseekers: vacancies, occupations, training courses, labour market, career guidance, self-analysis, help for job applications. Information is spread through databases, websites and workshops.

Nationals of the other Parties to the Charter

Answering the Committee’s question, the report indicates that EU nationals and other foreigners lawfully residing in the Netherlands who have permission to work (sticker in the passport) can register with the CWI and then make use of the CWI services, including guidance.

The Committee asks confirmation as to whether this implies that all the 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 the country are given access to vocational guidance.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in the Netherlands 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 Dutch education system consists of primary education, secondary general and vocational education, higher education and adult education. The Committee takes note of the information contained in the Dutch report concerning vocational and adult education.

The Committee recalls that Article 10§1 covers all forms 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; 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 the Netherlands has accepted Article 15, the measures concerning training of people with disabilities are dealt with under that provision.

Secondary education

From other sources¹, the Committee observes that, in the Netherlands, secondary education encompasses schools providing pre-university education (VWO), senior general secondary education (HAVO), and pre-vocational secondary education (VMBO, which has recently incorporated pre-vocational education, VBO). All three types of secondary education are for children aged 12 and over and all begin with a period of basic secondary education.

VMBO organises in three different programmes: a theoretical, a practical and a combined theoretical and practical programme. Under the practical programme a large part of the course is spent on work placement. To this purpose, the government entered into agreement with social partners to raise the number of training places available.

1. Education, Culture and Science in the Netherlands, Facts and Figures 2002, Dutch Education Ministry website, (www.minocw.nl).

The number of pupils in secondary general and vocational education slightly grew from 884 800 in 1997 to 890 000 in 2000, likewise the number of teachers which increased from 62 000 to 67 300.

Higher education

The Committee observes from another source¹ that, after secondary education, pupils move on to senior secondary vocational education (MBO) or higher education.

MBO is divided into a vocational training programme (BOL) and a block/day release programme (BBL, previously apprenticeship). The Committee refers to its Conclusions XIV-2, p. 557 for a description of the system. According to the report, MBO is organised into four training sectors:

- personal and social services and health care,
- business,
- engineering and technology,
- agriculture.

Since the report provides figures outside the reference period, the Committee observes from another source² that the total number of participants in MBO was 420 800 in 1996-97 and 434 800 in 1999-2000. Staff grew from 30 800 in 1996 to 34 300 in 2000.

Higher education encompasses higher professional (HBO) and university (WO) education. More than ninety percent of students enrolled in pre-university education (VWO) subsequently follow higher education (i.e. about 20 % of the 17-20 year old). Among them, 60-65 % enrol in university and 30-35 % in higher professional education (HBO).

According to the report, MBO qualifications of at least level four (middle-management training) give access to higher professional education (HBO), but not to university. To enter university MBO certificate-holders shall first obtain a HBO diploma. Persons without the requisite previous education have the option of sitting a special

1. *Ibid.*

2. *Ibid.*

entrance examination to gain access to university. The report indicates that developments are foreseen to standardise the procedure for admission without diploma, as well as efforts to improve the interfaces between the various levels of vocational education. The Committee requires to be informed about this in the next report.

The report indicates figures on total expenditure devoted to secondary vocational education only for 2001, i.e. outside the reference period. OECD rates total expenditure for education as a percentage of the GDP in 1998 to 4,6 %, which is a decrease in comparison to the 1994 figure of 5,2 %. From another source¹, the Committee notes that expenditure for secondary education grew from 3,1 million € in 1996 to 4,2 million € in 2000; expenditure for higher university education from 2,3 to 2,7 million €, and expenditure for higher professional education from 1,1 to 1,3 million €.

As far as equality of treatment for 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 the country is concerned, according to the Adult and Vocational Education Act and the Higher Education and Research Act, access is open to persons who have the Dutch nationality or are treated as Dutch nationals on the basis of some other provisions. Foreigners up to the age of 18 also have access, while foreigners aged 18 or over have access if they are lawfully resident in the Netherlands.

Conclusion

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

Paragraph 2 – Promotion of apprenticeship

The Dutch report refers to its previous report as far as the organisation of apprenticeship is concerned (see Conclusions XIV-2, p. 558). The

1. Education, Culture and Science in the Netherlands, Facts and Figures 2002, Dutch Education Ministry website, (www.minocw.nl).

block or day release scheme (BBL, previously apprenticeship) is part of senior secondary vocational and adult education (MBO).

The Committee observes the information concerning tax releases for employers providing training places in the BBL framework. According to the report, for a period of four years employers can claim a reduction in salaries tax and in the social insurance contributions they pay in respect of every employee who is in a block or day release scheme. The four-year reduction also applies to graduate employees recruited as research assistants or trainee researcher to conduct research for a doctorate. Two-year tax reductions apply to higher vocational degree students following a dual course combining training and employment.

The condition to claim tax reduction is that the gross pay of these employees shall not be over 18 914 € yearly, the reduction amounting to 2 400 € per year.

With effect from 2002, tax reductions can also apply to former unemployed people aged 23 or over with no basic qualifications. Employers who train these people can claim a contribution towards costs amounting to 1 529 € per employee.

The Committee observes from another source¹ that participants in BBL grew from 103 500 in 1997 to 131 900 in 2000. According to the report, 80 % of the apprentices are eligible for tax reduction.

Dual courses in higher professional education, combining training and employment, started in 1998. The report indicates that, in 2002, there are 6 865 students taking such courses. The number is expected to grow.

Finally, in 2000, there were 4602 research assistants (AIOs) or trainee researchers (OIOs) who were eligible for tax reduction.

The funding of apprenticeship is shared among the State, which pays for the theoretical component of block or day release schemes, and by the employer, who against favourable tax treatment pays for the practical component.

1. Education, Culture and Science in the Netherlands, Facts and Figures 2002, Dutch Education Ministry website, (www.minocw.nl).

According to the report, equality of treatment is ensured since BBL schemes are open to all Dutch nationals and to 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 the Netherlands.

Due to the evolution of the legal and practical framework of the organisation of apprenticeship at national level, the Committee has sometimes had difficulties in evaluating its conformity with Article 10§2 of the Charter. As a consequence, the Committee asks the next report to provide information on the following topics: length of the apprenticeship and division of time between practical and theoretical learning; selection of apprentices; selection and training of trainers; remuneration of apprentices; termination of the apprenticeship contract.

Pending receipt of the information requested, the Committee concludes that the situation in the Netherlands 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 Dutch report provides information about recent developments in continuing vocational training for adults.

The Committee observes that, as a consequence of the implementation of the Adult and Vocational Education Act of 1996 and the new Employment Service Act, the situation of training providers has been radically changed. The principle underneath the reform was to make the provision of training services becoming a matter of free competition.

On the one hand, the process of combining all the existing colleges and institutes into Integrated Regional Training Colleges (ROCs) was set in motion. On the other hand, the three existing institutes devoted

specifically to the training of unemployed (CVs, VVSs and CBBs) have seen their role changing. They are no longer providing only training for the unemployed, but they have become either training enterprises competing on the training services market (CBBs and VVSs), or they have been incorporated into the Employment Service (CVs).

Adults may also avail themselves of the adult education system, which comprises general secondary education (VAVO, second chance education for HAVO and VWO), adult basic education (meant as training courses aimed at furthering self-reliance and providing a broad basic education), and Dutch as a second language (DSL). The number of participants decreased from 193 600 in 1996/97 to 158 300 in 1999/2000.

Employed people

Training for employed people is primarily the responsibility of social partners and collective agreements are the framework where such training is organised.

The Dutch government encourages training for the employed through tax reductions for employers. One example is the training allowance, whereby a percentage of the training costs may be deducted from taxable profits by employers in the profit sector or from salaries tax and social insurance contributions by employers in the non-profit sector. Extra allowances are available for employees over 40 years. Tax reductions also apply in the framework of block or day release schemes (previously apprenticeship, see conclusion on Article 10§2).

Over the 1994-99 period the ESF has provided 1.45 billion € for training programmes, which benefited 100 000 employees.

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.

Unemployed people

From Eurostat, the Committee observes that in the period 1997-2000 unemployed people decreased from 373 700 to 224 200, that is from 4,9% to 2,8% 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 are without work for 12 months or more) as percent of total unemployment was, respectively, 49,1 % in 1997 and 43,5 % in 1999. In 2000, the long-term unemployment rate with respect to the active labour force amounted to 0,8 %.

The report indicates that the new Employment Service Act has introduced a outcome-oriented view of the reintegration market for unemployed people. The budget of the Employment Service was divided into a “basic contribution” and a “performance-related contribution”. Basic contribution is meant to finance basic services, such as provision of information to employers and jobseekers, registration of vacancies and of jobseekers. The performance related contribution is used for reintegration services, that is for the activities involved in preparing reintegration plans which go beyond mere labour market measures to which jobseekers may apply. These services cover issues such as training, assessment, and social activation. Today, they can be offered not only by the Employment Service, like it was in the past, but by a variety of institutions operating in a free commercial reintegration market. These institutions may be ROCs, CBBs, VVSs, etc.

The report also states that a particular Employment Service training measure, the Sectoral Training Grants Scheme for the Unemployed, has survived up to now. This scheme subsidises sector-specific training for the unemployed.

The 1998 Jobseekers Employment Act provides for a comprehensive service for young people up to the age of 23 and offers the possibility of training young people who are unable to find a job on their own and/or subsidise work experience places with employers. In 1998, there were 42 500 people who worked in a Jobseeker Employment Scheme job and 5 000 people were in a work experience places subsidised under the Jobseekers Employment Scheme. Combination with block or day release is also possible.

An additional scheme for the unemployed has been established by the Unemployment Benefits Act, which offers the option of channelling resources from the general unemployment fund into short-term training aimed at quickly getting the workers concerned back to work. In 2000, the number of available places was 1 000.

From another source¹, the Committee observes that, in the Netherlands, the activation rate of unemployed people was 34 % (134 560 participants) in 1999 and 39 % in 2000. With respect to training measures it was 16,4 % (64 370 participants) in 1999.

The Committee asks whether one of the goals of the liberalisation of the training services market is to raise the activation rate in relation to training measures and if results are already appreciable.

In reply to the Committee's previous question on equal opportunities, the report indicates that several measures are being taken to improve the number of women in employment and the reconciliation of work and family life. Working women are the 59 % of the labour force and 42 % of them work part-time (EU average is 20 %).

In order to increase the female participation rate, an important effort has been done to ensure a considerable expansion in childcare facilities and after-school supervision. However, the Committee is rather interested to know about the existence of vocational training schemes for women re-entering the labour market after child-birth or women who have never worked.

The reports indicates that, according to the in-company training statistics published by Statistics Netherlands (CBS), 41% of workers in the private sector, over 1.5 million people, did one or more training courses in 1999.

According to the report, it is up to the collective agreements to include arrangements for leave for the purpose of training. Many of these agreements provide for paid leave for training. The Career Break (Funding) Act also offers employees financial assistance to take leave for the purpose of studying or caring their family.

Being figures on State total expenditure for continuing training missing, the Committee observes from another source² that

1. EC, Joint Employment Reports 1999, 2000 and 2001, (www.europa.eu.int). In 1999, 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.

2. Education, Culture and Science in the Netherlands, Facts and Figures 2002, Dutch Education Ministry website, (www.minocw.nl).

expenditure for adult education was stable at around 200 million €. Expenditure for integration courses amounted to 69 million € in 1997 and to 90 million € in 2000. The Committee, however, requires the next report to provide information on the total amount of expenditure for continuing training.

The Committee also requests information on 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 continuing training.

According to the report, equality of treatment is ensured since continuing vocational training is open to all Dutch nationals and to 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 the Netherlands.

Conclusion

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

Paragraph 4 – Encouragement for the full utilisation of available facilities

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

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

The report indicates that fees are charged for secondary vocational education and higher education, education being free up to the age of sixteen. These fees are in principle covered by the student finance system.

The Committee observes from another source¹ that the student finance system is organised by two different acts: the Student Finance Act (WSF) and the Study Costs Allowances Act (WTS).

1. Education, Culture and Science in the Netherlands, Facts and Figures 2002, Dutch Education Ministry website, (www.minocw.nl).

The Student Finance Act (WSF) applies to full-time students in higher professional education and university education, and to full-time participants over the age of 18 in vocational training programmes under the Adult and Vocational Education Act. All students aged between 18 and 30 years are eligible.

According to the report, financial assistance is divided into three components: a basic grant (for everyone), a supplementary grant (for children of parents with low incomes), and a loan (for everyone). The exact amount of each component depends on several factors: whether the student attends secondary vocational education or higher education, whether the student lives at or away from home, and whether the student is insured privately or with a health insurance fund. The amount of the loan also depends on whether the student has already received a supplementary grant. The loan shall be repaid within 15 years.

As far as equal treatment is concerned, the report explains that anyone is eligible for financial assistance if:

- he/she has Dutch nationality;
- he/she does not have Dutch nationality, but is resident in the Netherlands and benefits from a treaty or a decision by an international organisation or;
- he/she does not have Dutch nationality, but is resident in the Netherlands and belong to a group of people, designated by order in council.

The report adds that a proposal is currently being worked to internationalise financial assistance for students; this will include revising the nationality requirement.

The Committee observes that, as it stands, equal treatment with respect to financial assistance is not guaranteed in practice to all 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 the Netherlands, but only to EU nationals. The fact that a proposal to reform the system, aiming at lifting the nationality requirement, is currently on-going witnesses that, generally speaking, non-Dutch nationals are discriminated.

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).

The 1996 Study Costs Allowances Act (WTS) provides for study costs allowances paid to young people under 18 who are in full-time secondary education or attending full-time courses of vocational training (BOL); to young people aged 18 and over who are in full-time secondary education; to people aged 18 and over who are on part-time or special education.

Training during working hours (Article 10§4 c)

Since there is no information in the report, the Committee asks whether time spent on supplementary training at the request of the employer is included in the normal working-hours.

Efficiency of training (Article 10§4 d)

As far as the evaluation of adult and vocational education is concerned, the report indicates that this is primarily the task of the educational institutions. They are responsible for ensuring the quality of education and shall discharge their duty through biennial quality assurance reports. External quality monitoring is carried out by the Education Inspectorate, which reports annually to the Education Minister. The latter can then adopt the necessary measures to improve the quality of education.

Steps are also taken to improve the quality of practical training in the workplace. Several bodies, among which the social partners and the Adult and Vocational Education Council, work to the draft of a national reference framework.

The Committee asks which are the existing procedures to assess higher education.

Conclusion

The Committee concludes that the situation in the Netherlands 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 the Netherlands 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 disabled persons*

The Committee notes the information in the Dutch report.

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

Education and Vocational Training

The Committee recalls that it had noted that in 1992 there were 110 529 pupils in special education and had asked for further information. The report states that this figure relates to all special education; special primary education and special secondary education. Both general and vocational subjects are available at secondary level. Pupils can transfer into mainstream schooling and can continue to receive assistance and supervision from the special school's teaching staff. According to the report it is not possible to specify how many pupils are within the special secondary education system undertaking a vocational orientated programme. The Committee nevertheless wishes to receive information on the number of pupils in special secondary education and the number of pupils with disabilities integrated into mainstream secondary schools.

Regional training centres are responsible for providing vocational training. They receive an annual budget of 1,1 million € to develop their own disability policies. Several projects have been launched to improve the integration of persons with disabilities into ordinary vocational education, involving cooperation between the specialized training institutes and regional training centres in order to increase the expertise of the regional training centres. The first projects involved only a small number of regional training centres but subsequently the projects were extended to encompass all training centres. Since 2000 a structural policy for persons with disabilities has been in place; in order to facilitate the individual training centres develop their own disability policy (partly to ensure that persons with disabilities have options within mainstream education). In order to ensure national coordination as to the quality of working methods and expertise the

training centres have established a National Disabled Platform. A study of the problems that people with disabilities encounter in vocational education has been started. The Committee wishes to be informed of the results and conclusions. It also requests information on the number of persons with disabilities attending mainstream vocational training.

The Committee also notes that according to the report, under the Equal Treatment (Disabled Persons) Bill persons with disabilities will be able to legally require educational establishments to allow them access to education and to make the necessary provision. The Committee wishes to receive further information on the legislation and its effects in the next report.

Training is also provided for persons with certain types of disability in five specialized training institutions. The State Secretary for Social Affairs and Employment fixes their budget which in 2002 amounted to 11 130 244 €. The Ministry of Education, Culture and Science also makes a total of 545 000 € available to the institutes annually. The admission procedure involves an assessment of the vocational skills of the individual. These specialised institutes have 360 places, each offering 1 600 hours of training. Approximately 686 people underwent training in 2000. The Committee asks whether the number of places is sufficient.

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

The Committee notes the information provided in the report on training for teachers, it asks in this respect whether general teacher training incorporates special needs education as an integral component.

As regards the budget of vocational training for persons with disabilities, the Committee notes that 70 million € was spent on training in 2001. It asks whether this is the total amount spent (in both the specialized training institutes and the regional training centres) on training for persons with disabilities or whether this only represents the amount spent on the re-integration under the Work Disabled Act.

Conclusion

The Committee concludes that the situation in the Netherlands is in conformity with Article 15§1 of the Charter.

Paragraph 2 – Placement arrangements for disabled persons

The Committee notes the information in the Dutch report.

Measures to promote employment

The Committee recalls that in its previous conclusion it had taken note of the various measures in force encourage the integration of persons with disabilities into the ordinary work environment. It had asked for information on the number of persons who had benefited from these measures. The current report states that 32,143 reintegration instruments were used in 1999 and 58,105 in 2000. However it adds that several instruments may have been used in respect of one individual. The Committee notes the increase between 1999 and 2000. However it asks for figures on the number of beneficiaries of the measures.

As regards sheltered employment the Committee notes that new legislation on sheltered employment entered into force during the reference period (Sheltered Employment Act of 11 September 1997). In addition to providing for employment opportunities in a company under the sheltered employment scheme the new Act provides the opportunity for people with disabilities to work in an ordinary employment setting under supervision. The employee enters into an employment contract with the employer as opposed to the local authority (as in the sheltered employment scheme) and is supervised by a professional supervisory organisation. The local authority provides a subsidy to the employer and finances the cost of supervision. Measures under the Sheltered Employment Act are largely financed by central government; the budget for 2001 was 4106,4 million NLG (1863,4 million €). In 2000 there were 91 000 workers in sheltered employment. The Committee asks whether this figure includes the number of persons working under the supervised access scheme; if not it wishes to know how many persons were employed under this new scheme.

The Committee notes that the employment conditions of workers employed under the Sheltered Employment Act are mostly those applicable to workers employed under normal conditions. However a worker under the Act is remunerated on the basis of a specific job evaluation system – the job classification/sheltered employment system. It is as far as possible similar to other job evaluation systems used in the business sector.

Other forms of assisted work schemes in the Netherlands are the Additional Job Creation Scheme and Entry level and step-up jobs scheme.

The Committee had previously requested information on the number of economically active persons with disabilities along with the number of job seekers who have disabilities. The report states that over 1,1 million persons with disabilities are registered with the benefit agencies and approximately 383 000 were in employment in 1999 (33,1 %). The Committee asks whether this figure includes persons employed in sheltered employment facilities. It also asks whether the 1,1 million persons with disabilities registered with benefit agencies are of working age.

The Committee notes that according to the report an employee who becomes disabled (irrespective of the cause) cannot have his employment contract terminated within the first two years of the disability being established, after this authorisation from the labour administration is required and the grounds for dismissal are examined. The employer is obliged to ensure that the workplace, conditions, and working methods are suitable and if necessary to redeploy the person concerned to another suitable job. Subsidies are available to cover the costs of any necessary adaptations.

As regards protection from discrimination on the grounds of disability in employment the Committee notes that new legislation Equal treatment (Disabled Persons) Bill is due to come into force in 2003, it wishes to receive information on this in the next report. It notes that at present there is no specific anti discrimination legislation prohibiting discrimination on grounds of disability in employment, although discrimination is prohibited by the Constitution. The Committee wishes to receive further information on the protection of persons with disabilities against discrimination on the grounds of disability.

Conclusion

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

Article 2 of the 1988 Additional Protocol – Right of workers to be informed and consulted

In its previous conclusion, the Committee found that the situation of the Netherlands was in conformity with Article 2 of the Protocol.

It notes from the present report that there have been some minor changes in relevant Dutch legislation.

Pursuant to a 1998 amendment to the Works Councils Act, thresholds for establishing works councils have been slightly raised. Works councils are now compulsory in undertakings with more than 50 employees (under the previous legislation, the threshold was 35 employees) and shall be established in undertakings between 10 and 50 employees, where the majority of the employees so require. The Act also provides that, in undertakings with less than 10 employees, employers are encouraged to set up some form of employee representation.

The report also shows that all employees, including temporary staff, may take part in the works councils elections, regardless of their employment status. Previously, only permanent employees working more than a third of the normal working time could do so.

Finally, the report states that all concerned workers are covered by the relevant provisions on information and consultation, regardless of their nationality.

The Committee concludes that the situation in the Netherlands is in conformity with Article 2 of the Protocol.

Article 3 of the 1988 Additional Protocol – Right of workers to take part in the determination and improvement of the working conditions and working environment

In its previous conclusion, the Committee found that the situation of the Netherlands was in conformity with Article 3 of the Protocol.

It notes from the present report that there have been further positive developments in relevant Dutch legislation.

Pursuant to Section 12 of the 1998 Working Conditions Act, employers and employees have an obligation to hold consultations with regard to the undertaking's health and safety policies and to cooperate in the implementation of relevant measures.

The Committee also notes that all concerned workers are covered by the relevant provisions, regardless of their nationality.

The Committee therefore concludes that the situation in the Netherlands is in conformity with Article 3 of the Protocol.

Partially dissenting opinion of Mrs. M. JAMOULLE

Conclusion relating to Article 4§3

Mrs. JAMOULLE considers that the conclusion of non-conformity should be applied for a second reason. She notes that the 1975 legislation stipulating the comparison of male and female salaries outside the firm is no longer in force and that the current system is limited in that it only allows for comparison within the firm whereas the existing jurisprudence of the Committee requires the possibility to look for comparative elements outside the firm, in order to guarantee that the rule of equal pay is effective.

Netherlands Antilles

Article 1 – Right to work

Paragraph 4 – Vocational guidance, training and rehabilitation

Under Article 1§4 of the Charter, the Committee considers vocational guidance, training for workers and rehabilitation for people with disabilities.

Since the Netherlands have not accepted Articles 9, 10§3 and 15 of the Charter as far as the Netherlands Antilles are concerned, the Committee examines here vocational guidance and continuing vocational training for workers, and rehabilitation for people with disabilities.

The report for the Netherlands Antilles answers some of the Committee's question.

In Curaçao, vocational guidance is mainly provided in the secondary school system by deans who are trained for this purpose and by some independent career advisors.

The FEFFIK is the national vocational training centre providing basic training, apprenticeship and continuing training. In reply to the Committee's question, the report indicates that FEFFIK has 9 departments, 90 full-time employees and 110 part-time instructors. According to the report, an average of 1 500 students are enrolled in the training programmes offered in various fields.

FEFFIK training is demand driven and responsive to the businesses' needs. In reply to the Committee's question, the report states that FEFFIK's overall job placement rate is 98 %.

FEFFIK is currently working to become an accredited vocational training institution in the Netherlands Antilles.

In Bonaire, vocational training is provided by the Foundation FORMA for basic training and by the Community of Schools for medium-level training.

As to equality of treatment for 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 the Netherlands Antilles, the report indicates that they are granted equal access to FEFFIK training programmes, subject to the condition they understand Dutch and Papiamentu (the local language).

The Committee asks to be informed about training provided in St. Marteen and about equal treatment for 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 the Netherlands Antilles in Bonaire and St. Marteen.

Likewise, the Committee asks for more information about vocational rehabilitation for persons with disabilities. It takes note that, according to the report, there is no legislation regulating this issue in the Netherlands Antilles. In Curaçao, a few children with disabilities are trained by a foundation.

The Committee concludes that the situation in the Netherlands Antilles is not in conformity with Article 1§4 of the Charter because the Netherlands failed, since the first supervision cycle, to provide evidence of compliance with this provision.

Aruba

Article 1 – Right to work

Paragraph 4 – Vocational guidance, training and rehabilitation

The Committee recalls that, at the time of the ratification of the European Social Charter, the Netherlands, as regards the Netherlands Antilles, declared to be bound by Articles 1, 5, 6 (with the exception of civil servants), and 16 of the Charter. In a letter dated 24 December 1985, the Permanent Representative of the Netherlands informed the Secretary General of the Council of Europe that, starting as from 1 January 1986, Aruba became autonomous and that international treaties would from that date on apply to the Kingdom in Europe, to the Netherlands Antilles and to Aruba.

The Committee notes that since that date, it has never received a report on the application of the Charter in Aruba and, therefore, it is not in a position to assess the situation as far as this part of the Kingdom is concerned. It asks the Dutch authorities to make every effort to provide the Committee with a report on the Aruba for each supervision cycle.

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

