



November 2008

European Social Charter

European Committee of Social Rights

Conclusions XIX – 1 (POLAND)

Articles 1, 9, 10, 15 and 18 of the Charter

Introduction

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

A presentation of this treaty as well as statements of interpretation formulated by the Committee figure in the General Introduction to the Conclusions¹.

The European Social Charter was ratified by Poland on 25 June 1997. The time limit for submitting the 7th report on the application of this treaty to the Council of Europe was 31 October 2007 and Poland submitted it on 21 February 2008.

This report was the first under the new system for the submission of reports adopted by the Committee of Ministers.² It concerned the accepted provisions of the following articles belonging to the thematic group “Employment, training and equal opportunities”:

- the right to work (Article 1),
- the right to vocational guidance (Article 9),
- the right to vocational training (Article 10),
- the right of persons with disabilities to education, training and employment (Article 15),
- the right to engage in a gainful occupation in the territory of other States Parties (Article 18),
- the right of men and women to equal opportunities (Article 1 of the Additional Protocol).

Poland has accepted these articles, with the exception of Article 10§§3 and 4, Article 18§§1, 2 and 3 and Article 1 the Additional Protocol.

The applicable reference periods were:

- 1 January 2003 – 31 December 2006 for Article 18;
- 1 January 2005 – 31 December 2006 for Articles 1, 9, 10 and 15.

The present chapter on Poland concerns 10 situations and contains:

- 4 conclusions of conformity: Articles 9, 10§1, 10§2 and 18§4;
- 5 conclusions of non-conformity: Articles 1§2, 1§3, 1§4, 15§1 and 15§2.

In respect of the other situation concerning Article 1§1, the Committee needs further information. The Government is therefore invited to provide this information in the next report on the articles in question.

The next Polish report will deal with the accepted provisions of the following articles belonging to the second thematic group “Health, social security and social protection”:

- the right to safe and healthy working conditions (Article 3),
- the right to protection of health (Article 11),
- the right to social security (Article 12),
- the right to social and medical assistance (Article 13)
- the right to benefit from social welfare services (Article 14),
- the right of elderly persons to social protection (Article 4 of the Additional Protocol).

The deadline for the report was 31 October 2008.

¹ The conclusions as well as state reports can be consulted on the Council of Europe’s Internet site (www.coe.int/socialcharter).

² Decision adopted at the 963rd meeting of the Ministers’ Deputies on 3 May 2006.

Article 1 — Right to work

Paragraph 1 – Policy of full employment

The Committee takes note of the information provided in Poland's report.

Employment situation

The Committee notes that, according to Eurostat, growth in Poland slowed slightly down during the reference period, from 3.9% in 2004 to 3.6% in 2006.

The employment rate increased, from 51.7% in 2004 to 54.5% in 2006, as did the female employment rate, from 46.2% in 2004 to 48.2% in 2006. These rates are below the average for the EU-15 average (66.2% and 58.7% respectively in 2006).

The overall unemployment rate, the female unemployment rate and the youth unemployment rate (for 15-24 year-olds) all decreased significantly, amounting respectively to 13.8%, 14.9% and 29.8% in 2006. The Committee notes however, that these rates are still higher than the EU-15 average (7.7%, 8.5% and 15.7% respectively in 2006).

Long-term unemployment as a percentage of total unemployment increased during the reference period, from 54% in 2004 to 56.1% in 2006, whereas the EU-15 average was 42.1% in 2006.

According to the report, the different immigrant groups and minorities faced highly diverse employment situations during the reference period – unemployment was 9.4% among Armenians, 11.3% among Tatars and 31% among Roma. It is acknowledged in the report that despite the implementation of a Government programme to assist Roma since 2004, their situation on the labour market is still problematic.

The Committee requests up-to-date information on the unemployment rate of persons with disabilities.

Despite the youth unemployment rate and the long-term unemployment rate, the Committee nevertheless acknowledges that the labour market situation did improve in Poland during the reference period.

Employment policy

According to the report, national employment policy priorities during the reference period were as follows:

- to put the priority on active policies to promote employment;
- to improve the functioning of the public employment services;
- to combat unemployment.

Several measures were aimed at categories which are more prone to unemployment, particularly young people and the long-term unemployed.

For young people, the First Job programme, launched in 2002 (and lasting until 2005), enabled 248,023 of the 794,488 participants (i.e. 31.2%) to find work. Other projects of the same type cover certain specific sectors such as the environment.

The report also describes a number of measures aimed at young people providing access to information on employment such as the new university careers offices and municipal information centres, which are intended to give students and graduates access to useful information for vocational guidance and jobseeking purposes.

As for the long-term unemployed, the Human Resources Development programme, launched in 2004, attempts to combat social exclusion through improved access to training and to encourage the unemployed to return to work, particularly by reducing the number of those entitled to unemployment benefit.

The Committee takes note of the various schemes designed to combat unemployment in rural areas (opening of distance learning centres, creation of new jobs) and promote employment for workers over 50, along with other targeted measures intended to promote the occupational reintegration of disadvantaged categories (particularly disabled persons and "risk groups"). With regard to workers over 50, the report focuses in particular on a number of pilot projects, in which 1,486 people took part. 43% of these people were subsequently able to find work.

The report estimates that in total, in addition to the participants in the First Job programme referred to above, 546,700 people participated in active measures in 2006, including 145,327 long-term unemployed people. The activation rate of unemployed persons increased from 20.1% in 2005 to 22.6% in 2006 and 163,000 unemployed people found a stable job as a result of active measures in 2006 (compared to 237,558 in 2005). The Committee notes again that participation in active measures is low.

The Committee asks how much time elapses on average between a person registering as unemployed and receiving an offer of an active measure.

It observes there has been an increase in funding for active measures for people with disabilities. The Committee notes that according to Eurostat, that total spending on active and passive employment policy measures remained stable during the reference period (1.2% of GDP in 2006). It also notes that the part devoted to active measures amounted to 0.4% of GDP in 2006. The Committee however observes that the total spending on active and passive employment policy measures is significantly lower than the EU-15 average (2% in 2006).

Conclusion

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

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

The Committee takes note of the information provided in Poland's report.

1. Prohibition of discrimination in employment

The Committee considers that under Article 1§2, legislation should prohibit discrimination in employment at least on grounds of sex, race, ethnic origin, religion, disability, age, sexual orientation and political opinion (Conclusions XVIII-1).

As with other states that have accepted Article 15§2 of the Charter, the Committee will examine Poland's legislation prohibiting discrimination based on disability under this provision.

The Constitution contains a general non-discrimination clause. The Labour Code defines and prohibits indirect and direct discrimination in employment on grounds including sex, age, disability, race, religion, nationality, political opinion, trade union membership, ethnic origin, beliefs and sexual orientation. The Labour Code also states that there is indirect discrimination where a seemingly impartial provision, criterion or act leads to disparities in employment conditions if these disparities cannot be justified objectively.

As the legislation fails to define discrimination on the ground of age, the Committee asks how this principle is interpreted by the courts.

According to another source¹, current practice shows that no use has been made of the new provisions introduced into Polish legislation such as prohibition of discrimination on the ground of sexual orientation. A recent survey² reveals that 10% of homosexuals questioned in Poland have experienced some form of work-related discrimination. 27.9% of these have been refused a job, 23% have been dismissed and 14.8% refused promotion. The Committee also notes from another source³ that the Government has never had a national strategy to combat discrimination on the ground of sexual orientation, particularly in the employment field. It also notes that the Minister of Education dismissed the director of the national teacher training centre, Mr Miroslaw Sielatycki, for publishing the Council of Europe's anti-discrimination handbook, *Compass*, which contained a passage on homosexuality considered contrary to the values upheld by Poland⁴. In the light of this information, it asks for the next report to provide information on the application by the courts of the legislation prohibiting discrimination at work on the ground of sexual orientation, the activities and campaigns organised by the Polish authorities to combat this type of discrimination and the outcome of the judicial proceedings initiated following the dismissal of the director of the national teacher training centre.

The Committee acknowledges that exceptions to the ban on discrimination may be authorised for the purposes of positive action or where they are warranted by essential occupational requirements (Conclusions XVIII-1). Under the Polish Labour Code, it is possible to refuse to employ a person if the decision is justified by "the nature of the work, the way in which it is to be carried out or occupational requirements". The Committee notes that the latter concept is not defined and fears that it may be too broad in scope to be in conformity with

¹ Summary of Poland's report on measures to combat discrimination, Directives 2000/43/EC and 2000/78/EC, Country Report, Poland, Monika Mazur-Rafal, State of Affairs up to 8 January 2007, European Network of Legal Experts in the non-discrimination field, p.1.

² *Situation of Bisexual and homosexual persons in Poland, 2005 and 2006 report*, Kampania Przeciw Homofobii (KPH) and Lambda Warszawa ed., Warsaw 2007, 84 pages.

³ Kampania Przeciw Homofobii (KPH), Shadow report on Article 1§2 of the European Social Charter, p.9.

⁴ See the report on Poland by the Council of Europe Commissioner for Human Rights, 20 June 2007, document CommDH(2007)13.

Charter requirements. It asks for the next report to describe the occupational requirements which the courts accept as justification so that it can determine whether they can be regarded as essential.

In disputes relating to an allegation of discrimination in matters covered by the Charter, the burden of proof should not rest entirely on the complainant, but should be the subject of an appropriate adjustment. The Committee notes that under the Labour Code, employees do not have to provide proof of discrimination. They merely have to point to the facts that show that their situation differs from that of other employees. It is then for the employer to prove that this difference in treatment is objectively justified.

The Committee points out that under Article 1§2 of the Charter, any compensation awarded to a victim of discrimination must be effective and proportionate and act as a deterrent. It therefore considers that imposing a predetermined upper limit is incompatible with the Charter as in some cases this may mean that the compensation awarded is not commensurate with the loss or damage incurred and not sufficiently dissuasive for the employer.

The Committee notes that there is no upper limit on the compensation that may be awarded in cases of discrimination and that amounts are determined either through a compromise between the parties or by the court hearing the case, which will take account of the importance of the case and its consequences.

According to the report, associations, organisations or other legal entities which have a legitimate interest in securing equal treatment within the meaning of Article 1§2 of the revised Charter are entitled to seek rulings that there has been a breach of the prohibition on discrimination. The Committee asks whether this right is often relied on by the bodies in question and how the national courts interpret the idea of legitimate interest.

Setting up a specialised and independent body to promote equal treatment, especially by providing discrimination victims with the support they need to take proceedings, is a means of guaranteeing the full effectiveness of efforts to combat discrimination in accordance with Article 1§2 of the Charter. Since there is no such specialised body in Poland, the Committee asks whether it is planned to set one up and whether other bodies fulfil this role in the meantime.

The Committee points out that under Article 1§2, states may make foreign nationals' access to employment subject to possession of a work permit, but they may not issue a general ban on nationals of States Parties occupying jobs for reasons other than those set out in Article 31. Restrictions on the rights embodied in the Charter are only acceptable if they are prescribed by law, serve a legitimate purpose and are necessary in a democratic society to safeguard the rights and freedoms of others or protect the public interest, national security, public health or morals. The only jobs from which foreigners may be banned are therefore those that are inherently connected with the protection of law and order or national security and involve the exercise of public authority.

In its previous conclusion, the Committee found that the situation was not in conformity with Article 1§2 because foreign nationals who wished to work as doctors had to be granted discretionary authorisation by the National Chamber of Physicians.

According to the report, under a new act adopted on 24 August 2007, outside the reference period, foreign nationals wishing to practise medicine in Poland must still obtain authorisation from the Chamber of Physicians, but authorisation must now be granted if the person concerned meets certain conditions, none of which depend on the applicant's nationality. However, as this act only came into force in 2007, the situation was still not in conformity with Article 1§2 during the reference period. The Committee asks for the next report to include an account of how the implementation of the new act is progressing.

In its previous conclusion, the Committee found that the situation was not in conformity with Article 1§2 because the function of driving test examiner was not sufficiently connected with the exercise of public authority to justify the requirement of Polish nationality. Since the amendment to the Road Traffic Act of 20 April 2004, it has no longer been necessary to have Polish nationality to be a driving test examiner, and so the situation is now in conformity with Article 1§2 of the Charter in this respect.

2. Prohibition of forced labour

Prison work

According to the report, Polish legislation prohibits the forced labour of prisoners, who may only be employed with their free consent. However, under Article 116§1 of the Code on the Enforcement of Sentences, prison work is compulsory but not forced. Pointing to a possible contradiction between these two pieces of legislation, the Committee asks for the next report to explain the distinction that the legislation makes between compulsory labour and forced labour. It points out, nonetheless, that forced or compulsory labour in any form

must be prohibited and that prisoners' working conditions (including pay, hours and social security) must be regulated, particularly if they are working for private companies. For instance, prisoners may only be employed in workshops run by private companies with their consent and in conditions as close as possible to a private employment relationship (Conclusions XVI-1, Germany).

The Committee again asks the Government to answer the questions on prison work in the general introduction to Conclusions XVIII-1, namely:

- Can a prisoner be required to work (irrespective of consent):
 - A. for a private undertaking/enterprise
 - i. within the prison?
 - ii. outside the prison?
 - B. for a public/state undertaking
 - i. within the prison?
 - ii. outside the prison?
- What types of work may a prisoner be obliged to perform?
- What are the conditions of employment and how are they determined?
- 3. Other aspects of the right to earn one's living in an occupation freely entered upon

Privacy at work

The Committee asks for information to enable it to determine how far human freedom and dignity are protected by legislation and the courts against intrusions into personal or private life that may be associated with or result from the employment relationship (see observations on Article 1§2, general introduction to Conclusions 2006, §§13-21).

Restrictions linked to the fight against terrorism

The legislation pertaining to the fight against terrorism does not prohibit certain people from doing certain jobs.

Conclusion

The Committee concludes that the situation in Poland is not in conformity with Article 1§2 of the Charter on the ground that, during the reference period, nationals of other States Parties who wished to work as doctors in Poland had to be granted authorisation by the National Chamber of Physicians which was entirely discretionary.

Paragraph 3 – Free placement services

The Committee takes note of the information provided in Poland's report.

It notes in particular that amendments to the 2004 Employment Promotion Act and the employment support structures that were introduced in 2005 aimed as a priority at improving the efficiency of public employment services. The regional and local public employment services have also been granted greater autonomy.

The report states that the total number of vacancies notified to the public employment services decreased sharply during the reference period, from 875,829 in 2005 to 227,821 in 2006.

According to the report, the placement rate fell from 26.8% in 2005 to 14.6% in 2006. The average time needed to fill vacancies in 2006 was eighteen and a half months (compared to fifteen and a half in 2005). The Committee notes that the placement rate is low and the length of the average time needed to fill vacancies is long.

During the reference period public employment services were composed of a total of 16 *voivodies* employment offices (regions) and 339 *powiats* (districts) employment offices. In 2006, a total of 2,085 members of staff were responsible for placement throughout the public employment services; 872 of these were occupational counsellors, 254 career development specialists and 663 programme and planning officers. The staff of the EURES¹ network was made up of 24 counsellors and 8 assistants in the *voivodships* and 148

¹ The public employment services of the European Union and of the European Economic Area (EEA) are delivering services to unemployed and to employers through local employment agencies.

employees in all in the *powiats*. In 2006, there was an average of 131 unemployed people for every member of staff in the *powiats*.

The report states that before being employed by the public employment services, staff must first have obtained a vocational degree.

All private placement agencies must be entered on a register, which, since 2005, has been kept by the voivodships. In 2005, a total of 4,993 agencies were on the register. The Committee asks for information in the next report on the outcome of efforts to co-ordinate the work of public employment services and placement agencies.

As the total number of vacancies notified to the public employment services decreased sharply during the reference period, as well as the placement rate, and due to the length of the average time needed to fill vacancies, the Committee considers that the Government has not succeeded in proving the efficiency of public employment services.

Conclusion

The Committee concludes that the situation in Poland is not in conformity with Article 1§3 of the Charter on the ground that public employment services are not efficient.

Paragraph 4 – Vocational guidance, training and rehabilitation

The Committee takes note of the information provided in Poland's report.

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

As Poland has accepted Articles 9 (right to vocational guidance) and 15§1 (right of persons with disabilities to vocational guidance and training) of the Charter, the Committee refers to its findings under these articles. It found the situation to be in conformity with the Charter under Article 9. However, it found the situation not to be in conformity with the Charter under Article 15§1 on the ground that it has not been established that mainstreaming of persons with disabilities is effectively guaranteed in the field of education and training.

The Committee deals here only with the vocational training of adult workers in view of the fact that Poland has not accepted Article 10§3 of the Charter. The Polish report contains, under Article 1§4, information relating to the continuing vocational training of unemployed people and workers.

The Committee refers to its last conclusions (Conclusions XVIII-2) for a general description of the continuing vocational training system.

In reply to the Committee's question on the number of people attending continuing training in 2005 and 2006, the report states that, in view of the various types of training on offer and the fact that they are provided by different public and private institutions, it is impossible to provide full statistics. The Committee insists on the need to have all the relevant information to be able to assess the situation and asks for the next report to provide statistics on the number of people attending continuing training.

Equal treatment as regards access to continuing training is guaranteed to nationals of other states provided that they have a permanent residence permit. However, such permits may only be granted to foreign nationals who have spent at least three years in Poland as temporary residents, can show that they have permanent family or economic ties with Poland and have secure accommodation and a secure income in the country. This length of residence requirement is extended to five years in respect of nationals of non-European Union member states.

In previous conclusions, the Committee found that the situation was not in conformity with the Charter on the ground that access to further training for nationals of other States Parties was subject to an excessive length-of-residence requirement. In the absence of new information on this subject in the report, the Committee maintains the above conclusion.

Conclusion

The Committee concludes that the situation in Poland is not in conformity with Article 1§4 of the Charter on the grounds that:

- access to continuing training for nationals of other States Parties is subject to an excessive length of residence requirement;

- it has not been established that mainstreaming of persons with disabilities is effectively guaranteed in the field of education and training.

Article 9 – Right to vocational guidance

The Committee takes note of the information provided in Poland's report.

As Poland has accepted Article 15 of the Charter, measures relating to vocational guidance for persons with disabilities are dealt with under that provision.

Vocational guidance within the education system

a. Functions, organisation and operation

Higher education establishments offer professional vocational guidance services in careers centres for young people (MCKs), which help students to prepare to enter the labour market and to find work placements.

Measures introduced by the Ministry of Labour and Social Policy in 2005-2006 focused on mobilising the local labour market and helping pupils, students and graduates to plan their occupational careers. This is achieved through efforts to secure recognition of occupational skills and offering easy access to modern technologies for the dissemination of information.

b. Expenditure, staffing and number of beneficiaries

There are 963 municipal social integration centres, 200 university careers offices and 360 careers centres in colleges and secondary schools. There are also 21 MCKs and 49 mobile vocational information centres (MCIZs). In 2005 and 2006, approximately 1,050 persons were employed in psychological and educational consultation centres and 10,000 educational advisers were working in colleges and secondary schools. There were also 349 advisers in school careers centres in 2005 and 549 in 2006.

A total of 192,205 persons benefited from the vocational guidance services of MCIZs in 2005 and 9,776 from those of the MCKs. In 2006, 198,295 persons benefited from MCIZ guidance services. However, the report says that the number of persons receiving educational and vocational guidance in school career centres is not recorded in the education information system. The Committee asks for this information in the next report as well as for details on the level of spending on vocational guidance in the education system.

Vocational guidance in the labour market

a. Functions, organisation and operation

The Committee notes that there has been no change in the situation which it previously considered to be in conformity with the Charter (Conclusions XVIII-2).

b. Expenditure, staffing and number of beneficiaries

In 2005, the employment fund spent 8.05 million zlotys (PLN) (€ 2.37 million) on vocational guidance in the labour market. The fund's budget in 2006 was nearly PLN 7 million (€ 2.06 million). In 2005-2006, the education ministry spent PLN 80,000 (€ 23,600) on various vocational guidance activities. In addition, € 90,000 was spent under the Euroguidance Poland project, formerly known as the national centre for vocational guidance resources.

In 2005, 782 advisers were employed in employment offices and careers information and planning centres. The equivalent figure in 2006 was 872. These advisers have advanced training in psychology, education studies, sociology or vocational guidance. The network of specialist psychological and educational consultation centres included 557 establishments in 2005 and 565 in 2006.

In 2005, 426,263 persons received vocational guidance in employment offices. This fell to 316,252 in 2006. The Committee asks why the number of beneficiaries declined.

Dissemination of information

Vocational guidance advisers use a software package called Doradca 2000. Between May 2004 and December 2006 work continued on a new version of the package, particularly an internet version. The project has been financed by the European Social Fund. The programme includes a new "discussion forum" module for guidance counsellors, in the public service, to enable them to exchange information and experience.

The report also refers to various means used during the reference period, including brochures, leaflets, publications, films and catalogues, to disseminate information.

Equal treatment of nationals of the other parties to the Charter

The Committee notes that there has been no change in the situation which it previously considered (*ibid.*) to be in conformity with the Charter.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Poland 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 in Poland's report and refers to its previous conclusion (Conclusions XVIII-2) where it assessed the organisation and functioning of the education system.

Secondary, further and higher education

The Committee takes note of the Regulation of 3 February 2006 of the Ministry of Education and Science concerning the acquisition of general and vocational knowledge and qualifications. This regulation aims at facilitating the acquisition of knowledge both in educational establishments and outside the school system. Moreover, it introduces mechanisms for recognition of vocational qualifications acquired upon the completion of a vocational course outside the school system thus facilitating the integration into the job market. Regarding the measures taken in order to make educational qualifications relevant from the perspective of the integration into the labour market, the Committee takes note of the Law of 27 July 2005 on higher education which regulates the creation of enterprise centres at universities, the aim of which is to develop an entrepreneurial spirit in every student.

Measures to facilitate access to education and their effectiveness

The Committee notes that according to the Regulation of the Ministry of Education of 12 October 2006 nationals of other states legally resident or regularly working in Poland can enrol with all educational establishments that are open for Polish nationals, without any restriction.

In its previous conclusion the Committee asked what were the specific qualifications that other nationals were required to demonstrate as an entrance procedure to universities. In this respect the Committee notes from the report that in the particular fields of study, such as painting, sculpture, architecture, music the candidates should pass additional exams to prove their particular aptitude/talent in the given field.

Conclusion

The Committee concludes that the situation in Poland is in conformity with Article 10§1 of the Charter.

Paragraph 2 – Apprenticeship

The Committee takes note of the information provided in Poland's report.

The Committee notes that there have been no changes to the situation which it has previously (Conclusions XVIII-2) found to be in conformity with the Charter.

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

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

Paragraph 1 — Education and training for persons with disabilities

The Committee takes note of the information provided in Poland's report.

It notes that in 2006 there were 3.8 million people with disabilities in Poland and 2.2 million of these were 15 or over. According to the report, in 2006, 118,700 children under the age of 16 were officially certified to have a disability. However, according to other figures in the report, it would seem that the total number of children with disabilities at school is higher (176,911). The Committee asks for clarification of this matter in the next report. (It also asks what the total number of children at school is.)

Definition of people with disabilities

The report states that the bio psychosocial model of health adopted by the WHO in its International Classification of Functioning, Disability and Health (ICF 2001) forms the basis for the definitions of degrees of disability applied by Polish legislation. Degrees of disability are defined with regard to employment sectors or the payment of benefits.

The Committee also notes in the part of the report relating to Article 15§2 that there are plans to draw up a law on the recognition of disabilities, whose aim would be to standardise and simplify all of the different systems currently in force. The Committee asks for information in the next report on progress in this sphere.

Anti-discrimination legislation

In its previous conclusion (Conclusions XVIII-2), the Committee noted that discrimination against persons with disabilities was prohibited by the 1991 Education Act and the 1997 Act on the social and occupational rehabilitation of people with disabilities.

According to the report, the Ministry of Education and Sport adopted two regulations in 2005, one in January and the other in October, on the organisation of education and childminding for children and young people with disabilities as well as socially maladjusted persons, from nursery school through to upper secondary school age and in mainstream or special classes. The Committee asks for the next report to state whether these regulations prohibit discrimination on the ground of disability.

In its previous conclusion, the Committee asked for information on judicial and non-judicial remedies available to persons with disabilities who consider themselves to have been victims of discrimination.

In reply to the Committee, the report refers to Article 24 of the Civil Code, which governs the question of infringements of individual rights including all discrimination and provides that persons who suffer discrimination may call for unlawful acts to be halted and their effects to be nullified and may apply for compensation. It is also explained that, as a rule, remedies provided for by the Code of Civil Procedure apply to all persons suffering discrimination irrespective of the cause of the discrimination. Furthermore, under Article 61§4 of the Code of Civil Procedure, organisations whose aims are to ensure that the principle of equality and non-discrimination is guaranteed in practice may initiate proceedings on behalf of complainants or join the proceedings at any time provided that the complainant gives his or her consent.

The Committee notes that there is no information in the report on any case-law relating to discrimination on the ground of disability in the education and vocational training sectors. In order to be able to assess how successfully people with disabilities are integrated into the mainstream system, the Committee asks for the next report to provide information on case-law on the subject and on complaints that have been filed with the relevant authorities.

Education

The Committee recalls, as stated in its decision on the merits of collective complaint *Autism-Europe v. France* No. 13/2002 (decision of 4 November 2003, §48) that "the underlying vision of Article 15 is one of equal citizenship for persons with disabilities and, fittingly, the primary rights are those of 'independence, social integration and participation in the life of the community'. Securing a right to education for children and others with disabilities plays an obviously important role in advancing these citizenship rights". Children, young people and adults with disabilities must be catered for by the mainstream system; education and training for persons with disabilities must be provided in ordinary classes and, only where this is impossible, in special schools.

According to the report, during the 2005/2006 school year, 176,911 children with disabilities attended school at all levels from primary to upper secondary school or vocational college, with 83,892 in mainstream schools and 83,019 in special schools. The Committee notes that at vocational college level the number of disabled students is significantly higher in special schools (22,983 and only 5,092 in mainstream schools). This would tend to indicate that the aim of integrating persons with disabilities into mainstream schools has not been achieved. Consequently, it has not been established that the situation is in conformity in this respect.

The Committee asks for the next report to describe what is done to ensure the integration of pupils and students with disabilities into the mainstream system. In this connection, it reiterates that under Article 15§1, states are required to demonstrate that they are making tangible progress towards the development of inclusive education systems (Conclusions 2005, Cyprus).

The Committee notes that the funding allocated to schools for the education of pupils with disabilities has increased. It asks whether there are also financial benefits for children with disabilities which are geared to their needs throughout their schooling (along with support staff and other technical assistance).

As to the questions in its previous conclusion concerning children with intellectual disabilities, the Committee takes note of the Government's arguments. It asks for the next report to state more precisely how many children with intellectual disabilities choose to continue in schools that prepare them for work and how many abandon their studies and fail to find work (how many people with disabilities are registered with occupational therapy workshops).

Vocational training

The Committee refers to its previous conclusion for a full description of the various types of training on offer and the aids that are available to help people with disabilities to attend vocational training courses or undertake higher studies.

According to the report, there are increasing funds and programmes available for this purpose. However, the figures provided to show how many people with disabilities benefit from this aid and these programmes fail to make a systematic distinction between training in ordinary schools and special schools. It cannot therefore be determined whether a majority of people with disabilities are integrated into the mainstream education system.

Conclusion

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

Paragraph 2 – Employment for persons with disabilities

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

In 2006 there were 3.8 million people with disabilities in Poland and 2.2 million of these were 15 or over. Furthermore, 42,399 unemployed people or jobseekers with disabilities found work in 2006.

The report does not include any up-to-date information on the total number of people with disabilities in employment, registered as unemployed or looking for work. Without this information, the Committee cannot assess whether the situation is in conformity with Article 15§2.

Non-discrimination legislation

In its previous conclusion (Conclusions XVIII-2), the Committee concluded that the situation in Poland was not in conformity with Article 15§2 of the Charter because the legislation on non-discrimination in employment made no provision for reasonable accommodation of the workplace. The reasonable accommodation requirement is essential to guarantee the effectiveness of anti-discrimination measures. The Committee asked therefore for the next report to state whether it was intended to amend the relevant legislation to incorporate this requirement.

In reply to the Committee, the report states that the 1997 Act on the occupational and social rehabilitation and employment of persons with disabilities has long since included arrangements which have enabled employers who have created posts for persons with disabilities to finance the cost of adapting the workplace using funds provided by the National Fund for the Occupational Rehabilitation of Disabled Persons (PFRON). The report also states that this Act was amended in June 2007 (outside the reference period) with the intention, among other things, of improving the quality and effectiveness of the tasks carried out by bodies awarded PFRON funding. Following these amendments, the rules for the reimbursement of costs, for instance for items such as

the equipment needed for disabled persons' workstations, were tightened up. The Committee observes that while these measures do indeed make it easier to adapt workplaces, they do not place anyone under any legal obligation to do so.

The Committee also notes from another source¹ that the relevant provisions of the Labour Code are too general to entail any specific reasonable accommodation requirement. The Committee considers therefore that in this respect the situation in Poland is still not in conformity with Article 15§2 of the Charter.

In reply to the Committee the report provides information on judicial and non-judicial remedies available to persons with disabilities who consider themselves to have been victims of discrimination. However, no case-law on the subject is presented. The Committee repeats its request for information on any relevant case-law.

Measures to encourage the employment of persons with disabilities

The Committee refers to its previous conclusions on Article 15§2 (Conclusions XVI-2 and XVIII-2) for a description of measures intended to promote employment of persons with disabilities, such as targeted apprenticeship measures, provision of personal assistance and access to adapted information technologies, as the report states that these measures are still in place. It also notes that grants continue to be awarded to companies which offer jobs to people with disabilities on the ordinary labour market or in sheltered employment.

These measures have now been complemented by a programme entitled "Employment trainers – sheltered employment for people with disabilities", a pilot version of which began in 2007 (outside the reference period) and will continue up to 2010. The main beneficiaries of the programme are people with disabilities who, because of the nature and the extent of their disability, find it difficult to find a job and hence are now unemployed. Employment trainers help people with disabilities to prepare for work (both before and after recruitment). The type of assistance offered is geared to individual needs and the aim is to ensure the maximum amount of independence.

The report also states that in 2006, 20,585 employers met the requirement to take on a certain percentage of people with disabilities, whereas 34,535 preferred to make a financial contribution. The Committee notes from the report that the 1997 Act on the occupational and social rehabilitation and employment of disabled persons, as amended in June 2007 (outside the reference period) should improve the employment situation of people with disabilities. The Committee asks for information in the next report on the implementation of the amended act and its impact in terms of increasing the number of disabled persons in employment, including the percentage of disabled persons employed on the ordinary labour market and the percentage in sheltered employment.

The Committee refers to its previous conclusions (Conclusions XVI-2 and XVIII-2) for a description of the forms of sheltered employment available. The report states that, in 2006, there were 632 occupational therapy workshops attended by 21,180 people. In the same year, funding was provided for 198,621 disabled adults and their helpers to attend rehabilitation sessions. The Committee asks for the next report to state how many of these people found stable employment again as a result of these sessions.

As to the questions in its previous conclusion concerning people with mental disabilities, the Committee takes note of the information concerning the openings available to them in sheltered employment. It reiterates, however, that it would like to know what steps are taken to enable them to work in the ordinary labour market as well. It asks for the next report to contain relevant figures (for example the rate at which workers with disabilities are moving from sheltered employment to the open labour market).

The Committee reiterates that under Article 15§2 of the Charter, people with disabilities must be able to work in an ordinary working environment. Sheltered employment should only be resorted to for those whose disability alone prevents them from finding a place on the open labour market. Sheltered employment bodies must also try to help users to find ordinary work.

¹ Summary of Poland's report on measures to combat discrimination, Directives 2000/43/EC and 2000/78/EC, Country Report, Poland, Monika Mazur-Rafal, State of Affairs up to 8 January 2007, European Network of Legal Experts in the non-discrimination field, available at the following address:

http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/plsum07_en.pdf

Conclusion

The Committee concludes that the situation in Poland is not in conformity with Article 15§2 of the Charter on the ground that anti-discrimination legislation in the field of employment does not make reasonable accommodation of the workplace a requirement.

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

Paragraph 4 – Right of nationals to leave the country

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

The Committee asks for the next report to provide a complete list of practical circumstances in which Polish citizens may be prevented from leaving the country, and their legal basis.

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