



November 2008

European Social Charter (revised)

European Committee of Social Rights

Conclusions 2008 (CYPRUS)

Articles 1, 9, 10, 15, 18, 20 and 24
of the Revised 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 Revised European Social Charter was ratified by Cyprus on 27 September 2000. The time limit for submitting the 5th report on the application of the Revised Charter to the Council of Europe was 31 October 2007 and Cyprus submitted it on 5 November 2007. On 12 February 2008, a letter was addressed to the Government requesting supplementary information regarding Article 15§1. The Government submitted its reply on 18 March 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 first thematic group “Employment, training and equal opportunities”:

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

Cyprus has accepted these articles with the exception of Articles 18§§1, 2 and 3, and 25.

The applicable periods of reference were:

- 1 January 2003 – 31 December 2006 for Article 18§4;
- 1 January 2005 – 31 December 2006 for Articles 1, 9, 10, 15, 20 and 24.

The present chapter on Cyprus concerns 16 situations and contains:

- 7 conclusions of conformity: Articles 1§1, 1§3, 9, 10§1, 10§2, 15§1 and 18§4;
- 6 conclusions of non-conformity: 1§2, 1§4, 10§3, 10§4, 20 and 24.

In respect of the 3 other situations concerning Articles 10§5, 15§2 and 15§3, the Committee needs further information. The Government is therefore invited to provide this information in the next report on the articles/provisions in question.

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.

The next Cypriot report deals 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 23)
- the right to protection against poverty and social exclusion (Article 30)

The deadline for the report was 31 October 2008.

Article 1 – Right to work

Paragraph 1 – Policy of full employment

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

Employment situation

The Committee notes that, according to Eurostat, growth remained stable during the reference period and reached 4% in 2006.

The employment rate was 69.6% in 2006. It remained stable over the reference period. Nevertheless, it was significantly higher among men than among women – 79.3% compared with 60.3%.

Unemployment fell slightly over the period, from 5.2% in 2005 to 4.6% in 2006. The total number of registered job seekers fell from 13,153 in 2005 to 12,824 (including 7,087 women) in 2006. The long term unemployed as a proportion of all unemployed also fell, from 23.5% in 2005 to 19.3% in 2006. The unemployment rate among young persons (15-24) was stable (4.1% in 2006).

The Committee previously (Conclusions 2004) asked for detailed statistics on employment and unemployment among persons with disabilities. In the absence of a reply, the Committee reiterates its question. It also asks for information in the next report on unemployment among foreign nationals.

Employment policy

Priority is given to measures to assist women, disabled persons, the unemployed and young persons, particularly through the activities of the Human Resource Development Authority. These measures are particularly concerned with training and encouraging business creation. As there is no reference to the number of beneficiaries of these various measures, it repeats its question. The Committee also asks whether other programmes specifically aimed at the long term unemployed are planned.

Since 2004, the Centre for the Occupational Rehabilitation of the Disabled has offered special training courses for this group of persons. According to the report, about forty persons have been trained each year since then.

The Committee notes that total spending on training and skills development rose during the reference period, to 6.5 million Cypriot pounds (CYP; nearly €10.9 million) in 2006. The Committee asks for details in the next report on total expenditure on employment policies as a percentage of GDP, specifying what proportions are devoted to active and passive measures.

Conclusion

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

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

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

The last conclusion on the 1961 Charter (Conclusions XVI-1) includes a general description of the legal situation.

1. Prohibition of discrimination in employment

The law on discrimination, which the Committee has considered in earlier conclusions (Conclusions XVI-1 and 2004), has been reinforced by a series of laws incorporating Community legislation on discrimination in employment. In particular, Cyprus has transposed directives 2000/78/EC and 2000/43/EC, which came into force in May 2004. However, the Committee notes from another source¹ that the new legislation does not include all aspects of the two directives, particularly concerning the burden of proof. It again asks for full information in the next report on the implementation of the legislation on discrimination.

As with other states that have accepted Article 15§2 of the Revised Charter, the Committee will examine the legislation banning discrimination based on disability under this provision. Similarly, for states such as Cyprus that have accepted Article 20, the right to equal treatment and opportunities without discrimination based on sex is considered under this provision.

In its last conclusions (Conclusions 2004), the Committee noted that foreign nationals could be employed in any field of employment as long as no Cypriot was available and willing to fill the particular vacancy. The Committee ruled that this condition constituted direct discrimination on grounds of nationality against nationals of States Parties lawfully resident in Cyprus and as such was incompatible with Article 1§2 of the Revised Charter. It notes that there is no information in the report on this point. It asks whether the situation in this respect has evolved since Cyprus joined the European Union. It renews its finding of non-compliance on this aspect.

According to another source², a knowledge of Greek is obligatory in order to be granted an operating licence by the tourism authority and this has been criticised by the body responsible for promoting equal treatment in Cyprus. The Committee asks for information in the next report on action taken in response to this criticism.

According to another source³, sexual orientation continues to be a ground for excluding numerous persons from employment. The Committee asks for information in the next report on this situation and the measures taken to deal with it. In addition, it refers on this point to its observation on privacy (see *infra*).

2. Prohibition of forced labour

Prison work

In Conclusions 2004, the Committee noted that that work done by prisoners for private enterprises was on an entirely voluntary basis, and that the working hours of prisoners employed inside or outside prisons were the same as those of other workers. The report states that prisoners at the guidance and extra-institutional employment centre who work outside of prison receive the same wages as if they were not prisoners. It also says that work areas in prisons satisfy the health and safety standards laid down for workers outside prison.

¹ European Anti-Discrimination Law Review, Issue No. 5, 2007, p. 62-65

² European Anti-Discrimination Law Review, Issue No. 5, 2007, p. 62-65.

³ Report on measures to combat discrimination, Directives 2000/43/EC and 2000/78/EC, Country Report, Cyprus, Nicos Trimikliniotis, State of affairs up to 8 January 2007, European Network of Legal Experts in the nondiscrimination field, p.103.

To complete this information, the Committee again asks the Government to answer the questions on prison work in the general introduction to Conclusions 2006, 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 XVIII-1, §§13-21).

Restrictions linked to the fight against terrorism

The Committee again invites the Government to reply to its question in the General Introduction to Conclusions 2006 as to whether any legislation against terrorism precludes persons from taking up certain types of employment.

Service required to replace military service

In its last two conclusions (Conclusions XVI-1 and Conclusions 2004), the Committee maintained that that the duration of the service that replaced compulsory military service, generally twice the length of the military service itself, was excessive. The report contains no information on this point. The Committee therefore considers that the situation is unchanged and is still not in conformity with the Revised Charter.

Admittedly, recognised conscientious objectors are in a better position than they are in countries that do not grant them special status or where refusal to serve is punishable by imprisonment. But even if states acknowledge the principle of conscientious objection and institute alternative service instead, they cannot make the latter longer than is necessary to ensure that refusal to serve on grounds of conscience is genuine and the choice of alternative service is not seen as advantageous rather than a duty.

Requirement to accept the offer of a job or training

The Committee considers that in general the conditions to which the payment of unemployment benefits is subjected, including any obligations to take up offered employment, should be assessed under Article 12§1 of the Revised Charter (or Article 12§3 in the case of new developments). However, in certain cases and under certain circumstances the loss of unemployment benefits on grounds of refusal to accept offered employment could amount, indirectly, to a restriction on the freedom to work and as such the situation would be assessed under Article 1§2 (See General introduction to Conclusions 2008, §10).

Part-time work

The arrangements for part-time work are laid down in Law 76(I)/2002, which transposes Directive 97/81/EC.

Part-time work is defined as work whose duration is shorter than the statutory working hours. The Committee notes that the law guarantees part-time workers the same level of pay and working conditions as full-time workers for work of an equivalent nature and duration.

In answer to the Committee, the report says that section 7(1)(e) of Law No. 76(I)/2002 also covers equal treatment with regard to leave and section 9 of the law requires employers to examine measures to facilitate access by part-time employees to vocational training to enhance career opportunities and occupational mobility.

Conclusion

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

- nationals of States Parties legally residing in Cyprus can only be employed if no Cypriot is available and willing to fill the particular vacancy, which constitutes direct discrimination based on nationality;
- the duration of alternative service is a disproportionate restriction on workers' right to earn their living in an occupation freely entered upon.

Paragraph 3 – Free placement services

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

A programme was launched in 2005 to modernise the public employment services aimed at increasing labour market flexibility by a better matching of demand for and the supply of labour. The Committee asks for information on the main achievements of the programme.

It also previously asked (Conclusions 2004) whether placement services were free. In the absence of a reply, it reiterates its question.

The employment service's geographical coverage was a priority during the reference period. Eight more local employment offices were opened and four district and two local offices were upgraded. According to the report, since 2006, 18 specially trained employment counsellors have provided individualised services to the unemployed. The Committee asks for information on total staffing of the various employment services and their qualification levels.

The number of vacancies also fell during the reference period, from 21,582 in 2005 to 20,829 in 2006. However, the Committee notes that the placement rate has increased over the same period, from 17.5% in 2005 to 19.8% in 2006. It asks how long on average is taken to fill vacancies.

The Committee notes that there is still no information in the report on the "market share" of the public employment services, that is the ratio between placements made by the public employment services and the total number of persons recruited on to the labour market. It stated in its last conclusion (Conclusions 2004) that this information, as well as other performance indicators such as the number of interviews with job seekers and of visits to or contacts with employers, was necessary to assess the efficiency of the employment services.

Conclusion

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

Paragraph 4 – Vocational guidance, training and rehabilitation

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

As Cyprus has accepted Article 9, 10§3 and 15§1 of the Revised Charter, measures relating to vocational guidance, to vocational training and retraining of workers, and to guidance and vocational training for persons with disabilities are dealt with under these provisions.

In these conclusions, the Committee has considered that the situation with regard to vocational guidance (Article 9), and vocational guidance, education and training of persons with disabilities (Article 15§1), was in conformity with the Revised Charter.

However, concerning vocational training for workers (Article 10§3) the Committee holds that the situation is not in conformity with the Revised Charter on the grounds that it has not been established that the right to an individual leave for training and the right to vocational training for the unemployed are effectively guaranteed.

Conclusion

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

Article 9 – The right to vocational guidance

The Committee takes note of the information provided in Cyprus's report and notes that there have been no significant changes in the situation, which it has previously considered to be in conformity with the Revised Charter (Conclusions 2007).

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

Vocational guidance in the education system

a. Functions, organisation and operation

Vocational guidance in the education system is provided by the counsellors and teachers of the Counselling and Career Education Service (CCES) of the Ministry of Education and Culture.

b. Expenditure, number of staff and number of persons assisted

Pupils in their last year of lower secondary school may attend career guidance classes in addition to individual counselling sessions.

The staff of the CCES was made up of 109 teachers in 2005-2006.

In the period from 2005 to 2006, vocational guidance sessions were attended by 18,562 lower secondary school pupils (66.38% of the total) and 22,147 general or technical upper secondary school pupils (78.67% of the total).

In the same period, public spending on vocational guidance of the CCES was about 3,200,000 Cypriot pounds (CYP ; € 5.48 million). This amount represents costs for salaries, for the publication and distribution of books and for the organization of seminars, training programs and conferences.

Vocational guidance in the labour market

a. Functions, organisation and operation

As part of the process of improving and modernising the public employment services, careers counsellors were given special training to provide tailored vocational guidance to jobseekers based on their qualifications, skills and work aspirations.

As part of the modernisation process, geographical access to services was also improved through the establishment of eight new regional employment offices and the modernisation of four district offices and two local offices.

b. Expenditure, number of staff and number of persons assisted

The number of recipients of vocational guidance corresponds more or less to the number of jobseekers registered with district labour offices. In 2006, this number amounted to some 12,824 people, 7,087 of whom were women. There were 18 vocational guidance counsellors.

In 2006, spending on the operational units of the counsellors working for the public employment services was CYP 230,374 (about € 395,000). Spending on these counsellors' wages amounted to CYP 197,914 (about € 339,000). According to the report, the amount of spending on vocational guidance by district and local employment offices cannot be calculated, as they also offer placement services.

In its previous conclusion, the Committee noted that Vocational guidance in the labour market is mainly provided by the Vocational Guidance Service (VGS) under the Labour

Department of the Ministry of Labour and Social Protection, which has regional and district offices throughout the country. In lack of information, the Committee asks again what is the geographical distribution and the number of VGS offices in the country.

Conclusion

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

Article 10 – The 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 Cyprus's report.

As Cyprus has accepted Article 15, measures relating to training for persons with disabilities are dealt with under that provision.

Secondary and higher education

The Committee notes from the report that the Examination Service of the Ministry of Education and Culture organises and supervises the annual examinations for entry to the Public Institutions of Higher and Tertiary Education. The new system was launched in 2006 and aims at integrating the final written examinations of the secondary education (*apolyterion*) and the entrance examinations to the higher education. The aim is the acquisition of both *apolyterion* and the eligibility for admission to the higher education institutions, based on the average allocating score.

The Committee notes from the report that vocational education and training is provided through the upper secondary technical and vocational education, the apprenticeship scheme, the afternoon and evening classes of technical schools, the training programmes subsidised by the Human Resource Development Authority (HRDA) and the public institutions of tertiary education. The Directorate of Secondary Technical and Vocational Education (STVE) is responsible for planning, organising, implementing and evaluating the educational programmes that are offered at public technical and vocational schools. Upper secondary technical and vocational education is offered in two directions, theoretical and practical. Graduates of both directions are awarded a Leaving Certificate which is equivalent to that obtained from other public schools of secondary general education and entitles students to pursue further studies at institutions of higher and tertiary education, or enter the labour market as skilled workers. The Committee recalls that under Article 10§1 the states are obliged to introduce mechanisms for the recognition/validation of knowledge and experience acquired in the context of training activity in order to achieve a qualification or to gain access to general, technical and university higher education on the basis of the sole criterion of individual aptitude. The Committee finds that the situation in Cyprus is in conformity with Article 10§1 of the Revised Charter on this point.

As regards the measures taken to ensure a close link between vocational guidance and training on the one hand and employment on the other, the Committee notes that the third year of studies in the Practical Stream combines a school-based environment with one day per week of work experience, where pupils follow a practical training programme. The industrial placement aims to provide pupils with specialised knowledge and skills gained under actual working conditions. In this way the programme contributes to the pupils' smooth transition from school to work, the consolidation and implementation of the skills and competencies learned at school, the development of the professional ethics, attitudes and values required in the labour market and society in general and the creation of closer ties between the education and industrial training systems.

The policies, programmes and activities of the HRDA are aimed to reduce skill mismatches, improve mobility, provide increased opportunities for employment, widen the choice of career opportunities and facilitate the continuing training throughout working life to those already in employment, young people and those out of work, thereby supporting, encouraging and promoting lifelong learning.

Measures to facilitate access to education and their effectiveness

The Committee notes that there has been no change as regards the number of education institutions and teachers.

The total amount of public expenditure on technical and vocational education in 2005 reached € 13.1 million. Overall expenditure by the HRDA, which is the national agency for training and development, on human resource training and development activities over the two-year period (2005-2006) amounted to more than € 21.7 million. The Committee asks what is the total spending on vocational education as a percentage of GDP.

In its previous conclusion the Committee asked whether nationals of other States party lawfully resident or regularly working in Cyprus enjoyed equal access to secondary and higher education. In this respect the Committee notes from the report that regardless of their nationality, race, gender, religion or physical disability, all pupils who have completed the third year of Gymnasium successfully and have obtained a Leaving Certificate, are eligible to study in the mainstream STVE. In addition, pupils who come from other countries or from private English schools can attend STVE programmes, provided that they succeed in the special entrance exams. Equality of access to vocational training for all is ensured both by the law and policies of the HRDA. The participation of nationals other than Cypriots in training activities subsidized by the HRDA is governed by the same conditions and regulations as for Cypriots. The Committee asks again whether there are any restrictions to access higher education, other than language and general entry examinations, for nationals of other States party.

Conclusion

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

Paragraph 2 – Apprenticeship

The Committee takes note of the information provided in Cyprus's report and refers to its previous conclusions (Conclusions 2005 and 2007) for a general description of the apprenticeship system.

As regards the reference period, the Committee notes that since 1/1/2006, by the decision of the Council of Ministers, the Cyprus Productivity Centre has become the competent authority for managing the Apprenticeship Scheme with a mandate to introduce improvements to the existing scheme and to design a New Modern Apprenticeship with the involvement of social partners.

In reply to its question, the Committee notes from the report that there are various Committees responsible for supervising the apprenticeship scheme. The members of these Committees are appointed by the Apprenticeship Board. The Minister of Labour and Social Insurance appoints apprenticeship system inspectors on an annual basis, one in each district and for each specialisation in order to ensure both the quality and quantity of the apprentices' practical training in industry.

In 2005 and 2006, the Human Resource Development Authority (HRDA) subsidised the apprenticeship training of 271 and 212 apprentices respectively, while subsidies to companies employing apprentices amounted to € 284,342 and € 277,041 respectively. During the same period the HRDA subsidised the practical training of 749 students and school-students in companies in the amount of € 525,420.

The report provides the gross participation rate in the apprenticeship scheme for 2002/2003 which amounted to 1.2% and which represents the percentage of the total

number of apprentices in the programmes out of the population in the age group of 16-19 (it amounted to 1.6% for the age group of 15-17). The Committee notes that this percentage has been declining since 1990. It asks that the next report provide this information for the reference period.

In its previous conclusion the Committee asked what rules were governing the termination of apprenticeship contracts and what was the remuneration of apprentices. The Committee repeats these questions.

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

Paragraph 3 – Vocational training and retraining of adult workers

The Committee takes note of the information provided in Cyprus's report and refers to its previous conclusions (Conclusions 2005 and 2007) for a general description of the vocational training system.

Employed persons

According to the report the vocational training system in Cyprus expressly provides for the training and retraining of adult workers. In its previous conclusion the Committee asked what was the level of participation in training programmes. The Committee notes that according to the Human Resource Development Authority (HRDA) 53,326 persons participated in continuing training programme in 2005 and 57,172 in 2006. The Committee notes from the report that CVET programmes are mainly targeted at working individuals as well as unemployed people who have not completed successfully lower secondary education or those who have but wish to acquire technical knowledge and skills in a specialty other than their original one.

The Committee asked for two consecutive times (Conclusions 2005 and 2007) whether and under what conditions employed workers were entitled to individual training or retraining leave. The Committee recalls that Article 10§3 requires the existence of legislation on individual leave for training. The Committee examines its characteristics, in particular the length, the remuneration, and the initiative to take it. Since the report again does not provide this information, the Committee holds that it has not been established that the right to an individual leave for training is guaranteed.

Unemployed persons

The Committee notes from Eurostat that the unemployment rate stood at 5.2% in 2005 and 4.6% in 2006 which is lower than the EU-15 average (8.1% and 7.7% respectively). The Committee asked for two consecutive times (Conclusions 2005 and 2007) what was the percentage of the unemployed participants in the training programmes out of the total number of unemployed, as well as public expenditure, as a percentage of GDP, on training measures for the unemployed. Since the report again does not provide this information, the Committee holds that it has not been established that the right to vocational training for the unemployed is effectively guaranteed.

Conclusion

The Committee concludes that the situation in Cyprus is not in conformity with Article 10§3 of the Revised Charter on the grounds that it has not been established :

- that the right to an individual leave for training is guaranteed;
- that the right to vocational training for the unemployed is effectively guaranteed.

Paragraph 4 – Long term unemployed persons

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

In its previous conclusions (Conclusions 2005 and 2007), the Committee asked for two consecutive times what types of vocational training were available for the long-term unemployed and what was the percentage of the long-term unemployed people who participated in training programmes out of the total number of long-term unemployed.

Since the report again does not provide this information, the Committee holds that it has not been established that the right to vocational training for the long-term unemployed is effectively guaranteed.

Conclusion

The Committee concludes that the situation in Cyprus is not in conformity with Article 10§4 of the Revised Charter on the grounds that it has not been established that the right to vocational training for the long-term unemployed is effectively guaranteed.

Paragraph 5 – Facilities

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

Fees and financial assistance (Article 10§5 a and b)

In its previous conclusions (2005 and 2007), the Committee asked for detailed information on the financial aid system available to higher education students and on the conditions under which it is granted. It notes that the report does not provide this information.

However, the Committee notes from Eurybase (2006/07) that, for example, the fees for Cypriot (and other EU) undergraduate level students at the University of Cyprus total 1,000 Cypriot pounds (CYP; € 1,600) per semester and these are paid in full by the State. The fees for international (other than EU) undergraduate students are € 3,200 per semester. In the Open University of Cyprus the tuition fees for undergraduate international (other than EU) students are set at 700 CYP (€ 1,120) while Cypriot and EU citizens do not pay any fees.

In its previous conclusion the Committee noted that nationals of other States Party are eligible for financial assistance under the same conditions as Cypriots. However, having observed the information contained in the Eurybase report, the Committee notes that it is not clear whether the equal treatment of nationals of non-EU States Parties lawfully resident or regularly working in Cyprus with respect to fees and financial assistance in higher education is guaranteed. The Committee recalls that according to the Appendix to the Charter, equality of treatment in these matters 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 should be 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. The Committee therefore asks whether this is the case in Cyprus. In the meantime it reserves its position on this point.

Training during working hours (Article 10§5 c)

The Committee notes that in the reference period there have been no changes to the situation it has previously considered (Conclusions 2005 and 2007) to be in conformity with the Revised Charter.

Efficiency of training (Article 10§5 d)

The Committee notes that in the reference period there have been no changes to the situation which it has previously considered (Conclusions 2005 and 2007) to be in conformity with the Revised Charter.

Conclusion

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

Article 15 – The 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 Cyprus's report and the additional information submitted by the Government on 18 March 2008 in reply to further questions addressed to it by the Committee.

It notes that according to the report, during the reference period up-dated figures were not yet available as regards:

- the total number of persons with disabilities, including the number of children;
- the number of students with disabilities following mainstream vocational facilities;
- the number of adults with disabilities participating in mainstream vocational training facilities and the possibilities for them to transfer from special to mainstreaming vocational training facilities.

The Committee points out that should this information not be provided in the next report, nothing will establish that the situation of Cyprus is in conformity with Article 15§1.

Anti-discrimination legislation

In its previous conclusion (Conclusions 2007), the Committee asked whether the Law on Education and Training of Children with Special Needs (Law No. 113(I)/1999) conferred an effective remedy on those who were found unlawfully excluded or segregated or otherwise denied an effective right to education. According to the additional information provided by the Government, parents of children with special educational needs may appeal (within thirty days) against the decisions taken by the Special Education and Training District Committee. Following such appeal, if the Committee's decision is confirmed, parents may still appeal to the higher body (the Central Committee for Special Education and Training).

As regards the explicit prohibition by law of discrimination based on disability in education and training, the Committee notes from another source¹ that Law No. 42(I)/2004 on the combating of racial and other kinds of discrimination (Commissioner for Administration) includes non-discrimination on the ground of "special needs" (terminology used by the Law to refer to persons with disabilities). The Law establishes that the Commissioner for Administration is the national Equality Body empowered, *inter alia*, with the task of promoting equality of opportunity in numerous areas including education and access to vocational training.

Education and vocational training

The Committee notes from the same source mentioned above that in 2006 the Equality Body examined complaints of lack of suitable accommodation for dyslexic children in exams. In its decision dated 31 October 2006, the Equality Body criticised the Pancyprian School Exams Law (Law No. 22(I)2006). It found that this Law and the one on Education and Training of Children with Special Needs (Law No. 113(I)/1999) introduced indirect discrimination on the ground of special needs in the field of education and asked the Attorney General to revise the laws. The Committee notes from the additional information submitted by the Government in reply to its specific questions in this regard that the 22(I)2006 Law was amended with regard to national exams following the Equality Body's

¹ Cyprus Country Report on measures to combat discrimination (Directives 2000/43/EC and 2000/78/EC), State of affairs up to 8 January 2007. Report drafted by Nicos Trimikliniotis for the European Network of Legal Experts in the non-discrimination field, available at:
http://europa.eu.int/comm/employment_social/fundamental_rights/policy/aneval/mon_en.htm

recommendations and specific instructions concerning the use of computers with a spell checker and other facilities have been addressed to all Special Education and Training Committees. The Committee requests the next report to highlight any envisaged or adopted amendment of the Law on Education and Training of Children with Special Needs.

The Committee also notes that in 2006 a governmental body applied to the Equality Body for an opinion as to whether terminating the training of a trainee who had acquired a disability during training would constitute discrimination prohibited by law. On 20 September 2006, the Equality Body held that it would indeed amount to less favourable treatment, which is prohibited by law, and recommended that the issue of training be seen separately from the issue of employment for a specific task.¹ The Committee wishes the next report to provide information on any follow-up to this decision of the Equality Body.

Finally, the Committee asks the next report to also indicate whether persons with disabilities or other bodies lodged any other complaint with the Equality Body regarding their effective right to access education or vocational training. It also asks whether the Equality Body carried out any investigation or survey in this regard and what were the conclusions thereof.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Cyprus is in conformity with Article 15§1 of the Revised Charter.

Paragraph 2– Employment of persons with disabilities

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

According to the report, no up-dated figures were yet available during the reference period as regards:

- the number of persons with disabilities integrated in the ordinary labour market;
- the general rate of progress of persons with disabilities from sheltered employment into the ordinary labour market.

The Committee reiterates its request for such figures.

Anti-discrimination legislation

As regards the Committee's previous requests for information (Conclusions 2005 and 2007) on the right of persons with disabilities to seek remedies against discrimination under the existing non-discrimination legislation, the report indicates that complaints may be lodged with courts and that these may impose the payment of fines for discriminatory behaviour, treatment or practice.

Moreover the Committee also notes from the report prepared by the European Network of Legal Experts in the non-discrimination field, that "all the anti-discrimination provisions found in the Cypriot law are enforceable in the public and the private domain against the state and against private individuals, in accordance with the judgement in the case of *Yiallourou v. Evgenios Nicolaou* (Judgment of 2001 of the Supreme Court of Cyprus), where the court ruled that all rights guaranteed under the constitution are directly applicable in the public and private sphere. However, given the long time and high costs involved in litigation, this principle is hardly ever utilised in practice. By contrast, the

¹ *Idem* p. 13. See also European Anti-discrimination Law Review, No. 5 – 2007, News from the EU Member States, Cyprus (p. 64).

procedure of applying to the Equality Body to investigate complaints of discrimination is simple, cost free and widely used.”¹

The Equality Body is competent to handle claims regarding discrimination in the workplace, such as conditions for access to employment, self-employment and occupation, employment and working conditions (including dismissal and pay) and membership or/and involvement in an organization of workers and employers. However, according to information collected by the European Network of Legal Experts, the Equality Body is empowered to impose fines, which are very low and offer little deterrence to potential perpetrators. It is therefore not possible to assess whether or not such sanctions are adequate, effective, proportionate and dissuasive. Moreover, there have not been any cases yet in Court on this issue.²

As regards its request (Conclusions 2007) to indicate whether there is an obligation for the employer to adjust working conditions, how reasonable accommodation is implemented in practice and whether there is case law on the issue, the Committee notes that the report does not provide a reply but observes from the European Network of Legal Experts’ report that “The law does not provide that failure to meet the duty of reasonable accommodation amounts to discrimination. (...) The test of reasonableness is much wider in the Cyprus law than in the Employment Directive (...) and clearly falls short of creating a full-blown mandatory regime. No case has actually been examined in court so far to assess how courts would determine whether accommodation is ‘reasonable’ or whether it imposes a ‘disproportionate burden’. When comparing the provisions under the Directive, which provide for a test of whether ‘such measures would impose a disproportionate burden on the employer’ to the criterion introduced into Cyprus law regarding the socio-economic situation of the disabled (Article 9), the disparity between the Cyprus law and the Employment Equality Directive is apparent”.

The Committee asks the next report to comment on the above-quoted findings of the European Network of Legal Experts in the non-discrimination field, while informing it about any amendments to Law 57(1)/2004 on Persons with Disabilities and Law No. 42(I)/2004 on the combating of racial and other kinds of discrimination (Commissioner for Administration) and any measure taken in practice to implement reasonable accommodation.

Measures to promote employment

With regard to measures to promote employment of persons with disabilities in the ordinary market, the report and another governmental source³ highlight the implementation of the following new schemes, co-financed on an equal basis by the European Social Fund and the Republic of Cyprus:

- the scheme for the vocational training of persons with severe disabilities to help their integration to the labour force and society in general;

¹ See p. 5 of the Executive summary of the Cyprus Country Report on measures to combat discrimination (Directives 2000/43/EC and 2000/78/EC), State of affairs up to 8 January 2007. Report drafted by Nicos Trimikliniotis for the European Network of Legal Experts in the non-discrimination field, available at: http://europa.eu.int/comm/employment_social/fundamental_rights/policy/aneval/mon_en.htm.

² Idem pp. 6 and 7.

³ Cyprus, Ministry of Justice and Public Order, Brief report on issues concerning the fight against discrimination, January 2008, available at: [http://www.mjpo.gov.cy/MJPO/MJPO.nsf/0e1012448b5b9766c2256ede00482425/b0fc8c0fcf7db557c2256f0a0037f720/\\$FILE/briefCyreport_2008.doc](http://www.mjpo.gov.cy/MJPO/MJPO.nsf/0e1012448b5b9766c2256ede00482425/b0fc8c0fcf7db557c2256f0a0037f720/$FILE/briefCyreport_2008.doc)

- the scheme through which incentives are offered to employers to facilitate the employment of persons with disabilities in the private sector, through subsidisation of part of their labour costs and a subsidy to make any adjustments necessary to the workplace;
- the scheme for setting up small business units, through subsidisation and grants.

The Committee reiterates its request for information on how many persons with disabilities are integrated in the ordinary labour market, including through the programmes recalled in its previous conclusion as well as through these new schemes. Meanwhile, it reserves its position on the conformity of the situation and points out that should the requested information not be provided in the next report, nothing will establish that the situation is in conformity with Article 15§2.

The Committee notes in response to its questions on the fact that a priority of employment reserved to persons with disabilities should not be restricted to a specific category of persons for one sole profession (such as people with visual impairment being hired as telephone operators), the report clarifies that “persons with visual impairment can choose and have a priority in a job they prefer”.¹ The Committee asks the next report to provide any relevant example of good practice in this regard as a study² on the employment experiences of higher education graduates with disabilities in Cyprus acknowledges the persistence of significant barriers in their employment (especially for the visually impaired) as well as a high degree of frustration (jobs felt not to match qualifications).

As to sheltered employment, the Committee reiterates that Article 15§2 of the Charter requires that persons with disabilities be employed in an ordinary working environment; therefore sheltered employment facilities must be reserved for those persons who, due to their disability, cannot be integrated into the open labour market. They should aim nonetheless to assist their beneficiaries to enter the open labour market.

In this context, the Committee requests the next report to comment on the following critical in the EU report on the situation of fundamental rights in Cyprus as regards the *Christos Stelios Ioannou Foundation* (sheltered employment) voiced: “the philosophies, policies and practices of the Foundation do not reflect the current international consensus on good practice, as (...) (a) too many clients are congregated on a single site, which has in effect become a permanent placement; (b) there is not enough movement of the clients from the central site into community settings and (c) not enough support is available to enable those who are not Foundation clients to work and live in the community. Figures show that out of the 156 current clients between the ages of 18 to 57, 98 (63%) have been attending since 1990 and 44 (28%) since the Foundation was established in 1983. 60 people have been successfully rehabilitated into the community in the 17 years since the Foundation was established – this would average out at three persons per year. These figures suggest that the Foundation is providing what is in effect a permanent placement for a significant number of clients.”³

¹ See p. 70, 5th National Report on the implementation of the European Social Charter (revised) submitted by the Government of Cyprus.

² “Employment experiences of people with disabilities in Cyprus” by K. Hadjikakou and D. Hartas, International Journal of Disability, Community & Rehabilitation, Volume 6, No. 1, 2007, published at: www.ijdcr.ca.

³ See p. 84 of the report submitted to the EU Network of Independent Experts on Fundamental Rights by Achilleas Demetriades on 15 December 2005 (reference: CFR-CDF/CY/2005). The documents of the Network may be consulted at: http://www.europa.eu.int/comm/justice_home/cfr_cdf/index_en.htm

Conclusion

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

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

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

Anti-discrimination legislation and integrated approach

The Committee points out that Cyprus's anti-discrimination legislation (Act No. 127(I)/2000 on persons with disabilities) forms the legal framework on which the equal treatment and full social integration of persons with disabilities is based. It notes that this Act expressly refers to mobility, transport, telecommunications, culture and leisure (sections 4, 7 and 8). The Committee asks for additional information on the Act within the material scope of Article 15§3.

On the matter of legal remedies, the report states that persons with disabilities who have suffered discrimination can go to court to seek compensation for any damage incurred and that fines can be imposed on offenders. The Committee asks for examples of relevant case-law. It also asks if all the authorities involved in implementing policies for persons with disabilities have integrated planning programmes.

Consultation

According to the report, a new Act (No. 143(I)/2006) on the consultation procedure between the state and agencies dealing with persons with disabilities was adopted in 2006. Through this Act, the Cypriot Confederation of Organisations for Persons with Disabilities is made an official partner of the state, involved in drawing up state social policy and programmes and legislation relating to persons with disabilities.

Forms of financial aid increasing the autonomy of persons with disabilities

The Committee notes that there have been no changes in the situation that it has previously considered (Conclusions 2005) to be in conformity with the Revised Charter.

Measures taken to overcome obstacles

Technical aids

The Committee refers to its statement of interpretation on Article 15§3 in the General Introduction to these conclusions.

It asks whether persons with disabilities are entitled to free technical aids or must contribute themselves to the cost. If an individual contribution is required, the Committee asks whether the state provides some financial contribution to the cost of obtaining technical aids. It also asks whether disabled persons are entitled to free support services, such as personal assistance or home help, when required, or have to meet some of the cost of such measures. The Committee finally asks whether mechanisms are in place to assess the barriers to communication and mobility faced by individual persons with disabilities and to identify the technical aids and support measures that may be required to assist them in overcoming these barriers.

Under the Act on public assistance and services, as amended in 2006, public assistance is granted to persons residing lawfully in Cyprus whose basic income is inadequate. Persons with disabilities are entitled to home help or personal assistance arrangements to help them to remain at home. The Committee asks how much of the costs of these services are covered by the state.

Communication

Some television channels broadcast a daily news bulletin in sign language for persons with hearing impairments. The Committee notes from another source¹, however, that sign language is not regarded as an official language in Cyprus. The Committee asks whether measures are being taken to have sign language recognised as an official language.

As far as telephone services are concerned, the Cyprus Telecommunications Authority (CITA) has set up systems that are especially suited to persons with disabilities. The Committee asks again what has been done to promote access to the new information and telecommunication technologies.

Mobility and transport

According to the report, the requirement for public transport to be accessible is not totally respected, public transport is not free for disabled persons and there are no reductions for accompanying persons. The Committee asks if measures are being taken to improve access to public transport for persons with disabilities. It also asks for information on the regulations on sea transport.

Housing

According to the report, 56 housing programmes for persons with disabilities were carried out in 2006 by NGOs and supported financially by the authorities. Persons with disabilities are also covered by a programme of social assistance for the improvement of housing conditions. In 2006, the number of people claiming this aid was 38% higher than in 2004.

Culture and leisure

Persons with disabilities do not have free access or reduced-rate access to facilities offering cultural and recreational activities. In the absence of any reply, the Committee asks again what measures are being taken to improve access.

The Committee emphasises that if the next report does not provide all the above requested information, there will be no evidence that the situation in Cyprus is in conformity with Article 15§3 of the Revised Charter.

Conclusion

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

¹ Report on the situation of fundamental rights in Cyprus in 2005, CFR-CDR/Rep[CY]2005, <http://cridho.cpd.r.ucl.ac.be/documents/Download.Rep/Reports2005/NationalReport/CFRCyprus2005.pdf>

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

Paragraph 4 – Right of nationals to leave the country

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

In its last assessment, it noted that under the Children's Act Cypriot nationals could be prevented from leaving the country if they were legally liable for the care and maintenance of one or more children under the age of sixteen and wanted to leave the country without them, unless they could provide evidence that the child or children were not likely to become dependent on public funds or be exposed to moral danger or neglect. The report states that this provision ceased to be applied during the reference period and the new bill to amend the Children's Act does not include such a provision. The Committee asks for this to be confirmed in the next report.

It notes that the only restrictions on the right to leave the country are ones necessary for the proper administration of justice or provided for in the national guard laws.

In connection with the administration of justice, the report explains that arrest warrants issued in criminal proceedings and civil court orders are automatically registered in a record and the persons concerned are prohibited from leaving the country.

In addition, male persons planning to leave the country, even for a short period, are obliged to obtain a special licence from the Ministry of Defence, if they are under 21. The Committee asks what conditions govern the granting of this authorisation, how long it takes and the procedure to be followed. It also wishes to know whether persons whose request for authorisation has been rejected can appeal against the decision, and if so to what body.

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

Article 20 – Right to equal opportunities and treatment in employment and occupation without sex discrimination

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

Equal rights

The Committee has examined the legislative framework for the right to equal treatment in previous conclusions, and therefore refers to these for an overview of the situation (Conclusions 2004 and 2006, Cyprus, Article 20).

The report indicates that Law 205(1) of 2002 on the equal treatment of men and women in employment and vocational training has been amended in 2006. The main purpose of the amendment was to make the definition of sexual harassment clearer and distinguish it from non-sexual gender-based harassment. Furthermore, NGO's are now allowed to represent their members in court or submit a complaint on behalf of their members. Also, social partners are given more say in measures taken on enterprise level.

Law 177 of 2002 on equal pay for men and women for similar work or work of equal value was amended in 2004 to harmonise Cypriot legislation with Council Directive 75/117/EEC relating to the application of the principle of equal pay for men and women¹. Whilst the aim and contents of this law are in line with the requirements of the Revised Charter, the Committee recalls that it came to a conclusion of non-conformity on this point in its previous conclusion because the scope of comparison of jobs and wages did not extend outside the company directly concerned. The recent amendment to Law 177 of 2002 does still not make provision for comparisons outside the same employer. The report indicates that the authorities in principle agree with the Committee's conclusion on this point and are considering changing the law to permit that comparison of wages can be extended outside the company concerned. Until this amendment is introduced in the law the Committee must reiterate its conclusion of non-conformity.

In Conclusions XVI-1 (under Article 1§2), the Committee noted that that under the collective agreement for the construction industry there were two job categories with different pay and men were automatically included in the higher paid one. According to the report (under Article 1§2), this collective agreement was scheduled to be amended as of 1 January 2006. The Committee asks what amendments have been made to the agreement.

The Committee notes that Law 133 of 2002 on equal treatment between men and women in occupational social security schemes guarantees equal treatment in this area.

Specific protection measures

The 2006 amendment of the basic law on equal treatment of men and women in employment and vocational training provides that certain occupations are excluded from the scope of this law. The Committee asks which are the concrete occupational activities that can only be entrusted to persons of one sex and are thus excluded from the law. It recalls in this respect that any exclusion of activities from the principle of equal treatment should be exceptional and subject to strict interpretation.

The report indicates that under the Maternity Protection Regulations of 2002, when the nature of certain activities may be detrimental to the health and safety of women employees that are pregnant, have recently given birth or are breast feeding, the employer must undertake a risk assessment and, if necessary, may remove or transfer the employee from such an activity. The Regulations do not explicitly forbid this category of

¹ Official Journal L 045, 19/02/1975 P. 0019 - 0020

employees to any work, and the restrictions are only derived from the assessment of the risks at the workplace. The Committee takes note of this information and recalls that it will be taken into account during its next examination of Article 8 of the Charter.

Position of women in employment and training

According to the report, the women's share of overall employment in 2006 was 60,3% (up from 58.4% in 2005). The rate for men was 79.4% (up from 79.2% in 2005).

Despite the progress in women's participation in the labour market, women continue to have higher unemployment rates. The overall unemployment rate was 5.2% in 2005, falling to 4.6% in 2006. Unemployment rates for women fell from 6.5% to 5.4%, but continued above the average rates as well as those for men, which were 4.3% and 4.0% (Eurostat statistics).

A large majority of workers in part-time and temporary employment continue to be women. In 2006, 4.3% part-time workers out of total employment were men, against 12.1% women; and the percentage of employees with temporary contracts was 7.9% males, compared to 19.0% females (Eurostat statistics).

With regard to the gender pay gap, the report states that in 2005 men were paid on average 25% more than women. The Committee notes from Eurostat that the European Union average (27 countries) for 2005 was 15%, and that the Cypriot rate was the highest for the whole EU. Among the reasons creating the wage gap are the overrepresentation of women in non-skilled occupations and low wage sectors. The report indicates that in 2006 the authorities have undertaken a comprehensive study with a view to identifying problems and defining possible ways, including best practices in other countries, in order to reduce the gender pay gap. The Committee asks to be kept informed on the outcome of this study.

As regards occupational training, the report states that the proportion of women participating in training activities during the reference period has remained more or less the same as in the previous reporting period, that is, 41-42%.

Measures to promote equal opportunities

The first National Action Plan on Gender Equality has been prepared and will cover the period 2007-2013. One of the six policy areas included in the plan relates to employment and vocational training. The Committee asks to be kept informed on the implementation of this Action Plan.

As to the policy measures in force during the reference period to increase female participation in employment, the report indicates that the scheme for the Encouragement, Strengthening and Reinforcement of Female Entrepreneurship has continued. There was also a scheme for the promotion of training and employability of women who do not work, and grants to NGO's and local communities for the development of child care facilities have continued.

The report also states that there has been an increase of public funds allocated to NGO's and the National Machinery of Women Rights to promote and implement gender equality programme.

The Committee notes from another source¹ that although no study has been conducted it appears that the content of collective agreements at sectoral and company level do not take gender into account in the setting of terms and conditions of employment. The

¹ European Industrial Relations Observatory (www.eiro.eurowfund.eu/eiro/)

Committee recalls that the promotion of equal treatment of the sexes and equal opportunities for women and men by means of collective agreements is a prerequisite for the effectiveness of Article 20 of the Revised Charter, and therefore requests that the next report contain information on any developments in this respect.

Conclusion

The Committee concludes that the situation in Cyprus is not in conformity with Article 20 of the Revised Charter on the ground that it is not possible to make a comparison of jobs outside the company directly concerned in unequal pay claims.

In accordance with Article 21-1§3 of the Committee's Rules of Procedure, a dissenting opinion of Mr S. Evju, member of the Committee, is appended to this conclusion.

Article 24 – Right to protection in cases of termination of employment

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

Scope

The Committee observes that Cypriot law still excludes from the protection against dismissal employees who have not completed a continuous period of 26 weeks with their employer regardless of their qualifications and thus reiterates its finding of non-conformity on this ground (see Conclusions 2005 and 2007).

Obligation to provide a valid reason for termination of employment

The Committee had examined the valid reasons for termination of employment under Section 5 of the Termination of Employment Law in its Conclusions 2005. It asks the next report to give a summary of significant case law showing how these grounds for termination are interpreted by the competent courts in practice. It wishes in particular to know under which conditions an employee may be made redundant for economic reasons pursuant to Section 18 of the said law and whether courts are empowered to review the facts underlying the economic reasons invoked by the employer.

The Committee had further observed that pursuant to Cypriot law, employment may be terminated where an employee has reached the retirement age and that the latter is fixed according to the contract of employment, collective agreements or legislation.

The report specifies that once an employee has attained retirement age he is entitled to all benefits resulting from a collective agreement, membership in an occupational pension scheme etc. Retirement age does not necessarily have to correspond to the pensionable age of the Social Insurance Scheme (65 years) and an employee may continue to work even after having reached the pensionable age on the basis of a corresponding agreement with the employer. However, the Committee also notes that the Termination of Employment Law stipulates that an employee is only entitled to compensation in the event of unfair dismissal if he or she has not yet attained the age of 65 years, i.e. that after having reached the pensionable age the protection afforded under the Termination of Employment Law does in principle no longer apply.

In reply to the Committee's question as to whether there are specific procedures to be followed once an employee reaches the retirement age or whether employees who reach this age are automatically dismissed, the report states that no specific procedure exists in this respect.

The Committee holds that dismissal on the grounds of age will not constitute a valid reason for termination of employment unless a termination is, within the context of national law, objectively and reasonably justified by a legitimate aim such as legitimate employment policy, labour market objectives or the operational requirements of the undertaking, establishment or service and provided that the means of achieving that aim are appropriate and necessary. It wishes the next report to provide information on whether and how the legal framework complies with this approach.

In reply to the Committee's question the report explains that Cypriot legislation does not oblige employers to provide in writing the reasons for a dismissal except in the event of collective redundancies. The Committee notes from another source¹ that in case of dismissal for disciplinary reasons, the labour courts nevertheless hold that general legal

¹ Internet site of the International Labour Organisation (Country summary – Cyprus – Termination of Employment) : www.ilo.org

principles are applicable including the employee's right to be informed of the charges against him and to have adequate time to present his case. The Committee asks for confirmation in the next report that it is established case law of Cypriot courts that employees have the right to be provided with the reasons for their dismissal.

Prohibited dismissals

The Committee examined the situation in Conclusions 2005 and found that the situation was in conformity with Article 24 in this respect.

Remedies and sanctions

The Committee notes that an employee may bring a case before the Labour Disputes Court in case of unlawful dismissal. The Labour Disputes Court may award compensation which cannot be less than the amount the employee would receive if made redundant but at the same time cannot exceed the wages of a period of two years. An employee may claim a higher amount of compensation from the District Court. The Labour Disputes Court may order reinstatement, but only in case of workplaces with more than 20 employees. In such a case the compensation awarded cannot exceed twelve months wages. Also in this case the employee may claim a higher amount of compensation from the District Court.

The Committee holds that Article 24 of the Revised Charter requires that courts or other competent bodies are able to order adequate compensation, reinstatement or other appropriate relief. In order to be considered appropriate, compensation should include reimbursement of financial losses incurred between the date of dismissal and the decision of the appeal body ruling on the lawfulness of the dismissal, the possibility of reinstatement and/or compensation sufficient both to deter the employer and proportionate to the damage suffered by the victim. It finds the situation in Cyprus not to be in conformity with the Revised Charter in this respect.

Conclusion

The Committee concludes that the situation in Cyprus is not in conformity with Article 24 of the Revised Charter on the grounds that:

- employees who have not been employed with their employer for a continuous period of 26 weeks are not entitled to protection against dismissal regardless of their qualifications, and
- compensation for unlawful termination of employment is subject to a ceiling.

In accordance with Article 21-1§3 of the Committee's Rules of Procedure, a partly dissenting opinion of Mr S. Evju, joined by Ms M. Schlachter and Ms A. Ciampi, members of the Committee, is appended to this conclusion.

Dissenting opinion of Mr S. Evju

Conclusion relating to Article 20

The Committee has reached a conclusion of non-conformity on the ground that “it is not possible to make a comparison of pay and jobs outside the company directly concerned where this is necessary for an appropriate comparison”. On this point I dissent.

The construction of Article 20 (and Article 4§3) on which the Committee rests is one that has been arrived at gradually, stumblingly and via a plethora of inconsistency, from a mere suggestion in Conclusions XIII-1 through several later conclusions in various forms. Be that as it may, the conclusion arrived at is neither solidly founded nor a readily comprehensible requirement.

Article 20 entails an obligation on States to “take appropriate measures to ensure or promote” “the right to equal opportunities and equal treatment”. Pay, “remuneration”, is merely mentioned as one element of “terms of employment and working conditions”. The particular conception underlying the Committee’s stance is a transference of the obligation under Article 4§3 to recognize “the right of men and women workers to equal pay for work of equal value”.

This begs the question what is “equal *value*”, that is, *value for whom* – for the worker, for an employer, according to some societal standard and in that case which, defined by whom, etc.? Unfortunately, no straightforward and operative answer is provided to this question. That is problematic also because obviously, there is an immediate connection between this and the issue of comparison as regards what is “*equal pay*”.

Employing the concept of “enterprise” in insisting on the possibility of “outside” comparison is unfortunate in that the very concept is fuzzy. It is not legally defined and its extension is not clear and may differ with varying contexts. This is the case with the concept of “enterprise” in several domestic jurisdictions (e.g., in French law) and also as the Charter and Articles 4§3 and 20 are concerned. The Committee has expressed itself in several different forms of wording, to the effect that domestic legislation must authorize the extension of comparisons of pay and jobs “to other enterprises”, “outside the enterprise”, “outside the company directly concerned”, or “beyond a single employer”, occasionally but not systematically with the rider “where this is necessary for an appropriate comparison”. The occasional use in Committee conclusions of terms like “company” or “employer” may portend certain conceptions but case law does not provide operative responses to how the intended “outside “ comparison must reach and where it may stop.

In this context it is of the essence to clarify who is the obligated subject pursuant to Article 4§3 or Article 20. In previous dissenting opinion I have pointed out that it is a fundamental difference between comparing average wages of women and men in society, at the aggregate level across all branches of the economy, and comparing wages at a given workplace, within a local authority (municipality, *Kommune*) or within state civil service, controlling for factors like education, age, years of service, etc. What is “equal” and what is “value” by force take on different meaning in different contexts. If what is at issue is seeking to provide an individual right for a worker as a vehicle to establish a legal entitlement to being paid by her or his employer, that amounts in effect to impose an obligation on an employer to pay its employees not on the basis of wages and wage differences within its own workforce but based on what some other employer(s) somewhere else in the economy is paying its workers. I find that to be an untenable position as regards the construction of the provision of Article 4§3 and Article 20 of the Charter. It cannot reasonably be presumed that by virtue of provisions like these an employer is obligated to pay its employees on the

basis of comparison with employees of other employers. I refrain from elaborating on this point, which I have addressed more comprehensively in previous dissenting opinions

Further, it remains foggy, at best, when according to the Committee's standard it must be deemed "necessary for an appropriate comparison" to have recourse to some form of "external" pay comparison. Arguably, one might hold that there may be a segregated labour market so that there may be a workplace where there is no one of the other sex to compare oneself with. To be able to see "discrimination" one will then have to be able to look outside. This is, however, little more than a pure postulate taking no account of the different issues of obligated individuals, the applicable concept of equal/unequal, and assessment criteria that I have pointed to above. And here, problems abound. I maintain my view that the position adopted by the Committee's majority is ill-advised.

Partly dissenting opinion of Mr S. Evju, joined by Ms M. Schlachter and Ms A. Ciampi

Conclusion relating to Article 24

As one reason for finding the situation in Cyprus not in conformity with Article 24 of the Revised Charter, the Committee points out that employees who have not been employed with their employer for a continuous period of 26 weeks are not entitled to protection against dismissal, regardless of their qualifications. This reiterates previous conclusions for Cyprus (C 2005, 111; C 2007, 345).

I have a different opinion on this point. The 26 weeks (half a year) concerned should be considered a probationary period. This is made clear in Cyprus fourth report (2006) under the Revised Charter, which states, i.a., "Employees who have not completed a continuous period of 26 weeks of employment with their employer are not entitled to any compensation in the event of dismissal since the six months periods is considered to be a period on probationary basis" (p. 96).

This being so, the case of Cyprus on this point is fully comparable with that of Italy, in which I have consistently held that a probationary period of up to a maximum of six months cannot in general terms be deemed to be not reasonable within the meaning of the Appendix to Article 24. In addition, I have noted that, i.a., that within the bounds of what is generally a "reasonable duration" of a probationary period I find the imposition of a requirement of shorter probationary periods for some categories or groups of workers based on the workers' "qualifications" to be unfounded.

My having overlooked the parallel in the two preceding conclusions for Cyprus is highly regrettable. But in no way can it preclude me from now expressing the view I find to be proper and correct.