



November 2008

European Social Charter

European Committee of Social Rights

Conclusions XIX – 1 (ICELAND)

Articles 1, 15 and 18 of the Charter in respect of Iceland

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 Iceland on 15 January 1976. The time limit for submitting the 21st report on the application of the Charter to the Council of Europe was 31 October 2007 and Iceland submitted it on 4 June 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).

Iceland has accepted these articles, with the exception of Articles 9, 10 and Article 1 of 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 and 15.

The present chapter on Iceland concerns 8 situations and contains:

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

In respect of the 2 other situations concerning Articles 18§2 and 18§3, the Committee needs further information. The Government is therefore invited to provide this information in the next report on the provisions in question.

The next Icelandic 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 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 Iceland's report.

Employment situation

The Committee notes that, according to Eurostat, growth in Iceland slowed down during the reference period, from 5.2% in 2004 to 4.2% in 2006.

The employment rate resumed its upward trend, rising from 82.3% in 2004 to 84.6% in 2006, as did the female employment rate, which increased from 78.8% in 2004 to 80.8% in 2006. These rates are still higher than the corresponding EU-15 averages (66.2% and 58.7% respectively in 2006).

The unemployment rate decreased from 3.1% in 2004 to 2.8% in 2006. The female unemployment rate fell from 2.9% in 2004 to 1.5% in 2006. The general and female unemployment rates were also significantly lower than the EU-15 average (7.7% and 8.5% respectively in 2006). The Committee asks for the next report to provide information on the unemployment rate among young people (15-24).

Long-term unemployment as a percentage of total unemployment decreased during the reference period, from 11.2% in 2004 to 8.7% in 2006, and is still much lower than the EU-15 average (42.1% in 2006).

The number of foreigners registered as unemployed decreased from 151 in 2005 to 99 in 2006, taking the unemployment rate among foreigners from 1.7% in 2005 to 0.7% in 2006. About 13 600 immigrants were on Iceland's labour market in 2006 (compared to 9 010 in 2005).

In 2006, some 200 people with disabilities were registered as unemployed, meaning that their unemployment rate was 4.9%.

Employment policy

The Committee notes that a new law on labour market measures came into force in 2006, whose aim is to encourage unemployed people to get back into the labour market. The Government's employment policy pursues two main aims:

- to redress the balance between labour supply and demand;
- to meet jobseekers' individual needs more effectively and encourage active jobseeking.

The employment of women was also a priority. A budget of 17 million króna (ISK) (€ 143 092) was allocated for various projects in this area.

The Committee notes that a total of 5 000 people (3 400 in 2005 and 1 600 in 2006) took part in active measures during the reference period. It asks again for the next report to give the activation rate (i.e. the total number of beneficiaries in relation to the total number of unemployed).

Spending on active labour market measures increased from ISK 266 million (€ 2 238 961) in 2005 to ISK 270 million (€ 2 272 630) in 2006. The Committee asks for the next report to give the figure for total expenditure on active and passive employment measures as a percentage of GDP, specifying what proportion is devoted to active measures.

Conclusion

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

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

The Committee takes note of the information provided in Iceland'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.

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

The Committee notes that the report gives details of judgments by the Supreme Court in cases of sex discrimination. It also outlines the conclusions of various studies showing that there is still a wage gap between women and men, draws attention to a four-year action plan for gender equality (ending in May 2008) and points out that several committees have been appointed to decide on measures to be taken in this sphere. The Committee also notes that a new Gender Equality Act was adopted on 26 February 2008, outside the reference period. The Committee asks for the next report to describe the outcome of the four-year action plan, the measures adopted to combat gender-based discrimination in practice following the surveys on the subject and the content of the new Act of 26 February 2008.

As to discrimination on grounds other than sex, the Committee notes that there have been no changes in the situation which it previously considered not to be in conformity with Article 1§2 of the Charter. It notes only that the Ministry of Social Affairs has set up a working group to look into the content of Council Directives 2000/43/EC of 29 June 2000, implementing the principle of equal treatment on grounds of racial and ethnic origin, and 2000/78/EC of 27 November 2000, establishing a general framework for equal treatment in employment and occupation. The Committee therefore concludes that the situation in Iceland is not in conformity with Article 1§2 of the Charter in this respect.

The Committee recalls that under Article 1§2 of the Charter, remedies available to victims of discrimination must be adequate, proportionate and dissuasive. Therefore the imposition of pre defined upper limits to compensation that may be awarded are not in conformity with Article 1§2 as in certain cases these may preclude damages from being awarded which are commensurate with the actual loss suffered and not sufficiently dissuasive. The Committee notes that Gender Equality Act No. 96/2000, as amended in 2008, makes no provision for an upper limit. The courts decide on the amount of compensation to be granted to victims of discrimination on the ground of sex. The Committee asks what the situation is as regards other types of discrimination.

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 Gender Equality Act No. 96/2000 provides for an adjustment of the burden of proof in sex discrimination cases. Thus, if employees can provide sufficient evidence to establish a presumption of discrimination, it is for the other party to prove that there was no discrimination, as defined in the legislation. The Committee asks what the situation is as regards other types of discrimination.

The Committee points out that to ensure that the prohibition on discrimination is effective, states must allow associations, organisations or other legal entities which, in accordance with criteria set by national legislation, have a legitimate interest in ensuring compliance with equal treatment within the meaning of Article 1§2 of the Charter to seek a ruling in court that the prohibition on discrimination in employment has been infringed and to support those who consider themselves to have been victims of discrimination. It asks what the situation is in Iceland in this respect, with regard to all types of discrimination.

The Committee recalls that under Article 1§2 of the Charter, States Parties may make foreign nationals' access to employment on their territory subject to possession of a work permit but they cannot ban nationals of States Parties, in general, from occupying jobs for reasons other than those set out in Article 31 of the Charter. Restrictions on the rights embodied in the Revised 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 therefore are those that are inherently connected with the protection of the public interest or national security and involve the exercise of public authority.

Under the Civil Servants' Rights and Obligations Act (No. 70/1996), staff recruited for more than one month must have Icelandic nationality or be nationals of one of the States Parties to the Agreement on the European Economic Area (EEA) or the European Free Trade Association (EFTA), although exceptions may be made for other nationals. The report seems to indicate that this condition applies to all civil service posts, whether or not they involve exercising public authority. The Committee requests confirmation that this is the case.

In its previous conclusion (Conclusions XVIII-1), the Committee noted that it was necessary to be an Icelandic national or the national of a State Party to the Agreement on the EEA to obtain a licence to practise as a pharmacist, be employed as a teacher or head in a primary school or be granted a licence to operate an industrial, craft or factory facility. In respect of operating licences for pharmacists or the operation of an industrial, craft or factory facility, exceptions could be made where the individual had been residing in Iceland for more than one year; exceptions could also be made for primary school teachers and heads, but only in specific circumstances. Despite the Committee's request, the report does not provide any additional information on the circumstances in which exceptions may be made in practice. The Committee repeats its

request. As there has been no change in the situation, the Committee reiterates that these restrictions go beyond those permitted by Article 31 of the Charter, in that it cannot be stated that all these occupations are inherently connected with the protection of the public interest or national security and involve the exercise of public authority. The Committee therefore concludes again that the situation is not in conformity with Article 1§2 in this respect.

The Committee notes that Act No. 112/1984 on the Employment Rights of Deck Officers on Icelandic Vessels and Act No. 113/1984 on the Employment Rights of Engineers and Mechanics on Icelandic Vessels were repealed, outside the reference period, by Act No. 30/2007 on the Crews of Icelandic Fishing Vessels, Coastguard Vessels, Pleasure Craft and other Vessels. The clause under which nationality of Iceland or one of the States Parties to the Agreement on the European Economic Area (EEA) or the European Free Trade Association (EFTA) is required to work on Icelandic vessels as a deck officer or engineer was not changed however. The Committee asks again why it is necessary to have Icelandic nationality to work as a deck officer or engineer on board an Icelandic vessel. It does note, however, that section 10 of the new Act allows foreign licences to be recognised as a basis for employment on Icelandic vessels.

2. Prohibition of forced labour

Prison work

Prison work is governed by section 18 of the Execution of Sentences Act (No. 49/2005). According to the report, prisoners are expected to work or engage in an activity in prison but are not obliged to work for a private company or a public or state body. The type of work done depends on the prison. Examples cited include manufacturing car licence plates, assembling windows, making cards out of recycled paper, activities connected with the fishing industry and maintenance of prison buildings. In principle, this work is carried out on week days and may not exceed eight hours per day. Prisoners receive remuneration for working or pursuing studies. Those for whom it has not been possible to find work or who are unable to work for medical reasons receive a daily allowance.

3. Other aspects of the right to earn one's living in an occupation freely entered upon

Privacy at work

In the General Introduction to Conclusions XVIII-1, States Parties are invited to "include in their next report information allowing the Committee to assess how employees' individual dignity and freedom are protected by legislation or through case law of courts from interference in their private or personal lives that might be associated with or result from the employment relationship" (Conclusions XVIII-1, General Introduction, §37). The Committee notes that the report does not contain this information. It therefore asks for the next report to provide this information in the light of the observations on Article 1§2 in respect of the right to privacy (Conclusions XVIII-1, General Introduction, §§ 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 XVIII-1 as to whether any legislation against terrorism precludes persons from taking up certain types of employment.

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 subject, including any obligations to take up proposed employment, should be assessed under Article 12§1 of the 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 proposed 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).

The Committee has ruled that the right to earn a living in an occupation freely entered upon means that for a reasonable initial period job seekers must be able to refuse job offers that do not correspond to their qualifications and experience without risking the loss of their unemployment benefits (Conclusions 2004, Cyprus).

It takes note of Unemployment Insurance Act No. 54/2006, which sets out the conditions for entitlement to unemployment benefit. It asks for this information to be included in the next report on Article 12.

Conclusion

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

- legislation prohibiting discrimination in employment on grounds other than sex is inadequate;
- certain occupations (primary school teacher, pharmacist and operator of an industrial, craft or factory facility) which are not inherently connected with the protection of the public interest or national security and do not involve the exercise of public authority and therefore are not covered by Article 31 of the Charter are restricted to Icelandic nationals or EEA nationals.

Paragraph 3 – Free placement services

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

It notes that the total number of vacancies notified to the public employment services fell from 7,800 in 2005 to 4,200 in 2006. Many employers advertise their vacancies directly in the press and not with the public employment services. The latter arranged approximately 1,600 placements in 2005 and almost 1,200 in 2006, giving a placement rate of 20.5% in 2005 and 28.5% in 2006. The report emphasises that this is simply an estimate and does not give a complete picture of the situation. In addition, the regional employment agencies also arrange placements, without this necessarily being reported to the Directorate of Labour.

The public employment services (the Directorate of Labour) employs between 20 and 30 staff.

There were ten private employment agencies in operation during the reference period and they had arranged between 2,000 and 3,000 placements during the same period. These agencies employed around 45 members of staff. The Committee would like the next report to give precise details (or failing that an estimate) of the percentage of the market these agencies cater for, i.e. how many placements they make compared to total recruitments on the labour market.

It also wishes to know whether the services rendered by private agencies are free of charge and whether the Ministry of Labour supervises their activities.

Conclusion

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

Paragraph 4 – Vocational guidance, training and rehabilitation

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

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

As Iceland has accepted Article 15§1 of the Charter (education and training of persons with disabilities), the Committee refers to its conclusion under that article, in which it concludes that the situation in Iceland is not in conformity on the ground that there is no legislation explicitly protecting persons with disabilities from discrimination in education and training.

The Committee is concerned here only with vocational guidance and continuing vocational training in view of the fact that Iceland has not accepted Articles 9 and 10§3 of the Charter. Where one or two of the three provisions has not been accepted, the Committee deals with the following questions under Article 1§4, looking in turn at guidance, continuing training and the guidance and training of persons with disabilities:

- the existence on the labour market of vocational guidance and training services for employed and unemployed persons and guidance and training aimed specifically at persons with disabilities;
- access: how many people make use of these services;
- equal treatment of foreign nationals, nationals of other States Parties and persons with disabilities.

Vocational guidance

In its last conclusion (Conclusions XVIII-2), the Committee noted that continuing education was available from lifelong learning centres, the University of Iceland's institute of continuing education and the business sector education centre, in collaboration with the industrial training centre. It asked how many people received vocational guidance. In answer, the report says that there is no information on the number of beneficiaries and an examination must be made of the best way of assembling the relevant data. The Committee emphasises the need for relevant information in order to assess the situation and asks for this information in the next report.

It also asked how many courses were run by the business sector education centre and how many people attended these courses. According to the report the centre ran 81 courses in 2003-2007, attended by 1 184 persons.

Continuing vocational training

The Committee asked whether some courses were more particularly geared to the long-term unemployed. The report says that persons who have been unemployed for more than six months are offered special assistance by counsellors attached to the directorate of labour. Where necessary, the directorate creates special courses for this group, including ones concerned with confidence-building, identifying aptitudes and skills, computer skills, operating working machinery, driving heavy vehicles and Icelandic for foreigners.

Conclusion

The Committee concludes that the situation in Iceland is not in conformity with Article 1§4 of the Charter on the ground that there is no legislation explicitly protecting persons with disabilities from discrimination in education and training.

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

Paragraph 1 – Education and training of persons with disabilities

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

In 2005 and 2006, 4.8% of the total population were recipients of disability benefit and rehabilitation grants and disability grant recipients. During the same period, such recipients accounted for 7.2% of the population aged 16-66. The figures are slightly higher than in 2004. According to the report, the increase, which consists of nearly 500 individuals, was greatest among those with disability ratings of 75% or more.

Definition of disability

The Committee notes from the report that whilst the definition of disability is not being revised, greater emphasis is being placed on people's abilities rather than on their disabilities. The Committee asks the next report to clarify whether this new approach has an impact with regard to the area of education and training. The Committee refers to its conclusion under Article 15§2 as to the impact of this new approach in the field of employment.

Anti-discrimination legislation

In its previous conclusion (Conclusions XVIII-2), the Committee concluded that the situation in Iceland was not in conformity with Article 15§1 of the Charter on the ground that there was no anti-discrimination legislation in the field of education and training. The Committee explained that the existence of non-discrimination legislation is an important tool for the advancement of the inclusion of children with disabilities into general or mainstream educational schemes. Such legislation should, as a minimum, require a compelling justification for special or segregated educational systems and confer an effective remedy on those who are found to have been unlawfully excluded or segregated or otherwise denied an effective right to education. Legislation may consist of general antidiscrimination legislation, specific legislation concerning education, or a combination of the two (Conclusions XVIII-2, General Introduction, Statement of Interpretation on Article 15§1).

The report informs that a working group appointed by the Minister of Social Affairs is expected to submit proposals on anti-discrimination legislation in summer 2008. While asking to be informed about the result of this initiative, the Committee concludes that the situation continues not to be in conformity with the Charter in this respect.

Education

In its previous conclusion (Conclusions XVIII-2), the Committee noted that legislation on education provides all children with the right to equal access to compulsory education and mainstreaming. However, to evaluate the effectiveness of mainstreaming, it asked for information on any case law and complaints brought to the appropriate institutions.

In reply to the Committee, the report indicates that generally few complaints are received by the appropriate bodies concerning refusal of admission to schools. It explains that in cases involving children in junior school, the local authorities' school committees generally find an acceptable solution, so that the matter does not come to the attention of the ministry. At the senior school and tertiary level, matters do arrive to the ministry which strives to resolve cases so that individuals receive suitable placement in schools with the appropriate facilities.

The report highlights the following Supreme Court cases:

- Case No. 51/2005, where the Court ruled that a Local Council and School building were discharged from paying a mother's costs resulting from the fact that she was obliged to maintain another home because of her daughter's attendance of a school for disabled persons in the capital. Such costs were regarded as being maintenance costs and not schooling costs.
- Case No. 169/2007, where the Court ruled that the parents of a severely disabled child did not have an undisputable right to demand that their child be accepted by an ordinary junior school in her home area as pupils' disabilities could be of such a nature as to make it impossible for them to pursue studies in an ordinary junior school. The evaluation of whether or not a pupil may receive teaching according to his needs in the school in the local government area should be made by the child's parents, the teacher and other specialists.

- Case No. 177/1998, where the Court considered that the lack of specific arrangements by the University of Iceland to meet the needs of blind students amounted to unfair treatment and the university had to award compensation to the student who had suffered such treatment.

The Committee asks the next report to continue to provide information on any relevant case law and complaints brought to the appropriate bodies with respect to discrimination on the ground of disability in relation to education and training.

It also highlights that in order to have a comprehensive picture of the situation and assess its conformity under Article 15§1 of the Charter, the Committee needs to be systematically provided with:

- the total number of children with disabilities;
- the number of children with disabilities attending mainstream schools facilities;
- the number of those attending special education institutions.

Vocational training

The Committee refers to its previous conclusion (Conclusions XVIII-2) for a description of the vocational training and secondary education facilities which it considered to apply the principle of mainstreaming. It had however asked for information about the effectiveness of the measures taken with respect to vocational training, in particular their impact on the subsequent integration of persons with disabilities in the labour market.

The Committee takes note that the vocational training/rehabilitation centre, Örvi, in Kópavogur, reported that of the 56 persons who left its programmes of assessment and training in the period 2004-2007, 31 entered employment in the labour market and three went to study in a technical school. The centre Plastiðjan Bjarg – lðjulund, in Akureyri, achieves similar results with its vocational rehabilitation and vocational training courses.

Moreover, while referring to its conclusions under Articles 1§1 and 15§2 for a description of the new Labour Market Measures Act, No. 55/2006, the Committee notes the “Employment With Assistance” (EWA) measure has produced positive results in terms of introducing disabled people to the labour market. However, those who use the services of the habilitation centres do not as a rule enter the ordinary labour market, some of them who work in sheltered employment, have done so. About 50-60 persons are on the waiting list for EWA programmes, and about the same number are waiting for positions in places of sheltered employment. The Committee asks the next report to describe the impact of the new Labour Market Act with respect to vocational training of persons with disabilities.

In this regard, the Committee observes that yet again no statistical information is available on the number of persons attending vocational training. The Committee underlines that to have a comprehensive picture of the situation and assess its conformity under Article 15§1 of the Charter, it needs to be systematically provided with:

- the number of children with disabilities attending mainstream training facilities;
- the number of those attending special training institutions.

In its previous conclusion, the Committee also asked what judicial or administrative remedies are available to those who are found to have been unlawfully excluded or segregated or otherwise denied an effective right to vocational training.

In reply to the Committee, the report indicates that under Article 9 of the new Labour Market Measures Act, appeals may be lodged with the Unemployment Insurance and Labour Market Measures Complaints Committee against executive decisions taken by the Directorate of Labour. Rulings by the Complaints Committee are final at the executive level. Persons who consider they have been discriminated against can also apply to the courts in accordance with the normal rules.

Moreover, the Disabled Persons Act, No. 59/1992, also contains provisions which are intended to guarantee the rights of disabled persons if they consider violations of their rights have been committed. Section XV of the Act specifically addresses measures to protect their legal rights, with the appointment of special regional councils which are to protect the right of disabled persons to receive services, in addition to which special representatives of the disabled are engaged to monitor their circumstances and situation.

Conclusion

The Committee concludes that the situation in Iceland is not in conformity with Article 15§1 of the Charter on the ground that there is no legislation explicitly protecting persons with disabilities from discrimination in education and training.

Paragraph 2 – Employment for persons with disabilities

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

According to the report, the total number of recipients of disability benefit and rehabilitation grants and disability grant recipients was 14,359 persons in 2005 and 14,851 persons in 2006, representing 4.8% of the total population and 7.2% of the population aged 16-66. The Committee observes that a very high percentage of these recipients of benefits and grants were persons with disability ratings of 75% or higher, i.e. 12,755 in 2005 and 13,230 in 2006.

In reply to the Committee, the report indicates that about 200 disabled people, recipients of social services, were on the unemployment register in 2006. No figure was available for 2005.

The Committee observes that the number of persons with disability who received no payments due to their employment earnings increased from 376 in 2004 to 418 in 2005 and 504 in 2006.

In order to have a clearer picture of the situation, the Committee asks the next report to also provide the total number of persons with disabilities in an ordinary work environment as well as the total number of those in sheltered employment.

Definition of disability

The Committee notes that whilst the definition of disability is not being revised, greater emphasis is being placed on people's abilities rather than on their disabilities. Focus is on making occupational rehabilitation more effective in order to achieve an increased return to the open labour market of persons with disabilities (see below). The Committee asks to be informed on the results of this new approach in the next report.

Anti-discrimination legislation

In its previous conclusion (Conclusions XVIII-2), the Committee had found that the situation was not in conformity with Article 15§2 of the Charter on the ground that there was no legislation prohibiting discrimination on the ground of disability in the field of employment. It had however noted that Iceland was working on legislation to ensure equal treatment in employment for persons with disabilities and asked to be informed about the steps taken forward.

In this regard, it notes from the report that a working group appointed by the Minister of Social Affairs is expected to submit proposals on anti-discrimination legislation in summer 2008. While asking to be informed about the result of this initiative, the Committee concludes that the situation continues not to be in conformity with the Charter in this respect.

The Committee recalls that non-discrimination legislation must provide for the adjustment of working conditions (reasonable accommodation) in order to guarantee the effectiveness of non-discrimination legislation in the field of employment.

Measures to promote employment

The Committee reiterates that there must be obligations on the employer to take steps in accordance with the requirement of reasonable accommodation to ensure effective access to employment and to keep in employment persons with disabilities, in particular persons who have become disabled while in their employment as a result of an industrial accident or occupational disease (Conclusions XVIII-2, Statement of Interpretation on Article 15§2). The Committee requests the next report to indicate what steps employers may take in practice in this regard.

The Committee refers to its previous conclusions (Conclusions XVI-2 and XVIII-2) for a description of the various measures in place to support employment of persons with disabilities in the ordinary market and takes notes of the adoption of the new Labour Market Measures Act, No. 55/2006 aimed at ensuring that as many people as possible are able to participate actively on the labour market. The Act provides for the measures to take into account the abilities and strengths of job-seekers who need assistance in order to enter the labour market and continue to participate actively on it. In this regard, it is clarified that the expression "employment-related rehabilitation" in the Act was preferred rather than "vocational rehabilitation" as the latter may cover medical rehabilitation and general rehabilitation which is not necessarily aimed at having the persons involved resuming participation on the labour market. Employment-related rehabilitation involves effective assistance and support and encouragement to become active participants on the labour market. The Committee asks the next report to provide an account of the impact of such employment-related rehabilitation and other measures taken under the new Act on the employment of persons with disabilities.

According to information from the State Social Security Institute, the vast majority of employed persons with disabilities are on the ordinary labour market, either in full-time or part-time work. Part of the total number work in places of sheltered employment or are employed under contracts as persons with reduced working capacity. The Committee reiterates that in order to have a clear picture of the situation in practice, it systematically needs to be provided with up-to-date figures concerning the total number of persons with disabilities of working age, those employed (on the open labour market and in sheltered employment), those benefiting from employment promotion measures and those seeking employment as well as those who are unemployed. Moreover, it also reiterates its specific request for data on the number of persons with disabilities in Iceland whom are given priority in employment with the state or local authorities.

As regards sheltered employment, the report indicates that the number of people employed in sheltered workshops was 595 in 2005 and 670 in 2006. The Committee recalls that Article 15§2 of the Charter requires that persons with disabilities be employed in an ordinary working environment. 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. The Committee asks the next report to indicate the impact of the measures introduced to enable the integration of persons with disabilities into the ordinary labour market and the rate of progress into it.

Trade unions, together with the Regional Offices for Disabled Persons' Affairs and disabled persons' shop-stewards, defend disabled persons' interests regarding wages and terms on the labour market. Trade unions also operate in sheltered employment where collective agreements have been made covering the work. The Committee notes that collective agreements covering work done in places of sheltered employment have been made in all the largest local government areas in Iceland. The Committee recalls that people working in sheltered employment where production is the main activity must enjoy the usual benefits of labour law and it therefore asks whether this principle is observed in smaller areas where such collective agreements have not been concluded.

Conclusion

The Committee concludes that the situation in Iceland is not in conformity with Article 15§2 of the Charter on the ground that there is no legislation explicitly prohibiting discrimination in employment on the ground of disability.

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

Paragraph 1 – Applying existing regulations in a spirit of liberality

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

Foreign population and migratory movements

The number of foreign nationals in Iceland rose steadily during the reference period because of a high demand for foreign labour. At the end of 2006, there were some 18 500 foreign nationals in the country, accounting for 6% of the population (compared to 4.6% in 2005). As new countries have joined the European Union and the European Economic Area since the last reference period, the countries of origin of foreign residents have become increasingly diverse.

Work permits

The Committee notes that there have been no changes to the situation, which it has previously considered to be in conformity with the Charter (Conclusion XVII-2).

Relevant statistics

The Committee notes that, again, the majority of work permits were granted to Polish nationals, followed by Chinese, Philippine and Lithuanian nationals. According to the report, the total number of work permits issued rose from 6,376 in 2005 to 10,688 in 2006. Over the same period the number of permit extensions also increased, from 1,569 in 2005 to 2,019 in 2006, but the number of temporary permits granted decreased, from 3,965 to 2,849, and the number of permanent permits granted also fell from 349 to 138.

In reply to the Committee, the report indicates how many work permit applications were rejected during the reference period. A total of 117 temporary work permit applications were rejected in 2004 whereas the figure was 359 in 2005 and 403 in 2006. The number of rejections of applications for work permit extensions increased from 3 in 2005 to 29 in 2006.

Conclusion

The Committee concludes that the situation in Iceland is in conformity with Article 18§1.

Paragraph 2 – Simplifying formalities and reducing dues and taxes

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

Administrative formalities

The Minister of Justice and the Minister of Social Affairs together looked into the possibility of entrusting one and the same body with the processing of both work permit and residence permit applications in future, but decided in the end to leave things as they stood.

In reply to the Committee, the report states that the authorities' target of reducing the average time between the filing of an application for a work permit and the issue of the permit to six weeks has not yet been met. The main reason for this is that it often takes a considerable amount of time to obtain the necessary documents. Furthermore, the Labour Directorate must wait for the Immigration Directorate to agree to issue a residence permit before it takes the decision on whether to issue a work permit. The Committee asks to be informed of any developments in this area.

Chancery dues and other charges

In reply to the Committee, the report states that the new Foreign Nationals' Right to Work Act (No. 97/2002) has not changed the formalities for work or residence permit applications. However, under a regulation adopted in 2005 to meet the high level of demand for labour, it is possible to speed up the work permit application procedure for nationals of the states which joined the European Union and the European Economic Area in 2004.

A fee has also been introduced for residence permit applications (whether first-time or renewal applications or applications for a temporary or permanent permit). For nationals of the European Economic Area (EEA), the fee ranges from 1,000 Icelandic kronur (ISK, which is about € 8) to ISK 8,000 (approximately € 66) depending on whether the applicants are over the age of 18. For non-EEA nationals, the fee ranges from ISK 2,000 (about € 16) to ISK 4,000 (nearly € 33). The Committee asks what justification there is for charging fees at the application stage and whether they may be reduced in certain circumstances. Meanwhile, it reserves its position on this point.

Conclusion

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

Paragraph 3 – Liberalising regulations

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

It notes in particular that, during the reference period, amendments were made to the Immigration Act to give effect to the transitional provisions on the free movement of nationals of the member countries of the European Union, the European Economic Area and the European Free Trade Association. Since 2006, nationals of these states have no longer been required to apply for a specific work permit. The report refers to other legislation that is being prepared, which includes a plan to create new categories of temporary work permit. The Committee asks to be informed of any changes in the legislation.

Access to the national labour market

In reply to the Committee, the report states that the exceptions planned for nationals of States Parties which are not members of the European Economic Area with a view to granting them a special, extended first work permit were not applied in practice as temporary work permits were now extended as a matter of course.

Exercise of the right to employment

The Committee notes that Act No. 54/2001 on the Legal Status of Employees Working Temporarily for Foreign Enterprises in Iceland is to be amended to provide a better overview of the activities of these foreign enterprises and their staff. It asks to be kept informed of progress in enacting these amendments.

The Committee also notes that since 2005 temporary work agencies have been offering their services on a broader scale. In view of the increased demand for labour, an Act on the activity of these agencies was adopted in the same year (Act No. 139/2005). One of the aims of this Act is to guarantee that foreign workers employed on temporary contracts have the same rights as Icelandic nationals.

Consequences of loss of job

The Committee notes that foreigners working in Iceland on temporary work permits are not entitled to unemployment benefit under the new Unemployment Act (No. 54/2006). Only workers with a permanent work permit may claim benefit.

Since one of the prerequisites for a work permit to be issued is for labour to be needed in a specific sector, the labour market situation may determine whether a foreign worker will be forced to leave the country.

All foreign workers who lose their job and hold a work permit or a temporary residence permit are entitled to social assistance from the municipality or district in which they live on an equal footing with nationals. However, this is not a sufficient ground to qualify for a residence permit under the Foreign Nationals Act. Under Act No. 96/2002, all foreign nationals who have applied for the extension of their residence permit at least one month before it expires may remain in Iceland until a decision has been taken on their application. They may also appeal against decisions to reject applications for an extension, addressing the Directorate of Immigration in respect of residence permits and the Ministry of Social Affairs in respect of work permits. The Committee asks again whether residence permits can be extended pending a court decision for foreign workers appealing against dismissal.

Conclusion

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

Paragraph 4 – Right of nationals to leave the country

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

It notes that there have been no changes to the situation, which it has previously considered to be in conformity with the Charter (Conclusion XVII-2).

Conclusion

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

