



November 2008

European Social Charter (revised)

European Committee of Social Rights

Conclusions 2008 (NORWAY)

Articles 1, 9, 10, 15, 20, 24, and 25
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 Norway on 7 May 2001. 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 Norway submitted it on 13 February 2008.

This report was the first under the new system for the submission of reports adopted by the Committee of Ministers.² It concerned the accepted provisions of the following articles belonging to the 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),
- the right of workers to the protection of claims in the event of insolvency of the employer (Article 25).

Norway has accepted these articles with the exception of Article 18.

The applicable reference period was 1 January 2005 – 31 December 2006.

The present chapter on Norway concerns 16 situations and contains:

- 10 conclusions of conformity: Articles 1§1, 1§4, 9, 10§1, 10§2, 10§3, 15§2, 20, 24 and 25;
- 4 conclusions of non-conformity: Articles 10§4, 10§5, 15§1 and 15§3.

In respect of the 2 other situations concerning Articles 1§2 and 1§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.

The next Norwegian 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),

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 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 Norway's report.

Employment situation

The Committee notes that, according to Eurostat, economic growth in Norway slowed down during the reference period, to 2.8% in 2006 compared with 3.9% in 2004.

The employment rate continued its upward trend during the reference period, from 75.1% in 2004 to 75.4% in 2006, while the female rate remained stable, at 72.2% in 2006. These rates are above the EU-15 average (66.2% and 58.7% respectively in 2006).

Although the overall unemployment rate remained stable at 4.6% in 2006, the rates among women and young persons (15-24) fell, respectively, from 4% and 11.4% in 2004 to 3.4% and 8.8% in 2006.

Long-term unemployment as a percentage of total unemployment rose, from 18.1% in 2004 to 23.2% in 2006, but is still well below the EU-15 average (42.1% in 2006).

The report states that no account is taken in labour market statistics of disability as such. It is only recorded if it occurred when the individual concerned was already in employment. Such occupationally disabled persons represent about 3% of the total active population.

The Committee asks for up-to-date information in the next report on unemployment among immigrants.

Employment policy

In reply to the Committee, the report refers to various measures taken to integrate immigrants into the labour market, particularly by means of vocational training and introductory programmes, encouraging business creation and establishing jobs in the public sector. Implementation of these measures is above all a local authority responsibility.

In the vocational training field, 40% of the participants in the "New Chance" programme have entered work or further education.

The introductory programme for newly arrived immigrants referred to in the report has enabled 53% of the participants to enter work or further education. A total of 8,800 persons, including 4,600 women, have taken part in this programme.

The Committee asks for updated information on the implementation of these programmes as well as on further measures targeted at other groups of the population, including the long-term unemployed.

In answer to the Committee, the report states that 67,462 persons on average took part in active measures during the reference period, an activation rate of about 76%.

According to the report, there are no statistics to show the average time that elapses between registration as unemployed and the offer of an active measure. The Committee requests that this information be made available in the next report.

It notes that total spending on active and passive employment policy measures remained stable during the reference period and was the equivalent in 2006 of 1.6% of GDP. The Committee notes that this is below the EU-15 average, which was 2% of GDP in 2006. The part devoted to active measures also remained stable and represented 0.6% of GDP in 2006.

Conclusion

The Committee concludes that the situation in Norway 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 Norway's report.

1. Prohibition of discrimination in employment

The Committee notes that under Article 1§2 legislation should prohibit discrimination in employment at least on grounds of sex, race, ethnic origin, religion, disability, age, sexual orientation and political opinion (Conclusions 2006).

Legislation must cover both direct and indirect discrimination (Conclusions XVIII-1, Austria). With regard to indirect discrimination, the Committee points out that Article E of the Revised Charter prohibits "all forms of indirect discrimination" and that "such indirect discrimination may arise by failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all" (Autism-Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, §52).

As with other states that have accepted Article 15§2 of the Revised Charter, the Committee will examine Norway's legislation prohibiting discrimination based on disability under this provision. Similarly, for states such as Norway that have accepted Article 20, the right to equal treatment and opportunities without discrimination based on sex is considered under this provision. The Committee notes that discrimination based on sex is covered by the Gender Equality Act of 9 June 1978.

New legislation to protect employees and the working environment (WEA 2005) was enacted in 2005 and replaces the equivalent 1974 Act. Section 13§1 of the new law prohibits all forms of discrimination, direct and indirect, based on political view, trade union membership, sexual orientation, disability or age.

Section 13§2 makes the ban of discrimination applicable to all aspects of employment, including advertising of posts, appointments, training, pay and working conditions and termination.

Under section 13§4, exceptions are allowed where the discrimination has a just cause, does not involve excessive intervention and is necessary for the performance of work or profession.

In disputes relating to an allegation of discrimination in matters covered by the Charter, the burden of proof should not rest entirely on the complainant, but should be the subject of an appropriate adjustment. The Committee notes that under section 13§8 of WEA 2005, where an employee or job applicant submits information which gives reason to believe that the legislation has been breached, it is for the employer to show that there has been no discrimination.

A new Discrimination Act was also passed in 2005 which prohibits discrimination based on ethnicity, religion, origin, descent, colour, language or philosophy.

The Committee asks why two distinct laws have been passed, one banning discrimination based on political view, trade union membership, sexual orientation, disability or age (WEA 2005) and the other on grounds of ethnicity, religion, origin, descent, colour, language or philosophy (the Discrimination Act), when previously the two categories of discrimination

were covered by a single item of legislation. It asks for information on the differences between the two laws and the reasons for these differences.

It asks whether the Discrimination Act has the same rules as WEA 2005 in terms of scope, exemptions from the ban on discrimination and the burden of proof.

An act that came into force on 1 January 2006 established an equality and non-discrimination ombudsman, who covers all forms of discrimination outlawed by the aforementioned legislation. Persons who consider that they have been discriminated against may complain to the ombudsman, who will rule on the case. Appeals may be lodged against the ombudsman's decisions to an equality and anti-discrimination board of appeals, which may impose fines on those who do not abide by its decisions. The ombudsman also gives general legal advice on matters of discrimination.

Indirect discrimination is defined as any apparently neutral provision, condition, practice, act or omission which in fact places a person in a less favourable situation than others.

The notion of age discrimination covers all age groups, and therefore not just older people.

The Committee has ruled that under Article 1§2 of the Revised Charter, any compensation awarded to a victim of discrimination must be effective and proportionate and act as a deterrent. It therefore considers that imposing a predetermined upper limit is incompatible with the Revised Charter as in some cases this may mean that the compensation awarded is not commensurate with the loss or damage incurred and not sufficiently dissuasive for the employer. The Committee notes from the report that the level of compensation for discrimination is determined by the courts according to the circumstances of the case, and that there is therefore no upper limit.

Under the Code of Civil Procedure, associations, organisations or other legal entities with a legitimate interest in securing equal treatment within the meaning of Article 1§2 of the Revised Charter are entitled to seek rulings that there has been a breach of the prohibition on discrimination. Whether or not there is deemed to be a legitimate interest depends on practical circumstances such as number of members and the organisation's objectives.

In the absence of a reply in the report, the Committee again asks what steps are taken to promote equality in employment.

Under Article 1§2 of the Revised Charter states may make foreign nationals' access to employment subject to possession of a work permit, but they may not issue a general ban on nationals of states party occupying jobs for reasons other than those set out in Article G. 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 barred are therefore those that are inherently connected with the protection of law and order or national security and involve the exercise of public authority.

Under the Constitution, only Norwegian citizens may be appointed to senior official positions in the state service. These include the Prime Minister, members of the Council of State, State Secretaries, senior officials of the diplomatic or consular service, commanders of regiments and other military formations, commandants of forts and officers commanding warships, judges, the attorney-general, public prosecutors, senior Government officials, ambassadors, certain police posts and county governors.

In the maritime sector, the captains of ships registered on the Norwegian register (NOR) and fishing boats must be nationals of the European Economic Area. On Norwegian international register (NIS) ships, non-EEA nationals may serve as captain if granted exemption. The Committee asks for more information on these measures, in particular which are the possible exemptions.

2. Prohibition of forced labour

Prison work

According to the report, prisoners may not be required to undertake work, training and so on, other than in connection with necessary cleaning and other housework in prison. Prisoners may carry out various tasks, such as making wooden or metal objects, cutting grass or trees, painting, food preparation and laundry. As far as possible, prisoners' work preferences are taken into account. They very rarely work outside prison. Prisoners are covered by the relevant employment legislation (WEA 2005), when this is applicable. They receive training before carrying out specialist tasks and then work under the supervision of prison staff. The health and safety at work legislation also applies. Prisoners are paid 51 Norwegian kroner (NOK) (€6.53) a day.

Prisoners can be required to work for private undertakings or public/state bodies within or outside prison, under the supervision of prison staff. The report gives the impression that prisoners' consent may not be an automatic requirement. The Committee has ruled that prisoners may only be employed in workshops run by private companies with their consent and in conditions as close as possible to a private employment relationship (Conclusions XVI-1, Germany). It therefore asks for clarification on whether or not prisoners' consent is required before they can be asked to work, particularly for private undertakings or bodies.

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

Privacy at work

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

Restrictions linked to the fight against terrorism

There is no legislation restricting access to certain forms of employment as a precautionary measure against terrorism. However, official security clearance is required for certain positions. Finally, convicted persons may lose the right to be employed in certain positions.

Conclusion

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

Paragraph 3 – Free placement services

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

According to the report, although employers have a legal obligation to notify their vacancies to the public employment service (*Aetat*), they are not all notified in practice.

In reply to repeated requests from the Committee, the report states that there are no official statistics on placement rates, that is the number of placements made by the employment service in relation to the number of vacancies notified. The only statistics

concern the number of job seekers who have found work. The Committee asks for such data to be provided in the next report.

In the absence of a reply, the Committee again asks what percentage of the market the public employment services cater for – in other words how many placements they make compared to total recruitments on the labour market.

It has already stated (Conclusions 2006 Norway) that these figures are indispensable in order to assess the real effectiveness of employment services. Should the next report fail to provide this information, there would be no evidence that the right to free employment services is guaranteed.

It also asks for other additional information in the next report, such as the number of jobseekers who have been in contact with or visited employers. It also asks for up-to-date information on the total number of staff in the public employment services.

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

Paragraph 4 – Vocational guidance, training and rehabilitation

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

As Norway 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.

The Committee concluded that the situation with regard to the vocational guidance (Articles 9) and continuing vocational training of workers (Article 10§3) is in conformity with the Revised Charter.

However, it found the situation not in conformity with the Revised Charter as regards Article 15§1 on the ground that the anti-discrimination legislation covering education for persons with disabilities is inadequate. Since this ground concerns education, it is not relevant under Article 1§4.

Conclusion

The Committee concludes that the situation in Norway is in conformity with Article 1§4 of the Revised Charter.

Article 9 – Right to vocational guidance

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

As Norway 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 within the education system

a. Functions, organisation and operation

The authorities in charge of education in the regions are responsible for providing pupils and students with a vocational guidance service. A major reform is being made to the school system under the heading "Promotion of knowledge" and will result in changes to vocational counselling. The Committee asks for the next report to provide information on how this reform is progressing.

b. Expenditure, staffing and number of beneficiaries

The Committee asks for information on expenditure, staffing and the number of beneficiaries of vocational guidance in the education system.

Vocational guidance in the labour market

a. Functions, organisation and operation

In 2006, the public employment, national insurance and municipal social welfare services were merged to form a new employment and social welfare office (the NAV). The merger helped to improve the co-ordination and interaction of local administrative offices and the services they provide. The reform resulted in a new vocational guidance strategy, which affects unemployed people, people with disabilities and immigrants in particular. The role of guidance counsellors was redefined and more was done to cater for the diversity of user needs. Vocational guidance is provided free of charge. The Committee asks for the next report to provide information on the outcome of the reform.

b. Expenditure, staffing and number of beneficiaries

According to the report, vocational guidance services are part of the NAV and there are no separate figures concerning expenditure, staffing or the number of beneficiaries. However, it will be possible to obtain these statistics once the reform has been completed. The Committee asks for the next report to provide information on expenditure, staffing and the number of beneficiaries of vocational guidance in the labour market.

Dissemination of information

The NAV has set up its own Internet site (www.nav.no), which provides information for jobseekers and employers. The site also has a special section for young people including tests which propose career choices on the basis of their personal interests.

Equal treatment of nationals of the other States Parties

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

Conclusion

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

Article 10 – Right to Vocational Training

Paragraph 1 – 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 Norway's report.

The Committee notes from the Norwegian report that there have been no changes to the situation which it has previously found to be in conformity with the Revised Charter (Conclusions 2007).

Conclusion

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

Paragraph 2 – Apprenticeship

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

The Committee has already looked into the organisation of the apprenticeship system in Norway (Conclusions 2005 and 2007) and considered it to be in conformity with the Revised Charter. The Committee notes that there have been no changes during the reference period.

Conclusion

The Committee concludes that the situation in Norway 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 Norway's report.

Employed persons

The Committee has already examined the organisation of vocational training for employed persons (Conclusions 2005 and 2007) and found that the situation was in conformity with the Revised Charter. The Committee further notes from the report that an in-house training subsidy is specifically designed to prevent employees from being excluded from working life during major reorganisations.

In reply to the Committee's question regarding the training leave entitlement conditions the report indicates that according to the WEA Section 12-11, an employee who has worked for at least three years shall be entitled to full or partial leave for up to three years in order to attend organised courses of education. Disputes concerning educational leave shall be resolved by the Dispute Resolution Board which was established in 2006 and has, since its establishment, resolved three disputes.

Unemployed persons

In its previous conclusions (Conclusions 2007) the Committee asked for statistics concerning the participation in training programmes and also, how the financial burden of continuing training was shared among public bodies, employers and households. In this connection the Committee notes from the report that a major part of ordinary labour market measures is constituted by labour market courses (LMT). The courses are now considered to be the most important measure to qualify and update competencies among the unemployed and to strengthen their employment possibilities. The aim of LMT is to facilitate the labour market integration through vocational training adapted to the needs of employers. The Committee notes that the number of participants in LMT courses has been

decreasing since 2004, when it amounted to 46,829 persons to 30,971 persons in 2006. According to the report this is related to the fact that the labour market has been improving, with the number of vacancies increasing and the number of job seekers decreasing. The Committee notes from Eurostat that the unemployment rate amounted to 4.4% in 2004 and to 3.5% in 2006, while the EU-15 average stood at 8.1% and 7.7% respectively.

As regards the Committee's second question, the report states that all labour market measures are purchased from and implemented by private or non-profit enterprises in close cooperation with the Norwegian Labour and Welfare Service (NAV). Participants in labour market measures receive financial compensation paid by NAV in accordance with the rules and regulations for each programme. They are also entitled to subsistence benefits for the duration of the measure. Some participants also receive subsistence benefits from the municipal social welfare.

Conclusion

The Committee concludes that the situation in Norway is in conformity with Article 10§3 of the Revised Charter.

Paragraph 4 – Long-term unemployed persons

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

The Committee notes from Eurostat that the long-term unemployment rate in Norway amounted to 18.7 % in 2004 and to 23.2% 2006. The EU-15 average amounted to 42.1% in 2006.

The Committee notes from the report that all persons who are unemployed for more than six months are considered long-term unemployed for the purposes of vocational training aimed specifically at this category. They participate in different labour market measures, including courses, wage subsidies to employers, employment schemes and in-house training. These people have been treated as priority in 2005 and 2006. The report states that all labour market measures are implemented by private or non-profit enterprises in close cooperation with the employment and welfare service. The Committee requests information on the total spending on these measures.

In its previous conclusions (Conclusions 2005 and 2007) the Committee asked for information concerning measures specifically aimed at long-term unemployed persons, the number of such persons having participated in training programmes and the impact of such training on reducing long-term unemployment. The Committee notes that the report again does not provide this information. Therefore it holds that it has not been established that the situation in Norway is in conformity with Article 10§4 of the Revised Charter.

Conclusion

The Committee concludes that the situation in Norway is not in conformity with Article 10§4 of the Revised Charter on the ground that it has not been established that measures aimed at the retraining and re-integration of long-term unemployed persons are adequate.

Paragraph 5 – Facilities

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

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

In its previous conclusions (Conclusions XVI-2, 2005 and 2007) the Committee found the situation not to be in conformity with the Revised Charter in view of the length-of-residence and employment requirements imposed for entitlement to financial assistance for training

for nationals of other States Parties lawfully resident or regularly working in Norway. The Committee notes that the situation has not changed in this respect. The report states that pupils and students from non-EEA states are eligible for State Educational Loan Fund (*Lånekassen*) if they have been employed in Norway for at least two years immediately prior to becoming a student. The Committee reiterates its finding of non-conformity on this point.

Training during working hours (Article 10.5 c)

The Committee notes from the report that training at the request of an employer will normally be counted as ordinary working hours if the training is held during the ordinary working time. In some cases, the training may be held during what normally is considered as the employees' off-duty time. Specific terms and conditions of such training is regulated in the employment contracts or in the wage agreements.

Efficiency of training (Article 10.5 d)

The Committee notes that there have been no changes to the situation which it previously found to be in conformity (Conclusions 2007).

Conclusion

The Committee concludes that the situation in Norway is not in conformity with Article 10§5 of the Revised Charter on the ground that nationals of other States Parties legally resident or regularly working in Norway are not treated on an equal footing with Norwegian students as regards financial assistance for education.

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

Paragraph 1 – Education and training for persons with disabilities

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

While reiterating its request for the total number of persons with disabilities, the Committee notes that the report acknowledges that the Norwegian National Census Bureau does not have any official statistics or survey concerning children with disabilities in the age group 0 to 18 years. However, the report points out that based on research, as well as on aggregate figures on how many children with disabilities receive specific measures, services and benefits, an unofficial estimation of 2005 showed that 2.7 per cent (approximately 33,000 children) out of all children up to 18 years (approx. 1,300,000) had been registered with some type of disability.

Definition of Disability

It is recalled that according to the Government White Paper 40 (2002-2003) disability "occurs when a gap exists between the capabilities of the individual and the functional requirements of his or her surroundings."

Anti-discrimination legislation

In its previous conclusion (Conclusions 2007), the Committee considered that during the reference period there was no sufficient non discrimination legislation in the field of education and thus found that the situation was not in conformity with the requirements of Article 15§1 of the Revised Charter. The Committee notes that there has been no change in the situation in this regard as the report indicates that in 2007/2008 (outside the reference period), the Government was supposed to submit to Parliament a draft Anti-discrimination and Accessibility Act. The Committee wishes to be informed on the status of the legislative procedure in the next report. It also particularly asks what is the Act's scope of application, whether it requires a compelling justification for special or segregated educational systems and whether it provides for effective remedies for those who are found to have been unlawfully excluded or segregated or otherwise denied an effective right to education.

Education

The Committee recalls from its previous conclusions (Conclusions 2005 and 2007) that mainstreaming is ensured in compulsory schooling and even in child day-care for all children with disabilities. It however reiterates its request for information on any case law and complaints brought to the appropriate institutions with regard to discrimination in compulsory schooling.

The Committee also reiterates its question on information about specialised education facilities

Vocational training

In its previous conclusions, the Committee asked to be kept informed about the improvements made by higher education institutions in order to implement the action plan for the disabled and higher education (1998-2002) and whether any follow-up was foreseen.

In this regard, the Committee notes from the report that the higher education institutions have each been given the responsibility to draw action plan documents to ensure a satisfactory working environment for the disabled. The Committee requests the next report

to highlight the concrete impact of such documents in terms of increased integration of disabled students in higher education institutions.

Conclusion

The Committee concludes that the situation in Norway is not in conformity with Article 15§1 of the Revised Charter on the ground that the anti-discrimination legislation covering education for persons with disabilities is inadequate.

Paragraph 2 – Employment of persons with disabilities

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

The Committee requests the next report to provide up to date figures concerning:

- the number of persons with disabilities between 16 to 66 years of age (476,000 in 2004);
- the number of employed persons with disabilities (220,000 in 2004);
- the number of unemployed persons with disabilities (12,000 in 2004).

Anti-discrimination legislation

The Committee recalls that in its previous conclusion (Conclusion 2007) it considered that the Working Environment Act (WEA) was amended to include a Chapter on Equality of Treatment at work which brought the situation in conformity with Article 15§2 as regards the existence of anti-discrimination legislation. The amended Act in fact prohibits direct and indirect discrimination on the basis of disability and requires employers to implement the necessary measures to enable employees with disabilities to obtain or retain employment, perform and make progress in work, and have access to training.

The Committee had asked for information on the implementation in practice of the reasonable accommodation obligation (adjustment of working conditions to guarantee the effectiveness of the non-discrimination legislation in the field of employment). From the report, it notes that the national health insurance scheme contributes to the implementation of such reasonable accommodation obligation by financing certain "assistive devices" which are helpful in the workplace, such as tools to assist communication and movement, low vision aids, hearing aids, cognitive aids, etc.

The Committee also notes that the Labour Inspection Authority carries out inspections and may issue orders if employers fail to respect their reasonable accommodation duty. The Committee requests the next report to clarify the impact of such orders in practice in the workplaces.

In this context, the Committee also reiterates its specific questions concerning the implementation of the reasonable accommodation obligation, i.e. :

- Has the reasonable accommodation obligation given rise to cases before courts?
- Has the reasonable accommodation obligation prompted an increase in employment of persons with disabilities in the open labour market?

Measures to promote employment

The Committee notes that the measures to promote employment which it described and assessed positively in its previous conclusion have not changed.

The Committee notes that the agreement referred to under Article 10§3 (Agreement on a more inclusive working life - IW), is an additional measure to also promote employment and integration of disabled persons. The Committee acknowledges that as of 2007 (outside the reference period), the Government has initiated a pilot project called

“Adaptation Guarantee” to ensure that necessary technical aid and support, need for adaptation and follow-up be provided in due time. The Committee asks the next report for information on the outcome of this project, as well as the new employment and welfare administration (NAV) implemented since the summer 2006.

The Committee observes from the report that in 2006 the number of persons with disabilities concerned by labour market measures increased to 95,620 (they were 57,000 in 2004). The report also specifies that 45% of such persons progressed to work. The Committee asks the next report to provide further details in this regard (progression rate to the ordinary labour market).

The Committee also observes that the number of persons with disabilities concerned by measures in sheltered enterprises increased too: 17,500 in 2006 (15,240 in 2004). It notes that such measures include rehabilitation training, clarification and qualification programmes. The Committee refers to its above-mentioned questions concerning the total number of persons with disabilities.

Conclusion

The Committee concludes that the situation in Norway is in conformity with Article 15§2 of the Revised Charter.

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

The Committee takes note of the information provided in Norway’s report.

Anti-discrimination legislation and integrated approach

In its previous conclusion (Conclusions 2007), the Committee noted that a bill on the prohibition of discrimination on the ground of disability (the Anti-Discrimination and Accessibility Act) had been presented in 2005 and forwarded to the appropriate authorities. Its chief defining features were that it prohibited direct and indirect discrimination and made it compulsory to adapt facilities to individuals. According to the report, the Government will submit the bill to Parliament in 2007-2008.

The Committee reiterates that the right of persons with disabilities to social integration provided for by Article 15§3 implies that barriers to communication and mobility should be removed to offer them access to transport by road, rail, sea and air, public/social and private housing, and cultural activities and leisure, such as social and sporting activities. Article 15§3 therefore requires comprehensive non-discrimination legislation covering both the public and private spheres in fields such as housing, transport, telecommunications and cultural and leisure activities, and effective remedies for those who have been treated unlawfully.

The Committee asks for the next report to contain information on the Anti-Discrimination and Accessibility Act, and asks whether it applies to the areas covered by Article 15§3. Pending this information, it considers that the situation in Norway is not in conformity with the Revised Charter because, during the reference period, there was no anti-discrimination legislation which explicitly covered the fields of housing, transport, telecommunications and cultural and leisure activities.

Previously, the Committee asked whether the Anti-Discrimination and Accessibility Act was the outcome of the White Paper entitled “Dismantling disabling barriers: Strategies, aims and measures in the policy for people with impairments”, or if other implementing measures were planned and how the various measures were co-ordinated. In reply, the report states that the Act is indeed the result of the White Paper as far as the

implementation of measures for people with disabilities is concerned. The Committee of State Secretaries and the Ministry of Labour and Social Inclusion co-ordinate the various measures described in the White Paper.

Consultation

The Government has its own Council on Disability, which acts as a consultative body on disability-related matters. Its members are organisations representing people with disabilities. There are also similar councils at local and regional level, which are active in numerous sectors of activity, such as education and health. Annual meetings take place between these organisations and the Council on Disability.

Forms of financial aid to increase the autonomy of persons with disabilities

All persons aged 18 to 67 residing or working in Norway have to be insured for disability-related risks and may claim a rehabilitation allowance if they have been insured for at least three years prior to the reason for their claim. Spending on technical aids and vehicles may also be covered.

Persons with a long-term disability (lasting over two or three years) may claim social assistance benefit. The National Insurance Act (section 10) describes the system of financial support for technical assistance.

Measures to overcome obstacles

Technical aids

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

According to the report, technical aids or personal assistance such as communication devices, sight and hearing aids, mobility aids (particularly wheelchairs), assistance with information technologies, interpreting services and guide dogs for the blind are provided to make persons with disabilities more independent.

The Committee 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.

Communication

Over the reference period the Government continued to promote electronic communication for people with disabilities through its “eNorge 2009” action plan.

Mobility and transport

The report describes measures taken during the reference period under a specific programme to promote disabled access to road, rail, sea and air transport (a special financial arrangement in the budget of the Ministry of Transport and Communications, improved access to transport, reserved spaces and special sanitary facilities for people in wheelchairs and a special road and rail programme).

Housing

There is no specific provision concerning housing rights in legislation but the Government is required to provide appropriate housing for disadvantaged groups including people with disabilities. The Government's main aim is to increase the number of specifically adapted dwellings and residences. In 2006, 37% of Norway's social housing was fully accessible to wheelchair users whereas this was the case with only 7% of ordinary housing. The Committee asks for the next report to contain information on grants available to individual people with disabilities for home renovation work, lift installation and the removal of barriers to mobility, the number of beneficiaries of such grants and the general progress made on improving access to housing.

Culture and leisure

The Committee notes that there has been no change in the situation which it previously considered (Conclusions 2007) to be in conformity with the Revised Charter.

Conclusion

The Committee concludes that the situation in Norway is not in conformity with Article 15§3 of the Revised Charter on the ground that, during the reference period, there was no anti-discrimination legislation to protect persons with disabilities explicitly covering the fields of housing, transport, telecommunications and cultural and leisure activities.

Article 20 – Right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex

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

Equal Rights

The Committee refers to its previous conclusions (Conclusions 2006) for a description of the legal framework.

Amendments were made during the reference period to the Gender Equality Act and Working Environment Act (WEA). For example part time workers (predominantly women) have the right to increase their working hours before employers appoint new staff and there is a right to work flexible working hours where this can be granted without significant disadvantage. Further, the Gender Equality Ombudsman and Gender Equality Board of Appeals were replaced by new bodies namely the Equality and Anti discrimination Ombudsman and the Equality and Anti Discrimination Tribunal which enforce the prohibition on discrimination not only on grounds of sex.

Position of women in employment and training and Measures to promote equal opportunities

The report states that the Norwegian labour market is one of the most gender segregated in Europe. Measures are in place to address aspects of this, for example positive action measures have been taken to encourage women to enter fields of higher education where they are underrepresented and likewise men have been encouraged to enter certain professions working with small children.

The Ministry of Education and Research has prepared a Strategic Plan for Gender Equality 2007-2012, this will focus on young persons and children under the age of 19.

The segregation of the labour market, according to the report, accounts for the gender pay gap which remains at about 15/16%.

The monitoring of women in senior management positions continued during the reference period. Various measures have been taken to increase the proportion of women in senior management in particular in the public sector.

Conclusion

The Committee concludes that the situation in Norway is in conformity with Article 20 of the Revised Charter.

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

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

It observes that a new Act of 17 June 2005 No. 62 relating to working environment, working hours and employment protection, etc. (WEA 2005) entered into force on 1 January 2006 and replaced the previously applicable Norwegian Working Environment Act from 1977 (WEA 1977). The report specifies that the regulations concerning termination of employment relationships are now to be found in the WEA 2005 chapter 15 and the regulations relating to proceedings concerning termination of employment etc. in chapter 17. The central provisions concerning protection against unfair dismissal are now included in Section 15-7 subsections 1 and 2 of the WEA 2005, which replaced the former WEA's 1977 Section 60 subsections 1 and 2. According to the report, the provisions of the WEA 2005 as regards protection in cases of termination of employment are mainly identical with the previous regulations in WEA 1977.

Scope

The Committee refers to its previous conclusions on Article 24 (Conclusions 2005 and 2007) where it has found that the scope of the provisions dealing with the protection against dismissals is in conformity with the requirements of the Revised Charter. The report confirms that protection against dismissal applies to all employees.

Obligation to provide a valid reason for termination of employment

The Committee finds that the situation regarding the valid reasons for termination of employment as examined in its previous conclusions continues to be in conformity with Article 24 of the Revised Charter under the WEA 2005.

Pursuant to Section 15-7 subsection 1 of the WEA, employees may not be dismissed unless this is objectively justified on the basis of circumstances relating to the undertaking, the employer or the employee. As regards the termination of employment on the grounds of age, Section 15-7 subsection 4 of the WEA 2005 stipulates that dismissal before an employee reaches 70 years of age due solely to the fact that the employee has reached pensionable age pursuant to the National Insurance Act shall not be deemed to be objectively justified. The Committee notes from another source that standard pensionable age according to the national insurance scheme is 67¹. Section 15-7 subsection 4 of the WEA 2005 further states that after the employee reaches 66 years of age, but not later than six months before he reaches pensionable age, the employer may inquire in writing whether the employee wishes to retire from his post upon reaching pensionable age. A reply to this inquiry must be returned in writing not less than three months before the employee reaches pensionable age. Provided that this is expressly stated in the inquiry, protection against dismissal under the preceding paragraph lapses if no reply is received within the time stated.

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. In this context it wishes the next report to provide information on what are the underlying aims of the aforementioned provision of the WEA 2005.

¹ Website of the European Foundation for the Improvement of Living and Working Conditions (www.eiro.eurofound.eu.int).

The report further states that the Ministry of Labour and Social Inclusion currently is in the process of evaluating whether Section 15-7 subsection 4 of the WEA 2005 is in compliance with Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation¹ and the Committee asks for information on the findings of the Ministry in this respect.

Prohibited dismissals

The Committee examined the situation as regards dismissals prohibited under Norwegian law in its Conclusions 2005 and found the situation to be in conformity with the Revised Charter. The Committee had in particular noted that pursuant to Section 64 of the WEA 1977 employees were protected from dismissal for the first six months following a period of incapacity and the first twelve months if the employee has been employed by the company for five consecutive years or more. It observes that under the WEA 2005 the 12 months period following a period of incapacity has been extended to all employees.

Remedies and Sanctions

In its Conclusions 2005, the Committee noted that unless it is alleged that a dismissal is discriminatory, the burden of proof lies with the plaintiff. The Committee holds that in proceedings regarding unfair dismissals, the burden of proof should not rest entirely on the complainant, but should be the subject of an appropriate adjustment between employee and employer. It asks the next report to specify whether Norwegian law provides for such an adjustment.

Conclusion

The Committee concludes that the situation in Norway is in conformity with Article 24 of the Revised Charter.

¹ Official Journal L 303, 2.12.2000, p.16-22.

Article 25 – Right of workers to the protection of their claims in the event of the insolvency of their employer

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

The Committee points out that in the event of the insolvency of their employer, workers' preferential claims are protected by a guarantee institution. This mainly covers wage claims for up to the four months preceding the beginning of insolvency proceedings and claims in respect of paid leave accrued over a total of 24 months, as well as the interest payable on both types of claim. It also covers compensation for loss of salary, the costs of proceedings to recover wage claims and costs relating to the opening of bankruptcy proceedings.

The Committee also reiterates that the maximum sum that can be paid is adjusted annually in accordance with the social security base amount. According to the report, this sum was 125,784 kroner (NOK) (about €15,700) during the reference period. Costs connected with the opening of bankruptcy proceedings are not included in this sum and are reimbursed separately.

In its previous conclusions (Conclusions 2005), the Committee asked whether the guarantee institution covered workers' claims in respect of amounts owed for absences other than paid leave. In the absence of any reply, the Committee repeats its question.

The report states that the guarantee institution is financed directly by the state. Therefore, claims are still protected even where employers have not paid the relevant contributions. Although the guarantee institution covers workers' claims only if formal insolvency proceedings have been initiated against their company, there is adequate protection, because costs relating to the opening of bankruptcy proceedings are covered separately by the guarantee institution.

The report also states that the average time that elapses between the filing of claims and the payment of any sums owed is six weeks. The Government is not able, however, to provide an estimate of the overall percentage of workers' claims which are satisfied through the guarantee system. In this connection, the report states that in 2006, some 6,500 workers were affected by bankruptcy proceedings and most of their preferential claims were reimbursed by the guarantee institution.

The Committee notes that the Wage Guarantee Act has been amended to be in accordance with Directive 2002/74/EC of the European Parliament and of the Council of 23 September 2002⁵ and that company board members and general managers, who were not covered by the wage guarantee during the previous reference period, are now covered. The result of this is that only employees with a 20% holding in the company or more are excluded from the protection afforded by the guarantee institution if they can be held responsible for the bankruptcy.

Conclusion

The Committee concludes that the situation in Norway is in conformity with Article 25 of the Revised Charter.

⁵ Directive 2002/74/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 80/987/EEC on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer.