

European Social Charter

European Committee of Social Rights

Conclusions XVIII-2 (2007)

**Conclusions concerning Articles 1§4,
2, 3, 4, 9, 10 and 15 of the Charter in
respect of Malta**

Introduction

The function of the European Committee of Social Rights is to judge the conformity of national law and practice with the European Social 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 general comments formulated by the Committee figure in the General Introduction to the Conclusions¹.

The European Social Charter was ratified by Malta on 4 October 1988 and the Revised European Social on 27 July 2005. The time limit for submitting the 14th report on the application of the European Social Charter was 31 March 2006 (reference period: 1 January 2001 to 31 December 2004) and Malta submitted it on 28 August 2006.

This report concerned the following “non-hard core” provisions of the Charter:

- right to just conditions of work (Article 2);
- right to safe and healthy working conditions (Article 3);
- right to a fair remuneration (Article 4);
- right to vocational guidance (Article 9);
- right to vocational training (Article 10);
- right of persons with disabilities to education, training and employment (Article 15).

Malta has accepted all of these articles with the exception of 2§4, and 10§4.

1. The conclusions as well as state reports can be consulted on the Council of Europe's Internet site (www.coe.int) under Human Rights.

The present chapter on Malta contains 20 conclusions¹:

- 5 cases of conformity: Articles 2§2, 2§3, 2§5, 3§1 and 4§2;
- 8 cases of non-conformity: Articles 1§4, 2§1, 4§4, 4§5, 10§1, 10§2, 10§3 and 15§1.

In respect of the 7 deferred conclusions, that is Articles 3§2, 3§3, 4§1, 4§3, 9, 10§4 and 15§2, the Committee needs further information in order to assess the situation.

The next Maltese report will be the first under the new system for the submission of reports adopted by the Committee of Ministers². It concerns 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 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).

The report should be submitted to the Council of Europe before 31 October 2007.

1. The 20 conclusions correspond to the paragraphs of the Articles which are part of the non-hard core and Article 1§4. This latter provision is usually examined together with Articles 9, 10 and 15 due to the links between these provisions.

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

Article 1 – Right to work

Paragraph 4 – Vocational guidance, training and rehabilitation

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

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

The Committee deferred its conclusion with regard to vocational guidance (Article 9), and it found that the situation with regard to vocational training of workers (Article 10§3) and the vocational education and training of persons with disabilities (Article 15§1) is not in conformity with the Charter, because it cannot assess whether nationals of other states party are guaranteed equal treatment as regards access to continuing training

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

Article 2 – Right to just conditions of work

Paragraph 1 – Reasonable daily and weekly working hours

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

The Committee notes from the report that the Employment and Industrial Relations Act came into force in 2002 (Chapter 452 of the Laws of Malta), which regulates employment and working conditions in Malta. Section 6 of this Act deals with working time. Legal Notice 247 of 2003 on the Organisation of Working Time Regulations was issued by virtue of the Section 6 of the above mentioned Act. This Legal Notice implements EC Directive 93/104/EC concerning certain aspects of organisation of working time.

The Committee notes that Section 6 of the Employment and Industrial Relations Act gives the Minister responsible for industrial and employment relations power to legislate on the maximum weekly working hours, including overtime. The Committee notes that according to the regulation 7 of the Legal Notice 247 the average working time for each seven-day period, including overtime, shall not exceed 48 hours.

The Committee recalls that Article 2§1 of the Charter requires that even under flexible working time schemes which normally fix the average weekly working hours over a certain reference period, the working hours, including overtime, should not be more than 60 hours in any individual week or up to 16 hours in any single day. In this connection the Committee asks whether the Legal Notice 247 transposing the EC Directive 93/104/EC according to which average weekly working hours should not exceed 48 hours, sets limits on individual working week, including overtime and individual working day including overtime.

In its previous conclusion the Committee found that the situation in Malta was not in conformity with Article 2§1 of the Charter due to the absence of limits on overtime. In this connection it notes that even though the Employment and Industrial Relations Act came into force transposing the EC Directive 93/104/EC, it has not been demonstrated that the right to reasonable daily and weekly hours is guaranteed to workers.

The Committee notes that civil servants are covered by collective agreements and it is considered that working conditions of these employees go beyond the minimum protection afforded by the Maltese law.

The Committee concludes that the situation in Malta is not in conformity with Article 2§1 as it has not been demonstrated that the right to reasonable working hours is guaranteed to workers.

Paragraph 2 – Public holidays with pay

The Committee notes from the Maltese report that there have been no changes to the situation which it has previously found to be in conformity.

It nonetheless asks the next report to provide updated information on the increased remuneration paid and/or compensatory rest periods granted in respect of work done on a public holiday.

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

Paragraph 3 – Annual holiday with pay

The Committee notes the information provided in Malta's report.

The Committee previously held that the situation in Malta was not in conformity with Article 2§3 of the Charter for two reasons:

- Maltese law allowed employees to waive their right to annual holidays in exchange for an increase in their remuneration;
- Maltese law did not guarantee that workers who fall ill or have an accident during their holiday can take the holiday at another time.

According to the current report the Organisation of Working Time Regulations 2003 LN 247 of 2003 provide that every worker is entitled to paid annual leave of at least the equivalent in hours to four weeks and four working days calculated on the basis of a 40 hour working week and an 8 hour working day and out of this paid annual leave entitlement, a minimum period equivalent to four weeks may not be replaced by an allowance in lieu, except where the employment relationship is terminated.

The Committee finds that the situation is now in conformity in this respect.

As regards the second ground of non conformity the report clarifies that when a worker falls sick during his/her annual leave, he/she must inform his employer so as to convert his holiday leave into sick leave. The employee does not lose his /her right to holiday leave, and may recover his holiday leave.

The Committee finds that the situation is in conformity in this respect.

The Committee considers that under Article 2§3 of the Charter annual holidays exceeding two weeks may be postponed in particular circumstances defined by domestic law, the nature of which should justify the postponement. It asks the next report to provide information on the rules of postponement.

The Committee concludes that the situation in Malta is in conformity with Article 2§3 of the Charter.

Paragraph 5 – Weekly rest period

The Committee notes the information provided in Malta's report.

The Committee recalls that it previously (Conclusions XVI-2, p. 482) found that the situation was not in conformity with this provision of the Charter on the grounds employees required to work on their rest day were entitled only to extra pay and not to compensatory rest.

The Committee notes that new legislation entered in force during the reference period; the Employment and Industrial Relations Act of 2002, Chapter 452 of the Laws of Malta regulates employment and conditions of work in Malta. Article 6 of the Employment and Industrial Relations Act, deals with working time. It gives the Minister responsible for industrial and employment relations power to legislate on "the maximum weekly working hours, including overtime, for employees, minimum periods of daily rest, weekly rest and annual leave. Reasonable daily and weekly working hours are regulated by Legal Notice 247 of 2003, the Organization of Working Time Regulations 2003, which was issued by virtue of the aforementioned Article 6.

Regulation 6 of the Organization of Working Time Regulations 2003, provides that every worker shall have the right to a minimum

uninterrupted weekly rest period of 24 hours, in addition to the daily rest period of 11 hours, for each seven day period during which the workers works for the employer. The regulations also allow the weekly rest period to be calculated over a fourteen day reference period, in such cases a worker is entitled to two uninterrupted rest periods each of not less than 24 hours each preceded by a daily rest period, in each fourteen day period or one uninterrupted rest period of not less than forty eight hours preceded by a daily rest period.

The Committee notes that certain sectors are excluded from the scope of Regulation 6. It therefore asks for information on safeguards, if any for workers working in these sectors.

The Committee concludes that the situation in Malta is in conformity with Article 2§5 of the Charter.

Article 3 – Right to safe and healthy working conditions

Paragraph 1 – Issue of safety and health regulations

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

Content of the regulations on safety and health at work

The report indicates that in the context of Malta's accession to the European Union (EU), a process of harmonisation with the EU acquis in the field of occupational health and safety was undertaken. The Committee notes that a significant number of new regulations were adopted during the reference period in transposition of relevant EU Directives on occupational health and safety. Moreover, Act No. VII for the Promotion of Occupational Health and Safety of 1994 has been repealed, and replaced by the more updated Act No. XXVII on the Occupational Health and Safety Authority of 2000 (which constitutes the framework law in this area). On the basis of this information, the Committee considers that the general obligation under this provision is met.

Besides the general expansion of legislation and regulations, the report indicates that under new occupational health and safety regulations there is now a mandatory duty on employers to conduct a risk assessment of occupational hazards in the workplace.

In respect of the specific risks to which the Committee has decided to pay particular attention, the Committee notes the following from the report.

– Protection of workers against asbestos. Regulations on the protection of workers from risks related to exposure to asbestos were adopted in 2003 in transposition of the corresponding EU Directive¹. The Committee asks if the other relevant Directive in this area, that is, Commission Directive 1999/77/EC of 26 July 1999², which bans the placing on the market and use of products containing asbestos as from 2005, has been transposed into domestic law, or when this is expected to be done.

1. Council Directive 83/477/EEC of 19 September 1983 on the protection of workers against risks connected with exposure to asbestos during work.

2. Official Journal No. L 207/18 of 06/08/1999.

– Protection of workers against ionising radiations. Two sets of regulations on Nuclear Safety and Radiation Protection were adopted during the reference period. The Committee asks if the maximum exposure dose limits in such regulations have been set in accordance with those in Council Directive 96/29/Euratom of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation¹.

– Protection of workers against chemical agents. Regulations on the protection of the health and safety of workers from the risks related to chemical agents and regulations on the protection of workers from risks related to exposure to carcinogens or mutagens (e.g. benzene) were published in 2003. The occupational exposure limit values established therein meet the requirements set out in the corresponding EU Directives.

Protection of temporary workers

As the report contains no information on whether regulations take into account the health and safety interests of temporary workers, the Committee asks the next report to provide information on this point with a view to assessing whether this category of workers are adequately protected.

Personal scope of the regulations

The Committee has previously considered that the personal scope of regulations were in conformity with this part of Article 3§1 of the Charter. In reply to the Committee, the report indicates that the health and safety of civil servants and members of the armed forces must be ensured as far as reasonably possible in the light of the overall scope of those services.

Conclusion

Pending receipt of the information requested, the Committee considers that the situation in Malta is in conformity with Article 3§1 of the Charter.

1. Official Journal No. L 159 of 29/06/1966, pp. 0001-0114.

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

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

Occupational accidents and diseases

The Committee notes from the Maltese report that the number of occupational accidents fell from 5 109 in 2001 to 4 111 in 2004, and that the positive trend over the 1996-2000 period continued. This fall in the number of accidents at work between 2001 and 2004 is confirmed by Eurostat¹. The Committee nevertheless requests the next report to provide more information on this point, in particular to indicate the standardised incidence rate of accidents in relation to total employment as well as to provide a breakdown of accidents by sectors of the economy.

The Committee notes that there were 31 fatal accidents between 2001 and 2004, an average of 7.75 accidents per year (the same as in the period 1996-2000). The frequency of fatal accidents compared with the total number of accidents remained more or less stable in comparison to the previous reference period (a slight increase from 0.14 % to 0.16 %).

The Committee asks the next report to provide information on the number of occupational diseases, which is missing in the current one.

Activities of the Labour Inspectorate

The report describes the structure and main responsibilities of the Occupational Health and Safety Authority (OHSA). Among its functions, the OHSA is responsible for monitoring compliance with relevant OHS legislation, preparing regulations and codes of practice and carrying out investigations on any matter concerning OHS. The powers of OHS officers include the free entry without previous notice of any workplace, the inspection of documents and the issuing of orders to any person.

1. With 1998=100, the index values for subsequent years were as follows: 2001: 94; 2002: 91; 2003: 90 and 2004: 83 (Eurostat, Population and Social conditions, in <http://epp.eurostat.ec.europa.eu/portal/>).

As regards staffing resources of the OHSA, the Committee notes from the report that efforts have been undertaken with a view to capacity building and recruitment within the authority. However, given the limited funds available the recruitment process was discontinued. By the end of the period under review, the total number of employees was 25, of whom 15 are OHS Officers.

According to the report the number of inspection visits increased from 959 in 2001 to 1 975 in 2004. Whilst noting this positive trend, in order to assess compliance with this part of Article 3§2 of the Charter, the Committee needs to know the proportion of workers covered by inspections compared with the total workforce. It therefore asks to receive this information in the next report.

The Committee also needs to know the number of contraventions to health and safety legislation, and the penalties or sanctions imposed for such breaches.

Conclusion

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

Paragraph 3 – Consultation with employers’ and workers’ organisations on questions of safety and health

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

The Occupational Health and Safety Authority, which is made up of a 9-member tripartite Board, discusses all draft legislation and regulations. The Committee is satisfied that the machinery for consultation at national level continues to satisfy Article 3§3 of the Charter.

As regards workers’ participation, consultation and involvement on matters related to occupational health and safety at their place of work, the report indicates that legislation adopted during the reference period now obliges employers to “ensure that at work places wherein a sufficient number of workers are employed, there shall be elected, chosen or otherwise designated a person or persons to act as the Workers’ Health and Safety (WHS) Representative or Representatives, and who shall be consulted in advance and in good time by the employer on matters which may affect occupational health and safety” (Article 6(4) of Act XXVII of 2000). The Committee asks

what is considered to be a “sufficient number of workers” for the purposes of this provision, and whether there is any body or authority which can issue regulations in this respect. The Committee also asks if other measures are envisaged for companies with a small number of employees who do not fall under the obligation to designate health and safety representatives.

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

Article 4 – Right to a fair remuneration

Paragraph 1 – Adequate remuneration

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

According to the report the statutory minimum wage continued to be adjusted each year to compensate for the increase in the cost of living. In this connection the Committee notes that the statutory National Minimum Wage in 2001 amounted to Lm 49.88 (€ 114.7) per week and to Lm 53.88 (€ 126.07) per week in 2004. The Gross Average Wage stood at Lm 117.89 (€ 275) per week in 2001 and Lm 119.12 (€ 278) in 2004. The Committee notes that these figures do not include the weekly allowance of Lm 2.00 and the end of year bonus payable in June and December of each year. These amounts are subject to a 10 % deduction by way of a social security contribution. The Committee notes that the gross minimum wage represented 45 % of the gross average wage in 2004.

The Committee recalls that in its previous conclusion (Conclusions XVI-2, p. 487) the gross minimum wage represented 69 % of the gross average national wage. The Committee considered that calculated net the percentage would be higher, partly because tax is not imposed on the minimum wage and partly due to certain flat-rate payments paid to all full-time workers (weekly allowance and yearly bonus). However, since there are no net values provided in the present report the Committee cannot estimate whether the ratio of net minimum and average wages is below or above 60 %.

The Committee recalls each national report on Article 4§1 should provide information on gross and net values of both minimum and average wages.

In its previous conclusion the Committee asked for information about how Article 4§1 of the Charter was implemented in respect of workers who are part of the employer's family as this category was excluded from the scope of the 1952 Conditions of Employment Act. The Committee notes that the Employment and Industrial Relations Act came into force in 2002 and asks how the workers who are part of employer's family are treated in this Act in respect to Article 4§1 of the Charter.

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

Paragraph 2 – Increased rate of remuneration for overtime work

The Committee notes that no new information was provided in the Maltese report on the situation with regard to Article 4§2 of the Charter. It recalls that in its previous conclusion the situation was found to be in conformity with this provision.

The Committee concludes that the situation in Malta is in conformity with Article 4§2 of the Charter.

Paragraph 3 – Non-discrimination between men and women workers with respect to remuneration

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

Legal basis

The legal basis for the right to equal pay is Article 14 of the Constitution, which provides that "the State shall promote the equal right of men and women to enjoy all economic (...) rights and for this purpose shall take appropriate measures to eliminate all forms of discrimination between the sexes by any person, organisation or enterprise; the State shall in particular aim at ensuring that women workers enjoy equal rights and the same wages for the same work as men". In implementing this clause, the 1976 national regulations on a minimum weekly wage lay down the principle in the private sector of equal pay for equal work or work of equal value. Furthermore, Section 27 of the Employment and Industrial Relations Act establishes the same principle. Lastly, it was noted in the previous conclusions that legislation on equality of the sexes was being drafted. The Committee asks for the next report to state whether the legislation referred to is the Gender Equality Act of 9 December 2003, Section 4 of which prohibits discrimination in employment and hence changes the situation described in the report.

Notion of remuneration

The Committee notes that Malta's report has not satisfied its request in the previous conclusions for this report to indicate what is covered

in Maltese law by the notion of “remuneration” when applying the principle of equal pay. It repeats this request. It also reiterates that “Article 4§3 applies to all the elements of remuneration and that the notion of remuneration in the Charter, from the standpoint of the principle of equality between the sexes, covers basic or minimum wages or salary plus all other benefits paid directly or indirectly in cash or kind by the employer to the worker by reason of the latter’s employment” (Conclusions XVI-2, Malta, Volume 2, p. 488). The Committee asks again whether it is possible to look outside the enterprise for comparative information to determine whether work is the same or of equal value, one of the conditions for compliance with Article 4§3 (Conclusions XVI-2, Portugal, p. 680).

Public sector

The Committee notes that in the public sector the principle of equal pay for equal work or work of equal value was introduced between 1969 and 1971. The legal basis is Prime Ministerial Circular No. 38/67 of 13 June 1967. The Committee notes that, in reply to its question in its previous conclusions, the report confirms that public sector employees have an individual right to equal pay for equal work or work of equal value that is enforceable in the courts.

Consequences of breaches of the equal pay principle

In reply to the Committee’s question on the consequences of breaches of the equal pay principle, the report states firstly that any distinction based on discriminatory treatment is null and void. Any person who considers him or herself to be the victim of discrimination may lodge a complaint with an industrial tribunal. If the tribunal considers that the application is well founded, it may take any measure it deems appropriate, including cancelling any contract or clause in a contract or collective agreement and ordering the payment of reasonable compensation to the victim. Persons who consider themselves to have been the victims of a breach of the principle of equal pay may also complain to the Department of Industrial and Employment Relations, which will then initiate legal proceedings in the Court of Magistrates. Employers found guilty of such breaches are ordered to pay fines of between 100 and 1 000 Maltese lira (MTL) (€232.95 – €2 329.50). Employers may also be ordered to pay victims any amounts they owe them. According to the report, because, as in all criminal proceedings, the evidence must show that the employer is guilty beyond all reasonable doubt, complainants often

prefer to take action before the industrial tribunal, where a lower level of proof is required because the aim is to assess the probability of a breach.

The report also states that the industrial tribunal may decide whether an employee is to be reinstated and the conditions under which this is to occur. Where employees do not apply for reinstatement or are employed in a managerial or executive post which requires special trust on the part of the employer, the tribunal orders the employer to pay the employee compensation. To determine the amount of this compensation, the tribunal takes account of the actual damages and losses incurred by the worker and other circumstances such as the worker's age and skills, in so far as this may affect his or her chances of finding another job. The Committee points out that in the event of unequal pay, reinstatement should in principle be the preferred solution and that financial compensation can only be granted where reinstatement is not possible or not sought by the individual concerned, in which case it must be sufficient to compensate the worker and to deter the employer. This compensation must therefore cover at least the difference in pay (Conclusions XVI-2, Malta, p. 488). The Committee notes that the information in the report does not make it possible to assess whether the amount of compensation is sufficient to compensate the worker and to deter the employer. It has been asking for several supervision cycles (Conclusions XIII-2, pp. 261-262, and XIV-2, p. 512) under what circumstances compensation is paid and how it is calculated. It repeats this request and also asks for the next report to contain detailed information on the actual amounts of compensation awarded by the Tribunal.

Part-time employees

The Committee notes that there has been a change in Malta as regards equal pay for full-time and part-time employees. The Committee emphasises the importance of this equality because most part-time workers are women and so there is a possibility of indirect discrimination. Under Section 25 of the Employment and Industrial Relations Act, part-time workers must not be treated any less favourably than full-time workers, unless different treatment is justified on objective grounds. Rule 4 of Legal Opinion 427 of 2002, which is based on Section 25 of the Act, specifies that it is for the employer to ensure that this principle is applied. The Committee asks for the next report to explain exactly what is meant by the exception provided for in

this Section, namely the proviso “unless different treatment is justified on objective grounds”, referring in particular to judicial decisions. The Committee notes that this exception may be excessively broad and may actually undermine the principle of equal treatment.

Furthermore, the report fails to reply satisfactorily to the question put in the previous conclusions concerning the way in which pay increases are calculated for part-time workers in line with length of service, as it simply reiterates the principle of equal treatment and does not answer the question directly. The Committee asks for the next report to give detailed answers, giving specific examples where necessary.

As regards the payment of certain components of pay, such as premiums, bonuses, entitlement and benefits associated with complementary insurance schemes, paid as a result of employment, the report states that, where provision is made for such components in employment contracts, part-time workers must not be treated less favourably than full-time workers in comparable situations.

Statistics on women’s and men’s wages

The report presents statistical information on male and female earnings in the different economic sectors. The Committee notes firstly that according to these statistics, about two-thirds of the workforce are men. It also notes that the wage gap has tended to narrow, decreasing from 21.04 % in 2001 to 15.04 % in 2004. From the tables in the report, it is not possible, however, to determine the wage gap for comparable jobs as the data are only divided up according to sector, and there are no further details, particularly as regards the type of function occupied. Consequently, the Committee asks for the next report to provide more detailed data and to report on any detailed surveys conducted to arrive at an objective assessment of how posts are occupied in the various sectors of the economy and to gain a picture of the actual situation as regards equal pay for women and men. The Committee repeats the request it made in

previous conclusions for information on any steps taken to make job evaluation criteria more transparent and achieve greater objectivity in job assessment.

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

Paragraph 4 – Reasonable notice of termination of employment

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

The Committee notes that a new Employment and Industrial Relations Act came into force in Malta in 2002.

Article 36§5 stipulates that the period of notice required to terminate indefinite contracts depends on employees' length of service and is as follows:

- a. for more than one month but not more than six months: one week;
- b. for more than six months but not more than two years: two weeks;
- c. for more than two but not more than four years: four weeks;
- d. for more than four but not more than seven years: eight weeks;
- e. for more than seven years, an additional 1 week for every subsequent year of service up to a maximum of twelve weeks.

The Committee has already ruled that a period of notice of seven days for workers with fewer than six months' service is incompatible with Article 4§4 (Conclusions XIII-3, Portugal, pp. 266-267). Similarly, it has ruled that the Charter requires a period of notice of at least one month for workers with more than one year's service (Conclusions XIV-2, Spain, pp. 684-685).

It also notes that Article 36§2 provides for one week's notice during the probationary period for employees who have worked less than a month, and points out that the same periods of notice must apply, whether or not employees are in a probationary period, and that one week's notice is incompatible with Article 4§4.

Article 36§11 deals with periods of notice in the case of fixed-term contracts. Under this section, employers who terminate such contracts

before their expiry must pay half the wages or salary that would have been due up to the end of the notice period. The Committee notes in connection with periods of notice that no distinction may be drawn according to employees' status, whether their contracts be fixed-term or indefinite. Notice periods must therefore be the same, whatever the form of contract, and the amount paid must be the equivalent of what they would have earned during the corresponding period. Maltese legislation fails to provide for this when the period still to be covered before the end of the contract is less than twice the length of the specified notice period.

Article 36§14 authorises employers to dismiss employees without notice if there is good and sufficient cause. It then provides an exhaustive list of circumstances that cannot be deemed to constitute good and sufficient cause. The Committee considers this approach to be unclear and to leave doubts as to what actually constitutes a good and sufficient cause, which could pose problems with regard to Article 4§4. It notes that the only circumstance in which immediate dismissal is justified is that of a serious offence. It therefore asks for clarification, in particular whether the courts have been called on to consider the application of this rule.

The Committee concludes that the situation in Malta is not in conformity with Article 4§4 of the Charter because:

- one week's notice is insufficient for workers with fewer than six months' service;
- notice of less than a month is insufficient for certain workers with more than one year's service;
- one week's notice is insufficient during the probationary period for employees who have worked more than one month;
- the payment corresponding to the duration of the notice of dismissal that must be paid by employers to employees on fixed-term contracts is insufficient.

Paragraph 5 – Limitation of deduction from wages

The Committee notes the information in the Maltese report.

Section 15§1 of the Employment and Industrial Relations Act of 2 December 2002 confirms the principle that employers may not make deductions from their employees' salaries or provide for such

deductions in a contract with their employees, save in the following cases:

- where expressly authorised by the provisions of the Act;
- where required by another law;
- where ordered by a court;
- where authorised by an agreement between the employer, employers or employers' organisation and one or more trade unions representing the employees concerned.

The Committee notes that the report provides no information about the types of deductions possible, or the percentages of the portion of the wage that is exempt from deductions or the frequency with which these exceptions are applied. It asks for information in the next report on the types of exceptions that are made.

The Committee recalls that it deferred its previous conclusion (Conclusions XVI-2, p. 491) pending receipt of information on the exact sums set by the Ministry of Justice on the minimum portion of wage that is exempt from deductions, limits on fines provided for in collective agreements, and protection of public servants from unreasonable deductions from wages.

On the first point, the Committee notes that the report does not contain any new information in response to its request. Under Article 382§1 of the Code of Organisation and Civil Procedure, the minimum portion of wage that is exempt from attachment is either 300 Maltese pounds (MLT; € 721) per month or "such amount as may from time to time be established by order" of the Minister of Justice. The Committee noted in its previous conclusion that, in view of the minimum wage (193.50 MLT or € 465 per month) and gross average wage (280.50 MLT or € 675 per month), the 300 MLT limit was not excessive in relation to what was generally accepted under Article 4§5. However, before it can assess that the situation in this respect is in conformity with the Charter, the Committee needs to know the exact sums established by the Minister of Justice. It therefore asks again for this information to be systematically included in future reports.

On the second point, the Committee notes that the report does not contain any new information in response to its request. The report cites Section 19 of the Employment and Industrial Relations Act, under which fines provided for by employment contracts must be

approved by the Director of Labour. The Committee reiterates its view, as expressed in previous conclusions, that this makes it impossible for it to know precisely how large the fines in question are. It asks again therefore for the next report to contain conclusive information on this subject.

Lastly, as regards protection of public servants from unreasonable deductions from wages, the Committee notes that, according to the report, they are covered by Section 15§1 of the Employment and Industrial Relations Act referred to above.

The Committee concludes that the situation in Malta is not in conformity with Article 4§5 of the Charter on the grounds that it has not been established that the workers can ensure their subsistence and that of their dependents once deductions are made from wages.

Article 9 – Right to vocational guidance

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

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

Vocational guidance in the education system

a. Functions, organisation and operation

The Committee refers to its previous conclusion (Conclusions XVI-2, p. 492) for a general description of the vocational guidance system.

In reply to the Committee, the report states that students can choose whether or not to follow the advice received through guidance.

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

The Committee asked previously (*ibid.*) how much was spent on guidance services and how many people benefited from them. In the absence of any information in the report, the Committee repeats its question. It asks for this information to be provided systematically in each report.

In reply to the Committee, the report states that staff in the guidance services of state schools in 2004-2005 consisted of 120 teachers, 15 guidance counsellors and 5 teachers specialising in careers.

Vocational guidance in the labour market

a. Functions, organisation and operation

According to the report, a national economic and development programme was being drafted during the reference period as part of Malta's preparations for accession to the European Union. The Committee asks to be informed of the outcome of this project and any specific measures affecting vocational guidance.

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

In reply to the Committee, the report states that, in 2002-2003, spending on vocational guidance in the labour market was about MTL 2.758 million (€6.41 million), nearly MTL 1.021 million (€2.37

million) of which was used to fund programmes and nearly MTL 1.055 million (€2.45 million) covered staffing costs.

The report does not contain any information on the staffing levels of the Employment and Training Corporation's guidance services. The Committee asks for this information to be provided systematically in each report.

According to the report, information seminars on job-seeking techniques are held for young people and adults. 853 people took part in them between 2004 and 2005.

The report also states that a system of individual "profiling" interviews for young people and adults was introduced in 2003. A total of 12 735 jobseekers in Malta and 280 in Gozo attended such interviews between 2004 and 2005.

Young people and adults who are still without work three months after such interviews are called to take part in a job motivation seminar and a job club session. In 2005, 1 519 people attended job motivation seminars and 148 took part in job club sessions. The aim is to make sessions and seminars of this type more generally available. For people who have still not found a job after these seminars and sessions, a personal plan of action is drawn up. This concerned 802 people in 2005.

According to the report, a total of 336 people found a job as a result of the guidance services provided by the Employment and Training Corporation (ETC) between 2004 and 2005.

According to the report, there were 6 215 registered unemployed persons in 2001, 5 166 of whom were men. The equivalent figures in Gozo were about 400 and 350 respectively. The Committee asks what percentage of the unemployed are given vocational guidance.

Dissemination of information

The Committee notes that increasing use is being made of the Internet and new information techniques on various occupations, vocational guidance and study and training programmes. Users are introduced to these new tools through various courses and seminars organised by the ETC. The Committee asks for more information on the other means of disseminating information on guidance (particularly the media and brochures).

Nationals of other Parties to the Charter

The Committee asked for information on this subject in its previous conclusion (*ibid.*). In the absence of any information in the report, the Committee repeats its request. If the requested information is not included in the next report, there will be nothing to show that the situation is in compliance with Article 9 of the Charter.

Conclusion

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

Article 10 – Right to vocational training

Paragraph 1 – Promotion of technical and vocational training and the granting of facilities for access to higher technical and university education

The Committee takes note of the information in the Maltese report and points out that it does not answer the questions put in previous conclusions (Conclusions XIV-2, p. 519, and Conclusions XVI-2, p. 494). As a result, it is unable to assess the situation.

The report points out that vocational education and training are mainly the responsibility of the Ministry of Education. The Committee noted previously that, in the context of local and regional government reform, responsibility for education was to be transferred by July 2002. It was no longer to be exercised by the state's regional offices but by the autonomous local and regional authorities. It asks once again whether this did actually happen and what responsibilities were transferred

Under Article 10§1, national reports must:

- report on the most recent measures taken to foster vocational training, including general and vocational secondary education, university and non-university higher education, apprenticeship and continuing education (systems are described in full in the special Eurydice and Cedefop databases);
- describe the pathways between secondary vocational training and university or non-university higher education;
- give an outline of the mechanisms for the recognition of skills and work experience acquired in the course of vocational training or activities carried out to gain a qualification or access to general or technical courses;
- describe measures introduced to ensure that qualifications acquired in general secondary and higher education are geared towards helping students find a place in the labour market;
- provide an overview of the mechanisms for the recognition of qualifications obtained through continuing vocational training and education;
- give statistics showing the success rate of students in higher education;
- state the proportion of graduates who find employment and how long it takes for them to find their first skilled job.

If access to higher technical or university education is to be based solely on individual aptitude, this clearly implies setting up educational structures which facilitate the recognition of knowledge and experience and transfers from one type or level of education to another; it also implies that registration fees or other educational costs do not create financial obstacles for some candidates.

The Committee asks for a detailed description of the entire education and training system based on the above guidelines and the Form for Reports.

Despite the fact that the Committee asked for information on the subject in its two previous conclusions (Conclusions XIV-2, p. 519, and Conclusions XVI-2, p. 494), the report does not contain any information about equal treatment of nationals of other states party with regard to access to education and training. The Committee notes that under the 1988 Education Act, Maltese citizens are granted the right to education. The Committee has been unable to assess whether equal treatment for foreign nationals is guaranteed as regards access to education and training for several supervision cycles now and so it concludes that the situation is not in conformity.

Conclusion

The Committee concludes that the situation in Malta is not in conformity with Article 10§1 of the Charter on the grounds that it has not been established whether nationals of other States party to the Charter and the Revised Charter are guaranteed equal treatment as regards access to education and training.

Paragraph 2 – Promotion of apprenticeship

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

The Committee reiterates that there are currently two types of apprenticeship scheme: the Extended Skills Training Scheme (ESTS), which is aimed chiefly at future craft workers, and the Technician Apprenticeship Scheme (TAS), whose classes and training sessions are aimed more at technicians. In reply to the Committee, the report states that the length of ESTS apprenticeships varies between two and four years while all TAS apprenticeships last four years. The Employment and Training Corporation (ETC), which works under the authority of the Ministry of Education, Youth and Employment, is

responsible for the management of the two apprenticeship schemes. This responsibility covers the enrolment of apprentices, their placement with a company that complies with safety rules, monitoring of their practical training in the workplace, practical support for employers and the organisation of examinations at the end of apprenticeships. Two vocational education and training (VET) institutions are responsible for organising theoretical training. The Committee asks for the next report to provide information about apprentices' pay and about termination of apprenticeship contracts.

According to the report, in 2001, there were 362 ESTS apprentices and 236 TAS apprentices. In 2004, there were 434 ESTS and 291 TAS apprentices.

Despite the fact that, in its two previous conclusions (Conclusions XIV-2, pp. 519-520, and Conclusions XVI-2, p. 497), the Committee asked for a full description of the situation in practice and in law with regard to equal treatment of nationals of other states party, the report does not contain any information on the subject. As the Committee is unable to assess whether equal treatment is guaranteed as regards access to apprenticeship, it concludes that the situation is not in conformity in this respect.

Conclusion

The Committee concludes that the situation in Malta is not in conformity with Article 10§2 of the Charter because it cannot assess whether nationals of other states party to the Charter and the revised Charter are guaranteed equal treatment as regards access to apprenticeship.

Paragraph 3 – Vocational training and retraining of adult workers

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

There is a department in the Maltese Ministry of Education which is responsible for adult education. Its tasks include managing the country's continuing education centres, broadcasting and media education centres and art, music and drama colleges. It is also in charge of organising evening and language classes. The aim of this training is to improve knowledge in particular fields and create a culture

of continuing education. In the last quarter of 2004, 7 653 people (2 369 men and 5 284 women) attended the courses on offer.

The report does not contain any information about spending on vocational training for employed and unemployed adults. The Committee therefore repeats the question. It also asks for detailed information on how the cost of vocational training is shared between public bodies (state or other collective bodies), unemployment insurance systems, enterprises and households.

Employed persons

In reply to the Committee's question on preventive measures against the deskilling of still active workers at risk of becoming unemployed as a consequence of technological and/or economic progress, the report states that evening classes are proposed by the Night Institute for Further Technical Education (NIFTE). The institute believes that high standards of training can have an influence on the performance of employees, who then contribute more effectively to the competitiveness of the company for whom they work. From October 2004 to September 2005, 148 training programmes were proposed by the institute and 1 660 people attended its courses (1 054 men and 606 women).

The Employment and Training Corporation (ETC) pays subsidies to companies whose employees attend continuing education courses. Since 2002, 72 employers and 3 372 people have taken advantage of them.

The Committee asks again whether there is legislation authorising individual leave for training and, if so, under what conditions and on whose initiative, how long it lasts and what determines whether it is paid or unpaid.

Unemployed persons

According to Eurostat data, the unemployment rate was 7.6 % in 2003 (when the EU average was 9.1 %). Unemployment among young people under 25 was 17.2 % in 2003.

In reply to the Committee, the report mentions several measures designed to provide training for unemployed persons.

The aim of the Employment Training Placement Scheme (ETPS) is to help employers to provide the necessary training during their probationary period for employees recruited after periods of unemployment of varying lengths. The assistance takes the form of a grant equal to half the minimum wage, paid for a period agreed on by the ETC and the employer, but at most for one year.

The goal of the Work Start Scheme is to help adults entering the labour market and enable them to acquire work experience. It is intended for adults who have never worked, people who have been out of the labour market for more than five years, particularly women, and people who have academic or vocational qualifications but no work experience in the area in which they are qualified.

The Training and Employment Exposure Scheme provides training for people over 40 who have been unemployed for more than six months to help them find work again.

Other measures proposed to help give unemployed persons access to the labour market are the Redeployment Scheme, the Job Experience Scheme, the Active Youth Scheme and Literacy Training for Those Seeking Employment.

According to the report, between October 2003 and September 2004, 3 906 people took part in schemes of this type in Malta and 646 in Gozo.

Despite the fact that the Committee asked for information on the subject in its two previous conclusions (Conclusions XIV-2, p. 521, and Conclusions XVI-2, p. 501), the report does not contain any information about equal treatment of nationals of other states party with regard to access to continuing training. The Committee points out that foreigners residing lawfully in Malta must have a valid work permit to be able to enrol on ETC courses. It has not obtained any answers concerning the requirements and the number of applications for work permits. As the Committee is unable to assess whether equal treatment for nationals of other states party is guaranteed as regards access to continuing training, it concludes that the situation is not in conformity in this respect.

Conclusion

The Committee concludes that the situation in Malta is not in conformity with Article 10§3 of the Charter on the grounds that it has

not been established whether nationals of other states party to the Charter and the revised Charter are guaranteed equal treatment as regards access to continuing training.

Paragraph 4 – Encouragement for the full utilisation of available facilities

The Committee notes that the report does not contain any information concerning the two sub-paragraphs (a and d) of paragraph 4 which Malta has accepted.

Fees and charges (Article 10§4.a)

In its previous conclusion (Conclusions XVI-2, p. 501), the Committee noted that all education and training was financed by the public budget and was free of charge for students.

Efficiency of training (Article 10§4.d)

The Employment and Training Corporation (ETC) closely monitors all apprenticeship schemes. In the absence of a reply, the Committee asks again for information about any monitoring and assessment measures taken in consultation with employers' organisations and trade unions to ensure that vocational training courses for young people are effective.

Conclusion

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

Article 15 – Right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement

Paragraph 1 – Vocational training for persons with disabilities

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

The Committee recalls that in its previous conclusion (Conclusions XVI-2, p. 303), it found the situation not to be in conformity with the Charter on the ground that a low number of persons were integrated into mainstreaming education and vocational training. It observes that the report does not provide any figure about persons with disabilities, i.e. their total number, the percentage of children with disabilities, or the number of those attending mainstream or special education and vocational training. It therefore asks this information to be systematically provided in the report.

The Committee asks whether the current definition takes into account the international classifications such as that endorsed by the WHO (International Classification of Functioning, Disability and Health – ICF 2001).

Education

The Committee recalls that, as stated in the Autism-Europe decision (Autism-Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, §48), “the underlying vision of Article 15 is one of equal citizenship for persons with disabilities and, fittingly, the primary rights are those of “independence, social integration and participation in the life of the community. Securing a right to education for children and others with disabilities plays an obviously important role in advancing these citizenship rights”. Under Article 15§1, the Committee therefore considers necessary the existence of non-discrimination legislation as 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 anti-discrimination legislation, specific legislation concerning education, or a combination of the two.

It should be noted that, in the view of the Committee, Article 15 applies to all persons with disabilities regardless of the nature and origin of their disability and irrespective of their age. It thus also covers both children and adults who face particular disadvantages in education, such as persons with intellectual disabilities.

The Committee recalls from its previous conclusion that the 2000 Equal Opportunities (Persons with Disabilities) Act guarantees the right to equal treatment in education for persons with disabilities (see Conclusions XVI-2, Malta for the description of the legislation). During the reference period several complaints (43) concerning education were filed with the National Commission Persons with Disabilities (NCPD). They mainly concerned the provision of the necessary educational support so that students can follow the curriculum in mainstream education, including special arrangements for university examinations.

The report also describes the number of support teachers from the National Support Centre for Special Education Needs who circulate in mainstream and special education institutions in order to provide the necessary support to children. In reply to the Committee it indicates that the transition programme provides work experience for students with intellectual disabilities seeking employment helping them to move from special schools to adult training centres. 20 children participated in this programme in 2004. Finally, the Committee notes from another source⁸ that, in 2003, the review of special and inclusive education has been launched by the Ministry of Education.

However, the Committee notes that the report does not provide up-to-date information on the number of children attending mainstream or special education, or on the measures to increase mainstreaming, which in the previous conclusion was found to be limited. Therefore it considers that the situation is not in conformity with the Charter. Similarly, no information is provided on whether general teacher training incorporates special education as an integral component. It therefore reiterates its previous questions. It also asks to be informed on any development which may follow up from the review exercise.

It finally asks to be informed on access of children with intellectual disabilities to mainstreaming or special education.

Vocational training

In reply to the Committee, the report indicates that the 2000 Equal Opportunities (Persons with Disabilities) Act also guarantees the right to equal treatment in vocational training for persons with disabilities. No complaint was filed during the reference period on vocational training.

The Committee recalls that in its previous conclusion it found the situation not to be in conformity with the Charter on the ground that a low number of persons were integrated into mainstreaming vocational training (Conclusions XVI-2, Malta). The Committee observes that the report does not provide any information on the number of persons with disabilities attending mainstreaming vocational training and the other forms of training available, or about these other forms themselves. Therefore it reiterates its conclusion of non-conformity.

The Committee recalls that under Article 10 of the Revised Charter it regards vocational training as encompassing all types of higher education including university education. It considers that this interpretation applies *mutatis mutandis* to Article 15. It therefore asks information on participation of persons with disabilities to higher education.

8. National Commission Persons with Disabilities, Annual report 2004, in www.knpd.org.

Conclusion

The Committee concludes that the situation in Malta is not in conformity with Article 15§1 of the Charter on the ground that persons with disabilities are not sufficiently integrated into mainstream educational institutions and no new information has been provided to indicate that the situation has improved or that measures have been taken to address the issue.

Paragraph 2 – Employment for persons with disabilities

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

As in the previous report, the only figure available on persons with disabilities is the total number of disabled persons registered in the National Register of Disabled Persons maintained by the National Commission Persons with Disabilities (NCPD): 9 063. The proportion of those of working age is 45-55 %, i.e. 4 584. The report underlines that registration is voluntary and entitles to an identity card giving access to the following benefits: priority in public services, free or reduced fees for certain services such as transports and leisure facilities, reserved parking and housing benefits.

The report also indicates that the Government does not have any statistics on employment of persons with disabilities.

The Committee recalls that when it is generally acknowledged that a particular group is or could be discriminated against, the state authorities have a responsibility for collecting data on the extent of the problem (ERRC v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, §27). The gathering and analysis of such data (with due safeguards for privacy and against other abuses) is indispensable for the formulation of a rational policy (ERRC v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005, paragraph 23).

Non-discrimination legislation

The Committee recalls from its previous conclusion that the 2000 Equal Opportunities (Persons with Disabilities) Act (EOA) guarantees the right to equal treatment in employment for persons with disabilities (see Conclusions XVI-2, p. 506, for the description of the legislation).

In reply to the Committee, the report provides a series of clarifications concerning the EOA. The National Commission for Persons with Disabilities (NCPD) will provide guidance to any employer who asks for assistance to identify its obligation of reasonable accommodation. This includes the identification of cases when reasonable accommodation brings along undue prejudice for the employer. It is only the person who qualifies as having disabilities who can seek redress under the EOA (Title I, Part III).

Although the EOA does not make reference to collective agreements, they are mentioned in the Employment and Industrial Relations Act (EIRA) which provides that any conditions less favourable than those in the Act itself must be replaced by the more favourable conditions of the Act. The EIRA prohibits discrimination on the ground of disability; therefore any condition in a collective agreement which is less favourable for a person with disabilities is substituted by the conditions provided for in the EIRA. Moreover, the EOA itself may be deemed to refer implicitly to collective agreements since it provides that no employer must discriminate on the ground of disability in regard to terms, conditions and privileges related to employment.

The NCPD may take two types of legal proceedings: a lawsuit to have the Court declare that there has been a violation of the Act and to have the Court order remedial action; an application to have the Court order any person to submit written information required during an investigation carried out by the Commission. Courts may order specific remedial action and they generally award material damages; however, under the EOA they can also award moral damages (maximum LM 200, € 464.8).

During the reference period several complaints (39) concerning employment were filed with the NCPD. The majority concerned dismissal. Most of them were solved through the mediation of the Commission; two were settled by the industrial tribunal, one in favour of the disabled employee who was granted financial compensation.

In order to assess whether the right to non-discrimination in employment is effectively guaranteed for persons with disabilities, the Committee asks the next report to indicate how reasonable accommodation is implemented in practice, whether there is case law on the issue and whether it has prompted an increase in employment of persons with disabilities in the open labour market.

Measures to promote employment

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.

The report indicates that the Supported Employment Scheme for persons with Disabilities aims at increasing the integration of persons with disabilities in the open market. The goal is the placement of 50 persons in gainful employment. The Scheme, which is run by the Employment and Training Corporation, includes an individual assessment process and an individualized job match, as well as training, support, and adaptation at the work site. So far 12 persons have been placed.

Moreover, the report indicates that there is no sheltered employment in Malta.

The Committee observes that 4 584 disabled persons of working-age are registered in the National Register of Disabled Persons maintained by the NCPD. The Supported Employment Scheme employed so far only 12 persons. Therefore, the Committee renews its question on the total number of persons with disabilities employed in the ordinary market both in the public and private sectors, as well as on information on all measures in force to promote employment of persons with disabilities. If the necessary information is not provided in the next report, there will be nothing to show that the situation in Malta is in compliance with Article 15§2 of the Charter in this respect.

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