



December 2007

European Social Charter

European Committee of Social Rights

Conclusions XVIII-2 (LUXEMBOURG)

Articles 1§4, 2, 3, 4, 7, 8, 10, 11, 14 and 15 of the
Charter

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 Luxembourg on 10 October 1991. The time limit for submitting the 10th report on the application of this treaty to the Council of Europe was 31 March 2006 (reference period: 1 January 2001 to 31 December 2004) and Luxembourg submitted it in several parts between 19 September 2005 and 6 July 2007.

This report should have 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);
- prohibition on employment of children under the age of 15 and the right of young persons between 15 and 18 years to appropriate working conditions and the right of children to be protected from exploitation (Article 7);
- right of employed women to protection (Article 8);
- right to vocational guidance (Article 9);
- right to vocational training (Article 10);
- right to protection of health (Article 11);
- right to benefit from social welfare services (Article 14);
- right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement (Article 15);
- right of mothers and children to social and economic protection (Article 17);
- right to engage in a gainful occupation in the territory of other Contracting Parties (Article 18).

Luxembourg has accepted these articles with the exception of Articles 4§4.

The present chapter on Luxembourg contains 37 conclusions²:

- 17 cases of conformity: Articles 2§1, 2§2, 2§3, 2§5, 3§1, 3§3, 7§3, 7§6, 7§7, 7§8, 7§9, 8§1, 8§3, 10§1, 10§2, 10§3, 11§2;
- 11 cases of non-conformity: Articles 1§4, 2,§4, 3§2, 4§1, 4§2, 7§4, 7§5, 10§4, 11§3, 15§1, 15§2;

In respect of the other 9 cases, that is Articles 4§3, 4§5, 7§1, 7§2, 7§10, 8§2, 11§1, 14§1, 14§2, the Committee needs further information in order to assess the situation.

The Committee notes the failure of Luxembourg to respect its obligation, under the Charter, to report on the implementation of Article 9 (right to vocational guidance), Article 17 (right of mothers and children to social and economic protection) and Article 18 (right

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.

2. The 37 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. There is no conclusion under Article 4§3. Since the right to equality under Article 20 covers remuneration, the Committee does no longer examine the national situation in this respect under Article 4§3 (right to equal pay) as regards States which have accepted both provisions.

to engage in a gainful occupation in the territory of other Contracting Parties). It recalls that in its previous examination (Addendum to Conclusions XV-2, reference period: 1 January 1999 to 31 December 2000) of Article 17 (Public participation in the establishment and maintenance of social welfare services), Article 18§2 (The right of mothers and children to social and economic protection)

and Article 18§3 (Simplifying existing formalities and reducing dues and taxes), the Committee deferred its conclusion pending receipt of further information.

The next Luxembourg report will be the first under the new system for the submission of reports adopted by the Committee of Ministers¹. 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 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 report should be submitted to the Council of Europe before 31 October 2007.

1. 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 notes the information in the Luxembourg report and refers to its conclusions under 10§3 (right to vocational training and retraining of workers) and 15§1 (right of persons with disabilities to guidance, education and vocational training).

The Committee considered that the situation with regard to continuing vocational training of workers (Article 10§3) is in conformity with the Charter.

As Luxembourg has not submitted any report on Article 9, the Committee, consequently, could not adopt any conclusion.

The Committee considered that the situation with regard to vocational education and training of persons with disabilities (Article 15§1) is not in conformity with the Charter because there is no anti-discriminatory legislation in the field of education and training.

Conclusion

The Committee concludes that the situation in Luxembourg 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 Luxembourg report.

In its previous conclusion which was found to be in conformity with Article 2§1 of the Charter the Committee asked for details on working time flexibility rules in view of the new legislation which specify the procedure for obtaining ministerial authorisation to extend the reference period for averaging working hours beyond the period stipulated by law. In this connection the Committee notes from the report that according to the law of 1999 concerning the implementation of the Employment Action Plan, a collective agreement can prolong the reference period up to a maximum of 12 months. The Committee asks in this regard for examples of collective agreements which have prolonged the reference period up to 12 months. The Committee recalls that in the meaning of Article 2§1 the reference periods must not exceed six months. They may be extended to a maximum of one year in exceptional circumstances.

The Committee also notes that according to Article VI of the above mentioned law, in the absence of a collective agreement, or in case a collective agreement does not contain provisions on the reference period, the authorised minister may, at the request of an enterprise, authorise fixing of a reference period. Before doing so, the minister will send the request to trade unions and employers' organisations for opinion. On the basis of their opinion the minister may ask social partners to conclude a sectoral agreement. This sectoral agreement may fix a reference period which may be longer or shorter than 4 weeks as stipulated in paragraph 2 of Article VI and it will be submitted to the minister for approval. In the absence of such an agreement, the minister, before granting authorisation, will again consult the social partners and also staff representatives of the enterprise concerned. The request from the enterprise itself should be well-founded and specify the staff concerned.

Pending receipt of the information requested, the Committee concludes that the situation in Luxembourg is in conformity with Article 2§1 of the Charter.

Paragraph 2 – Public holidays with pay

The Committee notes from Luxembourg's 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 in respect of work done on a public holiday.

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

Paragraph 3 – Annual holiday with pay

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

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. It asks the next report to provide information on the rules of postponement.

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

Paragraph 4 – Elimination of risks for workers in dangerous or unhealthy occupations

The Committee notes the information contained in the Luxembourg's report.

The Committee refers to its most recent interpretation of Article 2§4 in the general introduction to these Conclusions.

The Committee recalls that it has previously found that the situation was not in conformity with the Charter on the grounds that legislation makes no provision for reduced working hours or additional holidays in dangerous or unhealthy occupations.

In light of its most recent interpretation of Article 2§4 of the Charter referred to above, the Committee requests up to date detailed information on measures taken to reduce exposure to risks in all occupations where it has not been possible to eliminate all risks.

Conclusion

The Committee concludes that the situation is not in conformity with Article 2§4 of the Charter on the grounds that reduced working hours or additional paid holidays are not provided for workers engaged in dangerous or unhealthy occupations.

Paragraph 5 – Weekly rest period

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

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

Content of the regulations on safety and health at work

The Committee examined the general scope of the regulations in Conclusions XIV-2 (pp. 469-471). In the last supervision cycle it came to a conclusion of non-conformity for repeated lack of information on whether preventive and protective measures existed for all the risks that must be covered under Article 3§1 (which appear in the general introduction to Conclusions XIV-2, pp. 39 and 40).

The report sets out the full list of domestic regulations which have been adopted in transposition of European Community Directives on health and safety at work. These relate, *inter alia*, to the minimum health and safety rules in the workplace, temporary or mobile building sites; they also concern the rules on the use of industrial equipment at work, the use of individual protection apparatus at work and work on display screen equipment, as well as the protection of workers from the risks related to exposure to chemical agents, explosive gases, biological agents or noise emissions at work. The Committee notes that some of these regulations already existed in the past but have been updated during the reference period. Bearing in mind that most of the relevant European Community Directives on health and safety have been transposed, the Committee considers that the obligation that rules on occupational health and safety must specifically cover a large majority of the risks listed in the General Introduction to Conclusions XIV-2 (pp. 39 and 40) is now met.

Protection against dangerous agents and substances

- Protection of workers against asbestos. The Committee has previously considered that the measures put in place for the protection of asbestos-related risks were in conformity with Article 3§1 of the Charter (Conclusions XVI-2, p. 57).
- Protection against ionising radiation. The report indicates that national legislation in this area was amended by the adoption of a Regulation of 14 December 2000 on the protection of the population against dangers from ionising radiation. The purchase, installation and use of sources of ionising radiation is subject to an authorisation from the Director or Minister of Health. The regulation contains a number of provisions on the protection of workers exposed to ionising radiation. It also makes reference in several parts to 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. The Committee asks for confirmation that under the regulations the maximum exposure dose limits in the workplace have been set in accordance with those in the aforementioned directive, or those recommended by the International Commission on Radiological Protection. Subject to this information, the Committee considers that the situation in Luxembourg is in conformity with Article 3§1 on this point.

Protection of temporary workers

The report reiterates that temporary employees receive the same levels of training and protection as other workers in the undertaking concerned. Under Article L. 131-12 of the Labour Code, the hiring company is the sole responsible for ensuring that health and safety regulations are applied to non-permanent workers. The Committee asks the next report to confirm that regulations require the host employer to inform temporary workers of potential hazards of the job, the precautions to prevent them, as well as of particular qualifications required. It also wishes to receive information on medical supervision available to non-permanent workers.

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

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

Conclusion

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

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

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

Occupational accidents and diseases

The Committee notes from Eurostat¹ that there was an increase of accidents between 2001 and 2003, followed by a decrease in 2004². The number of accidents at work (4 days absence or more) for ten branches of activity³ was 9 204 in 2004.

In terms of the standardised incidence rate of accidents at work per 100 000 workers, the rate was 5 131 in 2002 and 5 033 in 2003. The European Union (15 countries) average for those years was 3 528 and 3 328, respectively. The Committee therefore notes that for two consecutive years of the reference period the rates in Luxembourg were significantly above the average in the European Union (the second highest accident rates).

The Committee recalls that the conformity with the Charter «cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised» (International Commission of Jurists v. Portugal, complaint No. 1/1998, decision on the merits, 9 September 1999, §32). The Committee monitors the implementation of Article 3 under paragraph 2 of this provision and it considers that in this respect the frequency of industrial accidents and their evolution are critical factors. In Luxembourg's case, the frequency of such accidents is too high for this right to be considered secured.

As regards fatal accidents, Eurostat shows that the number of fatal accidents at work for nine branches of activity⁴ increased from 3 (in 2001) to 6 (in 2003). In terms of the standardised incidence rate of fatal accidents at work, excluding road traffic accidents and accidents on board of any mean of transport in the course of work (rate per 100 000 workers), there was an increase in Luxembourg from 1.7 (in 2001) to 3.2 (in 2004). The European Union (15 countries) average for these years was 2.7 and 2.5, respectively.

Activities of the Labour Inspectorate

The Committee examined the general framework of inspection services in Conclusions XIV-2 (pp. 473-474). The report does not provide any new information on the structure and powers of the Labour and Mines Inspectorate. The Committee requests that future reports indicate whether there have been changes in the national inspection system during the reference period.

The Committee notes from another source⁵ the staffing resources and number of inspections carried out by the Labour and Mines Inspectorate. In 2004, the number of inspectors in the authority was 20. The total number of inspection visits during 2004 was 1 069. 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 the next report to provide this information, if available.

1. Eurostat, Population and Social conditions, in <http://epp.eurostat.ec.europa.eu/portal/>.

2. With 1998=100, the index values for the subsequent years were as follows: 1999: 96; 2000: 82; 2001: 83; 2002: 72; 2003: 68 and 2004: 65.

3. Agriculture, hunting and forestry; Manufacturing; Electricity, gas and water supply; Construction; Wholesale and retail trade; repair of motor vehicles, motorcycles and personal and household goods; Hotels and restaurants; Transport, storage and communication; Financial intermediation; Real estate, renting and business activities.

4. Agriculture, hunting and forestry; Manufacturing; Electricity, gas and water supply; Construction; Wholesale and retail trade; repair of motor vehicles, motorcycles and personal and household goods; Hotels and restaurants; Financial intermediation; Real estate, renting and business activities.

5. European Commission, 2004 National Labour inspections Annual Reports, in http://ec.europa.eu/employment_social/health_safety/slic_en.htm.

As regards measures taken for breach of health and safety regulations, the Committee notes from the same source that in 2004 the inspection services issued 210 improvement notices. Cessation of work was ordered in 45 cases, and 50 other cases were presented to the public prosecutor.

Conclusion

The Committee concludes that the situation in Luxembourg is not in conformity with Article 3§2 of the Charter on the ground that the number of occupational accidents is manifestly too high.

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

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

It therefore concludes that the situation in Luxembourg is in conformity with Article 3§3 of the Charter.

Article 4 – Right to a fair remuneration

Paragraph 1 – Adequate remuneration

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

The Committee notes the evolution of the minimum wage in Luxembourg. It notes in particular that in 2002 a non-qualified worker aged 18 years and more earned a minimum wage of € 1 290. In 2003 this amount rose to € 1 368 and to € 1 438 in 2004. As regards the net amount, the report states that in 2004 the net minimum salary amounted to € 1 212 for a single worker of 18 years and over.

The Committee notes from Eurostat that in 2004 18 % of all full-time employees earned the minimum wage. The Committee notes the increase from 15.1 % in 2002 to 18 % in 2004.

The Committee recalls that to be considered fair within the meaning of Article 4§1 a wage must not fall too far short of the national average wage. In its previous conclusion the Committee considered that the minimum wage corresponded to 54.8 % of the national average wage. Therefore it requested the Government to show that the minimum wage can ensure a decent living standard for the worker receiving it. In particular, it requested detailed information on any social transfers or benefits made available specifically to workers earning the minimum wage as well as on any other factors ensuring that the minimum wage is sufficient to give the worker a decent standard of living. However, the Committee notes that the report contains no evidence to this end.

The Committee concludes that the situation in Luxembourg is not in conformity with Article 4§1 of the Charter as it has not been established that a decent standard of living is guaranteed for a single worker earning minimum wage.

Paragraph 2 – Increased rate of remuneration for overtime work

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

It recalls that previously the situation was found not to be in conformity with the Charter because as of the ninth hour of overtime work, civil servants and public sector employees did not receive either a higher rate of pay or a longer period of rest if the overtime was performed between 6 am and 10 pm or outside week-ends and national holidays (Conclusions XVI-2). The Committee notes that there has been no change to the situation in this respect.

The Committee asked previously whether the first eight hours of overtime for civil servants and public sector employees were compensated by an increased time off. The Committee notes from the report that in the public sector flexible working time arrangements have been introduced which permit civil servants and public sector employees to compensate for the overtime hours in the following month with a rest period. The report states that in practice, only two categories of civil servants may work overtime: teachers and police officers. In the former case, overtime is not calculated on the basis of number of hours actually worked but on the “weight” (coefficient), which is based on the number of pupils or the branch of education. In the latter case, overtime is compensated by a general five-day extra leave period.

The Committee therefore notes that there has been no change to the situation concerning remuneration for overtime hours.

The Committee concludes that the situation in Luxembourg is not in conformity with Article 4§2 of the Charter on the grounds that the right to increased remuneration for overtime hours is not guaranteed to all workers.

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

The Committee notes the information in Luxembourg’s report. It notes that the report does not supply the information requested in the last conclusion (Conclusion XVI-2, Addendum, p. 62).

In particular, the Committee noted in the last report that under the Act of 8 December 1981 on equality of treatment between men and women, employees who sought to enforce their right to equal treatment were protected against retaliatory measures – in particular, dismissal – from their employer.

The Committee has always ruled that in the event of reprisal dismissals, reparation must, in principle, take the form of reinstatement in the same or a similar post. Where this is not possible or not desired by the employee, financial compensation may be acceptable, but only if it is sufficient to deter the employer and to compensate the worker (see, in particular, Conclusions VII, p. 26 and VIII, p. 66, Denmark; Conclusions XIII-5, pp. 254-255, general observation; Conclusions XIV-2, pp. 480-481, Luxembourg, and p. 374, Iceland; Conclusions XVIII-2, Germany). Consequently, the Committee asks that next report includes a detailed overview of the remedies awarded under the 1981 Act in the event of retaliatory dismissals for employees who seek to enforce their right to equal treatment.

The Committee also notes that there is still a gap between the average remuneration of male and female workers. According to a Eurostat study the average difference in 2004 was 14 %. It repeats its previous request to the Luxembourg authorities to deal fully with the issue of objective job evaluation in order to guarantee effective implementation of the right to equal treatment with respect to remuneration, which they recognise in law. It also asks for detailed statistics in the next report on equal pay between women and men.

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

Paragraph 5 – Limitation of deduction from wages

The Committee takes note of the information provided in the report from Luxembourg.

Legislation authorises employers to lay down workplace rules unilaterally and that under these rules fines can be imposed on employees. The Committee recalls that it cannot be left solely to employers to determine the circumstances under which such deductions from wages may be made.

The Committee notes that under section 5 of the Act of 11 November 1970 on assignments and attachments of remuneration for work and of pensions and annuities, total deductions by employers cannot exceed one tenth of wages and these deductions cannot be made from the assignable and attachable parts of employees' remuneration. This section can therefore be viewed in conjunction with section 4 of the Act, which specifies the proportions in which wages may be assigned or attached, and section 8 on maintenance deductions.

The Committee notes that, after deductions, salaries must still be high enough for workers to provide for themselves and their dependants (Conclusions XI-1, Greece, p. 76). The figure of up to one tenth of wages specified in section 5 of the 1970 Act represents a quite significant proportion of total pay. Moreover, this sum may be in addition to anything deducted from the assignable and attachable parts of wages plus maintenance payments. The Committee therefore asks what is the total maximum proportion that may be deducted from employees' wages or salaries under legislation.

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

Article 7 – The right of children and young persons to protection

Paragraph 1 – Prohibition of employment under the age of 15

The Committee takes note of the information in the Luxembourg report and points out that it does not answer the questions it put in its previous conclusion (Conclusions XV-2, Addendum, p. 71).

In its previous conclusion (*ibid.*), the Committee asked for information on the activities of the authorities responsible for ensuring that the minimum age for admission to employment is respected in practice. In the absence of any reply, the Committee asks which authority is responsible for ensuring that the minimum age is respected in practice and how frequently it carries out inspections, how many offences have been reported and how many penalties have been imposed.

With regard to home-based work, the Committee asks for information on the way in which the conditions in which it is carried out are monitored in practice (i.e. under what conditions and on what legal basis labour inspectors can enter homes) (Conclusions 2006, statement of interpretation relating to Article 7§1).

It notes the entry into force on 31 July 2006 (and hence outside the reference period) of the Labour Code, which is the law governing child labour. The Committee will examine the text when it examines the next report and asks Luxembourg to provide all relevant information.

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

Paragraph 2 – Higher minimum age than 15 for dangerous occupations

The Committee takes note of the information in the Luxembourg report and points out that it does not answer the questions it put in its previous conclusion (Conclusions XV-2, Addendum, pp. 71-72).

It notes the entry into force on 31 July 2006 (and hence outside the reference period) of a new Labour Code, which is the law governing child labour. The Committee will examine the text when it examines the next report and asks Luxembourg to provide all relevant information.

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

Paragraph 3 – Prohibition of employment of children subject to compulsory education

The Committee takes note of the information in the Luxembourg report and notes that there has been no change in the situation, which it has previously considered to be in conformity.

It notes the entry into force on 31 July 2006 (and hence outside the reference period) of the Labour Code, which is the law governing child labour. The Committee will examine this during the next supervision cycle relating to this provision.

Pending receipt of the information requested, the Committee concludes that the situation in Luxembourg is in conformity with Article 7§3 of the Charter.

Paragraph 4 – Length of working time

The Committee takes note of the information in the Luxembourg report and points out that it does not answer the questions it put previously (Conclusions XV-2, Addendum, p. 72).

The Committee previously concluded that the situation in Luxembourg was not in conformity with the Charter on the ground that national law provided that persons under 16 could work for up to 8 hours daily and 40 hours weekly and that longer daily or weekly working hours were permitted under collective agreements or by express authorisation of the Inspectorate of Labour and Mines (Conclusions XIII-5, p. 124, and Conclusions XV-2, Addendum, p. 72). In the absence of new information on this subject in the report, the Committee maintained its finding of non-conformity.

The Committee takes note, however, of the entry into force on 31 July 2006 (and hence outside the reference period) of a new Labour Code, which is the law governing the employment and working hours of young workers. The Committee will examine this during the next supervision cycle relating to this provision.

The Committee concludes that the situation in Luxembourg is not in conformity with Article 7§4 of the Charter on the ground that working hours for children under the age of 16 are excessive.

Paragraph 5 – Fair pay

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

The Committee points out that it found previously that the situation in Luxembourg was not in conformity with the Charter because the reductions in the wages paid to young workers were excessive. Young workers aged 15 to 16 earned 60 % of the adult minimum wage and those aged 16 to 17 earned 70 % (Conclusions XV-2, Addendum, p. 73, and Conclusions XIII-5, p. 125). According to the report, the Minimum Wage Reform Act of 22 December 2000 removed the 15-16 age bracket and raised the minimum wage for 15 to 17 year-old workers from 70 to 75 % of the adult minimum wage. The minimum wage for workers aged 17 to 18 is now 80 % of the adult minimum wage.

The Committee notes from the report presented under Article 4§1 of the Charter that, in 2004, the minimum wage was € 1 438 per month, before deduction of taxes and social security contributions. The wage for workers aged 15 to 17 was € 1 078 per month, or 75 % of the adult minimum wage, and the wage for workers aged 17 to 18 was € 1 150 per month, or 80 % of the adult minimum wage.

Under Article 7§5 of the Charter, a young worker's wage may be lower than that of an adult beginning his or her career, but the gap must be reasonable and must close quickly. For young workers aged 15 to 16, a 30 % reduction in pay compared to an adult wage is acceptable. Between the ages of 16 and 18 years, the reduction may not exceed 20 % (Conclusions 2006, Ireland, Article 7§5, p. 377). As the difference in Luxembourg is now 25 % for workers between the ages of 15 and 17 and 20 % for those between 17 and 18, the Committee considers the situation to be in conformity on this point.

With regard to apprentices' wages, the Committee recalls that the wage should be at least one-third of the adult starting wage at the commencement of the apprenticeship and at least at two-thirds of such a wage at the end of the apprenticeship. The Committee previously noted that in general, the wages paid to apprentices in their third year were less than two thirds of the adult minimum wage. In the absence of any information on the actual wages paid to apprentices in the various sectors of the economy, the Committee considers that the situation is not in conformity with Article 7§5 of the Charter.

The Committee concludes that the situation in Luxembourg is not in conformity with Article 7§5 of the Charter on the ground that the wages paid to apprentices in their third year are less than two thirds of the minimum wage of an adult.

Paragraph 6 – Vocational training time

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

Under section 4 of the Continuing Vocational Training Act of 22 June 1999, time spent on vocational training during normal working hours must be treated as part of the working day. The Committee notes that, in order to give entitlement to financial aid under the act, at least half of the training activities concerned must take place during normal working hours. Training attended outside these hours is not treated as working time, but under section 4§3 of the Act, employees are entitled to time-off in lieu equal to half of such training time or financial compensation calculated on the basis of their standard hourly pay.

In the absence of any reply on the subject in the report, the Committee asks again to what extent non-compulsory training is provided for young workers with the employer's consent outside the framework of the Act of 22 June 1999.

Having noted that the Act applies only to private-sector jobs, it asks for the next report to provide information on the equivalent rules in the public sector.

The Committee notes the entry into force on 31 July 2006 (and hence outside the reference period) of a new Labour Code, which is the law governing child labour. The Committee will examine this during the next supervision cycle relating to this provision.

Pending receipt of the information requested, the Committee concludes that the situation in Luxembourg is in conformity with Article 7§6 of the Charter.

Paragraph 7 – Paid annual holidays

The Committee takes note of the information in the Luxembourg report and notes that there has been no change in the situation, which it has previously considered to be satisfactory.

The Committee concludes that the situation in Luxembourg is in conformity with Article 7§7 of the Charter.

Paragraph 8 – Prohibition of night work

The Committee takes note of the information in the Luxembourg report and notes that there has been no change in the situation, which it has previously considered to be satisfactory.

The Committee concludes that the situation in Luxembourg is in conformity with Article 7§8 of the Charter.

Paragraph 9 – Regular medical examinations

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

The report points out that, under the Act of 28 October 1969 for the protection of children and young workers, in the three months before they begin work or an apprenticeship, young people must be given a thorough medical check-up confirming their fitness for work. A further check-up must be conducted within six months. These check-ups must be carried out by qualified doctors certified by the Ministry of Labour and the Ministry of Health. The medical file compiled by the certified doctor must be submitted to the medical inspectors of the Ministry of Health and the Labour Inspectorate at their request.

Under a Grand-Ducal Regulation of 17 June 1997, workers under the age of 21 recruited before they were 18 must have two medical check-ups before they are 21. Workers under the age of 21 recruited after they were 18 must have at least one medical check-up before they are 21.

The Committee concludes that the situation in Luxembourg is in conformity with Article 7§9 of the Charter.

Paragraph 10 – Protection against physical and moral dangers

The Committee notes information provided in Luxembourg's report.

According to the report there is no new information.

Protection from sexual exploitation

In order to guarantee the right provided by Article 7§10, Parties must take specific measures to prohibit and combat all forms of sexual exploitation of children, in particular children's involvement in the sex industry. This prohibition must be accompanied by an adequate supervisory mechanism and sanctions.

The following are minimum obligations:

- as legislation is a prerequisite for an effective policy against the sexual exploitation of children, Article 7§10 requires that all acts of sexual exploitation be criminalised. In this respect, it is not necessary for a Party to adopt a specific mode of criminalisation of the activities involved, but it must rather ensure that criminal proceedings can be instituted in respect of these acts. Furthermore, States must criminalise the defined activities with all children under 18 years of age irrespective of lower national ages of sexual consent. Child victims of sexual exploitation should not be prosecuted for any act connected with this exploitation.
- a national action plan combating the sexual exploitation of children should be adopted.

An effective policy against commercial sexual exploitation of children should cover the following three primary and interrelated forms: child prostitution, child pornography and trafficking of children.

The Committee recalls that it examined the legislative framework protecting children from sexual exploitation in the previous conclusion (Addendum to Conclusions XV-2). The Penal Code, makes the possession of pornographic material featuring children a criminal offence. It also contains provisions which make it a criminal offence to assist, facilitate, encourage or incite a person less than 18 years of age to engage in prostitution. The Committee asks again to receive information on any system of supervision that exists.

The Committee asks for information on the incidence of the sexual exploitation of children in Luxembourg including information on trafficking of children into or through Luxembourg for the purposes of sexual exploitation.

Protection of children against other forms of exploitation, ill treatment and abuse

Parties must prohibit the use of children in other forms of exploitation such as, domestic/labour exploitation, including trafficking for the purposes of labour exploitation, begging, or the removal of organs.

States parties must also take measures to prevent and assist street children

The Committee asks for information on the above mentioned issues.

Protection against the misuse of information technologies

In light of the fact that new information technologies have made the sexual exploitation of children easier, States parties must adopt measures in law and in practice to protect children from their misuse. As for example the Internet is becoming one of the most frequently used tools for the spread of child pornography, States parties must take measures to combat this, such as by providing that Internet service providers be responsible for controlling the material they host, encouraging the development and use of the best monitoring system for activities on the net.

The Committee asks the next report to provide information on Protection against the misuse of information technologies

Conclusion

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

Article 8 – The right of employed women to protection of maternity

Paragraph 1 – Maternity leave

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

According to the report there have been no changes to the situation previously found to be in conformity with the Charter. The Committee recalls that compulsory maternity leave is of 16 week duration.

Employees who have been affiliated to the social security system for at least six months in the year preceding the start of their maternity leave are entitled to a cash maternity benefit equivalent to 100 % of their average gross earnings in the three months prior to maternity leave.

In its previous conclusion, the Committee noted that the maternity benefit was subject to a ceiling and asked for updated information on the ceiling. According to the report the ceiling is currently 7 851.40€.

The Committee also recalls that female employees who at the start of their maternity leave have not been affiliated for at least six months are nonetheless entitled to a flat-rate maternity allowance.

Conclusion

The Committee concludes that the situation in Luxembourg is in conformity with Article 8§1 of the Charter.

Paragraph 2 – Illegality of dismissal during maternity leave

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

The Committee previously deferred its conclusion pending information on remedies for women unlawfully dismissed on grounds of pregnancy or during their maternity leave. The Committee asked whether, in cases where employees who have been wrongfully dismissed are not reinstated in their jobs, the law provides for a form of compensation that is sufficient both as a deterrent for the employer and as compensation for the employees and, at all events, at least equivalent to the salary due until the end of the protection period.

The Committee repeats its request for this information.

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

Paragraph 3 – Time off for nursing mothers

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

The Committee previously found the situation to be in conformity with the Charter, employees are entitled, upon request, to take two forty-five minute breaks per day for breastfeeding. If the working day is broken up by a rest period of less than an hour, the two breaks may be combined to form one ninety minute break for breastfeeding.

Breaks for breastfeeding count as ordinary working hours and consequently give rise to payment of an ordinary wage.

The Committee asks whether such paid leave for breastfeeding women is limited in time or whether women may avail of this until they have ceased breastfeeding.

Pending receipt of the information requested the Committee concludes that the situation is in conformity with Article 8§3 of the Charter.

Article 10 – Right to vocational training

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

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

Secondary and higher education

According to the report, technical secondary education is divided into three levels, lower, intermediate and upper level. At intermediate and upper level there are three training options, the “technical” option, the “technician training” option and the “vocational” option.

Technical secondary school pupils who opt for the “technical” stream – leading to the technical school-leaving certificate – are assigned to one of the following three sections: the general technical section, the administrative and commercial section or the health and social services section.

The Committee notes that the report fails to provide any new information regarding general and technical higher education and notes from another source¹ that the University of Luxembourg was established in 2003. It asks for the next report to provide details on this subject and wishes to know what measures have been taken to facilitate access to higher technical and university education based solely on individual aptitude.

Measures to facilitate access to education and their effectiveness

According to the report, the number of students taking the “technical” option increased from 4 291 in 2001 to 4 305 in 2004. Those taking the “technician training” option rose from 2 670 in 2001 to 2 792 in 2004 and numbers of “vocational” students increased from 4 202 to 4 272 between the same two years.

The Committee also notes that 9 764 general secondary school pupils and 18 474 technical secondary school pupils attend state schools and 552 general secondary school pupils and 3 111 technical secondary school pupils are enrolled with private schools. Furthermore, there are a total of 3 359 post-primary school teachers in general and technical secondary schools combined.

The pass rate at the lower level of technical secondary education increased from 73 % in 2001 to 78.7 % in 2004 while that at the intermediate level rose from 77.2 % to 81.5 % over the same period.

The Committee notes that the total number of students in secondary education increased from 31 218 in 2001 to 32 520 in 2004 and that it is constantly increasing. The Committee asks what measures are taken to ensure that there are enough places for all candidates.

In the absence of any information in the report, the Committee notes from another source² that total public spending on education by the Ministry of Education amounted to € 537 million in 2001 and € 586 million in 2004. Other authorities contribute to education funding as well including the local authorities, the public buildings office, the Ministry of Family Affairs, the Ministry of the Interior, the Transport Ministry, the Ministry for the Civil Service and Administrative Reform and the Ministry of Health. In 2002 Luxembourg allocated 3.9 % of its GDP to education at all levels (the European Union average was 4.9 % in 2002).

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Luxembourg is in conformity with Article 10§1 of the Charter.

Paragraph 2 – Promotion of apprenticeship

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

According to the report, besides traditional apprenticeships leading to a technical and vocational skills certificate (CATP), the vocational option at technical secondary school offers an apprenticeship leading to a manual skills certificate (CCM) and an apprenticeship intended to promote social and

1. University of Luxembourg website: www.en.uni.lu/l_universite.

2. Ministry of Education website: www.men.lu.

vocational integration leading to a technical and vocational foundation certificate (CITP), which may ultimately lead to a CATP. Vocational training can be taken either full time at upper secondary school or as a sandwich course.

The Committee notes that the number of students in craft-trade apprenticeships increased from 604 in 2001 to 626 in 2004 and that their pass rate remained constant at 70 %. The number of students in industrial apprenticeships rose from 250 in 2001 to 295 in 2004, while the pass rate in this branch increased from 74 % to 78 %, and the number of students in agricultural apprenticeships rose from 65 in 2001 to 74 in 2004, and the pass rate increased from 86 % to 92 %. According to the report, in the period from 2001 to 2004, there were more training places than candidates.

It is stated in the report that a work permit is required for all nationals of a non-EU state who wish to take up an apprenticeship. Permits are granted as long as persons wishing to attend a vocational training course in Luxembourg are legally present in the country.

The Committee notes the entry into force on 31 July 2006 (and hence outside the reference period) of the new Labour Code, which is the law governing apprenticeship contracts. It asks for the next report to contain the text of this new law. It also asks for information on the length of apprenticeships, the division of time between theory and practice, the selection of apprentices and instructors, apprentices' pay and the conditions for the termination of contracts.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Luxembourg is in conformity with Article 10§2 of the Charter.

Paragraph 3 – vocational training and retraining of adult workers

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

Employed people

According to the report, continuing training is available to individuals and groups. Courses for employed people are provided by the national continuing vocational education centre (CNFPC). Training for individuals in economics and social sciences is provided by trade union organisations and/or professional bodies and the National Labour College (*Ecole supérieure du travail*). The Adult Education Service (SFA) is the co-ordinating body.

With regard to collective access to training, continuing vocational training in the public sector is managed by the relevant training institutions. The decentralisation of the various types of training involved is warranted by their specialisation and the different forms of initial training that trainees have already attended. There are two types of training for company employees:

- evening classes, which are intended for adults wishing to perfect their skills in a particular area for private or professional purposes. They cover the following subject areas: computing, computerised accounting, English, sewing, cooking, mechanics, carpentry, wrought iron working and welding;
- continuing vocational training intended for employees and organised partly at the request of the companies, services or institutions concerned.

In connection with individual training leave, the Committee notes the entry into force on 31 July 2006 (and hence outside the reference period) of the new Labour Code, which is the law governing training leave. It asks for the next report to contain the text of this new law. It also wishes to know under what conditions and on whose initiative such leave may be granted, how long it lasts and when it is paid and when it is not.

The Committee notes that in 2001, 3 494 people were enrolled on training courses, 30 % of whom were women, whereas in 2003, 2 739 were enrolled, 31 % of whom were women. It asks why there has been this decline in numbers.

Unemployed people

In its last conclusion on Article 1§1 of the Charter (Conclusions XVIII-1, p. 461), the Committee noted that the unemployment rate had increased from 3.7 % in 2003 to 5.1 % in 2004 – a rate that is significantly lower than the EU average (9.1 %). The Committee notes from Eurostat data that youth

unemployment is lower than the European average, but increased considerably between 2001 (7.3 %) and 2004 (16.4 %). Long-term unemployment was 21 % of total unemployment in 2004, which is a substantial decrease compared to the rate of 27.8 % recorded in 2001. This rate is appreciably lower than the European Union average (45.3 %).

Vocational guidance, induction and training activities are proposed for jobseekers. They generally last a year and those attending them are registered with the Employment Office. Training covers various subject areas including waitering and catering, sales, the environment, office automation, reception skills, locksmithing and mechanics.

Additional training can also be organised on the specific request of a company or an economic sector. Trainees are short listed by the Employment Office and the company or companies concerned. Training courses of an average length of six months are held at the CNFPC or other training institutions or in the workplace. The logistics and the content of courses are determined by an agreement between the Ministry of Labour and Employment, the vocational training service and the company, which undertakes to take on trainees who have successfully completed their course. Other training courses are organised in areas in which companies are constantly in need of labour.

The vocational training service also organises co-operation schemes with the Employment Office and local and regional associations or committees responsible for jobseekers. The arrangements for carrying out these co-operation projects are set out in an agreement between the Ministry of Labour and Employment, the vocational training service and each of their partners. In addition to these schemes involving the CNFPC, the vocational training service has negotiated co-operation agreements with various associations providing training for jobseekers, particularly for women wishing to return to work. The vocational training service is involved in decisions on financial assistance for trainees and the assessment and validation of training courses.

According to the report, 1 106 unemployed people attended training courses in 2001, 43 % of whom were women, and 1 193 attended in 2003, 45 % of whom were women. The Committee asks for detailed figures on the proportion of unemployed people attending training courses who are long-term unemployed.

Since none can be found in the present report, the Committee asks for the next report to contain information on the total spending allocated to the vocational training of employed and unemployed people. It also asks for information on how the cost of vocational and continuing training is shared between the authorities, unemployment insurance systems, firms and households.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Luxembourg is in conformity with Article 10§3 of the Charter.

Paragraph 4 – Encouragement for the full utilisation of available facilities

The Committee notes that the Luxembourg report contains no information on the matters dealt with under Article 10§4 of the Charter. It infers from this that there has been no change in the situation.

Fees and financial assistance (Article 10§4.a and b)

The Committee previously found that the situation was not in conformity with the Charter in view of the length-of-residence requirements imposed on non-EU nationals for entitlement to financial assistance for training. It noted that under the Act of 22 June 2000 on state aid for higher education, non-EU nationals were entitled to financial assistance only if they had been residing in Luxembourg for at least five years (Conclusions XVI-2, Addendum, p. 53). In the absence of new information on this subject in the report, the Committee maintains its finding of non-conformity.

Training during working hours (Article 10§4.c)

The Committee notes that there have been no changes in the situation that it has previously considered (ibid.) to be compatible with the Charter.

Efficiency of training (Article 10§4.d)

The Committee notes that there have been no changes in the situation that it has previously considered (Conclusions XIII-3, pp. 60-62) to be in conformity.

Conclusion

The Committee concludes that the situation in Luxembourg is not in conformity with Article 10§4 of the Charter because nationals of non-EU states party to the Charter or the revised Charter residing or working lawfully in the country are not guaranteed equal treatment with regard to financial assistance for training.

Article 11 – Right to protection of health

Paragraph 1 – Removal of the causes of ill-health

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

State of health of the population – General indicators

Life expectancy and principal causes of mortality

The Committee notes that life expectancy in 2004¹ was 81 years for women and 76 years for men (the European average² in 2004 was around 72 years for men and 80 years for women). The mortality rate in 2004¹ was 7.9 per 1000 (the European average² was 9.5 per 1 000 in 2004).

According to the report, circulatory system disorders are the main cause of death (38.9 % of deaths in 2004), followed by cancers (25.9 % of deaths) and respiratory system disorders (8.1 % of deaths). The Committee notes the reduction in deaths resulting from cerebrovascular disorders over the reference period. The report states that they accounted for 9.8 % of deaths in 2004 (representing, respectively, 220 deaths among women and 127 among men that year), whereas they had been responsible for 11 % of deaths in 2001. The Committee notes that the Preventive Medicine Division, in close collaboration with the Luxembourg Society of Neurology, has organised a vast awareness-raising and information campaign aimed at preventing strokes, with the emphasis on building public awareness and a hot-line (European emergency number).

Where deaths resulting from accidents (including traffic accidents) were concerned, their number also fell during the reference period (1.5 % of deaths in 2004 compared with 2.1 % in 2001).

Infant and maternal mortality

The infant mortality rate in 2004¹ was 3.9 per 1000 in Luxembourg (the European average² was 4.6 per 1000 in 2004). As regards the maternal mortality rate, the report states that it fell from 18.5 deaths per 100 000 live births in 1995 to 6.2 deaths per 100 000 live births in 1997³ (the European average⁴ was somewhere between 5 and 6 per 100 000 live births in 2004). The Committee asks that the next report provides up-to-date data for maternal mortality rates.

The Committee notes the efforts made to improve the quality of care during the pre-and perinatal period. A national working group on "neonatal screening" comprising representatives from the Society of Paediatrics, the Health Directorate and the National Health Laboratory meets on a regular basis with a view to optimising existing neonatal screening and studying the feasibility of a scheme to extend the early metabolic screening of newborns.

Health care system

Access to health care

Care is covered by the sickness insurance regimes with financial contributions from the beneficiary, while preventive medicine measures are free. The Committee notes that the new sickness insurance legislation provides for the joint organisation of preventive medicine programmes by the Health Directorate and the Union of sickness insurance funds on a national health contract basis. It asks to be informed of all developments.

The Committee asks under what conditions emergency medical assistance is dispensed. It also wishes to obtain information on the situation of all the disadvantaged categories of the population in terms of access to care.

The Committee reiterates that the right of access to health care implies that arrangements for access to health care do not entail undue delays in the provision of care. Management of health care waiting lists and waiting times are examined in the light of Committee of Ministers Recommendation No. R(99)21 on criteria for the management of waiting lists and waiting times in health care. The

1. WHO site: www.who.int.

2. EUROSTAT site: <http://epp.eurostat.ec.europa.eu/>.

3. Site de l'UNICEF: www.unicef.org.

4. EUROSTAT site: <http://epp.eurostat.ec.europa.eu/>.

Committee therefore asks that the next report specifies the criteria and administration measures governing waiting lists.

Health professionals and equipment

The Committee notes that the number of hospital establishments fell from 19 to 17. It further notes that the total number of hospital beds rose, during the reference period, from 3 035 beds to 3 045 beds (the European average¹ was around 639 per 100 000 inhabitants in 2002).

The Committee further notes that the number of doctors rose, from 1406 (in 2001) to 1591 (in 2004), with the density of doctors rising from 3.2 to 3.5 per 1 000 inhabitants (the European average² was around 328 doctors per 100 000 inhabitants in 2002). In reply to the Committee, the report states that the number of generalists rose, during the reference period, from 383 to 411 (yielding a density of 0.9 generalists per 1 000 inhabitants), while the number of specialists rose from 740 to 841 over the same period (pushing up the density from 1.7 to 1.9 per 1 000 inhabitants)

In addition to those 1591 doctors, in 2004 there were 339 dentists (i.e. 0.7 per 1 000 inhabitants), 4046 nurses (i.e. 8.9 per 1 000 inhabitants) and 123 midwives (i.e. 22.6 per 1 000 inhabitants). In addition, according to the report, the number of pharmacists rose from 342 to 375 during the reference period, while the number of pharmacies rose from 79 to 84.

Conclusion

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

Paragraph 2 – Advisory and educational facilities

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

Developing a sense of individual responsibility

Health education in schools

In reply to the Committee, the report stresses that the topics of smoking, alcoholism, promoting healthy eating and a healthy environment, sex education and traffic accident prevention are covered as part of health education in schools.

According to the report, schoolchildren are familiarised with health education from primary school onwards, through lessons taught within the framework of "science awareness". Furthermore, several primary and secondary education establishments have joined the "European network of health promoting schools", which is a project run jointly by the World Health Organisation (WHO), the Council of Europe and the European Union. Upper secondaries are striving to generate an environment favourable to health promotion, following an action programme over several years and embracing a variety of subjects such as, in addition to the aforementioned ones, environmental protection, safety and physical and sports activities.

Other schools run health days or weeks focusing on a specific topic, workshops, exhibitions and sports initiation days. Further initiatives geared to promoting healthy and balanced eating in school canteens have also been launched. The report mentions regular publications covering different topics of health education in schools for pupils in different teaching levels.

Public information and awareness

Several awareness-raising initiatives concerning prevention in the sphere of health and the environment as well as diet and physical activity have been run.

Anti-smoking awareness campaigns are also launched each year in the media. In the area of combating drug addiction, alcoholism and AIDS, awareness-raising initiatives have been carried out and interdisciplinary discussion groups set up in parallel. Other information campaigns on sexual health, osteoporosis, skin cancer and breast cancer also exist.

1. *Ibid.*

2. *Ibid.*

Counselling and screening

Pregnant women, children and young persons

In reply to the Committee, the report stresses that a law of 31 July 1995 provides for additional consultations for pregnant women with midwives. These consultations are available during pregnancy (5 medical examinations at the end of the 3rd month of pregnancy and the first 15 days of the 9th month of pregnancy) and during the post-natal period (within 10 weeks following the birth, at the latest). Dental check-ups are also organised, before the end of the 5th month of pregnancy at the latest.

Two perinatal examinations are normally organised within 48 hours of birth and between the 5th and 10th day after the birth. There is also provision for regular medical and dental check-ups up for children to the age of 2 years.

The examinations carried out within the school medicine framework generally comprise systematic tests and screening measures, systematic medical examinations, full health assessments and bucco-dental examinations. These check-ups are organised on a regular basis throughout the pupil's school-life, from nursery to secondary level.

Conclusion

The Committee concludes that the situation in Luxembourg is in conformity with Article 11§2 of the Charter.

Paragraph 3 – Prevention of diseases

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

Preventing avoidable risks

Reduction of environmental risks

Air pollution – The Committee previously asked (Conclusions XV-2, pp. 84-88) what concentration limit values had been set for the main

pollutants responsible for the deterioration of air quality and what arrangements had been made for the monitoring and measurement of air pollution.

The report merely mentions the launch of a National Plan for Sustainable Development in 1999 and the enactment of the law of 25 June 2004 coordinating national policy on sustainable development. In the absence of a reply, the Committee reiterates its questions.

Water pollution – The Committee notes several laws on water management have been enacted, including a regulation of 7 October 2002 on the quality of water for human consumption. The Committee asks for information on the results of these measures.

Soil pollution – As no information is provided in the report, the Committee asks for an update on the subject.

Ionising radiation – The report states that an action plan for serious nuclear incidents or accidents, designed to alert and inform the population and take the appropriate preventive and protective measures, has been in force since 1986.

A booklet was published in 2002 on the health protection measures to be considered and the behaviour to adopt in the event of a radiological emergency.

The Committee previously asked (*ibid*) whether the dose limits complied with the recommendations made in 1990 by the International Commission on Radiological Protection (ICRP) and the standards laid down in Council Directive 96/29/Euratom on the protection of the health of workers and the general public against the dangers arising from ionising radiation. In the absence of a reply, the Committee reiterates its question.

Noise – The report states that measures have been taken to prevent, reduce and eliminate noise. A number of regulations set decibel limits for music inside establishments and in the vicinity.

Asbestos – As no information is provided, the Committee again asks what restrictions and bans limit the use, marketing and manufacture of asbestos, what steps have been taken to detect the presence of asbestos in public buildings and what obligations firms are under concerning waste containing asbestos.

Food safety

The report states that following the publication in 2000 of a report criticising the functioning of the current food safety system, it was proposed to set up a coordinating committee on food safety.

Referring in particular to the resolution adopted by the 53rd World Health Assembly in May 2000 on food safety and while recognising the relevance of international strategies, the Committee considers that in order to comply with the Charter in this field, states must establish national food hygiene standards with legal force that take account of relevant scientific data, establish and maintain machinery for monitoring compliance with these standards throughout the food chain, develop, implement and regularly update systematic prevention measures, particularly through labelling, and monitor the occurrence of food-borne diseases (Addendum aux Conclusions XV-2, Cyprus, pp. 31-35). The Committee wishes to know what kind of measures have been taken by the aforementioned committee and especially with regard to prevention.

Measures to combat smoking, alcoholism and drug addiction

In reply to the Committee, the report merely specifies that under the law of 24 March 1989, schools must provide preventive and educational information.

The Committee previously considered that regulations governing the supply of tobacco and alcohol were clearly not sufficient to reduce the level of tobacco and alcohol consumption and the health problems caused by drinking and smoking. However, before reaching a decision on conformity with Article 11 of the Charter, it wished to receive the government's observations explaining the particularly high level of alcohol and tobacco consumption. As no information on the subject is provided in this report, the Committee concludes that the situation in Luxembourg is not in conformity with Article 11§3 of the Charter.

It asks the next report to update information on measures to combat drug abuse.

Preventive measures

– Epidemiological monitoring

As regards contagious diseases, the report states that the measures taken to prevent epidemic, endemic and other diseases are based on the law of 21 November 1980 organising the Health Department. Everyone practising medicine in Luxembourg is required to declare cases of infectious or transmissible diseases subject to compulsory declaration, which are listed by the ministerial regulation.

The report also provides information on the sexually transmissible diseases, including AIDS. AIDS is a disease subject to compulsory declaration. Screening is conducted free of charge on a voluntary basis.

The Preventive and Social Medicine Division of the Health Department and the services and private associations represented on the AIDS Monitoring Committee carry out a wide range of preventive activities. Special activities are also regularly aimed at young people and particular target groups (including prisoners and drug addicts).

– Immunisation

The Committee notes that new vaccinations against Hepatitis B and Pneumococcus have been introduced. It also notes that in 2002 the immunisation coverage rate was 99.6 % against diphtheria, tetanus and polio, 95.4 % against measles, German measles and mumps, 94.5 % against Hepatitis B and 93.7 % against whooping cough.

– Traffic accidents

The report does not provide any information on the subject. The Committee points out that states are required to take measures to prevent accidents. The three main categories of accident covered are road accidents, domestic accidents and leisure-time accidents (including accidents at school and those caused by animals), as well as workplace accidents. Developments regarding industrial accidents are considered under the right to safe and healthy working conditions (Article 3). The Committee therefore asks the next report to provide such information.

Conclusion

The Committee concludes that the situation in Luxembourg is not in conformity with Article 11§3 of the Charter on the grounds that no particular regulation governing the supply of tobacco and alcohol has been adopted.

Article 14 – The right to benefit from social welfare services

Paragraph 1 – Provision or promotion of social welfare services

The right to benefit from social welfare services provided for by Article 14§1 requires Parties to set up a network of social services to help people to reach or maintain well-being and to overcome any problems of social adjustment. The Committee reviews the overall organisation and functioning of social services under Article 14§1.

Social services include in particular counselling, advice, rehabilitation and other forms of support from social workers, home help services (assistance in the running of the home, personal hygiene, social support, delivery of meals), residential care, and social emergency care (shelters). Issues such as childcare, childminding, domestic violence, family mediation, adoption, foster and residential childcare, services relating to child abuse, and services for the elderly are primarily covered by Articles 7§10, 16, 17, 23 and 27. Co-ordination measures to fight poverty and social exclusion are dealt with under Article 30 of the Revised European Social Charter, while social housing services and measures to combat homelessness are dealt with under Article 31 of the Revised European Social Charter.

The provision of social welfare services should concern all those in need, in particular the vulnerable groups and individuals who have a social problem. Groups which are vulnerable – children, the family, the elderly, people with disabilities, young people with problems, young offenders, refugees, the homeless, alcohol and drug abusers, victims of domestic violence and former prisoners – should be able to avail themselves of social services in practice. Since many of these categories are also dealt with by more specific provisions of the Charter, under Article 14 the Committee reviews the overall availability of such services and refers to those other provisions for the detailed analysis of the services afforded. This overall review follows the criteria mentioned below as regards effective and equal access to, and quality of the services delivered as well as issues of rights of clients and participation.

The right to social services must be guaranteed in law and in practice. Effective and equal access to social services implies that:

- the general eligibility criterion regulating access to social services is the lack of personal capabilities and means to cope. The goal of welfare services is the well-being, the capability to become self-sufficient and the adjustment to the social environment of the individual;
- an individual right of access to counselling and advice from social services shall be guaranteed to everyone likely to need it. Access to other kind of services can be organised according to eligibility criteria, which shall be not too restricted and at any event ensure care in case of urgent need;
- the rights of the client shall be protected: any decision should be made in consultation with and not against the will of the client; remedies must be available for those who wish to complain about social welfare services and there must be a right to appeal to an independent body where allegations of discrimination and violation of human dignity are made;
- social services may be provided subject to fees, fixed or variable, but they must not be so high as to prevent the effective access of these services. For persons lacking adequate financial resources in the terms of Article 13§1 such services should be provided free of charge;
- the geographical distribution of these services shall be sufficiently wide;
- recourse to these services must not interfere with people's right to privacy, including protection of personal data.

Social services must have resources matching their responsibilities and the changing needs of users. This implies that:

- staff shall be qualified and in sufficient numbers;
- decision-making shall be as close to users as possible;
- there must be mechanisms for supervising the adequacy of services, public as well as private.

The report of Luxembourg indicates that no change occurred during the reference period. The Committee recalls that, due to the fact that Luxembourg failed to submit its previous report on this provision on time, it decided to examine Article 14 during this cycle with an extended period of reference (2000-2004). Given the evolution of the interpretation of Article 14 in Conclusions XVII-2 (see text in italics above), the Committee asks the next report to provide the relevant information.

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

Paragraph 2 – Public participation in the establishment and maintenance of social welfare services

In 14§2 requires States to provide support for voluntary associations seeking to establish social welfare services. This does not imply a uniform model, and States may achieve this goal in different ways: they may promote the establishment of social services jointly run by public bodies, private concerns and voluntary associations, or may leave the provision of certain services entirely to the voluntary sector. The "individuals and voluntary or other organisations" referred to in paragraph 2 include the voluntary sector, private individuals, and private firms.

The Committee examines all forms of support and care mentioned under Article 14§1 as well as financial assistance or tax incentives for the same purpose. It also verifies that the Parties continue to ensure that services are accessible on an equal footing to all and are effective, in keeping with the criteria mentioned in Article 14§1. Specifically, Parties must ensure that public and private services are properly coordinated, and that efficiency does not suffer because of the number of providers involved. In order to control the quality of services and ensure the rights of the clients as well as the respect of human dignity and basic freedoms, effective preventive and reparative supervisory system is required.

Article 14§2 also requires States to encourage individuals and organisations to play a part in maintaining services. The Committee looks at action taken to strengthen dialogue with civil society in areas of welfare policy which affect the social welfare services. This includes action to promote representation of specific user-groups in bodies where the public authorities are also represented, and action to promote consultation of users on questions concerning organisation of the various social services and the aid they provide.

The report of Luxembourg indicates that no change occurred during the reference period. The Committee recalls that, due to the fact that Luxembourg failed to submit its previous report on this provision on time, it decided to examine Article 14 during this cycle with an extended period of reference (2000-2004). Given the evolution of the interpretation of Article 14 in Conclusions XVII-2 (see text in italics above), the Committee asks the next report to provide the relevant information.

Pending receipt of the requested information, 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 report of Luxembourg.

The Committee observes that, notwithstanding its request, the report does not provide figures on the total number of persons with disabilities, and the percentage of these who are of school age. It therefore reiterates its question.

According to the report, the evaluation of the working capacities of persons with disabilities is carried out individually by the occupational health doctor. The Committee reiterates its question as to what steps, if any, have been taken or are planned to move away from a medical definition of disability towards a more social definition such as that endorsed by WHO in its international classifications of functioning (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.

The Committee recalls from its previous conclusion (Conclusions XVI-2) that mainstreaming is the practice for children with disabilities of compulsory school age. However, the report does not provide information neither on legislation regulating the issue, nor on the existence of non discrimination legislation. The Committee observes that non-discrimination legislation was adopted outside the period of reference (Act of 28 November 2006 on equality of treatment); it also covers education as regards persons with disabilities.

As the 2006 Act on equal treatment was adopted outside the reference period, the Committee will examine it in the next report and, meanwhile, concludes that the situation was not in conformity with the Charter during the reference period because of the lack of non-discrimination legislation.

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 report indicates that general teacher training includes special needs education.

In order to evaluate the effectiveness of mainstreaming the Committee asks the next report to provide information on the legislative framework, the number of children mainstreamed and of those attending special education, as well as on any case law and complaints brought to the appropriate institutions with respect to discrimination on the ground of disability in access to education.

Vocational training

The Committee observes that non-discrimination legislation was adopted outside the period of reference (Act of 28 November 2006 on equality of treatment); it also covers vocational training as regards persons with disabilities.

As the 2006 Act on equal treatment was adopted outside the reference period, the Committee will examine it in the next report and,

meanwhile, concludes that the situation was not in conformity with the Charter during the reference period because of the lack of non-discrimination legislation.

Notwithstanding the previous Committee's questions, the report does not provide the information requested as regards the total number of persons with disabilities into mainstream vocational training and those in all types of special facilities – not just those attending training organised or funded by the service for disabled workers (STH).

The Committee reiterates the above questions and it also requests information on the existence of non-discrimination legislation concerning secondary education and vocational training.

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 the participation of persons with disabilities to higher education.

Conclusion

The Committee concludes the situation in Luxembourg was not in conformity with Article 15§1 of the Charter during the reference period on the grounds that there was no specific legislation prohibiting discrimination on grounds of disability covering education and training.

Paragraph 2 – Employment for persons with disabilities

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

The Committee notes from the report that, in 2006, 4 562 workers were recognised by the competent body as disabled workers and thereby entitled to guidance, training, placement, rehabilitation and employment. The Committee, however, observes that, notwithstanding its request, the report does not provide figures on the total number of persons with disabilities, and the percentage of these who are of working age and of those who actually are in employment. It therefore reiterates its questions.

Non-discrimination legislation

The Committee recalls that in its previous conclusion (Conclusions XVI-2) it asked for information on legislation protecting persons with disabilities from discrimination in employment. However, the report does not provide information on the existence of non-discrimination legislation. The Committee observes that non-discrimination legislation was adopted outside the period of reference (Act of 28 November 2006 on equality of treatment); it also covers employment as regards persons with disabilities.

As the 2006 Act on equal treatment was adopted outside the reference period, the Committee will examine it in the next report and, meanwhile, concludes that the situation was not in conformity with the Charter during the reference period because of the lack of non-discrimination legislation.

The Committee also recalls that non-discrimination legislation must provide for the adjustment of working conditions (reasonable accommodation) in order to guarantee the effectiveness of non-discrimination legislation in the field of employment. It asks information to be provided in the next report.

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 for persons who have become disabled while in their employment as a result of an industrial accident or occupational disease.

The Committee recalls from its previous conclusion (Conclusions XVI-2) that several measures are in place to support employment of persons with disabilities in the ordinary market. The report provides up-to-date information on the number of participants to the different measures. 274 persons are employed in the ordinary market; wage subsidies were provided to 229 workers; exemption from social security charges was given to one worker; adaptation of the working place was carried out for 8 workers with disabilities. 235 persons with disabilities benefited from reintegration measures in 2006.

The Committee takes note of these figures, but at the same time it observes that they are low in comparison to the figure of 4 562 workers recognised as disabled workers by the competent body. In addition, due to the absence of overall figures concerning the total number of persons with disabilities in working age, they do not provide a clear picture of the situation concerning employment of persons with disabilities. In order to assess properly the situation, the Committee requires these figures to be provided in the next report.

According to the report the number of people employed in sheltered workshops was 158, 41 of whom received wage subsidies. The Committee recalls that Article 15§2 of the Charter requires that persons with disabilities be employed in an ordinary working environment. Sheltered employment facilities must be reserved for those persons who, due to their disability, cannot be integrated into the open labour market. They should aim nonetheless to assist their beneficiaries to enter the open labour market. The Committee asks the next report to indicate the measures introduced to enable the integration of persons with disabilities into the ordinary labour market and the rate of progress into it.

Finally, the Committee recalls that people working in sheltered employment where production is the main activity must enjoy the usual benefits of labour law and it therefore asks again whether this principle is observed in Luxembourg and whether trade unions are active in sheltered employment facilities.

Conclusion

The Committee concludes the situation in Luxembourg was not in conformity with Article 15§2 of the Charter during the reference period on the grounds that there was no specific legislation prohibiting discrimination on grounds of disability in employment.