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## **European Social Charter**

European Committee of Social Rights

Conclusions 2016

**AUSTRIA**

*This text may be subject to editorial revision.*



The role of the European Committee of Social Rights (the Committee) is to rule on the conformity of the situation in States Parties with the Revised European Social Charter (the Charter). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure.

The following chapter concerns Austria, which ratified the Charter on 20 January 2011. The deadline for submitting the 4th report was 31 October 2015 and Austria submitted it on 4 November 2015.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report concerns the following provisions of 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 right of men and women to equal opportunities (Article 20),
- the right to protection in cases of termination of employment (Article 24),
- the right to workers to the protection of claims in the event of insolvency of the employer (Article 25).

Austria has accepted all provisions from the above-mentioned group except Articles 15§2, 18§3 and 24.

The reference period was 1 January 2011 to 31 December 2014.

In addition, the report contains also information requested by the Committee in Conclusions 2014 in respect of its findings of non-conformity due to a repeated lack of information:

- the right to a fair remuneration – decent remuneration (Article 4§1).

The conclusions relating to Austria concern 18 situations and are as follows:

– 13 conclusions of conformity: Articles 1§1, 1§2, 1§3, 1§4, 9, 10§1, 10§2, 10§3, 10§4, 18§1, 18§2, 18§4 and 25

– 3 conclusions of non-conformity: Articles 4§1, 10§5 and 15§1

In respect of the other 2 situations related to Articles 15§3 and 20 the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Austria under the Charter. The Committee requests the Government to remedy this situation by providing the information in the next report.

During the current examination, the Committee noted the following positive developments:

#### **Article 15**

- The Insurance Law Amendment Act (*Versicherungsrecht-Änderungsgesetz*) of 2013 introduced special protection against discrimination for people with disabilities into the Insurance Contract Act (*Versicherungsvertragsgesetz*).

#### **Article 18**

- The quota system (*Bundeshöchstzahl*) was repealed as of 1 January 2014.
- The Red-White-Red Card and the EU Blue Card systems were introduced in 2011, has simplified the formalities for obtaining the documents needed for engaging in a professional occupation, in that it has established a combined residence and work permit (administered through a "one-stop shop").

**Article 20**

- The legislation was amended as of 1 August 2013 to expressly address court proceedings, specifying that the awarded compensation must be effective and proportionate as well as suited to preventing discrimination.

The next report will deal with the following provisions of the thematic group "Health, social security and social protection":

- the right to safe and healthy working conditions (Article 3),
- the right to protection of health (Article 11),
- the right to social security (Article 12),
- the right to social and medical assistance (Article 13),
- the right to benefit from social welfare services (Article 14),
- the right of elderly persons to social protection (Article 23),
- the right to protection against poverty and social exclusion (Article 30).

The report should also contain information requested by the Committee in Conclusions 2015 in respect of its findings of non-conformity due to a repeated lack of information:

- the right of children and young persons to protection – special protection against physical and moral dangers (Article 7§10, 2nd ground).

The deadline for submitting that report was 31 October 2016.

Conclusions and reports are available at [www.coe.int/socialcharter](http://www.coe.int/socialcharter).

## **Article 1 - Right to work**

### *Paragraph 1 - Policy of full employment*

The Committee takes note of the information contained in the report submitted by Austria.

### ***Employment situation***

The real GDP growth rate fell from 2.8% in 2011 to 0.4% in 2014 thus considerably lower than the EU average rate which stood at 1.4% in 2014.

The overall employment rate remained stable at 71.1% throughout the reference period. This rate is significantly higher than the EU employment rate which stood at 64.9% in 2014.

The male employment rate remained also relatively stable decreasing from 75.5% in 2009 to 75.2% in 2014, which is still considerably higher than the EU 28 average rate of 70.1% in 2014. The female employment increased slightly from 65.2% to 66.9% (EU 28: 59.6%). The employment rate of older workers increased from 39.4% to 45.1%.

The unemployment rate went up from 4.6% in 2011 to 5.6% in 2014. However, the unemployment rate is still considerably lower than the average EU 28 rate of 10.2%.

The youth unemployment rate stood at 8.9% in 2011 and at 10.3% in 2014. The long-term unemployment rate (as a percentage of active population aged 15-74) remained low during the reference period. 1.2% in 2011; 1.5% in 2014.

The Committee notes that the labour market situation in Austria remained stable during the reference period despite a considerable decrease in the overall GDP growth rate.

### ***Employment policy***

Labour market policy in Austria is characterised by a close interaction between governmental and non-governmental institutions. The government involves social partners in a variety of activities devising and implementing legislation and policy measures. The general labour market goals are set out in the EU 2020 strategy which is at the national level implemented in the Public Employment Service Act.

According to the report, a variety of labour market policy measures are destined for helping vulnerable groups such as people with disabilities and young people. Persons with disabilities benefit both through individual subsidies as well as through project grants.

Special emphasis is put on young people with special needs at the transition from school to work. Youth coaching is provided to all young people with special needs. Various measures intend to promote gender equality in the labour market.

According to the report, programmes, policies and measures of active labour market policies are monitored and evaluated on a permanent basis.

According to Eurostat, public expenditure on active labour market policies in Austria amounted to 1.9% of GDP in 2011 which was slightly above the EU 28 average (where the average public spending on active labour market measures as a percentage of GDP that year was 1.8%).

The Committee considers that Labour market policies implemented in Austria result in a relatively low level of unemployment and in targeted activation policies for vulnerable groups.

### ***Conclusion***

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

## **Article 1 - Right to work**

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

The Committee takes note of the information contained in the report submitted by Austria.

### **1. Prohibition of discrimination in employment**

The Committee has previously examined the legal framework prohibiting discrimination in employment. It noted that the Equal Treatment Act (*GIBG*) covers the private sector and protects against discrimination in employment on the following grounds: gender, ethnic affiliation, religion or belief, sexual orientation and age. The Federal Equal Treatment Act (*Bundes-Gleichbehandlungsgesetz, B-GIBG*) covers (Federal) public employment and protects against discrimination on the following grounds: gender, ethnic affiliation, religion and belief, sexual orientation and age.

The Committee notes that the Equal Treatment Act has been subsequently amended on 1 March 2011, respectively on 1 August 2013. The report indicates that the most important amendments consist in:

- the discrimination by association, that is discrimination of a person due to that person's close connection with a victim of discrimination, is now prohibited;
- the minimum compensation for harassment and sexual harassment has been increased from € 720 to € 1,000;
- the requirement to include the minimum wage as defined in the collective agreement and information regarding the willingness to pay more than that in job advertisements;
- confidentiality of proceedings before the Equal Treatment Commission has been lifted;
- with respect to court proceedings, it has been expressly stated that the compensation granted must be effective and proportionate and designed to prevent discrimination.

With regard to the available remedies, the report indicates that any person who considers herself/himself a victim of discrimination may file a complaint based on the provisions of the Equal Treatment Act before a court of law. In case the principle of equal treatment is violated, compensation awarded may consist in:

- compensation for financial losses, i.e. actual harm caused (*positiver Schaden*) and loss of profit; or
- creating/restoring a discrimination-free situation and, in both cases, additionally
- compensation for the immaterial damage and the personal impairment suffered.

The report outlines that protection from any adverse treatment or adverse consequences as a reaction to a complaint or proceedings aimed at enforcing compliance with the principle of equal treatment has been introduced as a measure to enhance protection against discrimination and applies not only to persons filing a complaint but also to other persons such as, for example, employees or witnesses supporting the complaint.

The Committee recalls that under article 1§2 of the Charter remedies available in cases of discrimination must be adequate, proportionate and dissuasive. It therefore considers that the imposition of pre-defined upper limits to compensation that may be awarded not to be in conformity with the Charter as in certain cases these may preclude damages from being awarded which are commensurate with the loss suffered and not sufficiently dissuasive to the employer (Conclusions XVIII-1). The Committee asks whether there is a ceiling/pre-defined upper limit to compensation in cases of discrimination in employment (in relation to recruitment or employment conditions in general).

The Committee takes note from the report of the competences of the two institutions dealing with issues of discrimination.

The Equal Treatment Commission established at the Federal Ministry for Education and Women's Affairs (*Bundesministerium für Bildung und Frauen, BMBF*) deals with all issues related to discrimination and may prepare expert opinions and carry out case reviews. Claims for damages or performance, however, cannot be submitted to the Commission as they belong to the exclusive jurisdiction of the courts. The decisions of the Equal Treatment Commission are not binding. The Equal Treatment Commission and the courts can be addressed independently from one other. The opinions issued by the Equal Treatment Commission are published in full, yet in anonymised form, on the BMBF's website. The report indicates that NGOs may represent an individual who is discriminated against in the proceedings before the Equal Treatment Commission. The participation of an NGO in court proceedings is ensured by way of third-party intervention.

The Equal Treatment Ombud Office established at the Federal Chancellery provides advice and support to individuals who feel they are discriminated against. The report indicates that the Act on the Equal Treatment Commission and Equal Treatment Ombuds Office Act which governs the functioning and proceedings of the two institutions has been amended during the reference period so that the proceedings before the Equal Treatment Commission were optimised (namely by fewer senate members, streamlined structure of Equal Treatment Ombud Office, enhanced arbitration function of the Equal Treatment Commission, new questioning rules in the Equal Treatment Commission).

The Committee requests updated information in the next report on the activities of the Equal Treatment Commission and of the Equal Treatment Ombud Office as well as on any judicial decisions pertaining to discrimination in employment issued by the courts with specific indications regarding their nature and outcome, and compensation paid to the employees.

With regard to discrimination on grounds of nationality, the Committee previously concluded that the situation was not in conformity with the Charter on the ground that during the reference period Section 8§2 of the Aliens Employment Act required employers to make foreign workers redundant first when reducing manpower or to avoid having to reduce the working hours of all employees (Conclusions 2012).

The Committee took note that Section 8§2 of the Aliens Employment Act was repealed in 2011, which was outside the reference period corresponding to the previous Conclusion. The current report confirms that Section 8§2 of the Aliens Employment Act was repealed as of 30 June 2011 in order to meet the requirements of the European Social Charter on the one hand, and on the other hand of the Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, which – among other things – sets forth the express principle of equal treatment as regards conditions of employment and working conditions, including conditions regarding the termination of employment relationships. The Committee takes note of these changes in the legislation and therefore concludes that the situation is now in conformity with the Charter on this point.

The Committee asks the next report to provide information on any concrete positive measures/actions taken or envisaged to promote equality in employment and to combat all forms of discrimination in employment.

## **2. Prohibition of forced labour**

### **Work of prisoners**

The Committee notes from the report that Section 44 of the Penal Execution Act that all persons detained in prison who are able to work are obliged to do so. They are not allowed to perform any life-threatening work or work involving severe health hazards. In reply to the question asked by the Committee (Conclusions XX-1/2012), the report specifies that prisoners who have an accident at work that was not intentionally caused by themselves are entitled to accident insurance care in addition to the provisions on medical care specified

(Section 76). During the period of detention, all inmates are entitled to healthcare even if they intentionally contract diseases or cause injuries to themselves, with the federal government having to cover the costs given the absence of conventional health insurance (Section 66 et seq. of the afore-mentioned law).

In July 2014, a total of 357 businesses were operating in the 27 Austrian prisons. The workers' protection provisions applicable to private enterprises also apply to businesses inside penal institutions. The remuneration for inmates is modelled on the remuneration specified in the collective agreement for metal workers and is based on the minimum wage index calculated by Statistics Austria. The average wage of prisoners released in 2013 was €4.85 per day, after deduction of law enforcement costs and unemployment insurance contributions.

The general requirements for the protection of life, health and physical safety apply to both public and private sector employees (Section 49 of the Penal Execution Act). Employees of the company may professionally supervise the prisoners but have no disciplinary authority whatsoever. Only law enforcement staff are responsible for supervising prisoners.

### ***Domestic work***

The report reiterates information that was provided in the previous evaluation cycle, namely that Section 104 of the Criminal Code forbids the five following forms of exploitation: sexual exploitation, removal of organs, exploitation of labour, exploitation through forced begging and exploitation through forced commitment of punishable acts. Human trafficking for the purpose of domestic exploitation is considered to be exploitation of labour.

The Committee notes from the report that an assessment of the legal situation in Austria with regard to compliance with ILO Convention No. 189 on domestic work has shown that there are some gaps or an absence of legislative provisions with regard to the recruitment of domestic employees from abroad (Article 8§1 of the Convention), payment of costs for repatriation of domestic workers to their home country following expiry or termination of the employment contract (Article 8§4 of the Convention), working hours (weekly working hours need to be reduced and the weekly rest period needs to be extended – Articles 10§§1 and 2 de la Convention) and adequate supervision of working conditions through the establishment of measures for labour inspection (Articles 17§§2 and 3 of the Convention). The Committee notes with regard to the inspection of the homes of individuals who have domestic employees, the Code of Criminal Procedure authorises such house searches provided they are ordered by the public prosecutor following a court's approval (Section 120§1 of the Code), if certain facts give rise to the assumption that a person suspected of a criminal offence is hiding there, or if evidence of such an offence may be found there (Section 119§1 of the Criminal Code) This concerns the criminal offences of slavery and people trafficking (Section 104 (a) of the Criminal Code). Aside from this, the law as it stands does not permit inspections relating to observance of the rights of workers to be carried out in the homes of private individuals. Moreover migrant workers recruited in Austria do not currently have the right to a job offer or enforceable contract of employment.

Following a number of meetings with the social partners since autumn 2012, draft legislation was drawn up in 2015 to overcome all current obstacles to ratification of ILO Convention No. 189. It should be enacted in 2016.

The report states that access to the Austrian labour market is essentially restricted to highly qualified skilled workers in areas where there is a shortage of skilled labour and to key employees. Job-seekers must obtain a 'Red White Red' (*RWR*) card to be able to sign a contract of employment. Such a card is not issued for domestic work as it is a low-skilled occupation. Accordingly, domestic workers employed in Austria are mostly EU citizens, who have free access to the labour market. There are also au pairs, who are covered by the Domestic Help and Domestic Employees Act (*Hausgehilfen- und Hausangestelltengesetz*). Employers of young au pairs from third countries must declare such employment to the



Public Employment Department (*AMS*) and must also submit a contract of employment. The enforceability of such contracts of employment is the same as for employees generally. The Employment of Foreigners Act (*Ausländerbeschäftigungsgesetz*) also provides for an exemption for staff at diplomatic missions, and no labour permit is therefore required for workers employed in the households of embassy employees, which means that the *AMS* cannot carry out any advance checks on the employment contracts of such workers.

Since the previous evaluation cycle, Austria has organized events for domestic workers employed in diplomatic households in 2013 and 2015 to inform them about their rights regarding wages, working hours and other job conditions. As it is host to a number of international organisations and a large diplomatic community, Austria co-operates with other countries at bilateral and multilateral level, for example within the OSCE in drawing attention to this issue and strengthening international co-operation.

The Committee takes note of the information provided and asks that the next report contain updated information on the enactment of the aforementioned law and the measures taken to monitor its application (General questions of the Committee, Conclusions 2012).

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

#### ***Minimum periods of service in the Armed Forces***

The Committee notes from the report that in Austria it is compulsory to serve in the armed forces for at least six months (basic service). Anyone who objects to compulsory military service on grounds of conscience and is exempted has to do nine months of alternative civil service. Persons doing alternative civil service must be employed in services which are either for the benefit of civilian national defence or in the public interest and which require a similar commitment from them as expected of persons doing compulsory military service.

Military service can be completed with the Austrian Armed Forces, either in the form of national service (*Präsenzdienst*), national training service (*Ausbildung Dienst*) or in the framework of an employment relationship. In the two latter cases, military service can be terminated by the soldiers at any time (resignation or termination). However, where active service is concerned, termination of service following an application to resign only becomes effective upon completion of the mission.

The Committee notes that the Austrian Defence Act (*Wehrgesetz, WG*) provides for 5 types of compulsory service in the armed forces. It also takes note of the information concerning the duration of the different types of service in the armed forces and the measures that may be applied in extraordinary circumstances.

It asks that the next report provide information on the impact of studies or training courses followed by soldiers on the duration of their service in the armed forces and on the possible financial repercussions of early termination of service.

#### ***Requirement to accept the offer of a job or training***

According to the report, in Austria unemployed workers are entitled to welfare benefits in the form of unemployment benefit and unemployment assistance. In order to receive such benefits they must accept the offer of a suitable job or take part in skills-improvement or vocational retraining programmes. A job is considered reasonably suitable if it suits the job-seeker's capabilities and corresponds to the standards defined in legislation and collective agreements. During the first 100 days on unemployment benefits, unemployed workers are entitled to placement in their former occupation and vacancies offered must not differ greatly from that occupation.

Unemployment assistance, which is payable on exhaustion of unemployment benefit, combines the principles of social insurance and welfare. In order to receive such assistance, the beneficiaries must prove that they are willing and able to work. Unemployment

assistance is, as a rule, granted for a maximum of 52 weeks. However, it continues to be paid as long as the person continues to have serious financial difficulties.

If claimants refuse or ignore opportunities by failing to accept jobs or to actively participate in training programmes, penalties may be applied in the form of the suspension of their unemployment benefits for six weeks, and in repeat cases for eight weeks. As a consequence, the duration of benefit entitlement is reduced by six or eight weeks. If someone becomes unemployed through their own fault, their unemployment benefit or assistance may be suspended for four weeks, in other words such benefits will only be paid four weeks after they have lost their job.

The Committee considers that in all cases in which the relevant authorities decide on the permanent withdrawal or temporary suspension of unemployment benefit because the recipient has rejected a job offer, this decision must be open to review by the courts in accordance with the rules and procedures established under the legislation of the State which took the decision (Statement of interpretation on Article 1§2, Conclusions 2012). It asks that the next report provide relevant information on this point. The Committee points out that if the information is not provided in the next report, there will be nothing to establish that the situation is in conformity with Article 1§2 of the Charter regarding the obligation to accept a job offer or training, or lose unemployment benefits.

### ***Privacy at work***

The report states that the employer's duty of care is stipulated in Section 18 of the Austrian Salaried Employees Act (*Angestelltengesetz, AngG*) and in Section 1157 of the Austrian General Civil Code (*Allgemeines bürgerliches Gesetzbuch, ABGB*). To meet the duty of care, the employer must not only offer working conditions which protect the life and health of employees in the best possible way but also respect employees' other material and non-material interests and personal rights, such as the protection of privacy. In the event of non-compliance with this obligation, employees may lodge a claim against the employer and seek compensation. Employees who wish to leave the company as a result of a violation of privacy may terminate the employment relationship or announce their premature resignation provided that their decision is based on pertinent grounds, invoking a health risk if work is continued or violation of morality vis-à-vis the employee (Section 26 *AngG* and Section 82a of the Industrial Code).

Pending receipt of the information requested, the Committee considers that with regard to the prohibition of forced labour and the other aspects of the right to earn one's living in an occupation freely entered upon, the situation is in conformity. It asks that the next reports continue to provide information on developments in the *de jure* and *de facto* situation with regard to these different aspects.

### ***Conclusion***

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

## **Article 1 - Right to work**

### *Paragraph 3 - Free placement services*

The Committee takes note of the information contained in the report submitted by Austria.

The 2014 Report of the Performance of the Public Employment Service (AMS) ([http://www.ams.at/\\_docs/001\\_gb\\_2014\\_kurzbericht\\_en.pdf](http://www.ams.at/_docs/001_gb_2014_kurzbericht_en.pdf)) indicates that the unemployment rate in Austria was 5.6%, the second lowest unemployment rate across the European Union (EU 28) after Germany (the unemployment rate for the 28 EU states was 10.2%).

The Committee notes from the above-mentioned report that AMS is divided into one federal, nine regional and 104 local organisations. In reply to the Committee's request the report confirms that all services provided by AMS remain free of charge.

In 2014, the number of vacancies notified to AMS was 436,500 and the number of placements by AMS was 369,000. It results a placement rate of 84,5% which is one of the highest rates among the Member States of the Charter.

AMS succeeded every 72 seconds in acquiring a new vacancy (including apprenticeship placements). Around 273,000 CVs of customers were electronically stored by AMS, corresponding to nearly 1,100 jobseeker CVs per working day. At the end of December 2014, 5,766 staff were at the service of job-seekers and enterprises. Annual average staff deployment is 5,068 full-time equivalents, assisting around 980,000 job and apprenticeship seekers as well as around 67,200 businesses at 104 local offices across all federal provinces.

As indicated in the report, AMS market share (share of vacancies filled by AMS assistance in all newly created employments) in 2014 was around 36.3%, slightly higher compared to the previous year. The report does not provide the market share of private recruitment agencies which are fully operational in Austria. In this connection, the Committee asks the next report to provide information on the co-ordination between the work of private agencies and that of the public employment service and indicate the market share of private services.

The report also indicates that the social partners are fully involved at all levels and make a considerable contribution in forming labour market policy and organisational controlling in the board of governors, the provincial directorates and regional advisory councils.

Having regard to the information provided, the Committee considers that the public employment services in Austria satisfy the criteria of free and effectiveness in practice as required by Article 1§3 of the Charter.

### *Conclusion*

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

## **Article 1 - Right to work**

### *Paragraph 4 - Vocational guidance, training and rehabilitation*

The Committee takes note of the information contained in the report submitted by Austria.

As Austria 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 vocational guidance and training for persons with disabilities are examined under these provisions.

The Committee considered the situation to be in conformity with the Charter as regards measures relating to vocational guidance (Article 9) and vocational training and retraining of workers (Article 10§3).

It considered however that the situation was not in conformity with Article 15§1 of the Charter on the ground that the right of persons with disabilities to mainstream education is not effectively guaranteed. Since this ground does not concern vocational training, it is not relevant under Article 1§4 (Conclusions 2008, Statement of interpretation on Article 1§4).

### *Conclusion*

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

## **Article 4 - Right to a fair remuneration**

### *Paragraph 1 - Decent remuneration*

In application of the reporting system adopted by the Committee of Ministers at the 1196<sup>th</sup> meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2015 on conclusions of non-conformity for repeated lack of information in Conclusions 2014.

The Committee takes note of the information submitted by Austria in response to the conclusion that it had not been established that the lowest wage paid was sufficient to ensure a decent standard of living (Conclusions 2014, Austria). In this respect it also notes the comments of the Federal Chamber of Labour (BAK) and the Austrian Economic Chamber (WKÖ).

Article 4§1 guarantees the right to a fair remuneration such as to ensure a decent standard of living. The concept of "decent standard of living" goes beyond merely material basic necessities such as food, clothing and housing, and includes resources necessary to participate in cultural, educational and social activities (Conclusions 2010, Statement of Interpretation on Article 4§1). To be considered fair within the meaning of Article 4§1, the minimum or lowest net remuneration or wage paid in the labour market must not fall below 60% of the net average wage. The assessment is based on net amounts, i.e. after deduction of taxes and social security contributions. The net national average wage is that of a full-time worker and calculated with reference to the labour market as a whole. If the lowest wage does not fall very far below the established threshold (in practice between 50% and 60%), the State Party will be invited to provide detailed evidence that the lowest wage is sufficient to give the worker a decent living standard even if it is below the threshold.

The report firstly refers to the net value of the average wage of manual workers (*Arbeiter und Arbeiterinnen*) which was € 22,484 in 2013 (according to Statistik Austria it increased to € 22,777 in 2014). In this respect the Committee wishes to point out that the reference wage for its assessment under Article 4§1 should not be restricted to manual workers, but should refer to all full-time wage earners (dependent workers) in the labour market as a whole (cf. Conclusions XIV-2 (1998), Statement of interpretation on Article 4§1). The Committee will therefore take into account the data available from Statistik Austria on all dependent employees (*Unselbständig Erwerbstätige*). It notes that the average annual wage for this group was € 30,616 in 2013 and € 30,959 in 2014. The report does not provide explicit information on the monthly average wage, but the aforementioned 2014 annual amount for all dependent employees (based on social security data) corresponds to a net average monthly wage of € 2,580. Statistik Austria also publishes a net monthly average for full time employees based on micro-census data which estimates the average net monthly wage at € 2,333 in 2014.

The report provides little information on the lowest wages paid in the labour market. It reiterates information previously noted by the Committee according to which approximately 98% of Austrian employees are covered by collective agreements and indicates that the lowest wage rates foreseen by these agreements range between € 1,200 and € 1,400 monthly (as of March 2015). The Committee assumes that these amounts are gross, i.e. before deduction of contributions and taxes. It asks that the next report confirm this understanding and provide estimates of the net value of the lowest wages provided for by collective agreement.

Nevertheless, the Committee notes that a gross monthly wage of € 1,200 corresponds to only about 51% of the net average monthly wage based on micro-census data and to about 47% of net average monthly wage based on social security data. The Committee can only assume that the percentages would have been even lower if the lowest wage rates had been indicated net of contributions and taxes. Thus, the lowest wages fall well below the threshold established by the Committee.

The Committee notes the information on transfer payments which according to the report play a major role for the actual income situation of employees and their households and should be seen as an instrument of redistribution. While acknowledging that the existence transfer payments may to some extent inform the Committee's assessment of compliance with Article 4§1, especially when the lowest wage levels are very close to the 60% threshold, the Committee notes that the transfer payments referred to predominantly concerns children and families with children and do not necessarily benefit all workers on the lowest wages. As regards tax breaks and the announced tax reforms (and relief from social security contributions) to ease the burden on low-income earners the Committee refers to its question above on the net value of the lowest wages, i.e. on the impact of contributions and taxes on these wages. It also wishes to receive information any reforms actually adopted in this respect.

On the basis of the information at its disposal, the Committee considers that the lowest wages are too low to meet the requirements of the Charter.

Finally, the Committee takes note of the explanation regarding Article 1152 of the General Civil Code which provides for "appropriate remuneration" where the employer is not bound by any existing collective agreement. According to the case law of Austrian Supreme Court (OGH) in such cases an appropriate wage has to be determined on the basis of collective agreements for comparable activities, with factors such as wage levels in the geographical area (neighbouring towns), the size of the enterprise and the number of employees being also taken into account. In principle, the Committee considers this *modus operandi* to be reasonable and acceptable under Article 4§1, however in order to assess the situation properly it needs to receive information, including examples, on the lowest wages actually paid to full-time workers not covered by collective agreement. It asks that this information be contained in the next report.

### *Conclusion*

The Committee concludes that the situation in Austria is not in conformity with Article 4§1 of the Charter on the ground that the lowest wages paid are too low to ensure a decent standard of living for all workers.

## **Article 9 - Right to vocational guidance**

The Committee takes note of the information contained in the report submitted by Austria.

As regards measures concerning vocational guidance of people with disabilities, both within the education system and the labour market, the Committee refers to its assessment under Article 15 of the Charter.

### ***Vocational guidance within the education system***

The Committee previously took note of the many and diverse orientation services offered to students in the field of education and occupation (see Conclusions XX-1 (2012)). It noted that all initiatives in this field were based on a national policy for the development and improvement of coordination of different services, with the objective of systematically supporting the educational and vocational decision-making processes, especially two years before graduation and/or transition.

It also noted that such counselling services are free and available to all students, irrespective of their nationality.

In addition, the report indicates that from the ninth year of schooling on, the Service Centre of the Ministry of Social Affairs also provides youth coaches within schools to support successful transition from school into working life for all students at risk of early school leaving. Prior to graduation and transfer from one school type to another, comprehensive information, counselling and guidance is available at schools. The report refers in this respect in particular to the Catalogue of mandatory measures concerning information, counselling and guidance for grades seven and eight (<http://www.bmbf.gv.at/ibobb>) and to the Initiative "18plus – Work and Study Checker" for the transition from secondary to tertiary education (<http://www.18plus.at>).

In response to the Committee's question concerning the budgetary and human resources allocated to vocational guidance in the education system and the number of beneficiaries, the report indicates that during the 2013/14 academic year, support was provided to over 86 000 seventh and eighth-grade students throughout Austria, an increase of 18% over the 2012/13 academic year. However, the report points out that as information, counselling and guidance for education and work are integrated into overall instruction, it is difficult to identify, out of the global budget for education, the costs specifically related to guidance. The report presents nevertheless some data concerning the number of educational and vocational guidance counsellors (psychologists and school and educational counsellors) in the education system, which remained largely constant between 2011 and 2014, as well as the estimated staff costs, which do not include however the expenditure on youth coaches and teaching activities. The Committee takes note of the information provided and asks that updated information be regularly provided on expenditure and staffing in the next reports.

### ***Vocational guidance in the labour market***

The Committee refers to its previous conclusion (Conclusions XX-1 (2012)), where it took note of the counselling, information and guidance services which are offered free of charge to both employed and unemployed persons by the Public Employment Service pursuant to the 1994 Public Employment Service Act (*Arbeitsmarktservicegesetz*), as amended. These services are in particular offered through the Vocational Information Centres (*Berufsinformationszentren, BIZ*) all over Austria. According to the report, the BIZ advisors provide research support, organise events and workshops, provide educational and vocational guidance for people of all ages and respond to queries by telephone and in writing. All services are provided impartially, free of charge and, where desired, anonymously.

The Committee takes note of the information provided in the report on the guidance services offered by BIZ to accompany young people in the transition from school to work and to

adults wishing to embark on a new career or change career direction. The report specifies that this information is not only available through personal guidance, but also through collections of documents (videos and brochures). Furthermore, an extensive online offer exists, including a careers test, information on current labour market trends, an apprenticeship vacancies site and a continuing vocational training database, available 24 hours a day.

The report also describes the numerous online resources managed by the Public Employment Service and available to anyone. They include: a website ([www.ams.at/karrierekompass](http://www.ams.at/karrierekompass)), which contains information on careers/occupations, education and training opportunities and labour market trends, data and research; the "Careers lexicon" website ([www.ams.at/beruflexikon](http://www.ams.at/beruflexikon)), which provides clear information on almost 1800 occupations as well as on jobs activities, employment prospects and education and training options for these occupations; the AMS's "Qualification Barometer" which provides information on the qualifications and professions with particularly good prospects (that is, where there are the most job vacancies) and the employment trends in each field of work; the AMS "Job Compass" website (*AMS-Berufskompass*) providing career-tests aimed inter alia at specific target groups (young people under the age of 16 on the one hand, workers looking for a career change on the other hand); the AMS's "Career Information System", a database of occupations, and the related training/qualifications required, pay, etc.; the "Application Portal" ([www.ams.at/bewerbung](http://www.ams.at/bewerbung)) which provides guidance on every stage of the application process; the AMS's "Youth Platform" (*Jugendplattform* – [www.arbeitszimmer.cc](http://www.arbeitszimmer.cc)) which provides information on all aspects of choosing a school, career or university course, including company apprenticeship vacancies.

As regards the spending, staffing numbers and number of beneficiaries of vocational guidance on the labour market, the report indicates that in 2014, a total of around 500,000 young people and adults used the information available in the AMS's 68 Vocational Information Centres. Around 140 permanent positions are allocated to provision of these services at the AMS's Vocational Information Centres. Due to the high degree of integration between the services provided by the Public Employment Service, and despite the fact that services were primarily expanded in the area of career choice support (e.g. Vocational Information Centres), a reliable assessment of the total costs and capacities spent in this area is however very difficult, according to the report. The Committee takes note of the information provided and asks that updated information be regularly provided on beneficiaries, expenditure and staffing in the next reports.

In response to the Committee's question concerning access of non-EU nationals to vocational guidance in the labour market, the report confirms that anyone interested – independently of nationality, length of residence or employment conditions – can obtain information and advice on occupations, job prospects, labour market trends and education and further training from specially trained counsellors at the AMS's Vocational Centres. In addition, anybody can access the online guidance resources mentioned above. The Committee finds that the situation is in conformity with Article 9 in this respect.

### *Conclusion*

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



## **Article 10 - Right to vocational training**

### *Paragraph 1 - Technical and vocational training; access to higher technical and university education*

The Committee takes note of the information contained in the report submitted by Austria.

### ***Secondary and higher education***

The Committee notes from the report that technical and vocational schools and colleges pave the way for the transition from compulsory education to the world of employment. By means of not just offering basic vocational training but also more sound and specialised courses, technical and vocational schools provide for training in various fields and for various occupations. Post-secondary courses provide short study programmes for people holding standard entry qualifications for university. These courses run for four or eight semesters, impart technical and practical qualifications to be acquired at technical and vocational colleges and end with a diploma exam. Access to advanced vocational education is conditional upon standard entry qualifications for university. Successful completion of professional university (*fachhochschul*) courses gives access to doctoral programmes at university.

Apart from imparting sound technical know-how as well as instructing students about the legal framework, secondary schools for occupations in the social services sector also foster the development of the individual student's personality as well as his/her social skills and understanding of organisational structures.

The Committee recalls that Article 10§1 covers all forms of higher education. In view of the current evolution of national systems, which consists in the blurring of the boundaries between education and training at all levels within the dimension of lifelong learning, the Committee considers that, today, the notion of vocational training of Article 10§1 covers initial training, i.e. general and vocational secondary education, university and non-university higher education, and continuing training. University and non-university higher education are considered to be vocational training as far as they provide students with the knowledge and skills necessary to exercise a profession.

The Committee asks what measures are taken to make general secondary education and general higher education qualifications relevant from the perspective of professional integration in the job market.

### ***Measures to facilitate access to education and their effectiveness***

In its previous conclusion the Committee found that the situation was not in conformity with the Charter as nationals of States Parties who are not nationals of the European Economic Area and are lawfully resident or regularly working in Austria are granted access to university education only subject to the availability of places.

The Committee notes from the report in this respect that from winter semester 2013/2014 a new study place limitation and admission process for all students independent of nationality has been implemented in some fields of studies. All applicants for a university place have to fulfil the general and the study related admission requirements prescribed by law, for instance the possession of a special university entrance qualification required for the degree program selected, a sufficient knowledge of German, and – where entrance examinations are stipulated – all students will have to pass these qualifying examinations. According to the report, this system guarantees equality of treatment with respect to access to university education to every applicant, including nationals of State Parties who are not nationals of the EEA.

The Committee considers that the situation has been brought into conformity with the Charter on this point.

The Committee notes from the report that in 2010 the total expenditure on all levels of education combined amounted to 5,8% of GDP. The Committee asks the next report to provide updated information in this respect, with a special regard to vocational education.

*Conclusion*

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

## **Article 10 - Right to vocational training**

### *Paragraph 2 - Apprenticeship*

The Committee takes note of the information contained in the report submitted by Austria.

According to the report, the Austrian dual system of vocational education and training is characterised by the combination of practice-oriented training provided at the enterprise and the teaching of subject-related theoretical know-how, general education and key skills at the part-time vocational school. The enterprise-based part of dual vocational training makes up approximately 80% of the apprenticeship-period. Training in an apprenticeship lasts between two and four years. About 40% of young people per year undergo an apprenticeship training. Approximately 35,000 enterprises are open as training sites.

The apprenticeship contract is entered into between the authorised apprenticeship trainer and the apprentice. It must be concluded in writing and has to be registered by the Apprenticeship Office in case it is correlating with the Vocational Training Act.

The Committee notes that the reforms of the dual system are aiming at an increased integration of economic and technological innovations and at motivating companies to invest in existing and to create new vacancies for apprentices.

At 31 December 2014 there were about 115,068 apprentices, of whom approximately 9,000 are doing a supra-company apprenticeship. There exist a wide range of subsidies to company-based apprenticeships. The youngsters usually search for an apprenticeship positions themselves or with the help of the Public Employment Service (AMS) and apply directly to the company. 11,299 young people found a regular apprenticeship in a company with the support of the AMS. Apprenticeship promotion funding was paid to companies in respect of 9,751 apprenticeships, for a total expenditure of €27,9 million.

According to the report, due to the current labour market situation, active labour market policy measures for those seeking apprenticeships continued at a high level.

In 2014, the AMS spent around €125 million for apprenticeships for young people. This figure includes subsistence allowances and apprenticeship pay.

### *Conclusion*

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

## **Article 10 - Right to vocational training**

### *Paragraph 3 - Vocational training and retraining of adult workers*

The Committee takes note of the information contained in the report submitted by Austria.

#### ***Employed persons***

According to the report, adult education is under the responsibility of the Federal Ministry for Education and Women's Affairs (BMBF). It is provided by a variety of educational institutions pursuing a range of objectives and offering various education programmes. To ensure participation in and successful completion of such courses, it is essential that programmes offered are suitable for adult learners and appropriate for the relevant target groups and that high-quality educational and vocational guidance is available. The BMBF provides funding for associations and institutions in the field of adult education.

The Federal Institute for Adult Education (*Bundesinstitut für Erwachsenenbildung*, BIFEB) is an innovative participant in national and international networks and projects and a training centre for everyone working in the adult education field.

Moreover, the European Social Fund (ESF) subsidises projects in the adult education field aimed at sustainable integration of disadvantaged adults into society, education and the labour market, dismantling of barriers and securing of equal opportunities, and professionalisation and quality development. ESF funding expired at the end of 2014. A successor instrument, the purely national instrument "Funding of training for employees" (*Qualifizierungsförderung für Beschäftigte*, QBN), is now available instead. This programme lays down rules for the funding of companies which carry out skills training measures for one or more employees.

The federal guidelines for the Public Employment Service (AMS) for 2013-2014 specify rules for funding of training measures provided for one or more employees within individual companies, training measures carried out within training networks, and training measures carried out in connection with temporarily reduced working hours. The grants provided are intended to finance the costs incurred by companies in implementing training measures for employees. The funding makes it easier for employers to provide training, on the one hand, while securing employment and preserving jobs by improving skills, on the other. Provided that the training is directed towards one of the AMS's predefined labour policy objectives, funding may be provided in respect of employees under the age of 45 who have no qualifications beyond compulsory schooling.

#### ***Unemployed persons***

The Committee notes that a total of 319,357 individuals were unemployed on average in 2014, and of these 148,742 persons (46.6%) had completed compulsory school as the highest level of education. 33.1% had completed apprenticeship training at most.

According to the report, skills development programmes for the unemployed available via the AMS include courses on active job seeking, careers guidance, education and further training and other training courses. 251,552 unemployed persons took advantage of these training measures and external courses. Spending, excluding incidental course costs, subsistence allowances, etc., totalled € 497 million.

For the New Skills programme of the AMS industry professionals from innovative leading companies and labour market and education experts have designed model curricula in selected fields of work for the purpose of enabling unemployed persons to acquire practical skills in line with their needs. 11,460 jobseekers participated in skills training activities in various fields of work under the "New Skills" programme in 2014. € 11 million were spent on this training.

Total spending by the AMS on labour market funding measures in 2014, including payments from the unemployment insurance fund in respect of reductions of working hours, was € 1,124.90 million.

In total, 380,807 individuals were newly included in labour market promotion schemes.

The proportion of all affected unemployed persons included in a support programme was 38.2%. Typical groups targeted by the AMS are young people experiencing difficulty entering the labour market, individuals without qualifications or with qualifications which are non-marketable or outdated, women returning to the labour market, individuals with health-related impediments to employment, older people and workers affected by structural change and at risk of job loss.

The Committee asks each national report to provide information about the activation rate – i.e. the ratio between the annual average number of previously unemployed participants in active measures divided by the number of registered unemployed persons and participants in active measures.

### *Conclusion*

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

## **Article 10 - Right to vocational training**

### *Paragraph 4 - Long term unemployed persons*

The Committee takes note of the information contained in the report submitted by Austria.

The Committee notes that in Austria long-term unemployed are persons who have been unemployed for at least 12 months.

The report indicates that the current strategy of the Public Employment Service (AMS) provides for timely action to prevent lengthy absences from the labour market.

In this context, the report refers to available instruments to promote employment such as: a) integration subsidies that are funding provided for a limited period to cover a proportion of the wage and non-wage labour costs of employing staff in roles subject to full social security contributions; b) the combined wage subsidy that is an additional incentive to jobseekers to accept low-paid or part-time work; c) non-profit employment projects that are non-profit organisations providing temporary project jobs in non-profit employment fields; d) socio-economic companies that are service companies, which offer temporary jobs to the unemployed.

The report mentions, as well, that, advice and support facilities are provided for the long-term unemployed, in particular, careers guidance and exploration of personal professional potential through a personalised support. Furthermore, training is carried out through the Centres for Vocational Education and Rehabilitation that are a particularly important partner to the AMS.

The report indicates that the number of long-term unemployed persons that benefited through the different instruments to promote employment is as follows:

- 14,358 long-term unemployed persons found employment in the labour market with the support of integration subsidies during 2014 (up 16.0% from the previous year);
- 6,192 long term unemployed persons in 2014, were paid the combined wage subsidy (62.6% of all beneficiaries of the combined wage subsidy during the year);
- 8,872 long term unemployed persons engaged in funded employment in a socio-integrative enterprise (socio-economic company or non-profit employment project) in 2014, (14.7% more than in 2013);
- 17,147 long-term unemployed persons worked under the non-profit temporary agency work scheme in 2014 (12.8% more than in 2013);
- 34,525 long-term unemployed persons in 2014, were given advice and support facilities by AMS (36.9% more than in 2013).

The Committee asks the next report to indicate types of trainings given to young long-term unemployed and the number of participants in these trainings.

Lastly, Article 10§4 requires equality of treatment for nationals of other States Parties lawfully resident in Austria as regards training for the long-term unemployed. Under Article 1§2, the current report confirms that Section 8§2 of the Aliens Employment Act was repealed as of 30 June 2011 in order to meet the requirements of the European Social Charter on the one hand, and on the other hand of the Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, which – among other things – sets forth the express principle of equal treatment as regards conditions of employment and working conditions. However, the Committee asks that the next report contains information whether equal treatment with respect to access to training and retraining for long-term unemployed persons is guaranteed to nationals of other States Parties lawfully resident in Austria on the basis of the conditions mentioned under Article 10§1.

### *Conclusion*

The Committee concludes that the situation in Austria is in conformity with Article 10§4 of the Charter.

## **Article 10 - Right to vocational training**

### *Paragraph 5 - Full use of facilities available*

The Committee takes note of the information contained in the report submitted by Austria.

### ***Fees and financial assistance***

In its previous conclusions on Article 10§4 (Conclusions XVI-2, XVIII-2, XIX-1 and XX-1) the Committee found that the situation was not in conformity with Article 10§4 of the Charter on the ground that equal treatment of nationals of other States Parties residing or working lawfully in Austria was not guaranteed – and reciprocal agreements were required – with regard to fees and to financial assistance for training. In particular, the nationals of States Parties (other than EEA) enjoy the same legal position as Austrian nationals after having resided in Austria for at least five years. A national of these countries will enjoy the same legal treatment as an Austrian citizen (in terms of eligibility to financial assistance for education) only when at least one parent was liable to pay income taxes in Austria for at least five years and had the centre of his/her vital interests in Austria. According to the report, the reason is to ensure that only those non-Austrians who have established a minimum relationship with Austria will enjoy this benefit.

The Committee notes from the report in this regard that in accordance with the School Grants Act 1983 (*Schülerbeihilfengesetz*), third-country nationals are entitled to educational grants insofar as they are so entitled as a result of the Agreement on the European Economic Area (EEA) and the Treaty establishing the European Community.

The report states that Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents provides that third-country nationals who are long-term residents are entitled to equal treatment as regards study grants. Under this Directive, the status of long-term resident is normally acquired after five years' residence in the territory of an EU Member State (Article 4.1), subject to more favourable provisions (Article 3.3) of, among others, the European Social Charter.

However, according to the report, as the European Social Charter is not directly applicable in Austria (as defined in Article 50 Para. 2 of the Federal Constitutional Act (*Bundes-Verfassungsgesetz*), compliance with the Charter must be by enactment of laws) it is not a more favourable provision for the purpose of the Directive if not transposed into national law.

The Committee considers that no matter what the status of the Charter may be in the domestic law, Austria is bound by its provisions as a State Party.

The Committee recalls that under Article 10§5 of the Charter equality of treatment as regards access to financial assistance for studies shall be provided to nationals of other States Parties lawfully resident in any capacity, or having authority to reside by reason of their ties with persons lawfully residing, in the territory of the Party concerned. Students and trainees, who, without having the above-mentioned ties, entered the territory with the sole purpose of attending training are not concerned by this provision of the Charter. Article 10§5 does not require the States Parties to grant financial aid to any foreign national who is not already resident in the State Party concerned, on an equal footing with its nationals. However, it requires that nationals of other States Parties who already have a resident status in the State Party concerned, receive equal treatment with nationals in the matters of both access to vocational education (Article 10§1) and financial aid for education (Article 10§5).

Those States Parties who impose a permanent residence requirement or any length of residence requirement on nationals of other States Parties in order for them to apply for financial aid for vocational education and training are in breach of the Charter.

The Committee considers that the situation which it has previously found not to be in conformity with the Charter has not changed. Non-EEA nationals are subject to a length of



residence requirement of five years to be eligible for financial assistance for training. Therefore, the situation is not in conformity with the Charter.

According to the report, in 2014/2015 academic year the number of applicants who are not Austrian citizens/equated to Austria citizens was 32 , of which 10 were accepted.

Federal aid for students in Austria was introduced in the 1960s as an accompanying measure towards the opening of the universities to make it possible for children from low-income families to start an academic career. Since 1992 the study financing has been more and more linked to other indirect support measures and the conditions of entitlement have been harmonised step by step.

The support measures can systematically be divided into two sections: transfer payments, which students receive directly, and expenses which students benefit from either by transfer payments to the students' parents or non-cash benefits.

Direct measures are for instance need-based grants, tuition fee refunds, transportation cost allowances, insurance cost subsidies, grants for studying abroad etc.

Indirect measures are for instance family allowances, tax privileges and support for student housing and food services. Third-country nationals benefit from these indirect measures without any residence requirement.

As concerns direct measures, Section 4 of the Student Support Act of 1992 stipulates that citizens of contracting parties to the EEA- or EU-Agreement as well as third country nationals enjoy the same legal position as Austrian citizens to the extent ensuing from these agreements.

### ***Training during working hours***

The Committee noted in its conclusion (XVIII-2) that the report states that, as far as employees are concerned, time spent on supplementary training at the request of an employer is counted as ordinary working hours, unless prescribed otherwise in an agreement between the employer and the employee. The Committee asks if there have been any developments in this respect.

### ***Efficiency of training***

The Committee asks what measures are taken to evaluate vocational training programmes for young workers, including the apprenticeships. In particular, it wishes to be informed of the participation of employers' and workers' organisations in the supervision process.

### ***Conclusion***

The Committee concludes that the situation in Austria is not in conformity with Article 10§5 of the Charter on the ground that non-EEA nationals are subject to a length of residence requirement of five years to be eligible for financial assistance for training.

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

### ***Paragraph 1 - Vocational training for persons with disabilities***

The Committee takes note of the information contained in the report submitted by Austria.

The Committee points out that Austria ratified the United Nations Convention on the Rights of Persons with Disabilities in 2008.

### ***Definition of disability***

As the report does not provide any further information on the definition of disability, the Committee refers to its previous conclusion (Conclusions XX-1 (2012)) with regard to this issue.

### ***Anti-discrimination legislation***

In its previous conclusion (Conclusions XX-1 (2012)), the Committee asked for the next report to clarify which law provided for express protection from discrimination on the ground of disability – and at what level of government. If such protection was implicit, it asked for examples of relevant case-law confirming this interpretation. It also asked whether the anti-discrimination legislation applying to the situation of persons with disabilities in education covered both public and private parties.

In reply, the report states that the protection from discrimination deriving from the Federal Disability Equal Treatment Act (*Bundesbehindertengleichstellungsgesetz, BGStG*) applies to all areas of federal administration, thus also covering most areas of school education. The Committee notes that this act provides for only one form of compensation, namely financial compensation, and therefore does not guarantee that discrimination will be reduced in practice. According to the report, higher education establishments (particularly universities) and matters relating to the internal organisation of compulsory schools are federal matters. The external organisation of compulsory schools, particularly as regards the maintenance of school buildings, falls within the remit of the *Länder*. The report points out that education programmes outside schools and universities, connected with the working world, are subject to protection against discrimination under the Disability Employment Act.

According to the report, as at 28 February 2015, there had been 1 738 arbitration proceedings since the entry into force of the relevant legislation on 1 January 2006, and 204 of these related to applications lodged in 2011, 250 to applications in 2012, 218 to applications in 2013 and 222 to applications in 2014 (see the report for more details). Of these applications, 509 related to the Disability Equal Treatment Act during the reference period.

The Committee asks for examples of case-law and complaints filed with the relevant authorities (at federal and provincial level) in relation to discrimination on the ground of disability and the lack of reasonable accommodation in the education and training spheres. The Committee also asks what the proportion of cases in which complainants won their cases and were awarded compensation, and how many cases were decided in court and how many by arbitration.

### ***Education***

The Committee points out that its last conclusion under the 1961 Charter was deferred (Conclusions XX-1 (2012)) pending information on the implementation of the principle of inclusive education in practice and the measures taken and progress made during the reference period. The report states that the integration of children with special educational needs was adopted for regular primary schools in 1993. In 2012, amendments were made to the legislation on vocational preparation classes in special schools, as a result of which the 9<sup>th</sup> year (pupils aged 14 and 15) became the vocational preparation year. Another

amendment adopted in 2012 established the legal provisions for integration at pre-vocational schools and one-year home economics schools (*Haushaltungsschulen*).

Pilot projects for integration continue to take place in lower secondary or middle schools (*Hauptschulen*), the initial years of general academic secondary schools (*Gymnasien*) and pre-vocational schools (*Polytechnische Schulen*). Pupils participating in these pilot programmes can receive instruction entirely or partially in accordance with the curriculum of the vocational preparation year, which was adjusted to the curriculum applied at pre-vocational schools in 2014.

The report states that over half of all primary schools and three quarters of all secondary modern schools have integrated classes and more than 50% of all pupils with special educational needs have been taught in integrated classes.

According to the report, during the 2013/2014 academic year, there were 30 002 pupils with special educational needs out of a total of 568 157 pupils of compulsory school age. This figure comprised 6 160 pupils with special educational needs attending primary school (out of a total of 327 772 pupils) (1.9%); 3 404 attending lower secondary schools (out of a total of 94 452) (3.6%); 901 attending pre-vocational schools (out of a total of 16 367) (5.5%); 5 367 attending new middle schools (out of a total of 115 396) (4.7%) and 14 170 attending special needs schools (in other words 47.23% of the total of 30 002 pupils with special educational needs). The Committee asks whether the figure of 30 002 pupils with special educational needs in mainstream or special schools matches the total number of children of school age with disabilities. It notes that almost half of pupils with special educational needs attend special schools (compared to 13 200 in 2006/2007, see Conclusions XX-1 (2012)) and also takes note that the same observation was made by the UN's Committee on the Rights of the Child and Committee on the Rights of Persons with Disabilities. Consequently, the Committee considers that the right of people with disabilities to mainstream education is not effectively guaranteed.

The Committee also asks what the success rate is in progressing to vocational training or higher education or to the open labour market and if qualifications obtained on leaving school are identical for all children and recognised when it comes to entering higher or vocational education or the open labour market. The Committee also asks for figures broken down according to *Land* to be provided in the next report. Given that sign language is now recognised as a language in its own right in the Austrian Constitution, the Committee also asks what measures are being taken to promote its use in education establishments.

### ***Vocational training***

The Committee notes the laws at *Länder* level, contained in the report, concerning the effective exercise of the right of persons with physical, mental or emotional disabilities or a sensory impairment to vocational training, integration or social reintegration.

The report states that after the 9th school year there is an option of integrated vocational training (IBA), a form of initial vocational training which corresponds to the educational needs of young people with disabilities or disadvantages and to the requirements of companies for suitably qualified young workers (see Conclusions XX-1 (2012)).

The Committee notes that pupils with physical and sensory disabilities are mainly integrated into all vocational technical, commercial, business, social, tourism and arts schools provided that they can fulfil the requirements of the curriculum.

The Service Centre of the Ministry of Social Affairs has nine offices in the *Länder*, serving as contact points for persons with disabilities concerning matters in the fields of work and equal treatment and focusing in particular on the transition from school to work.

As to vocational training, the report describes a large number of programmes specifically geared to the needs of persons with disabilities, in particular: the Youth Coaching project,

the Production School, the Vocational Training Assistance programme (*Berufsausbildungsassistenz*), Integrative Vocational Training and Job Coaching. The Committee notes that the figures provided in the report show a very significant increase in the number of training programs beneficiaries during the reporting period.

The Committee asks for information in the next report on the numbers of persons with disabilities in mainstream and special vocational training facilities, the number of special vocational training facilities for young people and adults with disabilities and the practical impact of the action plan to promote the integration of students with disabilities in higher education establishments.

### *Conclusion*

The Committee concludes that the situation in Austria is not in conformity with Article 15§1 of the revised Charter on the ground that the right of persons with disabilities to mainstream education is not effectively guaranteed.

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

### *Paragraph 3 - Integration and participation of persons with disabilities in the life of the community*

The Committee takes note of the information contained in the report submitted by Austria.

It notes that in 2007 (outside the reference period), according to the data on that year's microcensus, Austria had 1.7 million residents of private households with permanent impairments.

### **Anti-discrimination legislation and integrated approach**

The Committee reiterates that the right of persons with disabilities to social integration provided for by Article 15§3 requires the removal of barriers to communication and mobility to give persons with disabilities access to road, rail, sea and air transport, public, social and private housing, and cultural activities and leisure, such as social and sporting activities. For this purpose, Article 15§3 requires:

- anti-discrimination legislation covering both the public and private spheres in fields such as housing, transport, telecommunications, culture and leisure, as well as effective remedies for those who have been treated unlawfully;
- a coherent policy for persons with disabilities, and positive action to secure the social integration and full and comprehensive participation of people with disabilities. These measures must be co-ordinated and based on clear legal foundations.

The Committee notes that according to the report, under Article 7 of the Constitution, the Federal Government, the *Länder* and the local authorities undertake to ensure equal treatment of people with and without disabilities in all spheres of everyday life (amendment of 1997 to the Federal Constitutional Law).

The series of laws on the equal treatment of persons with disabilities which came into force on 1 January 2006 prohibits discrimination against persons with physical, mental, psychological or sensory disabilities. The Committee notes that the prohibition of discrimination against persons with disabilities also encompasses their family members. The components of these laws which are relevant to Article 15§3 are as follows:

- the Federal Disability Equal Treatment Act (*Bundes-Behindertengleichstellungsgesetz, BGStG*) was amended in 2011 to increase the minimum amount of compensation awarded in cases of harassment and to extend protection against discrimination to persons who are discriminated against because of their close relationship with someone with a disability.
- amendments to the Federal Disabled Persons Act establishing an Ombudsperson for persons with disabilities with a general advocacy role.
- according to the report, as at 28 February 2015, there had been 1 738 arbitration proceedings since the entry into force of all these measures including the legislation on 1 January 2006, and 509 of these related to the Disability Equal Treatment Act during the reference period.

The report refers to the Insurance Law Amendment Act (*Versicherungsrecht-Änderungsgesetz*) of 2013, which introduced special protection against discrimination for people with disabilities into the Insurance Contract Act (*Versicherungsvertragsgesetz*).

It also describes the legislation in the *Land* of Salzburg, where discrimination on the ground of disability is prohibited under Articles 28 and 29 of the Salzburg Equal Treatment Act (*Salzburger Gleichbehandlungsgesetz, S.GBG*) (see the report for more details). According to the report, during the reference period, seven people lodged applications or complaints concerning discrimination on the ground of disability in connection with access to public

goods or services or matters relating to the accessibility of buildings or services. The Committee asks whether a legislative framework also exists in other *Lands*.

The report also describes the National Disability Action Plan (NAP Disability) for 2012-2020, which was adopted in 2012 and includes measures targeting persons with disabilities specifically, relating in particular to accessibility in the fields of sport, media, communications, construction and tourism. The Committee asks for information in the next report on this action plan, particularly with regard to its implementation at the various levels of Austria's federal infrastructure, and on the results achieved.

The Committee also asks whether integrated programming is applied by all authorities involved in the implementation of the policy for persons with disabilities.

### ***Consultation***

The Committee points out that under Article 15§3, persons with disabilities must be consulted on the design, implementation and review of a coherent disability policy (Conclusions 2003, Italy).

According to the report, the Federal Disability Advisory Board is a body that advises the Federal Minister of Social Affairs on all key issues relating to disability policy. The Committee asks for information in the next report on the requirement for the local authorities to consult bodies protecting persons with disabilities. It also asks how persons with disabilities are represented and consulted in governmental bodies at national and local level.

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

According to the European Commission report, family allowances are paid in Austria and for families with a child with a disability these allowances are increased by €138.30 per month and payment may be extended up to the age of 25. This report also states that long-term care benefits may be awarded in the event of physical, mental or emotional disability or sensory impairment.

The Committee asks for the next report to provide details on benefits and other forms of financial assistance available to persons with disabilities.

### ***Measures to overcome obstacles***

#### ***Technical aids***

The Committee points out that under Article 15§3 technical aids must be available either for free or subject to a modest contribution towards their cost (Conclusions 2007, Finland).

The report lists various grants (for items such as technical aids, orientation and mobility training and guide dogs) which may be awarded to people with disabilities to help with their full integration. Expenses incurred for the services of sign-language interpreters may also be covered if this kind of support serves the purpose of achieving or securing gainful employment or is required for training and education measures.

The Committee asks for the next report to state exactly what technical aids can be obtained by persons with disabilities. It asks whether persons with disabilities are entitled to technical aids free of charge or must contribute themselves to the cost. If an individual contribution is required, the Committee asks whether the state provides some financial contribution. It also asks whether mechanisms are in place to assess the barriers to communication and mobility faced by individual persons with disabilities and to identify the technical aids and support measures that may be required to assist them in overcoming these barriers

### ***Communication***

The Committee points out that, under Article 15§3, communications and new information technology must be accessible (Conclusions 2005, Estonia) and sign language must have an official status (Conclusions 2003, Slovenia).

With regard to communication, the Federal Disability Equal Treatment Act (*Bundes-Behindertengleichstellungsgesetz, BGStG*) provides expressly that if communication services are not accessible, this can constitute discrimination.

As to sign language, the Federal Constitution provides: "Austrian sign language shall be recognised as a language in its own right. Detailed provisions on the subject shall be set out in the relevant legislation". Under the Social Law Amendment Act of 2010 persons dealing with social insurance bodies may call for the free assistance of a sign-language interpreter.

The Committee asks what is done to encourage access to new communication technologies.

### ***Mobility and transport***

The Committee points out that, under Article 15§3, public road, rail, sea and air transport, all newly constructed or renovated public buildings, facilities and buildings open to the public, and cultural and leisure activities should be physically accessible (Conclusions 2003, Italy).

As to transport and mobility, the National Action Plan referred to above provides, according to the report, for the creation of an inclusive transport system for all user groups by providing innovative products and services.

The Committee asks how the accessibility of public road, rail and air transport is guaranteed, particularly in the *Länder*. It also asks whether persons with disabilities are entitled to free transport, or concessionary fares to cover any supplementary costs.

### ***Housing***

The Committee points out that under Article 15§3 the needs of persons with disabilities must be taken into account in housing policies, including the construction of an adequate supply of suitable, public, social or private, housing. Financial assistance should also be provided for the adaptation of existing housing (Conclusions 2003, Italy).

It is clear from the report that the legislation in the building sector, particularly the rules on the elimination of barriers linked to construction methods, falls within the competence of the *Länder*. The report states that the National Action Plan referred to above provides that measures relating to building regulations must be harmonised to guarantee accessibility. In view of the high cost of removing barriers, there is a ten-year transition period to make public buildings and transport accessible. The Federal Government and the transport service operators need to prepare plans for the gradual elimination of barriers, thus guaranteeing full accessibility by the end of the transition period. However, the Act was amended to extend the transition period up to 2019.

The Committee asks for information in the next report on grants available to individual people with disabilities for home renovation work and the removal of barriers to mobility, the number of beneficiaries of such grants and the general progress made on improving access to housing.

### ***Culture and leisure***

The Committee points out that under Article 15§3 the right of persons with disabilities to social integration implies that barriers to communication and mobility be removed in order to enable access to cultural activities and leisure (social and sporting activities) (Conclusions 2005, Norway).

The report also states that the National Action Plan includes measures relating to accessibility to federal cultural institutions and measures designed to make sport for persons with disabilities part of the general sports facilities on offer.

According to Austria's initial report to the United Nations Committee on the Rights of Persons with Disabilities (2010), the Federal Sports Promotion Act ensures that sports for persons with disabilities have a secure financial basis.

#### *Conclusion*

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



## **Article 18 - Right to engage in a gainful occupation in the territory of other States Parties**

### *Paragraph 1 - Applying existing regulations in a spirit of liberality*

The Committee takes note of the information contained in the report submitted by Austria.

It notes that all EEA citizens, as well as their family members, have free access to the labour market. During the reference period, a work permit was required for the nationals of the following states parties to the Social Charter: Albania, Andorra, Armenia, Azerbaijan, Bosnia and Herzegovina, Bulgaria (until 1st January 2014), Croatia (transitional period rules apply as regards work permits until 2020, but a residence permit is not needed), Georgia, Republic of Moldova, Montenegro, Romania (until 1st January 2014), Russian Federation, Serbia, "The former Yugoslav Republic of Macedonia", Turkey and Ukraine.

### **Work permits**

Pursuant to the relevant legislation (the 1975 Employment of Foreigners Act, as amended, the 2005 Settlement and Residence Act and the Aliens' Police Act 2005), to enter and reside in Austria, foreign nationals wishing to work in gainful employment principally require an Austrian residence title (residence permit or settlement permit), the purpose of which includes employment activities.

The Committee notes from the report that a new type of permit, the Red-White-Red Card, was introduced in 2011 with the aim to facilitate the immigration and permanent settling of qualified third-country workers and their families, based on personal and labour-market related criteria (point based system). The Red-White-Red Card is issued for a period of twelve months and entitles the holder to fixed-term settlement and employment by a specified employer. It concerns very highly qualified workers, skilled workers in shortage occupations, other key workers, graduates of Austrian universities and colleges of higher education as well as Self-employed key workers.

Non-EEA foreigners wishing to seek employment in Austria may apply, upon certain conditions, for a jobseeker's visa for 6 month (D visa) and, if they find employment within the validity period of the visa they may file an application for a Red-White-Red Card (either as employed or self-employed workers).

To supplement the Red-White-Red Card, the 2011 Aliens' Law Reform Act (*Fremdenrechtsänderungsgesetz, FrÄG*) was passed, transposing the provisions of the Blue Card Directive into national law and introducing the EU Blue Card as a residence title. EU Blue Cards are issued to applicants fulfilling the following conditions: completed university course of three years minimum duration; an employment offer corresponding to the particular education; salary offer amounting to at least 150% of the average annual gross salary (€ 57 405); the Austrian Labour Market Service (AMS) is unable to place with the employer any registered Austrian or non-Austrian worker who is seeking employment and has equivalent skills.

While the Red-White-Red Card and the EU Blue Card are initially issued in connection with a specific job offer (or self-employed job) for a limited time, after a certain period (1 year for the holder of a Red-White-Red Card, 2 years for the holder of a EU Blue Card) their holder can apply for a Red-White-Red Card plus, which gives entitlement to residence and unlimited labour market access. Family members of Red-White-Red Card holders or EU Blue Card holders as well as of foreign citizens already permanently settled in Austria are also immediately entitled to a Red-White-Red Card plus.

The report also confirms that the previously applying quota system (*Bundeshöchstzahl*) was repealed as of 1 January 2014. Section 5 of the Employment of Foreigners Act authorises however the Federal Minister of Labour, Social Affairs and Consumer Protection to issue ordinances specifying contingents of foreign national skilled workers and harvest workers to cover temporary needs. Employment permits granted as part of such a contingent are

automatically valid as residence permits for the duration of the employment (maximum six weeks for employment permits issued as part of a harvest worker contingent, maximum six months in other cases).

The Committee takes note of the detailed information provided, in response to its request, concerning the requirements to be met by non-EEA nationals who are not yet legal residents (first applicants) and wish to engage in a gainful occupation in Austria as self-employed. It notes in particular that self-employed workers can be issued a Red-White-Red Card upon an expert opinion by the provincial office of the Public Employment Service, identifying benefits for the economy as a whole that go beyond the benefits for a single business.

### ***Relevant statistics***

The Committee notes, from the OECD report 2015 on recent changes in migration movements and policies, that at the end of 2013 foreign born population in Austria was 16.7% of the whole population. Close to 590 000 foreigners were employed in Austria in 2014, an increase of 6% over the level in 2013. Employed foreign workers were almost equally split into EU citizens and nationals of non-EU countries. While the number of non-EU nationals in employment has remained stable, that of EU citizens has almost doubled since 2007.

The Committee takes note of the statistical data provided in the report on the number of long-term permits issued in 2014, which decreased substantially as a result of the accession to the EU of new countries over the reference period and of the consequent increase in the number of foreign workers who do not need a permit any longer.

It notes that, as regards nationals of non-EEA states parties to the Charter, 42 598 permits were issued in 2014, out of 48 597 applications, with a refusal rate of 12%. In response to the Committee's request, the report indicates that the majority of refusals (about 60%) were based on a lack of occupational or other qualification (e.g. knowledge of German); in other words applicants did not achieve the total points required or did not submit the required proof of qualification. The second most common reason for refusal (20% of cases) is the employer's inadequate pay offer, which usually indicates a risk of exploitation by the employer or signals wage and social dumping.

### ***Conclusion***

The Committee concludes that the situation in Austria is in conformity with Article 18§1 of the Charter.

## **Article 18 - Right to engage in a gainful occupation in the territory of other States Parties**

### *Paragraph 2 - Simplifying existing formalities and reducing dues and taxes*

The Committee takes note of the information contained in the report submitted by Austria.

### ***Administrative formalities and time frames for obtaining the documents needed for engaging in a professional occupation***

The Committee refers to its conclusion under Article 18§1 for a description of the current work and residence permits system, in particular as regards the introduction in 2011 of the Red-White-Red Card and the EU Blue Card systems. In response to the Committee's question, the report indicates that the introduction of the new system has simplified the formalities for obtaining the documents needed for engaging in a professional occupation, in that it has established a combined residence and work permit (administered through a "one-stop shop"). As a result, the applicants, who include very highly qualified workers, skilled workers in shortage occupations, other key workers, self-employed key workers and university graduates, only have to submit one application and no longer two, i.e. for a separate residence title and employment permit, and thus avoid two sets of application procedures.

Other measures which, according to the report, have simplified the formalities needed include:

- the abolition of the federal quota system which applied to work permits, replaced by a point-based system including in particular a labour market test (that is, the requirement, for certain occupations, to ascertain that there is no suitable candidate on the national or EEA labour market), which is however not required in all cases (for example, in the case of very highly qualified individuals, skilled workers in shortage occupations and graduates of Austrian universities);
- the introduction of a visa for the purpose of job-seeking under Section 24a of the Aliens' Police Act (*Fremdenpolizeigesetz*);
- the possibility for workers in Austria to submit their application for a Red-White-Red Card while residing in the country (instead of submitting only from abroad);
- the possibility for workers abroad to submit their application for a Red-White-Red Card (or EU Blue Card) through the competent authority representing Austria in the applicant's home country and, since April 2012, through their potential employer in Austria as well;
- the setting-up of a website, in German and English, providing information on migration ([www.migration.gv.at/en/](http://www.migration.gv.at/en/)), as well as a contact form allowing potential applicants to get in touch with ministry employees, who will respond to their enquiries.

The Committee recalls that, with regard to the formalities to be completed, conformity with Article 18§2 presupposes the possibility of obtaining the residence and work permits at the same time and through a single application. It also implies that the documents required (residence/work permits) will be delivered within a reasonable time. It asks the next report to clarify whether there are still situations requiring a separate procedure in order to obtain a residence and a work authorisation and how long does it take, on average, for an applicant to obtain the requested employment title (Red-White-Red Card, EU Blue Card or other).

### ***Chancery dues and other charges***

As regards chancery dues and other charges, the report indicates that there have been no changes to the situation which the Committee previously found to be in conformity with the Charter (Conclusions XX-1 (2012)). The Committee asks for updated information in the next report on the regulatory criteria applied when the amount of the charges is set, clarifying, for instance, whether the charges correspond to the actual cost of processing the residence

permit application and whether it is planned to introduce measures to reduce costs for workers or employers.

*Conclusion*

The Committee concludes that the situation in Austria is in conformity with Article 18§2 of the Charter.

**Article 18 - Right to engage in a gainful occupation in the territory of other States Parties**

*Paragraph 4 - Right of nationals to leave the country*

The Committee takes note of the information contained in the report submitted by Austria.

It notes from the report that the situation which it previously considered to be in conformity with the Charter has not changed (Conclusions XX-1 (2012)).

*Conclusion*

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

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

The Committee takes note of the information contained in the report submitted by Austria.

### ***Equal rights***

The Committee recalls that it examined aspects relating to maternity protection and family responsibilities under Article 8 and 27 of the Charter (Conclusions 2015).

The report indicates that the principle of equality and the principle of non-discrimination are guaranteed in several provisions of Austrian federal constitutional law. Article 7 (2) of the Federal Constitutional Law (*Bundes-Verfassungsgesetz, B-VG*) states that equal treatment and positive discrimination measures shall be considered as constitutional (not breaching the equality principle) until material equality between men and women is achieved. Article 13 (3) of the *B-VG* further states that “the Federal Government, *Laender* and municipalities are to strive for the actual equality of women and men in their budgeting.”

The report further indicates that the Federal Equal Treatment Act for the Private Sector (*Gleichbehandlungsgesetz, GIBG*) prohibits direct and indirect discrimination on grounds of gender in relation to access to employment, working conditions and remuneration, termination of an employment relationship. The GIBG provides that discrimination also occurs where individuals are instructed to discriminate and where individuals are discriminated against due to their close relationship with a person of a certain gender. Positive action, i.e. action aimed at promoting gender equality and eliminating inequalities, is not considered discrimination.

As to the public sector, the report indicates that Federal Act on the Equal Treatment of Women and Men and the Advancement of Women within the Federal Authorities (*Bundes-Gleichbehandlungsgesetz, B-GIBG*) prohibits direct and indirect discrimination on grounds of gender in relation to recruitment, working conditions and remuneration, termination of employment. The B-GIBG applies to contractual public employees and civil servants, quasi-freelancers contracting with a federal authority, apprentices, participants in administrative internships pursuant to the Contractual Public Employees Act 1948 (*Vertragsbedienstetengesetz, VGBG*), individuals in national training service, and candidates for employment or training with the Federal Government. Exemptions from the principles of equal treatment or advancement of women exist only where gender is a prerequisite for a certain job.

The Committee recalls that exceptionally and subject to strict interpretation certain jobs and occupational activities may be limited to persons of one sex, if this is due to the nature of such jobs and activities or the context and conditions in which they are carried out. Such a limitation can only be in conformity in respect of jobs /activities where gender constitutes a genuine occupational requirement (Appendix to Article 20, §4). The Committee asks whether there are activities where gender is a prerequisite for their performance and examples of such activities.

The Committee further recalls that according to the Appendix to Article 20 (§2), provisions concerning the protection of women are not deemed to be discrimination. Such provisions must be objectively justified by needs that apply exclusively to women, such as those relating to maternity (pregnancy, childbirth and the post-natal period). These particular rights are also guaranteed by Article 8 of the Charter (right of employed women to protection of maternity). On the other hand, prohibiting women from performing night work or underground mining while authorising men to do so, is contrary to the principle of equal treatment (Conclusions 2012 Bosnia Herzegovina, Article 20). The Committee asks whether women are prohibited to perform certain activities and in what circumstances.

With regard to the available remedies, the report indicates that any person who considers herself/himself a victim of discrimination may file a complaint based on the provisions of the

Equal Treatment Act before a court of law. In case the principle of equal treatment is violated, compensation awarded may consist in:

- compensation for financial losses, i.e. actual harm caused (*positiver Schaden*) and loss of profit; or
- restoring a discrimination-free situation and, in both cases, additionally
- compensation for the immaterial damage and the personal impairment suffered.

As for the amount of compensation, the report indicates that as of the amendment to the Equal Treatment Act that entered into force on 1 March 2011, the minimum amount of damages in the context of the establishment of an employment relationship is at least two months' pay with the addition of compensation for the immaterial damage suffered. In the case of career advancement, the amount of damages continues to be the difference in pay for at least three months with the addition of compensation for the immaterial damage suffered. As for the other discriminatory acts, no maximum amount of damages is defined. The report adds that the legislation was amended as of 1 August 2013 to expressly address court proceedings, specifying that the awarded compensation must be effective and proportionate as well as suited to preventing discrimination.

Individual employees who claim that they have been discriminated have the option of appealing to: (i) the Labour and Social Court, or (ii) the Equal Treatment Commission, or (iii) first the Commission, then the Court, or (iv) the Court and the Commission simultaneously.

Whereas the decisions of the Equal Treatment Commission are not binding, the Commission can contribute to achieve equal treatment by issuing expert opinions on general issues related to the breach of the equal treatment principle and by making proposals to employers in the individual case. An application filed with the Equal Treatment Commission interrupts the statutory period within which claims must be asserted in court. NGOs as well as employer and employee organisations may participate in proceedings before the Equal Treatment Commission and in labour court proceedings. The Committee takes note of the information on the activities of the Equal Treatment Commission during the reference period provided in the report.

The Committee notes from the report that protection from any adverse treatment or adverse consequence as a reaction to a complaint or to proceedings aimed at enforcing compliance with the principle of equal treatment was introduced as a measure for enhanced protection against discrimination. Such protection covers not only the person filing the complaint but others as well, such as other employees or witnesses who support the complaint.

The report further indicates that the Equal Treatment Ombuds Office, which is established within the Federal Chancellery, provides counselling and aid to individuals who feel they have been discriminated against. The Committee asks that the next report provide information on its activities in relation to gender equality in employment.

Concerning the burden of proof, the report indicates that in proceedings before the Equal Treatment Commission and before the courts, the claimants have to establish facts from which it may be presumed that they have been the subject of discrimination on grounds of gender. They must present plausible reasons for having experienced discrimination. It is up to the alleged discriminator to prove the greater likelihood of another motive being the decisive reason for different treatment, or that the other gender is a necessary prerequisite for the work to be performed or that other objective reasons exist.

The Committee notes from the report that in the federal public service, special institutions have been established in order to achieve equal treatment and the advancement of women, such as: a separate Federal Equal Treatment Commission serving as an arbitration board for federal employees when lodging complaints; working parties for equality issues with the central administrative bodies composed of the equality officers of each of the central administrative bodies; equality officers; contact women in the administrative offices; Inter-ministerial Working Group. The Committee takes note of the legislative amendments brought

during to the B-GIBG for the public sector during the reference period, such as: the women's quota as defined in the provisions specifying special measures for the advancement of women was increased to 50%; part-time employees and those employed for less than a year were included in the Federal Government income reports; minimum remuneration is to be indicated in job postings by the Federal Government.

With regard to equal pay for equal work or work of equal value, the Committee notes that the principle is guaranteed by the paragraph 3 of Equal Treatment Act (for the private sector) and paragraph 4 of Federal Equal Treatment Act (European Equality Law Network, Country Report on Gender Equality, 2015).

The Committee recalls that it examines the right to equal pay under Article 20 and Article 4§3 of the Charter, and does so therefore every two years (under thematic group 1 "Employment, training and equal opportunities", and thematic group 3 "Labour rights"). Articles 20 and 4§3 of the Charter require the possibility to make pay comparisons across companies (Conclusions 2010, France). At the very least, legislation should require pay comparisons across companies in one or more of the following situations:

- cases in which statutory rules apply to the working and pay conditions in more than one company;
- cases in which several companies are covered by a collective works agreement or regulations governing the terms and conditions of employment
- cases in which the terms and conditions of employment are laid down centrally for more than one company within a holding (company) or conglomerate.

(Statement of Interpretation on Article 20, Conclusions 2012).

The Committee recalls that in equal pay litigation cases the legislation should allow pay comparisons across companies only where the differences in pay can be attributed to a single source. For example, the Committee has considered that the situation complied with this principle when in equal pay cases comparison can be made with a typical worker (someone in a comparable job) in another company, provided the differences in pay can be attributed to a single source (Conclusions 2012, Netherlands, Article 20) or when pay comparison is possible for employees working in a unit composed of persons who are in legally different situations if the remuneration is fixed by a collective agreement applicable to all entities of the unit (Conclusions 2014, France, Article 4§3).

The Committee refers to its Conclusion 2014 on Article 4§3 where it noted that wages and working conditions in Austria are generally governed by industry-specific collective agreements. Taking into consideration that the equal pay requirement also applies to collective agreements, this in itself implies that regulations concerning the remuneration of employees which are binding not only at corporate or trans-corporate level, but for the entire industry, are the basis for these employment relationships and that the principle of equal pay for equal work or work of equal value has to be complied with when assessing the jobs (Conclusions 2014 on Article 4§3). The report adds that the assessment of the job and the fixing of the remuneration take place at industry level than at corporate level.

The report further indicates that the differences among the companies may arise only if wages/salaries higher than specified in the binding provisions of the individual industry-specific collective agreements are paid, with these differences affecting men and women alike. For example, if a prospering company pays its employees 20% more than required by the collective agreement (overpayment), this company is internally bound to the equal pay principle in the remuneration of its employees. However, this cannot be used as a reference for a different company in the same industry which cannot afford the same overpayment as the first company, due to lack of commercial success.

The Committee considers that the pay gap may indeed be due to different levels of regional development as well as the differences in economic performance of companies, or to other similar reasons. However, these reasons should not preclude the workers from trying their equal pay case by comparing their pay with that of another worker performing the work of



equal value in another company, based on the criteria outlined above. Noting that comparisons of pay are possible between employees who are working for different companies governed by the same industry-specific collective agreement, the Committee considers that the situation is in conformity with the Charter on this point.

The Committee takes note from the report of measures taken with a view to improve income transparency. Firstly, businesses have been required to prepare income reports and remuneration analyses every two years. As of 2014 this requirement applies to companies with more than 150 employees. The Federal Government is required as of 2011 to compile annual income reports aimed at closing the gender pay gap in the public service sector. Secondly, the statutory requirement was introduced to indicate the minimum pay level in job advertisements as well as to indicate whether the employer is prepared to provide overpayment. Sanctions for infringements have been imposed since January 2012. Thirdly, where individual cases of pay discrimination are suspected, the Equal Treatment Ombuds Office and the Equal Treatment Commission's Senates are legally authorised to collect income data on reference periods from the competent social insurance institution. According to the report the effects of these measures will be evaluated in 2013. The Committee wishes to be informed of the impact of these measures.

The Committee takes note from the report of the information provided on the case law of the labour and social courts as well as the Equal Treatment Commission for the private sector in dealing with cases alleging pay discrimination during the reference period.

### ***Equal opportunities***

The report indicates that the percentage of female workers within the actively employed workforce overall was 45.7% in 2014. A large number of all dependently employed women work part-time; 45.9% of women and 8.5% of men worked part-time in 2013. According to the Public Employment Service's registration figures, the female unemployment rate was 7.6% in 2014, and the rate for males 9.0%.

The report indicates that in the private sector the gender pay gap (fully unadjusted, expressed in terms of mean gross annual income) was 39.1% in 2013, i.e. women earned on average this much less than men. This -40% difference has remained more or less the same over the past 15 years. This can be explained for the most part by the extremely large, increasing percentage of women working part-time

With regard to the public service, the mean incomes of women in federal public service are nonetheless lower than those of men, although the percent difference is much smaller than in the private sector. When adjusted for the number of working hours and for cases of employment lasting less than a year, the gender pay gap in the federal public service stood at 13.3% in 2012 and at 12.8% in 2013; which was in contrast to a difference of 19.5% when the hourly wages of full and part-time employees in Austria are compared, or of 18.5% between women and men employed full-time and year-round.

The Committee notes that according to Eurostat data, the gender pay gap stood at: 23.7% in 2011, 23.4% in 2012, 23% in 2013 and 22.9% **in 2014**. The Committee notes that the gender pay gap was higher than the EU 28 average of 16.1% in 2014.

The report indicates that a package of 55 specific measures were defined under the National Action Plan on Gender Equality in the Labour Market, published in June 2010, as a means of achieving four strategic goals: (i) diversifying educational paths and career choices; (ii) increasing women's labour force participation and full-time employment; (iii) increasing the number of women in management positions; and (iv) reducing the gender pay gap.

The Committee takes note from the report of the measures and programmes taken to promote gender equality during the reference period. The focus of these measures was on encouraging the reintegration of women workers into the labour market after childcare breaks ("Return to work" programme), providing further occupational training to women with

family responsibilities (“Competence with system” project), reconciling work and family life (by increasing the amount of childcare allowance, increasing the number of childcare places, granting fathers a legal entitlement to four weeks’ unpaid post-natal leave in the public sector) and providing training for women and girls in non-traditional professional fields in order to reduce gender segregation (“Women in Trade and Technology”).

The report further indicates that Women’s Employment Centres were established to offer a comprehensive range of advisory and other services aimed at providing intensive and personalised support for women looking to improve their skills. The Women’s Employment Centres provided support to around 6,800 women across Austria in 2014. The report indicates that the total spending on women re-entering the labour market was of Eur 93 million in 2014.

The report indicates that measures have taken to increase the representation of women in management positions. The Federal Government adopted a detailed women’s quota in March 2011, applying to the supervisory boards of state-owned and state-affiliated businesses in which the Federal Government holds a share of 50% or more. The plan provides for a gradually increasing percentage of women among the supervisory board members delegated by the Federal Government, specifically 25% by 2013 and 35% by 2018. Since September 2013 the Women’s Affairs Department of the Federal Ministry of Education and Women’s Affairs (BMBF) has acted as coordinator of “Women are top! To the top by innovative corporate cultures”, a Progress project with the goal of increasing the proportion of women sitting on advisory boards and in executive positions.

The report indicates however that the share of female employees is particularly large in the sectors as “activities of households as employers” (85.1%, with a total of only 2,957 employees) and “human health and social work activities” (76.3%). The share of women is particularly small in construction (12.2%), mining (12.8%) and energy supply (17.3%).

Noting that despite the measures taken to ensure gender equality in employment, there is still an occupational sex segregation on the labour market and that the gender pay gap is still high, the Committee asks the next report to provide comprehensive information on all measures taken to eliminate *de facto* inequalities between men and women, including positive actions/ measures taken. It asks in particular information on their implementation and impact on combating occupational sex segregation in employment, increase women’s participation in a wider range of jobs and occupations, including decision-making positions, and to reduce the gender pay gap. Meanwhile, it reserves its position on this point.

### *Conclusion*

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

## **Article 25 - Right of workers to protection of their debts in the event of the insolvency of their employer**

The Committee takes note of the information contained in the report submitted by Austria.

*Article 25 of the Charter guarantees the right of individuals to their wages and other payments arising from the employment relationship in the event of the insolvency of their employer. States having accepted this provision benefit from a margin of appreciation as to the form of protection of workers' claims and so Article 25 does not require the existence of a specific guarantee institution. However, the Committee wishes to emphasise that the protection afforded, whatever its form, must be adequate and effective, also in situations where the assets of an enterprise are insufficient to cover salaries owed to workers. Moreover, the protection should apply in situations where the employer's assets are recognised as insufficient to justify the opening of formal insolvency proceedings.*

The Committee takes note that the main rules regarding the protection and scope of outstanding claims of employees in the event of their employer becoming insolvent are laid down in the Insolvency-Guarantee of Remuneration Act (*Insolvenz-Entgeltsicherungsgesetz, IESG*). The original version of the IESG entered into force on 1 January 1978 and was promulgated in Federal Law Gazette no. 324/1977. It has since been amended a number of times; during the period under review (2011 to end of 2014) there were five amendments (Federal Law Gazette I no. 111/2010, Federal Law Gazette I No. 24/2011, Federal Law Gazette I No. 39/2011, Federal Law Gazette I No. 35/2012, Federal Law Gazette I no. 30/2014).

The report indicates that the IESG has been guided by the same basic principles from the outset: a) the employer must be insolvent (i.e. unable to meet payment obligations); this insolvency is established by court order; b) there must be or must have been an employment relationship between the employee and the insolvent employer; c) claims arising from this employment relationship must be outstanding as a result of this insolvency; d) the employee has six months – from the date of the court order establishing the insolvency – to apply to the Austrian guarantee institution for payment of the outstanding claims arising from the employment; e) if insolvency law requires outstanding claims to be filed in any insolvency proceedings pending, entitlement to insolvency pay is dependent on this being done; f) the guarantee institution decides on claims submitted to it and issues one or more administrative decisions stating its decision; g) if the guarantee institution accepts the claims submitted (in whole or in part), the corresponding sums are paid out from the Insolvency Remuneration Fund (*Insolvenz-Entgeltsicherungs-Fonds, IEF*); the IEF is financed chiefly by contributions made by employers.

The Committee notes that the amendment published in Federal Law Gazette no. 580/1980 imposed limits regarding amounts that can be claimed and time limits for these claims. Following the amendment published in Federal Law Gazette No. 647/1982, employee social security contributions (health and pension insurance) not paid by employers will be paid using IEF funds if – generally – the regional health insurance fund concerned was not able to recover these sums in the insolvency proceedings (= dependent on the assets in the estate). The amendment published in Federal Law Gazette I No. 618/1987 applies the same rule to contributions not paid by insolvent construction companies to fund inter alia the holiday entitlements of construction workers. Finally, the amendment published in Federal Law Gazette I No. 158/2002 requires the IEF to make an annual payment to the Republic of Austria specifically dedicated to the funding of apprenticeships and employment for young people; this concerns funding for apprentices in particular. Payments equivalent to approximately € 180 million are made per year.

The report indicates that the IESG provides an exhaustive list of the types of court order (as indicated by the Insolvency Law Amendment Act 2010 (*Insolvenzrechtsänderungsgesetz, IRÄG* 2010), Federal Law Gazette I No. 29/2010) which are deemed to confirm the insolvency of the employer with binding effect for the guarantee institution: a) proceedings

under the Insolvency Code (*Insolvenzordnung, IO*), Imperial Law Gazette No. 337/1914 (note: restructuring with self-administration, restructuring without self-administration, bankruptcy proceedings); b) supervised administration order (note: special insolvency proceeding for banks); c) non-commencement of insolvency proceedings because assets are insufficient to cover costs; d) refusal to commence insolvency proceedings following dissolution of a legal entity until the assets of that entity have been distributed; e) removal from the company register of a capital company or cooperative society possessing no assets; f) rejection of application for commencement of insolvency proceedings where assets (of the insolvent employer) are no longer situated within the territorial jurisdiction of the court.

The report indicates that employees have to apply within six months after the opening of insolvency proceedings. The claims will then be assessed. The assessment will include a consultation with the employer or insolvency administrator. Payments from the IEF to employees are limited to twice the amount of the maximum contribution basis (*Höchstbeitragsgrundlage*) for social insurance contribution (€ 9,300 in 2015).

The Committee recalls that under Article 25 the workers claims to be covered by the employer in case of insolvency shall not be less than three months under a privilege system and eight weeks under a guarantee system. In this connection the Committee notes from the report that insolvency of the employer is payable for worker's claims which arose for current wages of the last six months and holiday pay of the last year. Besides, the employer is also obliged to pay for claims in respect of other types of paid absence (holidays, sick leave), at not less than three months under a privilege system and eight weeks under a guarantee system. States may limit the protection of workers' claims to a prescribed amount but the limit set must be of an acceptable level. The Committee has previously held that three times the average monthly wage of the employee to be an acceptable level (Conclusions 2005, Estonia). To this respect the Committee asks what is the amount paid to satisfy other claims (holiday pay due as a result of work performed during the year in which the insolvency occurred, other types of paid absence).

The Committee further recalls that the protection afforded, whatever its form, must be adequate and effective also in situations where the assets of an enterprise are insufficient to cover salaries owed to workers. Moreover, the protection should also apply in situations where the employer's assets are recognised as insufficient to justify the opening of formal insolvency proceedings. The Committee asks what rules apply in such situations.

The Committee recalls that under Article 25 of the Charter in order to demonstrate the adequacy in practice of the protection, States must provide information, inter alia, on the average duration of the period when a claim is lodged until the worker is paid and on the overall proportion of workers' claims which are satisfied by the guarantee institution. The Committee requests that the next report provide this information.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Austria is in conformity with Article 25 of the Charter.