

European standards of vocational education

Standardy kształcenia zawodowego we współczesnej Europie

Summary:

The European Committee of Social Rights case law reaffirmed the great importance it is attached to vocational education which is essential not only integrating all people, young and old, into working life. The vocational education plays a central role in every aspect of personal development and social integration. Fundamental socio-economic trends such as ongoing globalisation and digitalization of the economy and the spread of information technology make it increasingly obvious that vocational education and training is life long process. Education, general and vocational, as well as professional training should be provided throughout the life cycle for all segments of the active population – young persons and adults, the unskilled and the skilled, the employed and unemployed. Investment in vocational education by the European Members States is quite substantial but in the view of the formidable challenges of the learning society there is still scope for further measures.

Key words:

general education, globalisation, life-long-learning, technical training, vocational education

Streszczenie:

Autor analizuje orzecznictwo Europejskiego Komitetu Praw Społecznych Rady Europy w sprawach dotyczących szkolenia zawodowego. Podstawę prawną jego rozważań stanowi przepis art.10 Kart Społecznych z 1961 r. i 1991 r., zobowiązujący państwa członkowskie do zagwarantowania wszystkim osobom w wieku aktywności zawodowej możliwości odbycia stosowanych szkoleń ogólnych i zawodowych na wszelkich poziomach możliwych poziomach, od podstawowego po studia wyższe i podyplomowe. Koncepcja ustawicznego szkolenia umożliwia osobom zainteresowanym realizację idei aktywnego funkcjonowania na rynku pracy we współczesnej epoce zatrudnienia postindustrialnego.

Słowa klucze:

edukacja, globalizacja, nieustanne kształcenie, szkolenie zawodowe,

1. Introduction

The European Social Charter of the European Council is a fundamental international treaty in which labour rights are regulated by labour and social security laws.¹ These rights are regarded as human rights,² guaranteeing protection on the European continent. The right to vocational education in Europe is protected by Article 10 § 1, §2, §3 (a), (b), § 4, §5(a),(b),(c), (d) of the Charter. Supervision of the implementation of above mentioned the Charter's provision is carried on by the independent European institution – The Committee of Social Rights (The Committee). The Committee controls whether authorities of member states fulfill their aforesaid obligations. Because some provisions of the Charter require the fulfillment of the above obligations depending upon specified needs (e.g. Article 9 the right to vocational guidance and Article 10 RESC the right to vocational training), the Committee researches whether a given situation in a member state needs an organisation of appropriate services as well as to see whether a member state has fulfilled the obligations which it has undertaken. The Committee assesses the reports filed by the member states as well as analysing the complaints made against a country where Charter obligations are accused of not being met. No provision in the Charter excuses a member state from not fulfilling the obligations it has undertaken voluntarily. The Committee conclusions are published by Council of Europe in cycles from 1969-1970³ until now.⁴

2. The Right to Vocational Training

The provision of Article 10 ESC consists of four paragraphs. They impose on member states the obligation of organising or/and supporting of: common vocational and technical training, free access to higher technical and university education (§1); system of apprenticeship (§2); vocational training for adults (§3);

¹ The European Social Charter of the Council of Europe is a term used to define the following treaties and international agreements entered into between 1961 and 1996: the European Social Charter (ESC) from 18 October 1961; the Additional Protocol to the European Social Charter from 5 May 1988; the Amending Protocol to the European Social Charter from 21 October 1991; the Additional Protocol to the European Social Charter providing for a system of collective complaints, from 9 November 1995; the Revised European Social Charter (RESC) from 3 May 1996. European Social Charter, Collected texts (7th edition), Council of Europe, Strasbourg 2015, p. 9 and following.

² A.M. Świątkowski, Council of Europe: Labour Human Rights and Social Policy Standards (third edition), Kluwer Law International B.V. AH Alphen aan den Rijn 2019, p. 173 and following.

³ Conclusions 1969-1970, Council of Europe Press, Strasbourg 1995.

⁴ They are quoted as Conclusions, op.cit.

access to utilizing vocational training (§4) The Revised European Social Charter introduced additional obligations of ensuring and supporting special measures of training and reintegration of the long-term unemployed. This provision was marked as §4, while §4 ESC was marked as §5 RESC. The scope of obligation of providing and/or supporting vocational training on all levels including university courses has a general nature. It comprises citizens of member states, migrants, citizens of other states, parties to the Charter,⁵ young persons and adults, educated and uneducated, non-working persons, unemployed persons, carrying out work according to work relation agreements as well as those running their own business.⁶ According to the Committee some of the mentioned above social groups should utilise the right to vocational training according to preference rules. This concerns persons who experience above-average obstacles in finding employment: the disabled and immigrants. The opinion of the Committee is that privileged treatment of these persons does not prompt the accusation of discrimination of the remaining beneficiaries of the right to vocational training.⁷ In the light of legal regulations introduced by Article 10 § 4 RESC privileged treatment can also apply to the long-term unemployed.

Enforcement of the duty regulated by this provision is related to the needs of labour markets occurring in particular member states. The Committee emphasizes that the unemployment rate cannot be considered as a main or as the only indicator of executing duties imposed on member states by the analyzed provision of the Charter. The unemployment rate is the most obvious indicator. Another important factor in determining the scope of duty of providing and/or supporting vocational training on all levels is the demand for a particular type of work.⁸ The latter means that the authorities of member states should organize and/or support vocational training on various levels and respond to the changing demand of labour market as well as to the expectations of different social groups in the age of professional activity. Under the term 'vocational training' used in Article 10 of the Charter the Committee understands the entirety of duties imposed on members states related to enabling all persons interested in acquiring education, from primary school to university, increasing occupational qualifications and occupational reorientation. According to the Committee the right to vocational training is the entitlement that should be available during the course of life for all social categories considered as poten-

⁵ Conclusions XIII-3, p. 32 and following.

⁶ Conclusions XIV-2, p. 59.

⁷ Conclusions I, p. 81.

⁸ Conclusions XIII-3, p. 37.

tially professional active groups: students, young persons, educated and uneducated, employed and unemployed.⁹ European societies are learning societies in their nature. The above classifications oblige member states to undertake constant efforts in order to organise and/or support initiatives aimed at increasing the level of knowledge, skills, occupational qualifications of all interested subjects. The execution of the above-mentioned duty is considered the most crucial and the most efficient measure of preventing social exclusion.

3. The Obligation to Provide or Promote Technical and Vocational Training and Granting Facilities for Access to Higher Technical and University Education

Member states who ratified the above provision are obligated to provide all interested persons, including the disabled, with technical and vocational training and to grant facilities for access to higher technical and university education. It does not imply that the above training has to be organised by the state. Article 10 §1 of the Charter obligates the authorities of member states that do not want to provide technical and vocational training themselves, to support technical and vocational training provided by private institutions. In the case of higher technical and university education, Article 10 §1 of the Charter orders a member state to grant facilities for access to higher technical and university education existing in a given state. During the first supervisory cycle the Committee became convinced that the essence of duties listed in the analysed provision comprises of the following: providing, promoting and granting access to units and institutions providing technical and vocational training from the basic to the advanced level.¹⁰ Article 10 §1 has the common range. All, citizens of a particular member state and citizens of other states, parties who ratified the Charter should be provided with vocational training.¹¹ However this entitlement is not of absolute nature. Member states were obligated to provide or promote technical and vocational training 'as needed'. The 'need' in a particular member states is determined by the authorities of that state. The Committee exists to verify the above evaluations. It demands from authorities of member states presenting information concerning the undertaken actions in order to provide all interested persons with technical and vocational

⁹ Conclusions XIV-2, p. 59.

¹⁰ Conclusions I, p. 55.

¹¹ Conclusions XIX-1 (2008), p. 31 (Austria), p. 365 (Slovenia).

training. It orders the presentation of information concerning the number of persons who utilised the above option.¹² The Committee particularly insists on delivering data on the number of immigrants coming from other member states, parties to the Charter, who partook in technical and vocational training.¹³ It is interested in measures undertaken in order to prevent discrimination amongst immigrants in terms of technical and vocational training.¹⁴ The preference treatment is accepted in case of disabled persons. Despite the fact that disabled persons should experience privileged treatment in matters concerning technical and vocational training as it is prescribed by the analysed provision, the Committee states that these preferences should be spread over all types of training, including higher technical and university education, which is mentioned in the final part of the provision in question.¹⁵ Access to higher technical and university education should be granted according to democratic rules, based solely on individual merit.¹⁶ Attending university and studying is enabled by scholarships and other measures of financial help. The Committee is interested in knowing about the benefits provided for interested persons by member states for those undertaking higher technical and university education.¹⁷ Familiarisation with domestic systems of vocational training obligates member states to provide detailed information about the organisations, division of tasks between various educational bodies and institutions, conduct of these institutions and ways of financing them. The Committee demands this information to be presented regularly.¹⁸

Providing and/or supporting vocational training by a member state should be performed in consultation with stakeholders. According to the Committee this reservation does not imply passing duties set by Article 10 §1 of the Charter onto tripartite committees, consisting of representatives of employers and workers, debating under the chairmanship of state authorities.¹⁹ Stakeholders should partake in the authorities' decision upon the planning of educational institutions and bodies and achieving statutory goals by these organisations. In the case of United Kingdom and Turkey the Committee stated trade unions

¹² Conclusions II, p. 42 (Denmark).

¹³ Conclusions IV, p. 71 (Germany).

¹⁴ Conclusions V, p. 81 (France), Conclusions 2007, vol. 2, p. 610 (Ireland), p. 1021 (Slovenia).

¹⁵ Conclusions II, p. 43; Conclusions III, p. 54 (Norway).

¹⁶ Conclusions I, pp. 55–56.

¹⁷ Conclusions II, p. 42 (Denmark).

¹⁸ Conclusions XIII-3, p. 33.

¹⁹ Conclusions XII-1, p. 165 (United Kingdom).

were incidentally involved in the planning of technical and vocational training happening within the conduct of governmental bodies.²⁰ Institutions providing technical and vocational training should be evenly spread over the territory of a state, so all parties interested in utilising their services could have equal access. In the case of Germany after the unification the Committee stated that there are significant differences between eastern and western provinces in terms of density of training institutions.²¹ It obliged the German authorities to eliminate the above disproportion.

Training institutions should be organised in order to ensure the maximum utilisation of their services by persons interested in undertaking technical or vocational training. The necessary condition for the execution of this rule is the proper proportion between learners and teachers. The increase of persons undertaking training accompanied by a stable number of teachers resulted in the Committee's reaction,²² examining the level of state expenses on technical and vocational training. The Committee considered the proportion of state expenses on technical and vocational training in the whole state budget as an important indicator of actions undertaken by state authorities in order to meet the obligations determined by Article 10 §1 of the Charter.²³

Article 10 §1 of the Charter orders member states to organise recruitment procedures for higher technical and university education as solely based on individual merit. The obligation of granting access to higher technical and university education to all faculties,²⁴ not only faculties leading to particular occupational qualifications such as law and medicine, orders member state authorities to provide financial benefits (scholarships, allowances, loans) for persons studying as well as to eliminate all barriers in accessing education. The requirement of obtaining a work permit before entering into vocational training agreement²⁵ and the option of applying for a scholarship was regarded to act as an obstacle. The Committee declared that the right to apply for financial assistance during education and training is treated as a necessary condition of ensuring learning persons the right guaranteed by Article 10 §1 of the Charter to utilise vocational training.²⁶ Evaluating the German report the Committee

²⁰ Conclusions XIV-2, p. 748 (Turkey); XIV-2, p. 779 (United Kingdom).

²¹ Conclusions XIII-2, p. 319; XIII-4, p. 382.

²² Conclusions XIV-2, p. 234 (Finland).

²³ Conclusions XIV-2, p. 349 (Greece).

²⁴ Conclusions XIII-3, p. 37.

²⁵ Conclusions VII, p. 59 (Germany).

²⁶ Conclusions VIII, p. 136.

was obliged to state Article 10 §1 ESC does not impose on member states the duty of granting financial aid to persons learning or studying. This obligation is derived from Article 10 §4.

The right to technical and vocational training as well as to higher technical and university education should be equally utilised by citizens of a particular country and citizens of other member states. Cases of unequal treatment of citizens of member states, signatories of the Charter were detected by the Committee during these supervisory cycles, when the Committee held the position that granting financial aid to persons learning or studying is a duty formulated in Article 10 §1 of the Charter. The Committee stated that discriminatory practices concerning the granting of financial aid to persons learning or studying, which were employed by the Belgian authorities against citizens of Turkey as conflicting with Article 10 §1 of the Charter.²⁷ The regulation of Finish authorities that introduced the requirement of two years of residency as the necessary condition for acquiring the right to financial aid for persons learning or studying was considered as a manifestation of discrimination.²⁸

In the eleventh supervisory cycle Greece was evaluated negatively by the Committee. It was regarded as a state in violation of the provision as it made the right of foreigner to partake in vocational training dependent upon being born and being a permanent resident on the territory of Greece.²⁹ It was not until the Greek regulations changed and Greece declared equal access to technical and vocational training as well as to higher technical and university education for Greek citizens and for citizens of other member states, parties to the Charter, when the Committee changed its jurisdiction towards this country.³⁰ In 2003 and 2008 the Committee detected one case of national labour regulations conflicting Article 10 §1 RESC. Slovenia had not provided citizens of other member states with equal access to vocational training. It conditioned the option of utilising vocational training on work permits for an unspecified period of time.³¹ The exception from the above rule was introduced for citizens of those member states, parties to the Charter, which were bound with Slovenia by international multilateral agreements on facilitating vocational training. In the last - 2016 cycle the Committee concludes that the situation in Montenegro, Slovak Republic and Ukraine is not in conformity with Article 10 § 1 of the

²⁷ Conclusions XIII-4, p. 382.

²⁸ Conclusions XIII-5, p. 81.

²⁹ Conclusions XI-1, p. 112; Conclusions XII-1, pp. 161–162; Conclusions XIII-1, p. 185; Conclusions XIII-3, p. 155.

³⁰ Conclusions XIV-2, p. 349.

³¹ Conclusions 2003, vol. 2, pp. 472–473, Conclusions 2008, vol. 2, p. 762.

Charter on the grounds that it has not been established that: 1) the right to vocational training is effectively granted³²; 2) the system of secondary and higher education operates in an efficient manner.³³ In case of the Slovak Republic the Committee notes that the education attainment of youth does not translate into success in placement in the labour market. Unemployment of young people is higher than in the EU 28 at all education levels. There are reliable instruments for anticipation of labour market need. There is no institution and there are no specialists focusing on qualitative anticipation of skill needs. *Ad hoc* sectoral/regional data have been collected, without efforts to develop regular national instruments to be used periodically to monitor labour market supply and demand. In Montenegro the Committee observes that insufficient measures were taken to match the skills acquired through vocational training with the labour market requirements and thus to bridge the gap between education and work. Therefore, the Committee concludes that the right to vocational training is not effectively guaranteed in practice as measures taken to make vocational education qualifications relevant from the perspective of professional integration in the job market have been insufficient.

In case of Ukraine³⁴ the Committee recalls that under the Article 10 § 1 of the Charter the member states must introduce mechanisms for the recognition/validation of knowledge and experience required in the context of training/working activity in order to achieve qualification or to gain access to general, technical and university higher education. Moreover, the states are obliged to take measures to make secondary education and general higher education qualifications relevant from the perspective of professional integration in the job market. In absence of information on these points, the Committee concludes that the system of secondary and higher education in Ukraine does not operate in an efficient manner.

4. The Duty of Providing or Promoting a System of Apprenticeship for Young Persons

Member states that ratified the above regulation are obliged to provide or promote a system of apprenticeship for young persons (boys and girls) or to provide or promote other systematic arrangements for training young persons

³² Conclusions 2016 (Slovakia), p. 92; (Montenegro), p. 44-45.

³³ Conclusions 2016 (Ukraine), p.119-120.

³⁴ *Ibidem*.

in their various employments. The Committee defined an apprenticeship, during the first supervisory cycle as a mixed system of training, a combination of theoretical and practical aspects. An apprenticeship is not intended solely to acquire practical skills. It is a complex system based on full, coordinated and systematic vocational training.³⁵ It may occur in the formalised legal form, according to which training is understood strictly in terms of vocational training. Vocational training can also comprise of apprenticeships, served by older students of technical and academic faculties such: pedagogical science, medicine, dentistry, and law.³⁶ The Committee evaluates whether systems of vocational training existing in member states meet the requirements of the analysed provision of the Charter. It monitors the actions undertaken by the authorities of member states in order to provide the youth with systematic vocational training; the number of persons who can enroll for training;³⁷ the number of persons who partook in vocational training;³⁸ the type of offered vocational training; financial support for persons attending training;³⁹ the number of persons who completed training taking into consideration their sex⁴⁰ and geographical location.⁴¹ The Committee supervised the obeying of the rule of equal opportunities for citizens of member states.⁴² It continued to hand down negative rulings against states that restricted the entitlement of foreigners to utilise financial aid during apprenticeships,⁴³ demanding the acquisition of a work permit or a certificate excusing from the above obligation.⁴⁴ It did not accept the explanation from the authorities of member states, which provided information on the results of the above protective actions intended at the future protection of national labour markets concerning a small minority, approximately five per cent of the whole working population, hence smaller than twenty per cent accepted according to the rule of majority formulated in Article 33 §2 ESC and Article I §2 RESC. The Committee declared that excluding less than five per cent of foreigners out of hundred per cent of citizens who had been deprived of the

³⁵ Conclusions I, p. 57.

³⁶ Conclusions III, p. 55.

³⁷ Conclusions XIV-2, p. 97 (Austria); p. 200 (Denmark).

³⁸ Case of Spain: Conclusions XII-2, pp. 159–160; Conclusions XIII-3, p. 167.

³⁹ Conclusions I, pp. 56–57.

⁴⁰ Conclusions XIV-2, p. 749 (Turkey).

⁴¹ Conclusions XIII-3, p. 240 (Turkey).

⁴² Conclusions 2007, vol. 1, p. 1016 (Slovenia).

⁴³ Conclusions XIII-4, p. 386 (Germany).

⁴⁴ Case of Austria: Conclusions VIII, p. 138–139; Conclusions XIII-3, p. 162; Conclusions XIV-2, pp. 97 and following.

entitlement to serve apprenticeship is, in fact, excluding hundred per cent of foreigners residing in the territory of other member state. This is why the rule of majority cannot be applied to all members of a particular social category. Therefore, the regulations of domestic labour law were regarded by the Committee as conflicting with Article 10 §2 of the Charter, although authorities of a given member state treated work permits as a 'pure formality'.⁴⁵

Identical rulings were handed down in the case of Greece which also required a work permit from participants of vocational training,⁴⁶ while Ireland⁴⁷, Malta and Slovenia privileged their own citizens in accessing vocational training.⁴⁸ During the 2016 cycle the Committee makes a distinction between member states in which there is no neither a well-functioning⁴⁹, functioning⁵⁰, or effective⁵¹ system of apprenticeship. Efficiency of the apprenticeship is assessed on the basis following elements: length of the apprenticeship and division of time between practical and theoretical learning. The main indicators of compliance are the existence of apprenticeship and other training arrangements for young people, the numbers controlled and the total spending, both public and private. The Committee asks for information on the selection of apprentices, the selection of training and instructors. It also tries to figure out how many apprenticeship places are on offer, approximately how many young people take up apprentices-style-training and how many of the completed the apprentices training. The Committee notes in 2016 that the reports mentioned above provided limited information, some information or no information at all regarding these points. Therefore in the absence of necessary information in the reports concerning apprentices, the Committee concludes that it has not been established that there is well-functioning, functioning or effective system of apprenticeship.

⁴⁵ Addendum to Conclusions on Luxembourg, p. 56 and following; Conclusions XIV-2, p. 486 (Luxembourg).

⁴⁶ Conclusions XII-2, pp. 156–157; XIII-2, p. 220; XIII-3, p. 165; Addendum to Conclusions XIII-3, pp. 56 and following.

⁴⁷ Conclusions XIV-2, p. 404.

⁴⁸ Conclusions XIII-2, p. 323; Conclusions XIII-3, pp. 165–166, Conclusions 2008, vol. 2, p. 498 (Malta), p. 762 (Slovenia), Conclusions XIX-1 (2008), p. 366 (Slovenia).

⁴⁹ Conclusions (Georgia), p. 26; (Slovak Republic), p. 59.

⁵⁰ Conclusions (Montenegro), p. 93.

⁵¹ Conclusions 2016 (Ukraine), p. 79.

5. Vocational Training for Adult Workers

The duty of member states is to guarantee or provide adequate training for adult workers. The Adult Education Strategy for the period 2015-2025 and the Adult Education Plan for the period 2015-2020 adopted by the Government is enough to comply with the provision of Article 10 § 3. The Committee wishes to receive information about the types of continuing vocational training and education available on the labour market for unemployed persons, the overall participation rate of persons in training and the total expenditure. It also asks what is the activation rate, the ratio between the annual average number of unemployed persons and participants in active measures. It wishes to be informed of the sharing of the burden of the cost of vocational training among public bodies, unemployment insurance systems, enterprises and households as regard continuing training. If the report does not contain information about the implementation of the strategy and adult education plan the conclusion is negative.⁵² Special facilities for the retraining of adult workers needed as a consequence of technological development and new trends in employment, should be provided by member states. The obligation stipulated under Article 10 §3 of the Charter has a relative nature. Providing or promoting vocational training and adequate training for adult workers should be organised as necessary. The Committee believes that the authorities of particular member states decide themselves, whether the above necessity applies. During the early supervisory cycles the Committee took the position that the margin of freedom for member state authorities in terms of making decisions upon promoting and providing vocational training should be limited. It is usually determined by the unemployment rate existing in given member states. According to the Committee Article 10 §3 of the Charter imposes special duties on member states where unemployment is high.⁵³ The Committee made a negative ruling in the case of Italy who neglected to provide training for adult workers. According to the report presented by the Italian authorities the percentage of unemployed utilising the option of vocational training was minimal.⁵⁴ The situation in the aforementioned countries looked similar during the second supervisory cycle.⁵⁵ Influenced by the negative rulings of the Committee the British and Italian authorities changed the policy of vocational training for adult workers,

⁵² Conclusion 2016, (Montenegro), p. 47.

⁵³ Conclusions I, p. 58 (Italy, United Kingdom).

⁵⁴ *Ibid.*

⁵⁵ Conclusions II, p. 43 (Italy), p. 44 (United Kingdom).

which let them obtain positive decisions of the Committee in terms of abiding by regulations formulated in the analysed provision of the Charter during the following supervisory cycle. Gradually the Committee became convinced there was no direct correlation between fulfilling the obligation of promoting and providing adequate training for adult workers and the unemployment rate. It concluded that what is protected by Article 10 §3 of the Charter is vocational training for adult workers as a virtue *per se*, which, generally analysing, plays an important role in the process of evaluating the chances of adult workers within the labour market, adult workers who want to work, who want to apply for jobs. The Committee ordered the authorities of member states to prepare reports concerning the number and geographical location of public and private institutions of vocational training dealing with adult workers, especially the ones who are unemployed; permanent centers of upgrading skills for persons of particular occupations (doctors, dentists, lawyers etc.) craftsmen, merchants, etc.; and actions undertaken by administrative bodies in order to promote these institutions.⁵⁶ It observed disproportion between the number of vocational training institutions and their localisation and the unemployment rate in particular member states.⁵⁷ On the one hand vocational training contribute to the increase of mobility of persons seeking employment and migrating for employment purposes,⁵⁸ on the other vocational trainings provided by employers enables workers to undertake new responsibilities, giving employers a reason for not leaving and extending their work relations with the same workers but of higher professional qualifications.⁵⁹

The Committee paid special attention to fulfilling by member states the duty of providing or promoting actions aimed at vocational trainings for adult workers in social groups vulnerable to changes in the labour market: women, the unemployed, migrant workers, citizens of other member states. Evaluating national reports the Committee emphasised that in some countries the participation of women in programs of vocational training is low, especially training obtaining with professional qualifications essential for carrying out works dominated by men. In relation to the above the Committee emphasised for the need of privileged treatment for women applying for participation in vocational training, which, once accomplished, increase the chances of a women

⁵⁶ Conclusions V, p. 84 (France).

⁵⁷ Case of Turkey: Conclusions XIII-1, pp. 240–241; Conclusions XIV-2, p. 751.

⁵⁸ Conclusions XIII-3, pp. 34–35 (Denmark).

⁵⁹ As above, Ireland, Iceland.

for carrying out work within occupations traditionally regarded as 'male'.⁶⁰ Despite the previously certified lack of direct correlation between professional training and the rate of unemployment the Committee demanded from the authorities of member states the reasons why a significant part of the unemployed are not included in training.⁶¹ It presented the opinion that unemployed persons, especially those who remain without employment for the period of one year should be included in special programs of vocational training and upgrading skills. It noted that in some countries such programs had been drafted and were executed.⁶² The experience of the Committee was taken into consideration by Article 10 §4 RESC, a standard, which orders member states to undertake special measures of professional training and reintegration of the long-term unemployed.

During each supervisory cycle the Committee demanded from the authorities of member states information concerning programs of vocational training for adult workers, citizens of other member states. The lack of such information resulted in postponing a ruling on the compliance of national regulations and practices with the requirements of the Charter.⁶³ During its supervisory session the Committee held the position that excluding or limiting the rights of foreigners, citizens of other member states, parties to the Charter because of their national identity, is a case of discrimination and must be considered as a violation of Article 10 §3 of the Charter.⁶⁴ It pursued a goal of encouraging the authorities of member states to apply the same requirements in accessing vocational training for adult workers for their own citizens and citizens of other member states, parties to the Charter. Evaluating the case of Germany, which introduced the requirement of a particular work tenure for candidates to vocational training for adult workers (three years for qualified workers and six years for unqualified), the Committee made attempts in order to determine whether

⁶⁰ Cases of: Spain, Ireland, Portugal, Sweden and Turkey. General introduction to Conclusions XIII-3, p. 35.

⁶¹ Conclusions XIV-2, p. 237 (Finland).

⁶² Spain, Ireland, Portugal, Sweden, United Kingdom. General introduction to Conclusions XIII-3, p. 35.

⁶³ During five consecutive supervisory cycles: the eighth, the ninth, the tenth, the eleventh and the twelfth the Committee postponed making a ruling in case of Austria. Conclusions VIII, p. 142; Conclusions IX-2, p. 69; Conclusions X-2, pp. 106–107; Conclusions XI-2, p. 13, p. 105; Conclusions XII-2, p. 160. It demanded information on the possibility of participation of immigrants in training organised for Austrian citizens. The Committee opposed the policy of providing vocational training for own citizens and foreigners according to different rules. During the fourteenth supervisory cycle the Committee postponed making a ruling in case of: Belgium (Conclusions XIV-2, pp. 144 and following); Denmark (XIV-2, pp. 200 and following); Finland (XIV-2, pp. 235 and following); Ireland (XIV-2, pp. 405 and following); Malta (XIV-2, p. 521); Portugal (XIV-2, pp. 655–656); Turkey (XIV-2, pp. 750 and following) and Italy (XIV-2, pp. 444–445) During the following supervisory cycle in 2003 the Committee postponed making a ruling in case of Italy (Conclusions 2003, vol. 1, p. 274).

⁶⁴ Conclusions 2003, vol. 2, p. 478 (Slovenia), Conclusions 2007, vol. 1, p. 191 (Belgium), vol. 2, p. 1018 (Slovenia).

the work tenure from different member states is respected in this requirement. After the positive answer, the Committee declared that requirements for candidates to vocational training for adult workers were not conflicting with the analysed provision of Article 10 §3 of the Charter.⁶⁵ The above position was repeated in the case of Denmark.⁶⁶ It negatively evaluated the legal regulation existing in Austria which allowed for utilising vocational training for adult workers by foreigners from member states, other than members of the European Economic Area according to the availability of places, not engaged by citizens of the privileged states.⁶⁷ It also stated that introducing the requirement of residency, as the condition of accessing vocational training for adult workers was not in accordance with the standards of the Charter.⁶⁸ It took the identical position towards work permits as a condition of accessing vocational training in some member states,⁶⁹ however debating on a different case, the Committee concluded that the final legal evaluation of such a requirement depends on the conditions of obtaining a work permit in the light of national labour law regulations and on practice of applying this provision, namely on comparing the number of issued permits with the number of negative decisions. It also concluded that when the authorities of a member state made a decision upon granting a work permit on the basis of objective criteria, not having been guided by citizenship of candidates, and granted work permits to an adequate number of foreigners, there was no legal basis for the negative ruling to be made.⁷⁰ It asks about the existence of legislation authorising individual leave for training and, if so, under what conditions and on whose initiative, how long it lasts and whether is paid or unpaid. In the absence of any information in report regarding this issue, the Committee considers that it has not been established that the legislation provides for an individual leave of training for employed persons. In effect the Committee concludes that due to the lack of information the right to an employee to an individual leave of absence is not guaranteed.⁷¹

⁶⁵ Conclusions V, p. 84; Conclusions VI, p. 73.

⁶⁶ Conclusions XIV-2, p. 202.

⁶⁷ Conclusions XIII-2, p. 221.

⁶⁸ Conclusions XIV-2, p. 103 (Ireland).

⁶⁹ Conclusions XIV-2, p. 521 (Malta).

⁷⁰ Conclusions XIV-2, p. 488 (Luxembourg).

⁷¹ Conclusions 2016 (Malta), p. 33-34; (Serbia), p. 185.

6. Special Measures for the Retraining and Reintegration of the Long-term Unemployed

Because of the limited possibilities of reintroduction of the long-term unemployed into the labour market the new provision was added to the Charter, the provision that imposes on member states the duty of providing or promoting special measures for the retraining and reintegration of the long-term unemployed.⁷² The supervision over abiding of this duty took place for the first time in 2003. Amongst six member states who delivered their reports,⁷³ two states⁷⁴ did not ratify Article 10 §4 RESC. Therefore the Committee supervised over abiding of this provision by four remaining member states. In two cases⁷⁵ it declared compliance of the national conduct with the standards established by the Charter. Slovenia drafted seven employment programmes enabling the unemployed, especially persons under the age of 26 acquiring professional qualifications and employment. One of these programs marked by number '5000' is addressed to young persons who are missing professional preparation or obtained qualifications, which are not demanded by the labour market. 60 per cent of persons benefiting from this programme were women. The programme enabled them to obtain secondary education. Due to acquired professional qualifications over 20 per cent of persons previously regarded as long-term unemployed found employment.⁷⁶ Better results of training programmes were ascertained in Sweden; 35 per cent of persons taking part in the special programme 'Activity Guarantee' found employment.

The long-term unemployed are persons remaining without employment for a period longer than a year. This definition of long-term unemployed is not applied by the Italian authorities. Three employment programmes for the long-term unemployed were addressed to workers from 16 to 32 years old, remaining without employment for at least 24 to 30 months. None of the programmes significantly reduced unemployment. The Committee emphasised that in Italy the percentage of the long-term unemployed is the highest in Europe. For this reason it declared that the Italian authorities did not fulfil the obligations formulated in Article 10 §4 RESC.⁷⁷ The Committee critically evaluated the French

⁷² Explanatory report to the revised European Social Charter, European Social Charter, *op. cit.*, p. 166.

⁷³ Bulgaria, France, Romania, Slovenia, Sweden, Italy.

⁷⁴ Bulgaria and Romania.

⁷⁵ Slovenia, Sweden.

⁷⁶ Conclusions 2003, vol. 2, p. 480 (Slovenia).

⁷⁷ Conclusions 2003, vol. 2, pp. 275–276.

report. Relating to independent sources, it prescribed the French authorities to undertake more efficient measure of professional elicitation of the long-term unemployed.⁷⁸

In 2008 the Committee concludes that the situation in four member states which ratified Article 10 §3 of the RESC (Belgium, Cyprus, Lithuania and Slovenia) is not in conformity with above mentioned provision due to the right of individual training leave for purpose of vocational training and retraining of adult workers, lack of equal treatment of nationals of other State Parties and national minorities regarding access to continuing vocational training as well as lack of effective guarantees of such training for the unemployed.⁷⁹

7. The Duty of Encouraging Actions Facilitating Vocational Training

The analysed provisions list the duties imposed on member states that ratified one of the paragraphs of Article 10 § 5 (a)-(d) of the Charter. The Committee is interested in obtaining an answer whether fees for serving apprenticeship are charged in member states, what the amount of these charges is and what actions are undertaken in order to reduce or resign from charging fees. It pursues a goal of obtaining information concerning the prevailing system of financial assistance for persons serving apprenticeships. It is interested in being aware of types of allowances (scholarships, loans, credits, others) and of the nature of these allowances. It makes an attempt in determining the conditions of acquiring the entitlements of the above allowances, their amounts, and the period they are obtained in. It pays special attention to abiding by member states the rule of equal treatment of its own citizens and citizens of other member states. It orders the authorities of member states to deliver information concerning actions undertaken in order to include vocational training undertaken during the period of employment at the request of the employer, in the normal working hours. The Committee recalls that under Article 10 § 5 of the Charter time spent on supplementary training at the request of the employer must be included in the normal working hours.⁸⁰ It also obliges the authorities of member states to describe the supervisory techniques introduced in consulta-

⁷⁸ According to the information delivered in the French report 40 per cent of the long-term unemployed embraced by governmental programmes undertakes the employment within the period of 6 months from the date of completion of the training. According to the data of EC Joint Employment Reports 1999–2001 the indicator of professional elicitation of the long-term unemployed came to 23 per cent. Conclusions 2003, vol. 1, p. 142. The Committee postponed making a ruling until the above discrepancy is clarified.

⁷⁹ Conclusions 2008, vol. 1, p. 123 (Belgium), p. 197 (Cyprus), vol. 2, p. 458 (Lithuania), p. 763 (Slovenia).

⁸⁰ Conclusions 2016 (Ukraine), p. 81.

tion with employers' and workers' organisations to ensure the workers' right to attend vocational training. In the majority of cases the Committee adjourned its decision with regards to whether the analysed provision in question is being followed by member states.⁸¹ The reason for this adjournment was a lack of information provided about the introduction of measures by a given member state dealing with a worker's vocational training.

Financial aid for those partaking in vocational training should be ensured in appropriate cases (Article 10(5)(b)). The Committee came to the conclusion that this definition encompasses cases whereby participation in vocational training would have been impossible had it not been for the financial assistance.⁸² The scope of this obligation refers to various types of vocational training considered by Article 10 § 1-3 of the Charter. In all cases referred to in these provisions subjects authorised to make a decision upon granting a financial assistance to persons serving apprenticeships utilise the freedom of material evaluation of these persons. Article 10 §1-3 cannot be the basis to impose on member states the duty of granting financial assistance to all persons serving an apprenticeship.⁸³ The duty of providing persons serving apprenticeships with financial assistance is independent from the duty of reducing or abolishing any fees or charges for apprenticeships.⁸⁴ In relation to evaluative language used twice in Article 10 of the Charter – once in Article 10 §1 'as necessary', and again in the analysed provisions of Article 10 §4 ESC and §5 RESC (b) 'in appropriate cases', the Committee decided that all matters concerning the provision of vocational training financed by member states on all levels, from the basic training and apprenticeship to the higher technical and university education will be analysed in the supervisory processes over Article 10 §4 ESC and §5 RESC.⁸⁵ Financial assistance in the form of scholarships, grants, loans and credits should be utilised to different expenses related to the participation in vocational training not vocational training fees. Participation in vocational training is an entitlement not an obligation. Therefore the regulation of national labour law depriving the unemployed of benefits in case of not accepting the option of vocational training turns into a duty of legal nature for this group.

⁸¹ Conclusions XIII-1, pp. 241–242 (Turkey); Conclusions XIII-2, pp. 327–328 (Belgium); Conclusions XIII-3, pp. 337 and following (Finland, Portugal); Addendum to Conclusions XIII-3, pp. 60 and following (Luxembourg); Conclusions 2003, vol. 1, pp. 276–278 (Italy); Conclusions 2003, vol. 2, pp. 594–596.

⁸² Conclusions XIII-1, p. 242 (Turkey).

⁸³ Conclusions XIV-2, p. 62.

⁸⁴ Conclusions XIII-3, p. 339.

⁸⁵ Conclusions XIV-2, p. 62.

For this very reason the Committee was interested in obtaining information on balancing labour market with the individual expectations of the unemployed in matters of undertaking employment.⁸⁶ The opinion of the Committee reflects the entitlement of undertaking employment according to the education, professional qualification and individual predispositions. Member states of the Council of Europe should attempt at providing the rules of freely choosing the place and type of work by those able to undertake employment, wanting or looking for employment. The threat of losing unemployment benefits due to refusing to take employment offered by an employment agency or failing to carry out specified vocational training in order to attain certain trade qualifications that are at the time required within the domestic labour market, is in contradiction to the principle of the freedom to work. Despite its doubts, the Committee did not conclude British authorities were violating Article 10 §4 ESC. It concluded that the typical example of violating the standards established by the given provision of the Charter are evident in the discriminatory treatment of citizens of other member states, parties to the Charter.

Amongst the countries that do not meet the standards specified by the provision in question of the Charter Article 10 § 4 - 5, are twenty member states: Andorra,⁸⁷ Austria,⁸⁸ Belgium,⁸⁹ Denmark,⁹⁰ Georgia,⁹¹ Greece,⁹² Finland,⁹³

⁸⁶ Case of United Kingdom: Conclusions XII-1, p. 172; Conclusions XIII-3, pp. 177-178.

⁸⁷ Conclusions 2016, p. 145 (As regards the equality of treatment of foreign nationals concerning access to financial aid and scholarships the law sets a minimum residence period of three consecutive years for students to apply for financial aid).

⁸⁸ Conclusions XIII-2, p. 221, Conclusions XIX-1 (2008), p. 35, Conclusions 2016, p.256 (the length of residence requirements of five years for non-EEA nationals to be eligible for financial assistance for training).

⁸⁹ Conclusions 2007, vol. 1, p. 194, Conclusions 2008, vol. 1, p. 126, Conclusions 2016, p.2 (two years to be eligible requirements for financial aid for education for non-EEA nationals).

⁹⁰ Conclusions XIX-1 (2008), p. 115, Conclusions 2016, p. 323-324 (non EEA nationals are subject to a length of residence requirement of two years .

⁹¹ Conclusions 2016, p. 248 (no special measures for retraining of the long-term unemployed).

⁹² Conclusions XI-1, p. 171; Conclusions XIII-3, p. 175.

⁹³ Conclusions 2007, vol. 1, p. 435, Conclusions 2016, p. 167-168 (two years to be eligible requirements for financial aid for education for non-EEA nationals).

France,⁹⁴ Hungary,⁹⁵ Malta,⁹⁶ Montenegro⁹⁷, Norway,⁹⁸ Portugal,⁹⁹ Serbia,¹⁰⁰ Slovakia,¹⁰¹ Spain,¹⁰² Slovenia¹⁰³, Sweden,¹⁰⁴ Turkey,¹⁰⁵ and Ukraine.¹⁰⁶ None of the mentioned states¹⁰⁷ ordered for less favourable treatment of foreign nationals in matters concerning financial assistance for those wanting to undertake vocational training. All the mentioned states specified the requirement of residency within the territory of the given member state for those who are attempting to undertake vocational training, in order to be able to seek financial assistance.¹⁰⁸

The Committee reminds the authorities of member states that the introduction of residency requirements within the territory of a given member state as a condition for being able to receive financial assistance for those wanting to undertake vocational training within the territory of another member state is regarded as indirect discrimination. It is forbidden. Member states that have introduced such requirements are in violation of Article 10 of the Charter. In all the above-mentioned cases the Committee rendered decisions that the men-

⁹⁴ Conclusions 2007, vol. 1, p. 551, Conclusions 2008, vol. 1, p. 326, Conclusions 2016, p. 269-270 (There is length of residence requirement of two years for non-EEA nationals to apply for scholarships granted on the basis of social criteria for higher education). The Committee also concludes that it has not been established that in France there is a mechanism to evaluate the efficiency of vocational education.

⁹⁵ Conclusions 2016, p.258.

⁹⁶ Conclusions 2008, vol. 2, p. 501.

⁹⁷ Conclusions 2016, p.143 (no special measures for retraining of the unemployed).

⁹⁸ Conclusions 2008, vo.2, p. 642, Conclusions 2008, vol. 2, p. 643.

⁹⁹ Conclusions 2008, vol. 2, p. 676, Conclusions 2016, p. 182 (no special measures for reintegration of long-term unemployed).

¹⁰⁰ Conclusions 2016, p. 87 (no special measures for the retraining of the long-term unemployed).

¹⁰¹ Conclusions XIX-1 (2008), p. 369, Conclusion 2016, p.61 (It has not been established that special measures for the retraining and reintegration of the long-term unemployed have been effectively provided or promoted).

¹⁰² Conclusions XIX-1 (2008), p. 404), Conclusions XX-1, p. 301.

¹⁰³ Conclusions 2007, vol. 2, p. 1021, Conclusions 2008, vol. 2, p. 765.

¹⁰⁴ Conclusions 2007, vol. 2, p. 1078, Conclusions 2008, vol. 2, p. 806.

¹⁰⁵ Conclusion 2016, p. 68 (no special measures for the retraining of the long-term unemployed).

¹⁰⁶ Conclusion 2016, p. 68 (no special measures for the retraining of the long-term unemployed).

¹⁰⁷ With the exception of Belgium, which regards citizenship as a necessary condition for being able to receive financial assistance for those undertaking vocational training. Conclusions III-4, pp. 386–388; Conclusions XIV-2, pp. 146–147.

¹⁰⁸ Turkish citizens in Belgium under the age of 21 have to prove five-year residency within the territory of the said state as well as a five-year period of study within Belgium educational institutions (Conclusions, XIV-2, p.146-147). Finland demands from foreign nationals, with the exception of citizens of member states of the European Union and the European Economic Area, seeking financial grants and scholarships to reside within Finland for at least a period of two years continuously (Conclusions XIII-5, 2.84-85; XIV-2,p.237-238). France, in addition to the identical requirements, requires for taxes to be paid within that same period of residency within its territory (Conclusions 2003, vol.1, p. 144). Slovenia grants financial assistance for those undertaking vocational training based on being in possession of a work permit. Permits are granted to those residing in Slovenia for a period of eight years (Conclusions 2003, p.483).

tioned member states violated the obligations stipulated under the provision in question of the Charter. In cases where member states did not provide the relevant information dealing with foreign nationals of other member states seeking financial assistance during vocational training, the Committee adjourned its decisions dealing with the legal situation of the said foreign nationals.¹⁰⁹

8. Conclusion

Delivering the right skills during the economically turbulent times is not an easy problem for the education and training European system. A serious national barriers for developing adequate skills and competences in the vocational systems is due to the lack of sufficient patterns and resources for relevant technological equipment and political will in some member states to ratify art.10 of the Charter. During a period of „forth industrial revolution” there are also complex feedbacks between new technology, jobs and skills. Skill gaps may pose barriers to the adoption of new technologies and therefore impede business growth. The current education system need to be examined given the arrival of the Artificial intelligence based wave of technological change. Its current set-up system of skill provisions is no longer sufficient. What is required is a general uplifting in workers’ and employees’ professional skills in the period of digitalisation of work to be able to cope with the coming changes brought by the postindustrial area. Main conclusions ought to be drawn from comparison of conclusions concerning vocational education issued by the Council of Europe Committee – ‘harsh reality contrast to urgent future needs’.

¹⁰⁹ Conclusions XIV-2, pp. 352–353 (Greece); pp. 406–407 (Ireland); pp. 657–658 (Portugal); pp. 752–753 (Turkey); pp. 445–446 (Italy).

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