



January 2016

European Social Charter

European Committee of Social Rights

Conclusions XX-4 (2015)

(CZECH REPUBLIC, DENMARK, GERMANY,
GREECE, POLAND, SPAIN, UNITED KINGDOM)

Articles 7, 8, 16, 17 and 19 of the 1961 Charter



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General Introduction

This text may be subject to editorial revision.

GENERAL INTRODUCTION

1. The European Committee of Social Rights, established by Article 25 of the European Social Charter, composed of:

Giuseppe PALMISANO (Italian)

President

Professor of International Law and EU Law

Director of the Institute for International Legal Studies

National Research Council of Italy, Rome (Italy)

Monika SCHLACHTER (German) Vice-

President

Professor of Civil, Labour and International Law

Director of Legal Studies Institute for Labour Law and Industrial Relations in the European Community

University of Trier (Germany)

Petros STANGOS (Greek)

Vice-President Professor of European Union law,

Holder of the Jean Monnet Chair "European human rights law"

School of Law, Department of International studies

Aristotle University, Thessaloniki (Greece)

Lauri LEPPIK (Estonian)

General Rapporteur

Senior Researcher

School of Governance, Law and Society

Tallinn University (Estonia)

Colm O'CONNOR (Irish)

Professor of Law

Faculty of Laws

University College, London (United Kingdom)

Birgitta NYSTRÖM (Swedish)

Professor of Private Law

Faculty of Law

University of Lund (Sweden)

Elena MACHULSKAYA (Russian)

Professor

Department of Labour and Social Law

Lomonosov State University, Moscow (Russian Federation)

Karin LUKAS (Austrian)

Senior Legal Researcher and Head of Team

Ludwig Boltzmann Institute of Human Rights, Vienna (Austria)

Eliane CHEMLA

Conseillère d'Etat

Conseil d'Etat, Paris (France)

József HAJDÚ (Hungarian)

Dean for International Affairs and Science

University of Szeged (Hungary)

Marcin WUJCZYK (Polish)

Lecturer in Labour Law and Social Policy

Jagiellonian University, Cracow (Poland)

Krassimira SREDKOVA (Bulgarian)
Professor of Labour Law and Social Security
University of Sofia (Bulgaria)

Raúl CANOSA USERA (Spanish)
Professor of Constitutional Law
University Complutense, Madrid (Spain)

Marit FROGNER
Judge
Labour Court of Norway, Oslo (Norway)

François VANDAMME (Belgian)¹
Former Director International Affairs, Federal Public Service Employment, Labour and Social Dialogue, Brussels (Belgium)
Former visiting professor, College of Europe (Bruges, 1998-2012, "Enjeux sociaux et gouvernance de l'Europe")
Former invited "Maître de conférences" (2008-2014) in Labour Law, Catholique University of Louvain, Louvain-la-Neuve, (Belgium)

assisted by Régis BRILLAT, Executive Secretary,

between January 2015 and December 2015 examined the reports of the States Parties on the application of the 1961 European Social Charter.

2. The role of the European Committee of Social Rights is to rule on the conformity of the situations in States with the European Social Charter (revised), the 1988 Additional Protocol and the 1961 European Social Charter.

3. Following the changes to the reporting system adopted by the Committee of Ministers at the 1996th meeting of the Ministers' Deputies on 2-3 April 2014 the system henceforth comprises three types of reports. Firstly, the ordinary reports on a thematic group of Charter provisions, secondly simplified reports every two years on follow-up to collective complaints for States bound by the collective complaints procedure and, thirdly, reports on conclusions of non-conformity for lack of information adopted by the Committee the preceding year.

4. Thus, the conclusions adopted by the Committee in December 2015 concern firstly the accepted provisions of the following articles of the 1961 European Social Charter ("the Charter") belonging to the thematic group "Children, families and migrants" on which the States Parties had been invited to report by 31 October 2014:

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection (Article 8),
- the right of the family to social, legal and economic protection (Article 16),
- the right of mothers and children to social and economic protection (Article 17),
- the right of migrant workers and their families to protection and assistance (Article 19).

5. The following States Parties submitted a report: the Czech Republic, Denmark, Germany, Greece, Poland, Spain and the United Kingdom.

6. Croatia and Iceland did not submit a report. Luxembourg submitted only parts of the report. The Committee was therefore unable to reach any conclusions on conformity with the relevant provisions in these States for this cycle. The Committee notes the failure of the States concerned to respect their obligation, under the Charter, to report on the implementation of this treaty. Under the circumstances the Committee considers that there is nothing to demonstrate that the situation in these States as regards the provisions concerned is in conformity with the 1961 Charter.

¹ As from 1 May 2015.

As this is the second successive year that Croatia does not submit a report, the Committee invites the Committee of Ministers to take any appropriate measures to ensure that Croatia fulfils its reporting obligation.

7. As noted above, States which have accepted the collective complaints procedure shall henceforth submit a simplified report every two years. In order to avoid excessive fluctuations in the workload of the Committee from year to year, the 15 States which have accepted the complaints procedure were divided into two groups as follows:

- Group A, made up of eight States: France, Greece, Portugal, Italy, Belgium, Bulgaria, Ireland, Finland²;
- Group B, made up of seven States: the Netherlands, Sweden, Croatia, Norway, Slovenia, Cyprus, the Czech Republic³.

On this basis, the States belonging to Group A were invited to submit reports on follow-up to collective complaints by 31 October 2014. The only State bound by the 1961 Charter concerned is Greece. The Committee's findings in this respect appear in a separate document.

8. Finally, certain States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013. The conclusions in this respect may concern both States reporting on the thematic group of provisions and those reporting on follow-up to complaints. The only State concerned in Conclusions XX-4 (2015) is Greece.

9. In addition to the state reports, the Committee had at its disposal comments on the reports submitted by different trade unions and non-governmental organisations (see introduction to the individual country chapters). The Committee wishes to acknowledge the importance of these various comments, which were often crucial in gaining a proper understanding of the national situations concerned.

10. The Committee's conclusions as outlined above are published in documents by State. They are available on the Council of Europe website (www.coe.int/...) in the case law database. A summary table of the Committee's Conclusions XX-4 (2015) as well as the state of signature and ratification of the Charter and the 1961 Charter appear below. In addition, each country document highlights selected positive developments concerning the implementation of the Charter at national level identified by the Committee in its conclusions.

Statements of Interpretation

11. The Committee makes the statements of interpretation which follow below. It notes in this respect that the statement on the rights of refugees was published in October 2015. The other statements are made public here for the first time:

12. Article 7§1 and 7§3 – permitted duration of light work

The Committee recalls that children under the age of 15 and those who are subject to compulsory schooling are entitled to perform only "light" work. Work considered to be "light" in nature ceases to be so if it is performed for an excessive duration. States are therefore required to set out the conditions for the performance of "light work" and the maximum permitted duration of such work.

The Committee considers that children under the age of 15 and those who are subject to compulsory schooling should not perform light work during school holidays for more than 6 hours per day and 30 hours per week in order to avoid any risks that the performance of such work might have for their health, moral welfare, development or education.

² France, Portugal, Italy, Belgium, Bulgaria, Ireland and Finland are Parties to the Charter (Revised).

³ The Netherlands, Sweden, Norway, Slovenia and Cyprus are Parties to the Charter (Revised).

In addition, the Committee recalls that, in any case, children should be guaranteed at least two consecutive weeks of rest during summer holiday.

13. Article 8§1 – maternity benefits

Under Article 8§1 of the Charter the States Parties shall ensure that employed women are adequately compensated for their loss of earnings during the period of maternity leave (which shall be not less than 14 weeks under the Revised Charter and 12 weeks under the 1961 Charter).

The modality of compensation is within the margin of appreciation of the States Parties and may be either a paid leave (continued payment of wages by the employer), social security maternity benefit, any alternative benefit from public funds or a combination of such compensations. Regardless of the modality of payment, the level shall be adequate. In case of continued payment of wages or earnings-related benefits, these shall be equal to the previous salary or close to its value, and not be less than 70% of the previous wage. A ceiling on the amount of compensation for high salary earners is not, in itself, contrary to Article 8§1. Minimum rate of compensation shall not fall below the poverty threshold defined as 50% of median equivalised income, calculated on the basis of the Eurostat at-risk-of-poverty threshold value.

The right to compensation may be subject to entitlement conditions such as a minimum period of employment or contribution. However, such conditions shall not be excessive; in particular, qualifying periods should allow for some interruptions in the employment record.

14. Article 19§4 – rights of posted workers

The Committee recalls that in its decision in *Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v Sweden*, Complaint No. 85/2012, decision on the merits of 3 July 2013 at para. 134, it stated as follows:

“[T]he Committee recalls that posted workers are workers who, for a limited period, carry out their work in the territory of a State other than the State in which they usually work, which is often their national State. The Committee is aware that, in terms of length and stability of presence in the territory of the so called “host State”, as well as of their relationship with such State, the situation of posted workers is different from that of other category of migrants workers, and in particular from the situation of those foreign workers who go to another State to seek work and to be permanently embedded there. Nonetheless, the Committee considers that, for the period of stay and work in the territory of the host State, posted workers are workers coming from another State and lawfully within the territory of the host State. In this sense, they fall within the scope of application of Article 19 of the Charter and they have the right, for the period of their stay and work in the host State to receive treatment not less favourable than that of the national workers of the host State in respect of remuneration, other employment and working conditions, and enjoyment of the benefits of collective bargaining (Article 19§4, a and b).”

The Committee therefore asks for information concerning the legal status of posted workers and what legal and practical measures are taken to ensure their equal treatment in matters of employment, trade union membership and collective bargaining.

The Committee notes that States are responsible for the regulation in national law of the conditions and rights of workers in cross-border postings. It notes that the situations of posted workers are often distinct from that of other migrant workers; however it is also clear that in some circumstances they share many of the same characteristics. The Committee recalls that states must respect the principles of non-discrimination laid down by the Charter in respect of all persons subject to their jurisdiction. It thus considers that in order to conform with the requirements of the Charter, any restrictions on the right to equal treatment for posted workers, which are imposed due to the nature of their sojourn, must be objectively

justified by reference to the specific situations and status of posted workers, having regard to the principles of Article G of the Revised Charter (Article 31 of the 1961 Charter).

15. Article 19§6 – language and integration tests

The Committee acknowledges that States may take measures to encourage the integration of migrant workers and their family members. It notes the importance of such measures in promoting economic and social cohesion. However, the Committee considers that requirements that family members pass language and/or integration tests or complete compulsory courses, whether imposed prior to or after entry to the State, may impede rather than facilitate family reunion and therefore are contrary to Article 19§6 of the Charter where they:

- a) have the potential effect of denying entry or the right to remain to family members of a migrant worker, or
- b) otherwise deprive the right guaranteed under Article 19§6 of its substance, for example by imposing prohibitive fees, or by failing to consider specific individual circumstances such as age, level of education or family or work commitments.

16. Article 19§6 – housing requirements

The Committee recalls that restrictions on family reunion which take the form of requirements for sufficient or suitable accommodation to house family members should not be so restrictive as to prevent any family reunion (Conclusions IV (1975), Norway). The Committee considers that states are entitled to impose such accommodation requirements in a proportionate manner so as to protect the interests of the family. Nevertheless, taking into account the obligation to facilitate family reunion as far as possible under Article 19§6, States Parties should not apply such requirements in a blanket manner which precludes the possibility for exemptions to be made in respect of particular categories of cases, or for consideration of individual circumstances.

The Committee considers that restrictions on the exercise of the right to family reunion should be subject to an effective mechanism of appeal or review, which provides an opportunity for consideration of the individual merits of the case consistent with the principles of proportionality and reasonableness.

17. Article 19§6 and 19§8 – the right of families to remain

The Committee considers that upon a proper construction of the text of the Charter, the possibility of the expulsion of the family members of a migrant worker is more properly dealt with under Article 19§6 on the facilitation of family reunion, rather than under Article 19§8 which concerns only the expulsion of a migrant worker. It therefore decides henceforth to assess whether the expulsion of family members of a migrant worker is in conformity with the Charter under Article 19§6.

18. Article 19§8 – expulsions in case of threat to national security, or offence against public interest or morality

The Committee has previously interpreted Article 19§8 as obliging 'States to prohibit by law the expulsion of migrants lawfully residing in their territory, except where they are a threat to national security, or offend against public interest or morality' (Conclusions VI, Cyprus, p. 126.)

Such expulsions can only be in conformity with the Charter if they are ordered by a court or a judicial authority, or an administrative body whose decisions are subject to judicial review. Any such expulsion should only be ordered in situations where the individual concerned has been convicted of a serious criminal offence, or has been involved in activities which constitute a substantive threat to national security, the public interest or public morality. Expulsion orders must be proportionate, taking into account all aspects of the non-nationals'

behaviour as well as the circumstances and the length of time of his/her presence in the territory of the State. The individual's connection or ties with both the host state and the state of origin, as well as the strength of any family relationships that he/she may have formed during this period, must also be considered to determine whether expulsion is proportionate.

All foreign migrants served with expulsion orders must have also a right of appeal to a court or other independent body.

19. The rights of refugees under the Charter

The Committee emphasises the urgent and unconditional need to treat with solidarity and dignity the men, women and children who arrive on European territory, and who have a right under international law and the relevant national and European laws to the protection of European States as refugees, as described by the 1951 Convention on the Status of Refugees. It is even more important in light of the current humanitarian crisis resulting from the exodus of such people from their homes. Those people are driven by circumstances which prevail in their homelands to seek refuge from war, terror, torture or persecution, and to build a safer and better life for themselves outside the borders of their country of origin. Their proper integration into the European societies which welcome them is the best way to ensure their safety and well-being.

The Committee considers that the obligations undertaken by the States Parties by virtue of the European Social Charter are appropriate to promote and to firmly establish the prompt social integration of refugees in the host societies. It recalls that these obligations require a response to the specific needs of refugees and asylum seekers, such as courses for learning the language of the host state; the recognition of their qualifications; the liberal administration of the right to family reunion; and the right to undertake gainful employment and thus contribute to the economy.

The Committee underlines that States Parties must ensure that everyone within their territory is treated with dignity and without discrimination. This means not only to ensure respect for their civil rights, but also to support their physical and mental integrity, and to recognise their fundamental human needs of community and belonging. The fundamental rights of every human being which bind the international community are universal, indivisible and interdependent. The social and economic integration of every individual is an essential part of their right to lead a dignified life.

In recognition of this, the Committee reiterates that the rights guaranteed by the Charter are to be enjoyed to the fullest extent possible by refugees (cf. Conclusions XVII-1 (2004), Statement of Interpretation on the personal scope of the Charter). It recalls that it has held that certain rights afforded by the Charter apply to refugees and other vulnerable groups, for example Article 17 (Conclusions 2003, Bulgaria), Article 13 (Conclusions 2013, Bosnia and Herzegovina) and Article 31 (FEANTSA v. the Netherlands, Complaint No. 86/2012, Decision on the Merits of 2 July 2014). It recalls that it has previously outlined the protection of stateless persons under the Charter (Conclusions 2013, Statement of Interpretation on the rights of stateless persons). The Committee adds to that reasoning the following observations.

The Appendix forms an integral part of the Charter, and the interpretation thereof, in the light of its object and purpose, is thus entrusted to the European Committee of Social Rights. The Appendix to the Charter reads:

“2. Each Party will grant to refugees as defined in the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951 [and in the Protocol of 31 January 1967]⁴ and lawfully staying in its territory, treatment as favourable as possible, and in any case not less

⁴ The 1967 Protocol does not appear in the Appendix to the 1961 Charter, however, all of the States bound by the 1961 Charter as of 7 September 2015 have also ratified the 1967 Protocol.

favourable than under the obligations accepted by the Party under the said convention and under any other existing international instruments applicable to those refugees.”

Article 1A of the 1951 Convention relating to the Status of Refugees (CSR), read in conjunction with Article 1 paragraph 2 of the 1967 Protocol⁵, defines a refugee as follows:

“For the purposes of the present Convention, the term “refugee” shall apply to any person who:

(2) owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.”

A refugee as contemplated by the CSR and its 1967 Protocol is thus anyone who has fled the country of his nationality or habitual residence, and is unwilling, through well-founded fear of being persecuted, to return to it. Having regard to the above definition, the Committee underlines that the protection of a refugee under the CSR, and his or her resultant protection under the Charter, does not depend on the administrative recognition of refugee status by a State, which is done by the granting of asylum.

The Committee recalls that the Charter is a living instrument dedicated to the values which inspired it, namely dignity, autonomy, equality and solidarity. It must be interpreted so as to give life and meaning to fundamental social rights (FIDH v. France, Complaint No. 14/2003, Decision on the Merits of 8 September 2004, §29). The Charter should also so far as possible be interpreted in harmony with other rules of international law (Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, Decision on the Merits of 20 October 2009, §35).

In this respect, the Committee points out that Article 25 paragraph 1 of the United Nations Universal Declaration of Human Rights sets out the following with regard to the universal right to an adequate standard of living:

“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”

The Committee further notes that the Committee of Ministers of the Council of Europe in its Recommendation No. R(2000)3 (Adopted on 19 January 2000 at the 694th meeting of the Ministers’ Deputies), has recommended that Member States:

“[...] recognise, at national level, an individual universal and enforceable right to the satisfaction of basic material needs (as a minimum: food, clothing, shelter and basic medical care) for persons in situations of extreme hardship.”

“The exercise of this right should be open to all citizens and foreigners, whatever the latter’s position under national rules on the status of foreigners, and in the manner determined by national authorities.”

Having in mind the same concerns, the Committee recalls that in European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands,

⁵ In respect of Turkey, the instrument of accession stipulates that “the Government of Turkey maintains the provisions of the declaration made under section B of article 1 of the Convention relating to the Status of Refugees, done at Geneva on 28 July 1951, according to which it applies the Convention only to persons who have become refugees as a result of events occurring in Europe, and also the reservation clause made upon ratification of the Convention to the effect that no provision of this Convention may be interpreted as granting to refugees greater rights than those accorded to Turkish citizens in Turkey”.

Complaint No. 86/2012, Decision on the Merits of 2 July 2014, it held that the right to emergency shelter and to other emergency social assistance is not limited to those belonging to certain vulnerable groups, but extends to all individuals in a precarious situation, pursuant to the principle of upholding their human dignity and the protection of their fundamental rights. The Committee considers that certain social rights directly related to the right to life and human dignity are part of a “non-derogable core” of rights which protect the dignity of all people. Those rights therefore must be guaranteed to refugees, and should be assured for all displaced persons.

The wording of the Appendix to the Charter demonstrates the express undertaking to provide “treatment as favourable as possible” to the persons it covers. The Committee thus considers that the rights contained in the Charter should as far as possible be guaranteed to refugees on an equal footing with other persons subject to the jurisdiction of the host State. It is therefore incumbent upon them to take meaningful steps towards the achievement of equality for refugees under each article of the Charter by which they are bound. In any case, as is expressly stated in the Appendix to the Charter, the treatment of refugees must not be less favourable than that guaranteed by the CSR. When the achievement of a right in question is exceptionally complex and particularly expensive to resolve, States Parties must attempt to achieve the objectives of the Charter within a reasonable time, with measurable progress and making maximum use of available resources (cf. *Autism-Europe v. France*, Complaint No. 13/2002, Decision on the Merits of 4 November 2003, §53).

The CSR grants social and economic rights to refugees with reference to three levels of protection. Article 7 paragraph 1 CSR provides that “[e]xcept where this Convention contains more favourable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally”. Other provisions of the Convention guarantee that States Parties afford refugees treatment equal to that of nationals, while some provide for “the most favourable treatment accorded to nationals of a foreign country”, and others “treatment as favourable as possible, and in any event, not less favourable than that accorded to aliens generally in the same circumstances”.

The CSR coincides with the Charter in guaranteeing many social and economic rights to refugees.

Refugees must be accorded treatment equal to nationals in respect of elementary education (Article 22 CSR), which is guaranteed by Article 17§1 of the Charter; and public relief and assistance (Article 23 CSR), which is accorded under Article 13 of the Charter (social and medical assistance) and implied by Article 30 of the Charter (the right to protection against poverty and social exclusion).

Labour legislation and social security (Article 24 CSR) are the areas of greatest correspondence between the two instruments. The following Articles of the Charter all cover rights for which the CSR guarantees the same treatment as nationals: Article 2 (working hours, holidays with pay, overtime arrangements); Article 4 (remuneration); Article 6 (the enjoyment of the benefits of collective bargaining); Article 7 (a minimum age of employment, young persons’ employment rights and apprenticeships); Article 8 (rights of women in the workplace); Article 10 (training opportunities); Article 11 (healthcare); Article 12§§1, 2, 3 (the right to social security covering healthcare, sickness, unemployment, old age, employment injury or disease, family benefits and maternity benefits); Article 16 (family benefits); 19§7 (access to courts); and Article 23 (rights of the elderly).

The CSR guarantees the right to the most favourable treatment accorded to nationals of a foreign country in respect of the right to belong to trade unions (Article 15 CSR), which is guaranteed by Articles 5 and 19§4 of the Charter; and the right to engage in wage-earning employment (Article 17 CSR), which is guaranteed by Articles 1 and 18 of the Charter.

Finally, the CSR guarantees treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, in relation to the right to self-employment (Article 18 CSR), which is covered in Article 1 and 18 of the Charter; the right to access to housing (Article 21 CSR), which is dealt with under Articles 16 and 31 of the Charter; and the right to further education (Article 22 CSR), which is guaranteed by Article 10 (vocational education) and Article 17 (secondary education) of the Charter.

The rights contained within the CSR are to be guaranteed without discrimination (Article 3 CSR). Certain articles of the Charter explicitly prohibit discrimination in a number of circumstances (e.g. Article 1§2 (discrimination in employment); Article 15 (discrimination on the grounds of disability); Article 20 (discrimination on grounds of sex)). The application of the rights guaranteed by the Charter must also be secured without discrimination, pursuant to Article E of the Revised Charter, or must take account of the preamble of the 1961 Charter.

The CSR guarantees the right to free access to the courts of law, with refugees enjoying the same treatment as nationals in respect of legal assistance or court fees. Many of the Charter provisions require effective mechanisms for their exercise, including the right to appeal against decisions of the relevant authorities. The Committee considers that refugees must enjoy the same treatment in respect of juridical procedures involving their rights under the Charter.

Finally, Article 32 of the CSR stipulates that the Contracting States shall not expel a refugee lawfully on their territory save on grounds of national security or public order, in which case expulsion shall take place only in pursuance of a decision reached in accordance with due process of law. The Committee thus considers that refugees must be guaranteed the protection of the Charter in respect of expulsion (cf. Article 19§8) on an equal footing with nationals of other States Parties to the Charter.

The Committee therefore requests that all States Parties provide up-to-date and complete information relevant to the situation of refugees and displaced persons on their territory, in their reports concerning the rights identified in this Statement of Interpretation. Where specific measures apply to such persons these should be clearly described, and any difference of treatment in relation to the treatment of other persons subject to their jurisdiction should be justified with reference to the principles of Article 31 of the 1961 Charter and Article G of the Revised Charter.

General Questions from the Committee

20. The Committee refers to the questions included in the above statements of interpretation on Article 19§4 and on the rights of refugees. These questions should be answered by all States Parties concerned.

Statement on information in national reports and information provided to the Governmental Committee

21. The Committee draws the attention of the States Parties to the obligation to systematically include replies to information requests by the Committee in the national reports. Moreover, the Committee invites the States Parties to always include in the report any relevant information previously provided to the Governmental Committee, whether in writing or orally, or at least to refer to such information, and of course to indicate any developments or changes that may have intervened in the period since the information was provided to the Governmental Committee.

Next assessment

22. The reports on the accepted provisions, which were due before 31 October 2015, concern the following Articles belonging to the thematic group "Employment, training and

equal opportunities": 1, 9, 10, 15, 18 and Article 1 of the 1988 Additional protocol. States having accepted the collective complaints procedure and belonging to Group B⁶ were due to submit a simplified report on follow-up to complaints also before 31 October 2015. Finally, by the same date States concerned⁷ are to report on any conclusions of non-conformity for lack of information adopted in Conclusions XX-3 (2014).

⁶ Czech Republic, Croatia.

⁷ States Parties where information is required on conclusions of non-conformity for lack of information in Conclusions XX-3 (2014): Luxembourg, Spain, the United Kingdom.

CONCLUSIONS XX-4 (2015)

Article	CZECH REPUBLIC	DENMARK	GERMANY	GREECE	POLAND	SPAIN	UNITED KINGDOM
Article 7.1	+					+	
Article 7.2	+		+		+	+	+
Article 7.3	+		+			0	-
Article 7.4	-		+		+	+	
Article 7.5	-		-			-	-
Article 7.6	+		+		+	+	+
Article 7.7	+		+		+	+	
Article 7.8	+		+		+	+	
Article 7.9	+		+		+	+	+
Article 7.10	+		0		+	+	-
Article 8.1	+	+	+		+	+	-
Article 8.2	-				+	0	
Article 8.3	0		+		+	+	
Article 8.4					-	+	
Article 11.2				+			
Article 13.4				-			
Article 16	-	-	+		-	-	-
Article 17	-	-	+		-	+	-
Article 19.1			+		+	-	+
Article 19.2			0		-	+	0
Article 19.3			+		0	-	-
Article 19.4			-		+	+	0
Article 19.5			+		+	+	+
Article 19.6			-		+	-	-
Article 19.7			+		+	+	+
Article 19.8			-		0	0	0
Article 19.9	+		+		+	+	+
Article 19.10			-		-	-	-

**MEMBER STATES OF THE COUNCIL OF EUROPE
AND THE EUROPEAN SOCIAL CHARTER**

Situation on 31 December 2015

MEMBER STATES	SIGNATURES	RATIFICATIONS	Acceptance of the collective complaints procedure
Albania	21/09/98	14/11/02	
Andorra	04/11/00	12/11/04	
Armenia	18/10/01	21/01/04	
Austria	07/05/99	20/05/11	
Azerbaijan	18/10/01	02/09/04	
Belgium	03/05/96	02/03/04	23/06/03
Bosnia and Herzegovina	11/05/04	07/10/08	
Bulgaria	21/09/98	07/06/00	07/06/00
Croatia	06/11/09	26/02/03	26/02/03
Cyprus	03/05/96	27/09/00	06/08/96
Czech Republic	04/11/00	03/11/99	04/04/12
Denmark	*	03/03/65	
Estonia	04/05/98	11/09/00	
Finland	03/05/96	21/06/02	17/07/98 X
France	03/05/96	07/05/99	07/05/99
Georgia	30/06/00	22/08/05	
Germany	*	27/01/65	
Greece	03/05/96	06/06/84	18/06/98
Hungary	07/10/04	20/04/09	
Iceland	04/11/98	15/01/76	
Ireland	04/11/00	04/11/00	04/11/00
Italy	03/05/96	05/07/99	03/11/97
Latvia	29/05/07	26/03/13	
Liechtenstein		09/10/91	
Lithuania	08/09/97	29/06/01	
Luxembourg	*	10/10/91	
Malta	27/07/05	27/07/05	
Moldova	03/11/98	08/11/01	
Monaco	05/10/04		
Montenegro	22/03/05	03/03/10	
Netherlands	23/01/04	03/05/06	03/05/06
Norway	07/05/01	07/05/01	20/03/97
Poland	25/10/05	25/06/97	
Portugal	03/05/96	30/05/02	20/03/98
Romania	14/05/97	07/05/99	
Russian Federation	14/09/00	16/10/09	
San Marino	18/10/01		
Serbia	22/03/05	14/09/09	
Slovak Republic	18/11/99	23/04/09	
Slovenia	11/10/97	07/05/99	07/05/99
Spain	23/10/00	06/05/80	
Sweden	03/05/96	29/05/98	29/05/98
Switzerland		06/05/76	
«the former Yugoslav Republic of Macedonia»	27/05/09	06/01/12	
Turkey	06/10/04	27/06/07	
Ukraine	07/05/99	21/12/06	
United Kingdom	*	11/07/62	
Number of States	47	2 + 45 = 47	10 + 33 = 43

The **dates in bold** on a grey background correspond to the dates of signature or ratification of the 1961 Charter; the other dates correspond to the signature or ratification of the 1996 revised Charter.

* States whose ratification is necessary for the entry into force of the 1991 Amending Protocol. In practice, in accordance with a decision taken by the Committee of Ministers, this Protocol is already applied.

X State having recognised the right of national NGOs to lodge collective complaints against it.



January 2016

1961 European Social Charter

European Committee of Social Rights

Conclusions XX-4 (2015)

CZECH REPUBLIC

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 1961 European Social Charter (the 1961 Charter) and the 1988 Additional Protocol (the Additional Protocol). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure

Information on the 1961 Charter, statements of interpretation, and general questions from the Committee, are reflected in the General Introduction to all Conclusions.

The following chapter concerns Czech Republic which ratified the 1961 Charter on 3 November 1999. The deadline for submitting the 12th report was 31 October 2014 and Czech Republic submitted it on 13 November 2014. Comments on the 12th report by NGOs (*Liga lidských práv*, MDAC, Forum Human Rights, LUMOS, Inclusion Europe, SPMP, QUIP, DownSyndrom CZ, *Organizace Pro Pomoc Uprchlíkům*) were registered on 31 January 2015 and additional comments by Forum Human Rights were registered on 27 October 2015. The Government's complementary observations were registered on 24 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 "Children, families and migrants":

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection of maternity (Article 8),
- the right of the family to social, legal and economic protection (Article 16),
- the right of mothers and children to social and economic protection (Article 17),
- the right of migrant workers and their families to protection and assistance (Article 19).

The Czech Republic has accepted all provisions from the above-mentioned group except Articles 8§4, 19§§1 to 8 and 19§10.

The reference period was 1 January 2010 to 31 December 2013.

The conclusions relating to Czech Republic concern 16 situations and are as follows:

- 10 conclusions of conformity: Articles 7§1, 7§2, 7§3, 7§6, 7§7, 7§8, 7§9, 7§10, 8§1 and 19§9,
- 5 conclusions of non-conformity: Articles 7§4, 7§5, 8§2, 16 and 17.

In respect of the situation related to Article 8§3, 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 the Czech Republic under the 1961 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 7§10

An amendment to the Penal Code was adopted in 2014 (out of the reference period), which increases the protection of children against sexual assaults.

Article 8§2

The Labour Code provision which authorised a dismissal notice to be served on an employee on maternity leave in certain cases of relocation of all or part of the business, was amended with effect from 1 January 2012 in order to align it with the requirements of the Social Charter. As a result, Section 54 of the Labour Code henceforth explicitly provides for a prohibition of dismissal on the grounds of organisational changes of pregnant employees, employees on maternity leave as well as male employees on parental leave taken within the period during which a woman employee is entitled to be on maternity leave.

Article 16

- Through an amendment to the School Act, which entered into force on 1 January 2012, conditions have been created for developing and subsidising company childcare facilities;
- Through an amendment to the Trade Act, other forms of childcare facilities have been promoted
- The Mediation Act entered into force on 1 September 2012.
- New provisions governing interim measures – such as preliminary proceedings in cases of domestic violence – entered into force on 1 January 2014 (out of the reference period). The Victims of Crime Act, which entered into force on 1 August 2013, added new provisions to regulate interim measures with a view to protecting the aggrieved party, persons closely related to her, preventing the accused party from committing a crime and ensuring effective implementation of criminal proceedings.

Article 17§1

- The new Article 971(3) of the Civil Code explicitly stipulates that “inadequate housing conditions and material situation of parents of the child cannot *per se* be a reason for the court’s decision on institutional care.
- Amendment No. 401/2012 also made significant changes to the Family Act No. 94/1963 (it is now explicitly prohibited for a court to order institutional care of a child solely for inadequate housing conditions or financial situation of his/her parents).
- Amendment No. 134/2006 of 14 March 2006 of the Act on Social and Legal Protection of Children imposed on the competent public authorities a duty to provide parents, after a removal of children from their care, immediate and comprehensive assistance with a view to effectively reunifying the family.

The next report to be submitted by the Czech Republic will be a simplified report dealing with the follow up given to decisions on the merits of the following collective complaint in which the Committee found a violation:

- Association for the Protection of all Children Ltd – APPROACH Ltd v the Czech republic, Complaint No. 96/2013, decision on the merits of 20/01/2015, Violation of Article 17§1 of the 1961 Charter

The deadline for submitting the above report was 31 October 2015.

Conclusions and reports are available at www.coe.int/socialcharter.

Article 7 - Right of children and young persons to protection

Paragraph 1 - Prohibition of employment under the age of 15

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

The Committee noted previously that the prohibition on work of children up to 15 years of age or older than 15 until completion of their compulsory school attendance is an absolute prohibition applicable to any and all types of work in any economic sector, performed within or outside the scope of employment relationships. The only exception allowed by the Labour Code relates to performing artistic, cultural, sporting and advertising activities under the terms set by Employment Act No. 435/2004 Coll. An authorisation for such activities must be issued by the regional branch of the Employment Office (Conclusions XIX-4 (2011)).

The Committee takes note from another source that the minimum age for admission to employment is no longer governed by the Labour Code but instead by Act No. 89/2012 Coll. Civil Code (Civil Code) which took effect from 1 January 2014. According to section 34 of the Civil Code, the employment of minors under the age of 15 years, or minors who have not completed their compulsory school education, is prohibited (Direct Request (CEACR) – adopted 2014, published 104th ILC session (2015), Minimum Age Convention 1973, No. 138, ratified by the Czech Republic in 2007). Since the new legislation came into force outside the reference period, the Committee requests a full and up-to-date report on the relevant regulations concerning the employment of all children of up to 15 years of age or older than 15 who have not completed their compulsory school education (including self-employed, children working in family undertakings) and any exceptions from the minimum age of admission to employment.

In its previous conclusion (Conclusions XIX-4 (2011)), the Committee asked whether the Labour Inspectorate carries out inspections with regard to employment of children under the age of 15, what are the findings of such inspections and what sanctions, if any, are imposed when a violation is identified.

The Committee notes from the report that from 2010 to 2013, the labour inspectors detected seven cases of child labour and one case of performance of artistic activity without the authorisation of the Employment Office. In this last case a fine of CZK10,000 (€364) was imposed while measures to eliminate the shortcomings were imposed on the entities inspected. The Committee further notes from the report that, in 2010, the labour inspectors granted 2,509 permits and extended three permits to children under 15 years to participate in artistic, sporting or cultural activities and, in 2011, 2,235 such permits were granted and ten permits extended.

The report indicates that a fine of up to CZK 2,000,000 (€72 832) can be imposed on an individual or a legal entity, as the case may be, who allows a child to perform such activities which are not considered suitable for children without an authorisation or does not comply with the condition set out in the authorisation. For the same breaches, a fine of CZK 100,000 (€ 3 642) can be imposed on a child's legal guardian. The Committee notes from another source that a breach of the provision prohibiting the employment of children under the age of 15 years, or children who have not completed compulsory schooling, is penalized as per Sections 12(1)(a) and 25(1)(a) of the Labour Inspection Act No. 251/2005 which establish fines of up to CZK 300,000 (€10 925) (Direct Request (CEACR) – adopted 2014, published 104th ILC session (2015), Minimum Age Convention 1973, No. 138, ratified by the Czech Republic in 2007).

Conclusion

The Committee concludes that the situation in the Czech Republic is in conformity with Article 7§1 of the 1961 Charter.

Article 7 - Right of children and young persons to protection

Paragraph 2 - Higher minimum age in dangerous or unhealthy occupations

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

The Committee previously found the situation in the Czech Republic to be in conformity with Article 7§2 of the 1961 Charter (Conclusions XVI-2 (2004)). The Committee requests up-to-date information on the legal framework on the minimum age of employment of minors in hazardous occupations and on the conditions under which young people may, in exceptional circumstances, carry out this work.

In its previous conclusion, the Committee requested information on the activity of the Labour Inspectorate, its findings and the eventual sanctions applied in cases of violation (Conclusions XIX-4 (2011)). The report indicates that the Labour Inspection Office is permanently monitoring the working conditions of young workers. A fine of up to CZK 2,000,000 (€72 832) can be imposed on an employer for employing young workers in work in which they are exposed to an increased risk of accident. It also indicates that during the inspections carried out during the reference period, the Labour Inspection Office did not identify any violation by the employers in this matter.

The Committee recalls that the situation in practice should be regularly monitored. It asks the next report to provide information on the number and nature of violations detected as well as on sanctions imposed for breach of the regulations regarding prohibition of employment under the age of 18 for dangerous or unhealthy activities.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in the Czech Republic is in conformity with Article 7§2 of the 1961 Charter.

Article 7 - Right of children and young persons to protection

Paragraph 3 - Prohibition of employment of young persons subject to compulsory education

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

With reference to its Statement of interpretation on Article 7§3, the Committee previously asked whether the rest period free of work had a duration of at least two consecutive weeks during the summer holiday and information on the rest periods during the other school holidays.

The report indicates that the organisation of a school year and the distribution of school holidays is provided for by Section 24 of Act No. 561/2004 Coll. (the Education Act). The report describes the duration of school holidays such as autumn holidays, Christmas holidays, spring holidays. The report indicates that the total duration of school holidays at primary and secondary schools is of nearly three months. The main school holidays consist of two months during the summer in July and August. The Committee asks for confirmation that young persons subject to compulsory education will have in any case an uninterrupted period of rest of two weeks during the summer holidays.

Conclusion

Pending receipt to the information requested, the Committee concludes that the situation in the Czech Republic is in conformity with Article 7§3 of the 1961 Charter.

Article 7 - Right of children and young persons to protection

Paragraph 4 - Length of working time for young persons under 16

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

Article 7§4 of the 1961 Charter is concerned with the employment of persons under 16 who are no longer in compulsory education. The Committee has previously considered that for persons under 16 years of age, a limit of eight hours a day or forty 40 hours a week is contrary to this article (Conclusions XI-1 (1991), Netherlands). However, for persons over 16 years of age, the same limits are in conformity with Article 7§4 (Conclusions 2002, Italy).

In its previous conclusion (Conclusions XIX-4 (2011)), the Committee found that the situation was not in conformity with Article 7§4 of the 1961 Charter as the length of working time for young workers under 16 years of age was excessive since they may work eight hours per day and a maximum of 40 hours per week. The Committee notes from the report that the situation with regard to the daily and weekly working time for children who are no longer subject to compulsory education has not changed and it therefore maintains its conclusion of non-conformity.

With respect to the employees who finished compulsory education and are older than 15, the Labour Code strictly stipulates that juveniles may be employed only on those works which are adequate to their physical and intellectual level of development and special care to their needs at work must be devoted (Article 243 of the Labour Code).

The report indicates that the length of vocational training in the first school year (young people under 16) may not exceed 6 lessons (1 lesson has 45 minutes). The second year is usually in the range of 7 lessons and the third school year may not be longer than 8 lessons.

Conclusion

The Committee concludes that the situation in the Czech Republic is not in conformity with Article 7§4 of the 1961 Charter on the ground that the duration of working time for young workers under 16 years of age is excessive.

Article 7 - Right of children and young persons to protection

Paragraph 5 - Fair pay

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

Young workers

In its previous conclusion (Conclusions XIX-4 (2011)), the Committee noted that according to Government Regulation No. 567/2006 Coll., an employee under 18 years of age is entitled to at least 80% of the statutory minimum wage and the lowest level of guaranteed wage.

Under Article 7§5 of the Charter, wages paid to young workers under 18 years of age can be reduced by as much as 20% compared to a fair adult's starting or minimum wage. Since Czech Republic has not accepted Article 4§1 of the 1961 Charter, the Committee makes its own assessment on the adequacy of pay. From the information provided in the report, the Committee notes that the net minimum wage corresponds to only 39% of the net average wage, which is too low to secure a decent standard of living. Accordingly, the situation in the Czech Republic is not in conformity with Article 7§5 of the 1961 Charter.

The Committee recalls that if the reference wage is too low, even a young worker's wage which respects these percentage differentials is not considered fair (Conclusions XII-2 (1992) Malta). Therefore, even if young workers are paid at least 80% of the minimum statutory wage, the Committee considers that the right to a fair pay of young workers is not guaranteed since the reference wage itself is too low to secure a decent standard of living.

Apprentices

The report indicates that the level of remuneration of apprentices amounts to at least 30% of the minimum wage for the prescribed weekly working hours. In case of different working hours or in the event that no productive activities were performed by the young worker, the amount of remuneration is to be adjusted proportionally.

The Committee repeatedly asked information on the minimum amount of the allowances granted to apprentices in their last year of apprenticeship. As the report does not provide the requested information, the Committee considers that the situation is not in conformity with the Article 7§5 of the 1961 Charter on the ground that it has not been established that the apprentices' allowances are adequate.

Conclusion

The Committee concludes that the situation in the Czech Republic is not in conformity with Article 7§5 of the 1961 Charter on the grounds that:

- the minimum wage of young workers is not fair;
- it has not been established that the apprentices' allowances are adequate.

Article 7 - Right of children and young persons to protection

Paragraph 6 - Inclusion of time spent on vocational training in the normal working time

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

The report indicates that under Article 229 of the Labour Code, employers are obliged to ensure adequate job training for graduates of secondary schools, conservatories, advanced vocational schools and universities in order to allow them to obtain the necessary practical experience and skills to perform the work. The report indicates that job training is deemed to constitute performance of work, for which the employee is entitled to receive a wage or a salary.

The Committee previously asked whether the conditions concerning job training apply also to young people, who are not covered by the Labour Code. In reply, the report states that the legal regulations apply to any and all employees performing dependent work, regardless of whether they are young workers or adults.

The report does not provide any information on the activities of the Labour Inspectorate. The Committee reiterates its request for information as regards the activities, findings and sanctions in relation to the obligation of employers to provide remuneration for training time as for the normal working time.

Conclusion

Pending receipt of the information provided, the Committee concludes that the situation in the Czech Republic is in conformity with Article 7§6 of the 1961 Charter.

Article 7 - Right of children and young persons to protection

Paragraph 7 - Paid annual holidays

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

The report indicates that there has been no change in this area since the last report. The holiday duration in a calendar year remains at least 4 weeks or longer if the employer chooses so and it is applied to young workers in the same manner.

In its previous conclusion (Conclusions XIX-4 (2011)), the Committee asked whether the young workers have the option of waiving their annual holiday for financial compensation and whether they have the possibility to take the leave lost, due to illness or accident, at some other time.

The report indicates that under Article 218 of the Labour Code, as amended in 2012, an employer is obliged to determine the employee's annual holiday schedule in such a manner that the holiday is taken in the calendar year when the holiday was accrued, unless the employer is prevented from doing so by a temporary incapacity of the employee or by urgent operational grounds. If the annual holiday cannot be taken in such manner, the employer is obliged to schedule the employee's annual holiday so that it can be taken by the end of the following calendar year at the latest. If by the end of June of the subsequent year the leave has not been taken, then the employee is entitled to determine when to take it (Section 218§3). In situations where the employee is temporarily unfit for work or on maternity or parental leave, the annual leave is postponed by the employer (Section 218§4).

The report indicates that according to Section 222 of the Labour Code, compensation for any annual holiday not taken is only possible on termination of the employment relationship. The same applies also to young workers.

The Committee recalled in its previous conclusion that the situation in practice should be regularly monitored and requested information on the activities of the Labour Inspection Office. The report indicates that the inspection authorities monitor the compliance of employers with the obligations set by the Labour Code regarding the annual holidays for all employees, including for young workers. The most frequent deficiencies identified concern the calculation of holiday, payment in lieu of holiday and ordered holiday. The most frequent findings consist in the failure to make the payment in lieu of holiday on the next pay day upon the termination of a worker's employment, and an incorrect calculation of that payment. In all cases, the employer was ordered to remedy the deficiency within a given period of time.

Conclusion

The Committee concludes that the situation in the Czech Republic is in conformity with Article 7§7 of the 1961 Charter.

Article 7 - Right of children and young persons to protection

Paragraph 8 - Prohibition of night work

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

The Committee previously noted that according to Section 245 of the Labour Code employers may not require young workers under 18 to work at night. Exceptionally young workers over 16 years old, may perform night work not exceeding 1 hour, where this is necessary for their vocational training, under supervision of an employee over 18 years of age, if this supervision is necessary for the protection of the young worker. Night work of a young worker must immediately follow his daytime work according to the schedule of working shifts (Conclusions XIX-4 (2011)).

In its previous conclusion, the Committee recalled that the situation in practice should be regularly monitored and asked that the next report provide information on the activity of the Labour Inspectorate, its findings and the applicable sanctions. In reply, the report indicates that violations of the prohibition of night work exceeding one hour were identified in 8 cases during the reference period. Measures to remedy the deficiency were imposed considering that the time in excess was short (approximately 30 minutes).

Conclusion

The Committee concludes that the situation in the Czech Republic is in conformity with Article 7§8 of the 1961 Charter.

Article 7 - Right of children and young persons to protection

Paragraph 9 - Regular medical examination

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

The report indicates that the employer is always responsible for "employing young workers only in work that is adequate to their physical and intellectual development and for providing increased care to these employees during work". The report indicates the types of work and workplaces which are prohibited for young workers as defined and listed by the Decree No. 288/2003 Coll. and the Labour Code.

The report indicates that according to the Labour Code, employers need to ensure, at their own expense, that young workers are examined by a provider of occupational medical services before the commencement of the employment relationship and before their transfer to a different work, and then on a regular basis as necessary and at least once a year. When assigning work tasks to young workers, the employer observes the medical opinion issued by the provider of occupational medical services.

The Committee previously asked more information on how the medical examinations of young workers are performed. The report indicates that Act No. 373/2011 Coll. provides for occupational medical services administered through a health care facility that ensures the periodical examinations of young workers in employment and apprenticeship once a year, unless more frequent examinations are prescribed by a physician in view of the working conditions (job training) or in view of the health condition. In addition to the periodical examinations, an extraordinary examination may be carried out in order to determine the health conditions of the employee under examination in case of a well-grounded assumption that the employee no longer shows the required health fitness for work or shows a change in the health fitness for work, or where the level of risk for the risk factor related to the working conditions previously accounted for has increased. An extraordinary examination is performed based on a request submitted by the employer or at the initiative of the employee, or based on the information notified by the physician concerning a reasonable suspicion that a change in the employee's health condition resulted in a change in the health fitness.

The report indicates that according to the Decree on occupational medical services and certain types of medical assessment, every occupational medical check-up includes a basic examination consisting of:

- an analysis of the past development of the employee' health condition and medical history (diseases suffered), focusing particularly on the occurrence of diseases that might restrict or exclude health fitness;
- a work-related medical record monitoring, in particular, the response of the organism to the presence of risk factors;
- a comprehensive physical examination, including an indicative examination of hearing, vision, skin and an indicative neurological examination, with emphasis of an assessment of the condition and functioning of the organs and systems that will be strained during the performance of the work or training for the future profession and its pursuit, and taking into account the potential disability of the person under examination.

In its previous conclusion (Conclusions XIX-4 (2011), the Committee asked information on the activity of the Labour Inspectorate, its findings and the sanctions imposed. The report indicates that in a number of eight cases the State Labour Inspection Office found that a young worker was not examined by a provider of occupational medical services. Fines in a total amount of CZK 235,000 (€ 8 558) were imposed on the entities concerned.

Conclusion

The Committee concludes that the situation in the Czech Republic is in conformity with Article 7§9 of the 1961 Charter.

Article 7 - Right of children and young persons to protection

Paragraph 10 - Special protection against physical and moral dangers

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

Protection against sexual exploitation

The Committee takes note of the amendment to the Penal Code adopted in 2014 (out of the reference period) which increases the protection of children against sexual assaults.

In particular, in line with Article 4 (4) of Directive 2011/93/EU on combating the sexual exploitation of children and child pornography, a new section on knowingly attending pornographic performances involving the participation of a child (Article 193a) has been added in the Penal Code. The criminal offence of establishing illicit contact with a child was added (Article 193 b) as well as the offence of intentionally seeking access to child pornography by means of information and communication technology (in line with Article 5 (3) of Directive 2011/93/EU).

The Committee notes from the report on Global Monitoring on the status of action against commercial sexual exploitation of children (ECPAT, 2012) that the country's difficulty with keeping accurate, up-to-date, and detailed statistics on victims and convictions has been noted internationally and by the Czech authorities themselves. The Czech authorities do not seem to have current figures related to child victims of child pornography, child sex tourism, or child prostitution.

As an initial matter, according to ECPAT, the Czech authorities should create a mechanism for compiling all data- including information on perpetrators and victims of sexual exploitation crimes, ages and gender of the child victims, regions in the country where the offences occurred, formal prosecutions, and convictions.

Furthermore, according to ECPAT the varying age cut-offs for sexual consent and criminal liability in the legislation are confusing and also contradictory to the requirement of the Committee of the Rights of the Child (UN-CRC), which is a uniform age cut-off of 18 years. Czech authorities should reform their laws on this matter and institute a more cohesive policy regarding child prostitution. They should address the confusion of the issue of age of consent, age of majority, age of criminal liability- as it is interpreted and applied in many different ways.

The Committee recalls that under Article 7§10 States must criminalise the all acts of sexual exploitation with all children under 18 years of age, irrespective of lower national ages of sexual consent. It asks for confirmation that all acts of sexual exploitation of children, including child prostitution, simple possession of child pornography cover children until 18 years of age.

The Committee also asks whether child victims of sexual exploitation may be prosecuted for any act connected with this exploitation.

Protection against the misuse of information technologies

The Committee notes from ECPAT that the Government has been involved in efforts to inform children and parents of the dangers of child pornography and exploitation through unmonitored internet use. One programme, the Czech Safer Internet National Centre ("*Saferinternet CZ*") was launched in 2009. Saferinternet CZ is supported by the European Commission and the Ministry of the Interior. The National Safer Internet Centre campaign uses technology and media campaigns to promote internet safety for children and organises trainings and workshops related to safer internet use for children, parents, and professionals in the field. Two of Saferinternet CZ's recent projects are the Teachtoday.eu portal and nsafe

e-safety family kit, both of which have been translated into Czech and used by schools and sponsors.

Protection from other forms of exploitation

As a priority action required, ECPAT recommends that the Ministry of Roma Affairs should be more involved in addressing Romani children's vulnerability to trafficking and prostitution situations and design and implement prevention campaigns specially targeted at Roma living in situations of increased vulnerability to sexual exploitation.

The European Roma Rights Centre and other international sources found that Roma children, particularly Romani girls in state care frequently are trafficked within and into the Czech Republic and are involved in prostitution.

According to ECPAT, because the Government does not breakdown its data on trafficking by ethnicity (in addition to age), there are no official data on the percentage of Romani people involved in prostitution and sex trafficking. As a result, the numbers estimated are extremely divergent: an NGO operating in the Ústí region near the German border claims that Roma are perceived to represent around 70% of persons trafficked for sexual exploitation, whereas an NGO working nationally in collaboration with the Ministry of the Interior estimates the representation of Roma among victims of trafficking in human beings (including both sexual exploitation and labour) to be around 20%.

Given the lack of reliable information available about Roma children possibly involved in sex trafficking, prostitution and other forms of sexual exploitation, ECPAT underlines that there is a need for the Government policy to address this group specifically. According to ECPAT there is no mention of prevention activities in the Trafficking National Plan of Action, specifically including or focusing on Roma. Nor does the Czech Republic's Decade of Roma Inclusion (2005 – 2015) National Action Plan, (the major policy measure regarding the situation of Roma in the Czech Republic) include any measures specifically intended to prevent sex trafficking among and involving Roma.

The Committee requests that the next report provide information on measures taken to address the issue of sexual exploitation of Roma children.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in the Czech Republic is in conformity with Article 7§10 of the 1961 Charter.

Article 8 - Right of employed women to protection

Paragraph 1 - Maternity leave

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

Right to maternity leave

The report indicates that the situation, which the Committee previously found to be in conformity with the Charter (Conclusions XIX-4 (2011)), has not changed: according to Article 195 of the Labour Code of 2006, women are entitled to 28 weeks of maternity leave, which can be extended to 37 weeks in case of multiple birth. Maternity leave can never be shorter than 14 weeks and 6 weeks of postnatal leave are compulsory. The same rules apply to women employed in the public sector.

Right to maternity benefits

In its previous conclusion (Conclusions XIX-4 (2011)), the Committee asked for a full and updated description of the system to be provided, including in respect of women employed in the public sector. The report does not provide however this information.

The Committee notes from the ILO database on Maternity protection, Czech Republic 2011, that are eligible to maternity benefits the insured persons who have participated in the sickness insurance scheme for at least 270 calendar days over the last two years before the date of starting the maternity leave. Under certain conditions, are also eligible to maternity benefits people receiving full invalidity pensions and students (Act No. 187/2006 Coll. on Sickness Insurance, as amended up to Act No.180 of 2011 coll.).

The maternity benefits are granted from the start of the maternity leave (no later than 6 weeks before the expected date of childbirth), for a duration of 28 weeks, up to 37 weeks in case of multiple children. Maternity benefits can be transferred to the insured father or husband of the mother, if a written agreement has been concluded to this effect after the end of the 6th week after the childbirth.

According to MISSOC database (Czech Republic, as of 1/01/2014), the amount of the maternity benefits (peněžitá pomoc v mateřství – PPM) is 70% of the daily basis of assessment per calendar day, up to a maximum of CZK 1,060 (€39) a day. The daily basis of assessment is calculated using gross monthly earnings, which are taken into account as follows: up to CZK865 (€31): 100%; CZK865 (€31) to CZK1,298 (€47): 60%; CZK1,298 (€47) to CZK2,595 (€94): 30%; earnings over CZK2,595 (€94) are not taken into account. The Committee recalls that a benefit must be adequate and must be equal to the salary or close to its value, i.e. at least equal to 70% of the previous wage. For high salaries, a significant reduction in pay during maternity leave is not, in itself, contrary to Article 8§1. Various elements are taken into account in order to assess the reasonable character of the reduction, such as the upper limit for calculating benefit, how this compares to overall wage patterns and the number of women in receipt of a salary above this limit. In the light thereof, the Committee asks that the next report provide information on the proportion of employees exceeding the daily average limit of CZK2,595 (€94). It furthermore reiterates its request for a full and updated description of the system in the next report. In addition, the Committee refers to its Statement of Interpretation on Article 8§1 (Conclusions XX-4 (2015)) and asks whether the minimum rate of maternity benefits corresponds at least to the poverty threshold, defined as 50% of the median equivalised income, calculated on the basis of the Eurostat at-risk-of-poverty threshold value.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in the Czech Republic is in conformity with Article 8§1 of the 1961 Charter.

Article 8 - Right of employed women to protection

Paragraph 2 - Illegality of dismissal during maternity leave

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

Prohibition of dismissal

In its previous conclusion (Conclusions XIX-4 (2011)) the Committee found the situation not to be in conformity because the Labour Code authorised a dismissal notice to be served on an employee on maternity leave in certain cases of relocation of all or part of the business, a situation which was not warranted under Article 8§2 of the 1961 Charter.

According to the report, the provision at issue of the Labour Code has however been amended with effect from 1 January 2012 in order to align it with the requirements of the Social Charter. As a result, Section 54 of the Labour Code henceforth explicitly provides for a prohibition of dismissal on the grounds of organisational changes of pregnant employees, employees on maternity leave as well as male employees on parental leave taken within the period during which a woman employee is entitled to be on maternity leave. The Committee considers that the situation is now in conformity with Article 8§2 on this issue.

Redress in case of unlawful dismissal

The Committee noted (Conclusions XIX-4 (2011)) that, under Article 69§1 of the Labour Code, in case of unlawful dismissal reinstatement is possible. In this case, the employer should pay a compensatory wage to the employee concerned, corresponding to her average earnings.

The Committee requested however clarifications about the level of compensation available in cases where the employee does not ask for reinstatement. Although the report does not provide any information in this respect, the Committee notes from the ILO website that, under Article 69§2 of the Labour Code, if the employee does not ask for reinstatement the employment relationship is deemed to have been terminated by agreement and the employee is entitled to compensation of wages in the amount of average earning for the period of regular notice of dismissal. The Committee asks the next report to confirm this information.

The Committee also asked whether:

- such compensation covers both pecuniary and non-pecuniary damage or whether unlimited compensation for non-pecuniary damage can also be sought by the victim through other legal avenues (e.g. anti-discrimination legislation);
- both types of compensation are awarded by the same courts, and how long it takes on average for courts to award compensation;
- the same regime applies to women employed in the public sector, especially those on temporary contracts.

In the absence of reply to these questions, the Committee reiterates them and considers in the meantime that it has not been established that the situation is in conformity with Article 8§2 on this aspect.

Conclusion

The Committee concludes that the situation in the Czech Republic is not in conformity with Article 8§2 of the 1961 Charter on the ground that it has not been established that, where there is no reinstatement, the law provides for an adequate compensation.

Article 8 - Right of employed women to protection

Paragraph 3 - Time off for nursing mothers

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

Section 242 of the Labour Code provides for paid nursing breaks. A female employee who works normal weekly working hours (40 hours per week, 8 hours per day) is entitled to two half-hour break per shift for each child until the child reaches the age of one year, and to one half-hour break per shift in the subsequent three months. Employees working part-time (but at least half of the normal weekly hours, i.e. 20 hours per week, 4 hours per day) are entitled to one half hour break for each child until the child reaches the age of one year. The Committee notes from the report, in reply to its question, that the same rules apply both to the private and the public sector.

As regards women who work less than half of the statutory working time, the report states that while the law only defines the minimum breaks which the employer must grant to the employees, it allows the granting of breaks on a case-by-case basis that can be scheduled by the nursing employee according to her needs and subdivided into several shorter periods of time. The report also refers to the food and rest breaks which are available to workers (not less than 30 minutes break after 6 hours worked) and which can be subdivided in parts of at least 15 minutes. The Committee asks the next report to clarify, in the light of any relevant laws, collective agreements, statistical data or other information, whether women working 8 hours per day but totalling less than 20 hours per week (for instance, two full working days twice a week) are entitled to paid nursing breaks, other than the normal food and rest breaks. It holds that if no such information is provided, there will be nothing to establish that the situation is in conformity with Article 8§2 of the Charter. It reserves in the meanwhile its position on this issue.

Conclusion

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

Article 16 - Right of the family to social, legal and economic protection

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

Social protection of families

Housing for families

The Committee concluded previously (Conclusions XIX-4 (2011)) on a non-conformity on the ground that it had not been established that families receive adequate social protection with regard to housing.

The report stresses that housing falls within the competence of local authorities.

The Committee notes the existence of several instruments dealing with the issue of help to first-time buyers aged under 36. It also notes from the report of the Governmental Committee (Report concerning Conclusions XIX-4 (2011)) that regions and cities offer young people the opportunity to rent a 'starter housing' – with a competitive rent – until they arrange for a more permanent alternative.

The information provided to the Governmental Committee above mentioned indicates that there are two social benefits in order to support low-income families: the housing allowance and the supplement for housing. The housing allowance is paid if housing costs of an owner or tenant (or a cooperative member) of an apartment registered as a permanent resident in the apartment exceed 30% of the decisive income of the household (in Prague 35%) and at the same time these 30% (or 35%) is not higher than the normative housing costs. In 2012, on average almost 170,000 people were receiving this allowance on a monthly basis. The supplement for housing helps people in material need to pay the housing costs if their income – including the housing allowance – is not sufficient. In 2012, the supplement was paid approximately to 40,000 beneficiaries per month.

As to protection against unlawful eviction, the report of the Governmental Committee provides a series of information based on the legislation and the Constitution. First, finding alternative solution by mutual agreement is privileged. Second, there shall be a written notice period of at least 3 months before eviction. Third, any person may enforce his/her rights before an independent and impartial court of justice in accordance with the prescribed procedure. Fourth, the right to legal aid allows every party to legal proceedings to be represented before court by a legal representative (lawyer, attorney). If a party to legal proceedings files a request to the court, the right to (free) legal aid can be granted and an attorney can be assigned *pro bono* to the party. Fifth, everybody is entitled to compensation for damage caused him/her by an unlawful decision of a court, other State bodies, or public administrative authorities, or as the result of an incorrect official procedure.

In view of the above, the situation is now in conformity in respect of families receiving adequate social protection with regard to housing.

Concerning the housing needs of Roma families, the report refers to the 'Concept of housing policy until 2020', adopted in July 2011, which sets the following objectives: increasing the accessibility of adequate housing, creating a stable legal environment and improving the housing quality. The report also mentions the Agency for Social Inclusion, created in 2008, which focuses on the social inclusion of Roma living in socially excluded localities. It further refers to the Strategy to Combat Social Exclusion and the Roma Inclusion Strategy and the Decade of Roma Inclusion 2005-2015.

The Committee, however, notes from the European Commission against Racism and Intolerance (ECRI) conclusions adopted in 2012 that the number of socially excluded localities has increased to 400 and that discrimination in the housing market continues to affect the access of vulnerable groups such as Roma. In the same vein, the Commissioner

for Human Rights in his report of 2013 urged the authorities to increase their efforts to counter practices that lead to the territorial segregation of Roma and their discrimination in the allocation of social housing.

While taking note of the efforts undertaken to overcome the housing problems of Roma families, the Committee in view of the recent assessments considers that the situation is not in conformity with the 1961 Charter on the ground that housing conditions of Roma families are not adequate.

Childcare facilities

Concerning childcare facilities for children up to three years of age, the Committee notes from the report of the Governmental Committee (cited above) the following developments: 1) childcare facilities are called crèches and are run either by public (state, regions, municipalities) or private facilities; 2) through an amendment to the School Act, which entered into force on 1 January 2012, conditions have been created for developing and subsidising company childcare facilities; 3) through an amendment to the Trade Act other forms of childcare facilities have been promoted; 4) the supply of non-institutionalised childcare facilities has increased. The number of trade licenses issued increased from less than 300 in 2008 to 880 in 2012; 5) the Law on Children's Group submitted by the Ministry of Labour and Social Affairs to the Government and Parliament aims at creating another flexible form of childcare for children from 6 months to 6 years; 6) parents can receive a parental allowance in addition to their income to cover the needs of a child; 7) the participation rate in pre-primary education in 2010/2011 was 27.5%. The Committee also notes that because of the insufficient number of childcare facilities for children up to three years of age kindergartens have increasingly enrolled also two-year old children – 33,141 of such children for the year 2013/2014.

As regards children aged 3 to 6, the report indicates that they are catered for in kindergartens, whose number increased by 605 during the reference period. It also specifies that the issue concerning their capacities is being solved thanks to state subsidies, operational programme of the Ministry of Regional Development and gradual decrease in the number of children in the different age groups. The qualifications of a pre-school teacher are determined by the Act on Pedagogical Staff as amended and range from secondary to higher education. The Law on Children's Group submitted by the Ministry of Labour and Social Affairs mentioned above includes tax measures to promote the development of childcare facilities in the form of tax deductibility for employers of the costs to provide these services and a tax credit for the income earned by self-employed parents when securing these services for their children. The Committee asks the next report to provide information on the outcome of this Law.

Family counselling services

The report mentions a grant programme for 'Family and Protection of the Rights of Children', which is announced every year since 2005 by the Ministry of Labour and Social Affairs. The programme is intended for non-governmental organisations engaged in family counselling services and each year €3.5 million are allocated to it. It is aimed at promoting family services of preventive and supportive nature.

Participation of associations representing families

The Committee notes from the report of the Governmental Committee that families are represented by association of NGOs, such as the Network of Mother Centres, Acer, Union centre for family and community. Their main tasks include cooperation with governmental and non-governmental organisations, media and organisation of seminars and conferences. In addition to institutes such as the Research Institute for Labour and Social Affairs these

NGOs are invited by the Ministry of Labour and Social Affairs for consultation purposes in view of a conceptual work.

Legal protection of families

Rights and obligations of spouses

The report provides no updated information on the rights and obligations of spouses. The Committee takes note of the information in previous reports and all the information at its disposal, and finds that the situation which it previously considered to be in conformity (Conclusions XIX-4 (2011)) has not changed.

Mediation services

The Mediation Act entered into force on 1 September 2012. Its main goal is to provide the parties to a dispute the possibility for an alternative resolution which is fast and out-of-court. Pursuant to the Code of Civil Procedure, as amended, the chief judge may order the parties to the proceedings to meet with a registered mediator and suspend the proceedings for no longer than 3 months. Moreover, with effect from 1 January 2013 the competent authority for social and legal protection of children – municipal authority – may also decide to oblige the parents or other persons responsible for the upbringing of the child to participate at the first meeting with a registered mediator.

The report indicates that the remuneration for the first meeting with a mediator ordered by the court amounts to €15 for each hour and the mediator's remuneration for the mediation depends on the agreement concluded between the parties to the dispute and the mediator. The Committee considers that under Article 16 of the Charter, the legal protection of the family includes the provision of mediation services whose object should be to avoid the further deterioration of family conflicts. To be in conformity with Article 16, these services must be easily accessible to all families. In particular families must not be dissuaded from seeking such services for financial reasons. Providing these services free of charge constitutes an adequate measure to this end. Otherwise, in case of need, a possibility of access for families should be provided. The Committee asks the next report to indicate what assistance is available for families in case of need.

Domestic violence against women

The Committee takes note of new provisions governing interim measures – such as preliminary proceedings in cases of domestic violence – that entered into force on 1 January 2014 (out of the reference period). Moreover, the Victims of Crime Act, which entered into force on 1 August 2013, added new provisions to regulate interim measures with a view to protecting the aggrieved party, persons closely related to her, preventing the accused party from committing a crime and ensuring effective implementation of criminal proceedings. The report provides a list of interim measures that can be imposed such as the prohibition of any contact with the aggrieved party, the prohibition to enter the common home, etc. Interim measures can only be ordered by a court and, at the pre-trial stage, by the chief judge at the initiative of the public prosecutor or by the public prosecutor. The Victims of Crime Act specifies the forms of support and the rights of particularly vulnerable victims of crime, such as the right to legal aid, to protection of privacy, etc.

As regards the situation in practice, the report mentions the National Action Plan for Prevention of Domestic Violence for 2011-2014, which has been approved by a resolution on 13 April 2011. The Plan aims at dealing with this issue in a systemic and comprehensive manner and includes 32 tasks assigned to the different ministries and other entities. The report also indicates that on 31 December 2013 there were 407 social services indicating domestic violence victims as their target group. Further, under the new school educational programme new police recruits are to be trained on how to tackle domestic violence. The

Committee wishes the next report to indicate the outcome of these initiatives since 31 December 2013.

Economic protection of families

Family benefits

The Committee concluded previously (Conclusions XIX-4 (2011)) on a non-conformity on the ground that the level of family benefits did not constitute an adequate income supplement.

The report indicates that as of 1 January 2012 the regularly paid family benefits include the parental allowance and the child benefits.

As regards child benefits, MISSOC indicates that the entitlement to child benefits is limited to the family with an income under 2.4 times the family living minimum. In 2013, the monthly child benefits was €18 for children aged under 6, €22 for children aged 6 to 15 and €25 for children aged 15 to 26. According to Eurostat, the median equivalised income in 2013 was €641 per month. The Committee notes that child benefits range from 2.8% of the median equivalised income for children aged under 6 to 3.9% for children aged 15 to 26. The report indicates also that in 2013 19.6% of families received child benefits. The Committee recalls that child benefits should be provided to a significant number of families (Conclusions XVII-1 (2004) Spain). The Committee concludes that the situation is not in conformity on the ground that family benefits are not of an adequate level for a significant number of families.

Vulnerable families

In its previous conclusion (Conclusions XIX-4 (2011)), the Committee asked for a description of the measures taken to offer Roma families economic protection.

The report indicates that the Ministry of Labour and Social Affairs receives assistance from the European Social Fund in view of supporting social integration of members of Roma localities in areas like education, access to social services, human resources and employment. The eligible applicants for financial grants include social service providers, non-governmental organisations, regions, municipalities and organisations that engage in the social area and educational institutions. The Ministry receives also fundings from the European Regional Development Fund in view of developing social integration services focused on socially excluded Roma localities/communities. The call is aimed at municipalities, unions of municipalities and non-governmental organisations. The report provides several figures in respect of the developed programmes: 18 projects focusing on municipalities were allocated €8.6 million with support that will be granted to 7,488 beneficiaries and 17 projects focusing on regions were allocated €13.5 million with support that will be granted to 17,093 beneficiaries. The Committee wishes the next report to provide further information on the steps taken to ensure the economic protection of Roma families.

Equal treatment of foreign nationals and stateless persons with regard to family benefits

The report indicates that nationals of other States parties to the European Social Charter legally residing and /or working in the Czech Republic are entitled from the beginning of their period in the country to benefits under the material needs assistance, living allowance and housing supplement systems. Moreover, foreigners who have received a stay permit linked to the performance of a gainful activity have also equal access to family benefits provided that they meet the eligibility requirements for the specific benefit.

The Committee asks the next report to indicate whether stateless persons and refugees are treated equally with regard to family benefits.

Conclusion

The Committee concludes that the situation in Czech Republic is not in conformity with Article 16 of the 1961 Charter on the grounds that:

- housing conditions of Roma families are not adequate;
- family benefits are not of an adequate level for a significant number of families.

Article 17 - Right of mothers and children to social and economic protection

The Committee takes note of the information contained in the report submitted by the Czech Republic. It also takes notes of the information contained in the comments by certain NGOs (Liga lidských práv, MDAC, Forum Human Rights, LUMOS, Inclusion Europe, SPMP, QUIP, DownSyndrom CZ, Organizace Pro Pomoc Uprchlíkům) of 31 January 2015, in the additional comments by Forum Human Rights of 27 October 2015 as well as of the Government's complementary observation of 24 November 2015.

The legal status of the child

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

Protection from ill-treatment and abuse

In its previous conclusion (Conclusions XIX-4 (2011)) the Committee found that the situation was not in conformity with the Charter as there was no explicit prohibition in legislation of corporal punishment in the home and in institutions.

In its decision on the merits of 12 December 2014 of Complaint No. 96/2013, Association for the Protection of All Children (APPROACH) v. the Czech Republic (§§ 49-51), the Committee noted that the provisions of the domestic law referred to in the context of this complaint prohibit serious acts of violence against children, and that national courts will sanction corporal punishment provided it reaches a specific threshold of gravity. However none of the legislation referred to by the Government sets out an express and comprehensive prohibition on all forms of corporal punishment of children that is likely to affect their physical integrity, dignity, development or psychological well-being.

Furthermore, there is no clear and precise case-law prohibiting the practice of corporal punishment in comprehensive terms. The Committee observed in particular that also the revised legal provisions (Act No. 303/2013 Coll.) may be read as separating all forms of corporal punishment from the notion of permitted "educational measures".

The Committee likewise took note of the domestic case-law on corporal punishment (§ 34). It noted that there was nothing in the legislation that would allow it to conclude that all corporal punishment would be automatically prohibited. The Government did not contest this. On the contrary, it stated that bodily harm needed to attain a specific threshold of gravity before it amounted to corporal punishment, and that physical punishment was allowed as long as it did not reach the prohibited level of intensity.

The report refers to Act No. 303/2013 Coll., amending certain acts in connection with the adoption of private-law recodification and provides that any person who uses inadequate educational means or restrictions against a child commits an offence, punishable in the form of a fine of up to CZK 50,000 (€ 1 821).

The Committee considers that the situation which it has previously held to be in violation with the Charter has not changed. It reiterates its previous finding of non-conformity on the ground that all forms of corporal punishment are not prohibited in the home and in institutions.

Rights of children in public care

In its previous conclusion the Committee noted that the number of children placed in institutional care was high despite the measures taken to reduce it and replace institutional care with foster care.

In this connection, the Committee particularly noted from the Observations of the UN Committee on the Rights of the Child (UN-CRC, 2011) that Roma children were disproportionately represented among children in these institutions and continued to be

removed from their families on the sole ground that the latter did not have a suitable and stable home, or that their economic and social conditions were not satisfactory.

The Committee notes from Comments of the Czech Republic on the Report by the Commissioner for Human Rights of the Council of Europe, following his visit to the Czech Republic from 17 to 19 November 2010 that on 7 December 2010 the Government adopted Resolution No. 882 on General Measures of the Execution of the Judgments of the European Court of Human Rights – Prevention of the Removal of Children from Parents' Care for Socio-Economic Reasons.

The measures provided for by the Resolution were based on the following premises:

- It is not permissible to remove children from family care solely on the ground of unsuitable housing or other social and economic reasons (unless the child's life, health or favourable development are at serious risk).
- If there are no doubts as to the parents' child-rearing abilities or their emotional ties to the children, the State has a positive obligation to provide the parents with adequate assistance in child rearing, including assistance to overcome the family's adverse housing and material situation which will make it possible for the children to stay in the family.

In this connection, the Committee notes from the report that the Social and Legal Protection of Children Act (No 359/1999 Coll.) explicitly states that insufficient housing conditions or means of a child's parents or other persons responsible for a child's upbringing may not be a reason for compulsory placement of a child in an institutional care facility if the parents are otherwise capable to ensure proper upbringing of the child.

The Committee further notes from the Resolution CM/ResDH(2013)218 of the Committee of Ministers that legislative measures were taken to execute the judgments of the European Court of Human Rights. The new Article 971(3) of the Civil Code explicitly stipulates that "inadequate housing conditions and material situation of parents of the child cannot *per se* be a reason for the court's decision on institutional care.

Amendment No. 401/2012 also made significant changes to the Family Act No. 94/1963. In particular, it is now explicitly prohibited for a court to order institutional care of a child solely for inadequate housing conditions or financial situation of his/her parents. Furthermore, a court can order institutional care for a maximum of three years with a possibility of extending such a period by a new decision for up to three years.

Amendment No. 134/2006 of 14 March 2006 of the Act on Social and Legal Protection of Children imposed on the competent public authorities a duty to provide parents, after a removal of children from their care, immediate and comprehensive assistance with a view to effectively reunifying the family. This task, *inter alia*, includes a duty to assist parents when applying for financial and other kinds of material benefits they are entitled to within the scheme of State social support.

The Committee notes from the information submitted by several NGOs that the number of children placed in institutional facilities has been on a downward trend from 7397 in 2011 to 6549 in 2014, which is true of both open (with or without school) and closed (for children with behavioural problems) institutional facilities. However, according to the NGOs, number of children placed in children's homes remain very high.

According to the report, the National Strategy to Protect Children's Rights for the period 2012-2018 aims at transforming child protection system into more supportive rather than restrictive, with an emphasis on preventive and remedial services rather than institutional care. However, according to the NGOs, the system fails to ensure adequate, accessible and affordable community-based services which would prevent institutionalisation of children such as family support, housing support, street-work and ambulatory services for children and families at risk. Moreover, the Committee notes from the information provided by the NGOs that housing support is often not accessible to families in need. More than a half of all

children placed in institutions place are still being placed there because their families do not have adequate housing and are not provided with any housing support.

The Committee asks the next report to provide information on the number of children taken into institutional care as opposed to foster care. It wishes to be informed, in particular, of Roma children and asks for evidence that the legislative measures implemented, as well as general awareness raising measures and implementation of the National Strategy have had a positive impact on the situation of Roma children in public care. In the meantime, it reserves its position on this issue.

Young offenders

In reply to the Committee's questions, the report states that Act No. 218/2003 Coll., regulating Liability for Unlawful Act of Youth and Court for Juveniles (Juvenile Justice Act), as amended, stipulates in Section 47 that pre-trial detention in juvenile cases must not take longer than two months. Only in cases of a particularly serious violation it must not last longer than six months. The maximum length of a prison sentence of a juvenile cannot exceed 5 years.

In reply to the Committee's question as to whether young offenders have a statutory right to education, the report states that juveniles are placed in special prisons for juveniles. Basic education is compulsory. The conditions for making it possible for young people serving a sentence to complete their compulsory education are stipulated in Act No. 169/1999 Coll., on Imprisonment and on the amendment to some related acts.

The Committee notes from the NGOs information that the juvenile system does not provide children below the age of criminal responsibility (15 years) with individualised treatment and restorative measures. Cases of children younger than 15 years (1371 children in 2012) are allegedly always brought before a juvenile court even for petty offences which is, according to the NGOs, unnecessary and harmful to a child. The Committee asks the next report to provide information in this regard.

Right to assistance

The Committee recalls that Article 17 guarantees the right of children, including unaccompanied minors to care and assistance, including medical assistance (International Federation of Human Rights Leagues (FIDH) v. France, Complaint No 14/2003, decision on the merits of September 2004, § 36). In fact, Article 17 concerns the assistance to be provided by the State where the minor is unaccompanied or if the parents are unable to provide such assistance.

States must take the necessary and appropriate measures to guarantee for the minors in question the care and assistance they need and to protect them from negligence, violence or exploitation, thereby posing a serious threat to the enjoyment of their most basic rights, such as the rights to life, to psychological and physical integrity and to respect for human dignity (Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §82).

The Committee notes that the UN-CRC remains seriously concerned about the continuing practice of detaining asylum-seekers, including children. While noting the ongoing efforts to improve the situation, the UN-CRC is concerned at the situation of detained asylum-seeking families and guardians with minors at the specialised detention centre in Bělá Jezová which does not meet the required standard for asylum-seeking children's well-being and their best interests.

The UN-CRC reiterates its recommendation to the Czech Republic to avoid any form of detention of asylum-seekers under 18 years of age. The UN-CRC further recommends that all possible alternatives are considered, including unconditional release, prior to detention

and emphasizes that this should not be limited to unaccompanied or separated minors, but extended to all cases involving children.

The Committee notes from the information provided by NGOs that the Czech Republic routinely detains families with underage children for immigration purposes and detention of such families is not used as a measure of last resort. Moreover, the conditions of detention are not adequate for accommodating families with children.

The Committee further notes from the additional information submitted by Forum Human Rights that the conditions in the detention centres (such as the detention centres in Běla-Jezová and Běla-Jezováfor) for unlawfully present families and children are very poor, in terms of environment, food, hygiene etc). The Committee notes in this respect from the Observation of the Government that in 2015 the public defender has acknowledged that the conditions of foreigners detained in Bělá Jezová had improved in accordance with the recommendations made by the public defender of rights.

The Committee wishes to be informed of measures taken to protect the children in irregular situation from negligence, violence or exploitation.

Conclusion

The Committee concludes that the situation in the Czech Republic is not in conformity with Article 17 of the 1961 Charter on the ground that all forms of corporal punishment are not prohibited in the home and in institutions.

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 9 - Transfer of earnings and savings

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

The report states that Act No. 219/1995 Coll., the Foreign Exchange Act, as amended, does not provide for any limits governing or restricting the amount of funds to be imported or exported. Consequently, the migrant workers can transfer any desired parts of earnings and savings, provided they comply with the requirements prescribed by the above act.

The Committee refers to its Statement of Interpretation on Article 19§9 in Conclusions XIX-4 (2011), and asks whether there are any restrictions on the transfer of movable property of a migrant worker.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in the Czech Republic is in conformity with Article 19§9 of the 1961 Charter.



January 2016

1961 European Social Charter

European Committee of Social Rights

Conclusions XX-4 (2015)

DENMARK

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 1961 European Social Charter (the 1961 Charter) and the 1988 Additional Protocol (the Additional Protocol). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure

Information on the 1961 Charter, statements of interpretation, and general questions from the Committee, are reflected in the General Introduction to all Conclusions.

The following chapter concerns Denmark which ratified the 1961 Charter on 3 March 1965. The deadline for submitting the 34th report was 31 October 2014 and Denmark submitted it on 10 February 2015. Comments on the 34th report by the Danish Institute of Human Rights were registered on 7 July 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 "Children, families and migrants":

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection of maternity (Article 8),
- the right of the family to social, legal and economic protection (Article 16),
- the right of mothers and children to social and economic protection (Article 17),
- the right of migrant workers and their families to protection and assistance (Article 19).

Denmark has accepted all provisions from the above-mentioned group except Articles 7, 8§§2 to 4 and 19.

The reference period was 1 January 2010 to 31 December 2013.

The conclusions relating to Denmark concern 3 situations and are as follows:

- 1 conclusion of conformity: Article 8§1
- 2 conclusions of non-conformity: Articles 16 and 17

The next report will deal with 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 1 of the 1988 Additional Protocol).

The deadline for submitting the above report was 31 October 2015.

Conclusions and reports are available at www.coe.int/socialcharter.

Article 8 - Right of employed women to protection

Paragraph 1 - Maternity leave

The Committee takes note of the information contained in the report submitted by Denmark. It also takes notes of the information contained in the comments by the Danish Institute for Human Rights registered on 7 July 2015.

Right to maternity leave

The Committee previously noted that in Denmark a pregnant employee is entitled to take 4 weeks' maternity leave before the expected due date and 14 weeks' maternity leave after childbirth. However, only the first two weeks after childbirth are compulsory (Maternity Leave Act Act, No. 1084 of 13 November 2009, Sections 6 and 7). The Committee had also noted that, according to a 2007 survey, 99% of women had taken a 14 weeks' postnatal leave.

The Committee recalls that Article 8§1 of the Charter requires that a right to maternity leave of at least 12 weeks be guaranteed by law to all categories of employees, with a compulsory period of postnatal leave of no less than six weeks. Where compulsory leave is less than six weeks, the rights guaranteed under Article 8 may be realised through the existence of adequate legal safeguards that fully protect the right of employed women to choose freely when to return to work after childbirth (Conclusions XIX-4, 2011, Statement of interpretation on Article 8§1). In the light thereof, the Committee had asked what legal safeguards exist to avoid any undue pressure from employers on women to shorten their maternity leave; whether there is an agreement with social partners on the question of postnatal leave which protects the free choice of women and whether collective agreements offer additional protection. In addition, it asked for information on the general legal framework surrounding maternity (for instance, whether there is a parental leave system whereby either parents can take paid leave at the end of the maternity leave).

In response to these questions, the Committee notes that parents in Denmark are entitled to a total of 52 weeks of paid leave. In addition to the 18 weeks leave provided to the mother (4 weeks before and 14 weeks after childbirth), fathers are indeed entitled to 2 weeks paternity leave and the remaining 32 weeks leave can be divided among the parents as they wish. Benefits are conditional upon the the parents meeting the employment requirements set out in the Maternity Leave Act and are set at the same level as sickness benefits. The right to full or partial pay from the employer during leave depends on provisions of collective agreements or individual contracts.

The Act on Equal Treatment on the Labour Market (Act No. 711 of 20 August 2002) guarantees protection against all discrimination related to pregnancy or parental leave: an employer who exerts undue pressure on an employee exercising her or his rights to maternity, paternity or parental leave with the aim of shortening the leave, i.e. with threats of dismissal or less favourable terms and conditions on return to work, is acting contrary to the law. Substantial changes to terms and conditions upon return to work may amount to a dismissal within the scope of the law and, in case of illegal dismissal on grounds of pregnancy and/or maternity, paternity or parental leave, the employer must pay a compensation of on average 9 months' pay. It is up to the employer to prove that the dismissal was not based on those grounds. The report also indicates that the establishment of the Equal Treatment Board in 2000 as an alternative to the civil justice system has greatly improved the enforcement of the non-discrimination legislation.

In addition to the aforementioned protection against dismissal and the general acceptance of the right to maternity leave, the report indicates that Danish collective agreements in general provide for pay during the maternity leave of 14 weeks. In order to cover the costs of such measures, several collective agreements have introduced equalisation schemes, which oblige all employers to contribute to funds covering the costs of pregnancy, maternity, paternity and parental leave. This solution was extended to cover the whole private sector in

2006, with the entry into force of the Act on Maternity Equalization Scheme (Act No. 417 of 8 May 2006).

According to the information provided by the Danish Institute for Human Rights, there is no evidence that pressure is exercised on employees to shorten their statutory postnatal leave.

In the light of this information, the Committee considers that the guarantees offered are of an adequate level to avoid pressure on women to return to work before the expiry of their maternity leave.

Right to maternity benefits

Eligibility to full maternity benefits for an employee is based on a period of work of at least 120 hours in the 13 weeks preceding the paid leave (Section 27, Maternity Leave Act). The Committee notes that Section 27(2)iv of the Maternity Leave Act provides that in the calculation of the abovementioned 13-week period, periods shall be included in which the employee has, inter alia, received unemployment benefits or an allowance in lieu thereof. The Committee accordingly finds that the situation is in conformity on this point.

The Committee had furthermore previously noted that part-time workers, in the private and in the public sector, are entitled on the same conditions as full-time workers to maternity leave and benefit and that are also entitled to maternity, paternity and adoption cash benefits the persons who are unemployed, who have completed a vocational training course for a period of at least 18 months or are doing a paid work placement as part of activation measures, students in paid internship following education regulated by law and, upon certain conditions, self-employed persons.

The amount of maternity benefit is calculated on the basis of the employee's hourly wage, with a maximum of DKK 4,075 (= € 546 at the rate of 31 December 2013) per week or DKK 110.35 (€ 15) per hour in 2014, which corresponds to maximum unemployment benefits.

In addition, the Committee also noted that public sector employees remain entitled to their full pay during leave, while entitlement to full or partial pay from the employer in the private sector depends on the provisions of collective agreements or individual contracts. According to another source (Bloksgaard, L. and Rostgaard, T. (2013) "Denmark country note" in: P.Moss (ed.) International Review of Leave Policies and Research 2013, available at www.leavenetwork.org), about 75% of the workforce are covered by collective agreements which provide for full or partial compensation during leave from their employer up to their former earning. The Committee asks the next report to clarify whether a worker not receiving maternity benefits might still be entitled to employer compensation during maternity leave corresponding to at least 70% of her base salary and to provide all relevant information which would clarify what categories of employees (and what percentage they represent) are not getting during maternity leave a compensation (from the employer and/or in terms of maternity benefits) corresponding to at least 70% of their base salary. Furthermore, with reference to its Statement of Interpretation on Article 8§1 (Conclusions XX-4 (2015)), the Committee asks whether the minimum rate of maternity benefits corresponds at least to the poverty threshold, defined as 50% of the median equivalised income, calculated on the basis of the Eurostat at-risk-of-poverty threshold value.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in Denmark is in conformity with Article 8§1 of the 1961 Charter.

Article 16 - Right of the family to social, legal and economic protection

The Committee takes note of the information contained in the report submitted by Denmark. It also takes note of the information contained in the comments by the Danish Institute for Human Rights of 7 July 2015.

The Committee understands that there have been no changes to the situation as regards childcare facilities, family counselling services, participation of associations representing families, rights and obligations of spouses and mediation services. It previously considered the situation to be in conformity on all these issues.

Social protection of families

Housing for families

Pursuant to the Danish Act on Social Housing, social housing is open to the entire population with a special focus on vulnerable groups with low income. Each tenant who wishes to have access to such housing has to put his/her name on a waiting list. In order to ensure social housing for vulnerable groups local authorities have a right to dispose of 25% of all vacant such dwellings. The waiting lists are then administered by non-profit housing organisations under the inspection of local authorities. The report indicates that there are approximately 600,000 social housing units representing 22% of the total number of dwellings. In 2013, 83,000 households with children with low income had 42% of the rent covered by housing benefit. Between 1 January 2010 and 31 December 2013, approximately 9,000 social housing family dwellings have been constructed or are under construction.

The Committee notes from the comments submitted by Danish Institute for Human Rights' (DIHR) that the policies for improving living conditions in the challenged social housing neighbourhoods have the inverse effect of preventing vulnerable tenants from moving into these neighbourhoods. The Committee therefore asks the next report to indicate what steps are being taken to remedy this situation.

As to protection against unlawful eviction, States must set up procedures to limit the risk of eviction (Conclusions 2005, Lithuania, Norway, Slovenia and Sweden). The Committee recalls that in order to comply with the Charter, legal protection for persons threatened by eviction must include:

- an obligation to consult the parties affected in order to find alternative solutions to eviction;
- an obligation to fix a reasonable notice period before eviction;
- accessibility to legal remedies;
- accessibility to legal aid;
- compensation in case of illegal eviction

The Committee asks the next report to provide detailed information on the legal framework ensuring the protection against unlawful eviction in view of the case law mentioned above.

As regards forced eviction, the report makes reference to several measures adopted by the Government aiming at preventing the eviction of tenants. First, the Ministry of Social Affairs in 2010 launched a very detailed information campaign guiding tenants and municipalities about different options to avoid eviction. Second, on 1 January 2012 the Government increased the financial aid for certain groups to improve the possibilities of paying the rent. Third, in 2011 and 2012 the Government provided financial support in order to hire counsellors on social housing. Fourth, as from 1 January 2013 the Government improved the opportunities for municipalities to provide financial aid for the payment of the rent, if it can prevent eviction.

With regard to Roma families, the report stresses that no special measures are taken to secure their right to housing since pursuant to the Social Housing Act they enjoy equal rights

to nationals in accessing social housing. The Committee asks for information in the next report on the situation in practice as regards access to housing for Roma families.

Legal protection of families

Domestic violence against women

In its previous conclusion (Conclusions XIX-4 (2011)) the Committee asked information on the action plan "National Strategy to Combat Violence in Intimate Relations", which had been launched in 2010. The Committee notes in this regard that the action plan aims at tackling the issue of domestic violence by:

- giving priority to prevention and early intervention in order to ensure that fewer children and teenagers grow up in homes touched by violence and if violence starts it will be stopped as quickly as possible;
- fast and effective help for victims of domestic violence followed by a long-term plan for helping the victims so that they can live without fear of further attacks;
- more research and collaboration among professional groups.

The Committee also notes that these activities and services are financed by the national budget, which allocated €4.7 million over a four-year period to more than 30 different initiatives in the frame of this National Strategy. It asks that the next report indicates the outcomes of this action plan.

The Committee notes from the DIHR comments that in 2012, the regulations on restraining orders, barring orders and eviction were assembled in a single act with the purpose of strengthening the protection of victims exposed to violence and harassment. The act gives the police the authority to remove the aggressor from the shared home not allowing him or her to return in case of a well-founded assumption that the violence will continue. However, the DIHR stresses that each police district uses this instrument differently. The Committee asks the next report to indicate whether steps are taken to ensure a uniform and effective handling of cases about domestic violence in all police districts.

The Committee notes that Denmark ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence on 23 April 2014 (outside the reference period).

Economic protection of families

Family benefits

According to Eurostat data, the monthly median equivalised income in 2013 amounted to €2,238. According to MISSOC, as of 1 July 2014 the amount of the child benefit was for each child of 0-2 years €197 per month; for each child of 3-6 years €156 per month; for each child of 7-14 years €123 per month; and for each child of 15-17 years €123 per month. Child benefit represents a percentage of that income as follows: 8.8% for each child of 0-2 years; 6.9% for each child of 3-6 years; 5.4% for each child of 7-14 years and 5.4% for each child of 15-17 years.

The Committee considers that, in order to comply with Article 16, child benefit must constitute an adequate income supplement, which is the case when they represent a significant percentage of median equivalised income. On the basis of the figures indicated, the Committee considers that the above-mentioned amounts of benefits are compatible with the 1961 Charter.

Vulnerable families

In its previous conclusion (Conclusions XIX-4 (2011)) the Committee asked to be provided with up-dated information on the implementation of means to ensure the economic

protection of various categories of vulnerable families, including Roma families. The report provides no information in this respect therefore the Committee reiterates its request. Should the next report not provide the requested information, there will be nothing to show that the situation is in conformity with the 1961 Charter.

Equal treatment of foreign nationals and stateless persons with regard to family benefits

The Committee previously concluded (Conclusions XIX-4 (2011)) that the situation was not in conformity with the 1961 Charter on the ground that the length of residence requirements for ordinary and special child allowances were excessive. It also noted that the new legislation that was to enter into force on 1 January 2012 whereby entitlement would be "earned" gradually through periods of employment or residence in Denmark did not appear to bring the situation into conformity with the 1961 Charter. The report does not contain any new information on the length of residence requirements despite what was mentioned in the report of the Governmental Committee (Report concerning Conclusions XIX-4 (2011)). On this basis, the Committee considers that the situation remains in breach of the 1961 Charter.

The Committee asks the next report to indicate whether stateless persons and refugees are treated equally with regard to family benefits.

Conclusion

The Committee concludes that the situation in Denmark is not in conformity with Article 16 of the 1961 Charter on the ground that the length of residence requirements for ordinary and special child allowances for nationals of States Parties are excessive.

Article 17 - Right of mothers and children to social and economic protection

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

The legal status of the child

The Committee notes that there has been no change to the previous situation.

Protection from ill-treatment and abuse

The Committee notes that the situation which it has previously considered to be in conformity with the Charter has not changed. Corporal punishment is prohibited in all settings, including in the home.

Rights of children in public care

According to the report, in 2014 the Government launched a major reform of the supervision of placement facilities. The responsibility to approve and supervise all types of placement for children are now with 5 supervision units that cover each region in Denmark. The aim of the reform is to improve standards and the quality of care and treatment. DKK 280 million (37.5 million €) has been allocated for the period 2014-2017 to initiatives that ensure early support for vulnerable children.

As regards the criteria for restriction of custody or parental rights, according to the report, the reform underlines the importance of timely and correct action from the social authorities when they receive notification about a child who is presumed to have been exposed to abuse. The social authorities are obliged to evaluate every notification within 24 hours and to decide if immediate action is needed. They have to conduct an interview with the child during the process of investigating the notification.

The Committee notes that by the end of 2012 there were 12,025 children placed outside the home of whom 57% were placed in foster family care and 37% in residential care.

Young offenders

According to the report, the age of criminal responsibility has been raised from 14 to 15 years (by amendment to the Criminal Code, Act No. 158 of 28 February 2012).

In its previous conclusion (Conclusions 2011) the Committee found that the situation was not in conformity with the Charter on the following grounds:

- prison sentences for minors could go up to 20 years;
- minors could be subject to 8 months of pre-trial detention;
- solitary confinement of minors could last up to four weeks.

As regards the first ground, according to the report, in 2010 Article 33(3) of the Criminal Code was amended (Act No. 711 of 25 June 2010) and now provides that if an offender had not reached the age of 18 years when the offence was committed, the offender cannot be sentenced to life. When determining a penalty, the court shall in accordance with Article 82(1) of the Criminal Code, in general, consider it a mitigating circumstance if the offender had not reached the age of 18 years when the offence was committed.

The Committee observes that when referring to the juvenile justice, the competent international bodies require that the prison sentences imposed on juveniles should be as short as possible (Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice, Recommendation CM/Rec(2008)11 of the Committee of Ministers of the Council of Europe concerning the European Rules for juvenile offenders, United Nations Standard Minimum Rules for the Administration of Juvenile Justice). Accordingly, the Committee asks the States Parties to the Charter to take all possible measures to reduce the

maximum length of prison sentence for young offenders, as well as to ensure that they make the best possible use of their right to education and vocational training, with a view to their reintegration into the society, once the sentence has been served.

As regards the second ground, according to the report, the Parliament has adopted an amendment to the Administration of Justice Act (Act No. 493 of 17 June 2008). The key purpose of this amendment – with regard to pre-trial detention – is to restrict long pre-trial detentions. Thus Section 768a (2) prescribes that unless the court finds that very special circumstances are involved, pre-trial detention must not, in cases in which the detainee is less than 18 years old, be extended for a continuous period that exceeds:

- 4 months when the accused is charged with an offence that under the law does not carry a sentence of imprisonment for 6 years; or
- 8 months when the accused is charged with an offence that under the law may carry a sentence of imprisonment for 6 years or more.

The report states that Denmark has continued the efforts to restrict the duration of pre-trial detentions, including pre-trial detentions of minors.

The Committee notes that minors can still be held in pre-trial detention for up to 8 months. Therefore, the situation which it has previously found not to be in conformity has not changed. The Committee reiterates its previous finding of non-conformity on this ground.

As regards the third ground, according to the report the four-week limit may only be exceeded if the charge concerns intentional violation of Chapter 12 or 13 of the Criminal Code (terrorism, etc.). The principle of proportionality has the consequence that solitary confinement exceeding four weeks can only be used in exceptional cases where the detainee is suspected of an extremely severe offence and the risk of the detainee obstructing the investigation is very substantial. The age of the detainee is of great significance when considering solitary confinement. Therefore solitary confinement for a detainee of the age of 15 or 16 years – as a principal rule – cannot take place.

The Committee observes that as regards minors, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has expressed very strong reservations as concerns any form of solitary confinement of juveniles as this can compromise their physical and/or mental integrity. To this end, it considers that a juvenile should not be placed in solitary confinement for disciplinary purposes for more than three days (Report to the Danish Government on the visit to Denmark carried out by the CPT from 4 to 13 February 2014).

The Committee considers that the situation which it has previously found not to be in conformity has not changed. The Committee therefore reiterates its finding of non-conformity on this ground.

Right to assistance

The Committee recalls that Article 17 guarantees the right of children, including unaccompanied minors to care and assistance, including medical assistance (International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, decision on the merits of September 2004, § 36). In fact, Article 17 concerns the assistance to be provided by the State where the minor is unaccompanied or if the parents are unable to provide such assistance.

States must take the necessary and appropriate measures to guarantee for the minors in question the care and assistance they need and to protect them from negligence, violence or exploitation, thereby posing a serious threat to the enjoyment of their most basic rights, such as the rights to life, to psychological and physical integrity and to respect for human dignity (Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §82).

The Committee notes from the Concluding Observations of the UN Committee of the Rights of the Child (2011) that there were instances of unaccompanied asylum-seeking children disappearing prior to the final processing of their asylum case.

The Committee asks what assistance is given to children in irregular situation to protect them against negligence, violence or exploitation.

Conclusion

The Committee concludes that the situation in Denmark is not in conformity with Article 17 of the 1961 Charter on the grounds that:

- minors can be subject to eight months of pre-trial detention;
- solitary confinement of minors can last four weeks.



January 2016

1961 European Social Charter

European Committee of Social Rights

Conclusions XX-4 (2015)

GERMANY

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 1961 European Social Charter (the 1961 Charter) and the 1988 Additional Protocol (the Additional Protocol). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure

Information on the 1961 Charter, statements of interpretation, and general questions from the Committee, are reflected in the General Introduction to all Conclusions.

The following chapter concerns Germany which ratified the 1961 Charter on 27 January 1965. The deadline for submitting the 32nd report was 31 October 2014 and Germany submitted it on 12 December 2014.

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 "Children, families and migrants":

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection of maternity (Article 8),
- the right of the family to social, legal and economic protection (Article 16),
- the right of mothers and children to social and economic protection (Article 17),
- the right of migrant workers and their families to protection and assistance (Article 19).

Germany has accepted all provisions from the above-mentioned group except Articles 7§1, 8§2 and 8§4 .

The reference period was 1 January 2010 to 31 December 2013.

The conclusions relating to Germany concern 23 situations and are as follows:

- 16 conclusions of conformity: Articles 7§2, 7§3, 7§4, 7§6, 7§7, 7§8, 7§9, 8§1, 8§3, 16, 17, 19§1, 19§3, 19§5, 19§7 and 19§9
- 5 conclusions of non-conformity: Articles 7§5, 19§4, 19§6, 19§8 and 19§10

In respect of the other 2 situations related to Articles 7§10 and 19§2, 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 Germany under the 1961 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 16

- The Bavarian legislator introduced a new Act which entered into force on 30 August 2012. The new Act provides for an entitlement to Land child-raising allowance of parents of foreign origin without the characteristic of "nationality" being taken into account.
- On 25 September 2012 the Council of Ministers of the Land of Baden-Württemberg decided to end the eligibility for state child-raising allowance for all children born on or after 1 October 2012.

Article 17§1

The Law governing the expansion of assistance for pregnant women and the regulation of anonymous childbirth, which came into force on 1 May 2014, reinforces the rights of the child.

The fundamental right of the child to know his or her origins is guaranteed in that he or she is able to inspect the mother's data and obtain information on her name, address and date of birth.

The next report will deal with 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 1 of the 1988 Additional Protocol).

The deadline for submitting the above report was 31 October 2015.

Conclusions and reports are available at www.coe.int/socialcharter.

Article 7 - Right of children and young persons to protection

Paragraph 2 - Higher minimum age in dangerous or unhealthy occupations

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

The report indicates that the Youth Employment Protection Act of 12 April 1976 (*Jugendarbeitsschutzgesetz – JArbSchG*) and the Child Labour Protection Ordinance of 23 June 1998 (*Kinderarbeitsschutzverordnung – KindArbSchV*) protect young people under the age of 18 from work which is too difficult, dangerous or unsuitable for them. The Committee concluded previously that the relevant provisions of the Youth Employment Protection Act (Sections 22 to 31) afford sufficient protection to the health and safety of young workers (Addendum to Conclusions XV-2).

As regards the employment of young persons on merchant vessels, the report states that the Maritime Labour Act, which replaced the former Seafarers' Act on 1 August 2013, contains occupational restrictions applicable to young people. These restrictions are supplemented by a catalogue of activities which should not be carried out by young crew members. The report indicates that the captain is responsible for ensuring that young crew members are not involved in these activities.

The Committee recalls that there must be an adequate statutory framework to identify potentially hazardous work, which either lists such forms of work or defines the types of risk (physical, chemical, biological) which may arise in the course of work (Conclusions 2006, France). The Committee asks if the law/regulations provide such list of activities (besides the above mentioned list for seafarers) with hazard to life, health, physical or mental development of young people and if the list is updated in view of new occupational health and safety risks.

The Committee asks for more detailed information on how the authorities monitor the possible illegal employment of young workers in dangerous or unhealthy occupations. The Committee wishes to know if sanctions are imposed in practice against employers who do not comply with the restrictions on the employment of young persons in work which entails exposure to danger.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Germany is in conformity with Article 7§2 of the 1961 Charter.

Article 7 - Right of children and young persons to protection

Paragraph 3 - Prohibition of employment of young persons subject to compulsory education

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

In its previous conclusions, the Committee asked the next report to indicate whether the situation in Germany complies with the principles set out in its Statement of interpretation on Article 7§3 in the General Introduction Conclusions XIX-4 (2011). In particular, it asked whether the rest period free of work has a duration of at least two consecutive weeks during the summer holiday and what are the rest periods during the other school holidays.

The report indicates that young people in compulsory full-time education in Germany are allowed to work a maximum of four weeks in the calendar year (Section 5§4 of the Youth Employment Protection Act – *JArbSchG*). The annual length of school holidays in Germany amounts to a total of 75 working days according to the "Hamburg Agreement" of 28 October 1964, and the individual Länder may "make pedagogical considerations paramount" in scheduling the holidays. Young persons may work for a maximum 20 days during the holidays. The report indicates that it is not specified how young persons may spread these 20 (4 weeks of 5 days) available working days across the official 75 days of holiday.

The report states that young persons will have in any case at least two consecutive weeks in the summer holidays. The Committee nevertheless asks information as regards the distribution of holidays over the school year and the timing of the uninterrupted period of rest with regard to the other holidays than the summer holiday.

The Committee refers to its Statement of interpretation on the permitted duration of light work and recalls that children under the age of 15 and those who are subject to compulsory schooling are entitled to perform only "light" work. Work considered to be "light" in nature ceases to be so if it is performed for an excessive duration. States are therefore required to set out the conditions for the performance of "light work" and the maximum permitted duration of such work. The Committee considers that children under the age of 15 and those who are subject to compulsory schooling should not perform light work during school holidays for more than 6 hours per day and 30 hours per week in order to avoid any risks that the performance of such work might have for their health, moral welfare, development or education (General Introduction, Conclusions XX-4 (2015)). The Committee asks what is the daily and weekly duration of light work permitted to children who are still subject to compulsory education during school holidays.

The Committee previously asked whether children still subject to compulsory education are allowed to work before school, and, if the case arises, under what conditions (Conclusions XIX-4 (2011)). The report indicates that the employment of children and young people of compulsory school age is prohibited (Section 5§1 of *JArbSchG*). Children of 13 years and above and young people of compulsory school age may be employed with the observance of the conditions laid down in Sections 5§3 of *JArbSchG* and the Child Labour Protection Ordinance, so that the employment has no adverse effect on school attendance or the children's ability to benefit from tuition.

The report indicates that children may never work more than two hours (or more than three hours in agricultural family-owned businesses), five days per week and not before 8 a.m. or after 6 p.m. Any employment in the morning before school or during school time is expressly forbidden. The report states that the delivery of newspapers from 6 a.m. on a school day, for example, would not be permissible in Germany for children and young people required to attend school full-time.

The Committee asks for more detailed information on the activities of the authorities (the Labour Inspectorate) of monitoring and detecting cases of possible illegal employment of young persons subject to compulsory education. The Committee wishes to know what sanctions are imposed in practice against the employers for infringements of the applicable legislation.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Germany is in conformity with Article 7§3 of the 1961 Charter.

Article 7 - Right of children and young persons to protection

Paragraph 4 - Length of working time for young persons under 16

The Committee notes from the information provided in the German report that there have been no changes to the legal situation which it has previously found to be in conformity with Article 7§4 of the 1961 Charter. It asks the next report to provide a full and up-to-date description of the situation in law and in practice.

Conclusion

The Committee concludes that the situation in Germany is in conformity with Article 7§4 of the 1961 Charter.

Article 7 - Right of children and young persons to protection

Paragraph 5 - Fair pay

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

Young workers

In its previous conclusion (Conclusions XIX-4 (2011)), the Committee requested that the next report provide up-to-date information on the wages paid to young workers, so as to make it possible to determine whether the situation in this respect is still in conformity with the 1961 Charter.

The report indicates that in the current industry-wide collective agreements there are only two sectors in which wages have been negotiated for the young persons under 18 years. As regards the wages paid to young employees working in these particular sectors (chemical industry in Bavaria and in Eastern Germany; confectionery industry in Lower Saxony/Bremen and in Eastern Germany), the Committee notes that, on the basis of the figures provided in the report, the difference between the starting wage of adult workers and the lowest wage for young workers is approximately 20%, which it considers to be acceptable under Article 7§5 of the 1961 Charter. The Committee notes that the adult starting salary in the above mentioned sectors is above 60% of the net average wage which is considered sufficient to secure a decent standard of living.

The Committee recalls that the adult reference wage must in all cases be sufficient to comply with Article 4§1 of the Charter. If the reference wage is too low, even a young worker's wage which respects the above-mentioned percentage differentials is not considered fair (Conclusions XII-2 (1992), Malta). The Committee points out that it has concluded that the situation in Germany is not in conformity with Article 4§1 of the 1961 Charter on the ground that the lowest wage paid does not secure a decent standard of living (Conclusions XX-3 (2014), Germany).

The report indicates that most collective agreements no longer differentiate between adolescent and adult workers. The Committee understands that the young workers covered by collective agreements are being paid at the same level of wage as the adults and it asks the Government to confirm this understanding. The Committee notes, on the basis of the figures provided in the report, that the young workers wage represents more than 80% of the minimum threshold (60% of the net average wage) which is considered enough to ensure a decent standard of living. The Committee notes that only in one situation, namely the baking industry in Brandenburg, the level of young workers wage seems to be under the required threshold. The Committee asks if there are any other factors to be taken in consideration when assessing if the young employees working in the baking industry in Brandenburg receive a fair wage.

The report does not provide any information on the minimum wages paid to young workers who are not covered by collective agreement. The Committee asks for any surveys, studies and examples indicating the wages paid to young workers who are not covered by collective agreements.

Apprentices

The Committee notes from the information on different economic sectors contained in the report that apprentices at the beginning of an apprenticeship could receive more than one third of the adult starting wage in most sectors (with the exception of construction, painting and decorating sectors throughout Germany, private transport industry in Thuringia and horticulture and landscaping in Western Germany) which is in conformity with Article 7§5 of the 1961 Charter.

However, at the end of the apprenticeship the allowance is far lower than the required two thirds under the Article 7§5 of the 1961 Charter for most of the economic sectors with the exception of the printing industry in Schleswig – Holstein/Hamburg/Mecklenburg-Vorpommern and the textile industry in southern Bavaria. The Committee recalls that under Article 7§5, the allowance paid to apprentices must be at least one third of an adult's starting or minimum wage at the beginning of their apprenticeship and reach at least two thirds by the end (Conclusions 2006, Portugal). In accordance with the methodology adopted with regard to Article 4§1, wages are taken into account after deduction of both social security contributions and taxes. The Committee recalls its opinion that, as for young workers, where the adult reference wage is very low, the wage of apprentices cannot be considered fair (Conclusions XII-2 (1992), Malta). The Committee points out that it has concluded that the situation in Germany is not in conformity with Article 4§1 of the 1961 Charter on the ground that the lowest wage paid does not secure a decent standard of living (Conclusions XX-3 (2014) Germany).

As regards public sector apprentices, the report indicates that the "Collective Agreement for Public Sector Trainees (TVAöD)" of 13 September 2005 (most recently amended by collective agreement No. 4 of 1 April 2014) gives public sector trainees the right to negotiate independently. The TVAöD covers basically all public sector occupations requiring training and is supplemented by specific regulations. The report indicates that apprentices' wages in the public sector are higher than average. The Committee notes, from the examples and information on allowances paid to apprentices in the public sector provided in the report, that apprentices at the beginning of their apprenticeship may receive more than one third of the adult starting wage, while at the end of the apprenticeship the allowance is lower than the required two thirds under Article 7§5 of the 1961 Charter.

Conclusion

The Committee concludes that the situation in Germany is not in conformity with Article 7§5 of the 1961 Charter on the ground that the allowances paid to apprentices are inadequate.

Article 7 - Right of children and young persons to protection

Paragraph 6 - Inclusion of time spent on vocational training in the normal working time

The Committee notes from the information provided in the German report that there have been no changes to the legal situation which it has previously found to be in conformity with Article 7§6 of the 1961 Charter. It asks the next report to provide a full and up-to-date description of the situation in law and in practice.

Conclusion

The Committee concludes that the situation in Germany is in conformity with Article 7§6 of the 1961 Charter.

Article 7 - Right of children and young persons to protection

Paragraph 7 - Paid annual holidays

The Committee notes from the information provided in the German report that there have been no changes to the legal situation which it has previously found to be in conformity with Article 7§7 of the 1961 Charter. It asks the next report to provide a full and up-to-date description of the situation in law and in practice.

Conclusion

The Committee concludes that the situation in Germany is in conformity with Article 7§7 of the 1961 Charter.

Article 7 - Right of children and young persons to protection

Paragraph 8 - Prohibition of night work

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

The report indicates that according to Section 14§1 of the Youth Employment Protection Act of 12 April 1976 (*Jugendarbeitsschutzgesetz – JArbSchG*), young people who are no longer of compulsory school age may only be employed between the hours of 6 a.m. and 8 p.m.

The report indicates that young people must always be guaranteed an uninterrupted period of at least 12 hours of leisure time after the end of work each day so that sufficient night – time rest is ensured (Section 13, JArbSchG). Young people doing creative work in media and the arts are entitled to an uninterrupted period of at least 14 hours of leisure time (Section 14§7, JArbSchG).

The Youth Employment Act provides some exceptions in relation to young people aged 16 and above who may be employed in certain sectors such as bakeries and confectioners from 5 a.m. (17-year-olds may work in bakeries from 4 a.m.); in agriculture from 5 a.m. or until 9 p.m., and in catering and at fairs and exhibitions until 10 p.m. Young people aged 16 and above may be employed until 11 p.m. in businesses with shift work. In any case, the Act stipulates that employment on the day before a school/training day is only permissible until 8 p.m., if tuition begins before 9 a.m (Section 14§4, JArbSchG).

Further exceptions relate to transport connections, when young people are then allowed to work until 9 p.m. It is possible for young people aged 16 years and above to be employed from 5.30 a.m. or until 11.30 p.m. in businesses working shifts, if this means that unnecessary waiting times are avoided. During the warm summer months, young people may be employed from 5 a.m. in businesses where work is done in high temperatures. Young people may do creative work in media and the arts until 11 p.m..

In its previous conclusion (Conclusions XIX-4 (2011)), the Committee noted that the authorisation that had to be obtained from the supervisory authority to institute exceptions to the prohibition on night work for young people under the age of 18 was eliminated under Section 7d of the Act of 21 June 2005 on the implementation of the regions' proposals for reduced bureaucracy and for deregulation. It asked the Government to indicate the manner in which supervision of the implementation of exceptions to the prohibition on night work for young people under the age of 18 is exercised. The report confirms that the authorisation of exceptions to the prohibition on night work for young people is no longer required.

The Committee recalls that under Article 7§8 some derogations to the prohibition of night work are allowed provided that they are explicitly provided in national law, in very limited cases and to the extent that they are necessary for the proper functioning of the economic sector in which they are applied (Conclusions XVII-2 (2005), Malta). In order to assess whether the situation is in conformity with the 1961 Charter, the Committee requests information on the proportion of young workers not covered by the ban on night work, including on the number of young workers employed in the above-mentioned sectors. The Committee requests information showing that the exceptions to the prohibition of night work are necessary for a proper functioning of the relevant economic sectors and that the number of young workers concerned is low. In the meantime, the Committee reserves its position on this point.

The report indicates that the supervision of the implementation of the Youth Employment Protection Act, including the regulations on the prohibition of night work, is the responsibility of the regulatory authorities under federal state law. The Committee asks for more detailed information on how the regulatory authorities monitor the possible illegal involvement of young workers in night work. The Committee wishes to know if sanctions are imposed in practice

against employers who do not comply with the prohibition of night work and the restrictions provided under Sections 13 and 14 of the Youth Employment Act.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Germany is in conformity with Article 7§8 of the 1961 Charter.

Article 7 - Right of children and young persons to protection

Paragraph 9 - Regular medical examination

The Committee notes from the information provided in the German report that there have been no changes to the legal situation which it has previously found to be in conformity with Article 7§9 of the 1961 Charter. It asks the next report to provide a full and up-to-date description of the situation in law and in practice.

Conclusion

The Committee concludes that the situation in Germany is in conformity with Article 7§9 of the 1961 Charter.

Article 7 - Right of children and young persons to protection

Paragraph 10 - Special protection against physical and moral dangers

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

Protection against sexual exploitation

In its previous conclusions (Conclusions 2011) the Committee found that the legislative framework protecting children against sexual exploitation was in conformity with the Charter. The Committee wished to be informed about the implementation of action plans to protect children against violence and sexual exploitation.

According to the report, protection of children and young people is one of the Federal Government's top priorities. The 2011 Action Plan to Protect Children and Young People from Sexual Abuse and Exploitation was adopted in September 2011. Recommendations were made continue to be implemented as part of a variety of measures on a statutory and non-statutory level. Further policies focus on protection for girls and boys, plus improvements in victim support, within the framework of an overall plan. According to the report, improvements to criminal law and prosecution as well as the implementation of the right to protection from sexual violence are the important issues dealt with by the action plan. Moreover, to implement the overall plan, there needs to be close cooperation between Federal Government departments, the *Länder*, local authorities, associations, experts and the Independent Commissioner for Questions related to Child Sexual Abuse.

The Committee notes from the Concluding observations of the Committee on the Rights of the Child (UN-CRC) on the report submitted by Germany under Article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2014) that some provisions of the Criminal Code punishing crimes under the Optional Protocol, particularly child pornography, protect children up to the age of 14 only. The UN-CRC has recommended in this respect that the State party ensure that all children under the age of 18 are fully protected.

The Committee asks whether all acts of sexual exploitation of children, including simple possession of child pornography, are criminalised under 18 years of age. It also asks whether child victims of sexual exploitation are in all circumstances considered victims or whether they can be prosecuted.

The UN-CRC has further urged Germany to strengthen coordination between all actors in the protection system and to allocate all the necessary human, technical and financial resources to ensure the prevention of sexual violence against children, especially in schools as well as the allocation of resources to specialised services. The Committee wishes to be informed regarding these issues.

Protection against the misuse of information technologies

The Committee wishes to receive updated information regarding measures taken in law and in practice to combat sexual exploitation of children through the use of internet technologies, such as by providing that internet service providers be responsible for controlling the material they host and encouraging the development and use of the best monitoring system for activities on the net.

Protection from other forms of exploitation

The Committee recalls that under Article 7§10 the States must prohibit the use of children in other forms of exploitation such as domestic exploitation, including trafficking for the purposes of labour exploitation and begging. They must also take measures to prevent and assist street children.

The Committee notes that the UN-CRC is concerned that the Residence Act makes the provision of residence permits to victims of trafficking, including children, conditional on their cooperation with the law enforcement authorities. It recommends that the State party revise its Residence Act in order to remove any conditions linked to the provision of residence permits to child victims of trafficking. The Committee asks what follow up has been given to these observations.

The Committee asks what measures are taken to assist street children, victims of trafficking.

Conclusion

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

Article 8 - Right of employed women to protection

Paragraph 1 - Maternity leave

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

Right to maternity leave

The report indicates that the Maternity Protection Act (MuSchG) applies to all (expectant) mothers in employment as well as to those working from home and the like. It also applies to those in part-time employment, domestic workers and women in vocational training, if the training forms part of an employment contract.

The period of time off from work (known as the maternity period) totals a minimum of 14 weeks before and after the birth. The maternity period begins six weeks before the birth and usually ends eight weeks or, in certain cases, twelve weeks after delivery. In case of premature delivery, the maternity period extends after the birth by the amount of time which the mother was unable to take before the birth. No reduction of the maternity period applies on the other hand if the baby is born later than expected. From six weeks before the birth of her child, an expectant mother may only be employed if she herself has expressly stated a wish to continue working. She is free to reconsider this at any time. The ban on employment during the maternity period after childbirth is absolute. Women are not permitted to work during this time even if they wish to. In exceptional cases, following the death of their child and if they expressly wish it, women may be allowed to work again before the end of the post-natal statutory leave period (but no earlier than three weeks after delivery), if there are no medical reasons why they should not.

Right to maternity benefits

The report indicates that women receive maternity benefit from the statutory health insurance fund during the whole maternity leave period (§§ 13 and 14, MuSchG). The amount of benefit corresponds to 100% of the average normal net wages in the last three months preceding the start of the statutory leave period.

Health insurance pays a maximum of € 13 per calendar day, and the employer pays the difference between that and their average net wage for the duration of the leave period. For other women (e.g. those who are unemployed and receiving benefits in line with Book Three of the Social Code (SGB III) or self-employed persons with sickness benefit insurance), maternity benefit is calculated in the same way as sickness benefit (that is, 70% of the normal salary but not exceeding 90% of the net salary). Women without health insurance receive additional maternity benefit from the Federal Government in accordance with the requirements relating to maternity benefit in Book Five of the Social Code (SGB V), amounting to a maximum of (one single payment of) € 210, if they are employed when the statutory leave period begins, are working from home or their contract of employment was lawfully terminated by their employer while they were pregnant.

The Committee refers to its Statement of interpretation on Article 8§1 (Conclusions XX-4 (2015)) and asks whether interruptions in the employment record are taken into account in the determination of maternity benefits and whether the minimum rate of such benefits corresponds at least to the poverty threshold, defined as 50% of the median equivalised income, calculated on the basis of the Eurostat at-risk-of-poverty threshold value.

Conclusion

The Committee concludes that the situation in Germany is in conformity with Article 8§1 of the 1961 Charter.

Article 8 - Right of employed women to protection

Paragraph 3 - Time off for nursing mothers

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

It notes from the report that Section 7 of the Maternity Protection Act provides for nursing mothers' right to take nursing breaks during the working day: at least half an hour twice daily, or an hour once a day. Upon request, a woman working more than eight consecutive hours, is entitled to two periods of at least 45 minutes or, if there is no suitable nursing area close to her place of work, one period of at least 90 minutes. For the purpose of this provision, a working period is considered to be "consecutive" if it is not interrupted by a rest break of at least two hours. No wage deduction can be imposed in relation to the nursing period. In addition, the nursing mother must not be expected to make up the time for nursing either before or afterwards, and this time must not be deducted from ordinary rest breaks.

The Committee previously noted that no maximum period was laid down in the law (Conclusions XIII-4 (1996)) and that the same regime applied to women employed in the public and in the private sectors (Conclusions XIX-4 (2011)).

Conclusion

The Committee concludes that the situation in Germany is in conformity with Article 8§3 of the 1961 Charter.

Article 16 - Right of the family to social, legal and economic protection

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

Social protection of families

Housing for families

In its previous conclusion (Conclusions XIX-4 (2011)), the Committee asked to be provided with detailed information on eviction. The report describes the procedures to limit the risks of eviction:

- provisions in the Civil Code (BGB) provide notice periods: pursuant to § 573c, BGB, the landlord must give statutory notice of termination by the third working day of a calendar month at the latest for the agreement to terminate at the end of the second month thereafter. Pursuant to §§ 543 and 569, BGB, either party to an agreement can terminate without notice in exceptional circumstances with good cause, such as a particularly severe breach of contract by the tenant. The tenant can contest before courts the given notice;
- forced eviction from accommodation is only possible on the basis of a judicial eviction order issued after completion of due civil procedure. In the course of a civil suit the tenant/resident is guaranteed a legal hearing and so has the equal opportunity to present pleas and arguments and to file applications. Furthermore, at every stage of the proceedings the court should be mindful of an amicable resolution of the legal dispute or its individual points of contention;
- if the tenant/resident does not have the personal and economic resources to cover the costs of the proceedings, or can pay them only in part or in instalments, he or she may receive legal aid on application, if the proposed legal action or defence has sufficient chance of success and does not appear to be wilful;
- if the court ultimately finds that the notice to terminate the rental agreement is justified, and no amicable agreement is reached, it issues an eviction order. The court can hereby grant the tenant an adequate period of time to vacate the property;
- the tenant/resident can appeal against the eviction order within one month of it being issued. Legal aid can also be approved for this. A decision on the appeal and the corresponding application for legal aid is taken by the court on the next level up. Under certain conditions the appeal judgment can be challenged as far as the Federal Court of Justice;
- the court can grant the tenant protection from enforcement, if eviction constitutes a hardship for the tenant. The landlord must commission a bailiff to carry out the eviction if the tenant refuses to vacate the property despite the eviction order;
- if the bailiff breaches duties in relation to a third party in the course of the eviction, this may lead to official liability claims;
- an unlawful eviction beyond the public domain, e.g. carried out by a landlord acting without authorisation, also leads to claims for compensation.

In its previous conclusion (Conclusions XIX-4 (2011)), the Committee asked information on conditions in accommodation provided to Roma asylum seekers from non-EU Member States, particularly as regards children. The report does not provide any information in this respect, therefore the Committee reiterates its question. Should the next report not provide the requested information, there will be nothing to show that the situation is in conformity with the 1961 Charter.

Childcare facilities

The Committee asked in its previous conclusion (Conclusions XIX-4 (2011)) to be provided with information on childcare facilities. The report however does not provide any information in this respect. The Committee therefore reiterates its request.

Family counselling services

On matters connected with the raising of a child, the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction (FamFG) provides that the court points to the counselling opportunities available from the advice centres and services maintained by youth welfare service providers to specifically create an amicable way of resolving parental custody and responsibility. Moreover, the court can order the parents, singly or together, to meet a person or body nominated by the court, for a free consultation about mediation or some other means of settling their differences out-of-court, and to provide confirmation that they have done so. It can also order the parents to attend counselling at advisory centres run by youth welfare service providers. The orders may not be contested independently and parties may not be forced to comply.

Participation of associations representing families

The report indicates that family associations represent the interests of families vis-à-vis the legislature and the executive. These associations joined together have formed the Association of German Family Organisations (AGF), which takes a common approach or prepares joint policy papers. The AGF cooperates with family policy associations and organisations across Europe. The report also explains that the Federal Government formally involves the family associations at an early stage of the legislative process where these latter formulate their position.

Legal protection of families

Rights and obligations of spouses

The Committee refers to its previous conclusion (Conclusions XIX-4 (2011)) for a description of the procedural changes following the 2009 reform of procedural law relating to family matters.

The Committee also notes the entry into force on 19 May 2013 of the Act to reform parental responsibility of parents who are not married to one another, which provides that both parents have a fundamental right to joint custody, as long as this is not detrimental to the child's best interests. Previously, fathers who were not or had never been married to the mother were unable to enforce joint custody rights against the wishes of the mother.

Mediation services

The report states that access to family mediation services in Germany is generally unproblematic. It lists the different points of contact: the mediation associations and organisations such as the Federal Association for Family Mediation, the Federal Mediation Association or the Centrale für Mediation. In the case of family conflicts with a foreign aspect, parents can contact the Central Contact Point for Cross-border Family Conflicts at the International Social Service German branch. For the Convention on the Civil Aspects of International Child Abduction (CCAICA) cases, the Federal Office of Justice acts as the central authority in Germany to inform the parties – usually the parents – and the lawyers about the

possibility of bi-national co-mediation and also refers to cooperation with the Mediation in International Conflicts Involving Parents and Children.

The report, however, stresses that the costs of the mediation process must be borne by the parties concerned. In particular, mediation costs are not covered by the legal aid for court proceedings taking place concurrently. The Committee considers that under Article 16 of the 1961 Charter, the legal protection of the family includes the availability of mediation services whose object should be to avoid the deterioration of family conflicts. To be in conformity with Article 16, these services must be easily accessible to all families. In particular families must not be dissuaded from availing of such services for financial reasons. If these services are free of charge, this constitutes an adequate measure to this end. Otherwise a possibility of access for families when needed should be provided. The Committee asks the next report to indicate what assistance is available for families in case of need.

Domestic violence against women

In its previous conclusion (Conclusions XIX-4 (2011)), the Committee requested information on the outcome of the reform carried out in September 2009, in particular with regard to the transfer to family courts of jurisdiction for cases relating to protection from violence. The report indicates that an outcome is not expected before 2018. The Committee therefore asks the next report to provide the requested information.

Economic protection of families

Family benefits

According to Eurostat data, the monthly median equivalised income in 2013 amounted to €1,629 in Germany. According to MISSOC, the monthly amount of child benefits was €184 for the first and second child, €190 for the third child and €215 for the fourth and subsequent child. Child benefit represents a percentage of that income as follows: 11.3% for the first and second child, 11.6% for the third child and 13.2% for the fourth and subsequent child.

The Committee considers that, in order to comply with Article 16, child benefit must constitute an adequate income supplement, which is the case when they represent a significant percentage of median equivalised income. On the basis of the figures indicated, the Committee considers that the amount of benefits is compatible with the 1961 Charter.

Vulnerable families

The Committee asked in its previous conclusion (Conclusions XIX-4 (2011)) what were the means used to provide economic protection to Roma families. The report does not provide information in this respect. The Committee therefore repeats its request. Should the next report not provide the requested information, there will be nothing to show that the situation is in conformity with the 1961 Charter.

Equal treatment of foreign nationals and stateless persons with regard to family benefits

In its previous conclusion (Conclusions XIX-4 (2011)), the Committee concluded that the situation was not in conformity with the 1961 Charter on the ground that equal treatment is not guaranteed to nationals of other States Parties to the 1961 Charter and the Charter in respect of the granting of supplementary child-raising allowances in Bavaria.

The Committee notes that the Bavarian legislator introduced a new Act which entered into force on 30 August 2012. The new Act provides for an entitlement to Land child-raising allowance of

parents of foreign origin without the characteristic of "nationality" being taken into account. The Committee considers that the situation is therefore now in conformity with the 1961 Charter.

As to the child-raising allowance in Baden-Württemberg, the report confirms that on 25 September 2012 the Council of Ministers of the Land of Baden-Württemberg decided to end the eligibility for state child-raising allowance for all children born on or after 1 October 2012. The Committee concludes that the situation is now in conformity with the 1961 Charter.

The Committee asks the next report to indicate whether stateless persons and refugees are treated equally with regard to family benefits.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Germany is in conformity with Article 16 of the 1961 Charter.

Article 17 - Right of mothers and children to social and economic protection

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

The legal status of the child

According to the report, the Law governing the expansion of assistance for pregnant women and the regulation of anonymous childbirth, which came into force on 1 May 2014, reinforces the rights of the child. The fundamental right of the child to know his or her origins is guaranteed in that he or she is able to inspect the mother's data and obtain information on her name, address and date of birth.

In 2011, a law was passed with retroactive effect to 29 May 2009, whereby children born in and out of wedlock are treated equally in cases of inheritance.

Protection from ill-treatment and abuse

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

Rights of children in public care

In its previous conclusion (Conclusions XIX-4) the Committee asked what were the criteria for the restriction of custody or parental rights and what was the extent of such restrictions. It also asked what were the procedural safeguards to ensure that children are removed from their families only in exceptional circumstances.

The Committee notes from the report in this respect that the care and upbringing of children is the natural right of parents and a duty primarily incumbent upon them (Article 6, paragraph 2, of the Basic Law (*Grundgesetz*, GG)). However, if parents fail in their duty, then the State and society shall also assume responsibility for a child.

According to the report, the most severe form of encroachment on the rights of parents and of the child, is the separation of a child from its parents which is subject to strict conditions and is admissible only if the danger, to which the child is exposed cannot be countered in another way, not even through public support measures.

Decisions relating to this are incumbent on the independent courts. All decisions must be based on the best interests of the child. In the event of proceedings involving the endangerment of a child's best interests, it is the family court which discusses with the parents and the youth welfare office how such danger can be averted.

The court's objective is to highlight to the parents the severity of the situation and remind them of the potential consequences. Pursuant to Article 3 § 42 of Book Eight of the Social Code, the youth welfare office is also authorised and obliged to take a child or juvenile into custody if the child or juvenile requests this, or if there is an immediate danger to the welfare of the child or juvenile which calls for their removal, and those with custody rights do not object to it or a family court ruling cannot be obtained in time.

Irrespective of the issue of custody, the parents and the child have the right to contact with each other. The best interests of the child generally include contact with both parents. Even if the child is living with a foster family, the parents must always have the opportunity of personal contact with the child. The right of contact may only be restricted or excluded if the protection of the child requires it based on the circumstances of the individual case. The family court is responsible for taking decisions on individual cases.

The Committee requests updated information on the situation of children in public care, such as numbers of children in foster care as opposed to institutions.

The Committee notes from the Concluding observations of the UN-CRC on the combined third and fourth periodic reports of Germany on the Convention on the Rights of the Child (2014) that the UN Committee on the Rights of the Child (UN-CRC) recommends Germany to improve its system of family support and ensure that placement of children in foster care is used in the best interests of the child only and to provide welfare services with adequate human and financial resources in order to make them available to all families faced with social and economic difficulties, including migrant families, particularly difficulties in overcoming language barriers. The Committee wishes to be informed regarding these issues.

Young offenders

In its previous conclusion the Committee asked how the issue of proportionality in extending the pre-trial detention was addressed.

It notes from the report that in the case of ongoing detention, consideration must likewise be given to the fact that its continuation must always be proportionate. If a youth is being held in remand detention, the proceedings must be conducted particularly expeditiously. The remand detention must not last for more than six months before a custodial sentence is passed. This period may only be exceeded if the particular difficulty or the unusual extent of the investigation or some other important reason do not yet permit pronouncement of judgment and justify the continuation of remand detention.

According to the Federal Statistical Office the number of young persons in remand detention in Germany as at 31 March 2013 totalled 348. These figures have gone down considerably in recent years, from 558 in 2008 to 348 in 2013.

The principle of separation from other prisoners also applies to the enforcement of remand detention for young prisoners. The statutory regulations of the Länder stipulate that young prisoners on remand are placed separately in special departments within penal institutions for young offenders or in other penal institutions or dedicated facilities.

In its previous conclusion the Committee also asked whether young offenders have a statutory right to education.

According to the report, education and training of young prisoners on remand is a key element of the statutory regulations governing youth penalty enforcement of the Länder and is an important tool for their reintegration into society. For educational and developmental reasons young prisoners on remand are obliged, or may be obliged, as a matter of priority, to participate in educational and vocational guidance and training measures, or special measures to promote their educational, professional or personal development.

Right to assistance

The Committee recalls that Article 17 guarantees the right of children, including unaccompanied minors to care and assistance, including medical assistance (International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, decision on the merits of September 2004, § 36). In fact, Article 17 concerns the assistance to be provided by the State where the minor is unaccompanied or if the parents are unable to provide such assistance.

States must take the necessary and appropriate measures to guarantee for the minors in question the care and assistance they need and to protect them from negligence, violence or exploitation, thereby posing a serious threat to the enjoyment of their most basic rights, such as

the rights to life, to psychological and physical integrity and to respect for human dignity (Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §82).

The Committee notes that UN-CRC is concerned that different service facilities are under a federal statutory obligation to inform the immigration authorities about all persons who come to their notice who do not have a residence permit, including children. In practice, according to the UN-CRC, that discourages children with an irregular residence status from approaching service offices for fear of discovery of their irregular status, which could, inter alia, result in their deportation. The UN-CRC urges Germany to repeal the statutory obligation on all service facilities to inform the immigration authorities of any child who is in an irregular migration situation.

The Committee asks what follow up has been given to this recommendation and wishes to be informed about the assistance provided to children in irregular situation.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Germany is in conformity with Article 17 of the 1961 Charter.

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 1 - Assistance and information on migration

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

Migration trends

The Committee notes the main conclusions of the 2012 Report of the Migration Report of the Federal Office for Migration and Refugees (adopted 2014).

Immigration increased by 13% on a year-on-year basis in 2012, whilst the number of people emigrating rose by 7%. Migration within the EU accounts for 58% of all migration to Germany. There was a further increase in the number of highly-skilled workers coming to Germany.

Furthermore, more young people than ever before who had acquired their entitlement to study abroad started studying in Germany. The year-on-year increase in the number of asylum-seekers continued, with a 41% increase being observed.

One German resident in five has a migration background. This share is as high as roughly one in three among children aged under ten.

The Committee notes from the Fifth report of the European Commission against Racism and Intolerance (ECRI) (adopted 2013) that the figures on naturalisations, which had dropped between 2006 and 2008, had been rising again since 2009, totalling 106 897 in 2011. More than half of the 16 million persons from migrant backgrounds hold German nationality. In 2011, 50.4% of all naturalised persons were able to retain their old nationality.

Policy and the legal framework

The report provides no information on changes to the legal or policy framework. The Committee asks that the next report provide up-to-date information on the framework for immigration and emigration, and any new or continued policy initiatives.

Free services and information for migrant workers

The Committee notes from the report that language and orientation classes continue to be offered as part of an integration course. It notes that some migrants have to pay for these classes upon arrival and requests specific information on the thresholds for payment and on the costs of these courses.

The Committee notes that EU migrants and German nationals are not required to take the integration or language classes but have the option if spaces are available. It understands that this option would however not be available for temporary residents, such as posted workers, who are not entitled to participate. The Committee requests confirmation of this understanding, and asks whether there are costs involved for EU migrants and nationals wishing to take part, and how much these are.

It further notes from ECRI's fifth report on Germany that Germany has retained its system of obligations, rewards and sanctions vis-à-vis participation in these language and orientation courses and tests. Infringing the obligations can lead to an administrative enforcement procedure and sanctions when temporary residence permits come up for renewal. If the person in question is in receipt of basic benefits for job-seekers, failure to attend these courses and tests may also constitute a breach of the person's obligations and lead to a reduction in payments. The Committee asks what the precise nature of these sanctions is. It notes, on the other hand, that these integration courses are not obligatory where it would be unfeasible or

unreasonable to require the migrant to undertake them due to other vocational training or economic activity.

The Committee notes the existence of the advisory services for adults (Migration Advisory Service) and youths (Youth Migration Service) which provide points of contacts for immigrants upon arrival and support for further integration. The Committee asks for information in the next report regarding usage statistics or impact assessments for these services. It also notes that information is provided online (www.bamf.de/EN), via telephone and through printed materials in various languages.

Measures against misleading propaganda relating to emigration and immigration

The report provides no information on measures against misleading propaganda relating to migration. The Committee understands from the abovementioned report of ECRI (2013) that the Xenos Programmes described in the previous report (see Conclusions XIX-4 (2011)) had not been renewed at that time. The Committee requests up to date information on whether these programmes have been replaced or continue to be implemented beyond 2013.

Regarding measures to prevent and combat hate speech, ECRI regrets that the National Action Plan against Racism, Xenophobia, Anti-Semitism and Related Intolerance (Action Plan against Racism) has been "relegated to the background". This plan published in October 2008 ends with an acknowledgement of the need to evaluate and re-adjust its measures (see § 70).

The Committee notes from the abovementioned ECRI report that "Germany has an Action Plan against racism. This Plan, however, dates back to 2008, is not well known and, unlike the Integration Plan, has not been revised using a participatory approach. The authorities have informed ECRI that certain measures have been evaluated and adapted. However, neither practical measures, nor officials responsible for their implementation, nor timetables or control indicators have been included in the Plan" (p. 27, fifth report, 2013). The Committee asks the next report to comment on these observations, and to provide information on any further evaluation or update of the Action Plan.

The Committee further notes from the ECRI report that "the authorities have continued and stepped up their preventive work to make children and young people more aware of the dangers of [right-wing extremist/ racist] organisations and encourage them to become involved in the fight against right-wing extremism. This also includes activities at local level." (p. 18)

The Ministry of Interior has set up two new bodies. The Centre of Defence against Right-wing Extremism (*Gemeinsames Abwehrzentrum Rechtsextremismus*) was established in December 2011 to assess the threat from right-wing extremism and facilitate measures such as arrests and, above all, exchanges of information. A database (*Rechtsextremismusdatei*) was set up in September 2012 to combat more effectively violence emanating from right-wing extremism.

The Committee recalls that to be effective, action against misleading propaganda should include legal and practical measures to tackle racism and xenophobia and to prevent trafficking in women. Such measures, which should be aimed at the whole population, are necessary to counter the spread of stereotypes such as immigrants' supposed predisposition to crime, violence or drug abuse and disease (Conclusions XV-1 (2000), Austria). Authorities should take action in this area as a means of preventing illegal immigration and trafficking in human beings (Conclusions 2006, Slovenia). It asks for complete and up-to-date information on any measures taken to target illegal immigration and in particular, trafficking in human beings.

The Committee recalls that statements by public actors are capable of creating a discriminatory atmosphere. Racist misleading propaganda indirectly allowed or directly emanating from the state authorities constitutes a violation of the Charter (Centre on Housing Rights and Evictions

(COHRE) v Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010). The Committee stresses the importance of promoting responsible dissemination of information. It considers that in order to combat misleading propaganda, there must be effective organs to monitor discriminatory, racist or hate-inciting speech, particularly in the public sphere. The Committee asks what monitoring systems exist to ensure the implementation of anti-discrimination regulations.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in Germany is in conformity with Article 19§1 of the 1961 Charter.

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 2 - Departure, journey and reception

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

Departure, journey and reception

The report states that a condition of entry for immigrants to Germany is that he or she is able to secure his or her subsistence by independent means.

The report contains no information as requested about assistance with matters such as short-term accommodation, or shortage of money, which it does not consider to be ruled out by the requirement of self-sufficiency prior to entry. The Committee recalls that "reception must include not only assistance with regard to placement and integration in the workplace, but also assistance in overcoming problems, such as short-term accommodation, illness, shortage of money and adequate health measures" (Conclusions IV (1975), Germany). The Committee reiterates its question and asks under what circumstances help may be given to migrants upon reception when they suffer these difficulties.

The report states that all foreigners must have adequate health insurance when they enter Germany. This ensures that they are able to use any necessary health services or medical assistance during their journey and the period immediately thereafter.

Services for health, medical attention and hygienic conditions during the journey

The Committee recalls that the obligation to "provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey" relates to migrant workers and their families travelling either collectively or under the public or private arrangements for collective recruitment. The Committee considers that this aspect of Article 19§2 does not apply to forms of individual migration for which the state is not responsible. In such cases, the need for reception facilities would be all the greater (Conclusions V (1975), Statement of interpretation on Article 19§2). The Committee requests details of any measures taken in regard of collective recruitment, if it should occur.

The Committee's above-cited case-law on the right to assistance of migrant workers during reception (see Conclusions IV (1975), Germany) raises questions of law and practice which the Committee considers not to have been answered in the report submitted by Germany. The Committee considers that if the relevant information is not provided in the next report, there will be nothing to demonstrate that the situation is in conformity with the 1961 Charter.

Conclusion

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

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 3 - Co-operation between social services of emigration and immigration states

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

The report states that national emigration advisory centres are also increasingly providing advice and assistance to returnees. These centres are maintained by the voluntary welfare associations which receive financial support from the Federal Government, coordinated at the federal level through the Raphaels-Werk e.V. association. The report states that regular contact takes place between Raphaels-Werk and the authorities responsible for immigration in destination countries. The Committee wishes to know whether similar contact occurs in the other direction, namely whether information for immigrants in Germany is channelled via contacts with the responsible services in their origin countries.

The Committee recalls that the scope of this provision extends to migrant workers immigrating as well as migrant workers emigrating to the territory of any other State. Contacts and information exchanges should be established between public and/or private social services in emigration and immigration countries, with a view to facilitating the life of emigrants and their families, their adjustment to the new environment and their relations with members of their families who remain in their country of origin (Conclusions XIV-1 (1998), Belgium).

Formal arrangements are not necessary, especially if there is little migratory movement in a given country. In such cases, the provision of practical co-operation on a needs basis may be sufficient. Whilst it considers that collaboration among social services can be adapted in the light of the size of migratory movements (Conclusions XIV-1 (1998), Norway), it holds that there must still be established links or methods for such collaboration to take place.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Germany is in conformity with Article 19§3 of the 1961 Charter.

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 4 - Equality regarding employment, right to organise and accommodation

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

Remuneration and other employment and working conditions

The report provides no information as requested concerning the practical situation for migrants and those with immigrant backgrounds. The Committee recalls that it is not enough for a government to demonstrate that no discrimination exists in law alone but also that it is obliged to demonstrate that it has taken adequate practical steps to eliminate all legal and de facto discrimination concerning remuneration and other employment and working conditions, including in-service training and promotion (Conclusions III (1973), Statement of interpretation).

In particular, the Committee considers that in order to monitor and ensure that no discrimination occurs in practice, States Parties should have in place sufficient effective monitoring procedures or bodies to collect information, for example disaggregated data on remuneration or information on cases in employment tribunals. The Committee asks whether such information is collected in Germany and if so by whom.

In the absence of such information, which was requested in its previous conclusions (Conclusions XIX-4 (2011)), the Committee concludes that it has not been established that adequate practical steps have been taken to eliminate all legal and de facto discrimination concerning remuneration and other employment and working conditions.

This provision applies also to vocational training (Conclusions VII (1981), United Kingdom). The Committee asks whether vocational training with a view to improving the skills of workers and their opportunities is available in Germany on the same basis for migrants and nationals.

Membership of trade unions and enjoyment of the benefits of collective bargaining

The report states that Article 9, paragraph 3, of the Basic Law (*Grundgesetz*, GG) guarantees that every individual has the right to form or join associations to safeguard and improve working and economic conditions.

The Committee understands that the right to form trade unions in Germany therefore includes the right to hold official positions within associations such as trade unions, (cf. Conclusions XIX-4 (2011), Statement of interpretation on Article 19§4), and asks for confirmation of this understanding.

The Committee refers to its Statement of interpretation in the General Introduction (Conclusions XX-4 (2015)) and asks for information concerning the legal status of workers posted from abroad, and what legal and practical measures are taken to ensure equal treatment in matters of employment, trade union membership and collective bargaining.

Accommodation

The Committee notes that the report states that migrant workers have equal access to social housing, provided they fulfil the general requirements. It asks the next report to explain what are these general requirements. The report also states that given that there is no distinction with regard to origin when social housing is allocated, there is consequently no information on the number of migrant workers in social housing.

The Committee also takes note of the ban on discrimination under civil law in the General Equal Treatment Act.

Conclusion

The Committee concludes that the situation in Germany is not in conformity with Article 19§4 of the 1961 Charter on the ground that it has not been established that adequate practical measures have been taken to eliminate all discrimination concerning remuneration and other employment and working conditions.

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 5 - Equality regarding taxes and contributions

The report provides no updated information on the taxation of migrant workers. The Committee takes note of the information in previous reports and all the information at its disposal, and finds that the situation which the Committee previously considered to be in conformity (Conclusions XIX-4 (2011)), has not changed.

The Committee requests that full and up to date information on the situation be provided in the next report, including details of the laws applicable. In the meantime, the Committee considers that the situation remains in conformity with the Charter.

Conclusion

The Committee concludes that the situation in Germany is in conformity with Article 19§5 of the 1961 Charter.

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 6 - Family reunion

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

Scope

In 2011 the Act to combat forced marriages introduced an increase from two to three years of the minimum period for which a marriage must exist before a spouse can obtain his or her own residence title following their subsequent immigration (immigration for spousal reunion).

The Committee notes the addition of the possibility of a dependent minor child joining a parent provided the other parent consents, or a binding decision has been supplied by a competent authority. Furthermore, the Committee notes that for minor children over the age of 16 who do not relocate the focus of their life to Germany together with the parents or parent possessing sole right of care, they may only be granted a residence permit if it appears that they will be able to integrate into the way of life prevailing in Germany (except where the migrant is granted asylum or the migrant or his/her spouse possess an EU Blue Card or a settlement permit granted through the Blue Card system).

The Committee notes that children of majority age are entitled to family reunion if the authorities consider that a rejection of their application would place them in hardship (Residence Act, Section 36). Accordingly, the Committee notes that there has been a break from the past and children of majority age are no longer excluded from family reunion procedures, and finds that the situation with regard to the scope of family reunion is now in conformity with the 1961 Charter. Nevertheless in the absence of statistical data, the Committee requests that the next report provide examples of any guidance, including official guidelines and/or case-law, which defines or demonstrates the meaning of hardship, and which applies within the context of children of majority age.

The report further confirms that there is no distinction drawn between the spouses of first or second generation foreign nationals. In considering all the information available to it, the Committee determines that the situation in this regard is now in conformity with the Charter.

The Committee recalls that once a migrant worker's family members have exercised the right to family reunion and have joined him or her in the territory of a State, they have an independent right under the Charter to stay in that territory (Conclusions XVI-1 (2002), Netherlands, Article 19§8). With regard to the expulsion of family members, the report describes the rights of family members of EU citizens to remain. The Committee notes that under Section 12 of the Freedom of Movement Act family members are afforded the same protection from expulsion as EU citizens provided they are deemed dependents within the meaning of the Act.

The Committee requests information concerning the guarantees against expulsion of family members of non-EEA migrant workers, particularly in the event that the migrant worker is expelled. In the meantime, it reserves its position on this issue.

Conditions governing family reunion

With regards to the length of residence required of migrants for family reunion, the report states that "it is only in the case of new marriages that the principal person with residence entitlement needs to be in possession of a residence permit for two years before arranging for a spouse to join him or her. If the principal person entitled is already married... this minimum period does not apply." The Committee notes that the requirement of having held a residence permit for two years applies in restricted cases, however, it considers that the maximum period of one year laid down in its case law (Conclusions I (1969), II (1971), Germany) must apply without

discrimination to all migrants and their families regardless of their specific situations, save for legitimate intervention in cases of forced marriage and fraudulent abuse of immigration rules. Thus it maintains its previous conclusion (Conclusions XIX-4 (2011)) that the situation in Germany is not in conformity with the Charter because the requirement to hold a temporary residence title for two years in certain circumstances is too restrictive.

With respect to housing requirements, the Committee acknowledges Section 2 (4) of the Residence Act (AufenthG) which states that the space which is required to accommodate a person in need of accommodation in state-subsidised welfare housing shall constitute sufficient living space. Living space which does not comply with the statutory provisions for Germans with regard to condition and occupancy shall not be adequate for foreigners. Children up to the age of two shall not be included in calculation of the sufficient living space for the accommodation of families.

The Committee recalls that restrictions on family reunion which take the form of requirements for sufficient or suitable accommodation to house family members should not be so restrictive as to prevent any family reunion (Conclusions IV (1975), Norway). The Committee considers that states are entitled to impose such accommodation requirements in a proportionate manner so as to protect the interests of the family. Nevertheless, taking into account the obligation to facilitate family reunion as far as possible under Article 19§6, States Parties should not apply such requirements in a blanket manner which precludes the possibility for exemptions to be made in respect of particular categories of cases, or for consideration of individual circumstances.

The Committee considers that it is important that in practice the authorities in charge of issuing residence permits following applications for family reunion take account of the fact that “the principle of family reunion is but an aspect of the recognition in the Charter (Article 16) of the obligation of states to ensure social, legal and economic protection of the family. Consequently, the application of Article 19, paragraph 6, should in any case take account of the need to fulfil this obligation” (Statement of interpretation – Conclusions VIII (1984)).

The report states that the purpose of the requirement in Germany is to prevent a social gap between nationals and migrants, and to ensure that the living conditions meet generally applicable health and safety standards. The Committee asks for further information on the process of determining whether there is sufficient accommodation for migrants’ families, and for examples of any guidelines or standards followed.

With regards to means requirements, the report states that not all state benefits are excluded from the appraisal of “secured subsistence” for the purposes of residence titles relevant to family reunion. The Committee notes Section 2 (3) of the Residence Act, which provides that:

The report states that a foreigner’s subsistence shall be secure when he or she is able to earn a living, including adequate health insurance coverage, without recourse to public funds. Drawing the following benefits shall not constitute recourse to public funds:

1. child benefits,
2. children’s allowances,
3. child-raising benefits,
4. parental allowances,
5. educational and training assistance in accordance with Book Three of the Social Code, the Federal Education Assistance Act or the Upgrading Training Assistance Act, or
6. public funds based on own contributions or granted in order to enable residence in Germany.

The Committee notes from the report that public funds under item (6) above include, for example, unemployment benefit. Furthermore, Section 2 (3) states that “other family members’ contributions to household income shall be taken into account when issuing or renewing residence permits allowing the subsequent immigration of dependants.” The Committee asks which family members’ contributions may be taken into account, and whether this legislation allows for inclusion of the earning capacity of the dependent who wishes to join the migrant in Germany in such calculations.

With respect to language requirements, the Committee notes that the requirement to speak German “at least on a basic level” (Residence Act Section 30(1)(2)) is disapplied under section 30 of the same Act in certain circumstances, e.g. where the foreigner is in possession of a residence title on the basis of a highly-qualified worker permit (Section 19) or an EU Blue Card (Section 19a), is engaged in research (Section 20) or self-employment (Section 21), or where:

1. the foreigner holds a residence title pursuant to Section 25 (1) or (2) or Section 26 (3) and the marriage already existed at the time when the foreigner established his or her main ordinary residence in the federal territory,
2. the spouse is unable to provide evidence of a basic knowledge of German on account of a physical, mental or psychological illness,
3. the spouse’s need for integration is discernibly minimal within the meaning of a statutory instrument issued pursuant to Section 43 (4) or the spouse would, for other reasons, not be eligible for an integration course pursuant to Section 44 after entering the federal territory,
4. by virtue of his or her nationality, the foreigner may enter and stay in the federal territory without requiring a visa for a period of residence which does not constitute a short stay, or
5. the foreigner holds an EU Blue Card.

Section 25 regards asylum seekers and those with refugee status; Section 26 also regards asylum seekers who have acquired settlement permits. The Committee understands that the language requirement therefore continues to apply to the spouses of non-EEA migrants, including nationals of the States party to the Charter.

From the information provided in the report and the government website, the Committee understands that the Residence Act Section 32 provides that children over the age of 16 wishing to move to Germany to live with one parent (not being the sole legal custodian) without the consent of the other, or the order of a competent authority, must prove that they speak German and it must be apparent that they will be able to integrate into the German way of life.

The Committee acknowledges that States may take measures to encourage the integration of migrant workers and their family members. It notes the importance of such measures in promoting economic and social cohesion. However, the Committee considers that requirements that family members pass language and/or integration tests or complete compulsory courses, whether imposed prior to or after entry to the State, may impede rather than facilitate family reunion and therefore are contrary to Article 19§6 of the Charter where they have the potential effect of denying entry or the right to remain to family members of a migrant worker, or otherwise deprive the right guaranteed under Article 19§6 of its substance, such as by imposing prohibitive fees, or by failing to consider specific individual circumstances such as age, level of education or family or work commitments (Statement of interpretation on Article 19§6, General introduction to Conclusions XX-4 (2015)).

Consequently the Committee finds that the requirements to prove language proficiency for family reunion of spouses and children over 16 are not in conformity with the Charter because they present an obstacle to family reunion.

Conclusion

The Committee concludes that the situation in Germany is not in conformity with Article 19§6 of the 1961 Charter on the grounds that:

- the requirement for migrant workers to hold a temporary residence title for two years in certain circumstances before being entitled to family reunion is too restrictive;
- the requirements to prove language proficiency for family reunion of spouses and children over 16 present an obstacle to family reunion.

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 7 - Equality regarding legal proceedings

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

The Committee notes from the report that there have been no changes since the last cycle of conclusions (Conclusions XIX-4 (2011)), in which it found the situation to be in conformity with the Charter.

The Committee requests that full and up to date information on the situation be provided in the next report, including details of the laws applicable. In the meantime, the Committee considers that the situation remains in conformity with the Charter.

The Committee recalls that any migrant worker residing or working lawfully within the territory of a State Party who is involved in legal or administrative proceedings and does not have counsel of his or her own choosing should be advised that he/she may appoint counsel and, whenever the interests of justice so require, be provided with counsel, free of charge if he or she does not have sufficient means to pay the latter, as is the case for nationals or should be by virtue of the European Social Charter. Under the same conditions (involvement of a migrant worker in legal or administrative proceedings), whenever the interests of justice so require, a migrant worker must have the free assistance of an interpreter if he or she cannot properly understand or speak the national language used in the proceedings and have any necessary documents translated. Such legal assistance should be extended to obligatory pre-trial proceedings (Conclusions XIX-4 (2011), Statement of interpretation on Article 19§7). The Committee previously asked what rules apply in this regard (Conclusions XIX-4 (2011)). The Committee reiterates its question and considers that if this information is not provided in the next report there will be nothing to demonstrate that the situation is in conformity with Article 19§7 of the 1961 Charter.

The Committee refers to its Statement of Interpretation on the rights of refugees under the Charter, and asks under what conditions refugees and asylum seekers may receive legal aid.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Germany is in conformity with Article 19§7 of the 1961 Charter.

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 8 - Guarantees concerning deportation

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

The Committee has previously interpreted Article 19§8 as obliging 'States to prohibit by law the expulsion of migrants lawfully residing in their territory, except where they are a threat to national security, or offend against public interest or morality' (Conclusions VI (1979), Cyprus). Where expulsion measures are taken, they cannot be in conformity with the Charter unless they are ordered, in accordance with the law, by a court or a judicial authority, or an administrative body whose decisions are subject to judicial review. Any such expulsion should only be ordered in situations where the individual concerned has been convicted of a serious criminal offence, or has been involved in activities which constitute a substantive threat to national security, the public interest or public morality. Such expulsion orders must be proportionate, taking into account all aspects of the non-nationals' behaviour as well as the circumstances and the length of time of his/her presence in the territory of the State. The individual's connection or ties with both the host state and the state of origin, as well as the strength of any family relationships that he/she may have formed during this period, must also be considered to determine whether expulsion is proportionate. All foreign migrants served with expulsion orders must have also a right of appeal to a court or other independent body (Statement of interpretation on Article 19§8, Conclusions XX-4 (2015)).

The report states that the Residence Act (AufenthG) is currently being revised and is about to be comprehensively amended. The rules governing expulsion will also be revised as part of this amendment of the Act. The Committee notes that long term homelessness and claims for social assistance will no longer be grounds for expulsion from Germany. The Committee asks to be informed about these reforms and provided with specific details on the new provisions.

As to the situation during the reference period, the Committee acknowledges the information provided in the report. It notes, however, that the situation had not changed during this period. The Committee finds, notwithstanding that the individual's circumstances are taken into account, that the grounds for expulsion are overly broad. It recalls that it has consistently held that recourse to social welfare, homelessness and substance abuse, cannot be considered as grounds for expulsion permitted by Article 19§8.

The information provided concerning the exercise of these discretionary grounds is not sufficient to change the Committee's previous conclusion of non-conformity (Conclusions XIX-4 (2011)).

Conclusion

The Committee concludes that the situation in Germany is not in conformity with Article 19§8 of the 1961 Charter on the ground that recourse to social welfare, homelessness and substance abuse remain grounds for expulsion.

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 9 - Transfer of earnings and savings

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

From the report and all the available information it appears that the situation, which the Committee previously considered to be in conformity with the Charter (Conclusions XIX-4 (2011)), has not changed.

The Committee refers to its Statement of interpretation on Article 19§9 in Conclusions XIX-4 (2011)), and asks whether there are any restrictions on the transfer of movable property of a migrant worker. It also asks for an up-to-date description of the situation regarding transfer of other earnings. If it does not receive this information in the next report, the Committee considers that there will be nothing to prove that the situation is in conformity with the Charter.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Germany is in conformity with Article 19§9 of the 1961 Charter.

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 10 - Equal treatment for the self-employed

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

On the basis of the information in the report the Committee notes that there continues to be no discrimination in law between migrant employees and self-employed migrants.

However, in the case of Article 19§10, a finding of non-conformity in any of the other paragraphs of Article 19 ordinarily leads to a finding of non-conformity under that paragraph, because the same grounds for non-conformity also apply to self-employed workers. This is so where there is no discrimination or disequilibrium in treatment.

The Committee has found the situation in Germany not to be in conformity with Articles 19§4, 19§6 and 19§8. Accordingly, the Committee concludes that the situation in Germany is not in conformity with Article 19§10 of the 1961 Charter

Conclusion

The Committee concludes that the situation in Germany is not in conformity with Article 19§10 of the 1961 Charter as the grounds of non-conformity under Articles 19§4, 19§6 and 19§8 apply also to self-employed migrant workers.



January 2016

1961 European Social Charter

European Committee of Social Rights

Conclusions XX-4 (2015)

GREECE

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 1961 European Social Charter (the 1961 Charter) and the 1988 Additional Protocol (the Additional Protocol). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure

Information on the 1961 Charter, statements of interpretation, and general questions from the Committee, are reflected in the General Introduction to all Conclusions.

The following chapter concerns Greece which ratified the 1961 Charter on 6 June 1984. The deadline for submitting the 25th report was 31 October 2014 and Greece submitted it on 6 April 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 information requested by the Committee in Conclusions 2013 in respect of its conclusions of non-conformity due to a repeated lack of information¹:

- Right to protection of health – Advisory and educational facilities (Article 11§2)
- Right to social and medical assistance – Specific emergency assistance for non-residents (Article 13§4)

The Committee adopted one conclusion of conformity (Article 11§2) and one conclusion of non-conformity (Article 13§4)

The next report will deal with 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 1 of the 1988 Additional Protocol).

The deadline for submitting the above report was 31 October 2015.

Conclusions and reports are available at www.coe.int/socialcharter.

¹*Greece also submitted a report on follow-up to decisions on the merits in collective complaints. The Committee's findings in this respect are available in a separate document.*

Article 11 - Right to protection of health

Paragraph 2 - Advisory and educational facilities

In application of the reporting system adopted by the Committee of Ministers at the 1996th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions XX-2 (2013).

The Committee takes note of the information provided by Greece in response to the conclusion that it had not been established that there were adequate measures for counselling and screening for the population at large and for pregnant women and adolescents.

The Committee recalls that there should be screening, preferably systematic, for all the diseases that constitute the principal causes of death and there must be free and regular consultation and screening for pregnant women and for children (Conclusions 2005, Republic of Moldova). The Committee has ruled that "where it has proved to be an effective means of prevention, screening must be used to the full" (Conclusions XV-2 (2001), Belgium).

The report first of all emphasises the State's obligation to guarantee the provision of health care services to all citizens on the basis of Act No. 4238/2014 on Primary Health Care, which include, inter alia, the following services:

- Assessment of citizens' health needs, design and implementation of measures and programs in order to prevent diseases, universal implementation of a national screening program for specific diseases, as well as health promotion;
- Family planning and services for the mother and child;
- Primary dental and orthodontic care, placing emphasis on prevention;
- Implementation of vaccination programmes.

More particularly, with respect to screening, the report makes reference to the Programme of Preventive Medicine in the context of which medical tests are carried out for the following diseases: prenatal thalassemia, cervix cancer, prostate cancer, breast cancer, colon cancer, hemoglobin in urine and feces and dyslipidemia. The Committee takes note of the number of tests carried out as part of the Programme, but it also observes that larger numbers of tests are conducted outside the framework of the Programme. It therefore asks that the next report contain up-dated figures providing an overview of the total number of screenings carried out for the various diseases concerned. It also wishes to be informed about coverage rates (number of persons screened from the target population and on the impact of the screening programmes (impact on early diagnosis rates, survival rates, etc.).

The report also provides information on the National Newborn Screening Programme (EPPEN) which provides for screening concerning four diseases: phenylketonuria, congenital hypothyroidism, galactosemia and Glucose-6-Phosphate Dehydrogenase – G6PD. According to the report preparations are underway to expand this programme. Also here the Committee requests up-dated information on the number of screenings, coverage rates and impact.

While noting the information on the legislative framework for family planning and care for mother and child, the Committee asks that the next report contain information on any specific counselling and screening services specifically aimed at pregnant women.

Finally, the Committee notes that annual free preventive medical check-ups for school children are provided by volunteer doctors at schools throughout the country. It requests clarification as to whether free checks-ups are offered to all school children or only at selected schools based on the presence of volunteer doctors.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in Greece is in conformity with Article 11§2 of the 1961 Charter.

Article 13 - Right to social and medical assistance

Paragraph 4 - Specific emergency assistance for non-residents

In application of the reporting system adopted by the Committee of Ministers at the 1996th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions XX-2 (2013).

The Committee takes note of the information submitted by Greece in response to the conclusion that it had not been established that all foreign migrants in an irregular situation could receive emergency social assistance as needed (Conclusions XX-2 (2013), Greece).

The Committee recalls that the beneficiaries of the right to emergency social and medical assistance under Article 13§4 are foreign nationals who are lawfully present in a particular country but do not have resident status (Statement of interpretation on Article 13§4, Conclusions XIV-1 (1998)). Moreover, the Committee has extended the scope of the right to emergency social and medical assistance to foreigners in an irregular situation (International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, decision on the merits of 8 September 2004, §32).

As requested by the Committee the report provides information on the situation of persons irregularly present in the territory and in need of social assistance. Further information was provided by the Government to the Governmental Committee (Report concerning Conclusions XX-2 (2013)). It follows from this information that under Presidential Decree No. 220/2007 applicants for international protection (asylum seekers) who do not have shelter or resources are granted protection at "hospitality centres or other areas" determined by the competent authorities. According to the report living conditions in these centres and areas are such as to guarantee the fundamental rights of the persons concerned. The Committee asks whether and to what extent specific funding has been allocated to ensure the proper implementation of the Presidential Decree.

The report further states that victims of human trafficking or migrant smuggling "shall be granted standards of living capable of ensuring their subsistence provided they do not have sufficient resources" (Section 51 of Act No. 4251/2014).

As regards the situation in practice the report refers to the programmes of the European Refugee Fund aimed at meeting the basic needs of refugees, asylum seekers and displaced persons through the provision of housing, food, clothing, etc. Support under these programmes may be granted irrespective of immigration status (lawful or unlawful). The Committee takes note of the number of beneficiaries of the programmes.

Finally, the report emphasises that the Hellenic Police in its dealings with migrants in an irregular situation has the primary objective of ensuring adequate living conditions for them fully compatible with human values. Reference is made to the conditions offered to such persons in the seven Pre-departure Detention Centres (PKEK) established as part of the Action Plan on Asylum and Migration Management. In this respect the Committee notes the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (<http://www.cpt.coe.int/documents/grc/2014-26-inf-eng.pdf>) from which it would appear that, despite certain deficiencies determined, emergency assistance in the meaning of Article 13§4 of the Charter is ensured.

The Committee considers that the information provided is not sufficiently clear and does not seem to demonstrate that all persons in an irregular situation may benefit from social assistance, if they are in need. While it would appear that emergency social assistance is ensured for persons that have applied for asylum and are placed in hospitality centres, for

victims of trafficking and for irregular migrants held in detention facilities (PKEK centres), it remains unclear whether and to what extent assistance is provided to irregular migrants outside of this "institutional" framework.

On this basis, the Committee does not consider it established that the situation is in conformity with Charter 13§4 of the Charter.

Conclusion

The Committee concludes that the situation in Greece is not in conformity with Article 13§4 of the 1961 Charter on the ground that it has not been established all foreign migrants in an irregular situation are entitled to receive emergency social assistance in case of need.



January 2016

1961 European Social Charter

European Committee of Social Rights

Conclusions XX-4 (2015)

POLAND

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 1961 European Social Charter (the 1961 Charter) and the 1988 Additional Protocol (the Additional Protocol). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure

Information on the 1961 Charter, statements of interpretation, and general questions from the Committee, are reflected in the General Introduction to all Conclusions.

The following chapter concerns Poland which ratified the 1961 Charter on 25 June 1997. The deadline for submitting the 14th report was 31 October 2014 and Poland submitted it on 8 April 2015. Comments on the 14th report by the trade union *Ogólnopolskie Porozumienie Związków Zawodowych* (OPZZ) were registered on 18 May 2015 and the reply from the Government on these comments was registered on 26 June 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 "Children, families and migrants":

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection of maternity (Article 8),
- the right of the family to social, legal and economic protection (Article 16),
- the right of mothers and children to social and economic protection (Article 17),
- the right of migrant workers and their families to protection and assistance (Article 19).

Poland has accepted all provisions from the above-mentioned group except Articles 7§1, 7§3 and 7§5, as well as sub-paragraph b of Article 8§4.

The reference period was 1 January 2010 to 31 December 2013.

The conclusions relating to Poland concern 23 situations and are as follows:

- 16 conclusions of conformity: Articles 7§2, 7§4, 7§6, 7§7, 7§8, 7§9, 7§10, 8§1, 8§2, 8§3, 19§1, 19§4, 19§5, 19§6, 19§7 and 19§9;
- 5 conclusions of non-conformity: Articles 8§4(a), 16, 17, 19§2 and 19§10.

In respect of the other 2 situations related to Articles 19§3 and 19§8, 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 Poland under the 1961 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 7§10

Amendments to the Criminal Code were introduced in 2012; in particular, the new Article 202§4 b stipulates that whoever produces, distributes, presents, stores or possesses content showing pornographic image of minors (under the age of 18) shall be subject to a fine, or imprisonment of up to 2 years.

Article 8§1

The Law of 28 May 2013 amended the provisions on maternity leave, in particular by introducing parental leave.

Article 19§2

The new Law on Foreigners 2013 has inter alia streamlined the process for applying for residence permits, and transposed Directive 2011/98/EU concerning third-country nationals into Polish law.

Article 19§6

Section 186 of the Law on Foreigners 2013, which entered into force after the reference period, expressly provides that the right to family reunion shall be granted in accordance with the Social Charter.

The next report will deal with 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 1 of the 1988 Additional Protocol).

The deadline for submitting the above report was 31 October 2015.

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Article 7 - Right of children and young persons to protection

Paragraph 2 - Higher minimum age in dangerous or unhealthy occupations

The Committee notes from the report submitted by Poland that there have been no changes to the legal situation which it has previously considered to be in conformity with Article 7§2 of the 1961 Charter.

In its previous conclusion (Conclusions 2011), the Committee requested information on the irregularities identified by labour inspectors in situations where young people performed dangerous or unhealthy tasks in companies.

The report indicates that labour inspectors seldom come across breaches of the legislation on the employment of young people in dangerous or unhealthy occupations. The percentage was 1 to 1.5% over the period 2010-2013.

Violations of the statutory provisions included cases of young people performing work connected with the removal of asbestos (sheets of eternity). The work was carried out at height and without appropriate protective equipment. In addition, young workers: (i) performed tasks involving exposure to substances which are harmful to human health (e.g. work involving the use of organic solvents), (ii) operated machinery and equipment which were especially dangerous or had no protective cover or worked in buildings which did not meet occupational health and safety standards (they performed guillotining, for example). Cases of young people being employed to transport loads above the accepted limits were also reported.

The report indicates the measures taken by the labour inspectors in the course of inspections concerning compliance with the provisions on the employment of young workers in general during the reference period (including concerning the employment of young people in dangerous or unhealthy occupations). The Committee wishes to receive disaggregated data concerning the measures taken by the labour inspectorate (fines, court orders, etc.) in cases where there have been violations of the legislation on the employment of young people in dangerous or unhealthy occupations.

According to the report, information campaigns on occupational safety issues and the rights of young employees were conducted during the reference period, as well as training programmes for labour inspectors, employers and the social partners.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Poland is in conformity with Article 7§2 of the 1961 Charter.

Article 7 - Right of children and young persons to protection

Paragraph 4 - Length of working time for young persons under 16

The Committee notes from the report submitted by Poland that there have been no changes to the legal situation which it has previously considered to be in conformity with Article 7§4 of the 1961 Charter.

The report indicates that, during the reference period, 1 to 4% of the employers inspected did not comply with the regulations regarding night work, overtime and daily working time of young workers. The report provides the total number of measures taken by the labour inspectors with regard to the employment of young workers.

The Committee recalls that although there may have been no legislative developments, the situation in practice should be regularly monitored. It therefore asks the next report to provide disaggregated data on the number and nature of violations detected by the Labour Inspection as well as on sanctions imposed for breach of the regulations regarding working time for young workers under the age of 18.

Conclusion

The Committee concludes that the situation in Poland is in conformity with Article 7§4 of the 1961 Charter.

Article 7 - Right of children and young persons to protection

Paragraph 6 - Inclusion of time spent on vocational training in the normal working time

The Committee notes from the report submitted by Poland that there have been no changes to the legal situation which it has previously considered to be in conformity with Article 7§6 of the 1961 Charter.

The Committee recalls that although there may have been no legislative developments, the situation in practice should be regularly monitored. It therefore asks the next report to provide information on the monitoring activity of the Labour Inspection, including on the number and nature of violations detected as well as on sanctions imposed for breach of the regulations regarding the inclusion of time spent on vocational training by young workers in the normal working time.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Poland is in conformity with Article 7§6 of the 1961 Charter.

Article 7 - Right of children and young persons to protection

Paragraph 7 - Paid annual holidays

The Committee notes from the report submitted by Poland that there have been no changes to the legal situation which it has previously considered to be in conformity with Article 7§7 of the 1961 Charter.

The report indicates that the labour inspectors have identified breaches of the regulations concerning the first annual holiday of young workers for 9% of the employers inspected in 2012 and for 5% of the employers inspected in 2013.

The Committee recalls that the situation in practice should be regularly monitored. The report provides the total number of measures taken by the labour inspectors with regard to the employment of young workers. The Committee asks the next report to provide disaggregated data on the number and nature of violations detected by the Labour Inspection as well as on sanctions imposed for breach of the regulations regarding paid annual holidays of young workers under the age of 18.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Poland is in conformity with Article 7§7 of the 1961 Charter.

Article 7 - Right of children and young persons to protection

Paragraph 8 - Prohibition of night work

The Committee notes from the report submitted by Poland that there have been no changes to the legal situation which it has previously considered to be in conformity with Article 7§8 of the 1961 Charter.

The report indicates that, during the reference period, 1 to 4% of the employers inspected did not comply with the regulations regarding night work, overtime and daily working time of young workers. The report provides the total number of measures taken by the labour inspectors with regard to the employment of young workers.

The Committee recalls that the situation in practice should be regularly monitored. It asks the next report to provide disaggregated data on the number and nature of violations detected by the Labour Inspection as well as on sanctions imposed for breach of the regulations regarding prohibition of night work for workers under the age of 18.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Poland is in conformity with Article 7§8 of the 1961 Charter.

Article 7 - Right of children and young persons to protection

Paragraph 9 - Regular medical examination

The Committee notes from the report submitted by Poland that there have been no changes to the legal situation which it has previously considered to be in conformity with Article 7§9 of the 1961 Charter.

The report provides statistical data with regard to the deficiencies detected during the inspections carried out within the reference period. The labour inspectors have identified breaches of the regulations concerning the medical examination of young workers at recruitment for 33% of the employers inspected in 2012 and for 28% of the employers inspected in 2013. Furthermore, according to the report, 22% of the employers inspected in 2012, respectively 25% of the employers inspected in 2013 did not comply with the regulations regarding the regular medical examinations of young workers.

The Committee takes note of the high percentage of the employers breaching the rules concerning regular medical examination of young workers. It asks the next report to provide disaggregated data on the number and nature of measures taken by the Labour Inspection/sanctions imposed on employers for breach of the regulations regarding initial and regular medical examination of young workers under the age of 18.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Poland is in conformity with Article 7§9 of the 1961 Charter.

Article 7 - Right of children and young persons to protection

Paragraph 10 - Special protection against physical and moral dangers

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

The Committee notes that Poland ratified the Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse in 2015. According to the report, the Penal Code and certain other legislative acts were amended in 2014 in compliance with the abovementioned Convention as well as the Directive 2011/93/EU. The Committee wishes to be informed of the content of these amendments.

Protection against sexual exploitation

In its previous conclusion (Conclusions 2011) the Committee held that the situation in Poland was not in conformity with Article 7§10 of the Charter on the ground that children were not protected against all forms of child pornography as the same legislation applied to them as to adults which did not criminalise a simple possession and storage of pornography.

The Committee takes note of the amendments to the Criminal Code introduced in 2012; in particular, the new Article 202§4 b stipulates that whoever produces, distributes, presents, stores or possesses content showing pornographic image of minors (under the age of 18) shall be subject to a fine, or imprisonment of up to 2 years.

The Committee notes that with this amendment the situation has been brought into conformity with the Charter.

Protection against the misuse of information technologies

According to the report, the police participates in the programme 'safer internet' which aims at raising awareness about the dangers of internet for children. In 2013 the Council of Ministers adopted the cyberspace security policy document, which defines the priorities of action in the field. In 2013 the Ministry of Administration and Digitisation organised consultations with civil society organisations as well as communications companies regarding action to be taken with a view to protecting children against the misuse of internet technologies. The Committee also takes note of different initiatives and projects that have been implemented, including training and awareness raising on the digital technologies. The Ministry of Administration and Numerisation also implemented awareness raising programmes for parents.

The Committee asks whether internet service providers are responsible for controlling the material they host and encouraging the development and use of the best monitoring system for activities on the net.

Protection from other forms of exploitation

The Committee takes note of measures taken to protect children victims of trafficking.

In reply to the Committee's question in the previous conclusion, the report states that the frontier guards have put in place measures to protect children from being involved in forced begging. In the framework of these measures child victims of trafficking were identified.

The Committee notes from the Report of the Group of Experts on Action against Trafficking in Human Beings (GRETA) concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Poland (2013) that GRETA considers that the Polish authorities should extend all special protection procedures to cover child victims of trafficking up to the age of 18.

According to GRETA, the provision of accommodation and support to victims of trafficking is ensured by the National Consulting and Intervention Centre for Polish and Foreign Victims of Trafficking, 14 designated crisis intervention centres across the country, as well as non-

governmental organisations. Nevertheless, GRETA considers that the authorities should improve the system for providing assistance to child victims of trafficking, both in terms of accommodation and of medium and long-term support programmes tailored to the children's needs.

The Committee asks the next report to provide up-to-date information concerning the factual situation indicated in these recommendations.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Poland is in conformity with Article 7§10 of the 1961 Charter.

Article 8 - Right of employed women to protection

Paragraph 1 - Maternity leave

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

Right to maternity leave

The report refers to the Law of 28 May 2013, which amended the provisions on maternity leave, in particular by introducing parental leave. Under the Labour Code, as amended by this law, all employees are entitled to 20 weeks maternity leave and 6 weeks of "additional maternity leave". The length of maternity and additional maternity leave can be increased in case of multiple births (up to 37 and 8 weeks respectively). The leave can be taken up to 6 weeks before the expected date of birth. After the first 14 weeks of leave, which are reserved to the mother, the remaining 12 weeks can be taken by either parent. The maternity and additional maternity leave can be followed by a parental leave of up to 26 weeks, which can be taken by the parents by periods of at least 8 consecutive weeks. The Committee asks whether the law provides for a minimum length of postnatal leave, which is compulsory for the mother to take and can not be relinquished, not even at her request.

In response to the Committee's question, the report clarifies that the Labour Code provisions on maternity leave also applies to employees in the public sector, as the relevant legislation applying to them, that is the Act of 21 November 2008 on civil service, the Act of 16 September 1982 on Employees in State Offices and Act of 21 November 2008 on Employees in Regional Offices, does not contain any specific provision in this respect.

Right to maternity benefits

The Committee previously noted that, under the Act on Social Insurance Benefits in Illness and Maternity, all insured women are entitled, for the whole length of their maternity leave (26 weeks), to a benefit corresponding to 100% of their average gross monthly salary paid over the 12 calendar months preceding the leave. A benefit corresponding to 80% of the salary can alternatively be paid for 52 weeks if the employee chooses to cumulate maternity and parental benefit. The Committee asks the next report to clarify whether, as indicated by another source (European Network of Legal Experts in the field of Gender Equality, Fighting Discrimination on the Grounds of Pregnancy, Maternity and Parenthood – The application of EU and national law in practice in 33 European countries, 2012), a minimum period of insurance for 30 uninterrupted days is required in order to receive maternity benefits. In particular, with reference to its Statement of Interpretation on Article 8§1 in the General Introduction, the Committee asks whether interruptions in the employment record are taken into account in the determination of maternity benefits and whether the minimum rate of such benefits corresponds at least to the poverty threshold, defined as 50% of the median equivalised income, calculated on the basis of the Eurostat at-risk-of-poverty threshold value.

The report confirms that the same regime applies to women employed in the private as in the public sector.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in Poland is in conformity with Article 8§1 of the 1961 Charter.

Article 8 - Right of employed women to protection

Paragraph 2 - Illegality of dismissal during maternity leave

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

Prohibition of dismissal

The Committee previously noted that Article 177 of the Labour Code prohibits an employer from giving notice or terminating the employment contract with a pregnant woman or during maternity leave, except in certain cases, duly justified and validated by the trade union, related to the employee's misconduct (severe breach of duties, commission of a criminal offence or the employee's loss through her own fault of the qualifications needed to carry out her work) or if the enterprise ceases to operate due to bankruptcy or liquidation. The report adds that the same protection applies during parental leave.

As an exception, the termination of contract during pregnancy or maternity leave is also possible in certain cases of rejection by the employee concerned of changes to her contract in the following circumstances:

- following the revocation of appointment of high-level employees in public administration or state-owned enterprises (ministers, under secretaries of State, particular positions in local self government, directors, deputy directors in state owned enterprises, etc.) – in this case, the employee concerned must be offered an equivalent post, corresponding to her qualifications and is entitled to a salary compensation during the protected period (Article 72 of the Labour Code), unless she declines the offer, bringing the employment relationship to an end, a situation which the Committee considered to be compatible with Article 8§2 of the Charter (Conclusions XVII-2 (2005) and XIX-4 (2011));
- as a result of organisational, production or technical changes in the enterprise (Article 42 of the Labour Code and the Special Terms for Terminating Employees' Employment for Reasons Not Related to the Employees Act of 13 March 2003) – in this case, the employee is also entitled to a salary compensation during the protected period, unless she declines the offer, bringing the employment relationship to an end. In its previous conclusions, the Committee requested further clarifications, in particular with a view to assessing what guarantees/control is provided to ensure that such a possibility is not abused (Conclusions XVII-2 (2005)) and reserved its position on this point (Conclusions XIX-4 (2011)).

The Committee notes from the information provided in the previous and current reports that changes in the terms of working conditions and remuneration can be proposed in exceptional cases where it is not possible to maintain the employee concerned in her post only because of organisational, production or technical changes in the enterprise. According to a constant case-law, referred to in the report, the pregnant employee's consent is essential to bring an employment relationship to an end under these conditions, and she must be fully aware of her rights in this respect. For example, a resiliation of the contract agreed by the employee when she was not aware of being pregnant will be considered null and void.

Redress in case of unlawful dismissal

The Committee previously noted that in the event of a dismissal based on unjustified grounds, pregnant women and women on maternity leave, whether they have been reinstated or not, are entitled to compensation corresponding to the loss of earnings resulting from the time they were unemployed.

Replying to the Committee's question, the report confirms that only pecuniary damage is covered, in conformity with the Labour Code (Supreme Court judgment of 10 January 2007, III PK 91/06, LEX 948793). Claims for non-pecuniary damages might however be brought in

accordance with the relevant provisions of the Civil Code (Articles 23, 24, 415, 444, 445). The Committee asks the next report to provide further information on relevant cases, if any, concerning the award of non-pecuniary damage in connection with the unlawful termination of employment during pregnancy or maternity leave and to clarify whether compensation awarded in this context, under the civil code, is limited or not. It furthermore asks, in the light of any relevant data and case-law, whether damages can be claimed under the anti-discrimination legislation in cases of unlawful termination of employment during pregnancy or maternity leave.

The report confirms that the same rules apply to women employed in the public sector.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in Poland is in conformity with Article 8§2 of the 1961 Charter.

Article 8 - Right of employed women to protection

Paragraph 3 - Time off for nursing mothers

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

The report confirms that there have been no changes to the situation which was previously found to be in conformity with Article 8§3 of the Charter: all employees who are nursing are entitled to two half-hour breaks per day, which are included in the calculation of working hours and, accordingly, are paid (Article 187 of the Labour Code). The report furthermore confirms that the same rules apply to employees in the public sector.

The Committee notes from another source (Polish Labour Law Blog, [ECJ and Polish labour law on child feeding leave](#), Article by Kalina Jaroslawska, of 11/02/2011) that the right to nursing breaks applies for as long as the child is breastfed, with no limit of age and that the amount of leave depends on the daily working hours of the nursing mother:

- if it's shorter than 4 hours, no time off is available;
- if it's between 4 and 6 hours, one half-hour break when 1 child is being breastfed, or one 45-minute break when more than 1 child is being breastfed;
- if it's longer than 6 hours, two half-hour breaks when 1 child is being breastfed, or two 45-minute breaks when more than 1 child is being breastfed.

Conclusion

The Committee concludes that the situation in Poland is in conformity with Article 8§3 of the 1961 Charter.

Article 8 - Right of employed women to protection

Paragraph 4 - Regulation of night work and prohibition of dangerous, unhealthy or arduous types of work

The Committee takes note of the information, relating to Article 8§4(a) of the 1961 Charter, contained in the report submitted by Poland¹.

It previously noted that Article 151 of the Labour Code defines as night worker a worker who carries out at least one fourth of his/her working time between 9 p.m. and 7 a.m. or at least three hours every 24 hours during the above mentioned period of time.

The Committee previously found that the situation was in conformity with Article 8§4(a) of the 1961 Charter as regards pregnant women, as well as women who have recently given birth or are nursing and notes from the report that there have been no changes in this respect: night work is prohibited for pregnant women and any worker (men or women) who has a child below four years of age can only be employed at night upon the worker's consent (Article 178 of the Labour Code). The employer must transfer a pregnant night worker to a daytime post, matching as far as possible the employee's qualification and wages. If this is not possible, she is entitled to a compensatory allowance (Conclusions XV-2 (2001); XVI-2 (2004); XVII-2 (2005) and XIX-4 (2011)).

The Committee found however that the situation was not in conformity with the 1961 Charter as regards other categories of women employed as night workers in industrial employment, in that the applicable regulations did not provide adequate protection to them. The Committee recalls in this respect that, while Article 8§4, under the Revised Charter, concerns all employed women but only in relation to maternity (pregnant women, women having recently given birth, nursing women), the correspondent provision of the 1961 Charter requires states to regulate night work for women in industrial employment, not only in relation to maternity (Explanatory report on the Revised Social Charter).

Article 8§4(a) of the 1961 Charter does not require states to prohibit night work for women, but to regulate it in order to limit the adverse effects on the health of the woman. Furthermore, this provision does not require the adoption of night work regulations specific to women if there are regulations that apply equally to workers of both sexes (Conclusions X-1 (1987) United Kingdom), as long as they afford sufficient protection (Conclusions XIII-1 (1996), Ireland): these regulations should be designed to limit the damaging effects of night work and to prevent abuse and, to this end, should lay down conditions under which such work can be carried out (Conclusions X-2 (1988) Ireland), such as prior authorisation, working hours, breaks, days of rest following periods of night work etc. (Statement of Interpretation on Article 8§4, Conclusions X-2 (1988); Conclusions XIII-5 (1997) Portugal), the existence of regular medical check-ups and the possibility for night workers to be transferred to daytime work (Conclusions XV-2 (2001) Poland), whether, before introducing night work, the employer must consult with worker representatives and what are the penalties prescribed for breaches of the legislation (Conclusions XV-2 (2001) Spain). Accordingly, to be found in conformity with Article 8§4 a of the 1961 Charter, a state must be able to prove that effective protection measures, such as those indicated above, apply to all women in industrial employment and not only in relation to maternity.

In their report, the authorities state that the relevant legislation offers adequate protection to women employed as night workers. They confirm however that no prior authorisation is required before introducing night work and affecting a worker to it, and no particular rules apply as regards breaks and compensatory rest for night workers, unless the activity carried out is considered to be dangerous or implying a heavy mental or physical strain. Furthermore, despite the requirement to undergo a medical assessment before being employed on night work and regularly afterwards – at 3 to 5 year intervals depending on the work – there is no right to be transferred to daytime work in case of health problems related to night work (Conclusions XIX-4 (2011)). The report states that this situation has not changed, accordingly the Committee considers that the regulation of night work does not

adequately protect night workers, in particular those covered by Article 8§4(a) of the 1961 Charter, namely women carrying out night work in industrial employment.

Conclusion

The Committee concludes that the situation in Poland is not in conformity with Article 8§4(a) of the 1961 Charter on the ground that the regulation of night work does not adequately protect women carrying out night work in industrial employment.

¹*Poland denounced sub-paragraph b of this provision in 2011.*

Article 16 - Right of the family to social, legal and economic protection

The Committee takes note of the information contained in the report submitted by Poland. It also takes note of the information contained in the comments by the trade union *Ogólnopolskie Porozumienie Związków Zawodowych* (OPZZ) of 18 May 2015 and the addendum to the report of 26 June 2015.

Social protection of families

Housing for families

The Committee refers to its previous conclusion (Conclusions XIX-4 (2011)) for a description of the home building programmes that have been implemented for poor families.

The Committee points out that to comply with Article 16, States Parties must promote the provision of an adequate supply of housing for families, take the needs of families into account in housing policies and ensure that existing housing be of an adequate standard and include essential services (such as heating and electricity).

It notes from the data provided in the report that in 2013, 3% of households received housing benefit, which amounted to an average of €47.50 per month. It also notes that 1,714 social housing units were constructed in 2013. The report does not state, however, how many families are waiting for housing. Nor does it provide any information on the adequacy of housing.

The Committee also points out that to be effective, the right to adequate housing requires legal protection through adequate procedural safeguards. Occupiers and tenants must have access to affordable and impartial judicial and non-judicial remedies. Any appeal procedure must be effective (Conclusions 2003, France, Italy, Slovenia and Sweden; Conclusions 2005, Lithuania and Norway; European Federation of National Organisations working with the Homeless (FEANTSA) v. France, complaint No. 39/2006, decision on the merits of 5 December 2007, §§ 80-81). Public authorities must also guard against the interruption of essential services such as water, electricity and telephone (Conclusions 2003, France).

Despite the Committee's request, the report does not provide any information on adequate procedural safeguards.

In view of the lack of information on access to adequate housing for families and on adequate procedural safeguards, the Committee considers that the situation is not in conformity with the 1961 Charter on the ground that it has not been established that families have access to adequate housing.

With regard to eviction, the report states that the law on the protection of the rights of tenants and the housing resources of municipalities was amended in 2011 to cater more for the needs of persons facing eviction. When initiating eviction procedures, bailiffs who have ascertained that a tenant owing rent has not found an alternative solution must apply to the municipality for it to propose temporary accommodation to the tenant. Pending the identification of this accommodation by the municipality, bailiffs must refrain for up to six months from carrying out eviction orders. Beyond this time, bailiffs must refer tenants to a night shelter, a centre for the homeless or another facility offering accommodation. Parties who have been exempted by the court from legal costs or have made a statement are entitled to legal aid. The Committee asks for information in the next report on access to judicial remedies during eviction procedures and compensation in the event of wrongful eviction.

As to the housing situation of Roma families, the report states that the 2004-2013 National Programme for Roma has resulted in the implementation of activities in the areas of building, renovation, water and electricity supply and sanitation. Between 2010 and 2012, works of this type were carried out on 1, 085 flats. The Programme also provided financing for various

goals such as the regularisation of land ownership, assistance with the repayment of rent arrears and simplification of the procedures to claim housing benefit. According to the report, €2.6 million was spent in this sphere between 2010 and 2013. The Committee asks for further information in the next report on measures planned and taken to improve the housing situation of Roma families.

Childcare facilities

The report states that the Law on Childcare Services for Children up to the Age of 3 was amended in 2013 to take account of the possibility of obtaining financial support from bodies setting up childcare establishments. The Committee notes that in 2010, there were 511 nurseries and nursery branches whereas in 2013 there were 1,511. Over this period the number of places rose from 32,500 to 56,000, increasing the proportion of children covered by such services from 2.6% to 5.7%. The Committee notes the comments submitted by OPZZ on 5 June 2015, emphasising that 5.7% is still a very low figure. The Committee asks for information in the next report on the measures planned and taken to enable a larger number of children aged 3 and under to attend childcare facilities.

The report states that parents are charged €70 per year to cover attendance and food costs.

The Law on Childcare Services for Children up to the Age of 3 lays down the rules on nursery staff qualifications.

With regard to children between the ages of 3 and 6, the report points out that preschool education is now provided for all children aged 5 as a result, in particular, of the Regulation of the Minister of Education of 31 August 2010 on the various forms of preschool education, the requirements for their establishment and organisation and their operating methods. This regulation was amended in 2011 to allow an increase in the minimum number of hours of teaching per week. In 2013, municipalities were placed under an obligation to provide a place in a nursery school or another form of preschool education for all children of 4 years of age from 1 September 2015 and all children of 3 years of age from 1 September 2017. According to the statistics in the report, net school attendance rates in 2013 were 57.5% for children aged 3, 70.7% for children aged 4, 93.6% for children aged 5 and 97.7% for children aged 6.

The Committee notes that the European Social Fund has a budget of €416.4 million for the setting up of nursery schools, support for nursery schools for the creation of new places and the modernisation of preschool facilities. Between 2008 and 2013, 2,131 state and non-state preschool centres and preschool education groups were set up (including 1,338 in rural areas). The number of state and non-state nursery schools increased by 2,396 (to 10,434 including 3,448 in rural areas) and the number of preschool units in primary schools rose by 4,261. Currently, there are 15,422 of these in total (including 9,803 in rural areas).

On the subject of the attendance fees for state nursery schools, the report states that they are free of charge for up five hours per day. After 1 September 2013, the cost of each hour beyond five hours was limited to €0.23. In addition to attendance costs, parents must pay for food. On average, parents must pay about €14 per month for each child attending nursery school.

Family counselling services

The report states that the Law of 9 June 2011 on Family Support and Foster Care requires local and central government bodies to support families finding it difficult to fulfil their duties of care and education. The services provided include specialised advice and counselling, treatment and mediation and legal aid in family law proceedings, etc. The Law set up the institution of the family assistant, who helps to improve the situation of families with problems, particularly in the areas of household management and social, psychological and

educational problems. Assistants prepare and implement work plans with the families in consultation with social workers.

Participation of associations representing families

The report states that the Constitution and the Law of 24 April 2003 on Public Interest Organisations and Voluntary Work requires the state to co-operate with civil society organisations. This co-operation most frequently takes the form of preparing new legislation and in this context, the members of associations representing families submit comments on draft legislation and framework decisions.

Legal protection of families

Rights and obligations of spouses

In its previous conclusion (Conclusions XIX-4 (2011)), the Committee asked for information about the legal means of settling disputes between spouses, particularly disputes concerning children.

The Committee reiterates that where there is an irretrievable breakdown in family relations, Article 16 requires the provision of legal arrangements to settle marital conflicts, particularly ones pertaining to children, covering care and maintenance, deprivation and limitation of parental rights, custody and children's right to express their opinion in proceedings concerning them.

The report states that the Guardianship Code lays down the rules on family relations. In the event of divorce, decisions on children are always taken by courts, which take account of the child's best interests. Parents are expected to provide for their children's needs. If it is in a child's best interests, a court may decide to suspend, restrict or completely withdraw the parental authority of one or both of the parents.

The Committee asks for information in the next report on the legal arrangements to settle marital conflicts.

Mediation services

In its previous conclusion (Conclusions XIX-4 (2011)) the Committee requested information on the scope of family mediation services, whether they are provided free of charge, their distribution across the country and their effectiveness.

According to the report, parties in mediation proceedings must pay a fee and mediation services are spread throughout the country. Figures are also given on their use. The Committee considers that under Article 16 of the 1961 Charter, the legal protection of the family includes the provision of mediation services whose object should be to avoid the further deterioration of family conflicts. To be in conformity with Article 16, these services must be easily accessible to all families. In particular families must not be dissuaded from seeking such services for financial reasons. Providing these services free of charge constitutes an adequate measure to this end. Otherwise, in case of need, a possibility of access for families should be provided. The Committee asks the next report to indicate what assistance is available for families in case of need.

Domestic violence against women

According to the report, the Law of 29 July 2005 on Measures to Combat Domestic Violence was amended in 2010 to enhance prevention, increase the effectiveness of victim protection, set up mechanisms making it easier to separate perpetrators and victims and set up remedial and educational programmes for offenders. For this purpose, new measures were introduced such as the possibility of removing accused persons from the premises they

occupy with the victim, measures prohibiting offenders from approaching or contacting victims, the enforcement of conditionally suspended penalties, cancellation of parole, the possibility of bringing civil proceedings to keep perpetrators and victims apart and the possibility of undergoing a free medical check-up, etc.

The Committee takes note of the various national programmes, conferences and training programmes on combating domestic violence. It notes that in 2013, there were 35 specialised domestic violence victim support centres.

The Committee asks for further information in the next report on the measures taken to combat domestic violence against women.

Economic protection of families

Family benefits

According to Eurostat data, the monthly median equivalised income in 2014 was €445. According to MISSOC, child benefit for children under the age was €18, amounting to 4% of that income, while for children between 5 and 18, it was €25 amounting to 5.6% of that income, and for those between 18 and 24 it was €27 amounting to 6% of that income.

The Committee considers that, in order to comply with Article 16, family benefit must constitute an adequate income supplement, which is the case when it represents a significant percentage of the median equivalised income. It considers that child benefit for children under the age of 5 are inadequate.

The Committee also notes from the comments by the OPZZ submitted on 5 June 2015 that in 2012, child benefit were not paid if a family's *per capita* income exceeded €127 per month. In the OPZZ's view, the effect of this means testing was to deny child benefits to a large number of families in need. In its reply of 29 June 2015, the Government stated that the income criteria on which entitlement to benefit was based were reviewed every three years and that in 2014 the upper limit on *per capita* income per month was €133. It also refers to future changes but fails to indicate what percentage of families are paid child benefit. In the light of these figures, the Committee considers that the situation is not in conformity with the 1961 Charter because it has not been established that a significant number of families are entitled to child benefits.

Vulnerable families

In its previous conclusion (Conclusions XIX-4 (2011)) the Committee asked for information on the implementation of means to secure the economic protection of Roma families. The report does not provide any information on this subject so the Committee repeats its request. Should the next report not provide the information requested, there will be nothing to show that the situation is in conformity with the 1961 Charter.

Equal treatment of foreign nationals and stateless persons with regard to family benefits

In its previous conclusion (Conclusions XIX-4 (2011)) the Committee considered that the situation in Poland was not in conformity with Article 16 on the ground that there was no guarantee that family benefits would be paid to the nationals of certain States Parties to the 1961 Charter and the Charter.

The Committee notes that a new law on foreign nationals was adopted on 13 December 2013 and came into force on 1 May 2014 (outside the reference period). This law changes the personal scope of the law on family benefits. The right to family benefits is now granted to foreign nationals in the following circumstances:

- if the provisions on the co-ordination of social security systems are applied;

- if there are bilateral social security agreements;
- if the person is residing in Poland on the basis of a permanent residence permit, an EU long-term residence permit, a short-term permit issued because of the circumstances described in Articles 127 or 186, paragraph 1.3, of the Law of 12 December 2013 on Foreign Nationals or because the person concerned has been granted refugee status in Poland or subsidiary protection status if they are living in Poland with other family members;
- if they hold a residence permit marked “Access to the labour market”, unless they are nationals of third parties who are authorised to work in an EU member state for no more than six months, have been admitted to pursue studies or are authorised to work under a visa arrangement;
- if they are residing in Poland on the basis of a temporary residence permit (of 3 months to 3 year) including the right to work.

The Committee also notes from the report of the Governmental Committee (Report concerning Conclusions XIX-4 (2011)) that family allowances are non-contributory benefits and they are not subject to a work requirement.

The Committee recalls that States parties may apply a length of residence requirement with regard to non-contributory benefits provided that the length is not excessive (Conclusions XIV-1 (1998), Sweden). The proportionality of such length of residence requirements is examined on a case-by-case basis having regard to the nature and purpose of the benefit. The Committee has held that lengths of 6 to 12 months are reasonable and hence in conformity with Article 16 (Conclusions XIV-1 (1998), Sweden). On the other hand, it has held that lengths of 3 to 5 years are clearly excessive and therefore in breach of the Charter (Conclusions XVIII-1 (2006), Denmark).

The Committee asks for it to be clarified in the next report whether entitlement to a permanent residence permit is subject to a length of residence requirement. If this is the case, it asks what the length of residence is. Pending receipt of this information, the Committee reserves its position.

The Committee asks the next report to indicate whether stateless persons and refugees are treated equally with regard to family benefits.

Conclusion

The Committee concludes that the situation in Poland is not in conformity with Article 16 of the 1961 Charter on the grounds that:

- it has not been established that families have access to adequate housing;
- family benefits are inadequate for children under the age of five;
- it has not been established that a significant number of families are entitled to family benefits.

Article 17 - Right of mothers and children to social and economic protection

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

The legal status of the child

The Committee notes that there is no change to the situation which it has previously found to be in conformity with the Charter.

Protection from ill-treatment and abuse

The report states that a total ban on corporal punishment of children in all settings has been introduced. The situation accordingly remains in conformity with the 1961 Charter.

Rights of children in public care

According to the report, since 2012, when the Law on Family Support and Placement of Children entered into force, the ratio of children in family care and in institutions has been 7 to 3. The Committee notes that in 2013 there were 58,306 children in family type care and 20,105 children in institutions. The Committee asks what is the average size of an institution. It wishes to be regularly informed of the statistics relating to placement of children.

In its previous conclusion the Committee asked what were the criteria for the restriction of custody or parental rights and what was the extent of such restrictions. It also asked what are the procedural safeguards to ensure that children are removed from their families only in exceptional circumstances.

In this respect, it notes from the report that only the tribunal can decide about the placement of children. It may order other measures, such as involvement of social worker or oblige the parents to consult specialists of family therapy. Placement of children is a measure of last resort after having exhausted all other forms of intervention and assistance. An appeal can be lodged against the decision of the tribunal.

Young offenders

In its previous conclusion the Committee asked how the concept 'high level of demoralisation' was defined and what guidance existed for its use.

In reply it notes from the report that in deciding to place a minor in a correctional institution, the tribunal takes into account not only the circumstances and the nature of infraction but also the heightened degree of demoralisation. The examples of circumstances showing the demoralisation are contained in the law and include, among others, a violation of social norms, refusal to attend obligatory school or vocational education, consumption of alcohol or other substances. The level of demoralisation is determined by the tribunal in each individual case.

According to the report the maximum length of a prison sentence imposed on a juvenile cannot exceed two thirds of that imposed on an adult, hence 15 years.

Minors and adults reside in separate prisons as a general rule. The minor is a person under 21 years of age. It is obligatory to put a minor in the Centre of Detention for minors.

In reply to the Committee's question concerning the right to education for juvenile offenders, the report states that all detainees in prisons and the centre of detention have the possibility to exercise the right to education. Schools function in conformity with the education system in the penitentiary institutions. They follow the same programme as in public schools. Education is organised in prisons and detention centres at all education levels, except for higher education.

The network of schools in prisons guarantees the possibility of education for juveniles who are still covered by compulsory education – primary, secondary and vocational education.

According to the report, the network of schools covers 3 primary schools, 9 colleges and 19 vocational education schools, 9 technical schools and 9 high schools. In pre-trial detention centres there are 16 primary schools. On average, education is provided to around 3,500 detainees each year.

According to the report there is a significant drop in the number of juveniles in pre-trial detention. In 2013 the number fell by 58% in comparison with 2005 and 20,2% in comparison with 2011.

In its previous conclusion the Committee held that the situation in Poland was not in conformity with the Charter as the maximum permitted length of pre-trial detention of minors was excessive (2 years).

According to the report, the use of pre-trial detention of two years in case of a person who has not reached 18 years of age is only possible in exceptional situations, in case of serious infractions which are listed under Article 10§2 of the Penal Code. In using or prolonging the pre-trial detention the tribunal examines the circumstances of the case. Pre-trial detention of juveniles is only used where other preventive measure have not been sufficient to ensure the proper conduct of criminal proceedings.

The Committee considers that the situation in which the young offenders can find themselves detained for two years before the court examines their case has not changed. Therefore the Committee reiterates its previous finding of non-conformity on this ground.

Right to assistance

The Committee recalls that Article 17 guarantees the right of children, including unaccompanied minors to care and assistance, including medical assistance (International Federation of Human Rights Leagues (FIDH) v. France, Complaint No 14/2003, decision on the merits of September 2004, § 36). In fact, Article 17 concerns the assistance to be provided by the State where the minor is unaccompanied or if the parents are unable to provide such assistance.

States must take the necessary and appropriate measures to guarantee for the minors in question the care and assistance they need and to protect them from negligence, violence or exploitation, thereby posing a serious threat to the enjoyment of their most basic rights, such as the rights to life, to psychological and physical integrity and to respect for human dignity (Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §82).

The Committee asks what assistance is given to children in irregular situation to protect them against negligence, violence or exploitation.

Conclusion

The Committee concludes that the situation in Poland is not in conformity with Article 17 of the 1961 Charter on the ground that juvenile offenders may be held in pre-trial detention for up to two years.

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 1 - Assistance and information on migration

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

Migration trends

Poland has been a longstanding country of origin for migration. Historically, migration often occurred to Germany and the United States of America. Another surge in emigration followed its accession to the European Union in 2004, with main destination countries including the United Kingdom and Ireland.

According to the Central statistical office, flows of immigration from 2004-2009 were outweighed by emigration. It estimates that as of 2013, 2.21 million Poles were living abroad. However, a large number of emigrants during the period also chose to return home. Emigration rose significantly, while immigration also rose from 9,500 in 2004 to 17,400 in 2009. During the economic crisis, emigration contracted severely, from 35,500 emigrants in 2008 to 18,600 in 2009.

According to Poland's Office for Foreigners, in 2009 there were about 92,574 migrant residence card holders, corresponding to 0.24% of the whole population. European Union citizens are not required to have a residence card. The largest populations of migrants are of Ukrainian, Belarusian and Russian origin. According to Eurostat data, in 2013, Poland had 88.7 thousand immigrants, however, estimates of irregular immigration put the number of foreign residents much higher, with estimates in 2012 of up to 450,000 irregular migrants.

Following the collapse of the Soviet Union, large numbers of migrants crossed into Poland, with arrivals growing significantly during the 1990s. In 2000, in preparation for entry to the European Union, Poland increased stricter visa requirements on foreigners. Following accession to the EU, the number of temporary residence permits granted rose significantly. Poland is also becoming more popular as a transit country for migration to other European Union states.

In 2014 the office for immigration granted refugee protection to just 732 foreigners, and refused entry to 2,000 people.

Change in policy and the legal framework

The Committee recalls that the Law on Foreigners of 13 June 2003 reinforced immigration controls and brought Polish law into line with European Union standards. The Act of 1 February 2009 introduced work permits, which are issued at the request of the employer (Conclusions XIX-4 (2011)). In 2012 Poland introduced a 'simplified procedure' for citizens of Armenia, Belarus, Georgia, Moldova Russia and Ukraine.

In July 2012, the Law on Foreigners 2003 was modified to provide for the ability of migrants in irregular situations, during expulsion procedures, to pursue claims against their employers. It is now possible for such migrants to claim for unpaid wages and other matters, and to enforce judgments against the employer. The amendment also made provision for the grant of a temporary permit to the migrant for the duration of any criminal proceedings against the employer in which the migrant is a victim under the Law on employment of irregular migrants of 15 June 2012, which transposed Directive 2009/52/EC into Polish law.

A new Law on Foreigners was adopted on 12 December 2013 and entered into force in May 2014. The new Act does not make major changes to the system. It extends the maximum period of a temporary residence permit from two to three years, and introduces a uniform procedure for the obtaining of a residence and work permit. It also abolishes the 45-day period for applying for renewal of a temporary residence permit. It also provides for non-custodial measures to be taken against irregular migrants.

The National Action Plan for Employment for 2012-2014 also includes actions related to migrants, including dissemination of reliable information for migrant workers coming to Poland.

Between 2010 and 2014, the Polish Government and the Chief Labour Inspectorate have participated in the project 'The rights of migrants in practice', in collaboration with the International Organisation for Migration (IOM).

Free services and information for migrant workers

The Committee recalls that this provision guarantees the right to free information and assistance to nationals wishing to emigrate and to nationals of other States Parties who wish to immigrate (Conclusions I (1969), Statement of Interpretation on Article 19§1). Information should be reliable and objective and cover issues such as formalities to be completed and the living and working conditions they may expect in the country of destination (such as vocational guidance and training, social security, trade union membership, housing, social services, education and health) (Conclusions III (1973), Cyprus).

The report states that legal consultations are provided free for migrant workers. The Committee asks in what circumstances these are available, and what authority is responsible for their provision.

The Committee notes the information campaign "Foreigners – regular employment" which was run by the Labour inspectorate of Lublin and other authorities, which focussed on the agricultural sector and held 20 meetings with over 300 farmers in total.

The authorities have published a number of leaflets providing information concerning employment and living in Poland. These include a leaflet for employers 'The Lawful Employment of Foreigners', and one in Russian aimed at citizens of ex-Soviet states wishing to work in Poland, which was created in cooperation with *Ogólnopolskie Porozumienie Związków Zawodowych*. The Ministry for Labour has produced information documents concerning both emigration (such as a brochure on work in the Netherlands), and immigration, for those countries concerned by the 'simplified procedure'. It provides information on its website in Armenian, Georgian, Russian, Romanian and Ukrainian, as well as in Polish. The government has also run a Polish-language website, www.powroty.gov.pl, since 2008, which is aimed primarily at Polish migrants to other countries wishing to return.

The Committee considers that free information and assistance services for migrants must be accessible in order to be effective. While the provision of online resources is a valuable service, it considers that due to the potential restricted access of migrants, other means of information are necessary, such as helplines and drop-in centres. The Committee notes that Poland is a member of EURES, and therefore job placement services and advice in labour market mobility are now available for European Union citizens through that network. The Committee also recalls that information was available in a number of languages including English, French, Spanish, Russian, Arabic and Chinese (Conclusions XIX-4 (2011)). It asks for confirmation that this is still the case. It asks that the next report provide a full update of what services are available to migrant workers to provide specific information on their rights and obligations.

Measures against misleading propaganda relating to emigration and immigration

According to the report, a survey by the Centre of Research on Public Opinion in 2006 found that 47% of people were in favour of migrants being employed in certain sectors of the economy, while 34% were in favour of their unrestricted access to the labour market. 13% were opposed to the employment of foreigners. 55% of respondents affirmed that the nationality of their colleagues was not important to them, while 37% stated that they preferred to work with other Polish employees. Another survey by the Social Research Laboratory for the journal '*Puls Biznesu*' from 2013, which applied different methodology,

found that only 17% of respondents supported access to the labour market for foreigners, while 55% were against it, largely due to concerns about unemployment. According to a study in 2013 by the Centre for Research on Prejudice as many as 69% of Poles do not want non-white people living in their country. The Committee asks what measures have been implemented to support the access of migrant workers to the job market and to combat negative or prejudicial attitudes.

The Committee recalls that in order to be effective, action against misleading propaganda should include legal and practical measures to tackle racism and xenophobia as well as women trafficking. Such measures, which should be aimed at the whole population, are necessary *inter alia* to counter the spread of stereotyped assumptions that migrants are inclined to crime, violence, drug abuse or disease (Conclusion XV-1 (2000), Austria).

The Committee notes media reports of anti-migrant and anti-refugee demonstrations occurring in Poland, and asks the next report to comment on this phenomenon, and outline any strategies undertaken to combat intolerance. The Committee asks that the next report provide a full and up-to-date description of the situation regarding measures against misleading propaganda relating to migration.

The Committee notes from the 2015 report of the European Commission against Racism and Intolerance (ECRI) on Poland that Article 18 of the Anti-Discrimination Act entrusts the Human Rights Defender and the Government Plenipotentiary for Equal Treatment with the task of "implementing the principle of equal treatment". The Human Rights Defender's office was created by the Ombudsman Act 1987. According to ECRI, in practice the Human Rights Defender is also involved in promoting the training of key groups in discrimination issues. The Committee notes from the Annual report of the Human Rights Defender 2013, that 105 seminars were organised in cooperation with the Ministry of Labour and Social Policy, mostly dedicated to the priority areas of the elderly, disabled and migrants. The Committee asks for further information regarding the activities of the Human Rights Defender in relation specifically to migrants.

The Committee notes from the report that a number of specific crimes of a racist or discriminatory nature are included in the Penal Code, such as violence against a person or persons because of their national, ethnic, political or religious background and the incitement to hatred on racial, religious or other discriminatory grounds. The Committee requests that the next report provide further detail and statistical data on the number of prosecutions and convictions for such crimes. However, it notes from the abovementioned report of ECRI that there is still no general provision making racial motivation an aggravating factor for all crimes, though it must be taken into account during sentencing of criminals.

The Committee recalls that statements by public actors are capable of creating a discriminatory atmosphere. Racist misleading propaganda indirectly allowed or directly emanating from the state authorities constitutes a violation of the Charter (Centre on Housing Rights and Evictions (COHRE) v Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010). The Committee stresses the importance of promoting responsible dissemination of information. It considers that in order to combat misleading propaganda, there must be an effective system to monitor discriminatory, racist or hate-inciting speech, particularly in the public sphere. The Committee notes the concerns of ECRI and the 2011 report of the Local Knowledge Foundation concerning racism and intolerance on the internet; in particular the large number of nationality- and religion-based posts and comments. The Committee asks what monitoring systems exist to ensure the implementation of anti-discrimination regulations. It notes the existence of the National Broadcasting Council, which can receive complaints concerning discrimination, as well as its 'Regulatory Strategy 2014-2016', and asks for further information on its role and activities.

The Committee recalls that States must also take measures to raise awareness amongst law enforcement officials, such as awareness training of officials who are in first contact with migrants. The report states that there were no incidents reported of racist or xenophobic

behaviour by the police. It highlights that actions have been implemented to improve the competencies of police officers with regard to hate crimes. These include training on discrimination, both among the public and police institutions. Since 2006 the Police force, in cooperation with the OSCE Office for Democratic Institutions and Human Rights, has implemented the 'Training against Hate Crime for Law Enforcement' programme. Since 2009, the programme has included training on the recognition of hate crimes and how to conduct investigations in such circumstances, and on prevention. From 2009 to 2013, 70,000 police officers took part in the training. In 2013, the government also prepared a guide for Police units concerning anti-discrimination measures. The Committee notes from ECRI's report that according to the police, 48 criminal cases for hate speech were brought in 2009; 54 in 2010; 81 in 2011; 86 in 2012; and 267 in 2013.

The Committee recalls that authorities should take action against misleading propaganda as a means of preventing illegal immigration and trafficking in human beings (Conclusions 2006, Slovenia). It asks for complete and up-to-date information on any measures taken to target illegal immigration and in particular, trafficking in human beings.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Poland is in conformity with Article 19§1 of the 1961 Charter.

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 2 - Departure, journey and reception

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

Departure, journey and reception

The Committee previously asked for full and up-to-date information on measures to facilitate the departure, journey and reception of migrant workers and their families.

According to the report, access to the labour market is regulated for all non-EU nationals, with special schemes applying to certain countries under the 'simplified procedure' (cf. Conclusions XX-4 (2015), Article 19§1). The report states that immigration is limited and of a temporary nature. The Committee notes, however, that statistics demonstrate some inward migration for work purposes, and it is also aware that a large number of foreign citizens have residence permits, suggesting long-term possibilities for stay (cf. Conclusions XX-4 (2015), Article 19§1). The Committee notes the information provided concerning the modifications introduced by the new Law on Foreigners 2013, including streamlining of the process for applying for residence permits, and the transposition of Directive 2011/98/EU concerning third-country nationals into Polish law.

The Committee recalls that this provision obliges States to adopt special measures for the benefit of migrant workers, beyond those which are provided for nationals to facilitate their departure, journey and reception (Conclusions III (1973), Cyprus). The report states that due to the meagre amount of migration, it is not necessary to extend support services to migrant workers above those measures which have been described. The Committee considers nevertheless that those migrant workers who do immigrate to Poland are still in potential need of assistance, and services must be available to help them in situations of need. The Charter therefore requires States to provide explicitly for assistance in matters of basic need, or demonstrate that the authorities are adequately prepared to afford it to migrants when necessary.

The Committee recalls that reception must include not only assistance with regard to placement and integration in the workplace, but also assistance in overcoming problems, such as short-term accommodation, illness, shortage of money and adequate health measures (Conclusions IV (1975), Germany).

Reception means the period of weeks which follows immediately from their arrival, during which migrant workers and their families most often find themselves in situations of particular difficulty (Conclusions IV, (1975) Statement of Interpretation on Article 19§2). The Committee asks what provision is made, whether financial or otherwise, for the assistance of persons in need with basic needs such as food, shelter and healthcare.

The Committee asks for a complete and up-to-date description of the assistance available to migrant workers upon arrival in Poland, including health, housing and other basic requirements. In the meantime, the Committee considers that the information provided in the report is not sufficient to establish that the situation in respect of assistance provided for the departure, journey and reception of migrants is in conformity with the Charter.

Services for health, medical attention and hygienic conditions during the journey

The Committee recalls that the obligation to "provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey" relates to migrant workers and their families travelling either collectively or under the public or private arrangements for collective recruitment. The Committee considers that this aspect of Article 19§2 does not apply to forms of individual migration for which the state is not responsible. In such cases, the need for reception facilities would be all the greater (Conclusions V (1975), Statement of Interpretation on Article 19§2). The Committee requests details of any measures taken in regard of collective recruitment, should it occur.

Conclusion

The Committee concludes that the situation in Poland is not in conformity with Article 19§2 of the 1961 Charter on the ground that it has not been established that appropriate measures are taken to facilitate the departure, journey and reception of migrant workers.

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 3 - Co-operation between social services of emigration and immigration states

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

The scope of this provision extends to migrant workers immigrating as well as migrant workers emigrating to the territory of any other State. Contacts and information exchanges should be established between public and/or private social services in emigration and immigration countries, with a view to facilitating the life of emigrants and their families, their adjustment to the new environment and their relations with members of their families who remain in their country of origin. The Committee recalls that the co-operation required entails a wider range of social and human problems facing migrants and their families than social security (Conclusions VII (1981), Ireland).

The report states that due to low levels of immigration and emigration, it is not necessary to maintain much cooperation with other countries. The Committee notes that the Polish Central Statistical Office estimates that 2.21 million Poles live outside Poland. It considers that a considerable number of Polish migrant workers are therefore likely to require the presence of cooperative activities in relation to social services.

Common situations in which such co-operation would be useful would be for example where the migrant worker, who has left his or her family in the home country, fails to send money back or needs to be contacted for family reasons, or where the worker has returned to his or her country but needs to claim unpaid wages or benefits or must deal with various issues in the country in which he was employed (Conclusions XV-1 (2000), Finland).

The report refers to a 2013 Declaration on cooperation and exchange of information on mobility, signed by Polish and Dutch representatives. The agreement seeks to deepen collaboration efforts, in particular in relation to fraud against Polish workers, and will involve distribution of information to workers and employers, and exchange of information on conditions of work between authorities. Bilateral agreements concerning information exchange between labour inspectorates on working conditions also exist with numerous European countries.

According to the report, the General Labour Inspectorate plays a role of liaison office insofar as concerns the posting of workers in the framework of service provision under Directive 96/71/EC. In this role, it cooperates with similar institutions in other European Union member states on matters such as working conditions of posted workers, violations of the rights of posted workers. In 2010, the liaison action concerned 204 cases, in 2011 it concerned 198, in 2012, 229, and in 2013, 226. From the first of May 2011, the Labour Inspectorate has participated in the pilot project 'Internal Market Information System'.

The Committee notes the information provided concerning the collaboration between relevant authorities in the field of work. It asks whether other cooperation occurs between social services in other fields, for example dealing in matters related to family matters.

Whilst it considers that collaboration among social services can be adapted in the light of the size of migratory movements (Conclusions XIV-1 (1996), Norway), it holds that there must still be established links or methods for such collaboration to take place. Formal arrangements are not necessary, especially if there is little migratory movement in a given country. In such cases, the provision of practical co-operation on a needs basis may be sufficient (Conclusions XIV-1 (1998), Belgium).

The Committee asks that the next report provide a full and up-to-date description of the contacts and information exchanges established by social services in emigration and immigration countries.

Conclusion

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

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 4 - Equality regarding employment, right to organise and accommodation

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

Remuneration and other employment and working conditions

The Committee notes from the report that the Labour Code lays down a general principle of non-discrimination in employment. Direct or indirect discrimination, including on grounds of race, religion, nationality, or ethnic origin is prohibited. Furthermore, discrimination on the grounds of employment for a limited duration, or being in full or part-time employment, is also prohibited.

The Law of 3 December 2010 concerning the implementation of certain European Union law, prohibits discrimination in matters of, inter alia, vocational training, professional development or reorientation, and internships; the conditions of commencement and maintenance of employment; access to job market services, including unemployment services.

The Committee notes that the Labour Inspectorate is the competent authority for the monitoring of employment and working conditions of migrant workers. According to the report, cases of discrimination were reported concerning less favourable working conditions, such as lower pay, discriminatory organisation of work, and civil contracts in place of employment contracts. The Committee request clarification of the difference between these two types of contract. When it is informed of discrimination, the Labour Inspectorate can require the employer to cease the discriminatory activity, as well as impose sanctions on the responsible actors. It is also competent to advise the persons concerned on possible legal action and compensation from the tribunal. The Committee asks whether the Labour Inspectorate is empowered to act of its own initiative.

The report states that since 2009 the Border Guards are responsible for the verification of the legality of employment of foreigners. Inspections can be carried out of the place of employment, including domiciles where justified suspicion exists. Irregular employment constitutes a ground for the commencement of expulsion procedures against the migrant.

The report states that inspections showed a reduction throughout the period of established irregularities. In 2010, the inspectors discovered cases of discrimination concerning the working conditions of 70 foreigners, in a total of 8 businesses, in 2011, 58 workers were concerned corresponding to 11 businesses, in 2012, 26 foreigners in 8 businesses inspected were discriminated against, and in 2013 only 19 foreigner's cases were established against a total of 5 businesses.

One condition for the grant of a work permit by the voivode is that the contract of employment of the migrant guarantees remuneration at least the same as other employees performing comparable work.

According to the report, in July 2012 the Law on Foreigners was amended to provide for the grant of temporary permits to migrants resident in Poland for the duration of criminal proceedings against their employer for the employment of irregular migrants, in order for them to recover any wage arrears. A new Law on Foreigners was adopted on 12 December 2013, and entered into force on the first of May 2014 (outside the reference period). According to this law, it is no longer necessary for the foreigner to demonstrate a particularly important interest in order to be granted a temporary permit.

The Committee requests that the next report provide information on any policies or strategies put in place to ensure equal treatment of migrant workers in matters of employment.

Membership of trade unions and enjoyment of the benefits of collective bargaining

The report states that migrant workers have the right to join trade unions on the same terms as Polish workers by virtue of the Law on Trade Unions of 23 May 1991. The rules which regulate affiliation to trade unions are contained in the statutes of each trade union. The Committee asks whether migrant workers are able to hold office in all trade unions. It asks whether the statutes of trade unions are subject to anti-discrimination legislation.

The Committee refers to its Statement of Interpretation in the General Introduction and asks for information concerning the legal status of workers posted from abroad, and what legal and practical measures are taken to ensure equal treatment in matters of employment, trade union membership and collective bargaining.

Accommodation

The Committee recalls that it previously requested updated information with regard to housing of migrant workers (Conclusions XIX-4 (2011)). The report states that the legal framework for housing is contained in the Law on Tenants' Rights and Housing Resources 2001. Pursuant to that law, the *gmina* (municipality) is required to house every resident who requires housing and does not have sufficient means. The report states that migrant workers are treated equally with Polish citizens.

The labour inspectorate does not have the power to inspect the conditions of migrant workers' accommodation. However, the report states that should it become aware of bad conditions of housing which may breach health and safety regulations, the inspectors must inform the relevant authorities (Health Inspection/Fire Brigade). If there is a suspicion that a crime or delict has been committed against such workers, the inspectors must inform the police.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Poland is in conformity with Article 19§4 of the 1961 Charter.

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 5 - Equality regarding taxes and contributions

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

The report states that the Law on the promotion of employment and employment services provides for the obligation to pay contributions to the Employment Fund, which does not depend on nationality.

The Law on Foreigners of 12 December 2013 introduced the right for certain new groups of migrants to access employment services, including employment agencies. Temporary permit holders who received their entitlement through the single procedure, along with holders of a work-visa, are able to use such services. The extension does not apply to supplementary financial benefits.

Finally, the report states that there were no alterations to the taxes or charges payable by migrant workers during the reporting period. The Committee considers that the situation, which it has previously considered to be in conformity with the Charter (Conclusions XIX-4 (2011)), has not changed.

Conclusion

The Committee concludes that the situation in Poland is in conformity with Article 19§5 of the 1961 Charter.

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 6 - Family reunion

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

Scope

The Committee notes that the Law on Entry to the Republic of Poland of 14 July 2006 applies to citizens of the EU, of the EEA and Switzerland, as well as their family members, and provides a specific framework for the family reunion of such persons.

The Committee notes that the Law on Foreigners of 13 June 2003, in force throughout the reference period, provides for the grant of a permit of fixed period to family members wishing to join a migrant worker as defined by the European Social Charter (Section 53(1)(5) of the Law on Foreigners) or of a foreigner within article 54 of that Act (Section 53(1)(7)), if the circumstances justify their stay for more than 3 months.

According to Section 53(2) of the Law on Foreigners 2013, the following shall be regarded as family members of a migrant or refugee as defined in Section 54:

- a person married to a foreigner, such marriage being recognised under the Polish law in force;
- a minor child of a foreigner and person married to a foreigner, such marriage being recognised under the Polish law in force, including an adopted child;
- a minor child of a foreigner, including his/her adopted child, if the foreigner exercises actual parental control over the child;
- a minor child of a person referred to in subsection (1), including his/her adopted child, if he/she supports and exercises actual parental control over the child.

The Committee recalls that according to the Appendix to the Charter, the family of a migrant worker shall be taken to include his/her children under the age of 21.

The Committee notes that Section 53(1)(5) expressly granted the right of family reunion to the family members of migrant workers as described in the Charter. The report confirms that application of this provision is in accordance with the Social Charter, and that children of migrant workers under the age of 21 are granted the right to family reunion.

The Committee notes that section 186 of the Law on Foreigners 2013, which entered into force after the reference period, expressly provides that the right to family reunion shall be granted in accordance with the Social Charter. The Committee considers that the situation in this regard is in conformity with the Charter.

Where sufficient grounds of suspicion (as listed in Section 55 of the Law on Foreigners) exist, the granting authority is required to check that the marriage has not been concluded with the purpose of exploiting the provisions for the grant of a residence permit in Poland.

Under Article 56(2), the permit of fixed period shall be granted to the family member of a migrant worker for the period of the residence permit of the sponsor, or for the period of two years in the case of long-term residence permit-holding EU citizens and refugees.

Section 58 of the abovementioned law provides that, if the reason for which a permit had been issued ceases to exist, a migrant may be expelled. The Committee asks whether this means that a family member will be expelled automatically if their sponsor is expelled for any reason.

Conditions governing family reunion

The Committee recalls that it previously found the situation not to be in conformity on the ground that foreign nationals with a temporary residence permit who wish to be reunited with their family must have been lawfully resident in Poland for two years. The report states that the two year requirement only applies to family reunion for third country nationals covered by

EU Directive 2003/86/CE. It states that the two year requirement does not apply to those migrant workers and their families who are covered by the Charter. The Committee notes that the 2 year requirement contained in article 54(4) of the Law on Foreigners 2003 only applies to certain categories of foreigner, and that family reunion of a migrant worker as guaranteed under the Charter is a separate heading. It therefore considers that the situation in this regard is in conformity.

Section 53(7) of the Law on Foreigners 2003 requires the family member of the sponsor to demonstrate that they have a “stable and regular source of income enough to cover the cost of maintenance of a foreigner and members of his/her family supported by him/her”, and adequate health insurance. The means requirement may be fulfilled by the family member who is obliged to maintain the applicant (Section 53(8)). This requirement does not apply to the family members of refugees provided that the application for family reunion is submitted within 3 months from the granting of such status to the sponsor.

Pursuant to Section 53(10) of the abovementioned law, an income referred to in 53(7)(1), must be – after deduction of costs of accommodation – for each member of family supported by an alien, or for an alien if he/she is a single person, higher than the amount of income being a basis for granting social assistance pursuant to the provisions of Act of 12 March 2004 on Social Assistance.

The Committee recalls that a State may not deny entry to its territory for the purpose of family reunion to a family member of a migrant worker for health reasons. A refusal on this ground may only be admitted for specific illnesses which are so serious as to endanger public health (Conclusions XVI-1 (2002), Greece). The report states that health restrictions do not apply to the family of migrant workers protected by the Social Charter. The Committee notes that the Law on Foreigners 2003 provided that the family member of a migrant worker could be refused a permit if he/she has been diagnosed the illness or infection, that is the subject of obligatory medical treatment according to the act of 6 September 2001 on diseases and infections (J.L. No 126, it. 1348 and of 2003 No 45, it. 391) or there is a suspicion of such disease or infection and the alien refuses to undergo medical treatment. The Committee considers that such a requirement would, in any case, conform with the Charter.

The Committee notes that migrant workers wishing to sponsor a family member are required to have accommodation. The Committee recalls that restrictions on family reunion which take the form of requirements for sufficient or suitable accommodation to house family members should not be so restrictive as to prevent any family reunion (Conclusions IV (1975), Norway). The Committee considers that states are entitled to impose such accommodation requirements in a proportionate manner so as to protect the interests of the family. Nevertheless, taking into account the obligation to facilitate family reunion as far as possible under Article 19§6, States Parties should not apply such requirements in a blanket manner which precludes the possibility for exemptions to be made in respect of particular categories of cases, or for consideration of individual circumstances. However, the report states that the authorities do not examine whether the accommodation is of a sufficient size to accommodate the family when considering the grant of fixed duration residence permits.

The Law on Foreigners 2013 requires applicants for a fixed duration permit to demonstrate that they have health insurance, a stable and regular source of income sufficient to provide for their living expenses and for their dependent family. The ability to cover accommodation expenses is not required of families of migrants who are protected by the European Social Charter. The means requirement may be met by another member of the family who resides in Poland. The means of the person must be above the limit of eligibility for social assistance payments specified in the Law on Social Assistance of 2004. For the purposes of this calculation, the accommodation expenses are not deducted from the calculation.

The Committee recalls that the level of means required by States to bring in the family or certain family members should not be so restrictive as to prevent any family reunion

(Conclusions XVII-1 (2004), the Netherlands). Social benefits shall not be excluded from the calculation of the income of a migrant worker who has applied for family reunion (Conclusions 2011, Statement of Interpretation on Article 19§6). The Committee asks whether, in the context of a family member seeking to prove that their expenses shall be met by the sponsoring migrant worker, any rights to social assistance which the migrant worker enjoys may be included in the calculation of means to cover the family.

The Committee acknowledges that States may take measures to encourage the integration of migrant workers and their family members. It notes the importance of such measures in promoting economic and social cohesion. However, the Committee considers that requirements that family members pass language and/or integration tests or complete compulsory courses, whether imposed prior to or after entry to the State, may impede rather than facilitate family reunion and therefore are contrary to Article 19§6 of the Charter where they have the potential effect of denying entry or the right to remain to family members of a migrant worker, or otherwise deprive the right guaranteed under Article 19§6 of its substance, such as by imposing prohibitive fees, or by failing to consider specific individual circumstances such as age, level of education or family or work commitments (Statement of interpretation on Article 19§6, General introduction to Conclusions 2015). The Committee asks whether there are any requirements related to language or integration applicable for family reunion in Poland.

The report states that the Ministry of Foreign Affairs and other departments concerned organise meeting twice per year in order to improve the implementation of these rules, and to discuss new policies.

The Committee notes that regularly updated information concerning immigration to Poland appears on the site of the Ministry of Foreign Affairs in Polish and English.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Poland is in conformity with Article 19§6 of the 1961 Charter.

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 7 - Equality regarding legal proceedings

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

The report states that there have been no changes to the situation, which the Committee previously found to be in conformity with the Charter (Conclusions XIX-4 (2011)).

The Committee notes that Poland is a signatory to the Hague Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents, and applies this in accordance with Regulation (EC) No 1393/2007 of the European Parliament and Council.

In response to the Committee's question concerning the right to legal aid, the report states that foreigners can obtain the assistance of a legal representative according to the rules laid down in the Civil Procedure Code. It states that, in certain cases, they can benefit from free legal assistance. Migrants are entitled to the same rights as Polish citizens.

With respect to criminal procedure, the report avers that foreigners enjoy the same treatment with respect to representation as Polish citizens. The administrative authority is required to inform interested parties of the procedure, to provide access to the case files, and to provide necessary advice, including concerning the right to representation.

The Committee previously requested information concerning the right to interpretation in legal proceedings (Conclusions XIX-4 (2011)). The report states that, in accordance with the Law of 7 October 1999 concerning the Polish language, Polish shall be the official language of all constitutional organs of the state, as well as other institutions carrying out public functions. An individual who does not have sufficient command of the language has the right to use his own language before the court, and to have free use of interpretation services.

According to the report, an individual defendant in criminal proceedings who does not understand the language sufficiently will receive all the relevant documents of the case against him or her, accompanied by an obligatory translation.

In civil proceedings a foreign respondent will also receive a translation of the case documents in the language of the country in which he or she resides. If a foreigner wishes to begin a civil procedure, all the documents must be submitted in Polish. The tribunal may require that a translation be performed by a sworn translator.

In accordance with the Law on Foreigners, the authority which deals with matters under that law must provide advice to the foreigner in writing, in a language which the applicant understands.

Conclusion

The Committee concludes that the situation in Poland is in conformity with Article 19§7 of the 1961 Charter.

Article 19 - Right of migrant workers and their families to protection and assistance
Paragraph 8 - Guarantees concerning deportation

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

The report states that the new Law on Foreigners was adopted on the 12 December 2013 and came into force on the 1st May 2014. It implements the EU 'Returns Directive', 2008/115/EC. It does not apply to nationals of EU/EEA Member States. It has removed the grounds of expulsion concerning the failure to meet fiscal obligations, or the automatic expulsion of a foreigner following a term of imprisonment for crime or financial delict.

The report states that the following grounds for expulsion have been introduced by the new Law:

- The stay of the migrant on Polish territory constitutes a threat to public health, confirmed by examination, or jeopardises relations with another member State of the European Union;
- The objective and conditions of stay on Polish territory do not comply with those declared, except where the law allows such a change;
- The foreigner's application for asylum or subsidiary protection has been refused and the foreigner has failed to leave Poland within the time indicated.

The Committee recalls that risks to public health are not in themselves risks to public order and cannot constitute a ground for expulsion, unless the person refuses to undergo suitable treatment (Conclusions V (1977), Germany). It asks whether foreigners are offered treatment in practice.

The Committee notes that pursuant to Section 302 of the Law on Foreigners 2013, the following are also grounds for expulsion:

- when it is justified by national security or defence, the protection of public order and safety or the interests of the Republic of Poland;
- the foreigner has been convicted in the Republic of Poland by a final decision for a custodial sentence subject to execution, and there are grounds to conduct proceedings on his/her transfer abroad for the purpose of enforcing the penalty against him.

The Committee has previously interpreted Article 19§8 as obliging 'States to prohibit by law the expulsion of migrants lawfully residing in their territory, except where they are a threat to national security, or offend against public interest or morality' (Conclusions VI (1979), Cyprus). Where expulsion measures are taken, they cannot be in conformity with the Charter unless they are ordered, in accordance with the law, by a court or a judicial authority, or an administrative body whose decisions are subject to judicial review. Any such expulsion should only be ordered in situations where the individual concerned has been convicted of a serious criminal offence, or has been involved in activities which constitute a substantive threat to national security, the public interest or public morality. Such expulsion orders must be proportionate, taking into account all aspects of the non-nationals' behaviour as well as the circumstances and the length of time of his/her presence in the territory of the State. The individual's connection or ties with both the host state and the state of origin, as well as the strength of any family relationships that he/she may have formed during this period, must also be considered to determine whether expulsion is proportionate (Statement of interpretation on Article 19§8, Conclusions 2015).

The Committee asks whether the provisions of the Law on Foreigners 2013 relating to the expulsion of migrants comply with the Charter in this regard. In particular, it asks whether all aspects of the non-nationals' behaviour as well as the circumstances and length of time of his/her presence in the territory of the state will be taken into account in determining whether a migrant should be expelled.

The Committee recalls that the fact that a migrant worker is dependent on social assistance cannot be regarded as a threat against public order and cannot constitute a ground for

expulsion (Conclusions V (1977), Italy). The Committee previously asked whether dependence on social assistance could lead to the expulsion of a foreigner. The report states that it may not be a ground for an expulsion decision. However, it states that a foreigner can be deported where he or she does not have the financial resources necessary to cover the costs of his/her stay within the territory of the Republic of Poland, and has not indicated reliable sources to obtain such funds. The Committee notes that this ground was applicable under the Law on Foreigners 2003, and remains in force following the implementation of the Law on Foreigners 2013. The Committee considers that the report has not fully clarified whether dependence upon social assistance can constitute a ground for expulsion. It therefore asks whether a foreigner, who has applied for social assistance and is eligible, shall be considered to have sufficient means for their stay in Poland, and will not be susceptible to expulsion under Section 302(1)(6).

The Committee recalls that States must ensure that foreign nationals served with expulsion orders have a right of appeal to a court or other independent body, even in cases where national security, public order or morality are at stake (Conclusions V (1977), United Kingdom). It asks whether such an appeal process exists in Polish law.

Conclusion

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

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 9 - Transfer of earnings and savings

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

The report states that there were no changes of the situation with respect to the transfer of earnings and savings of migrant workers.

The Committee refers to its Statement of Interpretation on Article 19§9 in Conclusions XIX-4 (2011), and asks whether there are any restrictions on the transfer of movable property of a migrant worker.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Poland is in conformity with Article 19§9 of the 1961 Charter.

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 10 - Equal treatment for the self-employed

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

On the basis of the information in the report the Committee notes that there continue to be no discrimination in law between migrant employees and self-employed migrants.

However, in the case of Article 19§10, a finding of non-conformity in any of the other paragraphs of Article 19 ordinarily leads to a finding of non-conformity under that paragraph, because the same grounds for non-conformity also apply to self-employed workers. This is so where there is no discrimination or disequilibrium in treatment.

The Committee has found the situation in Poland not to be in conformity with Article 19§2. Accordingly, the Committee concludes that the situation in the Poland is not in conformity with Article 19§10 of the 1961 Charter.

Conclusion

The Committee concludes that the situation in Poland is not in conformity with Article 19§10 of the Charter as the ground of non-conformity under Article 19§2 applies also to self-employed migrant workers.



January 2016

1961 European Social Charter

European Committee of Social Rights

Conclusions XX-4 (2015)

SPAIN

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 1961 European Social Charter (the 1961 Charter) and the 1988 Additional Protocol (the Additional Protocol). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure

Information on the 1961 Charter, statements of interpretation, and general questions from the Committee, are reflected in the General Introduction to all Conclusions.

The following chapter concerns Spain which ratified the 1961 Charter on 6 June 1980. The deadline for submitting the 27th report was 31 October 2014 and Spain submitted it on 22 October 2014. Comments on the 27th report by CCOO and UGT were registered on 30 June 2015 and comments from *Profesionales por la Ética*, European Centre for Law and Justice and 23 Spanish NGOs were registered on 3 October 2015. The reply from the Government to the comments by CCOO and UGT was registered on 9 October 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 "Children, families and migrants":

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection of maternity (Article 8),
- the right of the family to social, legal and economic protection (Article 16),
- the right of mothers and children to social and economic protection (Article 17),
- the right of migrant workers and their families to protection and assistance (Article 19).

Spain has accepted all provisions from the above-mentioned group, except sub-paragraph b of Article 8§4.

The reference period was 1 January 2010 to 31 December 2013.

The conclusions relating to Spain concern 26 situations and are as follows:

- 17 conclusions of conformity: Articles 7§1, 7§2, 7§4, 7§6, 7§7, 7§8, 7§9, 7§10, 8§1, 8§3, 8§4(a), 17, 19§2, 19§4, 19§5, 19§7 and 19§9,
- 6 conclusions of non-conformity: Articles 7§5, 16, 19§1, 19§3, 19§6 and 19§10.

In respect of the other 3 situations related to Articles 7§3, 8§2 and 19§8, 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 Spain under the 1961 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 7§7

Section 38§3 of the Workers' Statute was amended through the Royal Decree-Law No. 3/2012. Under the new provision, if the holiday period coincides with a temporary incapacity resulting from pregnancy, childbirth or breastfeeding that prevents the worker from enjoying it fully or partially during the calendar year to which the holiday relates, the worker may take the holiday once the incapacity is over and provided that not more than eighteen months have passed from the end of the year in which the holiday was accrued.

Article 8§3

Section 6 of Royal Decree No. 1621/2011 has extended to domestic workers the right provided under Section 37 of the Workers' Statute.

The next report will deal with 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 1 of the 1988 Additional Protocol).

The report should also contain information requested by the Committee in Conclusions XX-3 (2014) in respect of its findings of non-conformity due to a repeated lack of information:

- the right to just conditions of work (Article 2§4)

The deadline for submitting the above report was 31 October 2015.

Conclusions and reports are available at www.coe.int/socialcharter.

Article 7 - Right of children and young persons to protection

Paragraph 1 - Prohibition of employment under the age of 15

The Committee takes note of the information contained in the report submitted by Spain, as well as the submissions of the Union Confederations of *Union General de Trabajadores* (UGT) and *Comisiones Obreras* (CCOO) of 30 June 2015 and the addendum to the report of Spain of 9 October 2015.

In its previous conclusion (Conclusions XIX-4 (2011)), the Committee analysed the legal framework applicable to the minimum age of employment for young workers. It noted that Section 6 of the Workers' Statute prohibits employment of children under the age of 16. Section 9 of Law No. 20/2007 of 11 July 2007, on the Statute of Self-employed Workers, stipulates that children under 16 may not engage in self-employment or family business. In case of breach of the minimum employment age either the Workers' Statute or the Statute of Self-employed Workers are applicable.

The Committee previously asked for more detailed information on how the Labour Inspectorate monitors possible illegal employment of young workers (Conclusions XIX-4 (2011)).

The report indicates that the Labour Inspectorate may carry out inspections/visits *in situ* to workplaces at any time during the day or night and without any notice in order to detect whether children under the age of 16 are working in those places. The report indicates that inspections are carried out in family undertakings as well.

With regard to the sanctions applied in cases of breach, the report states that the number of offences detected is very low. According to the data provided in the report, in 2013 a number of 344,047 inspections were carried out and only 9 violations related to child labour were detected.

The report states that the abovementioned data provided by Integra (the data base system of the Labour Inspectorate) concern the total number of inspections, and they relate to the monitoring of the ban on work for children under the age of 16 as well as the prohibition of night work and overtime work. All data and results of the actions of the Labour Inspectorate are stored by Integra and they can be consulted in detail by officials who may use the information for the follow-up of old cases or in new actions.

In this connection, the Committee notes from the submissions of the UGT that the data provided in the report lack specificity as to the age group or the activity sector in which the unlawful employment of children has been detected. The UGT argues that the low number of infringements detected is due to the lack of resources at the disposal of the Labour Inspectorate, rather than to the non-existence of child labour under the age of 16. The Committee notes from the reply of the Government that several changes have been made to the information system Integra in order to be able to improve the treatment of the data relating to minors, which make it possible to differentiate the inspecting action according to different specific obligations stipulated for the relevant age groups.

The Committee asks for information in this respect as well as for detailed data, broken down by sector of activity, on the inspections concerning the prohibition of employment of children under the age of 16.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Spain is in conformity with Article 7§1 of the 1961 Charter.

Article 7 - Right of children and young persons to protection

Paragraph 2 - Higher minimum age in dangerous or unhealthy occupations

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

The Committee noted previously that Section 6§2 of Workers' Statute stipulates that young workers under 18 may not be employed in activities or work that is unhealthy, painful, harmful or dangerous for their health or for their professional and human development (Conclusions XIX-4 (2011)). In its previous conclusion, the Committee took note of the types of work prohibited for young workers as provided by the Decree of 26 July 1957.

The report indicates that Section 27 of the Law 31/1995 on occupational risk prevention, provides that prior to any involvement of young workers under 18 in work and prior to any significant change in their working conditions, the employer must conduct an evaluation of the activities which are likely to involve any risks to the safety, health or development of young workers.

In its previous conclusion, the Committee asked to be provided with an update of the rates of occupational accidents and diseases among young workers and in what kind of occupations these accidents occurred (Conclusions XIX-4 (2011)). The report indicates that in 2013 there were 344,047 inspections carried out by Labour Inspectorate among which 340,120 actions concerned health and safety of young workers under 18 (for example breaches of regulations concerning work prohibited to minors of 18 years or breaches of the regulations on risk assessment of posts of young workers). The sanctions applied amounted to € 163,944. Violations were detected in only 4 cases and in another 6 situations employers were notified to remedy the breaches.

The Committee requests detailed data on the nature and number of violations detected and sanctions applied by the Labour Inspectorate with regard to the prohibition of employment of young workers under 18 in dangerous or unhealthy occupations.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Spain is in conformity with Article 7§2 of the 1961 Charter.

Article 7 - Right of children and young persons to protection

Paragraph 3 - Prohibition of employment of young persons subject to compulsory education

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

In its previous conclusion, the Committee asked if the rules concerning employment of children still subject to compulsory education, such as in the case of cultural activities, remain the same (Conclusions XIX-4 (2011)). The report indicates that the employment of children under 16 in public shows may be permitted in exceptional cases by the labour authorities, provided it does not involve any danger to their physical health or to their professional and personal development. Therefore, the employment of children in public shows is not possible without the prior authorisation of labour authorities and the consent of parents or tutors. The report indicates that it is the task of the labour authorities to evaluate if the rest periods coincide with the school holidays before authorising the employment of children under 16 in public shows.

The report indicates that children under 16 employed in public shows are subject to the same rules regarding the rest periods and holidays as the young persons under 18, namely:

- young workers under 18 may not perform night work (work performed between 10 p.m. and 6 a.m.) or overtime according to Section 6§2 of the Workers' Statute;
- young workers under 18 may not work more than 8 hours per day, including, where applicable, the time devoted to training, and when they work for several employers the total hours must not go beyond this limit – Section 34§3 of the Workers' Statute;
- a rest period of at least 30 minutes per day shall be provided in the case of young workers under 18 working more than 4 and a half hours per day – Section 34§4 of the Workers' Statute;
- the duration of their weekly rest period must be at least two consecutive days.

The Committee refers to its Statement of Interpretation on permitted duration of light work and it recalls that children under the age of 15 and those who are subject to compulsory schooling are entitled to perform only "light" work. Work considered to be "light" in nature ceases to be so if it is performed for an excessive duration. States are therefore required to set out the conditions for the performance of "light work" and the maximum permitted duration of such work. The Committee considered that children under the age of 15 and those who are subject to compulsory schooling should not perform light work during school holidays for more than 6 hours per day and 30 hours per week in order to avoid any risks that the performance of such work might have for their health, moral welfare, development or education. In addition, the Committee recalls that, in any case, children should be guaranteed at least two consecutive weeks of rest during summer holiday (Conclusions 2015, General Introduction).

As regards the duration of light work during school term, the Committee has considered that a situation in which a child who is still subject to compulsory education performs light work for 2 hours on a school day and 12 hours a week in term time outside the hours fixed for school attendance, is in conformity with Article 7§3 of the Charter (Conclusions 2011, Portugal).

The Committee therefore asks which is the daily and weekly duration of light work that children subject to compulsory education are allowed to perform during school term as well as during school holidays. It asks whether children subject to compulsory education may work up to 8 hours per day in public shows. In the meantime, the Committee reserves its position on this point.

The Committee previously asked for detailed information on how the Labour Inspectorate monitored possible illegal employment of young workers within their families or as self-

employed persons. The report indicates that the Labour Inspectorate carries out inspections/visits in enterprises as well as in family undertakings where all or some of the members of the same family work. The Committee asks if the Labour Inspectorate has detected cases where children who are still subject to compulsory school are working within such family undertakings.

The Committee notes from another source that pursuant to Section 9§1 of the Statute 20/2007 on self-employed Workers, children under 16 years may not work on a self-employed basis or be engaged in professional activity, even within their own families (Observation (CEACR) – adopted 2009, published 99th ILC session (2010), Minimum Age Convention 1973 (No. 138) ratified by Spain in 1977). Section 8§1 provides that public administrations will undertake an active role in the prevention of professional risks of self-employed workers through activities promoting prevention, technical advice, and the monitoring and control of the application of the legislative provisions on the prevention of professional risks by self-employed workers. According to Section 8§2 of the Statute on Self-employed Workers, the said administrations must promote training on risk prevention which is specific and adapted to independent work.

In its previous conclusion, the Committee asked whether the rest period free of work includes a duration of at least two consecutive weeks during the summer holidays and what the rest periods are during the other school holidays. The report does not indicate any information in response to this.

The Committee recalls that in order not to deprive children of the full benefit of their education, States Parties must provide for a mandatory and uninterrupted period of rest during school holidays. Its duration shall not be less than 2 weeks during the summer holidays. Furthermore the assessment of compliance over the school year takes account of the length and distribution of holidays, the timing of the uninterrupted period of rest, the nature and the length of the light work and the control efficiency of the labour inspectorate (Conclusions XIX-4 (2011), Statement of Interpretation on Article 7§3). The Committee reiterates its question as to whether the rest period includes at least two consecutive weeks during the summer holidays. The Committee holds that if the next report not provide the information requested, there will be nothing to establish that the situation is in conformity with Article 7§3 of the 1961 Charter.

Conclusion

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

Article 7 - Right of children and young persons to protection

Paragraph 4 - Length of working time for young persons under 16

The Committee notes from the information contained in the report submitted by Spain that there have been no changes to the legal situation which it has previously found to be in conformity with Article 7§4 of the 1961 Charter. It asks the next report to provide a full and up-to-date description of the situation in law and in practice.

Conclusion

The Committee concludes that the situation in Spain is in conformity with Article 7§4 of the 1961 Charter.

Article 7 - Right of children and young persons to protection

Paragraph 5 - Fair pay

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

Young workers

The Committee recalls that a young worker's wage may be less than the adult starting wage, but any difference must be reasonable and the gap must close quickly. For 15 year-olds, a wage of 30% lower than the adult starting wage is acceptable. For 16 and 17 year-olds, the difference may not exceed 20%. The adult reference wage must in all cases be sufficient to comply with Article 4§1 of the Charter of 1961. If the reference wage is too low, even a young worker's wage which respects these percentage differentials is not considered fair.

The report indicates that there is no differentiation based on age between the minimum wage of young workers under 18 and the adult minimum wage. The Committee understands that young workers have a right to the full national minimum wage, irrespective of their age.

The Committee notes that according to EUROSTAT data for 2013, the average annual earnings were of € 20,062.06 (€1,671.84 per month) net of social contributions and tax deductions (table "earn_nt_net"). It also notes that the gross minimum monthly wage was € 752.85 which represents 45% of the average monthly earnings. The Committee recalls that it found the situation not to be in conformity with Article 4§1 of the 1961 Charter as the minimum wage does not secure a decent standard of living (Conclusions XX-3 (2014) Spain). The Committee concluded that the minimum wage falls far below the fairness threshold required by Article 4§1 (at least 60% of the net average wage).

Under Article 7§5 the Committee examines if young workers are paid the equivalent of 80% of a minimum wage in line with the Article 4§1 fairness threshold (60% of the net average wage). Thus, if young workers' wage amounts to 80% of the minimum threshold required for adult workers (60% of the net average wage), the situation would be in conformity with Article 7§5 (Conclusions XVII-2 (2005), Spain).

In the present case, the young workers' wage is at the same level as the adult workers' wage.

The Committee notes that in 2013, the fairness threshold required under Article 4§1 was € 1,003.10 (60% of the net average wage). It notes that the gross minimum wage (€ 752.85) corresponds to 75% of the threshold required under Article 4§1. Therefore, the Committee considers that the right to a fair pay of young workers was not guaranteed.

The Committee asks that the next report provide information on net values of both minimum and average wages for the relevant reference period. The Committee underlines that it requests information on the net values, that is, after deduction of taxes and social security contributions. Net calculations should be made for the case of a single person.

Apprentices

The Committee recalls that the apprenticeship system must not be deflected from its purpose and be used to underpay young workers. Accordingly, the terms of apprenticeships should not last too long and, as skills are acquired, the allowance should be gradually increased throughout the contract period, starting from at least one-third of the adult starting wage or minimum wage at the commencement of the apprenticeship, and arriving at least at two-thirds at the end (Conclusions II (1971), Statement of Interpretation on Article 7§5; also Conclusions (2006) Portugal).

The report indicates that the apprentices' allowances are set in collective agreements and, in any case, may not be lower than the minimum wage. The Committee has repeatedly requested information on the net national minimum/average levels of apprentices' allowances at the beginning and at the end of the apprenticeship. The report does not

provide the information requested. Given the lack of information, the Committee concludes that it has not been established that the apprentices' allowances are adequate.

Conclusion

The Committee concludes that the situation in Spain is not in conformity with Article 7§5 of the 1961 Charter on the grounds that:

- young workers' wages are not fair;
- it has not been established that the apprentices' allowances are adequate.

Article 7 - Right of children and young persons to protection

Paragraph 6 - Inclusion of time spent on vocational training in the normal working time

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

The report indicates that the contract for vocational training cannot be concluded for part-time work. The effective working time, which shall be consistent with the time devoted to training activities, shall not exceed 75% during the first year, or 85% during the second and third year, of the maximum hours provided for in the collective agreement or, failing that, of the maximum legal workday. Workers may not perform overtime, night work or shift work (Section 11§2(f) of the Workers' Statute).

The report indicates that the remuneration of contracts for training and apprenticeships shall be established by collective agreements and cannot be, in any case, less than the minimum wage in proportion to the actual working time (Section 11§2(g) of the Workers' Statute).

The Committee notes from the report that during the reference period new legislation has been adopted such as the Royal Decree-Law No. 3/2012. It notes from another source that the new legislation brought some amendments on certain aspects of learning contracts (for example the worker's maximum age, training activities, and reductions in social security contributions for companies that use them related to Section 11 of the Workers' Statute) (European Labour Law Network, "Royal Decree-Law No. 3/2012 introduced an extensive reform of labour law"). In light of the new regulations, the Committee requests updated information on the vocational training contracts and conditions for young workers.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Spain is in conformity with Article 7§6 of the 1961 Charter.

Article 7 - Right of children and young persons to protection

Paragraph 7 - Paid annual holidays

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

Section 38§1 of the Workers' Statute stipulates that the period of paid annual leave set out in collective agreements or individual contracts may not be replaced by financial compensation and in no case may be less than thirty calendar days. The report states that the Spanish legislation does not provide special rules for annual holiday with pay of young persons under 18 and therefore the general rules apply.

The Committee notes that during the reference period, Section 38§3 of the Workers' Statute was amended through the Royal Decree-Law No. 3/2012. Under the new provision, if the holiday period coincides with a temporary incapacity resulting from pregnancy, childbirth or breastfeeding that prevents the worker from enjoying it fully or partially during the calendar year to which the holiday relates, the worker may take the holiday once the incapacity is over and provided that not more than eighteen months have passed from the end of the year in which the holiday was accrued.

Conclusion

The Committee concludes that the situation in Spain is in conformity with Article 7§7 of the 1961 Charter.

Article 7 - Right of children and young persons to protection

Paragraph 8 - Prohibition of night work

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

The report indicates that Section 6§2 of the Workers' Statute sets out a prohibition of night work for young workers under 18. Section 36 of the same statute defines "night work" as work performed between 10 p.m. and 6 a.m.

The report indicates that the Labour Inspectorate carries out inspections *in situ* in order to monitor if employers comply with the bans on night work and overtime in respect of young workers under 18. The report provides information on the activities of the Labour Inspectorate. It provides the total number of inspections, breaches detected and sanctions applied in relation to the prohibition of work for the young persons under 16 and the prohibition of night work and overtime for the young persons under 18. For example, in 2013 a number of 344,047 inspections were carried out, but only 9 breaches were found. The fines applied amounted to € 56,259 (according to the data collected by "Integra", the data base system of the Labour Inspectorate). The Committee asks for clarification on the above mentioned data, as well as detailed data on the number of inspections concerning the prohibition of night work for young workers under 18.

The Committee previously asked whether all young workers are included in the general prohibition of night work (Conclusions XIX-4 (2011)). Since the report does not provide any information in this sense, the Committee reiterates its question. It asks whether there are exceptions to the prohibition of night work in some economic sectors. Should the next report not provide the information requested, there will be nothing to establish that the situation in Spain is in conformity with Article 7§8 of the 1961 Charter.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in Spain is in conformity with Article 7§8 of the 1961 Charter.

Article 7 - Right of children and young persons to protection

Paragraph 9 - Regular medical examination

The Committee notes from the information contained in the report submitted by Spain that there have been no changes to the legal situation which it has previously found to be in conformity with Article 7§9 of the 1961 Charter. It asks the next report to provide a full and up-to-date description of the situation in law and in practice.

Conclusion

The Committee concludes that the situation in Spain is in conformity with Article 7§9 of the 1961 Charter.

Article 7 - Right of children and young persons to protection

Paragraph 10 - Special protection against physical and moral dangers

The Committee takes note of the information contained in the report submitted by Spain, as well as of the submissions of the Union Confederations of *Union General de Trabajadores* (UGT) and *Comisiones Obreras* (CCOO) of 30 June 2015 and the addendum to the report of Spain of 9 October 2015.

Protection against sexual exploitation

In its previous conclusion (Conclusions XIX-4 (2011)) the Committee found that the situation was not in conformity with the Charter as it had not been established that the legal framework effectively protected children from child pornography.

The Committee takes note of Organic Law 5/2010 of 22 June which strengthened the protection of minors under 13 years of age and introduced child grooming and cybercrime involving sexual exploitation of children. Article 187 of the Penal Code, as amended by Organic Law 5/2010 provides that whoever induces, promotes, favours or facilitates the prostitution of a person who is underage (i.e. under 18 years) shall be punished with the penalties from one to five years. The same punishment shall be imposed on whoever solicits, accepts or obtains a sexual relation with a person who is a minor in exchange for a remuneration or promise. Article 189, as amended by Organic Law 5/2010 provides that whoever produces, sells, distributes, displays, offers or facilitates the production, sale, diffusion or display by any means of pornographic material, in the preparation of which minors have been used, or possesses such material for such purposes, will receive a sentence of imprisonment from one to five years. Whoever possesses pornographic material for his own use, in the preparation of which minors have been used, shall be punished with the penalty from three months to a year of imprisonment.

The Committee asks whether child victims of sexual exploitation are in all circumstances considered victims or whether they can be prosecuted.

According to the report, the national registry of sex offenders was established in 2009, with the aim to preventing the recurrence of such offences, including sexual abuse of minors.

The Third Action Plan against Sexual Exploitation of Children and Adolescents (2010 to 2013) was adopted by the Plenary Session of the Children's Centre in 2010. This new plan builds on the conclusions and the assessment made in the previous plans, while reflecting on the need to enhance cooperation of the partners involved. The body in charge of monitoring and coordination of the Plan is the Observatory of Children.

The Committee notes from the submissions of the UGT that Article 177B of the Penal Code does not cover trafficking with the aim of engaging in unlawful activities. It does not criminalise the use of services of a trafficking victim, regardless of the type of exploitation, not even minors.

According to the UGT, protection provided to child victims of trafficking is not sufficient. The number of underage victims has increased from 15 in 2011 to 21 in 2012 and there were for all victims 49 accommodations with 250 beds, of which only 18 were for minors. The lack of an efficient and specific protection system hinders prevention and detection.

The Committee notes from the reply of the Government to these submissions that Article 177 bis defines as trafficking of human beings the capture, transportation or transfer, reception of minors under age, be it in Spanish territory, from Spain, or in transit, with the purpose to sexually exploiting them (including pornography).

The UGT further alleges that since 2013 when the Royal Decree Law 16/2012 ended the universality of public healthcare, directly excluding foreigners without legal residence, underage children, victims of trafficking do not have the same right to healthcare as social security beneficiaries.

In this regard, the Committee notes from the reply of the Government that foreigners aged under 18, not registered or authorised as residents in Spain will be entitled to public health care in the same manner as the persons who are insured under the National Health System.

The Committee also notes from the Report of the Group of Experts on Action against Trafficking in Human Beings (GRETA) concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Spain (2013) that the legislation on access to public Health Care has changed through the Royal Decree 576/2013, of 26 July which establishes basic criteria to provide access to health care of people who are not beneficiaries of the National Health Care System. This regulation modifies the Royal Decree 1192/2012, of 3 August, concerning the regulation of the conditions to be beneficiary of the National Health Care System financed with public funds.

This new regulation extends to victims of trafficking the access to free health care on the conditions of the basic common portfolio of health services throughout the National Health System regulated in Article 8 bis of Law 16/2003, of May 28th, i.e. not only access to emergency, maternity services and children medical care.

Protection against the misuse of information technologies

According to the report, the Police Plan for fight against trafficking with the purpose of sexual exploitation was presented in 2013. It covers, among others, measures against sexual harassment and grooming online.

The Committee wishes to receive updated information regarding measures taken in law and in practice to combat sexual exploitation of children through the use of internet technologies, such as by providing that internet service providers be responsible for controlling the material they host and encouraging the development and use of the best monitoring system for activities on the net.

Protection from other forms of exploitation

The Committee takes note of the entry into force of the Framework Protocol of the protection of the victims of trafficking, which at the interministerial level, establishes the basis of coordination and action against human trafficking. It also notes that the Organic Law 10/2011 extends the protection against trafficking to all children in the territory of Spain. The Committee also takes note of plans and activities of the State Security forces in the fight against trafficking.

The Committee asks what measures are taken to assist street children.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Spain is in conformity with Article 7§10 of the 1961 Charter.

Article 8 - Right of employed women to protection

Paragraph 1 - Maternity leave

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

Right to maternity leave

The Committee previously noted (Conclusions XIX-4 (2011)) that Section 48.4 of the Royal Decree on the Workers' Statute provides for 16 weeks of maternity leave for employed women, with an additional two weeks by child in case of multiple births. The employee concerned can decide how to distribute her leave before and after birth. She can also relinquish part of her maternity leave taken after birth to the father, provided that the compulsory six-week postnatal period is taken by the mother. The same regime applies to women employed in the public sector (Section 49, Basic Statute of Civil Servants Act 2007). The Committee notes that this situation, which it found to be in conformity with Article 8§1 of the 1961 Charter, has not changed.

Right to maternity benefits

According to Royal Decree 295/2009, maternity benefits correspond to 100% of the contribution basis constituted by the wage received in the month preceding maternity leave, up to a ceiling of €3425.70 monthly in 2013. The benefit is granted for the whole duration of maternity leave.

All workers are entitled to maternity leave cash benefits, whether employees or self-employees, if they are affiliated to any social security scheme and have made the contributions required, namely:

- No minimum contribution period is required for employed women below the age of 21;
- Employed women between the age of 21 and 26 need to have contributed 90 days in the 7 previous years or, alternatively, 180 days during their whole career;
- Employed women above 26 years of age need to have contributed 180 days in the 7 previous years or alternatively 360 days during their whole career;
- In the case of part-time workers, contributions are calculated according to the number of hours worked, by calculating their equivalence in theoretical contribution days.

The Committee previously found this system to be in conformity, insofar as periods of unemployment are considered as periods of employment for the purposes of maternity benefit (Conclusions XVII-2 (2005)).

The Committee notes from MISSOC database that women who do not qualify for the contributory maternity allowance are nevertheless entitled to a non-contributory maternity allowance, corresponding to 100% of the IPREM (Public Income Rate of Multiple Effects, *Indicador público de renta de efectos múltiples*) during 42 days, up to 56 days in certain cases (€532.51 per month or €17.75 per day, according to Escobedo, Meil and Lapuerta (2014) Spain country note, in P.Moss (ed.) International Review of Leave Policies and Research 2014, available on Leavenetwork.org).

The Committee refers to its Statement of Interpretation on Article 8§1 (Conclusions XX-4 (2015)) and asks whether the minimum rate of maternity benefits corresponds at least to the poverty threshold, defined as 50% of the median equivalised income, calculated on the basis of the Eurostat at-risk-of-poverty threshold value.

Conclusion

The Committee concludes that the situation in Spain is in conformity with Article 8§1 of the 1961 Charter.

Article 8 - Right of employed women to protection

Paragraph 2 - Illegality of dismissal during maternity leave

The Committee takes note of the information contained in the report submitted by Spain. It also takes notes of the information contained in the comments by the Trade Union Confederations *Union General de Trabajadores* (UGT) and *Comisiones Obreras* (CCOO), transmitted on 30 June 2015, and of the addendum to the report submitted by Spain on 9 October 2015.

Prohibition of dismissal

The Committee previously noted that, pursuant to Sections 52 to 55 of the Workers' Statute, dismissal is prohibited from the beginning of pregnancy, through maternity leave to the end of other types of suspension of the employment contract linked to maternity and breastfeeding. Dismissal is also prohibited after reintegration during the nine months that follow birth. This protection against dismissal was reinforced by the Equality Act which prohibits discrimination based on pregnancy or maternity and provides for compensation in case of such discrimination. It furthermore noted that women who are pregnant or on maternity leave are protected against dismissals which would be linked to pregnancy or maternity including in cases of collective redundancy (Conclusions XIX-4 (2011)).

As regards domestic workers, the Committee noted that, under the Equality Act, they cannot be dismissed for reasons pertaining to pregnancy or maternity (Conclusions XIX-4 (2011)). However, it notes from the comments submitted by UGT and CCOO that under Article 11(3) of the Royal Decree 1620/2011 on labour relations of family domestic service it remains possible to cancel a contract of a domestic worker during pregnancy or maternity leave by way of revocation during the trial period, as this is not covered by Article 55 of the Workers' Statute, according to the case-law of the Supreme Court and the Constitutional Court. In these cases, according to the trade unions, the worker's only possibility to contest the dismissal is to demonstrate that it constitutes gender-based discrimination, and present sufficient evidence to reverse the burden of proof. UGT and CCOO point out that the same situation applies to women working under the regulation of senior management staff (Royal Decree 1382/1985). According to the information provided by Spain in its addendum to the report, the termination of the contract of domestic workers and senior management staff by way of revocation is based on the loss of confidence in the worker, which makes it impossible to continue the employment relationship. The Committee asks the next report to clarify, in light of relevant case-law examples, how this revocation clause is interpreted by the domestic courts. It holds that if such information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter.

The report does not reply to the question previously raised by the Committee, as to whether women employed in the public sector, in particular those with temporary contracts, enjoy the same level of protection as employees of the private sector. The Committee notes however that women employed in the public sector, whether they have a statutory permanent post or are under a civil labour (permanent or temporary) contract with the administration, are covered by the Basic Statute of Public Employees (Law No. 7/2007). In matters that are not regulated by the Basic Statute of Public Employees, employees who are under a civil labour contract with the administration are covered by the general labour legislation, including the Workers' Statute (Section 93§4 of the Basic Statute of Public Employees). Accordingly, they enjoy the same protection against dismissal as employees of the private sector. As regards civil servants with a statutory permanent post, they can only lose their status of civil servants in case they resign or retire, if they lose their nationality or as a result of a disciplinary or penal final sanction (Section 63 of the Basic Statute of Public Employees). Therefore, they cannot be dismissed for reasons related to their pregnancy.

The Committee recalls that, according to its case law, dismissal during the maternity leave could be allowed, as an exception, in certain cases, to be interpreted strictly, such as

misconduct which justifies breaking off the employment relationship, if the undertaking ceases to operate or if the period prescribed in the employment contract expires. It notes that discriminatory dismissal for reasons related to maternity leave is clearly prohibited under Spanish law, however it understands from the Workers' Statute that the dismissal of an employee during maternity leave remains possible on other grounds, such as collective redundancy, even when the undertaking has not ceased to operate (Section 51 of the Workers' Statute) and asks whether this interpretation is correct. It furthermore asks the next report to clarify under what circumstances the termination of contract of a worker during her maternity leave is possible under the "objective reasons" listed in Section 52 of the Workers' Statute, according to which dismissal appears to be possible in case of the employee's inaptitude to perform her duties; if the worker fails to adapt to work technical changes despite training offered by the employer; in case of recurrent absenteeism, other than for health reasons, representing 20% of the working days in any two consecutive months or 25% of the working days in any four non-consecutive months during the course of a year; in case of redundancy concerning a smaller number of workers than was established for collective redundancy; in case of state-funded activities of non-profit entities if the funding ceases to be available. The Committee reserves in the meantime its position on this issue.

Redress in case of unlawful dismissal

Section 55 of the Workers' Statute provides that dismissals on grounds of maternity are declared null and void, and reintegration must take place (Conclusions XIX-4 (2011)) with the payment of the salaries accrued during the procedure (Section 56§2 of the Workers' Statute).

The Committee previously asked for information on cases where the worker's reintegration is not possible (e.g. where the enterprise closes down) or the woman concerned does not wish it. Although the report does not provide any information in this respect, the Committee notes that under Section 286 of Act No. 36/2011 regulating the labour jurisdiction, when the worker's reinstatement is not possible, due to the closure of the enterprise or other legal or factual reasons, the judge can declare the end of the employment relationship and award the worker compensation in conformity with Section 281§2 of the Act. In this case, the compensation corresponds to the payment of the equivalent of a month salary for each year of employment (a prorata being calculated for periods shorter than one year), up to 24 months of salary as well as the payment of the salary accrued from the notification of the dismissal until the end of the employment relationship. Taking into account the reasons making the reinstatement impossible, the judge can grant an additional compensation of up to fifteen days salary per year of service (with a prorata calculated for shorter periods) up to a maximum of twelve months.

The law does not seem to provide for the payment of a compensation in case the reinstatement is possible but the worker chooses not to avail herself of this possibility, unless the dismissal is qualified as unlawful for reasons related to harassment, including sexual and gender harassment. The Committee asks the next report to indicate whether this interpretation is correct. It furthermore reiterates its request for clarifications on the compensation that might be awarded for unlawful dismissal on the basis of the Equality Act, which prohibits discrimination based on pregnancy and maternity. It asks in particular whether the amount of such compensation is limited or not.

As regards civil servants, the Committee notes that employees who are under a civil labour contract with the administration are covered by the general labour legislation, including the Workers' Statute (Section 93§4 of the Basic Statute of Public Employees). Accordingly, they enjoy the same protection as employees of the private sector.

Conclusion

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

Article 8 - Right of employed women to protection

Paragraph 3 - Time off for nursing mothers

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

It previously found that the situation was not in conformity with Article 8§3 because domestic workers did not enjoy the right to time off for nursing their infants. It notes from the report that Section 6 of Royal Decree No. 1621/2011 has extended to domestic workers the right provided under Section 37 of the Workers' Statute. According to this provision, as amended by Act 3/2012, workers are entitled to a daily break of one hour, which may be divided into two breaks, to nurse their child until 9 months of age. The duration of the break will be increased proportionally in the event of multiple births. Instead of taking breaks, workers may reduce their daily working time by half an hour or take the accumulated time reduction entitlement as full working days in accordance with the terms laid down in a collective agreement or in an individual agreement based on the former. If both parents are working, this right can be exercised by the mother or her partner. According to Section 37§3 these breaks are remunerated.

Pursuant to Section 48 of the Basic Statute of Civil Servants Act, civil servants are also entitled to a daily break of one hour, that can be divided into two breaks of half an hour until the child is 12 months of age. Alternatively, they can reduce their working day by starting half an hour later and leaving half an hour earlier, or shortening the working day by one hour either at the beginning or the end of the day. They may also accumulate the time off they are entitled to and take full days off. In case of multiple births, the duration of the breaks will be increased proportionately. The Committee previously asked for confirmation that nursing breaks for civil servants are also remunerated. As the report does not provide any information in this respect, the Committee reiterates its question. It holds that if such information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Spain is in conformity with Article 8§3 of the 1961 Charter.

Article 8 - Right of employed women to protection

Paragraph 4 - Regulation of night work and prohibition of dangerous, unhealthy or arduous types of work

The Committee takes note of the information, relating to Article 8§4(a) of the 1961 Charter, contained in the report submitted by Spain¹.

Regulation of night work in industrial employment

The Committee previously noted (Conclusions XIX-4 (2011)) that night work is regulated by Section 36 of the Royal Decree on the Workers' Statute, No. 1/1995. This provision defines night work as work performed between 10 p.m. and 6 a.m. and provides for the employer's obligation to inform labour authorities in case of regular recourse to night work. A worker is considered a night worker if he/she normally performs night work for at least three hours daily or one third of his/her annual working time. Different limits can be set up for certain categories of workers in accordance with Section 34§7 of the Workers' Statute. Daily working time for night workers may not exceed eight hours on average over a reference period of fifteen days. Overtime is prohibited for night workers. Night workers are entitled to a health assessment before they start night work and subsequently at periodic intervals. The safety and health of night workers must be protected to the extent required by the nature of the work and, in case of health problems related to night work, night workers are entitled to be transferred to a daytime post compatible with their qualifications, in accordance with Sections 39 and 41 of the Workers' Statute. These rules apply to all workers.

If the assessment of the working conditions, including night work, reveals particular risks for pregnant or nursing women, the employer must take the necessary measures to eliminate those risks (Section 26§1 of the Prevention of Professional Risks Act, No. 31/1995). Should the adaptation of the post prove impossible, the workers concerned should be transferred to another post while keeping the same pay (Section 26§2). If no transfer is possible, the employment contract will be suspended and the employee will receive special cash benefits, of an amount equivalent to her pay, from the social security system (Royal Decree No. 295/2009, Chapter IV). These provisions also apply to women employed in the public sector.

Conclusion

The Committee concludes that the situation in Spain is in conformity with Article 8§4(a) of the 1961 Charter.

¹*Spain denounced sub-paragraph b of this provision in 1991.*

Article 16 - Right of the family to social, legal and economic protection

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

Social protection of families

Housing for families

The Committee takes note of several Royal Decrees on access to housing.

In its previous conclusion (Conclusions XIX-4 (2011)) the Committee asked for information on procedural safeguards against unlawful eviction, such as alternative solutions to eviction, a reasonable notice period, legal remedies, access to legal aid and compensation in case of eviction. Since the report contains no replies, the Committee reiterates its request.

Concerning access to housing for Roma families, the Committee notes from the report adopted by the European Commission against Racism and Intolerance (ECRI) in December 2010 that the Spanish Plan for Housing and Rehabilitation 2009-2012 provided for the eradication in certain regions of slum dwellings, mainly inhabited by Roma, and permitted the launch of a number of programmes to rehouse families in standard housing at subsidised rents, significantly lower than the market rates. ECRI states that, thanks to these programmes, certain cities such as Barcelona no longer have any slums, and Roma generally now live alongside other citizens in standard housing. The Committee asks that the next report provide information on the measures taken to end completely and definitively the existence of slum dwellings and permit the relocation of their inhabitants to standard housing, thereby improving Roma living conditions.

The Committee also notes from the comparative report on the housing conditions of Roma and Travellers in the European Union, drawn up by the European Union Agency for Fundamental Rights in October 2009, that an improvement in home ownership among Roma could be noted in Spain, which was implementing a housing policy to promote home-ownership through State subsidies in preference to the provision of rented social housing. The report indicates that around half of Roma homeowners had acquired their dwellings through this policy.

Lastly, it notes from the above-mentioned ECRI report that recent legislation has been designed to encourage landlords to rent their properties to low-income tenants, particularly Roma and immigrants. An agreement is signed between the landlord, the local authorities and the tenant. The rent is lower than the market rate, but its payment is guaranteed by the local authorities.

Childcare facilities

In its previous conclusion (Conclusions XIX-4 (2011)) the Committee requested information on childcare facilities for the second time. Since the report does not contain the required information, the Committee concludes that the situation is not in conformity with Article 16 of the 1961 Charter on the ground that it has not been established that adequate childcare facilities exist.

Family counselling services

In its previous conclusion (Conclusions XIX-4 (2011)) the Committee requested information on family counselling services for the second time. Since the report does not contain the required information, the Committee concludes that the situation is not in conformity with Article 16 of the 1961 Charter on the ground that it has not been established that adequate family counselling services exist.

Participation of associations representing families

In its previous conclusion (Conclusions XIX-4 (2011)) the Committee for the second time requested information on the participation of associations representing families in the framing of family policies. Since the report does not contain the required information, the Committee concludes that the situation is not in conformity with Article 16 of the 1961 Charter on the ground that it has not been established that associations representing families are consulted when family policies are drawn up.

Legal protection of families

Rights and obligations of spouses

Article 66 of the Civil Code provides that spouses shall be equal in rights and duties, and Article 68 requires them to share household responsibilities and the tasks of caring for and assisting ascendants and descendants and other dependants. Article 154 of the Civil Code deals with equality in matters of parental authority.

Concerning cases of irretrievable breakdown in family relations, the Committee refers to its previous conclusion of conformity (Conclusions XIX-4 (2011)).

Mediation services

In its previous conclusion (Conclusions XIX-4 (2011)) the Committee for the second time requested information on access to family mediation services, whether they are provided free of charge, their distribution across the country and their effectiveness. Since the report does not contain the required information, the Committee concludes that the situation is not in conformity with Article 16 of the 1961 Charter on the ground that it has not been established that adequate mediation services exist.

Domestic violence against women

The report explains that the legislation deals with domestic violence against women from the angle of gender violence.

With regard to the legislative framework, the Committee takes note of Organic Law No. 1/2004 on protection against gender violence and Law No. 27/2003 on the system of protection for victims of domestic violence, which establishes the “status of comprehensive protection” by means of the adoption by a judicial body of interim measures (both criminal and civil law), while activating other social assistance measures. The existing legislation affords various rights to women victims of domestic violence, including the right to information and the right to social and legal assistance, etc. Law No. 1/2004 provides for specialisation of investigating judges through the establishment of courts for violence against women responsible for investigating and, where appropriate, trying cases. The Committee also takes note of the latest legislative developments during the reference period: Organic Law No. 5/2010 providing for the penalty of permanent removal from the victim’s place of residence; Royal Decree No. 3/2013 providing for non-means-tested legal aid; and Organic Law No. 10/2011 providing for a series of measures to assist foreign women who are victims of gender violence.

From a practical point of view, the report refers to various measures such as the comprehensive system of follow-up in gender violence cases, the protocol on co-ordination, co-operation and referral between professionals dealing with gender and domestic violence, the operating protocol for the system for computerised monitoring of removal orders and measures in gender violence cases and the strategic plans of the national police force and the Civil Guard for 2013-2016. The Committee wishes the next report to provide figures.

Economic protection of families

Family benefits

According to Eurostat data for 2013, the median equivalised income was € 1,127 per month.

According to the report, in 2013 the monthly allowance in respect of the first three children was €24.25 per child, and €233 as from the fourth child. These allowances represented about 2.15% and 20% respectively of this income.

The Committee considers that the allowance in respect of the first three children does not represent an adequate percentage of the median equivalised income. It consequently concludes that the situation is not in conformity with Article 16 of the 1961 Charter on the ground that family benefits are not of an adequate level for a significant number of families.

Vulnerable families

In its previous conclusion (Conclusions XIX-4 (2011)) the Committee asked what measures were taken to ensure the economic protection of Roma families. Since the report does not provide the required information, the Committee reiterates its request.

Concerning single parent families, the Committee notes from a report published in 2014 by Human Rights Watch that women are more specifically affected by the mortgage loans crisis on account of their greater income instability, on average lower wages and greater childcare responsibilities. It notes that 90% of single parent families have a woman head of household. In the light of these findings, the Committee asks that the next report indicate the measures taken to remedy this situation.

Equal treatment of foreign nationals and stateless persons with regard to family benefits

In its previous conclusion (Conclusions XIX-4 (2011)) the Committee asked for detailed information on the award of family benefits to nationals of other States party to the 1961 Charter and the Charter who are lawfully living or working in Spain. Since the report does not contain the required information, the Committee reiterates its request and points out that, should the next report fail to provide the requested information, there will be nothing to establish that the situation in Spain is in conformity with Article 16 of the 1961 Charter on this point.

The Committee asks the next report to indicate whether stateless persons and refugees are treated equally with regard to family benefits.

Conclusion

The Committee concludes that the situation in Spain is not in conformity with Article 16 of the 1961 Charter on the grounds that:

- it has not been established that adequate childcare facilities exist;
- it has not been established that adequate family counselling services exist;
- it has not been established that associations representing families are consulted when family policies are drawn up;
- it has not been established that adequate mediation services exist;
- family benefits are not of an adequate level for a significant number of families.

Article 17 - Right of mothers and children to social and economic protection

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

The legal status of the child

The Committee notes that according to Article 180.5 of the Civil Code adopted persons, after reaching legal age or while being underage, represented by their parents, shall be entitled to request any data relating to their biological origins. Childcare Public Entities, shall provide, through their specialised services, the advice and assistance required by any applicants wishing to exercise this right.

Protection from ill-treatment and abuse

The Committee notes that corporal punishment continues to be prohibited in all settings, including in the home.

Rights of children in public care

The Committee recalls that any restrictions or limitations of custodial rights of parents' should be based on adequate and reasonable criteria laid down in legislation and should not go beyond what is necessary for the protection and best interest of child and the rehabilitation of the family (Conclusions XV-2 (2001), Statement of Interpretation on Article 17).

The Committee underlines that placement must be an exceptional measure, and is only justified when it is based on the needs of the child, namely if remaining in the family environment represents a danger for the child. On the other hand, it considers that the financial conditions or material circumstances of the family should not be the sole reason for placement. In all circumstances, appropriate alternatives to placement should first be explored, taking into account the views and wishes expressed by the child, his or her parents and other members of the family.

The Committee furthermore holds that when placement is necessary, it should be considered as a temporary solution, during which continuity of the relationship with the family should be maintained. The child's re-integration within the family should be aimed at, and contacts with the family during the placement should be provided for, unless contrary to the best interest of the child. Whenever possible, placement in a foster family or in a family-type environment should have preference over placement in an institution (Conclusions 2011, Statement of Interpretation on Article 16 and 17).

The Committee asks what are the criteria for the restriction of custody or parental rights and what was the extent of such restrictions. It also asked what procedural safeguards exist to ensure that children are removed from their families only in exceptional circumstances. The Committee holds that if this information is not provided in the next report, there will be nothing to establish that the situation is in conformity.

Young offenders

In its previous conclusion (Conclusions XIX-4 (2011) the Committee asked what was the maximum possible length of pre-trial detention and a prison sentence for young offenders and whether they could be held together with adults in custody and in prisons.

According to Article 17 of the Organic Law 5/2000 the authorities and officials should also immediately notify the fact of detention and place of custody to the legal representatives of the minor. During the period of detention, minors must be separated from adults, and receive the care and social, psychological and medical assistance which they may require. The detention of a minor by police officers will not last longer than strictly necessary for the conduct of investigations to clarify the facts and, in any case, within a

maximum period of 24 hours the minor must be released or brought to the public prosecutor. The Committee asks what is the maximum length of pre-trial detention and a prison sentence that can be imposed on a minor.

As regards preventive measures, the action plan for improving safety in educational centres was drawn up on the basis of Instruction 7/2013 of the State Security Secretariat. This plan establishes measures to be taken to prevent juvenile delinquencies, such as awareness raising. The plan also foresees establishment of mechanisms of communication and cooperation with the education centres.

The Committee asks whether the young offenders have a statutory right to education.

Right to assistance

The Committee recalls that Article 17 guarantees the right of children, including unaccompanied minors to care and assistance, including medical assistance (International Federation of Human Rights Leagues (FIDH) v. France, Complaint No 14/2003, decision on the merits of September 2004, § 36). In fact, Article 17 concerns the assistance to be provided by the State where the minor is unaccompanied or if the parents are unable to provide such assistance.

States must take the necessary and appropriate measures to guarantee for the minors in question the care and assistance they need and to protect them from negligence, violence or exploitation, thereby posing a serious threat to the enjoyment of their most basic rights, such as the rights to life, to psychological and physical integrity and to respect for human dignity (Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §82).

The Committee takes note of the Law 12/2009 of 30 October on asylum and subsidiary protection, which contains provisions on the special circumstances of unaccompanied children in need of international protection.

The Committee notes from the Concluding Observations of the UN Committee on the Rights of the Child (UN-CRC, 2010) that a registry of unaccompanied children in the Police Department (Royal Decree 2393/2004) has been created, and the protocol was developed by the Children's Observatory concerning unaccompanied children.

However, the UN-CRC continues to be concerned about reports of ill-treatment of unaccompanied children by the police during forced or involuntary repatriation, failure of the authorities to provide unaccompanied children with temporary residence status and substandard accommodation conditions and neglect in emergency centres in some areas. The UN-CRC recommended to the State party to establish child-friendly reception centres for children, with effective mechanisms to receive and address complaints from children in custody, and effectively investigate reported cases of ill-treatment of children.

The Committee asks what assistance is given to children in irregular situation to protect them against negligence, violence or exploitation.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Spain is in conformity with Article 17 of the 1961 Charter.

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 1 - Assistance and information on migration

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

Migration trends

Some 13.8% of the Spanish population consists of migrants. The principal countries of origin are Romania, Morocco, Ecuador and Colombia, followed by the United Kingdom, Italy, Bulgaria, China and Bolivia.

Immigration decreased in 2012 owing to economic pressures which lowered Spain's attractiveness as a destination for migrants. Spain has experienced a slight population decrease since 2012 due to the present migration trends.

Change in policy and the legal framework

The Committee notes from the conclusions of the European Committee against Racism and Intolerance (ECRI) on Spain (adopted in 2013) that a comprehensive strategy against racism, racial discrimination, xenophobia and other related forms of intolerance was approved by the Council of Ministers on 4 November 2011. It notes that this strategy provides for collection of data on acts of racism and racial discrimination. The Committee asks that the next report give details of this strategy and include all relevant data on racial discrimination, for example details concerning appeals with a race-specific element, to enable it to assess the situation in Spain, particularly having regard to misleading propaganda.

Free services and information for migrant workers

The report does not provide information on free services and information for migrant workers. The Committee notes the information in the previous report and all of the new information at its disposal.

The Committee considers that free information and assistance services for migrants must be accessible in order to be effective. While the provision of online resources is a valuable service, it considers that due to the potential restricted access of migrants, other means of information are necessary, such as helplines and drop-in centres.

There is a government website giving information on the requisite formalities and procedures for living and working in Spain. Some information on this site is also available in English and French. The Committee notes that the information in English and French include particulars of the procedure for obtaining a visa, and the specific guides for different types of migrants. The Committee enquires whether the information is accessible in other languages, particularly those of the countries best represented in the migrant population (Romanian, Arabic) and about the conditions of access to this information.

The Committee previously noted the establishment of an integration service entitled Integra Local – it requests full and up-to-date information on the impact of this initiative. It also requests particulars of the information supplied to migrants before and after arrival to help their integration into Spanish life.

Pending receipt of the requested information, the Committee considers that the situation in this respect is in conformity with the Charter.

Measures against misleading propaganda relating to emigration and immigration

The report does not provide information on measures against misleading propaganda relating to emigration and immigration.

The Committee notes from the information in the country factsheet of the European Migration Network (EMN) (2013) that in 2013 Spanish integration policy concentrated on integrated reception programmes designed to meet basic needs and support the inclusion of socially vulnerable foreigners or persons at risk of social exclusion. It notes from the same source that several steps were taken towards training the members of the security forces with regard to xenophobia and racism, extending the training in two new fields: education and justice. The Committee observes from the report of the UN Special Rapporteur on Contemporary forms of Racism, presented at the 23rd session of the Human Rights Council on 6 June 2013, that in 2012 a project entitled FIRIR was developed to train 2,690 members of the *Guardia Civil* and other corps in identification of racist and xenophobic incidents. It notes the Rapporteur's finding that drastic budgetary cuts have had a negative impact on the conduct of the initiatives, and that there are not enough resources to carry out the agreements on many national strategies concerning racism and specific problems of migrants. The Committee asks that complete up-to-date information be supplied concerning these initiatives.

The Committee reiterates the observations made in its previous conclusion (Conclusions XIX-4 (2011)), where it took note of ECRI's concern over opinion polls which indicated that many Spanish people regard immigration as a problem. According to these polls, it is also widely thought in Spain that immigrants steal people's jobs and raise the crime figures, a situation which has given rise to some outbreaks of social unrest. The Committee requested that the report contain information on measures taken at national, regional and local level to counter the dissemination of negative stereotypes concerning immigrant workers. As the report submitted by Spain does not mention these initiatives, the Committee reiterates its question.

The Committee notes that in the report of the UN Special Rapporteur on Contemporary forms of Racism it is stated that the legislation against discrimination is not effective enough. In particular, it is pointed out that these provisions are not often invoked before the courts. The Committee also takes note of the observations on the Migrant Integration Policy Index (MIPEX) site indicating that the national body for equality is "seriously weak". The report of the aforementioned Special Rapporteur notes a lack of human and financial resources to support the Council for promotion of equal treatment and racial or ethnic non-discrimination. It asks the next report to comment on these remarks and to give examples of the work of this body and of other similar agencies.

The Committee also notes from the same report some observations concerning an increase in expressions of racism and intolerance in the media, and the observation that a few politicians have blamed migrants for the consequences of the economic crisis and other problems. The Committee recalls that statements by public actors are capable of creating a discriminatory atmosphere. Racist misleading propaganda indirectly allowed or directly emanating from the state authorities constitutes a violation of the Charter (Centre on Housing Rights and Evictions (COHRE) v Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010). The Committee stresses the importance of promoting responsible dissemination of information, and of deterring the promulgation of discriminatory views. It considers that in order to combat misleading propaganda, there must be an effective system to monitor discriminatory, racist or hate-inciting speech, particularly in the public sphere.

The Committee notes from the 4th report of the European Committee against Racism and Intolerance (ECRI) (adopted in 2010) that Spain did not collect information or statistics either on acts of discrimination and racism or on the application of the laws aimed at combating such acts. This assertion is repeated regarding the Penal Code in the report of the UN Special Rapporteur on Contemporary forms of Racism (Addendum 2, page 6). The Committee notes that the new 2011 strategy provides for collection of such information. It requests full and up-to-date details of the situation with regard to the monitoring of acts of discrimination and racism.

In the absence of new information on the measures taken to combat misleading propaganda, the Committee considers that it has not been established that the measures taken by Spain against misleading propaganda relating to emigration and immigration, particularly combating dissemination of negative stereotypes, are adequate.

Conclusion

The Committee concludes that the situation in Spain is not in conformity with Article 19§1 of the 1961 Charter on the ground that it has not been established that adequate measures have been taken against misleading propaganda relating to emigration and immigration.

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 2 - Departure, journey and reception

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

Departure, journey and reception

The Committee recalls from its previous conclusion (Conclusions XIX-4 (2011)) that before commencing the journey to Spain, immigrants receive information on all aspects that may be of interest to them concerning the country, both orally during the "selection process" and possibly during the training period, and in writing in their own language. Bilateral agreements on migration also refer to these aspects.

The Committee reiterates that 'reception' must be provided at the time of arrival and the period immediately following, that is to say during the weeks in which immigrant workers and their families find themselves in a particularly difficult position (Statement of interpretation – Conclusions IV (1975)). It also recalls that reception must include not only assistance with regard to placement and integration in the workplace, but also assistance in overcoming problems, such as short-term accommodation, illness, shortage of money and adequate health measures (cf. Conclusions IV, Germany). It requests that the next report provide information on the assistance available to migrants so that they may overcome the problems as described above.

The Committee takes note of Royal Decree 702/2013, and requests further information on its implementation in order to ascertain the existence of the specific problems with regard to the access of migrant workers and their families to certification cards, particularly on their arrival, and whether a refusal to issue such a card could prevent migrants' enjoyment of the services of the National Health System. It recalls that Section 12 of Institutional Act No. 4/2000 grants all foreign nationals in Spain the right to medical assistance on the same footing as Spanish nationals provided that they are lawfully registered with a municipality. This requirement is not stipulated in the case of minor children.

Services for health, medical attention and hygienic conditions during the journey

The Committee recalls that the obligation to "provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey" relates to migrant workers and their families travelling either collectively or under the public or private arrangements for collective recruitment. The Committee considers that this aspect of Article 19§2 does not apply to forms of individual migration for which the state is not responsible. In such cases, the need for reception facilities would be all the greater (Conclusions V (1975), Statement of Interpretation on Article 19§2).

The Committee again requests information on measures taken to facilitate access to health and medical services and maintain proper hygiene standards in the process of collective recruitment and during the journey. Should the next report fail to provide the requested information, the Committee considers that there will be nothing to demonstrate that the situation is in conformity with the 1961 Charter.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Spain is in conformity with Article 19§2 of the 1961 Charter.

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 3 - Co-operation between social services of emigration and immigration states

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

No new information is provided in the report concerning the cooperation of Spanish social services with those in migrant origin and destination countries on matters of assistance for migrant workers.

The Committee points out that the scope of Article 19§3 extends to migrant workers immigrating as well as migrant workers emigrating to the territory of any other State. Contacts and information exchanges should be established between public and/or private social services in emigration and immigration countries, with a view to facilitating the life of emigrants and their families, their adjustment to the new environment and their relations with members of their families who remain in their country of origin (cf. Conclusions XIV-1 (1998), Belgium). The Committee asks again whether steps have been taken to promote co-operation between social services.

It considers that formal arrangements are not necessary, especially if there is little migratory movement in a given country. In such cases, the provision of practical co-operation on a needs basis may be sufficient. Whilst it considers that collaboration among social services can be adapted in the light of the size of migratory movements (Conclusions XIV-1 (1998), Norway), it holds that there must still be established links or methods for such collaboration to take place.

Common situations in which such co-operation would be useful would be for example where the migrant worker, who has left his or her family in the home country, fails to send money back or needs to be contacted for family reasons, or where the worker has returned to his or her country but needs to claim unpaid wages or benefits or must deal with various issues in the country in which he was employed (cf. Conclusions XV-1 (2000), Finland).

The Committee considers that the information provided by the report does not permit it to assess the situation and, in particular, to determine whether there is sufficient co-operation between the social services of Spain and emigration and immigration states. Consequently it determines that it has not been established that the situation is in conformity with Article 19§3.

Conclusion

The Committee concludes that the situation in Spain is not in conformity with Article 19§3 of the 1961 Charter on the ground that it has not been established that there is sufficient co-operation between the social services of Spain and emigration and immigration states.

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 4 - Equality regarding employment, right to organise and accommodation

The Committee takes note of the information contained in the report submitted by Spain. It also takes notes of the information contained in the comments by the Trade Union Confederations Union General de Trabajadores (UGT) and Comisiones Obreras (CCOO), transmitted on 30 June 2015.

Remuneration and other employment and working conditions

The Committee takes note of the activities of the labour inspectorate which oversees the integration and treatment of migrant workers when enforcing rights to non-discrimination. In particular, the Committee takes note of the prohibition under section 8(12) of Royal Legislative Decree 5/2000 of “unilateral decisions of the enterprise involving unfavourable direct or indirect discrimination ... in respect of remuneration, working days, training, advancement and other working conditions, according to factors of gender or origin including racial or ethnic origin”. It notes that such offences may render the employer liable to a fine which may range from €6,251 to 187,515 according to the seriousness of the violation. The Committee requests statistics on the number of fines imposed.

The report also gives information on the second Strategic Citizenship and Integration Plan 2011–2014, which comprises actions and measures, including the labour inspectorate’s mandate to verify and prosecute situations of discrimination in enterprises. In this context, campaigns have been devised to mount a comprehensive action by the labour inspectorate against these acts.

The Committee notes from the European Migration Network (2012) country factsheet that the unemployment rate of the foreign population during the last quarter of 2012 was 36.53% whereas the rate for Spanish citizens was 24.23%. It asks which specific measures have been taken to combat the disproportionate impact of the economic difficulties on the migrant population, and requests more information on the initiatives set up to eliminate discrimination in the access of migrant workers to employment.

Pending receipt of the information requested, the Committee concludes that the situation in this respect is in conformity with the 1961 Charter.

Membership of trade unions and enjoyment of the benefits of collective bargaining

The Committee recalls that “section 1 of Institutional Act No. 4/2000 states that: (a) foreign nationals have the right to join a trade union or a professional organisation on the same terms as Spanish nationals; (b) foreign nationals may exercise the right to strike on the same terms as Spanish nationals.”

In its previous conclusion, the Committee asked for information regarding foreign workers’ trade union membership and concerning non-discriminatory treatment in law and in practice with regard to enjoyment by foreign workers of the benefits afforded by collective agreements. As the report does not provide further information on these questions, the Committee reiterates its request. The Committee stresses that if the requested information does not appear in the next report, there will be nothing to establish that the situation is in conformity with the 1961 Charter.

The Committee refers to its Statement of Interpretation in the General Introduction and asks for information concerning the legal status of workers posted from abroad, and what legal and practical measures are taken to ensure equal treatment in matters of employment, trade union membership and collective bargaining.

Accommodation

The report indicates that Royal Decree No. 233/2013 of 5 April 2013, entitled 'State Housing Plan for 2013-2016', applies to migrant workers and their families as well as to nationals. The decree establishes a housing support programme which involves direct aid to families for the payment of the rents for their habitual residences, regard being had to their incomes and the composition of the family or cohabiting units. The Committee requests that the next report provide data on access to housing by migrant workers and their families.

The Committee notes from the comments of UGT and CCOO that pursuant to the Organic Law 4/2000 on the rights and freedoms of foreigners, long-term foreign residents are entitled to the public system of housing allowances in the same conditions as nationals. The trade unions stress that this provision excludes from public housing allowances foreigners without long-term residence authorisation. The Committee asks the next report to provide an explanation on this comment.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Spain is in conformity with Article 19§4 of the 1961 Charter.

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 5 - Equality regarding taxes and contributions

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

The Committee held in its previous conclusion that the situation in Spain was in conformity with the Charter, on the basis that foreign nationals are treated in the same way as Spanish nationals with regard to matters such as social benefits and tax relief. It notes also the bilateral agreements concluded with other States party to the Charter on taxation of work-related income, referred to in its previous conclusion (Conclusions XIX-4 (2011)).

The report provides no new information on this topic. The Committee requests that full and up to date information on the situation be provided in the next report. In the meantime, the Committee considers that the situation has not changed within the reference period and thus remains in conformity with the Charter.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Spain is in conformity with Article 19§5 of the 1961 Charter.

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 6 - Family reunion

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

Scope

The Committee recalls from its previous conclusions (Conclusions XIX-4 (2011)) that Organic Law No. 4/2000 grants foreign residents the right to family reunion with the following persons in particular: spouses (provided that they are not separated in practice or in law and that the wedding was not illegal); children (of the resident or the spouse) including adopted children, provided that they are under the age of 18 (the age of majority in Spain) or that they have a disability and clearly require the assistance of a third party because of their state of health; minors under the age of 18 and adults clearly requiring the assistance of a third party because of their state of health where the foreign resident is their legal representative and the legal document setting out their powers of representation complies with the principles of the Spanish legal system.

The Committee recalls that for the purpose of this provision, the term "family of a foreign worker" is understood to mean at least his wife and dependent children under the age of 21 years (Appendix to the 1961 European Social Charter).

With regard to adult children (within the meaning of Spanish law), the previous report, submitted on 2 November 2010, emphasised that no other exceptions were provided for by the law than that of "disability" and hence that in practice it was impossible to arrange reunion for children who had reached majority in Spain, but were considered as being minors in countries of origin. It was also asserted in the same report that Spanish legislation was in line with the EU rules on this point. The Committee is aware of Article 4 of Council Directive 2003/86/EC on the right to family reunification, as referred to in the previous report and in the written information provided to the Governmental Committee (Report concerning Conclusions XIX-4(2011)). With respect to this, it would point out that Article 3 (2) (b) of the same directive states that the directive is without prejudice to more favourable provisions of instruments including the European Social Charter of 18 October 1961 and that this principle was recently upheld by the European Court of Justice (Case C-540/03, Parliament v. Council (2006) ECR, I-576).

In view of the foregoing, the Committee considers that dependent adult children (within the meaning of Spanish law), who are not disabled and do not require the assistance of a third party because of their state of health are excluded in law and in practice from the scope of the right to family reunion enshrined in Article 19§6 of the 1961 Charter. It asks again for detailed information in the next report, including figures, on any rejections of applications for family reunion by dependent adult children under 21 finding themselves in the situation described above. In the meantime, it reiterates its conclusion that in this regard the situation in Spain is not in conformity with the Charter.

The Committee requests that the next report provide complete and updated information concerning the scope of family reunion.

Conditions governing family reunion

The Committee notes that foreign residents who apply for family reunion are required to demonstrate that they have a job and/or sufficient economic resources to provide for their family's needs including medical assistance if they are not covered by social security. The required level of resources is determined in accordance with the number of people who would depend on the applicant. In this respect, the Committee repeats its question regarding whether the family members for whom family reunion is requested are entitled access to the public health care system.

The previous report presented by Spain states that during the evaluation of income for the purpose of reunion, income derived from the system of social assistance will not be recognised, while other revenue provided by the spouse who resides in Spain and cohabits with the requesting party will be taken into account. The Committee notes the information provided to the Governmental Committee (Report on Conclusions XIX-4 (2011)) according to which "neither contributive benefits nor non-contributive benefits have the character of social assistance, and therefore they may be taken into account in the requirement to show sufficient economic means at the time of application for authorisation of a temporary residence permit for the purpose of family reunion." The Committee considers that migrant workers who have sufficient income to provide for the members of their families should not be denied the right to family reunion because of the origin of such income, where its origin is not unlawful or immoral and where they have a right to the granted benefit. Social benefits shall not be excluded from the calculation of the income of a migrant worker who has applied for family reunion (Conclusions XIX-4 (2011), Statement of Interpretation on Article 19§6). The Committee requests further information on which benefits are considered within social assistance and thus not recognised as income for the purposes of family reunion, and those which are not considered social assistance and therefore can be taken into account. In the meantime, it concludes that it has not been established that social welfare benefits are not excluded from the calculation of the worker's income for the purposes of family reunion.

Foreign nationals applying for family reunion must also prove that they have suitable accommodation to provide for their own needs and those of their family members. Certification that applicants fulfil this requirement must be provided by the local authority in which they reside within fifteen days of the filing of the application. Certification by the local authority may be replaced by notarised deeds containing a document authorising the occupation of the dwelling and stating the number of rooms available, the purpose for which each room is designed, the number of persons living in the dwelling and the type of living conditions and amenities provided.

The Committee recalls that restrictions on family reunion which take the form of requirements for sufficient or suitable accommodation to house family members should not be so restrictive as to prevent any family reunion (Conclusions IV (1975), Norway). The Committee considers that states are entitled to impose such accommodation requirements in a proportionate manner so as to protect the interests of the family. Nevertheless, taking into account the obligation to facilitate family reunion as far as possible under Article 19§6, States Parties should not apply such requirements in a blanket manner which precludes the possibility for exemptions to be made in respect of particular categories of cases, or for consideration of individual circumstances.

The Committee considers that it is important that in practice the authorities in charge of issuing residence permits following applications for family reunion take account of the fact that "the principle of family reunion is but an aspect of the recognition in the Charter (Article 16) of the obligation of states to ensure social, legal and economic protection of the family ... Consequently, the application of Article 19§6 should in any case take account of the need to fulfil this obligation" (Conclusions VIII (1984), Statement of interpretation on Article 19§6).

Bearing in mind the foregoing, the Committee asks that the next report provide specific information, including figures, on any rejections of applications for family reunion based on the criteria relating to available means and housing. The Committee underlines that if this information is not provided in the next report, there will be nothing to show that the situation is in conformity with Article 19§6 of the Charter.

The Committee considers that restrictions on the exercise of the right to family reunion should be subject to an effective mechanism of appeal or review, which provides an opportunity for consideration of the individual merits of the case consistent with the principles of proportionality and reasonableness.

The Committee asks that the next report provide a complete and up-to-date description of the legal framework for family reunion, including any requirements or restrictions such as language or health, and a description of the administrative process of consideration and appeal.

Conclusion

The Committee concludes that the situation in Spain is not in conformity with Article 19§6 of the 1961 Charter on the grounds that:

- no provision is made in law or in practice for the family reunion of dependent children of migrant workers aged between 18 and 21 who do not have a disability and do not require the assistance of a third party because of their state of health;
- it has not been established that social welfare benefits are not excluded from the calculation of the worker's income for the purposes of family reunion

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 7 - Equality regarding legal proceedings

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

The report states that “foreigners are entitled to effective judicial protection”. The Committee also takes note of the fact that in accordance with Organic Law 4/2000, section 20(3), organisations legally constituted in Spain for the defence of immigrants shall be authorised to intervene in administrative procedures.

According to the report, section 22 of the same act provides that foreign nationals are entitled to legal aid on the same terms as Spanish nationals where migrants lack sufficient economic resources. In addition, the second sentence of section 22 secures the right to be assisted by an interpreter, and the Committee understands that this possibility is offered whenever they do not speak the official language of the procedure. In light of the foregoing, the Committee concludes that the situation in Spain regarding legal aid and the assistance of an interpreter is in conformity with the Charter.

The Committee refers to its Statement of Interpretation on the rights of refugees under the Charter, and asks under what conditions refugees and asylum seekers may receive legal aid assistance.

Conclusion

The Committee concludes that the situation in Spain is in conformity with Article 19§7 of the 1961 Charter.

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 8 - Guarantees concerning deportation

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

The Committee has previously interpreted Article 19§8 as obliging 'States to prohibit by law the expulsion of migrants lawfully residing in their territory, except where they are a threat to national security, or offend against public interest or morality' (Conclusions VI (1979), Cyprus). Where expulsion measures are taken, they cannot be in conformity with the Charter unless they are ordered, in accordance with the law, by a court or a judicial authority, or an administrative body whose decisions are subject to judicial review. Any such expulsion should only be ordered in situations where the individual concerned has been convicted of a serious criminal offence, or has been involved in activities which constitute a substantive threat to national security, the public interest or public morality. Such expulsion orders must be proportionate, taking into account all aspects of the non-nationals' behaviour as well as the circumstances and the length of time of his/her presence in the territory of the State. The individual's connection or ties with both the host state and the state of origin, as well as the strength of any family relationships that he/she may have formed during this period, must also be considered to determine whether expulsion is proportionate. All foreign migrants served with expulsion orders must have also a right of appeal to a court or other independent body (Statement of interpretation on Article 19§8, Conclusions 2015).

Concerning the expulsion of foreign nationals, the report answers the Committee's question by stating that provision for expulsion is made by Organic Law 4/2000. It mentions some amendments to this statute, particularly to section 57. Also according to the report, the Constitutional Court declared Section 58(7) unconstitutional in 2013. Consequently, the prohibition of entry for a maximum term of three months, applied to any foreigners attempting to enter the country illegally, would no longer be in force.

The Committee takes note of the ground of expulsion contained in section 53(1)(a) of Organic Law 4/2000 providing for deportation of foreigners who have exceeded the expiry date of their residence permit. It recalls that national legislation should reflect the legal implications of Article 18§1 of the Charter read in conjunction with Article 19§8 as informed by the case-law of the European Court of Human Rights, and considers that foreign nationals who have been resident for a sufficient length of time in a state, either legally or with the tacit acceptance of their illegal status by the authorities in view of the host society's needs, should be covered by the rules that already protect other foreign nationals from deportation (Statement of interpretation on Article 19§8, Conclusions XIX-4 (2011)).

The Committee asks that the next report contain specific information on the circumstances in which foreigners who have exceeded the expiry date of their residence permits can be expelled, and the extent to which their individual circumstances can be taken into account.

The Committee takes note of the other grounds for expulsion mentioned. In particular, the report indicates that section 57(2) of Organic Law 4/2000 provides for the expulsion of migrants who have been convicted of a crime punishable in Spain by a prison sentence exceeding one year. Taking note of its statement of interpretation cited above, the Committee reiterates that expulsion of legally resident migrants must be based on relevant reasons specific to the individual, and can be founded only on reasons of national security, public order or respect for morality. It therefore wishes to know how the principle of proportionality is applied in the administrative considerations for expulsions, and whether other grounds than those mentioned above can be a basis for deportation.

Conclusion

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

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 9 - Transfer of earnings and savings

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

The report indicates that transfer of earnings or savings on behalf of foreign workers to their families is permitted with no charge or limit to making outward economic transactions. It explains that the authorities can collect information which must be supplied to them by the “intervening entities”, and also that in the case of transfer of a sum of money worth over € 50 000, the authorising body should make a declaration before it is carried out.

In the light of this information, the Committee concludes that the situation in this respect is in conformity with the 1961 Charter.

It refers to its Statement of Interpretation on Article 19§9 in Conclusions XIX-4 (2011), and asks whether there are any restrictions on the transfer of movable property of a migrant worker.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Spain is in conformity with Article 19§9 of the 1961 Charter.

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 10 - Equal treatment for the self-employed

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

On the basis of the information in the report the Committee notes that there continue to be no discrimination in law between migrant employees and self-employed migrants.

However, in the case of Article 19§10, a finding of non-conformity in any of the other paragraphs of Article 19 ordinarily leads to a finding of non-conformity under that paragraph, because the same grounds for non-conformity also apply to self-employed workers. This is so where there is no discrimination or disequilibrium in treatment.

The Committee has found the situation in Spain not to be in conformity with Articles 19§1, 19§3 and 19§6. Accordingly, the Committee concludes that the situation in the Spain is not in conformity with Article 19§10 of the 1961 Charter

Conclusion

The Committee concludes that the situation in Spain is not in conformity with Article 19§10 of the 1961 Charter as the grounds of non-conformity under Articles 19§1, 19§3 and 19§6 apply also to self-employed migrant workers.



January 2016

1961 European Social Charter

European Committee of Social Rights

Conclusions XX-4 (2015)

UNITED KINGDOM

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 1961 European Social Charter (the 1961 Charter) and the 1988 Additional Protocol (the Additional Protocol). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure

Information on the 1961 Charter, statements of interpretation, and general questions from the Committee, are reflected in the General Introduction to all Conclusions.

The following chapter concerns the United Kingdom which ratified the 1961 Charter on 11 July 1962. The deadline for submitting the 34e report was 31 October 2014 and the United Kingdom submitted it on 3 December 2014. Comments on the 34th report by the Scottish Human Rights Commission were registered on 4 June 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 "Children, families and migrants":

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection of maternity (Article 8),
- the right of the family to social, legal and economic protection (Article 16),
- the right of mothers and children to social and economic protection (Article 17),
- the right of migrant workers and their families to protection and assistance (Article 19).

The United Kingdom has accepted all provisions from the above-mentioned group except Articles 7§1, 7§4, 7§7, 7§8, 8§§2 to 4.

The reference period was 1 January 2010 to 31 December 2013.

The conclusions relating to the United Kingdom concern 19 situations and are as follows:

–7 conclusions of conformity: Articles 7§2, 7§6, 7§9, 19§1,19§5,19§7 and 19§9

– 9 conclusions of non-conformity: Articles 7§3, 7§5, 7§10, 8§1, 16, 17, 19§3, 19§6 and 19§10

In respect of the other 3 situations related to Articles 19§2, 19§4 and 9§8, 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 the United Kingdom under the 1961 Charter. The Committee requests the Government to remedy this situation by providing the information in the next report.

The next report will deal with the following provisions of the thematic group "Employment, training and equal opportunities":

- the right to work (Article1),
- 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 1 of the 1988 Additional Protocol).

The report should also contain information requested by the Committee in Conclusions XX-3 (2014) in respect of its findings of non-conformity due to a repeated lack of information:

- the right to just conditions of work – elimination of risks in dangerous or unhealthy occupations(Article 2§4)
- the right to a fair remuneration – first ground: reasonable limits to deductions (Article 4§5)

The deadline for submitting the above report was 31 October 2015.
Conclusions and reports are available at www.coe.int/socialcharter.

Article 7 - Right of children and young persons to protection

Paragraph 2 - Higher minimum age in dangerous or unhealthy occupations

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

The Committee notes from the information provided in the report that there have been no changes with regard to the legal framework which it has previously found to be in conformity with Article 7§2 of the 1961 Charter (see most recently Conclusions XVII-2 and XIX-4).

The Committee noted that the European Council Directive 94/33/EC on the protection of young people at work was implemented in the United Kingdom by the Management of Health and Safety at Work Regulations 1999. Section 19 of the said regulations prohibits the employment of young persons in work which entails exposure to danger. Young persons who have completed compulsory schooling, i.e. are over the age of 16, may however perform such work under competent adult supervision if this is necessary for their training and any risk is reduced to the lowest level that is reasonably practicable.

As far as measures taken to implement the relevant legislation in practice are concerned, the report refers to the actions of Health and Safety Executive (HSE) to provide young people with information on risks at the workplace. Employers' duties are explained in guidance published by HSE. Revised guidance containing information on risks, legislation and work experience was published in June 2013 on the HSE's website.

The Approved Codes of Practice (ACoP) provide guidance to employers on their responsibilities towards young people and contain some restrictions by age as well as the limitation of specific tasks that can be carried out by young people. Failure to comply with an Approved Code of Practice is not an offence in itself, but may constitute evidence that an employer has not complied with health and safety law. The report indicates that ACoPs on specific topics such as work equipment, particularly woodworking and power presses, which lay down the responsibilities of employers towards young people, supplement the health and safety regulations.

As regards enforcement measures, HSE Inspectors routinely provide guidance to employers on how to meet the requirements of the Management of Health and Safety at Work Regulations 1999 during the inspections carried out by them. The Committee asks for more detailed information on how the HSE Inspectors monitor the possible illegal employment of young workers in dangerous or unhealthy occupations. The Committee wishes to know if sanctions are imposed against employers who do not comply with the prohibition to employ young persons in work which entails exposure to danger or with the restrictions imposed in such cases.

The report states that the courts assess the involvement of children and other vulnerable groups in dangerous or unhealthy work when dealing with health and safety cases. The Committee asks if the courts dealt with situations where children and young persons were involved in hazardous activities and what were the outcomes of such cases.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in the United Kingdom is in conformity with Article 7§2 of the 1961 Charter.

Article 7 - Right of children and young persons to protection

Paragraph 3 - Prohibition of employment of young persons subject to compulsory education

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

The Committee notes from the report and from the information available on the Government's website (Child employment) that there are several restrictions on when and where children are allowed to work. Children are not allowed to work in the following situations:

- without an employment permit issued by the education department of the local council, if this is required by local bye – laws;
- during school hours;
- before 7am or after 7pm;
- for more than one hour before school (unless local bye – laws allow it);
- for more than 4 hours without taking a break of at least 1 hour;
- in places like a factory or industrial site; in most jobs in pubs and betting shops and those prohibited in local bye – laws; in any work that may be harmful to their health, well-being or education.

The Committee notes that during term time children can only work a maximum of 12 hours per week. This includes:

- a maximum of 2 hours on school days and Sundays;
- a maximum of 5 hours on Saturdays for 13 to 14-year-olds, or 8 hours for 15 to 16-year-olds.

During school holidays 13 to 14-year-olds are only allowed to work a maximum of 25 hours per week, as follows:

- a maximum of 5 hours on weekdays and Saturdays;
- a maximum of 2 hours on Sunday.

The 15 to 16-year-olds can only work a maximum of 35 hours per week during school holidays, as follows:

- a maximum of 8 hours on weekdays and Saturdays;
- a maximum of 2 hours on Sunday.

The Committee notes from the report that children subject to compulsory education may work up to 8 hours per day and 35 hours per week during school holidays. The Committee refers to its Statement of Interpretation on the permitted duration of light work and recalls that children under the age of 15 and those who are subject to compulsory schooling are entitled to perform only "light" work. Work considered to be "light" in nature ceases to be so if it is performed for an excessive duration. States are therefore required to set out the conditions for the performance of "light work" and the maximum permitted duration of such work. The Committee considers that children under the age of 15 and those who are subject to compulsory schooling should not perform light work during school holidays for more than 6 hours per day and 30 hours per week in order to avoid any risks that the performance of such work might have for their health, moral welfare, development or education (General Introduction, Conclusions 2015).

The Committee therefore considers that the situation is not in conformity with Article 7§3 of the Charter on the ground that the daily and weekly duration of light work for children who are still subject to compulsory education during school holidays is excessive.

The report indicates that according to national legislation, 14 is the minimum age at which children can be employed, although local authorities can allow through local bye – laws that children aged 13 do some forms of light work, such as delivering newspapers or working as shop assistants. The Committee recalls that during school term, the time during which children may work must be limited so as not to interfere with their attendance, receptiveness and homework (Conclusions 2006, Albania). Allowing children to work before school begins

in the morning is, in principle, contrary to Article 7§3. Allowing children aged 15 years still subject to compulsory education to deliver newspapers from 6 a.m. for up 2 hours per day, 5 days per week before school is not in conformity with the Charter (Conclusions XVII (2005), Netherlands). In order to assess the situation, the Committee asks how many hours per day, for what duration and in what intervals children may perform light work such as delivering newspapers or working as shop assistants.

The Committee notes that Section 18 (2A) of the Children and Young Persons Act 1933 defines the notion of "light work" as work which, on account of the inherent nature of the tasks which it involves and the particular conditions under which they are performed: (a) is not likely to be harmful to the safety, health or development of children; and (b) is not such as to be harmful to their attendance at school or to their participation in work experience, or their capacity to benefit from the instruction received or, as the case may be, the experience gained.

The Committee recalls that States are required to define the types of work which may be considered light, or at least to draw up a list of those who are not. Work considered to be light ceases to be so if it is performed for an excessive duration (International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §29-31). The Committee notes, from the information available on the Government's website, that local bye – laws list the jobs that children are not permitted to do. If a job is on this list, a child under the minimum school leaving age must not do this work. Local bye – laws may also contain other restrictions on working hours, conditions of work and the type of employment.

In its previous conclusion (Conclusions XIX-4), the Committee asked whether the possibility was being considered of extending the system, whereby a local authority may revoke an employment permit if it believes that the child's health, welfare or ability to take advantage of education is likely to suffer, to all local authorities or encouraging them to do so. In response to the Committee's question, the Government indicates that all local authorities already operate such a system and the Government is not aware of any local authority that does not use the system described above. The Government points out that it is, in any case, for each local authority to determine how best to ensure compliance with child employment legislation in its area. The Committee wishes to know whether there have been cases where local authorities have forbidden the employment of a child under the school leaving age or have imposed restrictions on the child's employment.

The Committee referred previously to its Statement of Interpretation on Article 7§3 (Conclusions XIX-4) and asked whether the rest period free of work has a duration of at least two consecutive weeks during the summer holiday. It also asked what the rest periods during the other school holidays are. The report indicates that a child must have a 2-week break from any work during the school holidays in each calendar year. The Committee notes that Section 18 (1) of the Children and Young Persons Act 1933 provides that "no child shall be employed at any time in a year unless at that time he has had, or could still have, during a period in the year in which he is not required to attend school, at least two consecutive weeks without employment". The Committee asks for confirmation that children have 2 consecutive weeks free from work during the summer holiday in the United Kingdom.

The Committee asks for more detailed information on how the Labour Inspectorate monitors possible illegal employment of young workers subject to compulsory education. The Committee wishes to know what sanctions are imposed against the employers who do not comply with the restrictions provided by law in relation to employment of young persons subject to compulsory education.

Conclusion

The Committee concludes that the situation in United Kingdom is not in conformity with Article 7§3 of the 1961 Charter on the ground that the daily and weekly duration of light work for children who are still subject to compulsory education during school holidays is excessive.

Article 7 - Right of children and young persons to protection

Paragraph 5 - Fair pay

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

Young workers

The report does not provide any information as regards the rates of the National Minimum Wage (NMW) for young workers. The Committee notes from another source that since 2010 the NMW age groups changed (Government of the United Kingdom website, National Minimum Wage rates).

According to the data available on the Government's website, in October 2013 the NMW rates for each age group were as follows:

- workers under 18 years – 3,72 British Pounds (GBP) per hour, or € 4,46 per hour;
- workers between 18 – 21 years old - 5,03 GBP per hour, or € 6,03 per hour;
- workers aged over 21 years – 6.31 GBP per hour, or € 7.56 per hour.

The Committee points out that the "fair" or "appropriate" character of the wage is assessed by comparing young workers' remuneration with the starting wage or minimum wage paid to adults (aged 18 or above) (Conclusions XI-1(1991), United Kingdom). The Committee notes that the difference between adults' minimum wage and that of young workers aged 16-18 is of 26%, respectively 41% (by reference to the two values of adult minimum wage indicated above), which is higher than the maximum of 20% considered to be acceptable for 16-18 year olds under Article 7§5 of the 1961 Charter (Conclusions (2006) Albania).

Moreover, as regards the adult minimum wage, the Committee has concluded that the situation in the United Kingdom was not in conformity with Article 4§1 of the 1961 Charter on the ground that the minimum wage applicable to workers in the private sector did not secure a decent standard of living (Conclusions XX-3 (2014)). The Committee recalls that the adult reference wage must in all cases be sufficient to comply with Article 4§1 of the Charter. If the reference wage is too low, even a young worker's wage which respects the above-mentioned percentage differentials is not considered fair (Conclusions XII-2 (1992), Malta).

On this basis, the Committee considers that the situation is not in conformity with Article 7§5 of the 1961 Charter on the ground that the minimum wage of young workers aged 16 and 17 is not fair.

Apprentices

As for apprentices, the Committee notes that since 2010 NMW rates for apprentices have been introduced. The NMW rate was of 2,68 GBP per hour in 2013, 2,65 GBP per hour in 2012, 2,60 GBP per hour in 2011, respectively 2,50 GBP per hour in 2010 (Government of the United Kingdom website, National Minimum Wage Rates). This NMW rate applies to apprentices aged 16 to 18 and to those aged 19 or over who are in their first year of their apprenticeship. All other apprentices (including the apprentices over 19 who have completed the first year of their apprenticeship) are entitled to the NMW rate corresponding to their age.

The Committee notes that in 2013 the apprentices' minimum wage rate was of 2.68 GBP per hour corresponding to 42% of the adult NMW rate of 6.31 GBP per hour, which is considered to be acceptable under Article 7§5 of the 1961 Charter. The Committee recalls that the terms of apprenticeships should not last too long and, as skills are acquired, the allowance should be gradually increased throughout the contract period (Conclusions II (1971), Statement of Interpretation on Article 7§5), starting from at least one-third of the adult starting wage or minimum wage at the commencement of the apprenticeship, and arriving at least at two-thirds at the end (Conclusions 2006, Portugal)

The Committee asks for information on the terms of apprenticeships and requests confirmation that the allowance is gradually increased during the apprenticeship period. It requests information on the allowances paid to apprentices at the end of their apprenticeship. In the meantime, the Committee reserves its position on this point.

The report refers to measures taken by the Government targeted at improving the quality of apprenticeships. In October 2013, following a consultation, the Government published 'The Future of Apprenticeships in England: Implementation Plan' which sets out the policy, process and timescales for reforming apprenticeships in England. The Committee asks to be informed of any reforms in the legal framework and practice of apprenticeships intervened as a result of Government's initiatives.

Conclusion

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 7§5 of the 1961 Charter on the ground that the minimum wage of young workers is not fair.

Article 7 - Right of children and young persons to protection

Paragraph 6 - Inclusion of time spent on vocational training in the normal working time

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

The Committee noted previously that since 1 September 1999, young employees have been entitled to reasonable paid time off for study or training purposes. According to Section 63A “Right to time off for young person for study and training” of Employment Rights Act 1996, as amended through the Teaching and Higher Education Act 1998, 16 and 17 year – old employees who have not achieved a certain standard of education/training, are entitled to reasonable paid time off during normal working hours to pursue approved qualifications in the workplace, at college or with a training provider.

The report indicates that a right to request reasonable time off for study or training with pay applies to employees aged 16 or 17 who are not in full – time secondary or further education and who have not achieved a qualification at NVQ level 2 (level 2 in the National Qualifications Framework, a basic level of secondary education). As regards 18 year olds, they are entitled to complete study or training they have already begun.

Conclusion

The Committee concludes that the situation in the United Kingdom is in conformity with Article 7§6 of the 1961 Charter.

Article 7 - Right of children and young persons to protection

Paragraph 9 - Regular medical examination

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

In its previous conclusion (Conclusions XIX-4 (2011)), the Committee asked for a full and up-to-date description of medical surveillance of young workers employed in occupations prescribed by national laws or regulations.

Under the Management of Health and Safety at Work Regulations 1999 employers must, *inter alia*, make a suitable and sufficient assessment of the risks to the health and safety of their employees, including those under 18 years of age, to which they are exposed at work. Employers must also ensure that employees are provided with health surveillance as is appropriate having regard to the risks to their health and safety that are identified by the risk assessment, and this applies to young workers.

In addition, the Control of Lead at Work (CLAW) Regulations 2002, as amended, requires that employees exposed to a significant level of lead, specified in the Regulations, must be placed under medical surveillance. In its previous conclusion, the Committee asked for a full and up-to-date description of medical surveillance of young workers employed in occupations prescribed by national laws or regulations. The report indicates that medical surveillance for exposure to lead is carried out either by a Medical Inspector employed by the Health and Safety Executive, or by an Appointed Doctor. A young person under 18 has the level of lead in their blood measured at least once every three months (as opposed to every 6 months or 1 year for other employees). If the level reaches or exceeds the suspension level, the measurement is repeated and if it is confirmed, the employer must remove the young person from work which exposes them to lead in accordance with a certificate issued by the examining doctor. The doctor responsible for medical surveillance will only permit a young person to resume work involving exposure to lead when they consider it appropriate to do so.

The objectives of medical surveillance under CLAW Regulations 2002 are similar, in principle, to those which apply to other occupational health risks, namely to:

- make an initial assessment of an employee's suitability to carry out work with lead;
- evaluate the effect of lead absorbed by employees and to advise them on their state of health;
- monitor the exposure of female employees of reproductive capacity;
- assess the suitability of an employee to carry on working where there is continuing exposure to lead;
- detect early signs of excessive lead absorption or early adverse health effects, and to remove employees from exposure to prevent lead poisoning and other health effects developing; and
- help employers in their duty to control the exposure of their employees to lead.

The report indicates that in Northern Ireland, the medical surveillance is conducted in accordance with the Control of Lead at Work Regulations 2003, as amended. Under these Regulations the Employment Medical Adviser has the same role as that of a Medical Inspector.

Furthermore, the Health and Safety Executive completes health surveillance in line with the legal framework for industries where there is high hazard. The report indicates that local by-laws are enacted by local authorities and enforced by appropriately appointed enforcement officers (see also the conclusion on Article 7§2).

Finally, the report contains some statistics:

- During 2012/13, 4240 people were under medical surveillance because of work with lead; of these 1 was under the age of 18 years.

- During 2011/12, 7949 people were under medical surveillance because of work with lead, of these 15 were under the age of 18 years.
- During 2010/11 7472 people were under medical surveillance because of work with lead, of these 6 were under the age of 18 years.

The Committee wishes to receive more information on the conditions and medical surveillance applied to other occupational health risks (work involving risks other than work with lead) and some statistics in this regard.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in the United Kingdom is in conformity with Article 7§9 of the 1961 Charter.

Article 7 - Right of children and young persons to protection

Paragraph 10 - Special protection against physical and moral dangers

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

The Committee notes that the United Kingdom ratified the Optional Protocol to the UN Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

Protection against sexual exploitation

The Committee recalls that with a view to guaranteeing the right provided by Article 7§10, States Parties must take specific measures to prohibit and combat all forms of sexual exploitation of children, in particular children's involvement in the sex industry. This prohibition must be accompanied by an adequate supervisory mechanism and sanctions.

The minimum obligations imposed on the States are to ensure that legislation criminalises all acts of sexual exploitation and to adopt a national action plan combating sexual exploitation.

As regards the legislation, the Committee has previously found that the legislative framework was in conformity with the Charter (Conclusions 2011). The Committee however notes from the Concluding observations of the UN Committee on the Rights of the Child on the report submitted by the United Kingdom of Great Britain and Northern Ireland under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child (UN-CRC) on the sale of children, child prostitution and child pornography, that certain offences listed under the Sexual Offences Act 2003 for England and Wales and the Sexual Offences (Northern Ireland) Order 2008 cover children only under the age of 13 or 16 years while children between 16 and 18 years are left outside the ambit of these laws. Therefore, the in its Concluding Observations the UN-CRC specifically recommends that the existing legislation, particularly the Sexual Offences Act 2003, the Sexual Offences (Northern Ireland) Order 2008 and the proposed Modern Slavery Bill for England and Wales be amended and harmonised to ensure that all children under the age of 18 are protected against all types of offences covered by the Optional Protocol.

The Committee wishes to be informed whether all acts of sexual exploitation of children, including child pornography and child prostitution have been criminalised for all children under 18 years of age.

As regards the national action plan and other measures, the Committee takes note of various measures underway or planned by the Government, such as the National Group's Strategic Plan to tackle sexual violence against children. It also takes note of the Independent Inquiry into Child Sexual Exploitation in Rotherham (1997-2013). Moreover, the Police's National Child Sexual Exploitation Action Plan, which covers online and offline abuse, aims at improving partnership working, prevention and victim protection and support and the pursuit of offenders.

Child victims

In its previous conclusion the Committee found that the situation was not in conformity with Article 7§10 as children victims of prostitution could be subject to prosecution. The Committee asked how a child victim was defined and what guidance existed to protect children from involvement in prostitution.

The Committee notes from the report in this regard that it is still an offence for someone to engage persistently in loitering or soliciting in the street for the purposes of prostitution. As with most offences in the United Kingdom, this applies to children as well as to adults.

The report emphasises in this respect that although the offence remains on the statute books, both the Police and Crown Prosecution Service guidance is very clear that a child

involved in prostitution should always be treated as a victim of abuse or sexual exploitation. Crown Prosecution Service guidance also states that children under 18 involved in prostitution should be treated as victims of abuse. The focus should be on those who exploit and coerce children. Only where there is a persistent and voluntary return to prostitution, and where there is a genuine choice, should prosecution be considered.

The Committee further notes that the UN-CRC recommends the United Kingdom to establish mechanisms and procedures to protect the rights of child victims of offences covered by the Optional Protocol, including establishing a clear obligation of non-prosecution in the criminal justice system, and ensure that they are treated as victims rather than criminals by the law enforcement and judicial authorities.

According to the UN-CRC the State party should always consider, both in legislation and in practice, child victims of these criminal practices, including child prostitution, exclusively as victims in need of recovery and reintegration and not as offenders.

The Committee considers that despite the information on policy guidance in cases involving sexual exploitation of children and despite the fact that since 2000 there have only been a handful of prosecutions and children are rarely arrested for loitering and soliciting, the situation which it has previously considered not to be in conformity with the Charter has not changed as the legislation permits treating children involved in prostitution as offenders. Therefore, the Committee reiterates its previous finding of non-conformity.

Protection against the misuse of information technologies

According to the report, the Government created the National Crime Agency (NCA) to lead the fight against serious and organised crime. It coordinates law enforcement efforts. Every NCA officer is required to undertake mandatory training in child protection. The NCA also has a leading and coordinating role across UK law enforcement, so is better able to mobilise and target collective efforts against child sexual exploitation. The Committee also takes note of other measures taken, such as, among others, the creation of a single, secure database of all illegal images seized by the police and NCA which will enable better sharing of intelligence and reducing the resource burden for forces in investigating these crimes.

The report highlights that in 2013 more than 1,600 individuals were prosecuted for crimes involving the possession, distribution or publication of indecent images of children online – a number which has increased year-on-year.

Protection from other forms of exploitation

According to the report, the Modern Slavery Bill, which was published on 15 December 2013 and is currently before Parliament, when enacted, would give law enforcement the tools to tackle modern slavery, ensure that perpetrators can receive suitably severe sentences for these crimes, and enhance support and protection for victims. To complement the Bill, the Government is taking non-legislative action to tackle modern slavery, such as:

- trialling child trafficking advocates to give child victims more tailored support;
- establishing specialist multi-agency safeguarding and anti-trafficking teams at the border;
- reviewing the support that victims receive; and
- making modern slavery a priority for the National Crime Agency (NCA).

In its Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom, the Group of Experts against Trafficking in Human Beings (GRETA) urges the British authorities to take further steps to improve the identification of child victims of trafficking, and in particular to:

- enhance the involvement of local authorities in the decision making process in order to ensure that the special needs and circumstances of children are taken into account during identification;

- train all professionals working with child victims of trafficking to recognise and respond appropriately to their needs;
- ensure that all unaccompanied minors who are potential victims of trafficking are assigned a legal guardian.

The Committee notes that the factual information contained in these recommendations may be of relevance for the Committee's assessment of the national situation. Therefore, it asks the next report to provide up-to-date information concerning the factual situation indicated in these recommendations.

Conclusion

The Committee concludes that the situation in United Kingdom is not in conformity with Article 7§10 of the 1961 Charter on the ground that the legislation permits treating children involved in prostitution as offenders.

Article 8 - Right of employed women to protection

Paragraph 1 - Maternity leave

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

Right to maternity leave

The regulations on maternity leave (Maternity and Parental Leave Regulations 1999), as amended, provide for up to 52 consecutive weeks' maternity leave for all employed women. However, only 2 weeks' postnatal leave is compulsory, except as regards factory workers, who are entitled to 4 weeks compulsory postnatal leave.

According to a survey mentioned in the report (research report No.777: Maternity and Paternity Rights and Women Returners Survey 2009/10, published on 6/10/2011 by the Department for Work and Pensions), about 87% of mothers entitled to maternity leave took more than 26 weeks off on maternity leave, and only 13% of them took a shorter leave, up to 26 weeks. The Committee notes from another, more recent, survey (Parental Leave Survey 2014, published in 2014 by the National Childbirth Trust – NCT) that 11.5% of women took less than 12 weeks leave, and 3.8% of women took less than the compulsory 2 weeks leave.

Under Article 8§1 of the 1961 Charter, States Parties have undertaken to ensure the effective right of employed women to protection by providing for women to take leave before and after childbirth up to a total of at least 12 weeks. In particular, the Committee has considered that in all cases there must be a compulsory period of leave of no less than six weeks after childbirth which may not be waived by the woman concerned. Where compulsory leave is less than six weeks, the rights guaranteed under Article 8 may be realised through the existence of adequate legal safeguards that fully protect the right of employed women to choose freely when to return to work after childbirth – in particular, an adequate level of protection for women having recently given birth who wish to take the full maternity leave period, e.g. legislation against discrimination at work based on gender and family responsibilities; an agreement between social partners protecting the freedom of choice of the women concerned; and the general legal framework surrounding maternity, for instance, whether there is a parental leave system whereby either parents can take paid leave at the end of the maternity leave (Conclusions XIX-4, 2011, Statement of interpretation on Article 8§1).

In the light thereof, the Committee reserved its position as to whether in the United Kingdom, in law and in practice, the women concerned are effectively protected against any undue pressure to shorten their maternity leave, and asked for information on the general legal framework surrounding maternity and any relevant agreements.

In reply to this question, the report refers to legislative measures aimed at protecting women from undue pressure from employers for reasons related to the taking of maternity leave and which qualify any dismissal occurring on these grounds as unfair dismissal (Employment Rights (Northern Ireland) Order 1996, as amended; Maternity and Paternity Leave etc. Regulations (Northern Ireland) 1999). The Committee notes that the legislation referred to concerns Northern Ireland, it asks the next report to confirm that similar provisions apply to the rest of the country and to provide any relevant example of case-law. The Committee furthermore notes from the government website that provisions on paternity and parental leave also exist and that further reforms in this area were planned to come into force after the reference period. It asks the next report to provide a comprehensive overview of the measures adopted in the field of maternity, paternity and parental leave, which safeguard the right of employed women to choose freely when to return to work after childbirth. It reserves in the meantime its position on this issue.

Right to maternity benefits

Women are entitled to either Statutory Maternity Pay (SMP) from their employer or Maternity Allowance (MA) from the State. SMP can sometimes be supplemented by an Occupational Maternity Pay (OMP) from the employer. The Committee notes from the official survey referred to in the report (research report No.777: Maternity and Paternity Rights and Women Returners Survey 2009/10, published on 6/10/2011 by the Department for Work and Pensions) that 42% of mothers received SMP only, 32% received the SMP supplemented by the OMP, 4% received OMP only, 11% received MA and 11% received no maternity benefit.

SMP can be granted, up to a maximum of 39 weeks, to women who have worked for the same employer continuously for at least 26 weeks up to and including the 15th week before the week her baby is due, and have earnings in the last 8 weeks such that they were paying national insurance contributions. The amounts paid correspond, for the first six weeks, to 90% of the woman's average earnings, without any ceiling, while the following 33 weeks are paid at that 90% rate or, if lower, at a standard rate which was GBP 124.88 (€ 141 – rates at mid-April 2010) per week in 2010 and GBP 136.78 (€ 160 – rates at mid-April 2013) per week in 2013. In its last conclusion (Conclusions XIX-4 (2011)), the Committee concluded that during the reference period the rate was inadequate.

Women who do not qualify for SMP may be entitled to MA, up to 39 weeks, if they have been employed or self-employed for at least 26 weeks in the 66 weeks up to and including the week before the baby is due and have average weekly earnings of at least GBP 30 (€ 36 at 31 December 2013) over any 13 weeks period within the abovementioned 66 weeks. The Committee notes that MA is paid at 90% of the woman's average weekly earnings subject to a maximum weekly rate equal to the above-mentioned standard weekly rate of SMP. The report refers to the extension of the eligibility criteria to MA as from 2014; as these changes occurred outside the reference period, the Committee will examine them during its next assessment of the conformity with Article 8§1 of the 1961 Charter.

The report indicates that, in 2013, women in receipt of the minimum wage would receive SMP worth 66% of their wages over the 39-week payment period for SMP. If a worker in receipt of minimum wage received MA, her MA would be worth 62% of her wages over the 39-period. Average female weekly wages were GBP 327.50 (€ 392.2) in 2013, while the hourly rate of the minimum wage for workers aged 21 or more was GBP 6.31 (€ 7.5). With reference to its Statement of Interpretation on Article 8§1 (Conclusions XX-4 (2015)), the Committee asks whether the minimum rate of maternity benefits corresponds at least to the poverty threshold, defined as 50% of the median equivalised income, calculated on the basis of the Eurostat at-risk-of-poverty threshold value.

In its previous Conclusion (Conclusions XIX-4 (2011)), the Committee found that the situation was not in conformity with Article 8§1 of the 1961 Charter on the ground that the standard rates of Statutory Maternity Pay (SMP), after six weeks, and Maternity Allowance (MA) were inadequate. It recalls that Article 8§1 of the Charter requires maternity benefit to be at least equal 70% of the employee's previous salary (Latvia, Conclusions XVII-2 (2005)). In view of the set standard rates for Statutory Maternity Pay (SMP) after six weeks and Maternity Allowance (MA), the Committee considers that the level of maternity benefits continues to be too low and therefore inadequate.

Conclusion

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 8§1 of the 1961 Charter on the ground that the standard rates of Statutory Maternity Pay, after six weeks, and Maternity Allowance are inadequate.

Article 16 - Right of the family to social, legal and economic protection

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

Social protection of families

Housing for families

England:

The Committee takes note of several developments and measures:

- Publication of a guide taking stock of all the existing social housing options, including information on how to apply for social housing;
- Improvements to non-decent social housing reducing the proportion of non-decent homes from 47.2% in April 2001 to 6.5% in April 2013 as a result of the provision of funding of €2.25 billion to local authorities between 2011 and 2015;
- Possibility for the tenants to make a formal complaint against the local authority if they are not satisfied with the way their local authority or Private Registered Provider (PRP) is performing against the Decent Homes Standard. They can also ask for help from their local member of parliament or a tenant panel or submit their case to the Housing Ombudsman;
- Delivery of some 200,000 affordable homes since 2010;
- Investment of over €703 million to tackle and prevent all forms of homelessness over the spending review period (2010 – 2014).

As to particularly vulnerable families, the report states that since April 2011, the Mobile Homes Act 1983 has made provision for local authority Traveller sites. The Government has made €84 million in Traveller pitch funding available to help councils and housing associations build new Traveller sites. However, the Committee notes, that in 2012, the European Commission against Racism and Intolerance (ECRI) found that the efforts of the Government to address the disadvantages faced by Gypsies and Travellers (the terminology used in these conclusions reflects that of the national report) when attempting to access adequate accommodation has only been partly implemented.

In addition, on 21 January 2015, the High Court of Justice of England and Wales held that the conduct of the Secretary of State for Communities and Local Government in relation to certain planning decisions amounted to indirect discrimination against Gypsies and Irish Travellers. It found that this conduct was in breach of Article 6 of the European Convention on Human Rights because it could take over six months to process applications from Roma which should ordinarily take no more than two days. No such delays had been observed for “conventional” housing and only housing intended for Travellers had been affected.

Despite the progress made, the Committee considers, in view of ECRI’s findings and the facts of the case mentioned above, that the situation is not in conformity on the ground that the right of Gypsy/Traveller families to housing in England is not effectively guaranteed.

Wales:

- A Housing Bill has been introduced and if it is passed, it will improve conditions for people renting from private landlords. In addition, local authorities will be expected to offer more help for people who are homeless or who are at risk of becoming homeless. The Committee asks for information in the next report on the outcome of the Bill;
- The report states that 60% of social housing in Wales now meets the Welsh Housing Quality Standard and that the standards to be applied to new affordable housing are being reviewed.

As to particularly vulnerable families, in July 2013, the Government took steps to implement Article 318 of the Housing and Regeneration Act 2008, which is intended to improve security

of tenure for Gypsies and Travellers by introducing the necessary procedures to protect them from eviction from protected sites. A Government Gypsy and Traveller Framework for Action states the aims and proposed measures to ensure that Gypsies and Travellers can access culturally appropriate accommodation. The Government has published guidance to draw local authorities' attention to the importance of managing camps and to help them in this process. It also provides a grant for Gypsy and Traveller sites, as a result of which €11 million were allocated for the refurbishment of existing sites and the development of new ones between 2011 and 2015. One new site was constructed and 44 refurbishment projects on existing sites were carried out during this period.

Scotland:

- Between April 2011 and June 2014, the Government delivered over 21,300 affordable homes and 15,088 of these were at social rent, which means that 75% of the social rent target was achieved;
- In June 2013, the Government launched a Sustainable Housing Strategy, whose aim is to create warm, high quality, affordable, low carbon homes;
- In December 2012, the homelessness legislation was changed so that now all unintentionally homeless households are entitled to settled accommodation.

The Committee notes that since 2008, the Scottish Government has reformed local authority planning for new housing provision and that this includes the provision of sites for Gypsies and Travellers. Authorities are now required to assess the housing needs of Gypsies and Travellers and ensure that the needs of equality groups, including Gypsies and Travellers, are addressed in their local housing strategies, identify suitable locations for sites for Gypsies and Travellers in their development plans and involve Gypsies and Travellers in decisions about sites for their use. Moreover, in 2012 the Scottish Government's Social Housing Charter came into effect and included objectives relating to services provided by social landlords to Gypsy/Travellers.

Northern Ireland:

The Department of Social Development drew up a housing strategy for 2012-2017, which includes a plan for the provision of affordable social housing with a view to creating a balanced housing market providing households with a range of good quality housing at a reasonable price. The aim is to deliver 8,000 social and affordable homes by 2015.

On the subject of particularly vulnerable families, the Committee takes note of the information provided in the report.

Childcare facilities

States must ensure that affordable, good quality childcare facilities are available, with quality defined in terms of the number of children under the age of six covered, staff to child ratios, staff qualifications, suitability of the premises used and the size of the financial contribution parents are asked to make (Conclusions XVII-1 (2004), Turkey).

England:

The report provides information on childcare support and tax credits awarded to families but none on childcare facilities. The Committee notes from another source (the UK's Fifth Periodic Report to the UN Committee on the Rights of the Child, dated May 2014), that a range of measures has been introduced to improve access to childcare, to help parents combine work and family life successfully and to support children's development. For example, the number of free hours of early education for 3 and 4 year olds has increased to 15 hours a week. This entitlement has been extended to the most disadvantaged 2 year olds – over 90,000 children are already benefiting and the target is to reach 40% of 2 year-olds (around 260,000 children) from September 2014. Other measures which are planned do not relate to the reference period.

Wales:

The report points out that the 2006 Childcare Act makes it a duty for all local authorities to provide, as far as is practicable, sufficient childcare in their area to meet the needs of parents who require childcare in order to train, work or study. Local authorities must assess the supply and demand for childcare and such assessments are carried out by the 22 local authorities in Wales every three years, with interim reviews in the intervening years. The results of the last full assessment in 2011 showed that in 19 out of the 22 local authorities, high childcare costs were the principal barrier families face to accessing childcare. The Committee asks for it to be stated in the next report whether any measures are being taken to remedy the affordability issue.

The Committee takes note of the information regarding Scotland and Northern Ireland.

Family counselling services

The Committee asks for updated information in the next report on the family counselling services available in England.

It takes note of the information provided in respect of Wales, Scotland and Northern Ireland.

Participation of associations representing families**England:**

The report refers to the results of the Annual Parental Opinion Survey completed in 2010, whose aim is to provide the Government with information about the opinions of parents on a range of issues, focusing on their role as parents, particularly their confidence as parents and their views about the services that they or their children use.

Wales:

The report refers to the 2010 Children and Families Measure. It relates only to local authorities, which are encouraged to work closely with each of their partners.

Northern Ireland:

The report states that there is no formal mechanism by which families participate in the definition of policies and that this is currently achieved through the existing mechanisms for public consultation. Government Departments are also able to make use of a number of organisations which seek the views of parents and children where specific issues necessitate a more targeted consultation process.

In view of the foregoing, the Committee finds that the situation is not in conformity with the 1961 Charter because there are no associations representing families which can be consulted.

Legal protection of families***Rights and obligations of spouses***

The Committee previously found the situation to be in conformity with the 1961 Charter in this respect (Conclusions XIX-4 (2011)). It upholds its finding of conformity.

Mediation services**England and Wales:**

The Family Mediation Council (FMC) is made up of national family mediation organisations.

Scotland and Northern Ireland:

Similar family mediation services operate in Scotland and Northern Ireland.

The Committee considers that under Article 16 of the 1961 Charter, the legal protection of the family includes the availability of mediation services whose object should be to avoid the deterioration of family conflicts. To be in conformity with Article 16, these services must be easily accessible to all families. In particular families must not be dissuaded from availing of such services for financial reasons. If these services are free of charge, this constitutes an adequate measure to this end. Otherwise a possibility of access for families when needed should be provided. The Committee asks the next report to indicate what assistance is available for families in case of need.

Domestic violence against women

England and Wales:

In April 2011, the Government took steps to implement section 9 of the Domestic Violence, Crime and Victims Act 2004, particularly in cases of homicide. The Government also began implementing sections 24 to 33 of the Crime and Security Act 2010 by introducing Domestic Violence Protection Orders (DVPOs), which enable the police and magistrates courts to take immediate measures to protect victims after domestic violence incidents. DVPOs are a means of preventing perpetrators from returning to victims' residences or having contact with them for up to 28 days. Furthermore, in 2010, the Government published a cross-government strategy and a supporting action plan focusing on the principles of prevention, provision of services for victims, partnership working, risk reduction and improved justice outcomes.

The Committee asks for more detailed information in the next report on the outcome of these measures.

Scotland:

The main specialist Domestic Abuse Courts have operated at Glasgow Sheriff Court since 2005/06 (where a trial and a procedural court sit every day) and Edinburgh Sheriff Court. The report mentions ASSIST, which is the advocacy and support service for victims of domestic abuse linked to the dedicated court in Glasgow. According to the report, the Scottish Government has strengthened the criminal law. For this purpose, a new criminal offence of "threatening and abusive behaviour" was introduced in 2010 so that those who commit domestic abuse can be held to account. The Domestic Abuse (Scotland) Act came into force in July 2011 and introduced a new section to the Protection from Harassment Act 1997 which provides that one incident constitutes harassment, rather than a course of conduct, as was the case previously.

Northern Ireland:

Domestic violence is now included as a qualifying offence in Northern Ireland's Public Protection Arrangements. In this context, an assessment tool (for perpetrators) has been developed and distributed to the agencies involved in such protection. Since Multi-Agency Risk Assessment Conferences were held across the country between January 2010 and 31 May 2014, over 6,800 high risk victims of domestic violence have had safety plans put in place to protect them – plans which have included over 9,000 children. In December 2011, a process was introduced which allows all victims of domestic violence to access legal aid quickly in order to obtain Non-Molestation Orders. The Government also funded a 24-Hour Domestic Violence Helpline (which was recently extended to deal with sexual violence). A central role is to be played by the five-year Victim and Witness strategy published in June 2013. Key elements include a new Victim Charter and a victim and witness care unit.

Economic protection of families

Family benefits

According to Eurostat data, the monthly median equivalised income in the UK in 2013 was €1,558. According to MISSOC, the monthly amount of child benefits was €111 for the eldest qualifying child of a couple and €73 for each other child. Child benefits therefore amounted to 7.12% of the above income for the first child and 4.7% for each additional child.

The Committee considers that, in order to comply with Article 16, child benefits must constitute an adequate income supplement for a significant number of families. They Committee asks what is the percentage of families covered.

Vulnerable families

People who live in caravans, mobile homes or houseboats can pay rent on the site or the mooring alone or on these and the living quarters. A site rent for a caravan or mobile home is eligible for Housing Benefit when it is used as a home, unless it is paid under a long lease, even if the caravan or mobile home is owned by the claimant. However, the eligible rent for Gypsy and Traveller sites is subject to different rules depending on the type of organisation that is the landlord for the site. The Committee asks whether Gypsies and Travellers encounter problems when the landlord is a private person.

England:

According to the report, the Troubled Families Programme launched by the Prime Minister in December 2011 has a budget of €630 million to support local authorities, 40% of which is earmarked for social work with families living in their area.

In 2012, the UK Government set up the Social Mobility and Child Poverty Commission (SMCP), which is an independent body tasked with holding the Government to account for its progress in improving social mobility and reducing child poverty in the United Kingdom. The report states that the Government's approach is to make work pay and tackle low pay. Of particular note is the increase in the national minimum wage per hour to €9 from October 2014 onwards. The report states that as a result of these measures, 300,000 fewer children are in relative income poverty and 290,000 fewer children are growing up in workless families. The proportion of children living in households with relative low incomes decreased from 20% in 2009/2010 to 17% in 2012/2013.

Scotland:

The Government published its revised Child Poverty Strategy on 10 March 2014. The 2011 strategy set out two key aims, namely maximising household resources and improving children's well-being and life chances. The new strategy reformulates the two overarching aims and adds a third one, which is to see to it that children from low income households live in well-designed, sustainable spaces.

The Committee asks for information in the next report on the results of this strategy.

Wales:

The report states that despite the economic crisis since the introduction of the Children and Families Measure 2010, the percentage of children living in workless households has decreased.

Equal treatment of foreign nationals and stateless persons with regard to family benefits

All claimants of Child Benefit (ChB) and Child Tax Credit (CTC), regardless of nationality, must be "in the UK" and responsible for a child or qualifying young person. Being "in the UK"

means being present there (apart from short temporary absences: normally up to 8 weeks), being ordinarily resident there and having a right to reside there under UK or EU law.

The report does not provide information for the reference period but indicates that since 1 July 2014, persons who have entered the UK and are unemployed need to have lived in the UK for three months before they can claim ChB and CTC, although there are exceptions to this rule.

As to stateless persons, Schedule 1 of the Family Allowances, National Insurance and Industrial Injuries (Stateless Persons) Order, 1965 SI No. 1540, incorporates certain provisions of the Convention relating to the Status of Stateless Persons, including Article 24 (3) on the equal treatment of stateless persons in so far as labour legislation and social security are concerned.

The Committee asks the next report to indicate whether refugees are treated equally with regard to family benefits.

Conclusion

The Committee concludes that the situation in United Kingdom is not in conformity with Article 16 of the 1961 Charter on the grounds that:

- in England, the right of Roma/Traveller families to housing is not effectively guaranteed;
- associations representing families are not consulted when family policies are drawn up.

Article 17 - Right of mothers and children to social and economic protection

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

The legal status of the child

The Committee takes note of the Disclosure of Adoption Information Regulations 2005 No. 924 which set out the new framework for managing adoption information in respect of any adoption when an adoption order is made on or after 30 December 2005. The adoption agency became the main gateway for access to information, including birth record information.

Protection from ill-treatment and abuse

In its previous conclusion (Conclusions 2011) the Committee found that the situation was not in conformity with the Charter as not all forms of corporal punishment were explicitly prohibited in the home.

According to the report, the Government's position is unchanged. The Government takes the view that it should not be a crime for parents to give their children a mild smack. The law in Northern Ireland on the physical punishment of children is based on the concept of 'reasonable chastisement'. If a parent or adult smacks a child and is prosecuted, they can defend themselves in terms of reasonable chastisement but only if the harm is minor.

In interpreting Article 17 of the Charter, the Committee has held that the prohibition of any form of corporal punishment of children is an important measure that avoids discussions and concerns as to where the borderline would be between what might be acceptable form of corporal punishment and what is not (General Introduction to Conclusions XV-2). The Committee recalls its interpretation of Article 17 of the Charter as regards the corporal punishment of children laid down most recently in its decision in *World Organisation against Torture (OMCT) v. Portugal* (Complaint No. 34/2006, decision on the merits of 5 December 2006; §§19-21):

"To comply with Article 17, states' domestic law must prohibit and penalize all forms of violence against children, that is acts or behaviour likely to affect the physical integrity, dignity, development or psychological well-being of children.

The relevant provisions must be sufficiently clear, binding and precise, so as to preclude the courts from refusing to apply them to violence against children.

Moreover, states must act with due diligence to ensure that such violence is eliminated in practice."

The Charter contains comprehensive provisions protecting the fundamental rights and human dignity of children – that is persons aged under 18 (*Defence for Children International v. the Netherlands*, Complaint No. 47/2008, decision on the merits of 20 October 2009, §§ 25-26). It enhances the European Convention on Human Rights in this regard. It also reflects the provisions of the United Nations Convention on the Rights of the Child, on which in particular Article 17 is based.

The Committee has noted that there is now a wide consensus at both the European and international level among human rights bodies that the corporal punishment of children should be expressly and comprehensively prohibited in law. The Committee refers, in particular, in this respect to the General Comments Nos. 8 and 13 of the Committee on the Rights of the Child (*Association for the Protection of All Children (APPROACH) v. Ireland*, decision on the merits of 2 December 2014, §§45-47).

The Committee considers that the situation which it has previously found not to be in conformity with the Charter has not changed. Therefore, it reiterates its previous finding of

non-conformity on the ground that not all forms of corporal punishment of children are prohibited in the home.

Rights of children in public care

In its previous conclusion the Committee asked whether there were procedural safeguards to ensure that children were removed from their families only in exceptional circumstances and whether the national law provided for a possibility to lodge an appeal against a decision to restrict parental rights.

The Committee notes from the report in this respect that there is a general presumption that children should remain with their families unless they are at risk of significant harm or neglect. Local authorities are required to consider a hierarchy of placement options, starting with rehabilitation with parents. The next option would be to seek placement with a relative, friend or connection person. Only if these options are not possible does a local authority seek a placement with a foster carer who is not a relative, or in a children's home or other setting.

In reply to the Committee's question, the report states that of the 28,830 children who started to be looked after in 2013, only 50 entered care due to low parental income.

In this connection, the Committee recalls that placement must be an exceptional measure and is only justified when it is based on the needs of the child. The financial conditions or material circumstances of the family should not be the sole reason for placement (Conclusions 2011, Statement of Interpretation on Articles 16 and 17). The Committee also refers to the judgements of the European Court of Human Rights where the latter held that separating the family completely on the sole grounds of their material difficulties has been an unduly drastic measure and amounted to a violation of Article 8 (Wallová and Walla v. Czech Republic, application No. 23848/04, judgment of 26 October 2006, final on 26 March 2007).

The Committee asks whether children can be taken into care solely on the basis of inadequate resources of parents.

Young offenders

In its previous conclusion the Committee asked what was the maximum possible duration of remand for young offenders, including any extension that could apply.

The report states that the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act of 2012 introduced a new youth remand framework. Remands are a last resort. All 10 to 17 year-olds are treated as children for the purposes of remand by the criminal courts in England and Wales.

According to the Criminal Justice Act 2003 there is a statutory requirement that young people under 18 may not be sentenced to custody except as a last resort and then only for the shortest appropriate period. Overarching Principles – Sentencing Youths were published in 2009 which sets guidelines for the judiciary to follow.

The Committee notes that the time spent in custody is limited to a total of 182 days but may be extended by the court on application. Any time spent by a defendant remanded in custody is also subject to regular reviews. The Magistrates' Courts Act 1980 Sections 128 and 128A provide that the first review of a court decision to remand in custody must be made within 8 days. After this the decision to detain on remand must be reviewed no later than every 28 days. In addition to this the court is required to have regard to the remand status of the defendant at every court appearance and to hear any application for release on bail which includes new information that had not been presented to the court previously.

According to the report, when considering applications to extend custody time limits the court must have regard to Section 44 of the Children and Young Persons Act 1933: "Every court in dealing with a child or young person who is brought before it, either as an offender or

otherwise, shall have regard to the welfare of the child or young person and shall in a proper case take steps for removing him from undesirable surroundings, and for securing that proper provision is made for his education and training”.

The Committee asks to be informed of the average length of remand for young offenders after the entry into force of the new youth remand framework.

In its previous conclusion the Committee asked what measures were taken to reduce the number of children in custody and ensuring that the control-punishment model is replaced with a child-centred approach and that custody is only used as a last resort for children. It also asked what was the proportion of minors who receive non-custodial intervention orders as opposed to those in custody.

In reply the report describes the existing procedures/systems relating to detention of 17 year-olds, including community sanctions and penalties. The Committee takes note of the youth rehabilitation with fostering as a high intensity alternative to custody as well as a referral order which is the primary community sentence for first time offenders aged 10-17 years. It also takes note of the custodial measures available in respect of young offenders under 18, such as detention in a place approved by the secretary of State, young offender institutions, security training centres, secure children homes etc.

The great majority of penalties imposed on young offenders do not involve the deprivation of liberty. In a small minority of cases (about 6% of those who admit or are found guilty of an offence), courts decide that only a custodial penalty is sufficient to meet the circumstances of the case.

The Committee takes note of a specialised assessment tool, known as ASSET, which can provide all relevant information about a young person being dealt with by the criminal justice system for those making decisions and having duties of care.

As regards the right to education, according to the report, in 2013 the Government published a consultation paper on transforming youth custody and putting education at the heart of detention. The document highlights how the Government is setting out plan to introduce a pathfinder Secure College, a new secure educational establishment which will put education at the heart of youth custody.

At present 15-17 year-olds in young offender institutions receive an average of only 12 hours contracted education a week. In Secure Children’s Homes the educational ethos is to provide an individualised education for young people that does not allow the child to repeat the failures of their previous educational placements. Depending on their size and resources, these homes offer a range of educational interventions which have at their heart a commitment to ensuring that all the young people are furnished with numeracy and literacy skills. By providing 30 hours of education per week, the education provision is able to wrap around the child’s needs.

In its previous conclusion the Committee found that the age of criminal responsibility was low and therefore, the situation was not in conformity with the Charter. In this regard, the Government’s position remains unchanged. The age of criminal responsibility in England and Wales is 10 and 8 in Scotland. According to the report, it is believed that at the age of 10 children are old enough to differentiate between bad behaviour and serious wrong doing.

The Committee notes that the situation which it has previously found not to be in conformity with the Charter has not changed. Therefore, it reiterates its previous finding of non-conformity.

Right to assistance

In its previous conclusion the Committee asked whether unlawfully present children had access to shelter and medical care for as long as they were in the jurisdiction of the state party and if so, what was the legal basis.

The Committee recalls that Article 17 guarantees the right of children, including unaccompanied minors to care and assistance, including medical assistance (International Federation of Human Rights Leagues (FIDH) v. France, Complaint No 14/2003, decision on the merits of September 2004, § 36). In fact, Article 17 concerns the assistance to be provided by the State where the minor is unaccompanied or if the parents are unable to provide such assistance.

States must take the necessary and appropriate measures to guarantee for the minors in question the care and assistance they need and to protect them from negligence, violence or exploitation, thereby posing a serious threat to the enjoyment of their most basic rights, such as the rights to life, to psychological and physical integrity and to respect for human dignity (Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §82).

The Committee notes from the report that children in irregular situation do have access to humanitarian assistance, including shelter and medical care in the United Kingdom.

The Committee further notes from the Fifth Periodic Report of the United Kingdom to the UN Committee on the Rights of the Child that in England, local authorities have a statutory duty to safeguard and promote the welfare of all children regardless of their immigration status or nationality. Unaccompanied asylum seekers and migrant children have the same status and benefits as children in care and have access to an independent advocate who can represent their wishes and feelings.

Conclusion

The Committee concludes that the situation in United Kingdom is not in conformity with Article 17 of the 1961 Charter on the grounds that:

- not all forms of corporal punishment are prohibited in the home;
- the age of criminal responsibility is manifestly low.

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 1 - Assistance and information on migration

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

Migration trends

Net migration was 263,000 in the year ending June 2011, followed by a significant decrease in the year ending June 2012 to 167,000. A significant proportion of this decrease was on account of a reduction in the number of student visas granted, and the impact of new rules introduced to curb the number of Tier 2 visas, which included a quota of 20,700 for two years until April 2014 and a language test. Measures had also been taken in 2010 and 2011, when a limit of 21,700 visas was imposed across Tiers 1 and 2. Net long-term migration to the UK was estimated to be 212,000 in the year ending December 2013, though this is not a statistically significant increase according to the Office for National Statistics (ONS). While net migration has increased since the most recent low of 154,000 in the year ending September 2012, it remains below the peak of 320,000 in the year ending June 2005.

526,000 people immigrated to the UK in the year ending December 2013, not a statistically significant difference from 498,000 the previous year. 43,000 more EU citizens and 11,000 fewer non-EU citizens immigrated to the UK than in the previous year. This follows a steady decline in non-EU immigration since the recent peak of 334,000 in the year ending September 2011.

Work was the most common reason for immigrating to the UK during the reference period (214,000 in the year ending December 2013). Immigration for study (177,000) has remained steady.

Policy and the legal framework

The UK has ratified ILO Convention No. 97 – Migration for Employment (Revised), excluding Annexes I and III. In its report to the ILO, the United Kingdom indicates the current operation of the Points Based System (PBS), which allocates applicants to 5 different Tiers, and awards points based on certain factors to determine priority.

The Committee notes that there has been no significant change to the situation described in its previous conclusion (Conclusions XIX-4(2011)), except certain specific restrictions which have been introduced by the coalition government.

The Committee notes that the UK government has followed policies in the pursuit of cutting net immigration to below 100,000 by 2015. This policy has been pursued largely through the targeting of Non-EEA migrants, and reductions in the number of Tier 1 (highly-skilled workers) and Tier 4 (students) claimants.

Restrictions have also been introduced regarding the acquisition of permanent residence of those initially admitted for the purpose of work. In April 2013, the income threshold was raised to £35,500 (€ 42 516) for settlement applications from 2018.

New requirements of knowledge of “life in the UK” and the English language at level B1 were introduced in October 2013, except for certain exemptions such as those applying to migrants earning more than £150,000 (€179 645) p.a.

The Committee notes the introduction outside the reference period of the Immigration Act 2014. The updated ‘Immigration Rules’ are published on the government website. The Committee asks that the next report contain a detailed and up-to-date description of the rules applying to migrant workers coming to the UK from other States party to the Charter, and information on their implementation in practice.

The Committee also notes the introduction in March 2014, outside the reference period, of a Minimum Earnings Threshold, and asks that the next report contain a detailed description of its purpose and implementation.

Free services and information for migrant workers

The Committee considers that free information and assistance services for migrants must be accessible in order to be effective. While the provision of online resources is a valuable service, it considers that due to the potential restricted access of migrants, other means of information are necessary, such as helplines and drop-in centres.

The UK Visa and Immigration department (UKVI) has a number of visa centres to enable access to further information and complete application processes. The Committee wishes to know whether there are language services at these centres, such as leaflets or interpreters, to ensure that the migrant worker can understand the information provided.

Some helpline services have been switched to email query services, such as the Nationality Contact Centre. Other helpline services continued to be run centrally during the reference period by the Croydon Contact Centre.

The report gives Lincolnshire as an example of good practice, providing information packs in various languages in public spaces such as Libraries. The Committee would like to know whether such provision of physical information material is normally undertaken by local councils as opposed to national authorities, and to what extent this occurs across other regions of the United Kingdom.

Private companies also provide services such as information and assistance to migrant workers, and numerous charities and community projects exist to improve migrant integration.

Measures against misleading propaganda relating to emigration and immigration

The Committee notes from the report that the independent regulator Ofcom (Office of Communications) operates in the United Kingdom, and oversees the media, having the power to impose sanctions for material which is, inter alia, discriminatory. It also acknowledges government policies to tackle hate crime through information on its website and through the police. The Scottish Government also instigated the 'Speak Up Against Hate Crime' campaign. In Northern Ireland, a strategy applying from 2012-2017 governs policy for tackling hate crime.

The Committee recalls that States must also take measures to raise awareness amongst law enforcement officials, such as awareness training of officials who are in first contact with migrants. It asks whether police officers and other officials who have regular contact with migrants receive training related to racism and discrimination, and asks for a description of any such initiatives.

The Committee recalls that statements by public actors are capable of creating a discriminatory atmosphere. Racist misleading propaganda indirectly allowed or directly emanating from the state authorities constitutes a violation of the Charter (Centre on Housing Rights and Evictions (COHRE) v Italy, Complaint No. 58/2009).

The Committee notes the significant increase in negative coverage in the British media concerning migrants, and in particular the focus on Romanian and Bulgarian immigrants, whose rights changed as of 1 January 2014. The Committee stresses the importance of promoting responsible dissemination of information. It considers that in order to combat misleading propaganda, there must be effective organs to monitor discriminatory, racist or hate-inciting speech, particularly in the public sphere. The Committee asks what monitoring systems exist to ensure the implementation of anti-discrimination regulations, and requests a description of their activities.

The Committee requests that the next report include comments on these issues, and in light of the above, provide evidence of any action taken to combat discrimination, xenophobia and racism. In the meantime it reserves its position on this matter.

The Committee recalls that to be effective, action against misleading propaganda should include legal and practical measures to tackle racism and xenophobia and to prevent trafficking in women. Such measures, which should be aimed at the whole population, are necessary to counter the spread of stereotypes such as immigrants' supposed predisposition to crime, violence or drug abuse and disease (Conclusions XV-1 (2000), Austria). It asks for complete and up-to-date information on any measures taken to target irregular migration and in particular, trafficking in human beings.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in the United Kingdom is in conformity with Article 19§1 of the 1961 Charter.

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 2 - Departure, journey and reception

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

Departure, journey and reception

The Committee previously asked for updated information on facilitative measures for departure, journey and reception of migrants. In response, the report lays out the Government's position that employers and sponsors are responsible for ensuring the social aspects of reception arrangements for migrants. Where this does not occur appropriate assistance is provided through local authority social services, and through the national health care system which is available for free. The report states that advice and guidance is provided through public and privately funded advice centres, such as the Citizen's Advice Bureau (CAB).

Reception must include not only assistance with regard to placement and integration in the workplace, but also assistance in overcoming problems, such as short-term accommodation, illness, shortage of money and adequate health measures (Conclusions IV (1975), Germany). The Committee recalls that reception means the period of weeks which follows immediately from their arrival, during which migrant workers and their families most often find themselves in situations of particular difficulty (Conclusions IV, (1975) Statement of Interpretation on Article 19§2). It asks for specific information on what assistance may be provided upon reception for migrant workers who suffer such difficulties.

The Committee notes that in April 2011 budget cuts reduced the amount of funding available for the CAB, in turn causing a drop of 7% in the number of people they could assist in the first financial quarter, around 779,000 in total. In some areas cuts of as much as 60-74% were introduced. In 2013 Legal Services Commission/ Legal Aid Agency funding was also reduced as a result of government reforms, leading to a further cut in the budgets. The Committee asks for more information on what impact budget cuts have had on provision of assistance for migrant workers, and whether other specific assistance is provided to make up for any shortfall.

The Committee notes that Local Education Authorities are required to find a free school place for all children who are of compulsory school age, this applies also to pupils temporarily resident in the area, and those who have come from abroad.

With regard to healthcare provision upon arrival, the National Health Service is currently available to migrants arriving to the UK, subject to charges for certain groups, although payment is not demanded prior to urgent treatment. The report states that the coalition government intends to introduce an "immigration health surcharge" which would require immigrants to pay a charge as a precondition of entry or stay. The Committee wishes to know at what point this surcharge is to be levied and whether immediate assistance would be denied in its absence.

The Committee recalls that states are obliged to adopt special measures for the benefit of migrant workers, beyond those which are provided for nationals to facilitate their departure, journey and reception (Conclusions III (1973), Cyprus). The Committee also notes that since the Parties undertook to progressively realise the objectives of the Charter, the principle of non-regression should apply. This means that States should not reduce the level of protection afforded to migrants in respect of the Charter. The Committee therefore wishes for the next report to contain information on any changes to the situation regarding provision of healthcare to migrant workers, in particular statistics on access to healthcare.

With regard to the departure of migrants, the Committee asks for information on any assistance given to emigrants prior to departure, whether of British nationality or nationals of other States party to the Charter, including financial aid.

Services for health, medical attention and hygienic conditions during the journey

The report states that no provision is made for services for health, medical attention or hygienic conditions during a migrant worker's journey to the UK. The Committee recalls that the obligation to "provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey" relates to migrant workers and their families travelling either collectively or under the public or private arrangements for collective recruitment, and that the Contracting Parties can obviously not provide such services for migrant workers and their families making their own travel arrangements; however, in that case, the need for reception facilities is all the greater (Conclusions IV (1975), Statement of Interpretation on Article 19§2). The Committee has dealt with the question of reception of migrant workers in terms of healthcare provision upon arrival above. It requests information on any measures taken to facilitate access to health and medical services and maintain proper hygiene standards in the process of collective recruitment.

The Committee's above-cited case-law on the right to assistance of migrant workers during reception (see Conclusions IV (1975), Germany) raises questions of law and practice which the Committee considers not to have been answered in the report submitted by the United Kingdom. The Committee therefore defers its conclusion pending receipt of the information requested above.

Conclusion

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

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 3 - Co-operation between social services of emigration and immigration states

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

According to the report, there does not seem to exist currently any formal or informal central government or local authority arrangements for cooperation. Outstanding domestic matters may still be pursued by public or private agencies after the departure of a migrant, but the report provides no evidence of international cooperation in the resolution of such disputes.

The Committee notes that an appendix to the report contains information regarding cooperation at state level, such as through WAPES (World Association of Public Employment Services) and EPSCO (EU Employment, Social Policy, Health and Consumer Affairs committee). It asks for further information on the activities of such cooperation.

The Committee recalls that the scope of Article 19§3 extends to migrant workers immigrating as well as migrant workers emigrating to the territory of any other State. Contacts and information exchanges should be established between public and/or private social services in emigration and immigration countries, with a view to facilitating the life of emigrants and their families, their adjustment to the new environment and their relations with members of their families who remain in their country of origin (Conclusions XIV-1 (1998), Belgium).

It also recalls that formal arrangements are not necessary, especially if there is little migratory movement in a given country. In such cases, the provision of practical co-operation on a needs basis may be sufficient. Whilst it considers that collaboration among social services can be adapted in the light of the size of migratory movements (Conclusions XIV-1 (1998), Norway), it holds that there must still be established links or methods for such collaboration to take place.

Common situations in which the co-operation would be useful would be for example where the migrant worker, who has left his or her family in the home country, fails to send money back or needs to be contacted for family reasons, or where the worker has returned to his or her country but needs to claim unpaid wages or benefits or must deal with various issues in the country in which he was employed (Conclusions XV-1 (2000), Finland).

The report states that there is nothing that would prevent cooperation between social services at a local level, if such need were to arise. The Committee asks the next report to provide information on any instances where such cooperation has occurred. Such cooperation should facilitate both emigration and immigration. In the meantime the Committee finds that appropriate cooperation between social services in emigration and immigration countries is not sufficiently promoted.

Conclusion

The Committee concludes that the situation in United Kingdom is not in conformity with Article 19§3 of the 1961 Charter on the ground that appropriate co-operation between the social services of the United Kingdom and emigration and immigration states is not sufficiently promoted.

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 4 - Equality regarding employment, right to organise and accommodation

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

It recalls that States should pursue a positive and continuous course of action providing for more favourable treatment of migrant workers.

The Committee notes the enactment of the Equality Act 2010, which it did not examine in the previous conclusion, to consolidate anti-discrimination legislation. It notes that 'race', and more specifically 'nationality', are protected characteristics within the meaning of the Act. While the Equality Act does not apply in Northern Ireland, the Race Relations (Northern Ireland) Order 1997 applies to the employment relationship and contains the same descriptor for 'racial grounds' or 'racial group'.

Remuneration and other employment and working conditions

The report provides no information on the implementation of the abovementioned legislation in practice. The Committee requests that the next report contain information concerning the monitoring bodies and procedures for these Acts, any statistics collected on the implementation of the legislation, and examples of its enforcement where available.

The Committee recalls that States are obliged to eliminate all legal and de facto discrimination concerning remuneration and other employment and working conditions, including in-service training and promotion. The provision applies also to vocational training (Conclusions VII (1981), United-Kingdom). The Committee asks whether vocational training with a view to improving the skills of workers and their opportunities is available in the United Kingdom on the same basis for migrants and nationals.

Membership of trade unions and enjoyment of the benefits of collective bargaining

Section 57 of the Equality Act states that a trade union may not discriminate against a person in the decision to admit or terms of membership. There are no nationality requirements for membership or the holding of office in a trade union.

The Committee refers to its Statement of Interpretation in the General Introduction and asks that the next report provide further information concerning the legal status of workers posted from abroad, and what legal and practical measures are taken to ensure equal treatment in matters of employment, trade union membership and collective bargaining.

Accommodation

In order to be eligible for housing benefit and to access long-term tenancies in social housing persons have to satisfy the Habitual Residence Test (HRT), which entails a length of residence requirement. In its conclusion on Article 13§1 (Conclusions XX-2, 2013) the Committee concluded that the habitual residence test was in conformity with the 1961 Charter. The Committee concludes that the requirement of equality regarding accommodation is therefore respected for migrant workers and their families.

The Committee notes from the Department for Work and Pensions that from April 2014 (outside the reference period) new migrant jobseekers from the European Economic Area (EEA) will no longer be able to get Housing Benefit. It asks that the next report comment on this change.

Conclusion

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

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 5 - Equality regarding taxes and contributions

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

It notes from the report that the situation, which it previously considered to be in conformity with the Charter, remains broadly similar. The question of a person's nationality has no bearing on their liability for taxes or contributions.

Liability for National Insurance contributions is dependent on conditions of residence and presence in the United Kingdom.

Conclusion

The Committee concludes that the situation in the United Kingdom is in conformity with Article 19§5 of the 1961 Charter.

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 6 - Family reunion

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

Scope

The Committee takes note of the possibility of dependent children over the age of 18 to apply, with the prospect of favourable consideration, for reunification with their migrant parent. It asks for statistical information on accepted applications of children of migrants over the age of 18. In the meantime, it finds the situation in this respect to be in conformity with the 1961 Charter.

With regard to the deportation of the families of migrant workers, the Committee notes that where a migrant worker is expelled, a family member can make an application for leave to remain in the UK in their own right. The Committee asks whether this requirement to make an application gives rise to a presumption that the migrant's family will be removed, if they do not apply or their application does not succeed.

The report states that a family member of a non-EEA national may acquire a permanent right of residence after 5 years of continuous residence, or in accordance with EU law following Case C-310/08 Ibrahim and Case C-480/08 Teixeira (right of residence of the primary caring parent of a child of an EU national currently in education). The Committee considers that the protection of the families of migrant workers must be afforded to all migrant workers and their families on an equal basis.

The Committee recalls that the guarantees against expulsion contained in this paragraph apply to a migrant worker and his or her family members if these persons "should be able to reside lawfully within the territory of the state within the protection of the Charter". The right to family reunion provided for in Article 19§6 must be regarded as conferring on each of its beneficiaries a personal right of residence distinct from the original right held by the migrant worker (Conclusions XVI-1 (2002), Netherlands, Article 19§8).

The Committee recalls that decisions to expel migrants and/or their family members must be based on all the circumstances, and on an individual consideration of each case.

Therefore, the expulsion of a family member of an expelled migrant worker, without proof that in their own right they are a threat to national security, or offend against public interest or morality, is not in conformity with the 1961 Charter.

Conditions governing family reunion

The Committee notes from the Government website that a requirement has been introduced that family members seeking to join permanently settled migrants in the United Kingdom must demonstrate language competence at level B1. The Committee considers that these requirements are likely to hinder rather than facilitate family reunion and therefore are not in conformity with the 1961 Charter.

The Committee notes from the report that migrants from non-EEA countries must be able to show that they can support themselves and any family members without relying on public funds. While permitted to work in the United Kingdom under a temporary 'Tier system' visa, in order to satisfy the requirements for family reunification, "each dependant must have a certain amount of money available to them – this is in addition to the £945 (€ 1132) [the migrant] must have to support [him/herself]."

According to information published on the Government website, the amount depends on migrants' circumstances. A migrant must have £1,890 (€ 2 264) for each dependant if they are applying from outside the UK or have been in the UK for less than 12 months. If they

have been in the UK for more than 12 months, they must have £630 (€ 755) for each dependant. The figures vary slightly between 'Tiers', i.e. for different categories of worker.

The Committee considers that migrant workers having gained permanent residence are still entitled to the protection of Article 19§6 (cf. Conclusions XIX-4 (2011) Germany). Therefore the more strict rules for settled immigrants in the United Kingdom also merit scrutiny. In 2012 the government introduced minimum income thresholds for settled migrants wishing to sponsor their relatives to join them in the UK, of:

- £18,600 (€25 470) per year for a spouse
- £22,400 (€30 840) per year for a spouse and one child
- £2,400 (€3 304) per year for each additional child

The Committee wishes to know to what extent the calculation of whether a migrant meets these thresholds may include entitlements to income from social assistance. The Committee considers that the existence of such a threshold, which it considers does not merely reflect the levels of income necessary to support a family, but is intended to prevent migrant families needing to claim benefits from the state, directly controverts the previous statement of the Government (30th report (2010)) that "applications for family reunion are not systematically refused on the grounds that such reunion could entail an increase on social benefits financed from public funds paid to the migrant worker". A Home Office impact assessment published in June 2012 estimated that the chosen income threshold would prevent 17,800 family visas being granted every year.

The Committee recalls that the level of means required by States to bring in the family or certain family members should not be so restrictive as to prevent any family reunion (Conclusions XIII-1, Netherlands). It finds that the threshold of £18,600 (or more) in income is manifestly too high and is an undue hindrance to family reunion, given that, according to data collected by the Office for National Statistics, almost 50% of British workers do not earn this sum. Therefore it concludes that the threshold is not in conformity with Article 19§6 of the Charter.

The Committee recalls that restrictions on family reunion which take the form of requirements for sufficient or suitable accommodation to house family members should not be so restrictive as to prevent any family reunion (Conclusions IV (1975), Norway). The Committee considers that states are entitled to impose such accommodation requirements in a proportionate manner so as to protect the interests of the family. Nevertheless, taking into account the obligation to facilitate family reunion as far as possible under Article 19§6, States Parties should not apply such requirements in a blanket manner which precludes the possibility for exemptions to be made in respect of particular categories of cases, or for consideration of individual circumstances.

The Committee considers that restrictions on the exercise of the right to family reunion should be subject to an effective mechanism of appeal or review, which provides an opportunity for consideration of the individual merits of the case consistent with the principles of proportionality and reasonableness. The Committee asks what appeal mechanisms exist to challenge decisions against the grant of family reunion.

The Committee asks that the next report provide up to date information on any requirements imposed for eligibility for family reunion, including, for example, accommodation, health or length of residence.

Conclusion

The Committee concludes that the situation in United Kingdom is not in conformity with Article 19§6 of the 1961 Charter on the grounds that:

- family members may be expelled following the deportation of their sponsor, without proof that they are a threat to national security, or offend against public interest or morals;
- the language requirements imposed on the family members of migrant workers are likely to hinder family reunion;
- the income requirement for migrants who wish their families to join them is too high and is likely to hinder family reunion.

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 7 - Equality regarding legal proceedings

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

The Committee notes the introduction of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). It notes that the effect of the act is to put significant areas of litigation relevant to migrant workers and their rights under Article 19 of the 1961 Charter outside of the scope of legal aid qualification. Under LASPO 2012, unless a matter is specifically included in Schedule 1, it is out of scope (section 9(1)(a)).

It notes however that for proceedings on issues which concern both nationals and migrant workers, the legal conditions are the same. It asks for any statistics or information regarding the operation in practice of the new rules, in particular data on the number of claims brought respectively by migrants and UK nationals, where available.

The Committee notes the attempted introduction of a residence test for legal aid through amending regulations, and the subsequent declaration that such regulations were ultra vires by the High Court in July 2014. It requests to receive further information on this situation in the next report, and in particular wishes for details of any residential requirements should they exist.

The Committee notes that interpretation services are available in most cases, and understands that these are free where the applicant cannot reasonably afford to pay for the service, and cannot otherwise take part in the hearing. The Committee asks for confirmation of this point.

The Committee refers to its Statement of Interpretation on the rights of refugees under the Charter, and asks under what conditions refugees and asylum seekers may receive legal aid assistance.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in the United Kingdom is in conformity with Article 19§7 of the 1961 Charter.

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 8 - Guarantees concerning deportation

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

The Committee has previously interpreted Article 19§8 as obliging 'States to prohibit by law the expulsion of migrants lawfully residing in their territory, except where they are a threat to national security, or offend against public interest or morality' (Conclusions VI (1979), Cyprus). Where expulsion measures are taken, they cannot be in conformity with the Charter unless they are ordered, in accordance with the law, by a court or a judicial authority, or an administrative body whose decisions are subject to judicial review. Any such expulsion should only be ordered in situations where the individual concerned has been convicted of a serious criminal offence, or has been involved in activities which constitute a substantive threat to national security, the public interest or public morality. Such expulsion orders must be proportionate, taking into account all aspects of the non-nationals' behaviour as well as the circumstances and the length of time of his/her presence in the territory of the State. The individual's connection or ties with both the host state and the state of origin, as well as the strength of any family relationships that he/she may have formed during this period, must also be considered to determine whether expulsion is proportionate. All foreign migrants served with expulsion orders must have also a right of appeal to a court or other independent body (Statement of interpretation on Article 19§8, Conclusions 2015).

With regard to the deportation of migrant workers, the Committee notes the introduction, outside the reference period, of the Immigration Act 2014. It asks that the next report contain detailed information and examples concerning the Act's contents, implementation, and consequences for the expulsion of migrants.

In particular, the Committee notes from the Government website that the provisions of the new Immigration Act are described as "deport first, appeal later" measures. It recalls that States must ensure that foreign nationals served with expulsion orders have a right of appeal to a court or other independent body, even in cases where national security, public order or morality are at stake (Conclusions V (1977), United Kingdom). The Committee considers that for this right to be effective, this right of appeal must be available and exercisable prior to the deportation. The Committee requests that the next report contain information on the implementation of the Act and its follow up in this regard, with a view to ensuring that abuses are not perpetrated without the right to review of the decision.

The Committee notes that during the reference period, the Immigration Act 1971, as amended by the Immigration and Asylum Act 1999, remained in force. Section 3(5) provides that a person who is not a British citizen is liable to deportation from the United Kingdom if -

- (a) the Secretary of State deems his deportation to be conducive to the public good; or
- (b) another person to whose family he belongs is or has been ordered to be deported.

The Committee asks on what grounds the Secretary of State may consider that the expulsion of a foreigner may be conducive to the public good, and what grounds of appeal are available. It also notes that Section 3(6) of the Immigration Act 1971 provides that a person over the age of 17 who is convicted of an imprisonable offence shall be liable to deportation on the recommendation of a court empowered by that Act. The Committee asks whether all the circumstances of the case must be considered prior to an expulsion order being made.

Conclusion

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

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 9 - Transfer of earnings and savings

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

The report states that there are no restrictions on the transfer abroad of earnings and savings of migrant workers and their families.

The Committee finds that the situation, which it considered to be in conformity with the 1961 Charter in its previous conclusion (Conclusions XIX-4 (2011)), has not changed.

The Committee refers to its Statement of Interpretation on Article 19§9 in Conclusions XIX-4 (2011), and asks whether there are any restrictions on the transfer of movable property of a migrant worker.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in the United Kingdom is in conformity with Article 19§9 of the 1961 Charter.

Article 19 - Right of migrant workers and their families to protection and assistance

Paragraph 10 - Equal treatment for the self-employed

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

On the basis of the information in the report the Committee notes that there continues to be no discrimination in law between migrant employees and self-employed migrants.

However, in the case of Article 19§10, a finding of non-conformity in any of the other paragraphs of Article 19 ordinarily leads to a finding of non-conformity under that paragraph, because the same grounds for non-conformity also apply to self-employed workers. This is so where there is no discrimination or disequilibrium in treatment.

The Committee has found the situation in the United Kingdom not to be in conformity with Articles 19§4 and 19§6. Accordingly, the Committee concludes that the situation in the United Kingdom is not in conformity with Article 19§10 of the 1961 Charter.

Conclusion

The Committee concludes that the situation in United Kingdom is not in conformity with Article 19§10 of the 1961 Charter as the grounds of non conformity under Articles 19§4 and 19§6 apply also to self-employed migrant workers.