January 2018

European Social Charter

European Committee of Social Rights

Conclusions 2017

(ALBANIA, ANDORRA, ARMENIA, AUSTRIA, AZERBAIJAN, BELGIUM, BOSNIA and HERZEGOVINA, BULGARIA, ESTONIA, FINLAND, FRANCE, GEORGIA, HUNGARY, IRELAND, ITALY, LATVIA, LITHUANIA, MALTA, REPUBLIC OF MOLDOVA, MONTENEGRO, THE NETHERLANDS, PORTUGAL, ROMANIA, RUSSIAN FEDERATION, SERBIA, SLOVAK REPUBLIC, SLOVENIA, "THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA", TURKEY, UKRAINE)

Articles 3, 11, 12, 13, 14, 23 and 30
of the European Social Charter

January 2018

European Social Charter

European Committee of Social Rights

Conclusions 2017

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:

Mr Giuseppe PALMISANO (Italian)
President
Professor of International Law
Director of the Institute for International Legal Studies
National Research Council of Italy, Rome (Italy)

Ms 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)

Ms Karin LUKAS (Austrian)
Vice-President
Senior Legal Researcher and Head of Team
Ludwig Boltzmann Institute of Human Rights, Vienna (Austria)

Ms Eliane CHEMLA (French)
General Rapporteur
Conseiller d'Etat honoraire
State Council, Paris (France)

Ms Birgitta NYSTRÖM (Swedish)
Professor of Private Law
University of Lund (Sweden)

Mr Petros STANGOS (Greek)
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)

Mr József HAJDÚ (Hungarian)
Dean for International Affairs and Science
University of Szeged (Hungary)

Mr Marcin WUJCZYK (Polish)
Lecturer in Labour Law and Social Policy
Jagiellonian University, Cracow (Poland)

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

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

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

Mr François VANDAMME (Belgian)
Former Director International Affairs, Federal Public Service Employment, Labour and Social Dialogue, Brussels
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)

Ms Barbara KRESAL (Slovenian)
Professor of Labour law and Social Security
University of Ljubljana (Slovenia)

Ms Kristine DUPATE (Latvian)
Associate Professor, International and European law
Faculty of Law, University (Latvia)

Ms Aoife NOLAN (Irish)
Professor of International Human Rights Law School of Law, University of Nottingham (United Kingdom)

assisted by Mr Régis BRILLAT, Executive Secretary,

between January 2017 and December 2017 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 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 2017 concern firstly the accepted provisions of the following articles of the Revised European Social Charter ("the Charter") belonging to the thematic group "Health, social security and social protection" on which the States Parties had been invited to report by 31 October 2016:

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

5. The following States Parties submitted a report: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Estonia, Finland, France, Georgia,

Hungary, Ireland, Italy, Latvia, Lithuania, Malta, the Republic of Moldova, Montenegro, Portugal, Romania, the Russian Federation, Serbia, the Slovak Republic, “the former Yugoslav Republic of Macedonia”, Turkey and Ukraine.

6. 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[1], Portugal, Italy, Belgium, Bulgaria, Ireland, Finland.

• Group B, made up of seven States: the Netherlands, Sweden, Croatia, Norway, Slovenia, Cyprus, the Czech Republic[2]

On this basis, the States belonging to Group B were invited to submit reports on follow-up to collective complaints by 31 October 2016. The findings adopted by the Committee in this respect thus concern the following States Parties: Cyprus, Czech Republic, Norway, Slovenia, Sweden, the Netherlands[3]. They were published in September 2017.

7. Finally, certain States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015. 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 States concerned in 2017 are: Andorra, Armenia, Austria, Azerbaijan, Bosnia and Herzegovina, Georgia, Hungary, Latvia, Lithuania, Malta, the Republic of Moldova, the Netherlands, Romania, the Slovak Republic, Slovenia, “the Former Yugoslav republic of Macedonia”, Turkey and Ukraine.

8. 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.

9. The Committee’s conclusions as outlined above are published in chapters by State. They are available on the website of the European Social Charter and in the case law database that is also available on this site. A summary table of the Committee’s Conclusions 2017 as well as the state of signature and ratification of the Charter and the 1961 Charter appear below. In addition, each country chapter highlights selected positive developments concerning the implementation of the Charter at national level identified by the Committee in its conclusions.

Working group on Article 12

10. During the examination of the national situations in respect of Article 12§1, the Committee reviewed the normative content of Article 12 and the interrelationship between this provision and other provisions of the Charter also providing for certain aspects of the right to social security.

In particular, during the current cycle, the Committee decided that:

- as regards benefits related to work accidents/professional diseases, it would restrict its examination to the minimum level of benefit relating to temporary incapacity;

[1] Greece is a Party to the 1961 Charter.
[2] Croatia and Czech Republic are Parties to the 1961 Charter.
[3] Czech Republic is Party to the 1961 Charter.

- as regards invalidity benefits, it agreed that the minimum level to be taken into account should be the one corresponding to a level of incapacity which would be deemed, in the country concerned, to be incompatible with the exercise of a professional activity.

The Committee furthermore decided to streamline its conclusions on Article 12§1.

It already followed the practice to refer, whenever possible and appropriate, to the assessment done under Article 8§1 in respect of maternity benefits and to Article 16 in respect of family benefits. It decided likewise to refer to the assessment done under Article 23, as regards old age benefits, and to the assessment done under Article 13§1, as regards social assistance benefits. In this connection, it decided that a conclusion of non-conformity under Article 23, due to the inadequate level of old-age pensions, would be mentioned under Article 12§1 but would not entail a finding of non-conformity on the same ground.

Considering that the different issues raised concerning the assessment of Article 12§1 deserved further discussion, the Committee eventually decided not to formalize its approach by yet issuing a statement of interpretation on the matter, but instead to continue its examination of the matter after the adoption of Conclusions 2017.

In this perspective, it set up a working group, which would pursue its consideration of the different problems concerning Article 12§1

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

11. 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 reports

12. The next reports on the accepted provisions, which were due before 31 October 2017, concern the following Articles belonging to the thematic group "Labour rights": 2, 4, 5, 6, 21, 22, 26, 28 and 29. States having accepted the collective complaints procedure and belonging to Group A were due to submit a simplified report on follow-up to complaints also before 31 October 2017. Finally, by the same date States concerned are to report on any conclusions of non-conformity for lack of information adopted in Conclusions 2016.

CONCLUSIONS 2017

Article	ALBANIA	ANDORRA	ARMENIA	AUSTRIA	AZERBAIJAN	BELGIUM	BULGARIA	BOSNIA AND HERZEGOVINA	ESTONIA	FINLAND	FRANCE	GEORGIA	HUNGARY	IRELAND	ITALY	LITHUANIA	LATVIA	REP. OF MOLDOVA	"THE FORMER YUGOSLAV REPUBLIC OF MECEDONIA"	MALTA	MONTENEGRO	NETHERLANDS	NORWAY	PORTUGAL	ROMANIA	RUSSIAN FEDERATION	SERBIA	SLOVAK REP.	SLOVENIA	SWEDEN	TURKEY	UKRAINE
Article 3.1	-	+	-	+		+	+		+	+	+		+	+	0	+	0	0		+	+			+	+	+	+	-			0	0
Article 3.2	-	-		+		+	+		+		-		-	-	0	+	0	-	0	+	-			+	-	+	-	-			0	-
Article 3.3	-	+		+		-	-		-		-		0	-	0	-	-	-		-	-			-	-	-	+	+			-	-
Article 3.4	-	+		+		+	+			+	+		+	-	-	-	0		+	+	+			+		-	+	+			0	-
Article 7.1																									0							
Article 7.3					0			-										-														
Article 7.5												-																			0	
Article 7.6																									0						+	
Article 7.7																									0							
Article 7.8								-												-												
Article 7.9												-										-										
Article 7.10			0		+														+												-	
Article 8.1																		+														-
Article 8.2								-									+		+						+						0	
Article 8.4			+					-																								
Article 8.5					+							-																				-
Article 11.1	-	+		+	-	+	-	0	+	+	+	-	-	-	+	-	-	-	+	+	-			0	-	-	0	-			-	-
Article 11.2	-	+		+	0	+	+	-	+	+	+	-	+	+	+	+	+	-	+	0	0			+	+	0	0	+			+	-
Article 11.3	-	+		+	-	+	+	-	+	+	+	-	+	-	+	0	+	-	+	0	-			0	0	0	0	-			0	-

Article	ALBANIA	ANDORRA	ARMENIA	AUSTRIA	AZERBAIJAN	BELGIUM	BULGARIA	BOSNIA AND HERZEGOVINA	ESTONIA	FINLAND	FRANCE	GEORGIA	HUNGARY	IRELAND	ITALY	LITHUANIA	LATVIA	REP. OF MOLDOVA	"THE FORMER YUGOSLAV REPUBLIC OF MECEDONIA"	MALTA	MONTENEGRO	NETHERLANDS	NORWAY	PORTUGAL	ROMANIA	RUSSIAN FEDERATION	SERBIA	SLOVAK REP.	SLOVENIA	SWEDEN	TURKEY	UKRAINE
Article 12.1		-	-	+		+	-	-	-	-	-	-	-	-	0	-	-	-	-	-	-			-	-	-	-	-			-	
Article 12.2		+		+		+		-	+	+	+			-	+		0	-	+		0			+	+		+	+			+	
Article 12.3		+	0	+		+	+		+	+	+	+		-	-	+		-	+	+	-			+	-		0	+			+	
Article 12.4		-		-		-			-	-	-			-	-	0		-	-	-	0			-	-		-	-			0	
Article 13.1		-	-	-		0	-	-	-	-	-		-	-	-	-	-	-	-	-	-			-	-		-	-			-	
Article 13.2		+	0	+		+	+	0	+	+	+		+	+	0	+	0	0	+	+	+			+	+		+	+			+	
Article 13.3		+		+		+	+	-	+	+	+		+	+	+	+	+	0	0	0	+			+	0		0	+			+	
Article 13.4		0		+		0			+	0	+		+	+	+		+		+	0	0			0			+				0	
Article 14.1		+		-	-	-	-	0	+	+	+	+	-	-	0	+	-			+	+			-		+	0	+			-	0
Article 14.2		+	0	+	0	+	+	0	+	+	+	+	+	-	+	+	+			+	+			0		+	0	+			-	+
Article 16								-					-					-		+					-			+			0	-
Article 17.1			+									-																			-	
Article 19.1		+										-																			-	
Article 19.2			-																										+			
Article 19.3												+																				
Article 19.4			+									-																	+			
Article 19.5			+																													
Article 19.6												-																				
Article 19.7			+																												-	
Article 19.8			0																												-	
Article 19.11												0																			-	

Article	ALBANIA	ANDORRA	ARMENIA	AUSTRIA	AZERBAIJAN	BELGIUM	BULGARIA	BOSNIA AND HERZEGOVINA	ESTONIA	FINLAND	FRANCE	GEORGIA	HUNGARY	IRELAND	ITALY	LITHUANIA	LATVIA	REP. OF MOLDOVA	"THE FORMER YUGOSLAV REPUBLIC OF MECEDONIA"	MALTA	MONTENEGRO	NETHERLANDS	NORWAY	PORTUGAL	ROMANIA	RUSSIAN FEDERATION	SERBIA	SLOVAK REP.	SLOVENIA	SWEDEN	TURKEY	UKRAINE
Article 19.12																															-	
Article 23		+						0		0	+			0	-					-	-			0			-	-			-	-
Article 27.1			+		0							-																			0	
Article 27.2					0							-																				
Article 27.3			0																												0	
Article 30		0				0			0	+	+			-	-		-							+			-	-			-	-
Article 31.1																													0		-	-
Article 31.2		-														-													-		-	-
Article 31.3																															-	

+ conformity	- non-conformity	0 deferral	□ non-accepted provision

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

Situation on 31 December 2017

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	
Azerbaïjan	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 *	03/05/96	**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 *	29/06/07	**27/01/65**	
Greece	03/05/96	18/03/16	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 *	11/02/98	**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 *	07/11/97	**11/07/62**	
Number of States 47	**2**+ 45 = 47	**10** + 33 = 43	15

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 2018

European Social Charter

European Committee of Social Rights

Conclusions 2017

ALBANIA

This text may be subject to editorial revision.

The following chapter concerns Albania, which ratified the Charter on 14 November 2002. The deadline for submitting the 9th report was 31 October 2016 and Albania submitted it on 3 February 2017.

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 "Health, social security and social protection":

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

Albania has accepted all provisions from the above-mentioned group except Articles 12, 13, 14, 23 and 30.

The reference period was 1 January 2012 to 31 December 2015.

The conclusions relating to Albania concern 7 situations and are as follows:

– 7 conclusions of non-conformity: Article 3§§1 to 4 and Article 11§§1 to 3.

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The next report will deal with the following provisions of the thematic group "Labour Rights":

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 21),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 22),
- the right to dignity at work (Article 26).
- the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28)
- the right to information and consultation in collective redundancy procedures (Article 29).

The deadline for submitting that report was 31 October 2017.

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Conclusions and reports are available at www.coe.int/socialcharter as well as in the HUDOC database.

Article 3 - Right to safe and healthy working conditions

Paragraph 1 - Health and safety and the working environment

The Committee takes note of the information contained in the report submitted by Albania, but highlights the significant gaps in information provided in relation to the specific requirements of Article 3§1 of the Charter.

General objective of the policy

In its previous conclusion (Conclusions 2013), the Committee noted Albania's efforts to lay down and implement a national policy on occupational health and safety based on establishing and maintaining a culture of occupational risk prevention. It considered to assess the impact and trend of general policy during the next cycle, and asked for information on any new developments which occurred during the reference period. It also requested additional information on the way the general policy is updated in the light of changing risks.

In response, the report indicates that formulation, implementation and periodic review of national policies on occupational safety and health have been implemented in the changes and improvements made to the Labour Code and regulations for its implementation. Basic provisions for the protection of safety and health at work are provided by the Labour Code, under Chapter VIII, "On Safety and Health Protection" (Law No. 7961 of 12 July 1995). They basically include the principle of employers' responsibility for ensuring occupational safety and health (OSH) protection in the workplace. According to Article 40 of the Labour Code, an employer has to establish the necessary protective measures against special risks (toxic substances and agents, cars, transportation of heavy weights, air pollution, noise, vibration) and risks in some sectors of economy (constructions, civil engineering, mining and chemical industries). In addition, employers have a legal obligation to take necessary measures with respect to the periodic surveillance of workers exposed to specific risks to life and health in the workplace. The Committee requests the next report to provide information on the provisions in national legislation which contain this obligation, and also to provide information on the implementation of those provisions in practice.

The report indicates that a Policy Paper on Health and Safety for the period 2009-2013 was adopted in 2009. Its Action Plan had set the necessary measures and actions, which would be conducted to achieve the objectives identified in all sectors of the economy. The report indicates that the document focuses on the three main pillars, aimed to improve the policy and legal framework for the public health sector, to create good working conditions and health and safety workplaces, as well as to ensure the transparency and effectiveness of the systems and institutions of public health sector. The report also indicates that the 2016-2020 Policy Paper on Health and Safety at Work and its Action Plan were prepared by the Ministry of Social Welfare and Youth in cooperation with the relevant ministries, public institutions and social partners (outside of the reference period). This document was adopted by Decree of the Council of Ministries No. 370 of 18 May 2016. This Policy will be established pursuant to an evaluation and analysis of the previous Document of Strategic policies on Occupational Safety and Health 2009-2013. The Committee asks the next report to provide information on the activities implemented and results obtained by action plans.

The Committee points out that new technology, organisational constraints and psychological demands favour the development of psychosocial factors of risk, leading to work-related stress, aggression, violence and harassment. It would also point out that, with regard to Article 3§1 of the Charter, it takes account of stress, aggression, violence and harassment at work when examining whether policies are regularly evaluated or reviewed in the light of emerging risks. The States parties have a duty to carry out activities in terms of research, knowledge and communication relating to psychosocial risks (Statement of Interpretation on Article 3§1 of the Charter, Conclusions 2013). The report does not provide any information on this point. The Committee accordingly reiterates its request.

Organisation of occupational risk prevention

In its previous conclusion (Conclusions 2013), the Committee asked for more detailed information on how public authorities and employers put occupational risk prevention into practice. In reply, the report indicates that employers shall carry out an assessment of risk at work, including specific risks, and decide on the protective measures to be taken. The Committee notes from the report that 915 entities were determined to have a risk assessment document in 2012, 821 in 2013, 840 in 2014, and 874 in 2015.

According to Article 63 of the Labour Code, an employer must conduct a risk analysis of fire and explosion, and must take the necessary preventive measures, taking into account the nature of the materials used, environment and business processes. The Council of Ministers has the right to determine the minimum requirements to protect workers from the risk of explosive environments.

The Committee takes note of this information and reiterates its request, notably it asks for information on the organisation of occupational risk prevention for workers employed by public authorities and in the agricultural and forestry sectors. It also requests information about the way in which employers, particularly small and medium-sized enterprises discharge their obligations in terms of initial assessment of the risks specific to workstations and the adoption of targeted preventive measures in practice. The Committee requests the Government to indicate the manner in which it ensures that safety and health laws and regulations are adopted and maintained in force on the basis of an assessment of occupational risks. The Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Albania is in conformity with Article 3§1 of the Charter on this point.

The Committee also asks for information on the measures taken by the Labour Inspectorate to develop an occupational health and safety culture among employers and employees and share its experience in implementing instructions, prevention measures and consultations.

Improvement of occupational safety and health

The Committee previously examined existing structures to improve the health and safety of workers (Conclusions 2013). It concluded that the situation was not in conformity with Article 3§1 of the Charter on the ground that it had not been established that public authorities were involved in research relating to occupational health and safety, training of qualified professionals, definition of training programmes or certification of processes.

The report provides very general information on the research in the field of occupational health and safety, which relates to two years before the reference period.

As regards training, the report indicates that the Council of Ministers has issued several decrees regarding training for the labour inspectors, representatives of the employers' and workers' organisations, as well as for the public health sector specialists, in view of the necessary acquaintance with the respective provisions and their implementation. In addition, the report indicates that during the reference period, training has been provided for all labour inspectors with the aim to introduce the new government decrees in the implementation of the Law on the Security and Health at Work.

The report also indicates that the education system in Albania currently includes some aspects of OSH in its curricula. The Faculty of Medicine has a curriculum on occupational diseases and focuses on pulmonary diseases caused by exposure to hazards in the work places. However, there is no specialist university course in the field of OSH from which labour inspectors can be recruited. Usually, they are recruited from other university courses. The education of health specialists in the field of OSH is ensured within the framework of the programmes of the Faculty of General Medicine and Public Health, which contain many elements of environment and health, including occupational health.

The Committee takes note of this information. However, the report does not provide updated information, supported by concrete examples, on the research work (analysis of sectoral risks; norms defined; recommendations made; publications) undertaken during the reference period. The Committee therefore concludes that the situation is not in conformity with Article 3§1 of the Charter on the ground that public authorities are not involved in research relating to occupational health and safety.

Consultation with employers' and workers' organisations

The Committee previously examined existing structures to improve the health and safety of workers (Conclusions 2013). It concluded that the situation was not in conformity with Article 3§1 of the Charter on the ground that it had not been established that employers' and employees' organisations were being consulted by public authorities in practice. It asked for more detailed information on consultation of social partners by public authorities (bodies, jurisdiction, participants, frequency of meetings, themes dealt with) in practice. In reply, the report indicates that the OSH Policy Paper and Action Plan for the period 2016-2020 were presented and discussed in the National Labour Council meeting held in October 2015.

In its previous conclusion (Conclusions 2013), the Committee also asked for information on the set up and the consultation of health and safety committees in practice. The report does not provide any information on this specific point.

The Committee recalls that Article 3§1 requires consultation not only for tripartite co-operation between authorities, employers and workers to seek ways of improving their working conditions and working environment but also for the co-ordination of their activities and co-operation on key safety and prevention issues. Mechanisms and procedures of consultation with employers' and workers' organisations must be set up at national and sectoral level. The right to consultation is satisfied where there are specialised bodies made up of representatives of the government and of employers' and workers' organisations, which are consulted by the public authorities. If these consultations may take place on a permanent or *ad hoc* basis; they must in any case be efficient with regard to powers, procedures, participants, frequency of meetings and matters discussed, in promoting social dialogue in occupational safety and health matters. The Committee therefore concludes that the situation is not in conformity with Article 3§1 of the Charter on the grounds that employers' and employees' organisations are not being consulted by public authorities in practice.

Conclusion

The Committee concludes that the situation in Albania is not in conformity with Article 3§1 of the Charter on the grounds that:

- public authorities are not involved in research relating to occupational health and safety;
- employers' and employees' organisations are not being consulted by public authorities in practice.

Article 3 - Right to safe and healthy working conditions

Paragraph 2 - Safety and health regulations

The Committee takes note of the information contained in the report submitted by Albania, but highlights the significant gaps in information provided in relation to the specific requirements of Article 3§2 of the Charter.

Content of the regulations on health and safety at work

In its previous conclusion (Conclusions 2013) the Committee held that the situation was not in conformity with Article 3§2 of the Charter on the ground that the health and safety legislation and regulations in force did not specifically cover a majority of risks. It noted that existing regulations only covered a small proportion of the risks identified in Conclusions XIV-2, and failed to offer protection against significant risks such as heavy loads, asbestos, air pollution, noise and vibration, and chemical, physical and biological agents, or exposed sectors such as dock labour and agriculture.

In reply, the report indicates that the Law No. 10237 of 18 February 2010 on health and safety at work was amended by the Law No. 161/2014. The report also gives a list of 24 specific regulations, transposing EU directives on health and safety at work, which relate primarily to exposure to ionizing radiation (DCM No. 590 of 18 August 2011), safety and health signs at work (DCM No. 1012 of 10 December 2010), the risks relating to the carcinogenic and mutagenic agents at work (DCM No. 520 of 6 August 2014), exposure to chemical agents (DCM No. 521 of 6 August 2014), exposure to biological agents (DCM No. 550 of 27 August 2014), and the risk of exploding environments (DCM No. 384 of 6 May 2015).

The Committee notes that, according to ILO database NORMLEX, ILO Conventions No. 187 on Promotional Framework for Occupational Safety and Health (2006) and No. 167 on Safety and Health in Construction (1988) were both ratified on 24 April 2014.

The Committee points out that under the terms of Article 3§2 of the Charter, regulations concerning health and safety at work must cover work-related stress, aggression and violence specific to work, and especially for workers under atypical working relationships (Statement of Interpretation on Article 3§2 of the Charter, Conclusions 2013). The report does not provide any information on this point. The Committee accordingly reiterates its request. The Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Albania is in conformity with Article 3§2 of the Charter.

Levels of prevention and protection

The Committee considers the levels of prevention and protection that the legislation specifies for certain risks.

Establishment, alteration and upkeep of workplaces

The report lists various regulations, which incorporate the Community *acquis* on the establishment, alteration and upkeep of workplaces: Regulation on the minimal requirements for the Safety and Health in the use of work equipment at the workplace ((DCM No.562 of 3 July 2013) to incorporate Directive 2009/104/EC; Regulation on the minimal requirements for the Safety and Health in the Use of Individual Protection Equipment at the Workplace (DCM No. 563 and 564 of 3 July 2013) to incorporate Directives 89/656/EEC and Directive 89/654/EEC; Regulation on the Minimal Requirements for the Safety and Health at Works with Screen-Equipped Devices (DCM No. 521 of 6 August 2014) to incorporate Directive 90/270//EEC; Regulation on the Minimal Requirements for the Safety and Health for the Protection of the Employees regarding the Manual Labour and Load works (DCM No. 523 of 6 August 2014) to incorporate Directive 90/269//EEC; Decree of the Council of Ministers No.

841 of 3 December 2014 on Protection of the Employees from Risks relating to Vibration at Work which transposes Directive 2002/44/EC; Decree of the Council of Ministers No. 842 of 3 December 2014 on Protection of the Employees from Risks relating to the Noise the Workplace which transposes Directive 2003/10/EC; Decree of the Council of Ministers No. 844 of 3 December 2014 on Protection of the Employees from Risks relating to the Electromagnetic Fields at the Workplace which transposes Directives 2004/40/EC and 2013/35/EU; and Decree of the Council of Ministers No. 843 of 3 December 2014 on Protection of the Employees from Risks relating to the Optic Radiation at the Workplace which transposes Directive 2006/25/EC.

ILO Conventions No. 119 on Guarding of Machinery (1963), No. 120 on Hygiene (Commerce and Offices) and No. 127 on Maximum Weight (1967) have not been ratified.

The Committee asks for more detailed information on the implementation of preventive measures geared to the nature of risks, on the provision of information and training for workers, as well as on a schedule for compliance. It asks that the next report provide full and detailed information on the legislation and regulations, including any amendments thereto adopted during the reference period, which specifically relate to that subject. Pending receipt of the information requested, the Committee defers its conclusion on this point.

Protection against hazardous substances and agents

The Committee previously examined (Conclusions 2013) protection against hazardous substances and agents. It concluded that the situation on Albania was not in conformity with Article 3§2 of the Charter on the ground that the level of protection against risks related to hazardous substances and agents, in particular asbestos and ionising radiation, was inadequate, and asked for provide relevant information on the matter.

The report indicates that the Decree of the Council of Ministers No. 484 on the approval of the Regulation on the Protection of the Employees from Risks relating to Asbestos at the Workplace, which transposes Directive 2009/148/EC on the protection of workers from the risks related to exposure to asbestos at work, was adopted on 29 June 2016 (outside of the reference period). In addition, the Decree of the Council of Ministers No. 590 on the approval of the Regulation on the Protection of the Employees Professionally Exposed to Ionising Radiations was adopted on 18 August 2011 (outside the reference period). However, the report does not provide any information on preventive and protective measures with regard to asbestos and ionising radiation.

The Committee considers that the level of protection against risks related to hazardous substances and agents, in particular asbestos, is inadequate. It asks whether the authorities have considered drawing up an inventory of all contaminated buildings and materials. Bearing in mind the importance of this question in the light of the right to health of the population (Article 11), the Committee asks the next report to provide specific information on steps taken to this effect. It also asks the next report to indicate measures ensuring that in all workplaces where workers are exposed to asbestos, employers take all appropriate measures to prevent, or control, the release of asbestos dust in the air, and that employers comply with the prescribed exposure limits. The Committee also asks the next report to confirm that all forms of asbestos is prohibited. It asks whether workers are protected up to a level at least equivalent to that set in the Recommendations by the International Commission on Radiological Protection (ICRP Publication No. 103, 2007).

The Committee further asks the next report to provide information on the specific provisions relating to protection against risks of exposure to benzene.

Personal scope of the regulations

The Committee examines the personal scope of legislation and regulations with regard to workers in atypical employment.

Temporary workers

In its previous conclusion (Conclusions 2013), the Committee asked for information on how protection for agency workers enjoy, at recruitment and when they change posts, information and training geared to the workplace, access to occupational health services, and representation at work. The report does not provide any information on this point.

The Committee reiterates its requests. It considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Albania is in conformity with Article 3§2 of the Charter.

Other types of workers

In its previous conclusion (Conclusions 2013), the Committee found that section 3 of Act No. 10237 (2010) includes self-employed workers into the scope of the provisions, and asked for information on the coverage of domestic workers and home workers. It also asked (Conclusions 2007) if a residence from which a person performs work qualifies as a workplace, and is therefore subject to inspection by the Labour Inspectorate. The report does not provide any information on this point.

The Committee recalls that all workers, all workplaces and all sectors of activity must be covered by the regulations on occupational health and safety. In view of the lack of information establishing that some form of protection is offered to domestic workers and home workers, the Committee finds that the situation in Albania is in not conformity with Article 3§2 on the ground that it has not been established that the domestic workers and home workers are protected by occupational health and safety regulations.

Consultation with employers' and workers' organisations

The Committee previously examined (Conclusions 2013) existing structures to improve the health and safety of workers and concluded that the information did not suffice to establish that the social partners were consulted by public authorities in practice. It asked detailed information on the matter and on the set up and consultation of health and safety committees in practice. The report does not provide any information on this point.

The Committee recalls that regulations must be drawn up in consultation with employers' and workers' organisations. Article 3§2 requires consultation not only for tripartite co-operation between authorities, employers and workers to seek ways of improving their working conditions and working environment but also for the co-ordination of their activities and co-operation in the drafting of laws and regulations at all levels and in all sectors. The Committee reiterates its requests and concludes that the situation is not in conformity with Article 3§2 of the Charter on the ground that employers' and employees' organisations are not being consulted by public authorities in practice.

Conclusion

The Committee concludes that the situation in Albania is not in conformity with Article 3§2 of the Charter on the grounds that:

- the level of protection against asbestos is inadequate,
- it has not been established that the domestic workers and home workers are protected by occupational health and safety regulations, and
- employers' and employees' organisations are not being consulted by public authorities in practice.

Article 3 - Right to safe and healthy working conditions

Paragraph 3 - Enforcement of safety and health regulations

The Committee takes note of the information contained in the report submitted by Albania, but highlights the significant gaps in information provided in relation to the specific requirements of Article 3§3 of the Charter.

Accidents at work and occupational diseases

The Committee previously examined (Conclusions 2013) the situation regarding accidents at work and occupational diseases. It considered that the situation in Albania was not in conformity with Article 3§3 of the Charter on the ground that it had not been established that occupational accidents and diseases were monitored efficiently. It asked for information on the rate of reporting accidents at work and cases of occupational diseases in practice. It also requested full statistics (accidents at work; fatal accidents at work; cases of occupational diseases; cases of fatal occupational diseases) for each year of the reference period. It further requested that these figures include agriculture, forestry and fishery sectors, and that corresponding incidence rates were related, not to the number of workers recorded in the private sector, but to the labour force.

The report explains that statistics in the field of occupational health and safety have focused on the data regarding accidents at work and occupational diseases. They are collected by labour inspection under the mandatory reports from Social Security based on insurance claims for compensation for damage. The report specifies that it is very difficult to collect data on occupational diseases because of various factors: the information system of the Ministry of Health has no special section for occupational diseases, lack of reporting, covering part of enterprise health services, lack of doctors specialising in occupational diseases, etc.

The report indicates that the number of reported accidents at work has increased, from 95 accidents (including commuting accidents) in 2012, 89 in 2013, 121 in 2014, to 133 in 2015. The number of fatal accidents (including commuting accidents) was 26 in 2012, 19 in 2013, 33 in 2014 and 28 in 2015. The Committee observes that standardised incidence rates of accidents at work and fatal accidents at work were not provided in the report. The Committee therefore asks that the next report provide this information. It also asks the next report to provide the preventive and enforcement activities undertaken to prevent the accidents at work.

According to the report, the number of occupational diseases was 22 in 2012. The report also indicates that the number of employees with occupational diseases declared by occupational doctor (cases are not confirmed by the specialist doctor of occupational diseases) was 3 880 in 2013, 1 853 in 2014 and 1 123 in 2015. The Committee asks that the next report provide information on the legal definition of occupational diseases; the mechanism for recognising, reviewing and revising of occupational diseases (or the list of occupational diseases); the incidence rate and the number of recognised and reported occupational diseases during the reference period (broken down by sector of activity and year), including cases of fatal occupational diseases, and measures taken and/or envisaged to counter insufficiency in the declaration and recognition of cases of occupational diseases; the most frequent occupational diseases during the reference period, as well as the preventive measures taken and envisaged.

The Committee still considers that the figures provided do not establish that accidents at work and occupational diseases are monitored efficiently. The Committee recalls that satisfactory application of the Charter cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised, and that the frequency of accidents at work and their evolution are key aspects of monitoring the effective observance of the right enshrined in Article 3§3 of the Charter. In the meantime, the Committee concludes that the situation is not in conformity with Article 3§3 of the Charter on

the ground that it has not been established that accidents at work and occupational diseases are monitored efficiently**.**

Activities of the Labour Inspectorate

The Committee notes that under Article 3§3 of the Charter, States Parties must implement measures to focus labour inspection on small and medium-sized enterprises (Statement of Interpretation on Article 3§3, Conclusions 2013). Since it cannot find an answer to its question (Conclusions 2013) in the report with regard to this point, the Committee requests the next report to contain this information.

The Committee previously examined the activities of the Labour Inspectorate (Conclusions 2013) and considered that labour inspection structures were not sufficiently developed in practice to establish that there was an efficient labour inspection, and that in absolute terms, the number of fines imposed and the amounts involved remained too low to have a dissuasive effect.

In its previous conclusion (Conclusions 2013), the Committee asked for detailed information on which authority had primary responsibility for supervising health and safety at work, how relevant departments were organised, and which economic sectors were covered by such supervision. If applicable, it requested clarification on the labour inspectorate responsible for the public sector, agriculture, forestry and fishery, as well as for activities involving exposure to biological agents. It asked this information to be up-to-date as regards the provisions of Act No. 10237 and its implementing measures. It also reiterated its request for information about the measures taken to increase the number of inspections and of workers covered.

In reply, the report indicates that efforts have been made to improve labour inspection activities by training action delivered to labour inspectors, mainly on how to apply the new OSH legislation. Also, during the reference period, workshops were organised for the labour inspectors and representatives of the employers' and workers' organisations, as well as for the public sectors managers and specialists.

The Committee notes from Occupational Safety and Health Policy Document (2016-2020) that in 2015, there were 7 627 labour inspections conducted in private and state entities, of which 6 118 (80.2%) were planned, 308 (4%) followed complains, and 121 (1.5%) followed accidents at work. The number of entities sanctioned as a result of these inspections was 122 (1.6% of the total). The average ratio of labour inspectors is about one per 8 000 registered employees.

In order to gain a more precise picture of the administrative measures that inspectors are empowered to take and the dissuasiveness of the penalties applied, the Committee asks that the next report provide information on the following points: any change in the general framework for labour inspection activities during the reference period; the number, while distinguishing clearly between administrative staff and inspection staff, of inspectors assigned to supervising the application of the legislation and regulations on occupational health and safety; the number of general, thematic and unscheduled inspection visits assigned solely to the occupational health and safety legislation and regulations; the application of the legislation and the regulations on the labour inspectorate throughout the country in practice; details, by category, of administrative measures that labour inspectors are entitled to take and, for each category, the number of such measures actually taken; the outcome of cases referred to the prosecution authorities with a view to initiating criminal proceedings; figures for each year of the reference period. In the meantime, the Committee considers that it has not been established that the activities of the labour inspectorate are efficient in practice.

Conclusion

The Committee concludes that the situation in Albania is not in conformity with Article 3§3 of the Charter on the grounds that:

- it has not been established that accidents at work and occupational diseases are monitored efficiently;
- it has not been established that the activities of the labour inspectorate are efficient in practice.

Article 3 - Right to safe and healthy working conditions

Paragraph 4 - Occupational health services

The Committee takes note of the information contained in the report submitted by Albania, but highlights the significant gaps in information provided in relation to the specific requirements of Article 3§4 of the Charter.

The Committee previously examined the gradual introduction of occupational health services (Conclusions 2013). It concluded that the situation in Albania was not in conformity with Article 3§4 of the Charter on the ground that it had not been established that there was a strategy to progressively institute access to occupational health services for all workers in all sectors of the economy. It reiterated its request for information about the existence of strategies for undertakings which employ less than 15 workers, and about access to occupational health services for interim workers, temporary workers or workers on fixed-term contracts; self-employed workers; domestic and home workers. It also asked for information on the number of occupational physicians in relation to the economically active population; the number of workers monitored by occupational health services; and the percentage of employers covered by occupational health services.

The report confirms that staff, resources and capabilities to implement effective prevention strategies have been inadequate, but legal and inspection systems will be complemented by other instruments which will help to improve occupational health services.

According to the report, the 2016-2020 Occupational, Safety and Health Policy Document aimes at ensuring transparency and efficiency of the system and OSH institutions. Since the Policy Document was introduced outside the reference period, however, the Committee will examine it in its next report.

The report also indicates that in 2012, 246 enterprises had specialised services or persons outside the undertaking to organise activities for the protection and prevention of employees, 139 in 2013, 150 in 2014 and 168 in 2015. In 2015, 1 327 enterprises (compared to 1 520 in 2012) had an operational medical service.

In addition, the report indicates that employers have a legal obligation to take necessary measures with respect to the medical professional visits and periodic surveillance of workers, in consultation with the company doctor. The Committee requests that the next report provide information on the provisions in national legislation which contain this obligation, and also to provide information on the implementation of those provisions in practice.

The Committee notes that the Government is not in a position to give an accurate estimate of the number of companies and the proportion of employees that still do not have access to occupational health services. It further notes that there is no plan in place by the Government, its agencies or private enterprises to improve the provision of such services during the reference period. On this basis the Committee considers that the requirements of Article 3§4 of the Charter as outlined above are not met.

Conclusion

The Committee concludes that the situation in Albania is not in conformity with Article 3§4 of the Charter on the ground that there is no strategy to develop occupational health services for all workers.

Article 11 - Right to protection of health

Paragraph 1 - Removal of the causes of ill-health

The Committee takes note of the information contained in the report submitted by Albania. However, there are significant gaps in information provided in relation to the specific requirements of Article 11§1 of the Charter.

Measures to ensure the highest possible standard of health

The Committee notes from WHO that life expectancy at birth in 2015 (average for both sexes) was 77.8 years (compared to 77 years in 2011). The life-expectancy rate is below that of other European countries. For instance, according to Eurostat, the average life expectancy at birth in the EU-28 was estimated at 80.6 years in 2015.

The Committee further notes from World Bank indicators that the death rate has slightly increased since the previous reference period, namely 7.46 deaths/1,000 population in 2015 compared to 6.98 deaths/1,000 population in 2011.

In its Conclusions 2009, the Committee noted that the main causes of death were related to blood circulation problems. It asked information on measures taken to combat this problem (Conclusions 2009) and it noted that the previous report did not address this issue (Conclusions 2013).

The Committee noted previously that the infant mortality rate (per 1,000 live births) dropped from 15 in 2008 to 13 in 2011 (Conclusions 2013). It notes that according to the World Bank indicators, the rate slightly decreased since the previous reference period to 12.5 deaths per 1,000 live births in 2015. The Committee considers that the rate is still high for Europe. According to Eurostat, the average EU-28 rate was of 3.6 per 1,000 live births in 2015 and the infant mortality rate in Albania was estimated at 7.1.

The Committee noted previously that according to WHO, the estimated ratio of maternal mortality was of 27 per 100,000 live births in 2010 (Conclusions 2013). The Committee notes from WHO and World Bank indicators that the maternal mortality rate stood at 29 deaths per 100, 000 live births and remained stable during the reference period.

The report indicates that the new package of health care services in primary health care contains the updated instructions and protocols related to prenatal care, post natal for women and newborn baby and child care for the upbringing of 0-6 years.

The Committee takes note of the reforms initiated and the measures taken to reduce maternal and child mortality. It asks to be informed on the implementation of such measures, their effect on reducing the maternal and infant mortality rate, updated data regarding the trends of the mortality rates and on any developments in this field. However, it notes that the situation has not improved substantially since the previous reference period. In view of the high rate of maternal mortality, as well as the prevailing high infant mortality rate, the Committee finds that insufficient efforts have been undertaken in this field, and therefore considers that the situation is not in conformity with the Charter on this point.

Access to health care

The Committee noted previously that health services in Albania are mostly public. The State remains the main provider of health services, health promotion, prevention, diagnosis and treatment of the population. The private sector continues to develop, but actually, mostly covers the pharmaceutical and dental sector, a number of ambulatory clinics for specialised examinations, notably located in Tirana and three hospitals (Conclusions 2013).

In its previous conclusion, the Committee asked the next report to provide information on the content and scope of the public health care services provided, and in particular whether they are sufficient to meet the health challenges related to socioeconomic, lifestyle and environmental risks of the population. Meanwhile, it considered that the situation was not in

conformity with Article 11§1 of the Charter on the ground that it has not been established that public health services operate in an effective manner (Conclusions 2013).

The report indicates that the Ministry of Health has developed 4 new strategies, namely the Health Strategy, the Strategy for the Control of Chronic Diseases, Health Promotion Strategy and Reproductive Health Strategy. The report lists some amendments to the relevant legal framework which have a direct impact on citizens' access to specialised health care, in particular the Decision No. 308/21.05.2014 of the Council of Ministers which guarantees the provision of a number of packages of hospital care services such as: specialised cardiological examinations, heart surgery, kidney transplant, dialysis and kidney transplant for kidney insufficiency, transplant cochlear hearing loss. The above mentioned services could be accessed in public and private hospitals under contract with the health insurance fund without direct costs for the citizens. The report mentions also the Decision of the Council of Ministers No 933/29.12.2014 which aims to reform emergency medical services in order to make them more efficient in view of the health needs of the population. The new health card contains a unique individual number and the number of compulsory insurance and it facilitates citizens' access to medical care by minimising bureaucracy.

As regards the prevention and control of chronic diseases, the Ministry of Health launched in early 2015 a program of mass services of primary health. The programme, which is financed from the state budget and free for all persons aged 40 – 65 years, provides for annual health check-ups through tests, examinations and interviews. The programme is aimed to maintain physical and mental health, and mobility thus reducing the medical costs and it can be accessed as primary health care services throughout the country. It covers a population of about 900,000 inhabitants.

The report provides data with regard to the medicines reimbursed by the Health Insurance Fund during the reference period, namely that the list included 1102 reimbursable drugs in 2012; 1135 reimbursable drugs in 2013 and 1275 reimbursable drugs in 2014.

The Committee asks that the next report provide information on the implementation of the above mentioned regulations/strategies and their impact on improving the access to health of the population.

The Committee notes from the World Bank data that the total health expenditure represented 5.9% of GDP in 2014 which is well below other European countries. For instance, the OECD average was 8.9% in 2013. The Committee notes that the health system in Albania is still characterized by relatively low levels of public health expenditure both in absolute terms and as a share of GDP. On the basis of this information, and noting that the situation has not improved, the Committee considers that the situation is not in conformity with Article 11§1 of the Charter on the ground that public healthcare expenditure, as a share of GDP, is too low.

The Committee asks that the next report contain updated data on the health expenditure as a share of GDP and information on the out-of-pockets payments supported by patients.

Concerning management of waiting lists and waiting times, the Committee repeatedly asked for specific information on the average waiting time for care in hospitals, as well as for a first consultation in primary care, with a view to showing that access to health care is provided without undue delays (Conclusions 2009 and 2013). The report does not provide any information on this important issue. Given the lack of information, the Committee concludes that the situation is not in conformity with Article 11§1 of the Charter on the ground that health care is not provided with no unnecessary delays.

The Committee previously asked information on the availability of rehabilitation facilities for drug addicts, and the range of facilities and treatments (Conclusions 2009 and 2013). The report does not provide the requested information. It only mentions that more efforts are being made to deal with young persons who have drug problems. Studies on problematic drug users 2015 and the European School Survey Project on Alcohol and Other Drugs –

ESPAD 2015 were carried out. The Committee requests that information on the availability of rehabilitation facilities for drug addicts and the range of facilities and treatments be included in the next report as well as updated statistical data.

The Committee asks that the next report contain information on the availability of mental health care and treatment services, including information on the prevention of mental disorders and recovery measures.

The Committee asks that the next report contain information on dental care services and treatments (such as who is entitled to free dental treatment, the costs for the main treatments and the proportion of out-of-pocket paid by the patients).

As regards the right to protection of health of transgender persons, the Committee received previously submissions from the International Lesbian and Gay Association (European Region) (ILGA) stating that "the Albanian authorities fail to provide medical facilities for gender reassignment treatment (or the alternative of such treatment abroad), and to ensure that medical insurance covers, or contributes to the coverage of such medically necessary treatment, on a non-discriminatory basis". The Committee invited the Government to submit comments on this matter, and asked whether legal gender recognition for transgender persons requires (in law or in practice) that they undergo sterilisation or any other invasive medical treatment which could impair their health or physical integrity (Conclusions 2013). The report does not provide any information on this matter. The Committee reiterates its questions.

Conclusion

The Committee concludes that the situation in Albania is not in conformity with Article 11§1 of the Charter on the grounds that:

- the measures taken to reduce infant and maternal mortality have been insufficient;
- public healthcare expenditure is too low;
- the provision of health care is subject to unnecessary delays.

Article 11 - Right to protection of health

Paragraph 2 - Advisory and educational facilities

The Committee takes note of the information contained in the report submitted by Albania. However, there are significant gaps in information provided in relation to the specific requirements of Article 11§2 of the Charter.

Education and awareness raising

The Committee noted previously a number of measures and campaigns to prevent activities that are damaging to health, such as smoking, alcohol and drugs (Conclusions 2009). In its previous conclusion, the Committee asked for updated information on the whole range of activities undertaken by public health services, or other bodies, to promote health and prevent diseases (Conclusions 2013). The report does not provide information on this point.

The Committee recalls that informing the public, particularly through awareness-raising campaigns, must be a public health priority. The precise extent of these activities may vary according to the nature of the public health problems in the countries concerned (Conclusions 2007, Albania). Measures should be introduced to prevent activities that are damaging to health, such as smoking, alcohol and drugs, and to develop a sense of individual responsibility, including such aspects as a healthy diet, sexuality and the environment (Conclusions XV-2, the Slovak Republic). The Committee asks that the next report provide information on concrete/specific campaigns undertaken on the above mentioned topics in the media, in schools and public institutions etc. In the meantime, it considers that it has not been established that public information and awareness raising is a public health priority.

With regard to health education at schools, the Committee noted previously that health education in pre-university education is considered important and a natural part of children and youngsters education and training at school. In compulsory education, health issues are addressed in the subject “Social ethics” between 1st – 8th grade. Afterwards they are taught integrated in the subject of Biology over the 5 years of the secondary education cycle. The latter subject includes other topics such as mental health, human body anatomy and the functioning of the body organs (Conclusions 2013).

The Committee recalls that health education in school must be provided throughout the entire period of schooling and shall cover the following subjects: prevention of smoking and alcohol abuse, sexual and reproductive health education, in particular with regard to prevention of sexually transmitted diseases and AIDS, road safety and promotion of healthy eating habits. It asks whether the above mentioned subjects are covered by the school curriculum. The Committee reserves its position on this point.

The Committee recalls that States Parties must ensure that sexual and reproductive health education forms part of the ordinary school curriculum; that the education provided is adequate in quantitative terms; that the form and substance of the education, including curricula and teaching methods, are relevant, culturally appropriate and of sufficient quality, in particular that it is objective, based on contemporary scientific evidence and does not involve censoring, withholding or intentionally misrepresenting information, for example as regards contraception and different means of maintaining sexual and reproductive health; and that a procedure is in place for monitoring and evaluating the education with a view to effectively meeting the above requirements (International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Croatia, Complaint No. 45/2007, Decision on the merits of 30 March 2009, §§46 – 47). The Committee asks for information in the next report on whether and how sexual and reproductive education is provided in schools in Albania.

Counselling and screening

The Committee took note previously of the available monitoring and screening for pregnant women and children. Different regulations guarantee free health monitoring during pregnancy, birth and after birth, including at least 4 antenatal checks before birth (Conclusions 2013). The Committee asks for updated information in the next report on the counselling and screening avaialble for pregnant women and their implemenation in practice.

As regards health checks for children at schools, the Committee noted previously that free of charge screening is ensured for all pupils from grades 1 to 9. Screening starts in September and ends at the end of the school year. Other examinations are carried out for children in grades 5 to 9 in cooperation with physical education teachers. School doctors also conduct hygiene controls at school. There is about 1 doctor for around 800 pupils/students, but this is not standard in all schools, and varies according to regions (Conclusions 2013). The Committee asked for figures on the number of medical staff for schools in the regions with the lowest capacity, and it reserved its position on this point (Conclusions 2013). The report does not provide the requested information. It only mentions that a Memorandum of Cooperation was signed between the Minister of Health and the Minister of Education which aims to ensure a more effective prevention of health problems for children in school through a better cooperation between institutions and through a reform of the structures responsible. The Committee reiterates its request for updated information regarding health checks for children at schools, in particular in rural areas.

The Committee recalls that under Article 11§2, free medical checks must be carried out throughout the period of schooling. The assessment of compliance takes into account the frequency of school medical examinations, their objectives, the proportion of pupils concerned and the level of staffing (Conclusions XV-2 (2001), France). The Committee asks whether the above mentioned Memorandum had an impact on the health checks carried out for children at school, and reiterates its request for figures on the number of medical staff for schools in the regions with the lowest capacity.

Meanwhile, given the lack of information, the Committee concludes that it has not been established that counselling and screening for pregnant women and children are frequent enough or that the proportion of mothers and children covered is sufficient.

In respect of counselling and screening for the population at large, the Committee noted previously that the Public Health Institute has designed a model for the early screening of potential causes of cardiovascular diseases and their timely treatment. It also noted that new voluntary/confidential testing services have been established throughout the country, with a view inter alia of improving the situation concerning HIV testing (Conclusions 2013).

The report indicates that the Decision of the Council of Ministers No. 185/04.02.2014 "On determining the manner of implementation of the medical basis for citizens aged 40-65" established a national program aimed at screening the population on risk factors and prevalent diseases for health care, prevention of diseases and complications, early detection of disorders, treatment in the early stages of diseases and improve health. The beneficiaries are all citizens from 40 to 65 years old with permanent residence in the Republic of Albania.

The Committee notes from EU Commission Report 2016 that a structure for cancer screening services and a cancer registry system remains to be set up. Several breast cancer screening awareness activities were undertaken by mobile units across the country. Guidelines and protocols for cervical cancer screening based on primary healthcare were prepared and are pending approval.

The Committee recalls that where it has proved to be an effective means of prevention, screening must be used to the full (Conclusions XV-2 (2001), Belgium). In particular, there should be screening, preferably systematic, for all the diseases that constitute the principal causes of death (Conclusions 2005, Republic of Moldova). The Committee asks for updated information in the next report on the measures taken to ensure screening for the population

at large in general and in particular for diseases which constitute the main causes of death. Meanwhile, it reserves its position on this point.

Conclusion

The Committee concludes that the situation in Albania is not in conformity with Article 11§2 of the Charter on the grounds that:

- it has not been established that public information and awareness raising are public health priorities;
- it has not been established that counselling and screening for pregnant women and children are frequent enough or that the proportion of mothers and children covered throughout the country is sufficient.

Article 11 - Right to protection of health

Paragraph 3 - Prevention of diseases and accidents

The Committee takes note of the information contained in the report submitted by Albania. However, there are significant gaps in information provided in relation to the specific requirements of Article 11§3 of the Charter.

Healthy environment

In its previous conclusion, the Committee took note of the different pieces of legislation and regulations adopted by Albania during the previous reference period for the reduction of environmental risks, in particular in the field of air quality, water management, chemicals, environmental noise and food safety. Several of the legal texts had been adopted with a view to bringing environmental legislation in line with EU legislation (Conclusions 2013).

The Committee asked for information on the institutional structures for the proper implementation of the above-mentioned legislation. It also wished to receive information on the levels of air pollution, contamination of drinking water and food intoxication during the reference period, namely whether trends in such levels increased or decreased (Conclusions 2013).

The report does not provide any information on these important aspects of Article 11§3. The Committee asks for updated information on the relevant legal framework and institutional structures for the proper implementation of the legislation with regard to air quality, waste management, water quality, food safety, noise pollution, asbestos, as well as for data on the levels of air pollution, contamination of water and food intoxication during the reference period, and the trends in such levels. The Committee points out that in the absence of such information in the next report, there will be nothing to show that the situation is in conformity with the Charter on this point.

Tobacco, alcohol and drugs

The Committee asked previously whether there was legislation prohibiting the sale of tobacco products to young persons, whether smoking in public places was prohibited and whether the advertising of tobacco products was prohibited (Conclusions 2009). The report provides no information on these matters. It also asked whether there exist laws on smoke-free environments, health warnings on tobacco packages, and if there is a ban on tobacco advertising, promotion and sponsorship (Conclusions 2013). Given the lack of information on these matters in previous reports, the Committee concluded that the situation was not in conformity with Article 11§3 of the Charter on the ground that it has not been established that adequate measures have been taken to prevent smoking (Conclusions 2013).

The present report only mentions that measures were taken by the Ministry of Health for setting up a new institution – the Health Inspectorate – which will have an important role in implementing the legislation on health related to smoking and alcohol consumption.

The Committee notes from EU Commission Report 2016 that the law on health protection against tobacco products has been implemented. The Committee further notes from WHO Report on the Global Tobacco Epidemic (2017) that the estimated prevalence of smoking among those aged 15 years or more in 2015 was 29.1% (men: 51.7%; women: 7.3%). The same source lists the smoke free environments as established by the legislation: health care facilities, educational facilities, government facilities, indoor offices and workplaces, restaurants, cafes, pubs and bars, public transport, and all other public places.

Given the lack of information in the report, the Committee reiterates its previous questions in particular with regard to legislation prohibiting the sale of tobacco products to young persons, health warnings on tobacco packages, as well as whether the advertising of tobacco products was prohibited and if there is a ban on tobacco advertising, promotion and sponsorship. It also asks for updated information in the next report on trends in the

consumption of tobacco (adults and youth). The Committee points out that if this information is not provided in the next report, there will be nothing to show that the situation is in conformity with the Charter on this point. Meanwhile, it reserves its position on this point.

As regards the consumption of alcohol and drug abuse, the Committee wished to receive updated information on legislation on the use of alcohol and drugs as well as trends in consumption (Conclusions 2013). Since the report does not provide any information on this point, the Committee reiterates its question and reserves its position on this point.

Immunisation and epidemiological monitoring

In its previous conclusion, the Committee asked for updated information on the national vaccination programme, as well as the vaccination coverage rate (Conclusions 2013). It also requested information on the arrangements for reporting and notifying diseases and emergency measures in case of epidemics.

The report indicates that the Law No. 15/2016 "On preventing and fighting infections and infectious diseases" provides rules for detection, treatment, reporting and management of the institutions responsible for such situations. The report adds that vaccine coverage remains quite high and more efforts are being made to reach the marginalised groups of Roma children, young people leaving school and young people with drug problems. The Institute of public health and immunisation programs through programs for HIV/AIDS prevention offers services throughout the country. The report indicates that a new program of disinfection of coastal areas is in its second year of implementation and aims to prevent the spread of infectious diseases to a number of residents of the areas of Shkodra, Lezha, Durres, Fier and Vlora.

The Committee notes from the EU Commission Report 2016 that people with HIV/AIDS continue to experience difficulties accessing healthcare. A mosquito control strategy and action plan remains to be adopted. Reporting systems on communicable diseases and microbiology laboratories are not integrated with the national electronic health record system. Capacity of microbiology laboratories needs strengthening to ensure effective disease surveillance, outbreak recognition and investigation and support to actions against antimicrobial resistance. The Committee invites the Government to provide comments on this. It recalls that countries must demonstrate their ability to cope with infectious diseases, such as arrangements for reporting and notifying diseases, special treatment for AIDS patients and emergency measures in case of epidemics (Conclusions XVII-2 (2005), Latvia).

The Committee asks for information in the next report on the implementation of the law on the control of infectious diseases in practice and the measures taken to ensure that the immunisation programmes and the epidemiological monitoring are efficient. Meanwhile, it considers that the situation is not in conformity with the Charter on the ground that efficient immunisation and epidemiological monitoring programmes are not in place .

Accidents

The Committee noted previously that changes were made to the Road Code during the reference period introducing new behavioral norms for users. Automatic control operations for road traffic have been put in place, as well as an electronic system for administration of fines (Conclusions 2013). The Committee wished to receive information on the number of deaths caused by traffic and leisure time accidents (Conclusions 2013). The report does not provide the requested information.

The Committee recalls that under Article 11§3, States Parties must take steps to prevent accidents. The main sorts of accidents covered are road accidents, domestic accidents, accidents at school and accidents during leisure time. The Committee asks for information in the next report on the measures taken to reduce injury and death by accidents as well as trends in the number of accidents. The Committe points out that if this information is not

provided, there will be nothing to establish that the situation is in conformity with the Charter on this point.

Conclusion

The Committee concludes that the situation in Albania is not in conformity with Article 11§3 of the Charter on the ground that efficient immunisation and epidemiological monitoring programmes are not in place.

January 2018

European Social Charter

European Committee of Social Rights

Conclusions 2017

ANDORRA

This text may be subject to editorial revision.

The following chapter concerns Andorra, which ratified the Charter on 12 November 2004. The deadline for submitting the 10th report was 31 October 2016 and Andorra submitted it on 6 March 2017. On 6 October, a request for additional information regarding Article 12§§2 and 3; Article 13§§2, 3 and 4 was sent to the Government which submitted its reply on 10 November 2017.

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 "Health, social security and social protection":

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

Andorra has accepted all provisions from the above-mentioned group.

The reference period was 1 January 2012 to 31 December 2015.

The conclusions relating to Andorra concern 19 situations and are as follows:

– 13 conclusions of conformity: Article 3§1, 3§3, 3§4, 11§1, 11§2, 11§3, 12§2, 12§3, 13§2, 13§3, 14§1, 14§2 and 23;

– 4 conclusions of non-conformity: Article 3§2, 12§1, 12§4 and13§1.

In respect of the 2 other situations related to Articles 13§4 and 30 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 Andorra under the Charter. The Committee requests the authorities to remedy this situation by providing the information in the next report.

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

Article 3§1

On 17 April 2013, after consulting employers' and employees' organisations, the Government approved the text of four technical notes relating to Law No. 34/2008 and concerning four areas, in particular very small and small enterprises in sectors of activity where risks are low or very low; co-operation and co-ordination; providing information for and training employees, and health supervision.

Article 3§2

Four sets of regulations were adopted during the reference period. In particular, the Regulations on minimum health and safety requirements for the use of personal protective equipment (BOPA, 10 October 2012) determine the notion of personal protective equipment; a list of exclusions; the standard criteria which must be applied when risks cannot be sufficiently avoided or mitigated through technical means of collective protection or through the adoption of measures, methods and procedures for organising work; and a list of obligations which are incumbent on employers and employees with regard to the use of personal protection equipment. The Regulations on minimum health and safety requirements for the use of work equipment (BOPA, 10 October 2012) set out measures to encourage improvements in the safety and health of private and public sector workers when using work equipment, and the roles and responsibilities of employers and employees regarding work equipment. Moreover, the Regulations on minimum requirements regarding health and safety signs in workplaces (BOPA, 10 October 2012) indicate their scope and expressly recognise two cases in which they are not applicable (sale of dangerous products, equipment, substances and preparations, and signs used for regulating road and air traffic,

except concerning such traffic in the workplace). In addition, they define the concepts of different types of health and safety signs. These regulations also contain provisions on information and training, as well as on worker consultation and participation.

Article 3§4

- Since April 2013, all companies must have a protection and prevention service which performs and carries out the following tasks and activities: design, apply and co-ordinate preventive action plans and programmes; evaluate risk factors which may affect occupational health and safety at work; identify priorities for the adoption of appropriate preventive measures and supervise their effectiveness; inform and train employees so as to avoid the risks linked to their work, and implement emergency and first aid plans;
- The Technical Information Note No. 4 of the Labour Inspectorate Department, which was approved by the Government on 17 April 2013, clarifies details of the content of Article 19 (health supervision) of the law on occupational health and safety and the Regulation on occupational health services. Particular reference is made to the definition of occupational health services and to the objectives of medical examinations; the need to propose medical examinations at work if they are not compulsory (in particular at regular intervals); carrying out compulsory medical examinations (dangerous activities, workers under 18 years of age, particularly sensitive workers, return to work after more than 6 months' sick leave and in cases in which it is essential in order to be able to evaluate the risks); the terms applied for proposing or carrying out medical examinations at work for all employees; supervising the health of workers who have several jobs or in the event that they change posts; the medical supervision of minors.

Article 12§3

- As from 2012, social security coverage has been compulsory for self-employed workers;
- As from September 2014, family allowances have been granted starting from the first child, rather than from the second (Law 6/2014 of 24 April 2014);
- As from 2015, healthcare coverage has been extended to certain categories of economically inactive persons.

Article 13§1

According to the report, Act 6/2014 of 24 April on Social and Health Services, is a step forward in the organisation and consolidation of the Andorran social protection system, through a network of benefits that complement the benefits established by the social security regulations. The Act 6/2014 determines the eligibility as well as the amounts of benefits. It aims at ensuring complementarity of social security benefits and social assistance, with a view to guaranteeing pecuniary benefits of a sufficient level (to meet essential needs of individuals or families who, because of their disability, their advanced age or other circumstances, cannot work or because they have limited autonomy).

Article 19§1

- Since December 2014,the Criminal Code established as criminal offences, inter alia public incitement to violence, hatred or discrimination against an individual or a group of individuals, public insults or defamation and threats, as well as the public dissemination or distribution and the production or possession of racist images or material;
- Andorra has implemented an advanced inclusive educational programme which attaches considerable importance to human rights and efforts to tackle stereotypes, hate speech and discrimination.

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In addition, the report contains also information requested by the Committee in Conclusions 2015 in respect of its conclusions of non-conformity due to a repeated lack of information:

- the right of migrant workers and their families to protection and assistance – assistance and information on migration (Article 19§1)
- the right to housing – reduction of homelessness (Article 31§2).

The Committee examined this information and adopted 1 conclusion of conformity relating to Article 19§1 and 1 conclusion of non-conformity relating to Article 31§2.

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The next report will deal with the following provisions of the thematic group "Labour Rights":

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 21),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 22),
- the right to dignity at work (Article 26),
- the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28),
- the right to information and consultation in collective redundancy procedures (Article 29).

The report should also contain information requested by the Committee in Conclusions 2014 in respect of its conclusions of non-conformity due to a repeated lack of information:

- the right of persons with disabilities to independence, social integration and participation in the life of the community – integration and participation of persons with disabilities in the life of the community (Article 15§3).

The deadline for submitting that report was 31 October 2017. The report was registered on 31 October 2017. Conclusions on the Articles concerned will be published in January 2019.

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Conclusions and reports are available at www.coe.int/socialcharter as well as in the HUDOC database.

CONCLUSIONS RELATING TO ARTICLES FROM THE THEMATIC GROUP

‘Health, social security and social protection”

Article 3 - Right to safe and healthy working conditions

Paragraph 1 - Health and safety and the working environment

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

General objective of the policy

In its previous conclusion (Conclusions 2013), the Committee noted that Law No. 34/2008 introduced a legislative framework which maintained and promoted an occupational health and safety policy based on occupational risk prevention. It asked whether occupational health and safety strategies or programmes existed alongside the legislative framework and whether they were reassessed in the light of new risks. In reply, the report states that the Labour Inspectorate Department disclosed all necessary information on the new legislation during the reference period and had monitored compliance with the law during the period mid-2014 to 2015. A special campaign of inspections had also focused on companies in various economic sectors which either employed a large number of workers or which had an accident ratio 50% higher than the average in that specific sector (44 companies had been inspected in 2012 and 60 in 2013). Nevertheless, the Committee reiterates its previous requests.

In reply to the Committee's question concerning the resolution of conflicts between the provisions of Law No. 34/2008 and those of Law No. 35/2008, and how many workers resign in practice (Conclusions 2013), the report states that the figures concerning the number of justified resignations of workers because of failures to comply with occupational health and safety measures are not available. However, it does state that the number is small. According to the information provided by the Labour Inspectorate Department from consultations, in some cases workers use this argument to justify putting an end to their contract.

The Committee points out that new technology, organisational constraints and psychological demands favour the development of psychosocial factors of risk, leading to work-related stress, aggression, violence and harassment. It would also point out that, with regard to Article 3§1 of the Charter, it takes account of stress, aggression, violence and harassment at work when examining whether policies are regularly evaluated or reviewed in the light of emerging risks. The States parties have a duty to carry out activities in terms of research, knowledge and communication relating to psychosocial risks (Statement of Interpretation on Article 3§1 of the Charter, Conclusions 2013). The report does not provide any information on this point. The Committee accordingly reiterates its request.

Organisation of occupational risk prevention

In its previous conclusion (Conclusions 2013), the Committee noted that Law No. 34/2008 regulated occupational risk prevention at national level, taking account of the particular hazards concerned, and the provision of information and training for employees. It also noted that the Labour Inspectorate was involved in the development of an occupational health and safety culture among employers and employees.

The report states that Law No. 34/2008 had been brought into force in stages and had been fully in force 21 April 2013. Article 8 on the planning of prevention and the evaluation of risks, which had come into force on 21 April 2012, stipulated that the employer's prevention measures must be planned on the basis of an initial evaluation of the risks for the workers' health and safety, while taking account of the firm's activity, the nature of workstations and the workers using them. If the outcome of the evaluation so requires, the enterprise can adopt the necessary prevention measures to guarantee a higher level of protection of workers' health and safety. The risks have to be assessed at regular intervals to guarantee occupational health and safety and also when there are changes in working conditions or if there has been an incident that may have consequences for the workers' health.

In its previous conclusion (Conclusions 2013), the Committee asked for information concerning the applicability of Law No. 34/2008 to the public service and to small firms. In reply, the report explains that the law does not apply to a number of public service activities involving specific risks for employees (the Police Department, the Fire and Rescue Services, the Customs Service, Prisons and Civil Protection Services). Nevertheless, risks relating to the workplace in the entire public administrative service had been assessed between July 2012 and October 2013 by an outside prevention service selected by means of an open competition. Moreover, since November 2013, several activities are carried out, in particular the updating and review of the assessment of risks relating to workplaces and equipment, the organisation and supervision of the application of preventive measures identified in the evaluation of risks, the review of activities where specific verification and health supervision is required.

In reply to the Committee's question about the way in which employers, particularly small and medium-sized enterprises, discharge their obligations in terms of initial assessment of the risks specific to workstations and the adoption of targeted preventive measures in practice (Conclusions 2013), the report states that, according to the estimates of the Labour Inspectorate Department, almost all small and medium-sized enterprises have employed outside risk prevention services to carry out the initial evaluation of risks and the planning of preventive activities. However, employers can only carry out some of the preventive work themselves under certain conditions (Technical information note No.1 published by the Labour Inspectorate Department). Health supervision must be delegated to an outside prevention service.

Employers and employees can put questions directly to the inspectors either by phone or at the Labour Inspectorate Department, with or without an appointment. The Committee notes that, according to the report, the number of specific consultations on this subject has increased. The report also mentions the website of the Labour Inspectorate Department, which contains information concerning the legislation and the rules and regulations in force, as well as the questions frequently asked with regard to occupational health and safety.

The report also states that, on 17 April 2013, after consulting employers' and employees' organisations, the Government approved the text of four technical notes relating to Law No. 34/2008, drawn up by the Labour Inspectorate Department. These notes concern four areas, in particular very small and small enterprises in sectors of activity where risks are low or very low; co-operation and co-ordination; providing information for and training employees, and health supervision.

The Committee maintains its previous finding of conformity in this respect.

Improvement of occupational safety and health

In its previous conclusion (Conclusions 2013), the Committee noted the existence of a system aimed at improving occupational health and safety through information, training and development, involvement in the training of occupational health and safety professionals and the definition of training programmes. It asked for information on how the authorities made sure that individual and collective equipment and also workplaces were in line with the latest scientific and technical know-how and met the relevant quality standards.

In reply, the report states that Andorra has neither a technical committee responsible for standardisation nor its own quality standards with regard to individual and collective protective equipment; however European standards are taken as a benchmark. The quality control of materials is carried out by outside prevention services, which determine the types of machinery, work equipment and individual and collective protection to be used on a case by case basis, with reference to European standards. Moreover, the Regulation governing health and safety protection in the building industry (BOPA, 9 December 2010) sets out in a concrete manner the norms concerning machinery and the compulsory nature of protective equipment, in accordance with CE-marking conformity assessment and EC marking,

according to the directives of the EU. The Committee notes from the report that this national regulation has been incorporated into the Regulation setting out the minimum health and safety requirements for the use of work equipment (BOPA, 10 October 2012), which establishes the minimum health and safety requirements for the use of work equipment provided to employees, and in the Regulation governing minimum health and safety requirements for the use of individual protective equipment (BOPA, 10 October 2012), minimum health and safety requirements for the use of individual protective equipment, the criteria and the conditions for their use.

In its previous conclusion (Conclusions 2013), the Committee also requested information as to how the training of occupational health and safety professionals by approved outside prevention services is performed in practice. In reply, the report states that in most companies, outside prevention services hold individual training sessions (at the workplace or in the training classes of the prevention services), semi-individual and online training sessions. Moreover, some prevention services distribute to employees when they are recruited information sheets on the main risks and prevention and protection measures appropriate to each workstation. With regard to small enterprises in sectors of activity where there is a low or very low level or risk and where employers have chosen to perform the prevention and protection activities themselves, the latter organise the training on occupational hazards at the time of recruitment. The Committee notes from the report that almost all small enterprises hire outside prevention services and it is therefore the technicians working for these services who are responsible for training their employees.

In its previous conclusion (Conclusions 2013), the Committee also asked of how the Central Public Health Laboratory (LCSP) and the University of Andorra co-operate with the authorities in this area. As the report does not address this issue, the Committee repeats its request and asks for the information to be updated for the reference period, fleshed out with details of activities carried out in practice (sectoral risk analysis; framing of rules; adoption of recommendations; dissemination of publications; creation of training modules) and backed up by specific examples.

Consultation with employers' and workers' organisations

In its previous conclusion (Conclusions 2013), the Committee noted that a system for consulting employers' and workers' organisations exists at the level of the public authorities and in business enterprises, and asked for information about the appointment of the health and safety representatives and the establishment of the health and safety committees in practice. It also requested information about the frequency, compulsory nature and procedural framework of the consultations organised by the Government. In reply, the report states that, pursuant to Article 22 of Law No. 34/2008 of 18 December 2008 on occupational health and safety, employees' occupational health and safety representatives were staff representatives elected in accordance with Law No. 35/2008 of 18 December 2008 on the Labour Relations Code. Under Article 23 of Law No. 34/2008, occupational health and safety committees must be set up in enterprises with one hundred or more employees. They must be made up of employees' representatives for prevention and of employers and/or the same number of representatives as those representing the workers. The Committee notes from the report that between 2009 and 2015, 24 procedures for the selection of staff representatives took place.

According to the report, the Government is obliged to consult employers' and employees' organisations. Under the first additional provision of Law No. 34/2008, the Government must draw up implementing regulations after consulting employers' and employees' organisations. In practice, the frequency with which consultations take place depends on the number of regulations that need to be approved; in particular the Government submits draft regulations in this field to employers' associations, to vocational training schools and to trade unions for their comments and proposals, which it studies and where possible adds them to the final text.

The Committee maintains its previous finding of conformity in this respect.

Conclusion

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

Article 3 - Right to safe and healthy working conditions

Paragraph 2 - Safety and health regulations

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

Content of the regulations on health and safety at work

The Committee previously deferred its conclusion on this point (Conclusions 2013) and pointed out that, if the information requested was not provided in the next report, there would be nothing to establish that the situation was in conformity with Article 3§2 of the Charter. It observed that during the reference period, the regulation implementing Act No. 34/2008 had not yet been fully adopted and that the regulations specifically governing exposure to the majority of occupational risks were being drafted. It accordingly asked for information on their adoption and application in practice.

In reply, the report mentions four sets of regulations adopted during the reference period: the Regulations on occupational health services (Official Gazette of the Principality of Andorra (BOPA), 21 November 2012), the Regulations on minimum health and safety requirements for the use of personal protective equipment (BOPA, 10 October 2012), the Regulations on minimum health and safety requirements for the use of work equipment (BOPA, 10 October 2012) and the Regulations on minimum requirements regarding health and safety signs in workplaces (BOPA, 10 October 2012). The report states that the last three instruments provide that risks not specifically governed by regulations are covered subsidiarily by the ILO rules, in application of the first additional provision of Act No. 34/2008, which entered into force on 21 April 2009.

The report also indicates that the Regulations on minimum health and safety requirements concerning the manual handling of loads, shift work (including work with VDUs), work places, and the protection of workers from risks linked to exposure to asbestos at work still need to be approved.

In its previous conclusion (Conclusions 2013), the Committee also requested clarifications on the enforceability of the ILO rules before the courts and on the application in practice of these rules by employers. In reply, the report explains that Andorra has not ratified any ILO Convention, but that national legislation and regulations refer to the application of ILO standards on health and safety at work, in a subsidiary capacity, and, in particular, ILO standards may be invoked in all kinds of judicial processes (criminal, administrative or civil) and the courts take them into account in their decisions. The Committee takes note of a number of decisions referred to in the report which illustrate the courts' reference to international standards, in particular those of the ILO.

In reply to a question by the Committee on arrangements for undertakings having fewer than 10 employees, introduced by the Labour Inspectorate's technical information memorandum No. 1 of 10 April 2013, the report states that this information memorandum sets out four conditions to be met by an employer who personally assumes partial responsibility for the preventive activity: the employer must have undergone, as a minimum, the basic training (50 hours); he/she must work permanently in the undertaking; the undertaking must have less than 10 employees, and the occupational risks must be low. However, some activities must be carried out by a non-prevention service (health monitoring); restrictions are therefore laid down in the technical memorandum.

The Committee points out that under the terms of Article 3§2 of the Charter, regulations concerning health and safety at work must cover work-related stress, aggression and violence specific to work, and especially for workers under atypical working relationships (Statement of Interpretation on Article 3§2 of the Charter, Conclusions 2013). As the report does not answer the Committee's question on this subject (Conclusions 2013), the Committee asks that this information be supplied in the next report.

The Committee recalls that states' first obligation under Article 3 of the Charter is to ensure the right to occupational safety and health rules of the highest possible standard. Paragraph 2 of this article requires them to issue health and safety regulations providing for preventive and protective measures against the risks recognised by the scientific community and laid down in EU and international regulations and standards. These regulations have to be specific in that they must set out rules in sufficient detail for them to be applied properly and efficiently. They must also cover a majority of the risks listed in Conclusions XIV-2 (1998).

The Committee takes note of the fact that general legal standards on health and safety at work have existed since Act No. 34/2008 came into force. It observes, however, that the existing regulations cover only a small proportion of the risks identified in Conclusions XIV-2, and fail to offer protection against some significant risks (carcinogens or mutagens; physical, biological and chemical agents; use of machinery, etc.). The report does not show that the aforementioned regulations correspond to the international standards. Therefore, the Committee considers that the general obligation that rules on health and safety at work must specifically cover a large majority of the risks listed in the General Introduction to Conclusions XIV-2 has not been met.

Levels of prevention and protection

The Committee considers the levels of prevention and protection that the legislation specifies for certain risks.

Establishment, alteration and upkeep of workplaces

The Committee deferred its previous conclusion on this point (Conclusions 2013). According to the report, pending the adoption of regulations specific to the workplace, the manual handling of loads, the use of VDUs and the use of machinery, the provisions of the Labour Regulations of 17 July and 22 December 1978 concerning the workplace, working environment and personal protection remain applicable. The report further states that the relevant ILO rules are also applicable.

However, the report indicates that the Regulations on minimum health and safety requirements for the use of personal protective equipment (BOPA, 10 October 2012) determine the notion of personal protective equipment; a list of exclusions; the standard criteria which must be applied when risks cannot be sufficiently avoided or mitigated through technical means of collective protection or through the adoption of measures, methods and procedures for organising work; and a list of obligations which are incumbent on employers and employees with regard to the use of personal protection equipment. The Regulations on minimum health and safety requirements for the use of work equipment (BOPA, 10 October 2012) set out measures to encourage improvements in the safety and health of private and public sector workers when using work equipment, and the roles and responsibilities of employers and employees regarding work equipment. Moreover, the Regulations on minimum requirements regarding health and safety signs in workplaces (BOPA, 10 October 2012) indicate their scope and expressly recognise two cases in which they are not applicable (sale of dangerous products, equipment, substances and preparations, and signs used for regulating road and air traffic, except concerning such traffic in the workplace). In addition, they define the concepts of different types of health and safety signs. These regulations also contain provisions on information and training, as well as on worker consultation and participation.

The Committee requests confirmation that the above-mentioned regulations also govern the protection of machines; manual handling of loads; work with display screen equipment; hygiene (in commerce and offices); maximum weight; air pollution, noise and vibration.

Protection against hazardous substances and agents

In its previous conclusion (Conclusions 2013), the Committee noted that, during the reference period, no regulation in force specifically governed exposure to asbestos or ionising radiation, outside the particular context of building sites, and it deferred its last conclusion on this point (Conclusions 2013). It therefore requested clarifications on the enforceability before the courts of ILO Conventions Nos. 162 on asbestos (1986) and 115 on ionising radiation (1960); Recommendations Nos. 172 on asbestos (1986) and 114 on protection against radiation (1960); the ICRP Recommendation (1990) and Directive 96/29/Euratom; and the international material safety datasheet, and on the application in practice of these texts by employers. The Committee also stressed that if the next report did not contain this information, there would be nothing to show whether the situation in Andorra is in conformity with Article 3§2 of the Charter

In reply, the report states that there were no new developments concerning the levels of prevention and protection against asbestos and ionising radiation during the reference period. It also confirms that there is no case law demonstrating the possible application of the ILO Conventions and Recommendations on asbestos and ionising radiation; however, the courts take into account the ILO standards when drafting their decisions and judgments.

The Committee notes again that there is no regulation in force which specifically governs exposure to asbestos or ionising radiation, outside the particular context of building sites. The Committee concludes that the levels of prevention and protection against asbestos and ionising radiation are not in conformity with Article 3§2 of the Charter.

Personal scope of the regulations

The Committee examines the personal scope of the legislation and regulations with regard to workers in atypical employment.

Temporary workers

In its previous conclusion (Conclusions 2013), the Committee observed that non-permanent and temporary staff are covered by the legislation on health and safety at work and that they are protected, including against risks resulting from a succession of periods of exposure to pathogenic agents while working for different employers, and by the limitation on using short-term employees for certain particularly dangerous types of work. It asked for information on access by non-permanent and temporary employees to medical surveillance and to representation at work.

According to the report, Act No. 34/2008 requires that workers with a fixed-term contract, seasonal workers and persons recruited by temporary work agencies must be treated in the same manner as other workers regarding occupational health and safety. More specifically, the report states that seasonal workers, temporary workers or those with a fixed-term contract enjoy the same rights with regard to medical supervision as the other employees of the enterprise in which they work. Medical examinations for medical supervision purposes are compulsory before recruitment and at the beginning of the contractual relationship if the employee has to carry out unsafe, unsanitary or damaging activities due to the elements, processes or substances handled (Appendix 1 to Act No. 34/2008) or if the workers concerned are minors or they are particularly sensitive to certain risks. Otherwise, the employer is obliged to offer the possibility of undergoing medical examinations to employees, who are free to accept.

Regarding representation at work, the report states that under Article 116 of Act No. 35/2009, fixed-term employees are represented by representatives chosen in that capacity. Workers with a contract longer than one year are counted as permanent employees, while those recruited for a shorter period are counted taking into account the number of days worked during the year prior to the elections being called: as from 225 days worked, a

worker is counted as an additional employee, as long as he/she works a minimum of 25 hours per week.

The Committee maintains its previous finding of conformity on this point.

Other types of workers

The Committee previously found (Conclusions 2013) that self-employed workers (entrepreneurs, farmers, craft workers, etc.) lacked sufficient protection within the meaning of Article 3§2 of the Charter and it reiterated its request for information on the protection of home workers. It asked for confirmation that domestic employees enjoy, in law and in practice, the health and safety conditions imposed by Act No. 34/2008 and the related implementing regulations.

The report explains that under Article 2(3) of Act No. 34/2008, domestic employees are excluded from the scope of this law. However, this article explicitly provides that employers are obliged to ensure that their domestic employees can carry out their work in appropriately secure and hygienic conditions. According to the report, although employers are in this case exempted from carrying out preventive activities, they are nevertheless obliged to ensure the health and safety of the person they have hired. The Committee asks whether the home from which a worker operates can be considered as a workplace and as a result be subject to an inspection by the Labour Inspectorate.

The Committee reiterates that, as stated in Conclusions 2009, all workers, all workplaces and all sectors of activity must be covered by occupational health and safety regulations. It also underlines that these regulations must apply to all places of work without exception, including private homes. Under Article 3§2 of the Charter, all workers, including self-employed workers, must be covered by the occupational health and safety regulations, on the ground that salaried workers and self-employed workers are more often than not exposed to the same risks. Since the report contains no new information on self-employed workers, the Committee reiterates its finding of non-conformity on this point.

Consultation with employers' and workers' organisations

In its previous conclusion (Conclusions 2013), the Committee noted that the public authorities have a system for consulting employers' and workers' organisations. It also observed that Act No. 34/2008 introduces a system for consulting workers on health and safety at work issues within enterprises. It therefore asked for information on the appointment of health and safety representatives and the setting up of health and safety committees in practice.

In reply, the report explains that, under Articles 22 and 23 of Act No. 34/2008 on health and safety at work, staff representatives are also workers' representatives on prevention regarding health and safety. Health and safety committees must be created in undertakings of 100 or more employees (the Committee also refers to its assessment under Article 3§1 of the Charter).

Moreover, the report states that Article 9 of the Regulations on health and safety in construction work of 1 December 2010 sets out the role of the health and safety supervisor, who plays a similar role to that of a staff representative on the protection of workers regarding health and safety at work (ensuring compliance with health and safety measures and ordering prevention and protection measures).The regulations concern all persons who intervene in or carry out, even occasionally, excavations, construction work, installations, demolitions, conservation work, repairs or restorations, maintenance, cleaning and any ancillary operation or works, and generally, all construction work, whether public of private.

The Committee reiterates its previous finding of conformity in this respect.

Conclusion

The Committee concludes that the situation in Andorra is not in conformity with Article 3§2 of the Charter on the grounds that:

- the health and safety legislation and regulations do not specifically cover a majority of the risks;
- the levels of protection against asbestos and ionising radiation are insufficient;
- self-employed workers are not adequately protected.

Article 3 - Right to safe and healthy working conditions

Paragraph 3 - Enforcement of safety and health regulations

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

Accidents at work and occupational diseases

In its previous conclusion (Conclusions 2013), the Committee noted that the incidence rates of accidents at work and fatal accidents at work had continued to fall in overall terms and asked for information on the measures taken to reduce the high number of accidents at work.

In reply, the report explains that the main measure put in place to combat and prevent accidents at work is the full entry into force of Act No. 34/2008 (on 21 April 2013), which, among other things, significantly increases the amount of penalties for non-compliance with its provisions. Moreover, most undertakings have chosen to delegate preventive management to an external prevention service. Businesses have put in place a number of protocols in order to monitor cases of accidents at work and the Labour Inspectorate has carried out many inspections in order to check whether the standards established by law are being complied with.

The Committee notes that, according to the report, the number of accidents at work (leading to sick leave) has decreased (from 1 727 in 2012 to 1 650 in 2015), as has the rate of incidence regarding these accidents (from 4 198 in 2012 to 3 837 in 2015), thereby confirming the tendency noted during the previous reference period. The report indicates that there has been only one fatal accident at work, in 2012.

In its previous conclusion (Conclusions 2013), the Committee also noted the excessively low number of recorded cases of occupational diseases and therefore asked for information on the measures taken to combat inadequate reporting or recognition of cases of occupational diseases in practice. The report indicates that Andorra's economy is mainly based on the services sector and the Andorran list of occupational diseases does not include occupational diseases in that sector. For an occupational disease to be recognised, an application for recognition must be filed with the Andorran Social Security Fund (CASS). An appeal lies to the Administrative Council of the CASS and subsequently to the courts. The report explains that the whole process is then judicialised, with a decision being taken at first instance, and a right of appeal to a court of second instance. Workers are therefore guaranteed remedies at both the administrative and the judicial level. The Committee asks that the next report provide information on the legal definition of occupational diseases; the incidence rate and the number of recognised and reported occupational diseases during the reference period (broken down by sector of activity and year), including cases of fatal occupational diseases, and the measures taken and/or envisaged to counter insufficiency in the declaration and recognition of cases of occupational diseases; the most frequent occupational diseases during the reference period, as well as the preventive measures taken or envisaged.

The Committee again observes that the incidence rates regarding accidents at work and fatal accidents have continued to fall overall.

Activities of the Labour Inspectorate

In its previous conclusion (Conclusions 2013), the Committee noted a continuing decrease in the number of inspection visits. It therefore asked for information on the measures taken to increase the number of inspection visits and on inspection visits made outside construction sites.

The report states that the number of inspection visits increased during the reference period (from 144 in 2012 to 206 in 2015). Regarding the measures and penalties imposed by the Labour Inspectorate, the number of administrative penalties increased from 14 in 2012 to 64 in 2015, including minor penalties (from 2 in 2012 to 6 in 2015), serious penalties (from 13 in

2012 to 164 in 2015) and very serious penalties (0 in 2012 and 2013, 3 in 2015). Over that period there was also a marked increase in the average amount of fines (from € 1 664.5 in 2012 to € 4 127.35 in 2015) and their global amount (from € 23 304 in 2012 to € 264 150 in 2015).

However, the number of inspected workplaces (94 in 2012, 173 in 2013 and 86 in 2015) and the number of workers concerned (2 111 in 2012, 6 965 in 2013, 2 363 in 2014, and 989 in 2015) decreased towards the end of the reference period. According to the report, this decrease is temporary and is linked to the implementation of new legislation. The Labour Department instituted an awareness-raising period during inspection visits, with a view to assessing the degree of compliance with Act No. 34/2008 on health and safety at work. From April 2013 to April 2014 disciplinary sanctions were suspended with a view to raising undertakings' awareness of the need for full implementation of the law. The report explains that once this period ended, the inspectors resumed their normal functioning, drawing up sanction files in case of non-compliance with the legislation.

The Committee notes that, according to figures published by ILOSTAT, in 2015 there were 8 labour inspectors and 317 inspection visits to workplaces. The Committee asks that the next report explain why the figures concerning inspection visits to workplaces indicated in the report and those published by ILOSTAT differ. It also asks that the next report state what proportion of workers was concerned by inspection visits and what percentage of undertakings was subject to an inspection visit relating to health and safety during the reference period.

The Committee takes note of the number of inspection visits, broken down by sector of activity (agriculture, industry, trade, hotels, construction and other services), size of undertaking and year, as set out in the report. It notes that, according to the report, inspection visits carried out in the construction sector have decreased, which can be explained by a downturn in activity in that sector and also by the fact that these undertakings are listed in Appendix 1 to Act No. 34/2008, making them subject to strengthened sanction procedures, and were therefore the first to be obliged to adapt to the law. The hotel industry was the sector most inspected during the reference period (workers in that sector filed the largest number of complaints with the Labour Inspectorate).

In its previous conclusion (Conclusions 2013), the Committee asked for information on the duties, powers and number of inspectors in the Department of Industry and on the terms of the co-operation with the Labour Inspectorate regarding monitoring of occupational health and safety. In reply, the report states that the Department of Industry is empowered to carry out inspection visits in respect of electrical and gas installations, pressure devices, fire safety devices, hydrocarbon facilities, elevating devices, explosive substances, mechanised workshops and major repairs on vehicles and body work. The inspection visits are carried out by inspectors from this Department or by approved inspection and monitoring companies. If an accident occurs in a workplace coming within the competence of the approved company's inspectors regarding monitoring and assessment, those inspectors are also competent to take part in the investigation, always in close co-operation with the Labour Inspectorate and the relevant section of the police. The Department of Industry includes three persons empowered to authorise the operation of the above-mentioned facilities, to inspect them, to sanction any breaches found and to impose coercive penalties and, if necessary, close down the facilities where they present a high risk.

In reply to the Committee's question (Conclusions 2013) on data concerning measures (reports ordering remedial measures; fines for minor, serious and very serious breaches; suspension of activities; referral to the prosecution service for criminal proceedings) taken by Labour Inspectorate inspectors, the report explains that there is no specific data analysis concerning reports ordering remedial measures or suspensions of activity. These two measures are taken in the workplace, and the managers concerning are informed directly without any statistics being produced, as they are ad hoc measures which do not lead to a

full suspension of the undertaking's activities, but to their temporary suspension. For a breach involving a greater risk, an administrative procedure is put in place, which may lead to a penalty. In the context of this administrative procedure, requests for rectification are addressed to undertakings in order for them to solve the problem. The amount of the penalty to be imposed is determined according to the follow-up action taken by undertakings in response to the Labour Inspectorate's requests: the degree of the sanctions (minor, serious or very serious) cannot be changed, but if the undertaking quickly resolves the breach found, this will be taken into account when determining the amount of the penalty, within the range corresponding to the severity of the breach. For cases which may give rise to criminal proceedings, the police force is responsible for transmitting the file to the judicial authorities, on the basis of a joint investigation with the Labour Inspectorate department in charge of accidents at work.

The Committee observes that the number of inspections and sanctions has increased significantly, which, according to the report, is due to the full entry into force of Act No. 34/2008 on 21 April 2013.

The Committee recalls that, under Article 3§3 of the Charter, States Parties must implement measures to focus labour inspections on small and medium-sized enterprises (Statement of Interpretation on Article 3§3, Conclusions 2013). The report indicates that as concerns small undertakings, which constitute the majority of businesses in the country, Act No. 34/2008 is fully implemented and employers have the same obligations. The number of inspection visits carried out by the Labour Inspectorate has increased as concerns undertakings with one to five workers (from 22 in 2012 to 41 in 2015) and those with six to ten workers (14 in 2012, 33 in 2013 and 20 in 2014). Visits of businesses with 11 to 30 workers totalled 21 in 2012; 37 in 2013 and 14 in 2015. Moreover, there was one visit to a business without any employees in 2013 and two in 2015.

Conclusion

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

Article 3 - Right to safe and healthy working conditions

Paragraph 4 - Occupational health services

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

The Committee points out that, in accordance with Article 3§4, States must, in consultation with employers' organisations and workers' organisations, promote the progressive development of occupational health services for all workers with essentially preventive and advisory functions. These services may be operated jointly by several companies. They must be effective and be capable of detecting, measuring and preventing work-related stress, aggression and acts of violence at work (See Statement of Interpretation concerning Article 3§4, Conclusions 2013; see also Conclusions 2003 concerning Bulgaria). It points out that if occupational health services are not established for all enterprises, the authorities must develop a strategy, in consultation with employers' and employees' organisations, for that purpose. That means that a State "must take measures that allow it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources" (Conclusions 2003, Bulgaria; Conclusions 2009, Albania).

In its previous conclusion (Conclusions 2013), the Committee noted that there was a strategy for establishing occupational health services through the practical provision of the resources and facilities required for giving workers access to medical supervision, and the high rate of medical supervision. It asked for clarification regarding the Regulation of 14 November 2012 on occupational health services and the Labour Inspectorate's technical information note of 10 April 2013 regarding medical supervision and occupational health check-ups.

The report states that pursuant to Article 19 of Law No. 34/2008 on occupational health and safety, companies must ensure that workers' health is regularly supervised in accordance with the degree of danger of the work being performed.

Since April 2013, all companies must have a protection and prevention service which performs and carries out the following tasks and activities: design, apply and co-ordinate preventive action plans and programmes; evaluate risk factors which may affect occupational health and safety at work; identify priorities for the adoption of appropriate preventive measures and supervise their effectiveness; inform and train employees so as to avoid the risks linked to their work, and implement emergency and first aid plans. Pursuant to Article 14 of Law No. 34/2008, employers may choose between three different ways of organising their prevention services: the employers themselves may take on responsibility for meeting this obligation, employees may be designated to carry out the work, or they may call on an outside prevention service (in 2015, 8 companies were officially recognised as outside prevention services).

The Occupational Health Regulation of 14 November 2012 established the health activities that must be carried out and the staff-related technical and health conditions that must be met in order to operate and secure authorisation from the health authorities and be registered on the Register of Occupational Health Centres, Services and Establishments. This Regulation determines the conditions required to secure authorisation from the health authorities, the health activities which occupational health services must perform (supervision of employees' health, preventing health problems and health promotion, enquiries into occupational health problems and their causes, assistance, training and providing information on health issues and the work done by companies and their employees, first aid and emergency care in the event that they must be provided within the company), criteria concerning employees who are obliged to undergo medical examinations and the frequency with which such examinations must be carried out, the duties of the health staff, and the penalties applied in the event that a company does not comply with these provisions and obligations. With the exception of compulsory examinations, employees must freely consent to occupational health examinations.

The report also presents Technical Information Note No. 4 of the Labour Inspectorate Department, which was approved by the Government on 17 April 2013, clarifying details of the content of Article 19 (health supervision) of the law on occupational health and safety and the Regulation on occupational health services. Particular reference is made to the definition of occupational health services and to the objectives of medical examinations; the need to propose medical examinations at work if they are not compulsory (in particular at regular intervals); carrying out compulsory medical examinations (dangerous activities, workers under 18 years of age, particularly sensitive workers, return to work after more than 6 months' sick leave and in cases in which it is essential in order to be able to evaluate the risks); the terms applied for proposing or carrying out medical examinations at work for all employees; supervising the health of workers who have several jobs or in the event that they change posts; the medical supervision of minors.

In its previous conclusion (Conclusions 2013), the Committee asked for information on access to medical supervision for public service workers; the participation of employers in medical supervision in practice and the penalties in cases where they fail to comply. In reply, the report states that medical visits in the general administrative services commenced on 24 January 2014, after having been organised by the outside prevention service recruited for this purpose on 19 November 2013. Such visits had been proposed to all staff (some 2 050 persons) taking account of a difference between compulsory visits (15% of posts in the general administrative authorities) and voluntary visits. 1 576 visits were conducted during the period 2014-2015, in 1 524 of cases the person was found to be "fit for work", 49 "fit for work with certain restrictions" and 3 "unfit". Moreover, in keeping with the Protocol on particularly sensitive workers applied by the general administrative authorities as from October 2012, all workers may seek a medical opinion when they consider it necessary to do so, depending on their personal circumstances with regard to their post (69 cases of particularly sensitive workers were registered at the end of 2015). With regard to the specialised services of the administrative authorities (police, fire-fighting services, customs and prisons), medical visits for the purposes of health supervision were carried out by specialists working for the general administrative authorities before the entry into force of Law No. 34/2008 (601 medical visits were made during the reference period). All municipalities have also hired outside prevention services, while the medical services were responsible for workers' medical visits (2 991 medical visits during the reference period).

According to the report, the company, or the public or private sector, should only be informed of the conclusions with regard to the workers' fitness for a particular post or with regard to the need to improve or introduce prevention and protection measures. The Committee takes note of the existence of the offences set out in Law No. 34/2008, and notes that serious offences are subject to a fine of between €1 101 and €10 000, and very serious offences to a fine of between €10 001 and €100 000.

In reply to the Committee's question concerning the frequency with which medical visits take place (Conclusions 2013), the report states that Article 5 of the Regulation on occupational health services prescribes the following frequencies: (a) employees under 18 and over 55 years of age: annual visit; (b) employees under 30 years of age: every 5 years; (c) workers between 30 and 55 years of age: every 3 years. However, doctors specialising in occupational therapy may set much more regular appointments for medical examinations. Employees are obliged to attend a medical examination when they return to work after more than six weeks' sick leave.

The report also states that in 2015, there were 81 registered senior technicians specialising in the prevention of occupational hazards, 51 of whom were registered in the three following specialities: ergonomics and applied psycho-sociology, occupational safety, and industrial health; 9 were registered in two specialities and 21 in only one speciality.

The Committee maintains its previous conclusion of conformity on this point. Given the gradual nature of compliance with the obligation imposed under Article 3§4 of the Charter, it

asks that the next report contain information on access by temporary and agency workers, workers on definite term contracts, self-employed and domestic workers.

Conclusion

The Committee concludes that the situation in Andorra is in conformity with Article 3§4 of the Charter.

Article 11 - Right to protection of health

Paragraph 1 - Removal of the causes of ill-health

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

Measures to ensure the highest possible standard of health

The Committee notes from WHO that estimated life expectancy at birth in 2012 (average for both sexes) was 83, up from 2009 when it was 82. The life-expectancy rate is higher in Andorra than in other European countries. For instance, according to Eurostat, the average life expectancy at birth in the EU-28 was estimated at 80.6 years in 2015.

The Committee notes from the statistics provided in the report that the death rate (number of deaths per 1 000 inhabitants) remained low during the reference period, i.e. 3.5 per 1 000 inhabitants in 2015. The same figures indicate that infant mortality was 2.3 deaths per 1 000 live births during the reference period (it had increased from 3.6 per 1 000 live births in 2008 to 3.7 in 2011). The report also indicates that the maternal mortality rate was 0.

The Committee had previously requested information on the main causes of death and the measures taken to combat these. The Committee notes from the most recent published analysis of statistics relating to births and deaths in Andorra that cancer and diseases of the circulatory system account for 60% of deaths. It reiterates its request for information on the measures taken to combat these diseases.

The Committee asks for the next report to provide information and statistics on life expectancy at birth (average for both sexes), the death rate and the main causes of premature death, and the measures taken to combat them. The Committee also asks for information on infant mortality and maternal mortality rates to be included in the next report.

Access to health care

For a detailed description of the Andorran health care system, the Committee refers to its previous conclusions (Conclusions 2009 and 2013).

The Committee had previously noted that the Andorran system is a mixed system combining public and private bodies performing tasks relating to hygiene, public health and individual and collective medical assistance. Patients are free to choose their health care provider or practitioner. However, the lack of any criteria governing access to services results in a somewhat irrational use of health services, does not promote a positive image of general practitioners, gives rise to waiting lists for specialists and encourages excessive use of health services, which has a heavy cost. The Committee asked whether measures were planned to tackle these problems (Conclusions 2013). The report states that in the near future, the concept of a GP with whom one is registered is to be promoted along with a sharing of people's medical records. These two principles will make it possible to regulate access to health care, co-ordinate the different levels of services and prevent excessive use of services. The Committee asks to be informed on the implementation of these measures.

The Committee asked to be informed of any reforms in health policy, and in particular if there were any plans to improve cover and access for unemployed people and casual workers not insured by the Andorran Social Security Fund (CASS) (Conclusions 2013). The report states that the amendments to the Social Security Act in 2015 provides that unemployed persons between the ages of 18 and 65 who have been resident in Andorra for three years, or aged 35 or over, not in receipt of unemployment benefits and having paid 36 monthly contributions to the CASS, may continue to be covered by the social security system with a reduced contribution in the general branch which provides cover for contributors and their dependants.

The Committee asks that the next report provide information on care and treatment provided for mental health, in particular with regard to the prevention of mental disorders and

measures taken to promote the recovery process. It also asks that the next report contain information on dental services and treatment (for example, who is entitled to free dental treatment, the cost for the main types of treatment and the proportion of the costs paid for by patients).

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Andorra is in conformity with Article 11§1 of the Charter.

Article 11 - Right to protection of health

Paragraph 2 - Advisory and educational facilities

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

Education and awareness raising

The Committee had previously taken note of education and awareness-raising campaigns focusing in particular on nutrition, sexuality and prevention of HIV/AIDS and other sexually transmitted diseases (Conclusions 2013). The present report refers, by way of example, to various types of action completed such as the publishing and distribution of different guides containing useful advice on nutrition and physical exercise for a variety of target groups (the general public, the elderly, children and adolescents, expectant mothers, nursing mothers and infants), and the “Sports day for all” race, with over 2,600 participants, representing more than 3.5% of the population, as part of “Sport for All” week.

The Committee asks for the next report to provide updated information on specific campaigns or initiatives to prevent harmful behaviours – smoking, excessive consumption of alcohol and drug abuse – and to encourage a sense of individual responsibility regarding, in particular, a healthy diet, sexuality and the environment.

In its previous conclusions, the Committee noted that health education is provided throughout schooling and forms part of the school curricula. Furthermore, in addition to one-on-one consultations in health centres and lower and upper secondary schools, the nurses responsible for the “Consulta Jove” programme run sex education activities in schools (Conclusions 2009 and 2013). The Committee asks for updated information in the next report.

Counselling and screening

The Committee previously noted that there were regular medical check-ups for pregnant women and children (Conclusions 2013).

The Committee previously took note of the cancer plan which had introduced a programme for the early detection of breast cancer. The Committee asked whether, in addition to the aforementioned programme, there were other screening programmes covering the illnesses which are the main causes of death (Conclusions 2013). The report states that Andorra is currently developing a programme for the early detection of cancer of the colon. The report adds that in 2014, Andorra introduced systematic HPV vaccination for girls.

The Committee asks for the next report to provide updated information on this issue.

Conclusion

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

Article 11 - Right to protection of health

Paragraph 3 - Prevention of diseases and accidents

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

Healthy environment

The Committee previously asked for information on the implementation of the legislation, giving details on air pollution levels and trends, or cases of contamination of drinking water and food poisoning during the reference period (Conclusions 2013).

The Committee takes note from the report of the information on cases of contamination of drinking water and food poisoning during the reference period (2012-2015), and on the new regulations. It also takes note from the sources indicated in the report, of the air quality surveys and the air quality in real time, which show that the situation is good. The report provides information on the measures taken to ensure the protection and quality of surface water, sewage treatment and waste management.

The Committee asks for the next report to provide updated information on air pollution levels and trends, and on cases of contamination of drinking water and food poisoning during the reference period.

Tobacco, alcohol and drugs

In its Conclusions 2013, given the lack of relevant information, the Committee concluded that the situation in Andorra was not in conformity with Article 11§3 of the Charter on the ground that it had not been established that appropriate measures had been taken to take action against smoking (Conclusions 2013).

In 2015 the Committee once again looked at the situation and took note of the adoption in 2012 of Act No. 7/2012 on protection against passive smoking. This Act prohibits smoking in public and semi-public establishments as well as in private establishments and work areas. The Committee once again asked about the situation regarding the regulations pertaining to health warnings on tobacco packaging, and tobacco advertising, promotion and sponsorship; meanwhile, it reserved its position on this point (Conclusions 2015). The report once again mentions the Act on protection against passive smoking, and a regulation setting out the criteria to be complied with in setting up dedicated smoking rooms, the monitoring, supervision and signage of these rooms, and places where smoking is forbidden. The report also mentions the regulation governing certain aspects of the sale and consumption of tobacco. The Committee reiterates its question for information on regulations related to health warnings on tobacco packaging, and tobacco advertising, promotion and sponsorship.

The Committee had also asked about the legislation and policies in force concerning alcohol consumption and, in particular, the minimum legal age for the purchase of alcoholic drinks and whether there were any legally binding rules on alcohol advertising (Conclusions 2013). The minimum legal age for the consumption of tobacco and alcohol is 18. The report provides information on the regulations on certain aspects of the sale and consumption of alcohol and tobacco. The Committee notes from the report the information on the consumption of tobacco and alcohol derived from the 2011 Andorran National Health Survey (ENSA 2011).

The Committee previously asked for updated data on trends in the consumption of alcohol, tobacco and drugs (Conclusions 2013). The report provides data on the consumption of tobacco and alcohol for 2011 (outside the reference period). The Committee notes from the WHO report on the global tobacco epidemic (2017) that in 2015 the percentage of smokers was 38.2% among men and 29% among women, and 33.7% for the two sexes combined. It asks for the next report to provide updated information on trends in the consumption of alcohol, tobacco and drugs.

Immunisation and epidemiological monitoring

In its previous conclusions (Conclusions 2009 and 2013), the Committee noted that the Department of Health is tasked with monitoring the incidence of transmissible diseases and that that there was a specific programme for the prevention and control of tuberculosis (PPCT), the general aim of which was to reduce the incidence of this illness and the prevalence of tuberculosis infection. The Committee asked to be informed of the results of this programme.

The Committee takes note from the report of the results of the programme containing figures for 2015 and showing trends from 1997 to 2015. The five-year incidence rate dropped between the five-year period 1997-2001 (15.2 per 100 000 inhabitants) and the period 2011-2015 (6.4 per 100 000 inhabitants).

The Committee asks for the next report to provide updated information and figures on the immunisation coverage .

Accidents

In its Conclusions 2013, given the lack of relevant information, the Committee concluded that the situation in Andorra was not in conformity with Article 11§3 of the Charter on the ground that it had not been established that appropriate measures had been taken to prevent accidents (Conclusions 2013).

In 2015, the Committee took note of the measures taken to prevent road accidents, in particular through awareness-raising activities. However, it asked for the next report to contain updated figures on the number of accidents and fatality rates, especially with respect to road accidents and domestic accidents; meanwhile it reserved its position on this point (Conclusions 2015).

The report states that safety, prevention of accidents and first aid are topics addressed in the health education programme implemented by all schools in the country. Similarly, all schools provide road safety education via a programme in which all school children from age 4 to 16 take part. Schools also offer first aid training. As part of the National Anti-Drug Addiction Plan, the prevention of accidents arising from the consumption of such substances is also addressed.

The Committee once again asks for the next report to contain information on the measures taken to prevent accidents (the main accidents taken into account are road accidents, domestic accidents, accidents at school and accidents occurring in recreational activities), and updated figures on the number of accidents and fatality rates. The Committee points out that if this information is not provided, there will be nothing to demonstrate that the situation is in conformity with the Charter on this point.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Andorra is in conformity with Article 11§3 of the Charter.

Article 12 - Right to social security

Paragraph 1 - Existence of a social security system

The Committee takes note of the information contained in the report submitted by Andorra, as well as in the addendum to the report transmitted on 10 November 2017.

In the case of **family** benefits, the Committee refers to its conclusions on article 8§1.

Risks covered, financing of benefits and personal coverage

In its previous conclusions (Conclusions 2013), the Committee noted that the Social Security Fund of Andorra (CASS) had been reorganised in November 2009. It notes from the publication, Andorra in Figures (2015), from the Andorran Department of Statistics that registration with the CASS is compulsory for all employees and assimilated persons and, since November 2012, has also been compulsory for the self-employed. According to that publication and CLEISS (French Liaison Centre for European and International Social Security), financing is divided between employees and employers with regard to coverage for health care, sickness, unemployment, old age, maternity, disability and survivors, while the family benefits scheme is funded from the national budget.

The social security system comprises a general branch (temporary incapacity, including in the case of occupational injuries or diseases, maternity, invalidity and survivors) and an old-age branch (retirement and widow's pensions). It is pointed out in the report that, since 2009, an allowance for involuntary unemployment has existed, which is not part of the social security system but comes under social assistance, in accordance with the regulation of 18 September 2013 governing social assistance benefits. The family branch, which was also established in 2009, has been managed directly by the Ministry of Social Affairs since 2014.

According to the official statistics (Andorran Department of Statistics), the total population in 2015 was 71 732 and the population aged 15 to 65 years was 55 806, of whom 38 751 were employed and 545 were unemployed. In 2014, when the population was put at 70 570, the employment rate was 74.4%, giving a working population of 52 504.

The Committee previously noted that the social security system in Andorra did not guarantee universal coverage. In reply to the questions put by the Committee (Conclusions 2013), the report states that the coverage rate of the health branch as a proportion of the total population was 83.9% in 2015 and that as a result of a legislative amendment in 2015 and subject to certain conditions, the unemployed can continue to be registered with the social security system by paying reduced contributions to the general branch, thereby ensuring healthcare cover for themselves and their dependants. The Committee requests that the next report explain which categories of persons are excluded from health coverage.

The report also states that the coverage rate for the active population was 82.04% in the case of sickness insurance and 24.91% in the case of old-age insurance. The Committee notes that such a low coverage rate does not seem compatible with the information that registration with the old-age branch of the CASS is compulsory for all employees, assimilated persons and self-employed workers. It therefore requests that the next report clarify this point. Moreover, the report provides no information on coverage as regards family benefits, maternity, occupational injuries and diseases, invalidity or survivors' benefits.

The Committee points out that, to be in conformity with Article 12§1 of the Charter, the social security system must both cover a significant proportion of the population in respect of health insurance (health cover should extend beyond employment relationships) and of family benefits and also a significant proportion of the active population as regards sickness benefits, maternity and unemployment benefits, old-age pensions and occupational injury and occupational disease benefits. The Committee requests that relevant figures concerning the coverage rate for each branch be given in all future reports, i.e. the percentage of the total population insured as regards health cover and family benefits and the percentage of the active population insured as regards sickness, occupational injuries and diseases,

invalidity, maternity, unemployment, old-age and survivors cover. In the meantime, it reserves its position on this matter.

Adequacy of the benefits

The Committee points out that, under Article 12§1, the level of income-replacement benefits should be fixed such as to stand in reasonable proportion to previous income and it should never fall below the poverty threshold defined as 50% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value. If the benefit in question stands between 40% and 50% of median equivalised income, other benefits, including social assistance, will be taken into account, while if the level of the benefit is below 40% of median equivalised income, it is manifestly inadequate and its combination with other benefits cannot bring the situation into conformity with Article 12§1. In the absence of the Eurostat median equivalised income indicator, the Committee notes from the report that, since 2014, the reference threshold for determining the minimum subsistence level has been the "social cohesion economic threshold" (LECS), the level of which is the same as the minimum wage, which was set at €962 in 2015. The Committee understands from the report that the LECS is equivalent to 60% of average incomes per consumer unit, which is roughly the same as the Eurostat at-risk-of-poverty threshold defined as 60% of median equivalised income. In assessing the adequacy of the benefits, the Committee will therefore take account, on the basis of the LECS, of the thresholds corresponding respectively to 50% and 40% of average incomes, i.e. €802 and €641.

In the absence of information concerning the minimum level of benefits, the Committee deferred its previous conclusions (Conclusions 2009 and 2013) and stated that if the information was not provided in this report, there would be nothing to establish that the situation was in conformity with the Charter. The Committee notes that the report still does not provide information concerning the minimum level but does indicate the replacement rate.

On the basis of that information, the Committee notes that, for the first 30 days, the level of **sickness** benefit amounts to 53% of the average wage earned in the 12 months preceding the cessation of work in the case of employees. On the basis of the minimum wage, the Committee notes that the minimum amount would be €510, which is manifestly inadequate compared to the poverty threshold defined as 40% of average income.

When temporary incapacity is caused by an **occupational injury** or an **occupational disease**, the level of benefit for the first 30 days of sick leave amounts to 66% of the average wage earned in the 12 months preceding the cessation of work. On the basis of the minimum wage, the Committee notes that the minimum amount would be €635, which remains manifestly inadequate compared to the poverty threshold defined as 40% of average income.

In the case of **invalidity** benefits, when the invalidity does not result from an occupational injury or an occupational disease, the report states that the calculation basis corresponds to the theoretical retirement pension and depends on the residual work ability. The Committee notes from CLEISS that in the case of a person no longer able to work at all (category 2), the invalidity benefit amounts to 100% of average wages/income. On the basis of the minimum wage, the Committee considers that this amount is in conformity with the Charter.

With regard to the **old-age pension**, the Committee refers to its assessment under Article 23 (conformity).

With regard to the allowance for involuntary **unemployment**, insofar as the Andorran social security system does not provide for a contributory benefit, the Committee refers to its assessment of social assistance under Article 13§1.

Given that Andorra has not accepted Article 16, the Committee assesses the adequacy of **family benefits** under Article 12§1. The Committee notes from the report that family benefits

are paid to insured persons with dependent children aged under 18 years, or 25 years in the case of students, and subject to conditions relating to residence (seven years of uninterrupted residence in Andorra) and income (monthly income below the LECS, increased by a percentage depending on the composition of the family). The amount of the benefit is equivalent to 10% of the LECS per child (20% in the case of children with disabilities). The report states that during the reference period (from 2012 to the end of 2015), family benefits were paid in respect of 1 463 children, for a total amount of €1 472 948. The Committee considers that the amount of the benefits is in conformity with the Charter.

The Committee requests that the next report provide up-to-date information concerning the national poverty threshold, the minimum wage, the monthly median equivalised net income and the minimum level of income-replacement benefits (sickness, occupational injuries and diseases, old-age pension and invalidity) and the level of family benefits.

Conclusion

The Committee concludes that the situation in Andorra is not in conformity with Article 12§1 of the Charter on the grounds that:

- the minimum level of sickness benefits is inadequate;
- the minimum level of occupational injury and occupational disease benefits is inadequate.

Article 12 - Right to social security

Paragraph 2 - Maintenance of a social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security

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

The Committee recalls that Article 12§2 obliges states to establish and maintain a social security system which is at least equal to that required for ratification of the European Code of Social Security. The Code requires acceptance of a higher number of parts than ILO Convention No. 102 relating to social security; six of the nine contingencies must be accepted although certain branches count for more than one part (medical care counts for two parts and old-age counts for three).

The Committee notes that Andorrra has not ratified either the European Code of Social Security or the ILO Convention No. 102. Therefore the Committee cannot take into consideration other sources such as the resolutions of the Committee of Ministers on the compliance of the States bound by the Code and has to make its own assessment based on the information received in the report.

The Committee recalls that in order to assess whether the social security system stands at a level at least equal to that necessary for the ratification of the Code, it has to be provided with information regarding the branches covered, the personal scope and the level of benefits offered.

The Committee refers to its conclusion under Article 12§1 in which it notes that the social security system comprises the general branch (temporary incapacity, including employment injury, maternity, invalidity, survivors benefits), the old-age branch (pensions and survivors) and family benefits branch. An involuntary unemployment allowance exists which is not covered by the social security scheme but provided under social assistance.

With regard to personal scope, the Committee refers to its request under Article 12.1 that the relevant figures concerning the coverage rate in each branch be systematically provided in reports and in the meantime it reserves it position on this point.

The Committee refers to its assessment under Article 12§1 that the minimum amounts of sickness benefit and employment injury benefits are manifestly inadequate.

The Committee also refers to its assessment under 12§1 that the levels of invalidity benefits and family benefits are in conformity as well as its Conclusion of conformity under Article 23. Moreover, the Committee refers to its assessment of social assistance under Article 13.1 that the situation is in conformity as regards the level of benefits, pending receipt of information concerning eligibility to social assistance and the amount of the basic benefit. The Committee also takes into account its assessment (Conclusion 2015) under Article 8§1 which is in conformity, pending receipt of information concerning the minimum rate of maternity benefit in relation to the poverty threshold. In the light of these elements, pending receipt of the information requested, the Committee considers that Andorra maintains a social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Andorra is in conformity with Article 12§2 of the Charter.

Article 12 - Right to social security

Paragraph 3 - Development of the social security system

The Committee takes note of the information contained in the report submitted by Andorra, as well as in the addendum to the report, transmitted on 10 November 2017.

It refers to its previous conclusions for the description of the Andorran social security system. Since Andorra has ratified Article 8§1 of the Charter, the Committee will assess the scope and impact of developments with regard to maternity benefits when it will next examine compliance with this provision.

As regards the other branches of social security, the Committee takes note of the legislative developments during the reference period. The report and its addendum refer to the following improvements in particular:

- as from 2012, social security coverage has been compulsory for self-employed workers;
- as from September 2014, family allowances have been granted starting from the first child, rather than from the second (Law 6/2014 of 24 April 2014);
- as from 2015, healthcare coverage has been extended to certain categories of economically inactive persons as a result of a legislative amendment which provides that persons aged between 18 and 65 years who have been resident in Andorra for 3 years, or who are aged over 35 years and have paid 36 monthly contributions to the National Social Security Fund (CASS), who are not in employment but are not receiving unemployment allowances, can continue to be registered with the social security system by paying reduced contributions to the general branch, thereby ensuring healthcare cover for themselves and their dependants.

The Committee also notes that, according to ISSA (International Social Security Association), the pay-as-you-go public pension scheme was reformed in 2014; in particular, the minimum number of contribution years was raised from 13 to 15, the level of the highest pensions was reduced and a non-contributory pension scheme was set up. The Committee requests that the next report provide any relevant information on this issue.

The Committee points out that Article 12§3 requires States Parties to improve their social security system. A situation of progress may consequently be in conformity with Article 12§3 even if the requirements of Articles 12§1 and 12§2 have not been met or if these provisions have not been accepted. The expansion of schemes, protection against new risks and increases in the level of benefits are all examples of improvement. A restrictive development in the social security system is not automatically in violation of Article 12§3. Assessment of the situation depends on the nature of the changes (field of application, conditions for granting allowances, amounts of allowance, etc.); the reasons given for the changes and the social and economic policy framework in which they arise; the extent of the changes introduced (categories and numbers of people concerned, levels of allowances before and after changes); the necessity of the reform; the existence of social assistance measures for those who find themselves in need as a result of the changes made (this information can be submitted under Article 13); and the results obtained by such changes. However, where the cumulative effect of the restrictions brings about a significant deterioration in the standard of living and the living conditions of some groups of population, the situation may amount to a violation of Article 12§3 of the Charter. Even if individual restrictive measures are in conformity with the Charter, their cumulative effect, together with the procedures adopted to put them into place, may constitute a violation of the right to social protection. Measures taken in order to consolidate public finances may be considered as a necessary means to ensure the maintenance and sustainability of the social security system. However, any modifications should not undermine the effective social protection of all members of society against social and economic risks and should not transform the social security system into a basic social assistance system. In any event, any changes to a social security system must

nonetheless ensure the maintenance of a basic compulsory social security system which is sufficiently extensive.

In the light of the above, the Committee asks for information in the next report on any relevant changes made during the reference period to the social security system, specifying the effect of such changes on the personal scope of the system and the minimum level of income replacement benefits. Such information must be provided in each report concerning Article 12§3 in order to assess compliance of the situation with the Charter.

Conclusion

The Committee concludes that the situation in Andorra is in conformity with Article 12§3 of the Charter.

Article 12 - Right to social security

Paragraph 4 - Social security of persons moving between States

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

Equality of treatment and retention of accrued benefits (Article 12§4)

Right to equal treatment

In its previous conclusions (Conclusions 2009 and 2013), the Committee asked whether and how equal treatment is guaranteed for non-nationals legally working or residing in Andorra, who are not covered by bilateral agreements. The report states that any person working in Andorra, irrespective of his/her nationality, must be registered with the social security system and, in this respect, enjoy the advantages of the system.

The Committee notes, however, that some benefits and allowances are subject, inter alia, to certain residence conditions which vary between three and ten years:

- The solidarity allowance for the elderly requires a length of residence in the Andorran territory of at least ten years, immediately preceding the minimum age for access to the ordinary pension required by the Social Security Act, or at age 60 if the person applying receives a social security widow's allowance;
- The solidarity allowance for disabled persons, benefits for dependent children and the residence allowance require a length of residence of at least seven years; and
- The technical and technological services require a length of residence period of at least three years.

The Committee recalls that, where non-contributory benefits are concerned, the section of the Appendix relating to Article 12§4 allows a residence requirement to be imposed on foreign national provided that the length of residence required is to the objective pursued (Conclusion XIII-4, Denmark).

All above benefits are non-contributory; Nonetheless, considering the basic nature of the solidarity allowances for elderly and disabled persons the Committee considers that the ten and seven years of residence requirements are excessive.

The Committee notes from CLEISS (French Liaison Centre for European and International Social Security) that this ten-year residence requirement does not apply to French nationals, in accordance with the bilateral agreement between Andorra and France. The Committee asks whether Spanish and Portuguese nationals are also exempt from this condition.

In respect of payment to family benefits, the Committee considered that the requirement for the child to reside in the territory of the paying State is in conformity with Article 12§4 (Statement of Interpretation on Article 12§4, XVIII-1 (2006)). However, since not all countries apply such a system, States Parties applying the 'child residence requirement' are under the obligation, in order to secure equal treatment within the meaning of Article 12§4, to enter, within a reasonable period of time, into bilateral or multilateral agreements with those States which apply a different entitlement principle (Conclusions XVIII-1 (2006), Cyprus).

In this regard, the Committee previously (Conclusions 2013) asked whether all children residing in Andorra, irrespective of their nationality, are entitled to family benefits, whether there is a "child residence requirement" and, if so, whether Andorra intend to conclude bilateral or multilateral agreements within a reasonable period of time with those States which apply a different principle for entitlement to such benefits (Albania, Armenia, Georgia and Turkey). The report indicates that all children residing in Andorra, irrespective of their nationality, shall benefit, through their parents, who are, in the Andorran social security system, the actual beneficiaries of family benefits. Therefore, the Committee understands that Andorra does require the claimant's children being resident in Andorra for the payment

of family benefits. It asks the next report to clarify whether this understanding is correct and, in the meantime, reserves its position on this point.

Right to retain accrued benefits

In its previous conclusions (Conclusions 2009 and 2013), the Committee asked if and how the retention of accrued rights is guaranteed for non-nationals legally residing or working in Andorra, who are not covered by bilateral agreements. The report states that the retention of benefits is only guaranteed for nationals of States with which there are bilateral agreements, namely Spain, France and Portugal. The Committee takes note of this information but nevertheless considers that it has not been established that the retention of accrued benefits is guaranteed to nationals of all other States Parties.

The Committee recalls that, under Article 12§4, States Parties shall conclude multilateral or bilateral agreements, or to take unilateral measures to ensure the right to retention of accrued benefits whatever the movements of the beneficiary. It requests that the next report provide information on the planned agreements, if any, and on what timescale.

Right to maintenance of accruing rights (Article 12§4b)

In the previous conclusions (Conclusions 2009 and 2013), the Committee asked if and how the right to accumulate insurance and employment periods is guaranteed for nationals of States Parties not covered by a bilateral agreement with Andorra. The report states that aggregation of insurance periods is only guaranteed for nationals of States with which bilateral agreements exist**,** namely Spain, France and Portugal. The Committee takes note of this information but nevertheless considers that it has not been established that the right to maintenance of accruing rights is guaranteed to nationals of all other States Parties.

The Committee recalls that there should be no disadvantage for a person who changes his/her country of employment, where he/she has not completed the period of employment or insurance necessary under the national legislation to be entitled to certain benefits. This requires, where necessary, the aggregation of the employment or insurance periods completed in another territory and, in case of long-term benefits, a pro-rata approach to the conferral of entitlement, the calculation and payment of benefits.

States Parties may choose between the following means in order to ensure the maintenance of accruing rights: multilateral conventions, bilateral agreements or, unilateral, legislative or administrative measures.

The Committee asks that the next report provide information on the agreements foreseen, if any, and on what timescale.

Conclusion

The Committee concludes that the situation in Andorra is not in conformity with Article 12§4 of the Charter on the grounds that:

- equal treatment with regard to social security rights is not guaranteed to nationals of all other States Parties;
- it has not been established that the retention of accrued benefits is guaranteed to nationals of all other States Parties;
- it has not been established that the right to maintenance of accruing rights is guaranteed to nationals of all other States Parties.

Article 13 - Right to social and medical assistance

Paragraph 1 - Adequate assistance for every person in need

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

Types of benefits and eligibility criteria

In its previous conclusion (Conclusions 2013) the Committee asked the next report to clarify the criteria applied to qualify for social assistance.

The Committee takes note of the Act 6/2014 of 24 April on Social and Health Services, which, according to the report, is a significant step forward in the organisation and consolidation of the Andorran social protection system, through a network of benefits that complement the benefits established by the social security regulations.

The Andorran social protection system for people in need is focused on provision of periodic benefits for vulnerable groups (the elderly, persons with disabilities, families and children), of occasional benefits to meet basic needs as well as on provision of assistance in emergency situations. For this approach, the Economic Threshold of Social Cohesion (LECS) occupies a significant place. This is an objective reference that is used to determine whether a person or a family may require assistance to prevent or respond to situations of need or social marginalisation, or to benefit from social services and programmes of social assistance provided for by the Act 6/2014.

In addition to referring to above three groups persons (persons with disabilities, the elderly and families), the Law 6/2014 addresses new needs, which are more complex. Among them are the occasional aids for people in the need, where economic benefits relate to fundamental rights. These are, among others, assistance to respond to situations of need, including access to housing.

The Act 6/2014 determines the eligibility as well as the amounts of benefits. It aims at ensuring complementarity of social security benefits and social assistance, with a view to guaranteeing pecuniary benefits of a sufficient level (to meet essential needs of individuals or families who, because of their disability, their advanced age or other circumstances, cannot work or because they have limited autonomy).

This complementarity is guaranteed by the compatibility system established by Act 6/2014. The Committee takes note of the *solidarity allowance* which is compatible with other allowances paid by the Government, as well as with the allowances paid by the Andorran Social Security Fund, or other entities to the extent that the total income of the person concerned, including the solidarity allowance itself, does not exceed the LECS. *Occasional aids* are compatible with other aids, even if they can be paid beyond the established maximum amount.

LECS is calculated according to the poverty rate which considers that persons in this situation are persons or families with income less than 60% of the average income per consumption unit in Andorra. The amount of LECS, (corresponding to the Eurostat at-risk-of poverty rate set at 60% of the median equivalised income) is very close to the minimum wage. It is for this reason that the new social assistance programmes approved on September 18, 2013 equalised LECS and minimum wage.The official minimum wage appears to be much closer to the minimum living wage, which is what a person or a family requires to meet basic human needs such as food, housing, clothing, education, health, recreation or transportation.

According to the report, as a result, the Act 6/2014 represented a major step forward in the structuring and organisation of a protection network which complements the social security benefits and establishes a set of rights to ensure dignified living conditions, through the consolidation of minimum income for people with disabilities and the elderly, equivalent to the LECS, which equals the minimum wage (€ 962.00 per month in 2015). The Committee

takes note of the solidarity benefits allocated in 2015, the total amounts allocated to persons with disabilities and the elderly, including the numbers of beneficiaries.

The Committee recalls that under Article 13 the system of assistance must be universal in the sense that benefits must be payable to 'any person' on the sole ground that he/she is in need. This does not mean that specific benefits cannot be provided for the most vulnerable population categories, as long as persons who do not fall into these categories (e.g. persons with disabilities, the elderly, children) but are still in need, are also entitled to appropriate assistance. Under Article 13 social assistance should be provided as a subjective right of any person without resources. There must be a precise legal threshold below which a person is considered in need and a common core of criteria underlying the granting of benefits. The text of Article 13§1 clearly establishes that this right to social assistance takes the form of an individual right of access to social assistance in circumstances where the basic condition of eligibility is satisfied, which occurs when no other means of reaching a minimum income level consistent with human dignity are available to that person. The Committee asks the next report to confirm that any person without resources is eligible for social assistance in the meaning of Article 13, on the basis of the Act 6/2014.

Level of benefits

To assess the situation during the reference period, the Committee takes into account the following information:

- Basic benefit: the Committee understands that LECS is used to determine the situation of need and represents the minimum guaranteed income. It also understands that it is used as a threshold in the means-test to determine eligibility to social assistance. The Committee further understands that the persons whose income is inferior to LECS receive the amount of social assistance that is necessary to make up the difference. The Committee asks the next report to confirm that this understanding is correct.
- Additional benefits: the Committee wishes to be informed of the monetary value of other benefits (e.g. housing and heating allowance, transport allowance) that a single person without resource, in receipt of the basic social assistance benefit may receive.
- Poverty threshold: the Committee notes from the report that since 2014, the reference value to establish the minimum living standard is LECS, which is equivalent to the minimum wage and which stood at € 962 in 2015. The Committee understands that LECS corresponds to 60% of the median equivalised income (the Eurostat at risk-of-poverty rate). The Committee will take into account, in its evaluation, 50% of the median equivalised income, which stood at 802€ in 2015.

The Committee considers that the the overall assistance that can be obtained exceeds the Eurostat poverty threshold. Pending receipt of the reply to its question concerning eligibility to social assistance and the amount of basic benefit, the Committee considers that the situation is in conformity with the Charter as regards the level of benefits.

Right of appeal and legal aid

The Committee asks the next report to provide updated information concerning the right of appeal and legal aid .

Personal scope

The Committee recalls that, under Article 13§1, States are under the obligation to provide adequate medical and social assistance to all persons in need, both their own nationals as well as nationals of States Parties lawfully resident within their territory, on an equal footing. In addition, with reference to its Statement of Interpretation of Articles 13§1 and 13§4

(Conclusions 2013) regarding the scope of Articles 13§1 and 13§4 in terms of persons covered, the Committee considers that persons in an irregular situation in the territory of the State concerned are also covered under Article 13§1, rather than under Article 13§4, which was previously its practice.

The Committee henceforth examines whether the States who have accepted Article 13§1 ensure the right to:

- adequate social and medical assistance for their own nationals and for nationals of other States Parties lawfully resident within their territory on an equal footing;
- emergency social and medical assistance to persons unlawfully present in their territory.

Nationals of States Parties lawfully resident in the territory

According to the Act 6/2014 social and medical services are provided to families who are at risk of exclusion or dependency. Article 5 of this Act provides that, in order to have access to medical and social services, the persons requesting it must demonstrate their legal and effective residence in Andorra at the time of submitting the application and during the enjoyment of these rights. The Committee further notes that in some cases, a minimum integration in the country is required, assessed through a specified period of residence .

In its previous conclusion the Committee noted that the length of residence requirement for access to basic benefits had been entirely abrogated. The Committee asks whether Law 6/2014 establishes any additional length of residence requirement.

Foreign nationals unlawfully present in the territory

In its previous conclusions (Conclusions 2013 and 2015) on Article 13§4 the Committee found that it had not been established that all foreign nationals in an irregular situation were entitled to emergency social and medical assistance.

As regards medical assistance, in its previous conclusion (Conclusions 2015) the Committee noted that that Section 8(c) of the General Law on Health as amended on 23 January 2009 provides for free emergency medical assistance to non-residents lacking medical coverage. In this regard, the Committee asked the next report to clarify whether this or other provisions provide free emergency medical assistance to non-resident foreign nationals in an irregular situation.

As regards emergency social assistance, the Committee recalls that persons in an irregular situation must have a legally recognised right to the satisfaction of basic human material need (food, clothing, shelter) in situations of emergency to cope with an urgent and serious state of need. It likewise is for the States to ensure that this right is made effective also in practice (European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, §187).

The Committee cannot accept the necessity of halting the provision of such basic emergency assistance as shelter, guaranteed under Article 13 as a subjective right, to individuals in a highly precarious situation. The Committee has considered that even within the framework of the current migration policy, less onerous means, namely to provide for the necessary emergency assistance while maintaining the other restrictions with regard to the position of migrants in an irregular situation, remain available to the Government with regard to the emergency treatment provided to those individuals, who have overstayed their legal entitlement to remain in the country (Complaint No. 90/2013, Conference of European Churches (CEC) v. the Netherlands, decision on the merits of 1 July 2014, §123).

In its previous conclusion (Conclusions 2015) the Committee noted that Act No. 6/2014 provides that emergency social assistance to foreigners in an irregular situation is provided for a duration that usually is of seven days, but that may be extended if necessary for

ensuring their safe return to their countries. In this respect, the Committee took noted that Act No. 6/2014 only provides occasional financial aid for handling urgent situations of subsistence for foreigners in an irregular situation (Section 5§4 of Act No. 6/2014). The Committee further took note that foreigners in an irregular situation are entitled to receive information and advice provided by primary care teams (*equips d'atenció primària*) (Section 28§1(d) of Act No. 6/2014), and asked for clarification on the meaning of this provision, and particularly on whether foreigners in an irregular situation are entitled to be diagnosed and treated by socio-sanitary primary care teams.

The Committee notes that the report does not provide any information on how these requirements are met in legislation and in practice. Therefore, the Committee reiterates its previous finding of non-conformity on the ground that it has not been established that foreign nationals unlawfully present in the territory are entitled to emergency social and medical assistance.

Conclusion

The Committee concludes that the situation in Andorra is not in conformity with Article 13§1 of the Charter on the ground that it has not been established that foreign nationals unlawfully present in the territory are entitled to emergency social and medical assistance.

Article 13 - Right to social and medical assistance

Paragraph 2 - Non-discrimination in the exercise of social and political rights

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

In its previous conclusion (Conclusions 2013) the Committee noted that the Constitution of Andorra guarantees equal rights to vote and to exercise public functions for all nationals. No restrictions apply on grounds of receipt of social or medical assistance.

The Committee notes that the Act 6/2014 of 24 April on Social and Socio-sanitary Services, which establishes the legal framework for access to benefits and programmes of assistance, also guarantees and ensures that citizens do not suffer any diminution of their political and social rights. This Act regulates the rights and obligations of the beneficiaries as well as the portfolio of social services and the criteria for coordination of actions and optimisation of resources.

The Committee asks the next report to provide updated information as regards whether the provisions enshrining the principle of equality and prohibiting discrimination in the exercise of political or social rights are interpreted in practice in such a way as to prevent discrimination on the basis of receipt of social or medical assistance.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Andorra is in conformity with Article 13§2 of the Charter.

Article 13 - Right to social and medical assistance

Paragraph 3 - Prevention, abolition or alleviation of need

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

Article 3 of the Act 6/2014 of 24 April on Social and Socio-sanitary Services provides for the setting up of social services, which aim to develop programmes of social and medical assistance, to address, in particular the individuals and families at risk or exclusion or dependency. Article 17 of the Act 6/2014 provides that the role of social services, is, among others, to inform, advise and guide families and groups about the available resources for social and medical assistance and other areas of social welfare, such as education, social security, employment and housing, and the rights and duties established by the social protection system.

The report states that the role of social services is also to detect situations of risk of social exclusion and carry out individual, family or community preventive actions and monitoring of the situations. These services participate and cooperate in the context of processes for the reintegration, inclusion and promotion of individuals, families and community groups. They are provided free of charge.

Conclusion

The Committee concludes that the situation in Andorra is in conformity with Article 13§3 of the Charter.

Article 13 - Right to social and medical assistance

Paragraph 4 - Specific emergency assistance for non-residents

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

The Committee refers to its conclusion under Article 13§1 (personal scope) and recalls that Article 13§4 from now on will cover emergency social and medical assistance for nationals of States Parties lawfully present (but not resident) in the territory.

The Committee recalls that States Parties are required to provide non-resident foreigners without resources emergency social and medical assistance (accommodation, food, emergency care and clothing, to cope with an urgent and serious state of need (without interpreting too narrowly the 'urgency' and 'seriousness' criteria). No condition of length of presence can be set on the right to emergency assistance (Complaint No 86/2012, European Federation of national organisations working with the Homeless (FEANSA) v. the Netherlands, decision on the merits of 2 July 2014, §171).

The Committee refers to its conclusion on Article 13§1 regarding unlawfully present foreign nationals and asks the next report to provide information regarding emergency social and medical assistance provided to lawfully present foreigners without resources.

Conclusion

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

Article 14 - Right to benefit from social welfare services

Paragraph 1 - Promotion or provision of social services

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

Organisation of the social services

The organisation of social services in Andorra is governed by Law No. 6/2014 of 24 April 2014 on social and medico-social services (*Llei 6/2014 de serveis socials i sociosanitaris*).

This law provides that social and medico-social services shall be provided in order to assist the population as a whole and in particular those who are in need of social welfare support or at risk of social exclusion and who do not have the personal or family means or resources to cope with the situation. The law lays down the rules governing holders of rights and duties and aims to organise and structure the system of social and medico-social services, establishes the framework for the participation of public and private stakeholders and the portfolio of specific social and medico-social services and specifies the criteria for co-ordinating action and optimising resources.

Effective and equal access

In its previous conclusion (Conclusions 2013), the Committee reiterated its request for a more detailed explanation on how decisions on granting social services are taken and what judicial remedies are available to persons against unfavourable decisions on requests for such services.

The report states that decisions are made according to certain predefined criteria and conditions for each type of benefit, programme or service applied for, in accordance with Law No. 6/2014 and the Decree approving the Regulation of 18 May 2016 on social and medico-social welfare benefits (*Decret d'aprovació del Reglament regulador de les prestacions econòmiques de serveis socials i sociosanitaris*), which came into force on 1 September 2016 (outside the reference period). One of the guiding principles of this law is the person-centered approach.

The report explains that national competence for social services lies with the Ministry of Social Services, Justice and the Interior with the participation of the *comuns.* The *comuns* are required to promote and facilitate access to the technical services within their purview, to the extent of the funds allocated, and to deliver these services either directly or through partner agencies. To this end, the *comuns* must help families and individuals who cannot afford the public tariffs charged for services within their competence. Under Article 35 of Law No. 6/2014, central government may delegate to the *comuns* the task of managing technical services relating to primary social care and domiciliary care. In order to establish inter-agency co-ordination and co-operation between central government and the *comuns* in certain areas of mutual interest relating to social services, in 2015 the Andorran government approved the Regulation on the National Commission for Social Well-being (CONBS) (*Reglament de regulació de la Comissió Nacional de Benestar Social*) set up under Article 36 of Law No.6/2014 which performs a number of functions.

As regards the judicial remedies available to persons wishing to appeal against unfavourable decisions on requests for social services, the report states that accordingly, under Article 124 of the Administration Code of 29 March 1989, as amended by Law No. 45/2014 of 18 December 2014, it is possible to lodge an appeal against an unfavourable decision (*recurs de reposició*) with the government. In addition, under Article 36 of the Decree Law of 15 July 2015 publishing the Law of 15 November 1989 on administrative and fiscal administration (*Decret legislatiu de publicació de la Llei de la Jurisdicció Administrativa i Fiscal*), a *recurs de reposició decision can be challenged by lodging an appeal with the Administrative Chamber of the Tribunal de Batlles*, within one month as from the day after the decision in question was notified. In accordance with the Decree of 17 December 2014 approving the

Regulation on the right to defence and to the assistance of a lawyer (*Decret d'aprovació del Reglament regulador del dret a la defensa i l'assistència tècnica lletrades*), individuals who have been declared insolvent by the competent *batlle* (judge) or court, according to the thresholds and scales stipulated in this Regulation, are entitled to a number of rights, including the right to be assisted and represented free of charge by a lawyer.

In its previous conclusion (Conclusions 2013), the Committee also asked for confirmation that nationals of other States Parties were guaranteed equal treatment as regards access to social services.

According to the report, Article 3 of Law No. 6/2014 establishes equality and fairness as basic principles governing access to and use of social and medico-social services (services, measures, programmes and protocols). Article 5 of Law No. 6/2014 which sets out the eligibility requirements for social and medico-social services, they are available to anyone who is legally, effectively or permanently resident in Andorra, irrespective of their nationality, except for minors, who are covered by the UN Convention on the Rights of the Child, and persons with disabilities, who may live abroad for the purpose of receiving treatment for their disability or illness.

In its previous conclusion (Conclusions 2013), the Committee also asked for the information on the charges paid by the beneficiaries of social services to be updated.

According to the report, primary social care services are guaranteed free of charge. Domiciliary care, which includes home help services, telephone assistance, fostering and child-minding services, is provided until the funds run out (*prestació de concurrència*), except for domiciliary care for highly dependent persons and telephone assistance, which are guaranteed, along with the foster family service for children and adolescents and the support service for women victims of gender-based violence and their children, which are guaranteed and free of charge. Day care services such as the early care service, the occupational assistance service and the day centre-based medico-social service are guaranteed and co-financed.

The report indicates the support services available: a) Guardianship service b) Full support service for victims of gender-based violence c) Personal care service d) Occupational integration support service e) Complementary health care f) Caregiver's support g) Emergency helpline h) Social volunteering i) Special transport service. The services listed in a), b) and g) are guaranteed and free of charge. The service mentioned in d) is guaranteed and co-financed, except for information about resources and individual counselling which are guaranteed and free of charge. The service mentioned in e) is available on the terms laid down in the social security regulations.

The report also lists the technological services available and explains that people who do not have sufficient resources to pay the public tariff charged for these services and who are not receiving any help from their families or close relatives who have an obligation to support them, can apply for financial assistance from the Public Administration, without prejudice to the Administration's right to seek reimbursement from the family or other relatives concerned. The report indicates the individual social cohesion economic threshold (LECS) which is equivalent to the interprofessional minimum wage, currently €975.87 per month.

Quality of services

In its previous conclusion (Conclusions 2013), the Committee had asked what conditions providers must meet to be able to offer their services.

According to the report, there is a Regulation on technical and technological assistance, which is currently the subject of a consultation with social and medico-social service bodies, and is expected to be approved in January 2017. This Regulation elaborates on three key instruments of Law No. 6/2014: authorisation, accreditation and registration. The Committee notes that the new Regulation on technical and technological assistance was adopted

outside the reference period and asks that the next report provides information on the implementation of such a Regulation.

The report points out that in order to monitor the quality of social services, the Law states that organisations receiving public funding for the provision of social and medico-social services must undergo a financial and management audit. Organisations in receipt of €25 000 or more per year are required to perform this audit every year, and those in receipt of smaller amounts every 4 years. Lastly, Law No. 6/2014 provides that central government, through the ministry competent for social affairs, is responsible for granting authorisations to open and/or modify social and medico-social service centres and facilities; it determines the facilities and technical and material requirements for the various centres, the operating conditions for the services and the number of staff and the minimum qualifications required (Article 33.2.c). In this respect, the Committee requests that the next report provides information about the impact on the quality of social services and on users of the implementation of the introduction of Law No. 6/2014.

In its previous conclusion (Conclusions 2013) the Committee had also asked for information in the next report on steps taken to ensure that social welfare services provided by the different agencies concerned were of a sufficient standard.

According to the report, Article 51 of Law No. 6/2014 tasks central government and the *comuns*, within the scope of their powers and in accordance with the co-operation agreements drawn up, with monitoring the quality of services provided by social and medico-social service centres and facilities. For example, they are required to conduct regular opinion polls to determine the level of user satisfaction. Article 52 of Law No. 6/2014 states that for the purpose of carrying out this monitoring, the ministry responsible for social affairs must set up a health and social care inspectorate, which acts either on its own initiative or at the request of a party. Article 53 of Law No. 6/2014 sets out the functions of the Health and Social Care Inspectorate: the inspectors are to assess, monitor and verify the correct application of the regulations, including notably as regards respect for users' rights and the standard of service; as well as the investigatory tasks which they are required to perform by the competent ministry, the inspectors take particular care to ensure compliance with the requirements for obtaining authorisation or accreditation. Article 46 of Law No. 6/2014 stipulates that every two years, the government must request an audit of the effectiveness and efficiency of social and medico-social services, to be carried out by firms with recognised expertise in this area following a public call for tenders.

In its previous conclusion (Conclusions 2013), the Committee had also requested that the next report indicate the qualifications required for social welfare personnel and demonstrate that there were enough such personnel to meet needs.

The report states that under Article 9 of Law No. 6/2014, senior managers of social and medico-social service centres and facilities must possess the qualifications and knowledge required by the relevant regulations. Article 10 of Law No. 6/2014 stipulates that all professionals working in social and medico-social services must have received formal training and hold a formal qualification. Social workers and specialised teachers working in the primary social care sector and those working in other services must hold a university degree certifying that they possess the knowledge and technical and operational skills needed to perform their duties. Other social and medico-social professionals may be recruited from health care, education, family welfare, occupational integration or other specialist fields relevant to the services to be provided and programmes to be implemented. They must hold a university degree and/or have received training such as to enable them to perform the duties assigned to their occupational category and, where appropriate, must be listed in the Register of Health Professions (*Registre de Professions Sanitàries*) or other registers prescribed by the relevant regulations.

Law No. 6/2014 stipulates a ratio of at least one social worker per 5 000 inhabitants and one specialised teacher per 8 500 inhabitants. Each parish has at least one social worker and

one specialised teacher, employed either full-time or part-time. 14 social xorkers and 2 specialised teachers are working for the LDepartment of Social Affairs of the Ministry of Social Affairs. In any case, the number of staff employed in primary social care is sufficient for the needs of the population and there is no waiting list given that the *comuns* also have specialised teachers, and that professionals in the Ministry of Social Affairs, Justice and the Interior now work in a co-ordinated fashion with their counterparts in the *comuns.*

Conclusion

The Committee concludes that the situation in Andorra is in conformity with Article 14§1 of the Charter.

Article 14 - Right to benefit from social welfare services

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

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

In its previous conclusion (Conclusions 2013), the Committee asked again what procedures were in place and what conditions were imposed in connection with non-profit organisations and other non-public providers wishing to offer services, and how their activities were monitored. It also asked for information on initiatives taken to encourage user participation in the creation and maintenance of social services.

The report states that Law No. 6/2014 stipulates that non-profit organisations must be encouraged and must receive certain types of preferential treatment. Consequently, the Government approved the regulation by the Commission on the Participation of Civic Bodies (*Reglament Regulador de la Comissió de la Participació de les Entitats Cíviques* (COPEC)). COPEC was established in November 2016 (outside the reference period), has met once and has been consulted on the regulation relating to technical and technological social and medico-social services, which includes a detailed appendix of all the services offered. In this connection, the Committee asks what impact the regulation has on the quality of services offered by non-profit organisations.

The report states that during this reference period and in accordance with the National Plan on social and medico-social services, each year there were calls for applications for subsidies granted to non-profit organisations legally established in Andorra carrying out an action or social programme. Since the entry into force of Law No. 6/2014, financial assistance continues to be allocated to non-profit organisations through co-operation agreements with the government, to enable these organisations to carry out actions and programmes and provide services in the social and medico-social field.

The report outlines the procedures and conditions that regulate private initiatives and the types of organisations that exist. Only organisations in conformity with the regulations in force, which have obtained authorisation and are registered with the national register of social and medico-social services, are allowed to establish and run centres and facilities providing technical social and medico-social services. Article 3.c of Law No. 6/2014 stipulates that the public authorities should promote citizen initiatives aimed at encouraging citizen involvement in identifying and meeting needs so that individuals and families may be completely independent. This is to be achieved through citizen involvement in drawing up programmes, assessing needs and monitoring social and medico-social services. It is for this reason that the law sets out active society, solidarity and participation as the guiding principles of the social and medico-social services.

The report provides statistics (the number of organisations and the amount) relating to the subsidies given by the Andorran Government, through the Ministry of Social Affairs, Justice and the Interior, to a number of non-profit organisations following annual calls for applications or in the context of co-operation agreements during the reference period.

According to the report, a number of instruments make it possible to monitor non-profit organisations action. Article 39 of Law No. 6/2014 specifies that the Government must carry out a financial audit of all non-profit organisations in receipt of a subsidy. In addition, the official document detailing the conditions that non-profit organisations must meet to be able to present their programmes and projects, states that follow-up visits will take place throughout the year to check that the projects are completed, and that the accounts and a report on the subsidised actions must be presented every year, regardless of the amount received. The report highlights that there is also an inspection department that assesses, monitors and verifies the correct application of the regulations.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Andorra is in conformity with Article 14§2 of the Charter.

Article 23 - Right of the elderly to social protection

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

Legislative framework

The Committee points out that the main aim of Article 23 of the Charter is to enable elderly persons to remain full members of society and, it consequently invites the States Parties to make sure that they have appropriate legislation to, firstly, combat age discrimination outside employment and to, secondly, provide for a procedure of assisted decision making.

With regard to age-based discrimination, the Committee asked in its previous conclusion (Conclusion 2013) if anti-discrimination legislation (or an equivalent legal framework) to protect elderly persons outside the field of employment exist, or whether Andorra plans to legislate in this area. The report states that there is no specific legislation on the subject. It further states that the principle of equal treatment is enshrined in more general terms in Andorran legislation, as with Law No. 6/2014 of 24 April 2014 on social and medico-social services and, in particular its Article 3.i. The Committee asks whether there exist a case-law on age discrimination outside employment which would protect elderly persons from such form of discrimination. Meanwhile, it reserves its position on this issue.

The report also states that Andorra is working on a bill on equal treatment and non-discrimination. The drafting process is intended to be participatory so it involves all social sector organisations, including those representing the elderly. The Committee asks whether age will be included as a possible ground of prohibited discrimination. It also asks to be informed of all developments concerning this project.

With regard to assisted decision making for elderly persons, the Committee previously asked whether there are safeguards to prevent the arbitrary deprivation of autonomous decision making by elderly persons. The report states that Law No. 15/2004 on Incapacity and Guardianship Bodies, as amended, establishes a series of guarantees (declarations of incapacity, guardianship) intended to compensate for the loss of legal capacity: In their judgments, courts must set out the extent and the limits of legal incapacity and appoint the members of the guardianship body. Law No. 15/2004, as amended, also includes restrictive regulations on involuntary placement. The Committee asks for further information in the next report on such placement. The report further states that under Law No. 6/2014 on Social and Medico-Social Services, the beneficiaries of such services, which includes elderly people, should be able to take part in decisions concerning them, be treated with dignity and respect and without discrimination, and be given advice and guidance to help them take decisions. Infringements of these rights are regarded as offences and subject to penalties.

Adequate resources

When assessing the adequacy of resources of elderly persons under Article 23, the Committee takes into account all social protection measures guaranteed to elderly persons and aimed at maintaining an income level allowing them to lead a decent life and participate actively in public, social and cultural life. In particular, the Committee examines pensions, contributory or non-contributory, and other complementary cash benefits available to elderly persons. These resources are then compared with median equivalised income. However, the Committee points out that its task is to assess not only the law, but also the compliance of practice with the obligations arising from the Charter. For this purpose, it also takes into consideration relevant indicators relating to at-risk-of-poverty rates for persons aged 65 and over.

In its previous conclusion (Conclusion 2013), the Committee asked what amount of pension is regarded as the minimum, thus triggering supplements. According to the report, Law No. 6/2014 guarantees elderly people fulfilling the relevant conditions a minimum income equal to the Social Cohesion Economic Threshold (LECS) due to the old-age social solidarity

allowance. In 2015, the amount guaranteed by this solidarity allowance came to € 962 per month.

According to the report, Andorra also offers a broad range of *ad hoc* or emergency forms of assistance to those who are entitled to them and specific technical and/or technological aids.

An elderly person who receives a social security pension paid by the Andorran Social Security Fund or a foreign fund is less than the LECS may, under certain conditions, be entitled to the solidarity allowance and have his or her income topped up to equal the LECS. The Committee asks the next report to specify what the conditions are**.**

The Committee also asked for information on the at-risk-of-poverty rate for persons aged 65 and over and about measures taken to address their situation. The report states that the threshold lies at the level of the LECS, which is equivalent to the minimum wage. The report also states that measures to improve the situation of elderly people and ensure that they receive social welfare benefits are set out in Law No. 6/2014.

Prevention of elder abuse

In its previous conclusion (Conclusion 2013), the Committee asked what was done to evaluate the extent of the problem, to raise awareness about the need to eradicate elder abuse and neglect, and if any legislative or other measures had been taken or were planned in this area. The Committee takes note of the information provided in the report but observes that the programmes to combat gender-based violence adopted by Andorra in accordance with Law No. 1/2015 are not addressed to elderly persons as such, meaning that an important part of them is not covered by the measures implementing those programmes. The Committee also notes that Law No. 9/2005 on the Criminal Code, as amended, has made age or, to be more precise, "vulnerability owing to old age" an aggravating circumstance in criminal cases. The Andorran Criminal Code also includes ill-treatment among offences against persons' health and physical integrity. Finally, the Committee notes that the Health and Social Care Inspectorate set up by Law No. 6/2014 may be called on to deal with cases of physical or psychological ill-treatment brought to its attention.

Services and facilities

The Committee points out that, although Article 23 makes reference only to information about services and facilities, it presupposes that such services and facilities exist.

With regard to the services and facilities themselves, the Committee firstly asked in its previous conclusion (Conclusion 2013) how many people benefit from the Red Cross Helpline and if the supply matches the demand. The report states that in 2015, the helpline dealt with 248 people. It confirms that the supply matches the demand as anybody who wants can access the service.

Secondly, the Committee asked if measures were planned to promote services for the elderly. The report states that the following services are available to the elderly: a first tier of social assistance, home help (home care provision, home helplines, host families), day care (day care centres, old people's centres), support services (guardianship services, personal services, support for family carers, adapted transport services), and a specialised service to assess situations of dependence. The report also states that Law No. 6/2014 has reformed the system of home help services by centralising its management, transferring it to government level, and extending these services to the entire country. A draft Regulation on technical and technological aids is being drawn up to clarify the functioning of the various services proposed. The Committee asks the next report to provide further information on the impact of those measures.

Thirdly, the Committee asked for details of the charges for services available to the elderly. According to the report, Law No. 6/2014 establishes a new system of financing based on the

joint responsibility of the relevant public authorities, the beneficiaries and where appropriate, their families when they have maintenance obligations. The cost of places in geriatric centres is broken down into three components: health, assistance with independence, and board and lodging. The two components are financed mainly by the government while users cover the cost of the third. However, vulnerable persons may receive financial aid.

The Committee asked in its fourth and last questions how the quality of services was monitored and whether there was a procedure for complaining about the standard of services. According to the report, Article 53 of Law No. 6/2014 requires private bodies to obtain a licence and entrusts the Health and Social Care Inspectorate with the task of monitoring the services provided. Beneficiaries of the social and medico-social services have the right to submit complaints or suggestions and to receive a written reply.

With regard to information on the existence of the services and facilities available, the Committee notes that Andorra set up a website, www.Govern.ad, which proposes an interface adapted to elderly people's needs. It is also working on the preparation of a good practice guide on accessibility.

Housing

In its previous conclusion (Conclusions 2013), the Committee asked, *inter alia*, whether there were any public financing mechanisms (loans, grants, etc.) available to elderly persons for home renovation/adjustment works. The report states that Andorra offers elderly people housing allowances (157 beneficiaries in 2015, receiving a total annual amount of €1 718), occasional assistance, together with technological benefits intended for housing conversion. It is possible, when carrying out conversion projects, to ask the Accessibility Commission for advice on the design of the changes to be made.

Health care

In its previous conclusion (Conclusions 2013), the Committee asked for information on specific healthcare services aimed at the elderly, mental health programmes, palliative care services and special training for individuals caring for elderly persons. According to the report, Andorra sets up an Interministerial Commission on Medico-Social Services, whose main task is to provide advice, help with medico-social activities and set up systems to co-ordinate social and medico-social services. The report also states that the "Notre Dame de Meritxell hospital" houses a mental health ward and palliative care service which provide home help in co-ordination with the social and medico-social services. The report further states that training courses are offered, one of which is intended for non-professional carers and another of which is intended for professionals wishing to improve the quality of the services provided in specialised establishments.

The Committee also asked to be informed of any measures aimed at improving the accessibility and quality of geriatric and long-term care, and the co-ordination of social and healthcare services for the elderly. According to the report, Law No. 6/2014 includes several measures intended to improve the accessibility of geriatric care and safeguard access to it. The Committee notes from the report that under the abovementioned Law, beneficiaries of social and medico-social services have the right for all data and information relating to them to be private and confidential.

Institutional care

In its previous conclusion (Conclusions 2013), the Committee asked whether capacity was sufficient to meet the needs of the elderly and whether the number of applications for institutional care was on the increase or not. The report states that Andorra has 4 medico-social centres (public and private), which provide 85 day care places and 387 permanent accommodation places in total. In order to better assess the situation, the Committee wishes

to know in the next report how many elderly people there are in Andorra and what proportion of the total population of Andorra this amounts to.

The Committee also asked whether an independent inspection system of public and private residential care services existed. The report states that the assessment and supervision of standards, particularly respect for users' rights and the quality of services, is entrusted to the Health and Social Care Inspectorate, which also follows up on inspections with the co-operation of the Health Department and other relevant ministries. The report also states that Law No. 6/2014 requires the government to conduct audits on the efficiency of social and medico-social services, which could lead to the preparation of a service improvement plan. The Committee asks to be informed of the results of this audit and the measures that might be adopted.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Andorra is in conformity with Article 23 of the Charter.

Article 30 - Right to be protected against poverty and social exclusion

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

Measuring poverty and social exclusion

The Committee recalls that under Article 30 States Parties must provide detailed information on how they measure poverty and social exclusion. The main indicator used by the Committee to measure poverty is the relative poverty rate. This corresponds to the percentage of people living under the poverty threshold, which is set at 60% of the equivalised median income.

The Committee notes the replies to its questions previously raised. According to the report, the at risk of poverty rate is used to calculate the Economic Precariousness Threshold (LEP) as well as the Social Cohesion Threshold (LECS). With respect to the Social Cohesion Threshold, the resulting threshold value after using the Eurostat methodology (60% of median equivalised income) is very close to the minimum wage. In 2015, the minimum wage stood at 962 €. According to the report the minimum wage coincides closely with the minimum subsistence level which will allow an individual or a family to cover all basic needs (food, accommodation, clothing, education, health, leisure activities and transport).

As for the next report, the Committee reiterates its request to receive an estimate of the at-risk-of-poverty rate calculated according to the Eurostat methodology (persons with an income of 60% of median equivalised income or less).

As for the request for obtaining poverty rates before and after social transfers, the Committee notes the efforts made in order to obtain these figures pursuant to Section 45 of Act No. 6/2014. More particularly an IT system is being developed which will allow the integration of data from all relevant ministries and authorities, notably those responsible for social affairs, helth, education, employment, housing as well as the Social Security Fund. The IT development is currently in its final phase and the report indicates that the data previously requested by the Committee will be available from the new system as from 2018. The Committee asks that they be included in the next report.

Finally, the Committee notes from a variety of sources that despite the absence of precise and reliable official statistical data, it is estimated that in view of the nature of the Andorran economy, its income structure and the size of its population, the incidence of poverty is very low. According to a 2003 study by the Andorran Ministry of Finances, the extreme poverty rate is less than 1% and with less than 8% being at risk of poverty, see http://www.estadistica.ad/serveiestudis/web/index.asp.

Approach to combating poverty and social exclusion

With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, Article 30 requires States Parties to adopt an overall and coordinated approach, which should consist of an analytical framework, a set of priorities and measures to prevent and remove obstacles to access fundamental social rights. The overall and coordinated approach must link and integrate policies in a consistent way, moving beyond a purely sectoral or target group approach and coordinating mechanisms, including at the level of delivery of assistance and services to those living in or at risk of poverty, should exist.

The Committee notes that report contains only very limited information on how the Government co-ordinates efforts and measures in different areas to arrive at the “overall and co-ordinated approach” required by Article 30 of the Charter and hence to cater for the multidimensional nature of poverty and social exclusion. The Committee therefore asks that information be provided in the next report not only on the measures implemented, but also on the existence of coordination mechanisms for these measures, including at delivery level (that is, how coordination is ensured in relation to the individual beneficiaries of assistance and services). It also asks that the next report contain detailed data demonstrating that the

budgetary resources allocated to combating poverty and social exclusion are sufficient in view of the scale of the problem at hand.

Finally, the Committee refers to its conclusions of non-conformity under other provisions of the Charter which are relevant to its assessment of compliance with Article 30 (see Conclusions 2013, Statement of interpretation on Article 30). It refers in particular to Article 12§1 and its conclusion that the minimum level of sickness benefits and occupational injury and occupational disease benefits is manifestly inadequate (Conclusions 2017), to Article 7§5 and its conclusion that the minimum wage of young workers is not fair and that the apprentices' allowances are not appropriate (Conclusions 2015) and to Article 31§2 and its conclusion that it has not been established that there is adequate legal protection for persons threatened with eviction and that the law prohibits eviction from emergency accomodation/shelters (Conclusions 2015).

Nevertheless, in view of the low level of poverty and while awaiting the information requested, notably the statistical information announced by the Government for 2018, the Committee reserves its position as to the conformity of the situation with Article 30.

Monitoring and evaluation

The Committee recalls that Article 30 of the Charter requires the existence of monitoring mechanisms for reviewing and adapting the efforts in all areas and sectors, at all levels, national, regional, local, to combat poverty and social exclusion; mechanisms which should involve all relevant actors, including civil society and persons directly affected by poverty and exclusion (see Conclusions 2003, France, Article 30).

The Committee notes that actions to combat poverty are assessed by an audit of effectiveness and efficiency as required by the law. The audit makes it possible to analyse the evolution of poverty taking into account other data such as the employment rate.

As for the participation of individuals and associations to take part in the monitoring and the assessment of measures to combat poverty and social exclusion, the Committee takes note that by a law adopted in 2014 such participation is guaranteed through the establishment of a Commission for the Participation of Civil Society Entities (COPEC) covering the social and medico-social field in Andorra thus ensuring transparency of the decisions taken. One of the tasks of this Commission is to prepare proposals for the improvement and adaption of social welfare legislation with a view to attaining the objectives laid down by such legislation

Conclusion

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

CONCLUSIONS RELATING TO CONCLUSIONS OF NON-CONFORMITY DUE TO A REPEATED LACK OF INFORMATION IN CONCLUSIONS 2015

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

Paragraph 1 - Assistance and information on migration

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the information provided by Andorra in response to the conclusion that it had not been established that adequate measures had been taken to combat misleading propaganda about emigration and immigration.

The Committee points out that in combating misleading propaganda, States Parties to the Charter must take legal and practical measures tackling racism and xenophobia aimed at the population as a whole.

According to the report, Andorra amended the Criminal Code, in particular its Article 338, in December 2014, and established as criminal offences, *inter alia* public incitement to violence, hatred or discrimination against an individual or a group of individuals, public insults or defamation and threats, as well as the public dissemination or distribution and the production or possession of racist images or material.

The report also refers to some draft legislation (a draft law on combating trafficking in human beings and protecting victims and a draft law extending the powers of the Ombudsman to issues concerning racism, intolerance and non-discrimination) which was expected to be shortly tabled in Parliament for adoption. The Committee asks the next report to provide updated information in this respect.

The report adds that specific training on racism and racial discrimination is provided for judges, lawyers and prosecutors and other legal professionals and also, where necessary, for other relevant personnel such as police officers and social workers. The Committee also notes from the fifth report of the European Commission against Racism and Intolerance (ECRI) adopted on 6 December 2016 that while 15 or so journalists attended a conference on the offences of incitement to hatred and discrimination, no other general efforts to raise awareness of human rights appear to have been organised for journalists. The Committee also notes that the recommendations by ECRI, which attaches great importance to the setting up of an independent body capable of investigating complaints against the media, have not been acted on. The Committee asks whether it is planned to set up such a body and, if so, when.

The Committee notes, again from ECRI's fifth report, that Andorra has implemented an advanced inclusive educational programme which attaches considerable importance to human rights and efforts to tackle stereotypes, hate speech and discrimination.

Lastly, the report indicates that Andorra provides a website with interfaces in various languages, information brochures and an individualised multilingual telephone information service for immigrants and emigrants. The Committee notes that, contrary to what is stated in the report, the website does not have any interfaces in languages other than Catalan.

In the light of the information available, the Committee considers that Andorra has taken adequate steps to combat misleading propaganda.

The Committee recalls that the situation concerning other aspects covered by Article 19§1 will be examined in the framework of the regular reporting cycle (Conclusions 2019) and asks that relevant and updated information be provided in that context.

Conclusion

The Committee concludes that the situation in Andorra is in conformity with Article 19§1 of the Charter.

Article 31 - Right to housing

Paragraph 2 - Reduction of homelessness

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the information provided by Andorra in response to the conclusion that it had not been established, firstly, that there was adequate legal protection for persons threatened with eviction and, secondly, the law prohibited eviction from emergency accommodation/shelters without the provision of alternative accommodation.

Forced Eviction

In its previous conclusion, the Committee asked whether the formal warning given to the tenants who failed to comply with an evicted order fixes a new period notice before forced eviction. It also asked for information on the prohibition to carry out evictions at night or during winter, access to legal remedies, access to legal aid or compensation in the event of illegal eviction. The report states that although there are no specific regulations to protect persons threatened with eviction, the judicial authorities do not in, practice, evict financially vulnerable persons without notifying the welfare services beforehand. It further indicates that the judicial authorities never order evictions when the person or household concerned has no alternative accommodation, and there must be confirmed alternative accommodation when the household includes children, persons with disabilities, elderly persons or other "vulnerable" persons. Over two months' notice is given for "forced evictions".

While taking note of this information, the Committee points out that Article 31§2, as interpreted by the Committee (see, in particular, the decision on the merits of collective complaint No. 15/2003 of 8 December 2004, European Roma Rights Centre (ERRC) v. Greece, §51; the decision on the merits of collective complaint No. 31/2005 of 18 October 2006, ERRC v. Bulgaria, §53), requires eviction to take place in accordance with rules which are sufficiently protective of the rights of the persons concerned. In other words, Article 31§2 implies that such rules exist. In this regard, even though States Parties have a certain margin of appreciation when implementing the provisions of Article 31§2, they must take the necessary legislative measures to prevent vulnerable persons threatened with eviction from being (arbitrarily) deprived of accommodation. Consequently, in the absence of specific regulations to protect persons threatened with eviction, the Committee considers the situation to be not in conformity with the Charter on this point.

Moreover, the Committee notes that the report does not provide any information on the prohibition on carrying out evictions at night or during winter, access to legal remedies access to legal aid or compensation in the event of illegal eviction. It reiterates its questions and, in the meantime, reserves its position on these points.

Right to shelter

The Committee refers to its Statement of Interpretation on Article 31§2 (Conclusions 2015) and recalls that eviction from shelters without the provision of alternative accommodation is prohibited.

In this regard, the report states that when the situation of homeless persons is brought to their attention, the welfare services assess the situation and adopt (two-stage) welfare action plans under which immediate temporary accommodation is found, followed later on by (long-term) transfers to "ordinary" accommodation.

The Committee understands that Andorran authorities in practice never evict anyone without first offering alternative accommodation. It requests the next report to clarify whether this understanding is correct and, in the meantime, reserves its position on this point.

The Committee recalls that the situation concerning other aspects covered by Article 31§2 will be examined in the framework of the regular reporting cycle (Conclusions 2019) and asks that relevant and updated information be provided in that context.

Conclusion

The Committee concludes that the situation in Andorra is not in conformity with Article 31§2 of the Charter on the ground that there is no adequate legal protection for persons threatened with eviction.

January 2018

European Social Charter

European Committee of Social Rights

Conclusions 2017

ARMENIA

This text may be subject to editorial revision.

The following chapter concerns Armenia, which ratified the Charter on 21 January 2004. The deadline for submitting the 11th report was 31 October 2016 and Armenia submitted it on 25 April 2017.

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 "Health, social security and social protection":

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

Armenia has accepted all provisions from the above-mentioned group except Articles 3§§2 to 4, Article 12§§2 and 4, Article 13§§3 and 4, Article 14§1, Article 23 and Article 30.

The reference period was 1 January 2012 to 31 December 2015.

The conclusions relating to Armenia concern 6 situations and are as follows:

– 3 conclusions of non-conformity: Articles 3§1, 12§1 and 13§1.

In respect of the 3 other situations related to Articles 12§3, 13§2 and 14§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 Armenia under the Charter. The Committee requests the authorities to remedy this situation by providing the information in the next report.

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

Article 3§1

On 1st August 2015, the Government, the Confederation of Trade Unions of Armenia and the Republican Union of Employers of Armenia concluded the Republican Collective Agreement with a view to ensure health and safety of employees during employment. It prescribes the obligations of the parties to social partnership, which includes the improvement of the role of trade unions, as well as the legislation for the purpose of increasing the economic interest and liability of employers, assistance in the drafting and introduction of the rules and norms for ensuring the safety and health of employees, promotion of development of the policy targeted at work safety within organisations, and the introduction of modern systems for monitoring of working conditions.

Article 8§4

Article 148 of the Labour Code has been amended (Law No. HO-96-N of 22 June 2015) and henceforth provides that pregnant women and employees taking care of a child under the age of three may be engaged in night work only with their consent after undergoing a preliminary medical examination and submitting a medical opinion to the employer.

Article 12§3

- The adoption, in 2011 and 2012 of a package of social security services, including compulsory medical insurance, for civil servants and employees working in state non-commercial organisations operating in the fields of education, culture and social security (Decisions No. 1923-N of 29 December 2011 and No. 1691-N of 27 December 2012);
- The extension, in 2015, of free medical care to include emergency heart surgery;
- The increase, as from 2014, of invalidity pensions of the first and second group of disability.

Article 13§1

The Committee notes from the report that in 2014 the Law ’On state benefits’ entered into force and the Law "On social assistance" entered into force on 1 January 2015.In the course of 2012-2015, changes were introduced to the system of family (or social) benefits, mainly concerning the improvement of the procedure and administration of assessment of the level of indigence of families. As a result, families with low income, especially those with a child also acquire the right to family (or social) benefit.

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In addition, the report contains also information requested by the Committee in Conclusions 2015 in respect of its conclusions of non-conformity due to a repeated lack of information:

- the right of children and young persons to protection - special protection against physical and moral dangers (Article 7§10)
- the right of employed women to protection of maternity - regulation of night work (Article 8§4)
- the right of children and young persons to social, legal and economic protection - assistance, education and training (Article 17§1)
- the right of migrant workers and their families to protection and assistance - departure, journey and reception (Article 19§2)
- the right of migrant workers and their families to protection and assistance - equality regarding employment, right to organise and accommodation (Article 19§4)
- the right of migrant workers and their families to protection and assistance - equality regarding taxes and contributions (Article 19§5)
- the right of migrant workers and their families to protection and assistance - equality regarding legal proceedings (Article 19§7)
- the right of migrant workers and their families to protection and assistance - guarantees concerning deportation (Article 19§8)
- the right of workers with family responsibilities to equal opportunity and treatment - participation in working life (Article 27§1)
- the right of workers with family responsibilities to equal opportunity and treatment - illegality of dismissal on the ground of family responsibilities (Article 27§3).

The Committee examined this information and adopted the following conclusions:

- 6 conclusions of conformity: Articles 8§4, 17§1, 19§4, 19§5; 19§7and 27§1;

- 1 conclusion of non-conformity: Article 19§2;

- 3 deferrals: Articles 7§10, 19§8 and 27§3.

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The next report will deal with the following provisions of the thematic group "Labour Rights":

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 21),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 22),
- the right to dignity at work (Article 26).
- the right of workers’ representatives to protection in the undertaking and facilities to be accorded to them (Article 28)

- the right to information and consultation in collective redundancy procedures (Article 29).

The report should also contain information requested by the Committee in Conclusions 2016 in respect of its conclusions of non-conformity due to a repeated lack of information:

- the right to work – policy of full employment (Article 1§1),
- the right to work – freely undertaken work (non-discrimination, prohibition of forced labour, other aspects) (Article 1§2 (5th ground)),
- the right to work – free placement services (Article 1§3),
- the right of persons with disabilities to independence, social integration and participation in the life of the community – employment of persons with disabilities (Article 15§2).
- the right of persons with disabilities to independence, social integration and participation in the life of the community – integration and participation of persons with disabilities in the life of the community(Article 15§3 (2nd ground)).

The deadline for submitting that report was 31 October 2017.

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Conclusions and reports are available at www.coe.int/socialcharter as well as in the HUDOC database.

CONCLUSIONS RELATING TO ARTICLES FROM THE THEMATIC GROUP

‘Health, social security and social protection”

Article 3 - Right to safe and healthy working conditions

Paragraph 1 - Health and safety and the working environment

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

General objective of the policy

In its previous conclusion (Conclusions 2015, in conformity with the decision adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on findings of non-conformity for repeated lack of information in Conclusions 2013), the Committee again considered that the situation was not in conformity with the Charter on the ground that it had not been established that there was an adequate occupational health and safety policy.

The report states that Article 82 of the Constitution (with amendments adopted on 6 December 2015, and entered into force on 22 December 2015) lays down that every worker shall, in accordance with law, have the right to healthy, safe and decent working conditions, to limitation of maximum working hours, to daily and weekly rest, as well as to annual paid leave.

The report indicates that, pursuant to the Statute of the Ministry of Health under Annex No. 1 approved by Decision of the Government No. 1300-N of 15 August 2002, the functions of the Ministry of Health include, among others, the development of a healthcare development policy, state target programmes, programmes targeted at the improvement of public health, the prevention and treatment of diseases, and the protection of health and safety at workplace.

The working group set up under Order of the Minister of Health No. 1710-A of 2 July 2015 has developed the "Basis Rules and Standards for the Protection of the Safety and Health of Workers", and the draft Government Decision approving these rules. According to the report, the draft of these rules was developed on the basis of the general study of international experience with respect to ensuring the safety and health of employees. These Rules include principles of risk prevention, assessment of working conditions at workplace based on the assessment of harmful and hazardous factors, procedures for training and instruction of employees, raising awareness of employees by applying safety signs, requirements for ensuring safety when working with hazardous chemical substances, inflammable fluids and at altitude. The report specifies that the adoption of rules will promote the establishment of a coherent field for the regulation of health protection and safety at work, and will provide an opportunity to integrate the basic rules on protection of health and safety of employees in one legal act.

According to the report, the National Strategy for the Protection of Human Rights has been approved by Executive Order of the President NK-159-N of 29 December 2012. It guarantees, among others, the rights to protection of human health, free choice of employment, adequate standard of living and social security in the field of economic, social and cultural rights. Pursuant to the point 32 of this Strategy, the guarantee of free choice of employment shall include ensuring that working conditions comply with the appropriate safety and sanitary requirements for employment.

The action plan stemming from the National Strategy for the Protection of Human Rights, approved by the Decision of the Government No. 303-N of 27 February 2014, envisages drafting of the Decision of "National Programme for Protection of Work Safety and Health of Employees at Workplace" and submission thereof to the Government until the first quarter of 2015. In its previous conclusion (Conclusions 2015), the Committee asked for information on the implementation of this programme. In response, the report indicates that the Strategy on Protection of Work Safety and Health of Employees at Workplace has been developed. It specifies the approaches and action stages, describes the necessary measures, and sets the time limits for implementation thereof. The protocol decision of the Government has also

been drafted. It provides for the approval of the Strategy on Protection of Work Safety and Health of Employees at Workplace and the Action Plan for Protection of Work Safety and Health of Employee at Workplace for the period 2016-2018. Since the Action Plan was introduced outside the reference period, the Committee will therefore examine it in its next report. The Committee asks the next report to provide information on the activities implemented and results obtained by the National Strategy.

The Committee points out that new technology, organisational constraints and psychological demands favour the development of psychosocial factors of risk, leading to work-related stress, aggression, violence and harassment. It would also point out that, with regard to Article 3§1 of the Charter, it takes account of stress, aggression, violence and harassment at work when examining whether policies are regularly evaluated or reviewed in the light of emerging risks. The States parties have a duty to carry out activities in terms of research, knowledge and communication relating to psychosocial risks (Statement of Interpretation on Article 3§1 of the Charter, Conclusions 2013). The report does not provide any information on this point. The Committee accordingly reiterates its request.

The Committee underlines that, in accordance with paragraph 1 of Article 3 of the Revised Charter, the main objective policy must be to foster and preserve a culture of prevention in respect of occupational health and safety. Occupational risk prevention must be incorporated into the public authorities' activities at all levels and form part of other public policies (on employment, persons with disabilities, equal opportunities, etc.). The policy and strategies adopted must be regularly assessed and reviewed, particularly in the light of changing risks. It concludes that there is no clearly defined occupational health and safety policy. It asks for a description in the next report of any changes to the legislative and regulatory framework that took place during the reference period. It repeats its request for information on whether policies and strategies are periodically reviewed and, if necessary, adapted in the light of changing risks.

Organisation of occupational risk prevention

In its previous conclusion (Conclusions 2013), the Committee noted that, although the report described some measures intended to organise the prevention of occupational hazards, it did not provide any information on the way in which these measures were implemented in practice, either by the authorities or by companies. The report did not state whether the ILO Guidelines ILO-OSH 2001 were being applied.

The Committee refers to its previous conclusion (Conclusions 2015) for the description of the reorganisation of the State Health Inspectorate, and its functions. The report indicates that the objectives of the new Inspectorate is to ensure state control and supervision over the enforcement of legal acts containing occupational health and safety norms prescribed by the Labour Code and other legal acts.

The Committee notes that the information provided does not suffice to establish that occupational risk prevention is organised at company level, work-related risks are assessed, and preventive measures geared to the nature of risks are adopted. It asks that the next report provide more detailed information on how public authorities and employers put occupational risk prevention into practice. It further asks for information on the measures taken by the Labour Inspectorate to develop an occupational health and safety culture among employers and employees and share its experience in implementing instructions, prevention measures and consultations. The Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Armenia is in conformity with Article 3§1 of the Charter in this respect.

Improvement of occupational safety and health

In its previous conclusions (Conclusions 2013 and 2009), the Committee asked for the updated information for the reference period, fleshed out with details of activities carried out

in practice (sectoral risk analysis; framing of rules; adoption of recommendations; dissemination of publications; creation of training modules) and backed up by specific examples. It asked (Conclusions 2013 and 2009) for more detailed information on national policy to improve the health and safety of workers through research on the subject, training of qualified professionals, design of training courses and certification of procedures.

The report does not provide any information on the involvement of public authorities in research relating to occupational health and safety, training of qualified professionals, definition of training programmes or certification of processes. The Committee reiterates its requests and considers that if the requested information does not provided in the next report, there will be nothing to establish that the situation in Armenia is in conformity with Article 3§1 of the Charter in this respect.

Consultation with employers' and workers' organisations

In its previous conclusion (Conclusions 2013), the Committee asked for information on how the provisions of the Labour Code, notably Articles 35 and 253, were applied in practice. It also asked whether safety and health at work formed part of the subjects covered by the National Collective Agreement (2009); whether prior consultation of the social partners on the Document on the "Basic Rules and Standards for the Protection of the Safety and Health of Workers" included workers' organisations; and how consultation with employers' and workers' organisations on subjects relating to occupational health and safety took place at company level.

In reply, the report indicates that the specialists of the Ministry of Health, including the State Health Inspectorate, the Ministry of Labour and Social Affairs, the National Institute of Labour and Social Research (state non-commercial organisation), the Confederation of Trade Union and the Republican Union of Employers of Armenia were included in the working group which drafted the the "Basic Rules and Standards for the Protection of the Safety and Health of Workers". The draft was submitted to the interested government agencies and organisations for consideration.

In addition, the report indicates that on 1st August 2015, the Government, the Confederation of Trade Unions of Armenia and the Republican Union of Employers of Armenia concluded the Republican Collective Agreement with a view to ensure health and safety of employees during employment. It prescribes the obligations of the parties to social partnership, which includes the improvement of the role of trade unions, as well as the legislation for the purpose of increasing the economic interest and liability of employers, assistance in the drafting and introduction of the rules and norms for ensuring the safety and health of employees, promotion of development of the policy targeted at work safety within organisations, and the introduction of modern systems for monitoring of working conditions.

Since the report only partially answers its questions, the Committee reiterates all the specific questions concerning consultation with employers' and workers' organisations. The Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Armenia is in conformity with Article 3§1 of the Charter.

Conclusion

The Committee concludes that the situation in Armenia is not in conformity with Article 3§1 of the Charter on the ground that there is no clearly defined policy on occupational health and safety.

Article 12 - Right to social security

Paragraph 1 - Existence of a social security system

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

In the case of **maternity benefits**, the Committee refers to its conclusion on Article 8§1 (Conclusions 2015).

Risks covered, financing of benefits and personal coverage

The Committee refers to its previous conclusions for a description of the social security system in Armenia. It notes that it rests on collective funding: it is funded by contributions (employers, employees) and by the State budget and that it covers medical care, sickness, unemployment, old age, maternity, invalidity and survivors. It asks whether employment injuries and occupational diseases are also covered and asks the next report to provide all relevant information concerning the categories of persons insured in this respect and their number, out of the total number of active population. The Committee previously noted (Conclusions 2013) that the social security system did not cover family benefits in the meaning of Articles 12 and 16 of the Charter. It refers to its conclusion under Article 13§1 as regards the social assistance benefits available to indigent families, pursuant to the Law on state benefits.

According to official statistics (National Statistical Service of the Republic of Armenia), Armenia's population in 2015 was estimated to be 2 998 600 in total, and the economically active population was estimated to be 1 316 400 (including 1 072 700 employed and 243 700 unemployed), out of a total labour force of 2 106 700.

The Committee previously noted (Conclusions 2015) that primary **healthcare** was provided free of charge to all residents (universal healthcare system). It considered however that the personal coverage of medical care was insufficient, insofar as free access to secondary and tertiary medical care was limited to certain vulnerable groups (children under 7 years of age, family benefits' recipients, disabled people) and people whose level of income was below a very low level, thus excluding a large proportion of the population. In response to this finding, the authorities clarify in the report (see also the Governmental Committee report concerning Conclusions 2013) that other categories of people are fully covered, such as children under 18 years old, under certain conditions (for example those with chronic diseases or without parental care); war veterans, military personnel and their families, including families of military who died in service; women during pregnancy and maternity leave; victims of human trafficking. Free treatment or upon payment of a reduced contribution is applicable in respect of hemodialysis services, treatments for diabetes, tuberculosis, epilepsy, mental diseases, infectious and sexually transmitted diseases, cancer treatments, cardiac treatment, including free of charge emergency heart surgery. Specialised dental care services are also free of charge for people aged 65 and over. As from 2012, a compulsory insurance for secondary and tertiary care applies to civil servants working in the governmental bodies, as well as in governmental organisations in the fields of education, culture, science, and social protection. While taking note of the explanations provided and the progressive extension of the coverage (see also Conclusions 2017, Article 12§3), the Committee notes that the report does not provide information on the proportion of the total population entitled to secondary and tertiary medical care free of charge or at a reduced cost; it accordingly asks for such data to be provided in the next report and considers in the meantime that it has not been established that the social security system covers a significant percentage of the population for the health insurance, as required by the Social Charter.

As regards **sickness** benefits, the Committee notes from Missceo that a contributory system covers employees and self-employed persons. In response to the Committee's question, the report indicates however that no statistical data are available concerning the coverage. The Committee reiterates its request for data concerning the number of people insured, out of the total active population.

The Committee refers to its previous conclusions as regards the description of the pensions' system, and in particular the different types of **old age**, **disability** and **survivors'** pensions. It notes from Missceo that a contributory and a non-contributory system are available in respect of disability and survivors' pension, with the contributory system covering employees, self-employed persons and owners of agricultural land. A multi-pillar old age pension system (state pension, contributory pension, voluntary contributions pension) applies to all residents. In particular, the report indicates that the voluntary pension component has been in effect since 2011. According to official statistics, in 2015 the number of beneficiaries was 305 600 for the old age labour pension, 2 800 for the privileged conditions (early retirement) labour pension, 1 100 for the long-term service (in civil aviation) labour pension, 128 300 for the disability pension and 10 800 for the survivors' pension. The Committee asks the next report to clarify whether the entire active population is insured (under the contributory or non contributory system) in respect of old age, disability and survivors' risks.

The report indicates that the **unemployment** benefits system was reformed, following the entry into force, on 1 January 2014, of a new Law on employment. It does not provide however the information requested on the percentage of insured persons out of the total number of active population. The Committee furthermore notes that, according to Missceo and ISSA, the unemployment benefits was discontinued in 2015. It asks the next report to clarify this point and to provide details on the system introduced by the new legislation (see also below).

Adequacy of the benefits

The Committee recalls that under Article 12§1, the level of income-replacement benefits should be such as to stand in reasonable proportion to the previous income and should not fall below the poverty threshold defined as 50% of the median equivalised income, as calculated on the basis of the Eurostat at-risk-of-poverty threshold value. In the absence of the Eurostat median equivalised income indicator, the Committee notes from official statistics that, in 2015, the equivalised average income was AMD 61 319 (€116 at the rate of 31/12/2015) per month, and 50% of it represented AMD 30 660 (€58), while 40% of it was AMD 24 528 (€46). The Committee will refer to these thresholds in the assessment of the adequacy of benefits. It notes nevertheless that other national indicators of poverty are also applied in Armenia: the upper poverty line, which was set at AMD 41 698 (€79 at the rate of 31/12/2015) per month, the relative poverty line, which was set at AMD 36 791 (€70), the lower poverty line, which was set at AMD 34 234 (€65) per month and the extreme (food) poverty line which was set at AMD 24 109 (€46) per month. The Committee furthermore notes that in 2015, the minimum wage was set at AMD 55 000 (€104).

Sickness benefits are paid from the second day of sickness for a maximum of three months, which can be extended to six months. An employee taking care of a sick family member is also entitled to sickness benefits (for a maximum of seven days if nursing an adult, 24-28 days if nursing a child and full duration in certain other cases). Self-employed persons are entitled to sickness benefits only for the period of treatment at an in-patient care institution, for a maximum of 60 calendar days in one calendar year.The amount paid corresponds to 80% of the average monthly salary of the employee (but not more than ten times the minimum wage) or the income of the self-employed (but not more than five times the minimum wage). Based on this information, the Committee considers that the level of this benefit is adequate, insofar as its minimum amount, calculated as 80% of the minimum wage – i.e. AMD 44 000 (€83) – is above the poverty level.

As the report does not provide information concerning the social security system in respect of **employment injuries/occupational diseases**, the Committee asks the next report to provide all relevant information on this issue, if this branch is covered by the Armenian social security system (information is needed in particular as regards the conditions for entitlement, the minimum amount of benefits and length of payment).

Inits previous conclusion (Conclusions 2013), the Committee held that the minimum level of **old age** benefit was inadequate. According to Missceo, contributory old age pensions are calculated on the basis of the length of service, the amount of basic pension and a personal coefficient. According to official statistics, the average monthly amount of pension was AMD 40 441 (€76). The Committee asks the next report to provide an estimation of the level of old age labour pension for an employee having worked at minimum wage level, with the minimum contributory period required of 25 years. It reserves in the meantime its position on this point. All residents who do not qualify for a contributory pension are entitled, as from the age of 65, to a non-contributory social pension (see Conclusion 2017 on Article 13§1).

According to the report, the amounts granted in respect of the non-contributory social **invalidity** pension are respectively AMD 21 500 (€41) for a person with first degree disability or a child, AMD 19 000 (€36) for a person with second degree disability and AMD 16 000 (€30) for a person with third degree disability. The Committee notes that the level of these benefits fall largely below the poverty level, it accordingly considers that it is inadequate.

The report does not provide the information requested by the Committee concerning the **unemployment** benefit system, but indicates that an important reform was enacted in 2014, with a view to promote activation measures. According to other sources (Missceo, ISSA) the unemployment benefits were discontinued in 2015 and replaced by employment-promotion measures, including cash assistance to the most disadvantaged categories of jobseekers. The Committee asks the next report to provide comprehensive and detailed information on this legislation and its impact as regards the conditions for entitlement to unemployment benefits, the level of the benefits granted, the length of the benefits and the conditions under which the payment of the benefits can be suspended or withdrawn, in particular as regards the unemployed person's possibility to refuse a job offer not matching his/her previous skills. In the meantime, the Committee considers that it has not been established that the level of unemployment benefits is adequate.

Conclusion

The Committee concludes that the situation in Armenia is not in conformity with Article 12§1 of the Charter on the grounds that:

- it has not been established that the social security system ensures an adequate health care coverage;
- the level of social invalidity pension is inadequate;
- it has not been established that the level of unemployment benefits is adequate.

Article 12 - Right to social security

Paragraph 3 - Development of the social security system

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

It refers to its previous conclusions for a description of the national social security system and in particular the pension system. As regards changes concerning maternity benefits, the Committee refers to its conclusions on Article 8§1. As regards other branches of social security, the Committee takes note of the legislative developments during the reference period. In particular, the report mentions the following improvements:

- the adoption, in 2011 and 2012 of a package of social security services, including compulsory medical insurance, for civil servants and employees working in state non-commercial organisations operating in the fields of education, culture and social security (Decisions No. 1923-N of 29 December 2011 and No. 1691-N of 27 December 2012);
- the extension, in 2015, of free medical care to include emergency heart surgery;
- the increase, as from 2014, of invalidity pensions of the first and second group of disability.

The Committee notes however that the unemployment benefits scheme has been substantially reconfigured, as from 2015, as a result of a reform of the employment policy, following the adoption of a new Law on Employment, which entered into force on 1 January 2014. According to the report, the new policy provides for several new programmes aimed at promoting employment by supporting in particular the employment of persons who are not competitive in the labour market. Under the new legislation, a financial assistance can be provided to these persons, as well as support for making use of the services of non-state employment agencies, for starting small entrepreneurial activities, or a compensation for employers recruiting such persons or adapting their workplace for them. The report does not provide however any information on the criteria and conditions of entitlement to the financial assistance and its amount. It furthermore does not explain what has been the impact of the reform on the unemployed people who are no longer entitled to unemployment benefits. According to the report, the status of unemployed is now an important factor in the assessment of the level of indigence of the family and the granting of social assistance (family) benefits. The Committee recalls in this connection that, in order to comply with the Charter, any modifications should not undermine the effective social protection of all members of society against social and economic risks and should not transform the social security system into a basic social assistance system. Therefore any changes to a social security system must ensure the maintenance of a basic compulsory social security system which is sufficiently extensive.

The Committee recalls that a restrictive evolution in the social security system is not automatically in violation of Article 12§3. The assessment of the situation depends on the nature of the changes (field of application, conditions for granting allowances, amounts of allowance, etc.); the reasons given for the changes and the framework of social and economic policy in which they arise; the extent of the changes introduced (categories and numbers of people concerned, levels of allowances before and after alteration); the necessity of the reform; the existence of measures of social assistance for those who find themselves in a situation of need as a result of the changes made (this information can be submitted under Article 13); the results obtained by such changes. In the light thereof, the Committee asks the next report to provide more detailed information on any change to the social security system, and in particular on the reform of employment policy, in the light of the criteria mentioned above and specifying the effect of the changes on the personal scope of the system and the minimum level of income replacement benefits. It reserves in the meantime its position on this point.

Conclusion

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

Article 13 - Right to social and medical assistance

Paragraph 1 - Adequate assistance for every person in need

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

Types of benefits and eligibility criteria

The Committee notes from the report that in 2014 the Law 'On state benefits' entered into force and the Law "On social assistance" entered into force on 1 January 2015.

The right to family (or social) benefit is determined on the basis on the indirect method of assessment of the level of indigence of the family. According to the Law "On state benefits", the family whose poverty score is higher than the marginal poverty score, shall be granted the right to family (or social) benefit. The family poverty score is calculated in accordance with the procedure prescribed by the Government, having regard to the proxy variables characterising poverty, i.e. the social group of each member of the family (disabled, pensioner, child, unemployed, adult capable of working, etc.), the number of family members incapable of work, conditions at home, average monthly income, etc.

Since 2008, the marginal poverty score for recognition of the right to family (or social) benefit has been reduced from 33.00 to 30.00 and it has remained unchanged until 2015. Families above the marginal poverty score acquire the right to family (or social) benefit, and families under the marginal poverty score may be included in the three-month emergency assistance list. The amount of the three-month emergency assistance is equal to the base amount of the family (or social) benefit. The Committee notes from MISSCEO that since 2014 the basic amount of assistance stood at AMD 17,000 (€32) per month.

According to the report in the course of 2012-2015, changes were introduced to the system of family (or social) benefits, mainly concerning the improvement of the procedure and administration of assessment of the level of indigence of families. As a result, families with low income, especially those with a child also acquire the right to family (or social) benefit. The Committee notes that the number of families having actually received benefits has gone up from 95,161 in 2012 to 103,745 in 2015.

As regards elderly persons, in its previous conclusion (Conclusions 2015) the Committee found that the social assistance provided to elderly persons without resources was not adequate. It asked for clarification on whether old age benefits for elderly people who do not fulfil the required insurance period are supplemented by other social benefits, including social benefits for families and housing benefits. It notes from the report that pensioners living alone and receiving a pension are granted a benefit of up to AMD 40 500 (in 2015), which means that their total income constitutes a pension in the amount of AMD 40 500, plus a benefit in the amount of AMD 16 000. Unemployed pensioners living alone (or having no guardians as prescribed by law) and receiving a pension are granted a benefit of up to AMD 109 000 (in 2015), which means their total income constitutes a pension in the amount of AMD 109 000, plus a benefit in the amount of AMD 16 000. The Committee understands that a pensioner living alone, who is still employed may receive the pension allowance of AMD 40,500, plus AMD 16,000 in benefit, while an unemployed pensioner living alone may receive 109,000 in pension allowance plus 16,000 in benefit. The Committee asks if this understanding is correct. The Committee also asks the next report to clarify the total amount of pension benefit and social assistance that a single elderly person without resources may receive. In the meantime, the Committee reserves its position as regards elderly persons.

The report further states that family benefits are designated for families with a family member under the age of 18, and social benefits are designated for families with no family member under the age of 18, provided that the grounds prescribed by the same law and the relevant decisions of the Government are satisfied. In this regard, the Committee recalls that under Article 13§1 of the Charter it examines the situation of a single person without resources. Therefore, it does not take into account the supplements paid to families for one

or several children. It asks the next report to provide more precise information regarding the 'family benefit' and/or 'social benefit' that would be paid to a single person meeting the eligibility criteria on the basis of the poverty score.

As regards medical assistance, it is previous conclusion the noted that free medical services were provided for households included in the family benefit system who have been attributed a poverty score of 36 or higher. It noted however from the WHO survey that in 2009 25% of the poorest people could not access the medical services they needed and asked the next report to comment on this observation.

The Committee notes from the report that the list of socially insecure and separate (special) groups of the population having the right to receive medical aid and services free of charge or on preferential terms guaranteed by the state has been approved by Annex 1 to Decision of the Government No 318-N of 4 March 2004. During the reference period, amendments were made to the list and the benefit recipients included in the system of family (or social) benefit and having the poverty score of 30.00 and more have also been included (previously 38.00). However, the Committee notes from WHO that private financing constitutes about half of total health expenditures in Armenia and most of that comes directly out of the consumer's pocket. In the current economic downturn, fewer and fewer people can afford it.

In this regard, the Committee also refers to its conclusion under Article 12§1 of the Charter where it the Committee notes that the report does not provide information on the proportion of the total population entitled to secondary and tertiary medical care free of charge or at a reduced cost. The Committee asks for more detailed information concerning the nature and extent of health services that are accessible and affordable for persons without resources. It holds that if this information is not provided in the next report, there will be nothing to establish that the situation is conformity with the Charter.

Level of benefits

- Basic benefit: according to MISSCEO and the report the base amount of benefit stood at AMD 17,000 (€32) in 2015. As regards the elderly persons, the Committee notes that they receive AMD 56,500 or AMD 125,000.
- Additional benefits: the Committee notes from MISSCEO that there is no allowance for housing or heating. The Committee takes note of the supplements paid to families for emergencies, as well as for each family member under 18 years of age.
- Poverty threshold (defined as 50% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value): in the absence of the Eurostat median equivalised income indicator, the Committee notes from official statistics that, in 2015, the equivalised average income was AMD 61 319 (€116 at the rate of 31/12/2015) per month, and 50% of it represented AMD 30 660 (€58). The Committee will refer to these thresholds in the assessment of the adequacy of benefits. It notes nevertheless that other national indicators of poverty are also applied in Armenia: the upper poverty line, which was set at AMD 41 698 (€79 at the rate of 31/12/2015) per month, the relative poverty line, which was set at AMD 36 791 (€70), the lower poverty line, which was set at AMD 34 234 (€65) per month and the extreme (food) poverty line which was set at AMD 24 109 (€46) per month.

The Committee considers that the amount of basic benefit at AMD 17,000 falls below the poverty threshold and, therefore, is not adequate.

Right of appeal and legal aid

In its previous conclusion the Committee asked the next report to confirm that legal aid and advice is available for persons without resources in their appeal procedures. The Committee

reiterates its question and holds that if this information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter.

Personal scope

The Committee recalls that, under Article 13§1, States are under the obligation to provide adequate medical and social assistance to all persons in need, both their own nationals as well as nationals of States Parties lawfully resident within their territory, on an equal footing. In addition, with reference to its Statement of Interpretation of Articles 13§1 and 13§4 (Conclusions 2013) regarding the scope of Articles 13§1 and 13§4 in terms of persons covered, the Committee considers that persons in an irregular situation in the territory of the State concerned are also covered under Article 13§1, rather than under Article 13§4, which was previously its practice.

The Committee will henceforth examine whether the States who have accepted Article 13§1 ensure the right to:

- adequate social and medical assistance for their own nationals and for nationals of other States Parties lawfully resident within their territory on an equal footing;
- emergency social and medical assistance to persons unlawfully present in their territory.

Nationals of States Parties lawfully resident in the territory

In its previous conclusion the Committee asked what criteria applied to nationals of States Parties lawfully resident in Armenia in order to benefit from social assistance on an equal footing with nationals.

It notes from the report that pursuant to Article 18 of the Law "On social assistance", any person residing in the Republic of Armenia, i.e. foreign nationals with a resident status, stateless persons, as well as persons holding a refugee status in the Republic of Armenia, in case of presence of the grounds prescribed by law shall have the right to social assistance. They enjoy the same rights as the citizens where they meet the requirements prescribed by the Law "On social assistance". The Committee asks whether nationals of States Parties lawfully resident in Armenia are subject to length of residence requirement to be eligible for social assistance.

Foreign nationals unlawfully present in the territory

The Committee recalls that persons in an irregular situation must have a legally recognised right to the satisfaction of basic human material need (food, clothing, shelter) in situations of emergency to cope with an urgent and serious state of need (including medical condition). It likewise is for the States to ensure that this right is made effective also in practice (European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, §187). The Committee asks the next report to confirm that the legislation and practice comply with these requirements.

Conclusion

The Committee concludes that the situation in Armenia is not in conformity with Article 13§1 of the Charter on the ground that the level of social assistance paid to a single person without resources is not adequate.

Article 13 - Right to social and medical assistance

Paragraph 2 - Non-discrimination in the exercise of social and political rights

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

In its previous conclusion (Conclusions 2015) the Committee noted that under the Law on social assistance, it did not appear that beneficiaries of social assistance are discriminated in their exercise of social and political rights. It asked next report to confirm that this is the case.

The Committee notes that the report does not provide any information in this respect. The Committee asks whether the provisions enshrining the principle of equality and prohibiting discrimination in the exercise of political or social rights are interpreted in practice in such a way as to prevent discrimination on the basis of receipt of social or medical assistance. In the meantime the Committee reserves its position on this issue.

Conclusion

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

Article 14 - Right to benefit from social welfare services

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

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

In its previous conclusion (Conclusions 2013), the Committee asked if and how the State helps voluntary organisations working in the social services field and, in particular, whether they are entitled to financial assistance or tax benefits.

The report indicates that Armenia is developing an integrated social services system with the involvement of different actors providing social services (including non governmental organisations), with the aim of improving the provision of services delivered to the beneficiaries. In this regard, was adopted on 26 July 2012 the Decision of the Government of the Republic of Armenia No 952- N , which approved the plan for the introduction of an integrated social services system and envisaged the implementation of a pilot programme for the provision of integrated social services. With the introduction of this integrated social services system, since 2013, were created 18 territorial centres for the provision of comprehensive social services. Extensive training courses have been organised for the employees of the bodies included within the composition of territorial centres. In this respect the Committee asks that the next report provides updated information on the impact on the social services provision after the approval of the plan for integrated social services system.

The report underlines that for the purpose of ensuring the necessary legal basis for the introduction of an integrated social services system, about 30 legal acts have been adopted following adoption of the Law of the Republic of Armenia "On social assistance"(17 December 2014). In particular Article 20 of the Law of the Republic of Armenia "On social assistance", lays down the basic principles of social assistance, including co-operation based on the collaboration and joint activity among different actors (e.g. non governmental organisations) involved in the delivery of social assistance.

The report indicates that, outside the reference period, was adopted the Order of the Minister of Labour and Social Affairs of the Republic of Armenia No 25-N of 11 February 2016 that lays down the standard form of the Agreement on Social Co-operation to be established at national and territorial level. These Agreements on Social Co-operation between the Government and representatives of international and local non-governmental organisations have been signed, since 2016 by 45 organisations and imply the establishment of a joint network for the exchange of information on the social sphere and implementation of activities for the purpose of detecting social needs, preventing risks, increasing the effectiveness of case management and making the provision of social assistance more targeted. In this respect, the Committee asks that the next report provides updated information on the impact on the social services provision after the adoption of the Agreement on Social Co-operation.

In its previous conclusion (Conclusions 2013), the Committee also asked the next report to provide pertinent figures, statistics or any other relevant information to demonstrate the participation of the voluntary sector to the provision of social services, as well as the effective access of individuals to these services. The Committee notes that the report does not provide this information and therefore, it reserves its position on this point. The Committee considers that if this information is not provided in the next report, there will be nothing to establish that the situation in Armenia is in conformity with Article 14§2 of the Charter.

In its previous conclusion (Conclusions 2013), the Committee asked the next report to explain what are the procedures and what conditions voluntary organisations have to satisfy before they can offer their services to users and, in particular, whether a system of authorisation or accreditation has been set up. It also asked how the standard of services provided by voluntary organisations is monitored. The Committee notes the recent efforts (outside the reference period), to ensure the more efficient organisation of social services in

general and in particular by involving non-governmental organisations in the provision of social services. However, the report does not provide the requested information. Therefore, the Committee reserves its position on this point. 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 defers its conclusion.

CONCLUSIONS RELATING TO CONCLUSIONS OF NON-CONFORMITY DUE TO A REPEATED LACK OF INFORMATION IN CONCLUSIONS 2015

Article 7 - Right of children and young persons to protection

Paragraph 10 - Special protection against physical and moral dangers

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the information submitted by Armenia in response to the conclusion that it had not been established that the legislation protects all children below 18 years of age from all forms of sexual exploitation and that adequate measures are taken to protect and assist street children.

Protection against sexual exploitation

In its previous conclusion (Conclusions 2015) the Committee noted that the Criminal Code does not precisely define 'child' and 'minor'. The Committee considered that with the information at its disposal, it had not been established that all acts of sexual exploitation of children, including simple possession of child pornography are criminalised with all children below 18 years of age. The Committee asked the next report to provide information about the precise legislative basis criminalising all forms of sexual exploitation with all children under 18 years of age.

According to the report, as prescribed by the legislation, as well as by international acts ratified and treaties signed by the Republic of Armenia, a child is any human being below the age of 18.

The Committee notes from the information provided by the Government that Article 289 of the new draft Criminal Code provides for the prohibition of dissemination of pornographic materials or objects. Part 2 of the mentioned Article concerns the punishment prescribed for the production, dissemination of child pornography or storage of child pornography on the computer system or computer data storage system or through other means. The Committee asks the next report to inform about the entry into force of the draft law. It also asks how the draft law regulates protection of children against sexual exploitation -i.e. child prostitution and child pornography. In the meantime, the Committee reserves its position on this issue.

Protection from other forms of exploitation

In its previous conclusion the Committee considered that it had not been established that measures taken to protect and assist street children were adequate.

The Committee notes from the information provided by the Government that on 10 August 2015, the Government adopted the Strategy for solving the problem of children involved in begging and vagrancy, which envisages reducing the number of such children and developing systematic approaches for the solution of the problems in the field, implementing comprehensive measures for their detection, ensuring the implementation of actions required for the integration of such children into the society.

With a view to preventing begging and vagrancy among minors, as well as improving the work carried out by the officers of the police, the subdivisions under Yerevan administration of the police and marz administrations pay occasional inspection visits in the city of Yerevan and marzes.With a view to providing the relevant assistance to minors involved in begging and vagrancy, police officers co-operate with local self-government bodies, institutions and non-governmental organisations.

Some of the children involved in begging and vagrancy detected as a result of the measures implemented by the police are referred to the Children's Support Centre by the Service for Juvenile Cases of the police. There minors receive relevant medical, psychological and

moral and social assistance from a multi-specialty council (consisting of psychologists, pedagogues, social workers).

Minors involved in begging and vagrancy are also referred to community rehabilitation centres, where long-term preventative treatment is provided to both minors and their parents. The case of each minor who has been referred to the centre is examined individually, the reasons and conditions are revealed and measures for their elimination are undertaken.

The inter-agency working group established on the basis of the Order of the Head of the Police, No 3837-A of 7 November 2013 carried out its activities in the course of 2014-2016 with a view to detecting children involved in begging. The working group discusses the problems of minors involved in begging and vagrancy and their families. It prepares and submits relevant motions to the competent bodies for re-enrolment of minors concerned in schools. The Committee asks the next report to provide statistical data on the incidence of street children.

Conclusion

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

Article 8 - Right of employed women to protection of maternity

Paragraph 4 - Regulation of night work

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the information submitted by Armenia in response to the conclusion that it had not been established that regulations on night work offered sufficient protection for the employed women who are pregnant, have recently given birth or are nursing their infant (Conclusions 2015, Armenia).

In response to the Committee's finding, the report indicates that Article 148 of the Labour Code has been amended (Law No. HO-96-N of 22 June 2015) and henceforth provides that pregnant women and employees taking care of a child under the age of three may be engaged in night work only with their consent after undergoing a preliminary medical examination and submitting a medical opinion to the employer. According to the report, this implies that a medical exam and the submission of its result to the employer is now a mandatory requirement in all cases when a pregnant woman or a woman taking care of a child under the age of three has to perform night work, when an employee performing night work becomes pregnant, or when she returns to night work following maternity leave.

The report also indicates that, under Article 258 of the Labour Code, when a pregnant woman or a woman taking care of a child under the age of one needs to undergo a medical examination during working time, the employer shall be obliged to release her from the performance of work duties, while maintaining the average salary which shall be calculated on the basis of the average hourly rate. In addition, according to the report, when providing obstetric and gynaecological aid and services during prenatal care for pregnant women and during postnatal care for puerperal women, obstetrician-gynaecologists advise women performing night work to avoid night work and issue a relevant statement of information to be presented to the employer.

The report furthermore recalls that medical examinations are provided in general for all employees, under Article 249 of the Labour Code, before undertaking work at night and on shifts and at regular intervals afterwards. In accordance with Decision No. 1089-N of 15 July 2004, there is no specific prohibition to perform night work during pregnancy or the breastfeeding period, but these situations are included in the list of general medical contra-indications for permitting employment connected with harmful and dangerous factors in the industrial environment and working process. In this respect, the report clarifies that, according to the Armenian sanitary rules (approved by Order No. 756-N of the Minister of Health, of 15 August 2005), depending on the number and duration of the shifts and the rest schedule, night work can constitute harmful (stressful) working conditions.

In the light of the information submitted, the Committee considers that the situation is in conformity with Article 8§4 of the Charter.

Conclusion

The Committee concludes that the situation in Armenia is in conformity with Article 8§4 of the Charter.

Article 17 - Right of children and young persons to social, legal and economic protection

Paragraph 1 - Assistance, education and training

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The legal status of the child

The Committee takes note of the information submitted by Armenia in response to the conclusion that it had not been established that there is no discrimination between children born within and outside the marriage (Conclusions 2015, Armenia). It notes in particular that the legislation makes no distinction between children born to married parents and children born to unmarried parents. All children are equal before the law. The Committee asks the next report to provide the relevant legislative basis guaranteeing this equality.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Armenia is in conformity with Article 17§1 of the Charter as regards the legal status of the child.

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

Paragraph 2 - Departure, journey and reception

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

The Committee takes note of the information submitted by Armenia in response to the conclusion that it had not been established that appropriate measures were taken to facilitate the departure, journey and reception of migrant workers.

According to the report, there are seven Migration Resource Centres (MRC) operating under the aegis of the State Employment Agency of the Ministry of Labour and Social Affairs of the Republic of Armenia. The MRCs raise awareness on migration issues, provide (potential) emigrants with pre-migration consulting services and assist returning migrants in re-integration into the labour market. The report provides few examples of projects and programmes carried out in 2016 (out of the reference period). In this regard, the report points out that emigrants are considered as vulnerable groups, pursuant to the law on employment adopted in 2014; thus, they may, in priority order, be engaged in all 13 annual state programmes for employment assistance. About 2019 returning migrants have applied to the State Employment Agency, 286 of whom have been engaged in the annual employment programmes.

The report adds that the State Employment Agency, in co-operation with the International Organisation for Migration and the NGO "Caritas" in Armenia, is developing a Mobile MRC, the aim of which is to raise the level of awareness of the population about employment and migration programmes, to assess the needs of migrants, as well as to carry out the registration of residents of remote regions in a more effective manner, as a result of which citizens will be more informed and protected.

Finally, the report states that the Policy Concept for the integration of persons recognised as refugees and having received asylum in the Republic of Armenia, as well as long-term migrants was approved on 21 July 2016 (out of the reference period). The goal of the Concept is to fill the existing gap in the migration policy of the Republic of Armenia by defining target groups of immigrants and the possible directions for their integration, taking into account the best international practices in this sector.

The Committee understands that most services available are dedicated in priority to immigrants and/or emigrants of Armenian origins. The ECRI's Fourth report further confirms this understanding, as it considers that in general "the existing elements of integration policies and programmes described above place too much focus on people of ethnic Armenian origin and on the agreed principle that their ethnic background makes integration efforts pointless".

The Committee recalls that Article 19§2 requires States Parties 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 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).

In this regard, the Committee previously asked for information on services available for newly arrived migrants to support them upon reception in Armenia. The report provides however no information on this matter. The Committee accordingly requests that the next

report provide a full and up-to-date description of the situation, having regard to the assessment criteria mentioned above. It considers in the meantime that no appropriate measures have been taken to facilitate the departure, journey and reception of foreign workers.

The Committee recalls that the situation concerning other aspects covered by Article 19§2 will be examined in the framework of the regular reporting cycle (Conclusions 2019) and asks that relevant and updated information be provided in that context.

Conclusion

The Committee concludes that the situation in Armenia is not in conformity with Article 19§2 of the Charter on the ground that no appropriate measures have been taken to facilitate the departure, journey and reception of foreign workers.

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

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

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31st October 2016 on conclusions of non-conformity for repeated lack of information in conclusions 2015.

The Committee takes notes of the information submitted by Armenia in response to the conclusion that it had not been established that migrant workers enjoy equal rights with respect to membership of trade unions and collective bargaining.

The Committee recalls that sub-heading b of Article 19§4 requires States to eliminate all legal and de facto discrimination concerning trade union membership and as regards the enjoyment of the benefits of collective bargaining (Conclusions XIII-3 (1995), Turkey). This includes the right to be founding member and to have access to administrative and managerial posts in trade unions (Conclusions 2011, Statement of interpretation on Article 19§4(b)).

According to the report, everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of labour interests, pursuant to Article 45 of the Constitution of the Republic of Armenia as amended in December 2015. Article 3, point 3 of the Labour Code enshrines the following three principles:

- Legal equality of parties to employment relations, irrespective of their national origins, nationalities or affiliation to political parties, trade unions or non-governmental organisations;
- Right to freedom of association of employers and employees, including the right to form or join trade unions and employers' associations;
- Freedom to collective bargaining.

The report adds that voluntary participation (membership) in trade union is, under Article 3, point b) of the Law on trade unions, secured for anyone, including migrant workers. The Committee asks the next report to provide further details on the implementation of this right in practice.

In light of the above, the Committee considers the situation to be in conformity with the Charter on this point.

The Committee recalls that the situation concerning other aspects covered by Article 19§4 will be examined in the framework of the regular reporting cycle (Conclusions 2019) and asks that relevant and updated information be provided in that context.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in Armenia is in conformity with Article 19§4.b of the Charter.

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

Paragraph 5 - Equality regarding taxes and contributions

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31st October 2016 on conclusions of non-conformity for repeated lack of information in conclusions 2015.

The Committee takes note of the information submitted by Armenia in response to the conclusion that it had not been established that no discrimination against migrant workers occurs in relation to employment taxes and contributions.

The report states that any natural person, with or without resident status in Armenia, shall be considered as income taxpayer, pursuant to Section 3 of the Law on Income Tax. In particular, pursuant to this law, a person is considered to be "resident" if he/she has been residing in Armenia for at least 183 days within the tax year (from 1 January to 31 December) or if his/her family or economic interests are concentrated in Armenia.

Residents are taxed on all income earned inside and outside Armenia. Non-residents are liable to pay personal income tax on income whose source is in Armenia.

The report points out that residents and non-residents' salaries, including foreign nationals, and their incomes equivalent thereto shall be taxed in the same way, based on the scale defined by Article 10(1)1 of the abovementioned law – once a month, and no kind of peculiarity (difference) of taxation is provided.

The report also points out that employees born on 1st January 1974 and later shall pay social contributions in Armenia, pursuant to Article 5(1)1 and (3) of the Law on Funded Pensions. This also concerns foreign nationals and stateless persons holding a residence permit who pay social contributions on a general basis, through the procedure established for the citizens of Armenia, unless otherwise provided for by a multi- or bilateral agreement.

Conclusion

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

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

Paragraph 7 - Equality regarding legal proceedings

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31st October 2016 on conclusions of non-conformity for repeated lack of information in conclusions 2015.

The Committee takes notes of the information submitted by Armenia in response to the conclusion that it had not been established that migrant workers are secured treatment not less favourable than that of Armenian nationals in respect of relevant legal proceedings through the provision of legal aid, interpretation and translation services.

The Committee recalls that States Parties must ensure that migrants have access to courts, to lawyers and legal aid on the same conditions as their own nationals (Conclusions I (1969), Italy, Norway, United-Kingdom).

It further 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. 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 2011, Statement of interpretation on Article 19§7).

According to the report, Article 63 of the Constitution of the Republic of Armenia, adopted through a referendum held on 6 December 2015, guarantees the right to a fair trial and public hearing within a reasonable time period, by an independent and impartial court to anyone, including migrant workers. The conditions under which a person is entitled to apply to civil and administrative courts are defined in Articles 2 of the Code of Civil Procedure and 3 of the Code of Administrative Procedure, respectively.

The Committee previously noted in its conclusion (Conclusions 2011) that the Advocacy Act guaranteed legal assistance free of charge in cases prescribed by the Criminal Code and Civil Code. In this regard, it asked what categories of cases are covered by legal assistance and what conditions are required for individuals to be eligible for free legal assistance. According to Article 64 of the Constitution of Armenia, "[e]veryone shall have the right to receive legal aid. In cases prescribed by law, legal aid shall be provided at the expense of state funds. With a view to ensuring legal aid, advocacy based on independence, self-governance and legal equality of advocates shall be guaranteed. The status, rights and responsibilities of advocates shall be prescribed by law."

Pursuant to Article 6(3) of the Advocacy Act, legal aid may be provided free of charge if agreed with the advocate. The report further indicates that under Article 4 of this Act, the State shall provide migrant workers with free legal aid in accordance with the criteria listed under Article 41(5) of the Act. Legal aid includes, *inter alia*, legal advice, draft of official materials and representation or defence in civil, criminal, administrative and constitutional cases (Article 41 (2) of the Advocacy Act).

Article 10(1) of the Code of Criminal Procedure also guarantees for everyone the right to receive legal aid. Legal aid provided to suspects and accused by an assigned counsel shall be remunerated at the expense of the State Budget, unless the counsel agreed to provide legal aid free of charge. The body conducting criminal proceedings shall take a reasoned decision on exempting the suspect or the accused from payment for legal aid in whole or in part (Article 165 (2) and (3) of the Code of Criminal procedure).

The Committee also asked for updated information on the planned amendments to the Advocacy Act. According to the report, the Bill intends to better take into account the peculiarities of the rights of foreign advocates, to specify the procedures for the training of advocates, to extend the scope of persons entitled to free legal aid, to allow non-advocates to exercise public defence and to regulate in a more comprehensive manner several procedural issues. The Committee understands from the report that free legal aid is not provided to foreigners and asylum seekers lodging an appeal to a decision on expulsion. It asks the next report to confirm whether this understanding is correct and under what other circumstances, if any, free legal aid is not provided to foreigners.

The Committee also understands that the Bill has not been adopted yet. Therefore, it asks the next report to specify when it will be adopted.

Finally, the Committee asked for more information on the arrangements provided for interpretation and translation in criminal proceedings, including as regards the bearing of the cost.

The report states that legal proceedings are conducted in Armenian. However, and where the person concerned lacks knowledge of Armenian, the Court shall ensure provision of translation services at the expense of the State, in criminal, civil and administrative cases. Free translation services (at the expense of the State) shall also be provided to natural persons taking part in administrative cases and certain civil cases prescribed by law if they prove that they are unable to pay for such services due to their financial situation (Article 19 of the Judicial Code).

The Committee notes that a new Code of Civil Procedure is being drafted and asks the next report to provide updated information on its adoption.

Conclusion

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

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

Paragraph 8 - Guarantees concerning deportation

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31st October 2016 on conclusions of non-conformity for repeated lack of information in conclusions 2015.

The Committee takes note of the information submitted by Armenia in response to the conclusion that it had not been established that migrants lawfully residing in Armenia shall not be expelled unless they endanger national security or offend against public interest or morality.

The Committee recalls that 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 (Interpretative statement on Article 19§8, Conclusions 2015).

In response to the Committee's request for clarifications (Conclusions 2015) concerning expulsion on health grounds, the report states that, according to Section 8(1)(d) of the Foreigners Act, the fact that a person suffers from an infectious disease threatening public health can only constitute a ground for refusing a visa to a person entering Armenia, but cannot be used as a ground for expelling a person already residing in Armenia. The Committee notes however that Section 8 of the Act also applies to the revocation of an entry visa and asks the next report to confirm that the revocation of an entry visa cannot be ordered on grounds of health, unless the person refuses to undergo suitable treatment. As regards the infectious diseases justifying the prohibition of entry of foreigner or stateless persons in Armenia, the report indicates that, pursuant to Decision No. 49-N of 25 January 2008, the list includes, *inter alia* the plague (lung form), cholera, active tuberculosis of respiratory organs (all forms with pathogen release), tropical malaria, atypical form of pneumonia, new subtypes of influenza, viral hemorrhagic fevers (Ebola, Marburg, Lassa), and Middle East Respiratory Syndrome (Coronavirus).

In its previous conclusion (Conclusions 2015), the Committee noted that, under Article 21§1d of the Foreigners Act, a residence permit may be revoked in case of absence from the country for more than six months, which in turn can lead to the deportation from the country, pursuant to Sections 30 and 31 of the same Act. In response to the Committee's request for clarifications on this point, the report confirms that Section 31 of the Foreigners Act provides for the expulsion of a foreigner where the latter fails to voluntarily leave the territory of Armenia in cases provided for by Section 30 of the same Act, i.e. when he/she does not have a valid residence status. Prior to any expulsion, the police shall notify the person about the decision concerning his/her residency status and the time-limit for either getting a valid residence status, leave the country or lodge an appeal against that decision. The Committee asks the next report to provide information on the time-limit granted to foreigners in this connection.

According to the report, even in case of failure to leave, the expulsion is not carried out automatically, but an action on expulsion is filed with the court, after examining whether any of the circumstances listed under Section 32 applies to the case at issue, which would oppose to the expulsion (see below). The report points out that foreigners who do not have a

valid residence status in Armenia are usually subject to administrative sanctions, e.g. fines, rather than expelled, unless they pose a threat to the national security or public interest.

The report indicates that the same procedure and considerations apply to expulsions on grounds of threat to national security and public order; it also indicates that, as from 2014, only two persons had been expelled on this ground and a third case was under examination. In particular, the report states that, in case of serious and/or substantial threat to national security and public order, the National Security Service delivers an opinion in this respect but a court decision is required in order for an expulsion order to be served. According to the report, during the consideration of each expulsion case, the court assesses whether the expulsion is in conformity with the obligations undertaken under international treaties, with reference to the circumstances under which the expulsion is prohibited. In this respect, the Committee notes that Section 32 of the Foreigners Act prohibits collective expulsions as well as expulsion involving a risk of violation of the foreigner's human rights, in particular persecution, torture, ill-treatment or death. Expulsion is also prohibited for minors whose parents reside in Armenia and for foreigners having a minor under their care or those who are above 80 years of age. The Committee asks the next report to clarify whether, as regards the risk of violation of human rights, the courts also take into account the Charter's requirements under Article 19§8, namely that the proportionality of expulsion be determined by considering 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, including 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. It reserves in the meantime its position on this issue.

Conclusion

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

Article 27 - Right of workers with family responsibilities to equal opportunity and treatment

Paragraph 3 - Illegality of dismissal on the ground of family responsibilities

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the information submitted by Armenia in response to the conclusion that it has not been established that the compensation for unlawful dismissal due to family responsibilities is adequate.

In its previous conclusion the Committee noted that there was a ceiling to the pecuniary damage which could be paid to an employee unlawfully dismissed on the ground of parental responsibilities. It asked whether compensation for non-pecuniary damage could be sought through other legal avenues (e.g. non-discrimination legislation).

According to Article 265 of the Labour Code in case of termination of the employment contract without a lawful ground or in violation of the procedure prescribed by the legislation, the rights of the employee shall be restored. An average salary for the entire period of forced idleness shall be paid in favour of the employee. As regards the compensation for non-pecuniary damage through other legal means (for instance, legislation prohibiting discrimination), the Ministry of Justice has undertaken the development of comprehensive legislation for combating discrimination with the support of the Eurasia Partnership Foundation (with the financial support of the Government of the Kingdom of the Netherlands). The draft law is scheduled to be adopted during the year 2017. The Committee asks the next report to provide information regarding the draft law. In the meantime, it reserves its position on this issue.

Conclusion

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

January 2018

European Social Charter

European Committee of Social Rights

Conclusions 2017

AUSTRIA

This text may be subject to editorial revision.

The following chapter concerns Austria, which ratified the Charter on 20 January 2011. The deadline for submitting the 5th report was 31 October 2016 and Austria submitted it on 4 November 2016.

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 "Health, social security and social protection":

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

Austria has accepted all provisions from the above-mentioned group, except Articles 23 and 30.

The reference period was 1 January 2012 to 31 December 2015.

The conclusions relating to Austria concern 17 situations and are as follows:

– 14 conclusions of conformity: Articles 3§1, 3§2, 3§3, 3§4, 11§1, 11§2, 11§3, 12§1, 12§2, 12§3, 13§2, 13§3, 13§4 and 14§2;

– 3 conclusions of non-conformity: Articles 12§4, 13§1 and 14§1.

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

Article 3§1

A Joint Resolution on the Austrian Employees Safety and Health Strategy 2013-2020 has been signed by all federal ministries involved in occupational health and safety, by accident insurers, social partners and interest groups. The Resolution is aimed at consistently improving the safety and health of Austrian employees, particularly with regard to areas like muscular and skeletal strain, psychological stress, risk posed by carcinogens and workplace evolution and support by prevention experts.

Article 3§2

- The amendment to the Workers Protection Act (Federal Law Gazette I No. 118/2012) is aimed at more effective prevention of stress and risks of a psychological nature that lead to inappropriate physical strain on workers. Risks potentially resulting in psychological stress are also required to be examined and assessed as part of risks assessment;
- Act No. 450/1994 of 17 June 1994 on Workers Protection, which sets out the basis legal framework in the field of occupational safety and health, was amended during the reference period to introduce the additional possibility of requiring a fire protection group and the health and safety committee and to clarify the role of prevention expert;
- As regards specific regulations on establishment, alteration and upkeep of workplaces, regulations have notably been adopted concerning worker protection by means of personal protective equipment (Ordinance, Federal Law Gazette II No. 77/2014), health surveillance at work (Ordinance, Federal Law Gazette II No. 26/2014), electrical protection (Ordinance, Federal Law Gazette II No. 33/2012), observance of workers' protection requirements and proof of compliance in transport approval procedures (Ordinance, Federal Law Gazette II No. 17/2012);
- The provisions of the Ordinance governing chemicals (2003) and the Ordinance on asbestos (2003) entered into force on 1 January 2014, banned the marketing and use of asbestos fibres. In practice, the provisions covering the marketing of

asbestos-containing substances and preparations are applied so that any marketing of asbestos (also in preparations and finished products) is banned.

Article 3§3

As of 1 July 2012 the scope of competence of the Labour Inspectorate was broadened to additionally cover the workplaces and work sites previously falling under the Transport Labour Inspectorate. Separate statistics continued to be kept in 2012 and 2013, while combined data is reported as of 2014.

Article 3§4

As a result of an amendment to the Workers Protection Act (ArbeitnehmerInnenschutzgesetz, ASchG) that entered into force as of 1 January 2013, Section 4§6 ASchG specifies that, in addition to occupational health and safety officers and occupational physicians, other qualified experts can be engaged to perform workplace evaluations; such experts include chemists, toxicologists, ergonomists and above all occupational psychologists. This new provision lists examples of the experts to be engaged, while special consideration should be given to occupational psychologists when psychological stress is to be evaluated. Occupational psychologists are not considered prevention experts (only occupational health and safety officers and occupational physicians are regarded as such).

Article 12§3

- The extension of long-term illness benefits to self-employed people (Social Insurance Amendment Act 2012 – Sozialversicherungs-Änderungsgesetz 2012, Federal Law Gazette I No. 123/2012);
- The extension of the list of occupational diseases covered for accident insurance purposes (vibration-induced vascular desorders, pressure damage, chronic diseases of the tendon sheats, peritendinum and muscular and tendinous insertions, as well as rhinopathy have been included);
- A reform of the disability pension system, with the introduction of a rehabilitation benefit (Act Governing Amendments to Social Law 2012 (Sozialrechts-Änderungsgesetz 2012), Federal Law Gazette I No. 3/2013) – the new benefit aims at encouraging rehabilitation and retraining and applies to persons with a temporary incapacity to work of at least 6 months; a rehabilitation allowance is furthermore introduced for persons not entitled to incapacity benefit because of the lack of permanent incapacity, but whose temporary incapacity for at least 6 months has been confirmed and where occupational measures are not practicable or not appropriate;
- The adoption in January 2014 of rules (Labour Law Reform Act 2013 (Arbeitsrechts-Änderungsgesetz 2013), Federal Law Gazette I No. 138/2013) enabling employees to take full-time or part-time leave, in agreement with their employers, in order to care for a close relative and receive care-leave benefits while maintaining their health insurance (to be paid by the Federal Government);
- As from July 2015, children and young people under the age of 18 needing orthodontic braces are entitled to receive such treatment as a benefit in kind without co-payment or payment of a contribution towards the cost of treatment by the insured;
- The introduction of relief measures for those caring for a disabled child and wishing to take out self-insurance and the creation of a non-contributory self-insurance scheme for people providing care for family members (Act Governing Amendments to Social Law 2015 (Sozialrechts-Änderungsgesetz 2015), Federal Law Gazette I No. 162/2015);
- The extension of full insurance coverage to participants to certain volunteers programmes, as specified in the Volunteer Act;

- The introduction of a temporary assistance allowance (Überbrückungsgeld) for unemployed construction workers who, in 2015, are close to their retirement age and cannot fulfil their work due to illness;
- The aggregation of periods credited towards the minimum period of unemployment – since 2015, specific periods such as military service or alternative civilian service, family hospice leave etc. are credited towards the duration of previous employment. The newly credited periods may also be part of the 156 weeks of unemployment insurance-covered employment within the preceding five years, for claiming 30 weeks of unemployment benefits;
- As a result of an important administrative reform entered into force in January 2014, and of a Constitutional decision of December 2014, complaints concerning the granting of unemployment benefits have now a suspensive effect.

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The next report will deal with the following provisions of the thematic group "Labour Rights":

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 21),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 22),
- the right to dignity at work (Article 26).
- the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28)
- the right to information and consultation in collective redundancy procedures (Article 29).

The deadline for submitting that report was 31 October 2017. The report as registered on 16 November 2017. Conclusions on the Articles concerned will be published in January 2019.

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Conclusions and reports are available at www.coe.int/socialcharter as well as in the HUDOC database.

Article 3 - Right to safe and healthy working conditions

Paragraph 1 - Health and safety and the working environment

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

General objective of the policy

The Committee points out that new technology, organisational constraints and psychological demands favour the development of psychosocial factors of risk, leading to work-related stress, aggression, violence and harassment. It would also point out that, with regard to Article 3§1 of the Charter, it takes account of stress, aggression, violence and harassment at work when examining whether policies are regularly evaluated or reviewed in the light of emerging risks. The States Parties have a duty to carry out activities in terms of research, knowledge and communication relating to psychosocial risks (Statement of Interpretation on Article 3§1 of the Charter, Conclusions 2013).

The report states that a Joint Resolution on the Austrian Employees Safety and Health Strategy 2013-2020 has been signed by all federal ministries involved in occupational health and safety, by accident insurers, social partners and interest groups. The Resolution is aimed at consistently improving the safety and health of Austrian employees, particularly with regard to areas like muscular and skeletal strain, psychological stress, risk posed by carcinogens and workplace evolution and support by prevention experts.

The report notes that the change planned for the Austrian Employees Safety and Health Strategy 2013-2020 is to coordinate project goals and schedules at overall level as well as to complete joint projects within the framework of a Strategic Platform, which includes representatives of the social partners, the Austrian Workers' Compensations Board and the Central Labour Inspectorate. The Committee takes note of the detailed information on the Austria Employees Safety and Health Strategy 2013-2020, the institutions involved and on related projects and publications. The Committee asks for information in the next report on the results obtained under the National Strategy 2013-2020.

The report also states that the National Network for Occupational Safety and Health, which brings together the Central Labour Inspectorate and the other main players in this area, has supported the campaigns by the European Agency for Safety and Health at Work (OSHA).

The Committee notes that there is a national policy which is intended to develop and preserve a culture of prevention in the occupational health and safety field.

Organisation of occupational risk prevention

The report notes that federal bodies have competence for workers' protection generally for all employees in the private economy, for public federal employees and for employees working in operations run by the federal, state and local governments. *Länder* (state) bodies are competent to pass implementing statutes and to monitor their observance with regard to workers' protection in agriculture and forestry, and to pass laws and monitor their observance with regard to protecting the health and safety of state and local government employees. Monitoring within the federal sphere (private businesses, federal employees, and federal state and local government operations, with the exception of farming and forestry operations) is performed by the Labour Inspectorate (the Federal Labour Inspectorate Act, 1993 (*Bundesgesetz über die Arbeitsinspektion, ArbIG*)). Farming and forestry operations are the responsibility of altogether nine Farming and Forestry Inspectorates, one of which is assigned to each state (their activities are regulated by state laws). State and local government employees are covered by separate bodies responsible to monitor workers' health and safety regulations.

The report states that the Austrian Workers Protection Act (*ArbeitnehmerInnenschutzgesetz, ASchG)* constitutes the basis for health and safety at work for employees. Targeted health and safety measures aim to avoid the danger of accidents, occupational diseases, work-

related illness and permanent damage. Employers are obliged to ensure occupational safety and health regarding all aspects at work and to prevent occupational risk defined as physical and mental risks including work-related stress, aggression and violence (Act to amend the Worker Protection Act and Labour Inspection Act adopted in 2012). According to the report, the employers have to assess psychosocial risks, make an action plan and take measures to prevent psychosocial risks as well as physical risks. The risk assessment has to be updated after incidences of work-relates psychological stress. To carry out risk assessment employers should seek the help of experts (occupational psychologists, safety technicians, occupational physicians, and others).

In reply to the Committee's question (Conclusions 2013), the report states that the organisation of occupational risk prevention was not affected by the amendments to Act No. 450/1994 which were adopted during the last reference period.

The report indicates that, as part of the Occupational Safety and Health Strategy 2007-2012, more than 100 projects were launched and completed or are being continued under the Austrian Employees Safety and Health Strategy 2013-2020. The report also states that over 40 documents were published and numerous specialised presentations dealing with the purpose and goals of the Occupational Safety and Health Strategy were held, to the end of raising awareness of this issue.

In its previous conclusion (Conclusions 2013), the Committee asked for information on the organisation of occupational risk prevention for workers employed by *Länder* and municipal government departments and in the agricultural and forestry sectors. The report states that the same level and standard of protection exists for public-service employees of *Länder* authorities and municipalities as for those under the Federal Government and gives, by way of example of the situation in all nine *Länder*, statements from Lower Austria. The Committee takes note that the Lower Austria Public Worker Protection Act of 1998 was amended in 2014 to include psychological stress and to introduce the deployment of occupational psychologists in the field.

As regards the agricultural and forestry sectors, the report states that the Agricultural Labour Act (*(Landarbeitsgesetz, LAG)* Federal Law Gazette No. 287/1984) has been enacted in the legislation of the individual *Länder*. The Act lays down principles of risk prevention for the health and safety of agriculture and forestry workers (general obligations of employers, identifying and assessing risks, defining measures, safety and health measures, principles of risk prevention, etc.). All of these principles have been enacted in the individual Farming Work Codes of the *Länder*. The Committee refers to the report for a detailed description.

In its previous conclusion (Conclusions 2013), the Committee also asked for information on the measures taken by the Labour Inspectorate to develop an occupational health and safety culture among employers and employees and share its experience in implementing instructions, prevention measures and consultations. In reply, the report states that the activities of the Labour Inspectorate to develop an occupation health and safety culture among businesses are specified in the Labour Inspectorate Act (Section 3). Such activities are a general part of the regular work of labour inspectors when monitoring and inspection businesses and advising employers.

The Committee considers that measures for occupational risk prevention, awareness-raising and assessment of work-related risks and information and training for workers are provided. It also notes that the Labour Inspectorate develops a culture of health and safety among employers and workers duty to share their knowledge about risk prevention in light of their inspection experience and as part of preventive activities.

Improvement of occupational safety and health

In its previous conclusion (Conclusions 2013), the Committee asked for information on the mode of involvement of complementary bodies such as *Humanware* along with the

authorities. In reply, the report states that *Humanware* is a management consulting firm specialised in advising businesses in implementing risk assessment for psychological stress. The firm has developed a proprietary instrument for this purpose, IMPULS-Test 2 Professional. The report adds that together with the Austrian Network for Workplace Heath Promotion, a related guide, “Psychological health. Combined implementation of the Workers Protection Act and Federal Employees Protection Act and workplace health promotion principles in the workplace evaluation of psychological stress”, has been published.

Consultation with employers’ and workers’ organisations

In its previous conclusion (Conclusions 2013), the Committee noted the existence of co-operation between public authorities and social partners at federal and at company level, and asked for information on the means of consulting employers’ and employees’ organisations at *Länder* level. The report states that the legislation at *Länder* level corresponds to the legislation at Federal level and therefore guarantees similar provisions for the respective employees in the laws for the protection of *Land* and municipal employees, in the individual *Länder* laws on staff representation bodies and in the Farming Work Codes. The report gives, by way of example of the situation in all nine *Länder*, statements from Lower Austria. The Committee refers to the report for a detailed description.

The report also contains information on the Occupational Safety and Health Advisory Board’s activity, stating that four meetings were held during the reference period. The legal provisions governing works councils’ rights to participate in health (both psychological and physical health) and safety matters remained unchanged during the reference period. The Labour Inspectorate are to hold consultations with the legal representation bodies of employers and of employees at least a twice year in each *Land* to discuss issues within the Inspectorates’ scope of competence.

The Committee notes that social partners are consulted in the design and implementation of the occupational health and safety policy.

Conclusion

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

Article 3 - Right to safe and healthy working conditions

Paragraph 2 - Safety and health regulations

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

Content of the regulations on health and safety at work

The Committee previously examined (Conclusions 2013) the general scope of the regulations and considered that occupational safety and health regulations complied with the general obligation in Article 3§2 of the Charter to provide specific coverage of the great majority of the risks enumerated in the General Introduction to Conclusions XIV-2.

Act No. 450/1994 of 17 June 1994 on Workers Protection, which sets out the basis legal framework in the field of occupational safety and health, was amended during the reference period to introduce the additional possibility of requiring a fire protection group and the health and safety committee and to clarify the role of prevention expert. The report lists the laws and regulations issued and/or amended during the reference period, for instance, the Act Amending Labour and Social Law (Federal Law Gazette I No. 94/2014 on 16 December 2014), amendment to the Ordinance governing workplaces and of the Ordinance governing safety representatives (Federal Law Gazette II No. 324/2014), amendments to the Ordinance governing the documentation of skills, Ordinance governing documentation of skills in the preparation and organisation of stage and lighting works, and the Ordinance governing the training of safety officers (Federal Law Gazette II No. 210/2013), Ordinance governing worker protection by means of personal protective equipment (Federal Law Gazette II No. 77/2014), Ordinance governing electrical protection (Federal Law Gazette II No. 33/2012), Ordinance governing needle-stick injuries (Federal Law Gazette II No. 16/2013).

The Committee points out that under the terms of Article 3§2 of the Charter, regulations concerning health and safety at work must cover work-related stress, aggression and violence specific to work, and especially for workers under atypical working relationships (Statement of Interpretation on Article 3§2 of the Charter, Conclusions 2013). According to the report, the amendment to the Workers Protection Act (Federal Law Gazette I No. 118/2012) is aimed at more effective prevention of stress and risks of a psychological nature that lead to inappropriate physical strain on workers. The report adds that it has been clearly specified that risks potentially resulting in psychological stress are also required to be examined and assessed as part of risks assessment.

The Committee maintains its previous finding of conformity on this point.

Levels of prevention and protection

Establishment, alteration and upkeep of workplaces

In its previous conclusion (Conclusions 2013), the Committee asked to indicate the international or EU standards which the legislation and regulations issued and/or amended during the reference period were designed to incorporate. The report states that, as a consequence of amending the Worker Protection Act through the Act Amending Labour and Social Law, the specific provisions on fire protection groups and safety representatives in implementing ordinances – the Ordinance governing workplaces (*Arbeitsstättenverordnung, AStV*) and the Ordinance governing safety representatives *(Verordnung über die Sicherheitsvertrauenspersonen, SVP-VO*) – were also modified. The amendments were published in Federal Law Gazette II No. 324/2014 and became effective as of 1st January 2015.

As regards specific regulations on establishment, alteration and upkeep of workplaces, regulations have notably been adopted concerning worker protection by means of personal protective equipment (Ordinance, Federal Law Gazette II No. 77/2014), health surveillance

at work (Ordinance, Federal Law Gazette II No. 26/2014), electrical protection (Ordinance, Federal Law Gazette II No. 33/2012), observance of workers' protection requirements and proof of compliance in transport approval procedures (Ordinance, Federal Law Gazette II No. 17/2012).

Protection against hazardous substances and agents

In its previous conclusion (Conclusions 2013), the Committee asked to indicate the international or EU standards which the legislation and regulations issued and/or amended during the reference period were designed to incorporate. The report indicates that amendments to the Workers Protection Act, the Maternity Protection Act (into force as of 1st June 2015), the Ordinance governing prohibitions and restrictions of employment for young people and the Ordinance governing labeling were introduced to implement the Directive 2014/27/EU, which adapted five Directives in the area of worker health and safety (Directive on safety and/or health signs at work, Directive on the safety and health of pregnant workers, Directive on the protection of young people at work, Directive on chemical agents at work, Directive on exposure to carcinogens at work) to the new system of classification and labelling of substances and mixtures (CLP Regulation).

The report adds that the Federal Government is planning an additional ordinance to amend health and safety labelling as well as the Ordinance governing biological agents and the Ordinance on protection of workers against explosive atmospheres for implementing the Directive 2014/27/EU.

Protection of workers against asbestos

In its previous conclusion (Conclusions 2013), the Committee asked for information on measures taken at national level, and where appropriate in certain other *Länder*, in particular to enforce the exposure limit of 0.1 fibres / cm^3. It also asked whether any measures were planned to prohibit the production and sale of asbestos and products containing it. In reply, the report states that Austrian legislation applying to working with asbestos includes the general provisions of the Workers Protection Act, the Ordinance governing personal protective equipment and the Ordinance governing limit values (2011), which specifies the exposure limit values and special provisions for asbestos. The Ordinance governing health surveillance at work (2014) requires examinations for suitability and follow-up examinations in the case of workers exposed to asbestos. The Ordinance governing labelling specifies the labelling of asbestos at workplaces. For working with asbestos, special regulations apply in addition to the general regulations in effect for protecting the lives and health of workers. The Committee takes note of the detailed information concerning the measures taken at both national and *Länder* level. It notes from the report that the currently valid concentration level for asbestos is 0.1 fibres/cm^3 (this limit applies to chrysolite and amphibole asbestos, specifically actinolite, amosite, anthophylliten crocidolite and tremolite).

The report indicates that the provisions of the Ordinance governing chemicals (2003) and the Ordinance on asbestos (2003) entered into force on 1 January 2014, banned the marketing and use of asbestos fibres. In practice, the provisions covering the marketing of asbestos-containing substances and preparations are applied so that any marketing of asbestos (also in preparations and finished products) is banned. The Committee notes that this is checked by administrative police monitoring which acts as a market supervisory body.

Protection of workers against ionising radiation

The report indicates that Directive 2006/117/EURATOM on the supervision and control of shipments of radioactive waste and spent fuel has been implemented in the Ordinance governing the shipment of radio-active wastes (Federal Law Gazette II No. 47/2009 as amended by Federal Law Gazette II No. 22/2015).

The Committee asks whether workers are protected up to a level at least equivalent to that set in the Recommendations by the International Commission on Radiological Protection (ICRP Publication No. 103, 2007).

In the light of the above information, the Committee considers that levels of prevention and protection in relation to the protection against hazardous substances and agents comply with the Charter.

Personal scope of the regulations

The Committee examines the scope of legislation and regulations with regard to workers in atypical employment.

Temporary workers

In its previous conclusions (Conclusions 2013 and XIX-2 (2009)), the Committee asked for information concerning measures taken to reduce the high rate of work accidents among temporary workers. It also asked for information on any arrangements made for consulting temporary workers on questions relating to occupational safety and health.

The report states that the Austrian Workers Protection Act applies to the employment of persons as employees. This group includes all persons who work within the framework of an employment or training relationship, including temporary agency workers. According to this Act, employers or user undertaking are specifically required to ensure that employees are adequately informed of the health and safety risk and of risk-prevention measures, as well as to ensure adequate instruction in health and safety at work. The provisions of this Act aimed at worker protection also apply to monitoring the health of temporary workers, examinations for suitability and follow-up examinations are accordingly required for certain work activities. The Committee takes note of the special obligations specified for temporary work agencies. It also notes that neither the Workers Protection Act nor the Temporary Agency Work Act (Federal Law Gazette No. 196/1988 as amended) make any distinction between temporary and permanent employment relationships, rather both refer without exception to the “employment” of workers or employees. Therefore, temporary employment relationships are included within the scope of application of each of these two acts.

In response to the Committee’s question (Conclusions 2013) concerning the increased accident rate among temporary workers, the report indicates that no specific measures were taken during the period under review.

Other types of workers

The Committee previously concluded (Conclusions XVI-2 (2003), XVIII-2 (2007), XIX-2 (2009) and 2013) that the protection of self-employed workers by occupational safety and health regulations did not cover all workers, all workplaces and all sectors, as required. The report states that both the Austrian authorities and the Austrian social partners do not recognise the need for additional legislative measures. According to the report, the large majority of businesses and self-employed persons are subject to industrial and trade laws. The Austrian Industrial Code includes specific regulations that protect business license holders. Special provisions to protect self-employed workers also exist for mining and for the construction sectors (see Conclusions 2013). The Workers Protection Act also applies to self-employed persons whenever they work side by side with the workers they employ (see also Conclusions XVI-2 (2003)). The report stresses that this raises the question as to whether applying strict regulations would be consistent with the freedom of trade and crafts as set forth in the Austrian constitution.

In addition, the report indicates that the Austrian Federal Economic Chamber and the Chamber of Agriculture, as the bodies representing the interests of Austrian businesspeople and farmers, and the social insurance institutions responsible for the self-employed and

farmers correspondingly offer a broad selection of opportunities for further education, training and counselling, which enable the self-employed to take care of their own safety and health needs. According to the report, the Farmers' Social Security Authority has provided safety advice and health promotion. The responsibilities of health promotion as part of health insurance, and safety advice, which falls within accident insurance, are combined within one and the same organisational unit, "Safety and Health".

The Committee takes note of programmes, initiatives, workshops and courses organised for small and medium-sized companies with a view to developing a healthier workplace.

Finally, the report makes reference to a study by the University of Bremen, which revealed the high level of health and safety regulations for the self-employed in Austria (Austria ranked first).

The Committee concludes that the situation regarding the self-employed is now in conformity with Article 3§2.

Consultation with employers' and workers' organisations

The Committee asks for information on any changes in the situation that it previously concluded was in conformity with Article 3§2 of the Charter.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in Austria is in conformity with Article 3§2 of the Charter.

Article 3 - Right to safe and healthy working conditions

Paragraph 3 - Enforcement of safety and health regulations

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

Accidents at work and occupational diseases

The Committee previously noted (Conclusions XIX-2 (2009) and 2013) that, since the large number of fatal work accidents published included commuting accidents and did not comprise any time limitation following the accident, the situation was in fact in conformity with Article 3§2 of the 1961 Charter.

The report indicates that the number of work accidents (excluding accidents on the way to and from work) decreased overall (from 93,152 in 2012 to 89,502 in 2014) as compared with the previous reference period. The number of accidents in agriculture and forestry also decreased from 6 216 in 2012 to 5 677 in 2014, whereas it increased in the transport sector from 2 964 in 2012 to 3 667 in 2013. These trends are corroborated by the declining of the number of non-fatal accidents at work causing at least four calendar days of absence in Austria published by EUROSTAT (from 67,025 in 2012 to 65,418 in 2014). According to the EUROSTAT figures, the standardised rate of incidence of non-fatal accidents at work per 100 000 workers was 1 902.54 in 2012 and 1 806.04 in 2014. The Committee notes that Austria's standardised rate of incidence is almost similar to the average rate in the EU-28 (1 717.15 in 2012 and 1 642.09 in 2014) at the end of the reference period.

The report indicates that the highest accident rates (per 10 000 employees) in 2014 were seen in construction (696), water supply, sewerage, waste management and remediation activities (559), and administrative and support service activities (441).

The report indicates that the number of fatal work accidents also decreased from 100 in 2012 to 65 in 2014, whereas it increased in agriculture and forestry (from 68 in 2012 to 92 in 2014) and in the transport sector (from 0 in 2012 to 8 in 2013). The incidence rate of accidents at work expressed as a number of accidents per 10,000 workers (recognised accidents at work in terms of the annual average of persons covered by accident insurance (x 10 000)). The incidence rate of accidents decreased from 313.5 in 2012 to 300.3 in 2014. The Committee also finds that, according to the Eurostat figures, the number of fatal accidents decreased from 144 in 2012 to 126 in 2014. The standardised incidence rate of fatal accidents at work per 100 000 workers decreased from 4.42 in 2012 to 3.96 in 2014. The Committee notes that Austria's standardised rate of incidence remains higher than the average rate in the EU-28 (2.42 in 2012 and 2.32 in 2014).

According to the report, the number of occupational diseases fell slightly over the reference period, from 1 189 in 2012 to 1 175 in 2014. The number of diseases leading to death rose from 91 in 2012 to 99 in 2014. The report states that the highest absolute numbers of occupational diseases in 2014 were seen in manufacturing (504), construction (194), and in wholesale and retail trade, maintenance and repair of motor vehicles and motorcycles (80). The Committee also notes from MISSOC that there is a list of 53 occupational diseases established by law in Austria.

In its previous conclusion (Conclusions 2013), the Committee asked for information on the situation of immigrant workers. The report states that pursuant to the Labour Inspection Act (*Arbeitsinspektionsgesetz, ArbIG*), immigrant workers are regarded as normal employees, so there are no separate statistics for this group.

The Committee notes the generally positive evolution in the number of accidents at work and occupational diseases.

Activities of the Labour Inspectorate

In its previous conclusion (Conclusions 2013), the Committee asked for information on the authority responsible for conducting inspection visits for workers employed by the *Länder* and the local authorities, the religious institutions, as well as for domestic workers. The report indicates that as of 1 July 2012 the scope of competence of the Labour Inspectorate was broadened to additionally cover the workplaces and work sites previously falling under the Transport Labour Inspectorate. Separate statistics continued to be kept in 2012 and 2013, while combined data is reported as of 2014.

The report states that a separate supervision arrangement exists for the public service (the Federal Employees Protection Act, the Labour Inspection Act, and the Federal Staff Representation Act). The bodies of legislation of the individual specify varying authorities or commissions (public-service employee protection committees) which are responsible for the employees with the administrative offices of the particular *Land*. The provisions are set forth in the laws for the protection of *Land* and municipal employees and in the accompanying ordinances that have been enacted or issued at level. All related provisions of law are available on the website of the Legal Information System (RIS). As regards the inspection for workers employed by "religious institutions", the report states that, according to the Labour Inspectorate Act (1993), the Labour Inspectorate is not competent to inspect houses of prayer affiliated with the churches and religious communities recognised by law; those are not subject to governmental labour supervision. Administrative institutions, welfare or charitable institutions as well as educational facilities, however, do fall under the remit of the Labour Inspectorate. Houses of prayer are not exempt from the scope of the Workers Protection Act. Consequently, the protection provisions for workers apply to persons employed at such houses of prayer (except for regulations governing workplaces). Spiritual dignitaries of churches and religious communities recognised by law are not considered employees (Section 2§1 ASchG). As regards domestic workers, the report states that Austria is already largely compliant with the ILO Convention No. 189 on the Domestic Workers (2011), however some amendments are still required (working time and inspection). The report adds that a bill which eliminates all of the obstacles to ratification of the Convention was produced in 2015.

In its previous conclusion (Conclusions 2013), the Committee also asked for figures on staffing in the labour inspection bodies, offences noted by the specialised inspectorates, fines imposed and their overall amount, as well as on suspensions of activities ordered. In response, the report states that as of 1 July 2012, the Transport Labour Inspectorate became part of the Central Labour Inspectorate within the Federal Ministry of Labour, Social Affairs and Consumer Protection. This unit consists of two departments with a staff of 28. The report indicates that the number of staff of Labour Inspectorate (management staff, field staff and administrative staff) was 418 in 2012 and 413 in 2015. The Agriculture and Forestry Inspectorates established at the offices of the Land governments had 16 inspectors on their rolls in the period of 2011 to 2014. According to ILOSTAT, the number of labour inspectors was 312 in 2012 and 329 in 2014, and the proportion of labour inspectors per 10 000 employed persons was 0.8 in 2012, 2013 and 2014. The Committee asks for the next report to explain the disparity between the number of labour inspectors in the report and ILOSTAT. It also asks that the next report provides information on the number, while distinguishing clearly between administrative staff and inspection staff, of inspectors assigned to supervising the application of the legislation and regulations on occupational health and safety.

The report indicates that the number of visits to workplaces (including federal offices) and businesses at construction sites and external work sites carried out by the Labour Inspectorate increased from 57,971 in 2012 to 61,204 in 2015. On the other hand, the number of inspection visits carried out by the Transport Inspectorate (from 1 108 in 2012 to 1 309 in 2013), and in agriculture and forestry (from 1 964 in 2012 to 2 329 in 2014) are constantly increasing. The number of workers covered by inspection visits is proportional to

the number of visits conducted, i.e. increasing in the case of the Labour Inspectorate (from 42.9% in 2012 to 56.1% in 2015). The number of workers covered by the Transport Inspectorate (29% in 2013 and 38% in 2010) and by the Agriculture and Forestry Inspectorates (63 753 in 2012 and 59 407 in 2014) decreased in comparison with the previous reference period.

The report also indicates that the number of offences noted by the Labour Inspectorate increased significantly (from 94 872 in 2012 to 116 481 in 2015). The number of offences noted by the Transport Inspectorate (3 671 in 2012 and 3 821 in 2013) and by the Agriculture and Forestry Inspectorates (11 in 2012 and 14 in 2014) also increased. The number of written injunctions is increasing in the Labour Inspectorate (from 23 164 in 2012 to 29 582 in 2015), similar to the Transport Inspectorate (from 247 in 2012 to 530 in 2013), and to agriculture and forestry (from 1 344 in 2012 to 1 457 in 2014). The number of offences reported to the administrative or judicial authorities by the Labour Inspectorate (2 055 in 2012 and 1 995 in 2015) is stable overall. The number of offences reported to the administrative or judicial authorities by the Transport Inspectorate (0 in 2012 and 2 in 2013) and by the Agriculture and Forestry Inspectorates (1 in 2012, 2013 and 0 in 2014) is also stable. The Committee notes that amount of penalty requested increased (from € 3 965 746 in 2012 to € 4 255 970 in 2014) during the reference period and amount of penalty imposed fell slightly over the reference period from € 2 580 862 to € 2 573 304 in 2014. It asks for the next report to provide more details on the measures taken by Labour Inspectorate inspectors (reports ordering remedial measures; fines for minor, serious and very serious breaches; suspension of activity, referral to prosecution service for criminal proceedings).

The Committee considers, in the light of the number of inspection visits, the proportion of workers covered and the extent of the monitoring, that the Labour Inspectorate is efficient.

Conclusion

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

Article 3 - Right to safe and healthy working conditions

Paragraph 4 - Occupational health services

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

The Committee previously examined (Conclusions 2013) the general legal framework for occupational health services and concluded that the situation was in conformity with Article 3§4 of the Charter.

In its previous conclusion (Conclusions 2013), the Committee asked for information on access to occupational health services for workers who are not covered by Act No. 450/1994, in particular in the sectors governed by the legislation of the or in the farming or forestry sector.

As regards an access to occupational health services in the farming and forestry sector, the report indicates that, according to Section 94 of the Agricultural Act, employers are to appoint occupational physicians by either employing qualified physicians within the framework of an employment relationship (in-house occupational physicians); utilising the services of an external occupational physician; or utilising the services of an occupational medical centre. Occupational physicians are to be consulted in issues involving maintaining and promoting health at work, in particular when planning workplaces, and when procuring or introducing and modifying work equipment and work processes. All employees can request regular health checks by the occupational physician to examine the specific safety and health risks at their place of work.

As regards an access to occupational health services for public-service employees, the report states that the corresponding provisions have been specified at federal and levels in the Federal Employees Protection Act *(Bundes-Bedienstetenschutzgesetz, B-BSG)* or in the acts of the individual that govern the protection of public-service employees. The same standards of protection apply in both the public and private sectors. All related provisions of law are available on the website of the Legal Information System (RIS).

The report indicates that as a result of an amendment to the Workers Protection Act (*ArbeitnehmerInneschutzgesetz, ASchG*) that entered into force as of 1 January 2013, Section 4§6 ASchG specifies that, in addition to occupational health and safety officers and occupational physicians, other qualified experts can be engaged to perform workplace evaluations; such experts include chemists, toxicologists, ergonomists and above all occupational psychologists. This new provision lists examples of the experts to be engaged, while special consideration should be given to occupational psychologists when psychological stress is to be evaluated. According to the report, occupational psychologists are not considered prevention experts (only occupational health and safety officers and occupational physicians are regarded as such). The Committee takes note of specific circumstances when employers can consult occupational psychologists, and of medical studies of occupational physicians.

In its previous conclusion (Conclusions 2013), the Committee asked for information on access to occupational health services for temporary and agency workers as well as workers on fixed-term contracts, self-employed workers and domestic or home workers. The report states that each provision governing occupational safety and health applies to every employee regardless of the type of employment relationship (permanent, temporary, temporary agency work) (Section 2§1 of the Workers Protection Act). Employers are under an obligation to ensure the protection of the health and safety of their employees, to bear the expense of the examination for suitability and of the follow-up examinations as well as to ensure that employees are adequately informed of the health and safety risks and of risk-prevention measures. The Committee requests detailed figures about access to occupational health services for self-employed workers; domestic and home workers.

The Committee takes note of detailed information on the initial medical examination before rehiring temporary workers, agency workers or workers on fixed-term contracts.

In its previous conclusion (Conclusions 2013), the Committee asked for the number of workers monitored by the occupational health services and the care rate by occupational health services among employers. The report states that the Preventive Care Department of the Austrian Workers' Compensation Board (*AUVAsicher*) provides care services for employees at businesses with up to 50 employees. The number of potential recipients of such services among employees (1 521 530 in 2012 and 1 594 764 in 2014) and the number of recipients among employees (891 032 in 2012 and 920 839 in 2014) increased slightly. The share of employees covered by the AUVA in relation to the market potentially covered decreased from 58.6% in 2012 to 57.7% in 2014. The report adds that no statistics on the individual employee categories are collected for the other businesses.

Conclusion

The Committee concludes that the situation in Austria is in conformity with Article 3§4 of the Charter.

Article 11 - Right to protection of health

Paragraph 1 - Removal of the causes of ill-health

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

Measures to ensure the highest possible standard of health

The Committee notes from the report that life expectancy at birth in 2014 (average for both sexes) was 81.3 (compared to 80.91 in 2010). It also notes from the WHO that life expectancy at birth in 2015 was 81.5. According to Eurostat, the average life expectancy at birth in the EU-28 was estimated at 80.9 in 2014 and 80.6 in 2015.

The report indicates that the death rate (deaths/1 000 population) was 9.2 in 2014, this indicator remaining stable from the previous reference period (9.2 in 2010).

The report states that during recent years, statistical data show a further decline of drug related deaths in Austria.

The report further indicates that the infant mortality decreased since the last reference period, therefore in 2014 the rate was 3 per 1 000 live births compared to 3.9 per 1 000 live births in 2010. The maternal mortality rate remained quite stable at 1.2 per 100 000 live births in 2014 compared with 1.27 per 100 000 live births in 2010. The Committee takes note of the main causes of infant mortality as well as maternal mortality which are listed in the report.

Access to health care

The Committee takes note from the report of the information regarding the number of hospitals, pharmacies, hospital employees and midwifes during the reference period.

The report indicates that according to Statistics Austria, a total of EUR 36.253 billion were spent on health care in Austria in 2014, which represents 11.0% of the GDP. Healthcare expenditure rose by an average of 5.0% per year during the period from 1990 to 2014.

The Committee took note previously of the periodic agreements between the Federal Government and the *Länder* governments on the organisation and funding of healthcare (on the basis of Article 15a of the Federal Constitutional Act*, Bundes-Verfassungsgesetz, B-VG)*. The previous agreement covered the period from 2008 until 2013 (Conclusions 2013). The report indicates that a new agreement scheduled to enter into force in early 2017 is being developed and negotiated.

The report refers to the Structural Health Plan (*ÖSG*) which was initially agreed in 2006 as a framework plan for achieving an integrated healthcare structure. *ÖSG* 2012, the fourth revision of the plan, encompassing a planning horizon up to 2020, represents a further major step towards comprehensive planning of the entire healthcare system. The report adds that the entire ÖSG is currently being revised and updated and further requirements regarding in particular outpatient treatment are incorporated. The revised version is scheduled to come into force in early 2017. The ÖSG national framework plan and the Regional Health Care Structure Plans (*Regionale Strukturpläne Gesundheit, RSG*), which are based on the ÖSG, cover planning specifications and reference values as well as quality criteria to ensure that healthcare is provided within a regionally balanced structure that is planned and realised (and later adapted) to meet the needs in each region.

The report further indicates that at the end of 2014 and during 2015, Austria provided a highly varying range of bed capacities for administering emergency inpatient care (including places at day clinics), for psychiatric specialities such as: general psychiatry, treatment of patients with addictive disorders and pediatric and adolescent psychiatry. The report mentions that inpatient psychiatric care facilities have been gradually decentralised in order to provide patients with care near their place of residence and the measures towards decentralised services have largely reached completion in the *Länder* of Lower Austria,

Upper Austria and Salzburg; in the other *Länder* the process is still ongoing. However, the report states that the expansion of inpatient and outpatient services to provide psychiatric care for children and adolescents throughout the country is proceeding slowly, in particular due to a still insufficient number of specialists in psychiatric care for children and adolescents; one of the measure taken was that training capacity has been increased. The Committee wishes to be kept informed on the availability of mental health care and treatment services, including information on the prevention of mental disorders and recovery measures.

With regard to waiting lists and waiting time management in the healthcare system, the Committee noted previously that for elective surgery and invasive testing for diagnosis at hospitals, a waiting list management system has been established that is comprehensible and transparent for patients. The system is the result of an amendment to the Federal Hospitals and Sanatoriums Act (*Bundesgesetz über Kranken- und Kuranstalten*, *KAKuG*). Legislation at the *Länder* level was required to stipulate criteria pertaining to the procedures and organisation of the waiting list system (Conclusions 2013). The report indicates that in the meantime, all *Länder* have met the obligation pursuant to Section 5a *KAKuG* and adopted relevant enforcement provisions in their respective hospital acts. The Committee asks that the next report provide updated information on the concrete waiting times.

The Committee asks that the next report contain information on dental care services and treatments (such as who is entitled to free dental treatment, the costs for the main treatments and the proportion of out-of-pocket paid by the patients).

In response to the Committee's question whether legal gender recognition for transgender persons requires (in law or in practice) that they undergo sterilisation or any other invasive medical treatment which could impair their health or physical integrity, the report indicates that the legislation neither requires sterilisation nor any other invasive medical treatment in order for a change of gender identity to be recognised.

The Committee notes from Euro Health Consumer Index (EHCI) 2015 that Austria does not ban abortion, but abortion is not carried out in the public healthcare system. The same source indicates that there are no official abortion statistics. It recalls that in respect of abortion, once States Parties introduce statutory provisions allowing abortion in some situations, they are obliged to organise their health service system in such a way as to ensure that the effective exercise of freedom of conscience by health professionals in a professional context does not prevent patients from obtaining access to services to which they are legally entitled under the applicable legislation (International Planned Parenthood Federation – European Network (IPPF EN) v. Italy, Complaint No. 87/2012, decision on the merits of 10 September 2013, § 69 and *Confederazione Generale Italiana del Lavoro* (CGIL) v. Italy, Complaint No. 91/2013, decision on the merits of 12 October 2015, §166-167). The Committee asks that the next report provide information on the conditions of abortion and measures taken by Austria to ensure that women can effectively have access to such abortion services.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Austria is in conformity with Article 11§1 of the Charter.

Article 11 - Right to protection of health

Paragraph 2 - Advisory and educational facilities

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

Education and awareness raising

The Committee takes note from the report of the measures and actions taken to improve health literacy of the population. In December 2014, the Federal Health Commission adopted the "Recommendations on establishing the Austrian Health Literacy Platform" (*Österreichische Plattform Gesundheitskompetenz, ÖPGK*). Its coordinating office was set up in 2015 as part of the Fund for a Healthy Austria.

The report recalls that the Fund for a Healthy Austria (*Fonds Gesundes Österreich*), a body responsible for implementing the Federal Act Governing Measures and Initiatives to Promote and Inform about Health (*Bundesgesetz über Maßnahmen und Initiativen zur Gesundheitsförderung, -aufklärung und -information*), continued its mandate of improving people's health literacy by way of providing information and raising awareness, taking targeted communication measures in all key areas. In 2015, the FGÖ and the Federal Ministry of Health launched a joint tobacco prevention campaign for and with children and young people. The Committee asks for information on the activities carried out by the FGÖ and the concrete areas addressed.

The Committee takes note of the measures taken in the field of nutrition which are implemented within the strategic framework of the Austrian Nutrition Action Plan (*Nationaler Aktionsplan Ernährung, NAP.e*). One of the NAP.e's main areas of action is the constant monitoring of the food situation and eating habits in Austria. The Federal Ministry of Health provides free information material that assists people in keeping a healthy diet and nutrition recommendations such as the food pyramid.

The Committee takes note of the public information and awareness raising campaigns carried out during the reference period such as: the campaign "Our school buffet" launched by the Federal Ministry of Health to improve the snack and lunch offerings for children at schools; the campaign "Measles are no easy feat" (*Masern sind kein Kinderspiel*) launched to point out the risks of measles and to increase the vaccination rate among the Austrian population; advertisements and PR measures for informing the public about the new regulations regarding on-line shipping of OTC drugs in Austria; new editions of the White Book on Alcohol in Austria (*Handbuch Alkohol – Österreich*); EU Joint Action „Reducing Alcohol Related Harm"(RARHA);

As regards health education at schools, the report indicates that based on the outcomes of the Healthy School project (*Gesunde Schule*) and the Austrian health targets adopted by the Federal Government in 2012, a coordinating office for health promotion in schools was set up in the Federal Ministry for Education and Women's Affairs (BMBF), which has developed a health promotion strategy of the BMBF.

Under the Healthy School project, agricultural schools (agricultural colleges, occupational schools and higher secondary schools) are supported in the long run and take an active part. The health theme is to be integrated gradually (even more) and holistically in everyday school life.

Counselling and screening

In its previous conclusion the Committee took note of the counseling and screening services available for pregnant women and children, including health checks at school (Conclusions 2013).

With regard to screening for the population at large, the report provides updated figures on the number of persons that benefited from precautionary checkups. In 2014, 950,940

persons (46.5% men and women 53.5%) participated in such precautionary check-ups, showing an increasing trend. A total of 187,102 women also participated in the gynecological examination programme. The report indicates that, on average, there has been an increase of the number of precautionary check-ups in Austria.

The report indicates that the precautionary checkup can be obtained once a year by all individuals living in Austria, regardless of whether or not they are covered by health insurance. The scheme is open to all persons from age 18 who are resident in Austria. The report mentions that the right to a precautionary check-up for people without insurance coverage was modified as of 1 January 2016 (outside the reference period) to the effect that it does not apply to persons who are entitled to a precautionary check-up at a healthcare institution or if, pursuant to Regulation (EC) 883/2004 and/or an intergovernmental agreement, a different country is responsible for providing healthcare.

Conclusion

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

Article 11 - Right to protection of health

Paragraph 3 - Prevention of diseases and accidents

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

Healthy environment

The Committee takes note of the different measures taken by Austria to implement the applicable legislation and regulations for the reduction of environmental risks with regard to chemicals and pollutants, waste management, water management, air pollution, climate change and green and healthy mobility and transport.

Tobacco, alcohol and drugs

The Committee takes note of the new anti-smoking measures which came into force during the reference period. The Tobacco Act (*Tabakgesetz, TabakG*) was amended in 20015, extending the general ban on smoking to festival tents and clubhouses in general (provided that the club's activities include young people). It also covers the outside areas of schools and childcare facilities now. In addition to the traditional tobacco products, what is referred to as related tobacco products, e.g. herbal products, electronic cigarettes and water pipes, are now also governed by the provisions on the smoking ban and the protection of non-smokers.

The report adds that as of 1 May 2018 (outside the reference period), a universal smoking ban will be in place in all public places including bars and restaurants that pertains to the consumption of all tobacco products as well as of related tobacco products. No separate rooms for smokers may be made available in the entire gastronomy and restaurant sector, except for hotels and accommodation facilities. The Committee asks to be informed on the anti-smoking measures.

The Committee takes note of the preventive measures taken and campaigns carried out during the reference period such as the smokers' telephone, a quit-line set up for smokers, or "Live your life. No smoking, YOLO" campaign targeting adolescents of 10 to 14-year old.

As to the number of smokers, the report states that in 2014, 27% of men (down one percentage point compared to 2006/07) and 22% of women (up three percentage points compared to 2006/07) were smoking on a daily basis. Between 2006 and 2014, a downward trend was observed in the proportion of young women (aged 15 to 24) who smoked on a daily basis, but in 2014, one in five 15 to 19-year-old women and 29% of 20 to 24-year-old women were smoking tobacco. Tobacco use among women aged 25 and older, however, was more prevalent than in 2006 in all age groups. The percentage of young men (aged 15 to 19) who smoked tobacco declined between 2006 and 2014 (from 26% to 22%), whereas the percentage of male smokers aged 25 to 29 rose by 4%.

The report indicates that the Council of Ministers adopted a national addiction prevention strategy in February 2016 (outside the reference period), which also covers the consumption of alcohol. By way of the working group for addiction prevention (*Arbeitsgemeinschaft für Suchtvorbeugung*), the specialised units for addiction prevention established in the *Laender* are also integrated and they cooperate with schools and various addiction facilities primarily at regional and local levels. The Committee asks statistical information in the next report on the consumption of alcohol.

The Committee takes note from the report of the legislation and policies applicable to drug use. It notes that during the reference period measures were taken with regard to the so-called "new psychoactive substances" (formerly also referred to as "research chemicals" or "legal highs") by the adoption of the New Psychoactive Substances Act (*NPSG*; Federal Law Gazette I No. 146/2011), and the New Psychoactive Substances Regulation (*NPSV*, Federal Law Gazette II No. 468/2011) which entered into force in 2012. They aim to minimize the circulation of new psychoactive substances and the health hazards resulting from the use of these substances, by adopting specific control measures.

Data show that following an increase in 2004, the prevalence of high-risk drug use decreased once again and has started gradually going down since 2009. Based on the latest estimate of the prevalence of high-risk drug use (usually of several substances) involving opiates, some 28 000 to 29 000 individuals are affected in Austria.

Immunisation and epidemiological monitoring

The report indicates that Austrian legislation requires the reporting of major infectious diseases (Epidemic Disease Act, *Epidemiegesetz*). At national level, notifiable diseases as defined in the Epidemic Disease Act must be reported electronically to the Epidemiologic Reporting System (*Epidemiologisches Meldesystem, EMS*). Relevant infectious diseases must be reported not only at national level, but also at EU level. To this end, national data are collated once a year and reported to the European Centre for Disease Prevention and Control (ECDC).

In its previous conclusion, the Committee asked for up to date information on the national vaccination programme, as well as the vaccination coverage rate (Conclusions 2013).

The report indicates that in early 1998, a new vaccination scheme was created with a view to giving all children up to the age of 15 who live in Austria access to vaccinations that are essential for public health, without incurring any costs for the legal guardians. This scheme covers most of the vaccine-preventable diseases potentially occurring in children and adolescents. The report further describes the types of vaccinations which are free of charge and recommended for children in Austria under the immunisation programme for children. Apart from the immunisation programme for children, MMR vaccination (measles, mumps and rubella) is available free of charge to anyone who is not immune (i.e. who has been vaccinated twice or has had the disease) in order to close any potential immunisation gaps in the population. Special attention is also paid to women who have just given birth, and if they lack rubella antigens, they will also be vaccinated against MMR. The report adds that in Austria vaccination is voluntary.

The report states that since the vaccination scheme has been in force, the immunisation rate for the most common children's diseases raised substantially. More than 90% of children born in the relevant years in reporting period received the hexavalent vaccination. In the majority of the *Länder*, the MMR vaccination coverage also climbed to over 80%. As a response to an increase in pertussis disease in young adults in the past few years, pertussis was included in the vaccination scheme for schools. The report further presents information on the general vaccination schedule for infants and small children, for school children and adolescents as well as for adults.

The Committee takes also note from the report of the information on HIV/AIDS situation in Austria.

Accidents

The Committee takes note of the information provided in the report regarding the measures taken to prevent road accidents as well as domestic accidents and accidents during leisure time.

The report describes the measures and actions taken through the Road Safety Programme (RSP), which is designed to improve the safety on the roads. In order to support the RSP strategy, numerous road safety awareness-raising measures and campaigns were carried out in 2014 at national or regional level. The report states that significant progress was already achieved through the first Austrian Road Safety Programme (2002–2010).

The current RSP 2011-2020 was published in February 2011 and set the following numerical targets: 50% fewer fatalities by 2020; 40% fewer serious injuries on the roads by 2020; 20% fewer personal injury accidents by 2020. The programme will be monitored throughout its duration by the Austrian Road Safety Advisory Council (Roads Task Force). An interim

evaluation of the RSP in 2015 shows positive trends since 2000. The report mentions some legal amendments in the road safety sector according to the RSP 2011-2020 such as: the introduction of a blood alcohol concentration (BAC) limit of 0.1 ‰ for all school transport drivers in the future; the introduction of a ban on lorries in the far left lane on motorways with three or more lanes; new Section Control Measuring Acts; new standard for child restraints.

The report indicates that in 2012, the Federal Ministry of Health launched a programme for the prevention of home and leisure accidents, with its measures to be implemented at intersectoral level. The Committee asks to be kept informed of the measures taken and the trend in the number of road accidents as well as domestic accidents and accidents during leisure time.

Conclusion

The Committee concludes that the situation in Austria is in conformity with Article 11§3 of the Charter.

Article 12 - Right to social security

Paragraph 1 - Existence of a social security system

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

In the case of **family** and **maternity benefits**, the Committee refers to its conclusions on, respectively, articles 16 and 8§1.

Risks covered, financing of benefits and personal coverage

The Committee refers to its previous conclusions for a description of the Austrian social security system and notes that it continues to cover all the traditional risks (medical care, sickness, unemployment, old age, work accidents/occupational diseases, family, maternity, invalidity and survivors) and is based on collective financing, as it is funded by contributions (employers and employees and the state) and also by the State budget.

According to the report, 99% of the population are covered by statutory health insurance schemes. With the introduction of the means-tested minimum income scheme, its beneficiaries are covered by compulsory social health insurance as well. Accident insurance covers practically 100% of the economically active population, including schoolchildren and students, with the exception of self-employed persons in a few liberal professions (e.g. authors, lawyers and civil engineers), which can however subscribe voluntary insurance. In 2015, on average 3 807 725 persons were directly covered by pension insurance (of which, 3 141 363 were employees and 566 362 were self-employed), 6 264 402 persons were covered by accident insurance and 3 134 986 were covered by unemployment insurance, including 16 721 freelance workers. Furthermore, 1 373 280 persons were receiving old-age benefits in 2015. The Committee asks for information in the next report on the number of insured persons as a percentage of the total active population, including the self-employed, for the different benefits paid as income replacement, and points out that this information must be supplied regularly in each report to enable it to assess the extent of actual personal coverage.

Adequacy of the benefits

According to Eurostat data, the median equivalised annual income was €23 260 in 2015, or €1938 per month. The poverty level, defined as 50% of the median equivalised income, was €11 630 per annum, or €969 per month. 40% of the median equivalised income corresponded to €775 monthly.

Old age benefit: according to the report, the Austrian statutory pension system does not provide for an unconditional minimum pension for persons beyond a certain age. However, the so-called “means-tested equalisation supplement” (*Ausgleichszulage*) may – on a partly means-tested basis – apply to persons who are, in principle, eligible to a pension entitlement. This means that low-level pensions may be raised to the so-called “equalisation supplement reference rate” in case of financial indigence. In 2015, the equalisation supplement reference rate was €872.31 for single persons and €1307.89 for couples. Although the level of minimum old-age benefits falls between 40% and 50% of the Eurostat median equivalised income, the Committee notes from the report that the "equalisation supplement" is paid 14 times a year, which brings the annual minimum level at €12 212, that is above the poverty level. The situation is accordingly in conformity with the Charter. The same applies to **sickness** and **invalidity benefits**, also when incapacity to work results from **work accidents** or **professional diseases**.

Unemployment benefit: the Committee previously noted (Conclusions 2013) that the Austrian system consists of two pillars which secure that none is with a minimum income below the poverty line: the unemployment insurance system and the minimum income scheme guaranteeing an adequate minimum income. When the unemployment benefits (*Arbeitslosengeld*) are lower than the minimum level guaranteed by the minimum income

scheme of the *Länder*, then the person is entitled to receive supplementary benefits under the employment assistance (*Notstandshilfe*), at least up to the level of the minimum income scheme. The report states that the minimum amount granted in 2015 to singles and single parents was €827.82, which corresponds approximately to 43% of the median equivalised income. The report mentions however that additional benefits can be granted by the *Länder*, in particular housing benefits. Furthermore, the Committee notes from MISSOC that the unemployment benefits and unemployment assistance can be cumulated with other employment-oriented benefits such as the special support (*Sonderunterstützung*), the transitional benefits (*Übergangsgeld*), further training allowance (*Weiterbildungsgeld*), transitional benefits after part-time for elder workers (*Übergangsgeld nach Altersteilzeit*) and retraining allowance (*Umschulungsgeld*). The benefits can also be cumulated with income from minor employment up to €405.98 per month. Considering the different additional benefits available to supplement the unemployment benefits, the Committee considers that its level is adequate. It notes from Missoc that the duration of payment of unemployment benefits, depending on insurance duration and age, goes from 20 weeks, for persons who have been insured 52 weeks within a period of two years, up to 78 weeks. This period can be extended when the beneficiary participates to certain training or reintegration measures. Unemployment assistance is paid for a maximum of 52 weeks. As regards the initial period during which a job can be refused as unsuitable, without losing entitlement to the unemployment benefits, the Committee refers to its previous conclusions (Conclusions 2013), where it found the situation to be in conformity with the Charter (during the first 100 days of unemployment, placement in jobs other than those previously held is considered unreasonable if such placement makes it much more difficult for the job-seeker to find in the future a job in her/his previous occupation).

Conclusion

The Committee concludes that the situation in Austria is in conformity with Article 12§1 of the Charter.

Article 12 - Right to social security

Paragraph 2 - Maintenance of a social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security

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

The Committee notes that Austria has not ratified the European Code of Social Security. Therefore the Committee cannot take into consideration other sources such as the resolutions of the Committee of Ministers on the compliance of the states bound by the European Code of Social Security and has to make its own assessment based on the information received in the report.

The Committee recalls that Article 12§2 obliges states to establish and maintain a social security system which is at least equal to that required for ratification of the European Code of Social Security. The European Code of Social Security requires acceptance of a higher number of parts than ILO Convention No. 102 on Social Security (Minimum Standards), as six of the nine contingencies must be accepted although certain branches count for more than one part (medical care counts as two and old-age counts as three).

The Committee notes that Austria has accepted parts II, IV, V, VII and VIII of ILO Convention No. 102 which concern respectively: medical care benefits, unemployment benefits, old age benefits, family benefits and maternity benefits. As a result of the ratification of ILO Convention No. 128 (Austria has accepted Part III on old age benefits) and pursuant to Article 45 of that Convention, part V (old age benefits) of Convention No. 102 are no longer applicable.

The Committee notes that the 2017 Report of the ILO Committee of Experts on Application of Conventions and Recommendations does not refer to any observation or direct request to the Government with regard to ILO Conventions 102 and 128.

The Committee recalls that in order to assess whether the social security system is maintained at a level at least equal to that necessary for the ratification of the Code, it has to assess the information regarding the branches covered, the personal scope and the level of benefits offered.

The Committee refers to its assessment under Article 12§1, which indicates that the social security system in Austria continues to cover all the traditional risks (medical care, sickness, unemployment, old age, work accidents/occupational diseases, family, maternity, invalidity and survivors). It takes into account the assessment of personal coverage and adequacy of benefits in Austria which are in conformity with Article 12§1 and refers to the Conclusion that the situation in Austria is also in conformity with Article 12§3.

Conclusion

The Committee concludes that the situation in Austria is in conformity with Article 12§2 of the Charter.

Article 12 - Right to social security

Paragraph 3 - Development of the social security system

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

It notes the changes to the legislation during the reference period, as set out in the report, and refers to its previous conclusions for a description of the social security system.

In the case of family and maternity benefits, the Committee refers to its conclusions on, respectively, Articles 16 and 8§1.

As regards other branches of social security, the Committee takes note of the legislative developments during the reference period. In particular, the report mentions the following improvements:

- the increase, during the reference period, in the level of standard rates for granting an equalisation supplement to the pension (2.7% in 2012; 2.8% in 2013, 2.4% in 2014; 1.7% in 2015) and in the level of pensions (2.7% in 2012; 1.8% in 2013; 1.6% in 2014; 1.7% in 2015);
- the extension of long-term illness benefits to self-employed people (Social Insurance Amendment Act 2012 – *Sozialversicherungs-Änderungsgesetz* 2012, Federal Law Gazette I No. 123/2012);
- the extension of the list of occupational diseases covered for accident insurance purposes (vibration-induced vascular desorders, pressure damage, chronic diseases of the tendon sheats, peritendinum and muscular and tendinous insertions, as well as rhinopathy have been included);
- a reform of the disability pension system, with the introduction of a rehabilitation benefit (Act Governing Amendments to Social Law 2012 (*Sozialrechts-Änderungsgesetz* 2012), Federal Law Gazette I No. 3/2013) – the new benefit aims at encouraging rehabilitation and retraining and applies to persons with a temporary incapacity to work of at least 6 months; a rehabilitation allowance is furthermore introduced for persons not entitled to incapacity benefit because of the lack of permanent incapacity, but whose temporary incapacity for at least 6 months has been confirmed and where occupational measures are not practicable or not appropriate;
- the adoption in January 2014 of rules (Labour Law Reform Act 2013 (*Arbeitsrechts-Änderungsgesetz* 2013), Federal Law Gazette I No. 138/2013) enabling employees to take full-time or part-time leave, in agreement with their employers, in order to care for a close relative and receive care-leave benefits while maintaining their health insurance (to be paid by the Federal Government);
- as from July 2015, children and young people under the age of 18 needing orthodontic braces are entitled to receive such treatment as a benefit in kind without co-payment or payment of a contribution towards the cost of treatment by the insured;
- the introduction of relief measures for those caring for a disabled child and wishing to take out self-insurance and the creation of a non-contributory self-insurance scheme for people providing care for family members (Act Governing Amendments to Social Law 2015 (*Sozialrechts-Änderungsgesetz* 2015), Federal Law Gazette I No. 162/2015);
- the extension of full insurance coverage to participants to certain volunteers programmes, as specified in the Volunteer Act;
- the introduction of a temporary assistance allowance (*Überbrückungsgeld*) for unemployed construction workers who, in 2015, are close to their retirement age and cannot fulfil their work due to illness;
- the aggregation of periods credited towards the minimum period of unemployment – since 2015, specific periods such as military service or alternative civilian service, family hospice leave etc. are credited towards the duration of previous employment. The newly credited periods may also be part of

the 156 weeks of unemployment insurance-covered employment within the preceding five years, for claiming 30 weeks of unemployment benefits.

The Committee also notes from the report that as a result of an important administrative reform entered into force in January 2014, and of a Constitutional decision of December 2014, complaints concerning the granting of unemployment benefits have now a suspensive effect. Administrative courts are responsible as from 2014 for appeal procedures concerning unemployment insurance, instead of the Public Employment Service. Furthermore, several special authorities which previously acted as appeals authorities in matters relating to health and accident insurance were abolished at the end of 2013 and the competence to review administrative decisions in this area resides now with the Federal Administrative Court.

The Committee notes on the other hand the introduction of certain restrictive measures, in particular:

- the abolition of certain cost reimbursements for medical check-ups and health screenings (Budget Accompanying Act 2016 (*Budgetbegleitgesetz* 2016), Federal Law Gazette I No. 144/2015);
- the tightening of access to early retirement pension scheme (in 2013, 38 years insurance were required, to be raised to 40 years by 2017), to long-time insurance pension (*Hacklerregelung* – the respective retirement age was increased to 62 years for men and women), to long-time insurance pension for manual workers (the minimum age and contribution period have been increased).

The report also mentions measures coming into force out of the reference period, concerning the calculation of the unemployment benefits rate and the introduction of partial retirement. The Committee asks the next report to provide information on their implementation and impact.

Conclusion

The Committee concludes that the situation in Austria is in conformity with Article 12§3 of the Charter.

Article 12 - Right to social security

Paragraph 4 - Social security of persons moving between States

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

Equality of treatment and retention of accrued benefits (Article 12§4)

Right to equal treatment

Equal treatment between nationals and nationals of other States Parties in respect of social security rights shall be ensured through the conclusion of bilateral or multilateral agreements or through unilateral measures.

The Committee recalls that, having regards to the EU legislation on the coordination of social security systems of the EU Member States, governed by Regulations (EC) No. 883/2004 and (EC) No. 987/2009**,** as amended by Regulation (EU) No. 1231/2010, the EU Member States are considered, as a matter of principle, to ensure equal treatment between, on the one hand, their nationals and, on the other hand, nationals of other EU Member States or member of the EEA, stateless persons, refugees resident in the territory of a Member State who are or have been subject to the social security legislation of one or more Member States, their families and their survivors, as well as nationals of third countries, members of their families and their survivors, provided that they are legally resident in the territory of a Member State and are in a situation which is not confined in all respects within a single Member State.

The Committee recalls that, in any event, under the Charter, EU/EEA Member States are required to secure, to the nationals of other States Parties to the 1961 Charter and to the Charter not members of the EU, equal treatment with respect to social security rights provided they are lawfully resident in their territory (Conclusions XVIII-1 (2006)). In order to do so, they have either to conclude bilateral agreements with them or take unilateral measures.

As regards bilateral agreements concluded with the other States Parties not EU Member States or part to the EEA, the Committee notes from the report that the situation remained unchanged during the reference period. The Committee noted in its previous conclusion (Conclusion 2013) that there was still no agreement with Albania, Andorra, Armenia, Azerbaijan, Georgia, the Russian Federation and Ukraine. The Committee asks that the next report to provide information on the agreements foreseen and if so, within what timescale.

As regards unilateral measures undertaken by Austria, there is no indication in the report that such measures have been taken or are planned, so that the Committee reiterates its finding of non-conformity on this point.

In respect of payment to family benefits, the Committee considered that the requirement for the child to reside in the territory of the paying State is in conformity with Article 12§4 (Statement of Interpretation on Article 12§4, XVIII-1 (2006)). However, since not all countries apply such a system, States Parties applying the ‘child residence requirement’ are under the obligation, in order to secure equal treatment within the meaning of Article 12§4, to enter, within a reasonable period of time, into bilateral or multilateral agreements with those States which apply a different entitlement principle (Conclusion 2006, Cyprus).

The Committee notes from MISSOC that Austria applies the rules whereby the payment of family benefits is conditional on the claimant’s children being resident in Austria.

The report does not address this issue. In absence of information, the Committee understands that the situation remains the same and, as a consequence, reiterates its finding of non-conformity. Furthermore, it asks each future report to provide information on the current state of the law or practice.

Right to retain accrued benefits

In its previous conclusions (Conclusions 2006 to 2013), the Committee asked for confirmation that the principle of retention of benefits applied to nationals of all these countries. The report confirms that pension benefits are exported to all countries without exceptions.

The Committee considers therefore the situation to be in conformity as regards retention of accrued benefits, including in the case of nationals of other States Parties not currently covered by any agreement.

Right to maintenance of accruing rights (Article 12§4b)

The report does not address this issue. The Committee considers therefore that the situation remained unchanged and, consequently, reiterates its previous conclusion where it found the situation to be in conformity with the Charter on this point. Furthermore, it asks each future report to provide information on the current state of the law or practice.

Conclusion

The Committee concludes that the situation in Austria is not in conformity with Article 12§4 of the Charter on the grounds that:

- equal treatment with regard to social security rights is not guaranteed to nationals of all other States Parties;
- equal treatment with regard to access to family allowances is not guaranteed to nationals of all other States Parties.

Article 13 - Right to social and medical assistance

Paragraph 1 - Adequate assistance for every person in need

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

Types of benefits and eligibility criteria

Given that Austria has not accepted Article 23 of the Charter, the Committee assesses the level of non-contributory pension paid to a single elderly person without resources under this provision. The Committee refers to its conclusion under Article 12§1 and notes that according to the report, the level of pensions are raised to the so-called "equalisation supplement reference rate" in case of financial indigence. In 2015, the equalisation supplement reference rate was €872.31 for a single person. Although the level of minimum old-age benefit falls between 40% and 50% of the Eurostat median equivalised income, the Committee notes from the report that the "equalisation supplement" is paid 14 times a year, which brings the annual minimum level at €12 212, that is above the poverty level (€11 630).

Level of benefits

To assess the level of social assistance during the reference period, the Committee takes note of the following information:

- Basic benefit: according to MISSOC, the minimum standard (*Mindeststandards)* was in 2015 € 827,82 for a single person.

The Committee takes note of information from individual *Länder.*

Lower Austria: the minimum standard amounts are adjusted annually to the equalisation supplement reference rate of pension insurance and are paid 12 times a year. The means-tested minimum includes subsistence and accommodation benefits. Individuals have a claim if evidence of accommodation costs is provided and these costs cannot be covered by third-party benefits. The Government additionally pays a heating allowance to persons in need once a year. For 2015/2016 it stood at €120 per household.

Upper Austria: social assistance benefits have the aim of avoiding social hardships (preventive support) and covering basic needs (support by satisfying basic needs). Means-tested income and social assistance benefits are paid by the *Land* of Upper Austria and regional social assistance institutions. The Minimum Income Act of Upper Austria lays down a legal entitlement to assistance, to secure subsistence and accommodation, healthcare and support in education and employment.

Tyrol: the Tyrolian Minimum Income Act differentiates between basic benefits and other benefits. Basic benefits are intended to help secure the necessities of life and accommodation needs. Other benefits are intended as education support, etc. The Committee notes that in 2015 the minimum income stood at € 620,87. There was also a special payment of € 74.50 per quarter. In addition, the accommodation allowance granted to a person seeking assistance covered actual regular expenses for rent, operation costs, heating and taxes and corresponded to normal local prices. In case of extraordinary hardships, individuals may receive additional support within the framework of the minimum income scheme by education support and financial support of a maximum €126 per month or a one-off payment of a maximum of € 1 508.

In reply to the Committee previous question concerning the overall level of assistance, the report states that the minimum income scheme provides for a minimum amount for covering subsistence and accommodation needs. The granted amount of minimum income benefit corresponds to the sub total of the respective minimum amount and actual accommodations costs of which evidence has been provided and which are to be taken into account. In 2015 the persons in need received € 620, 87 in the minimum amount, plus the benefit to pay for their subsistence and actual accommodation and operating costs for adequate accommodation, so that they did not have to use their subsistence allowance to pay for

heating costs. Indispensable one-off expenses are also covered, e.g. those connecting with securing an accommodation. In addition, the report indicates that € 124 were paid as pocket money and € 74,50 per quarter a special payment. According to he report, in total, minimum income, accommodation allowance and additional benefits may in some cases even exceed the Eurostat poverty threshold.

Vorarlberg: the Committee notes that the amount of minimum income continued to be based on the equalisation supplement reference rate. In 2014, the subsistence allowance for single persons amounted to € 623, while adequate accommodation allowance (rent, operating costs) was up to €560, which, according to the report, means that subsistence and accommodation allowances taken together may exceed the at-risk-of-poverty threshold value.

Vienna: the minimum standard amount for persons of full age include a base amount earmarked for accommodation needs, corresponding to 25% of the respective minimum standard amount. In addition, they are eligible for rental assistance if they can provide evidence of higher accommodation expenses. The ceiling of additional rental assistance is € 103 and therefore, altogether the amount of assistance may reach € 941. According to the report, in combination with other benefits the amount of means-tested minimum income granted reaches the poverty threshold in individual cases, but not in general and not in all constellations.

- Poverty threshold (defined as 50% of median equivalised income and calculated on the basis of the Eurostat at-risk-of-poverty threshold value): it was estimated at € 969 in 2015.

The Committee takes note of the detailed information on different types of benefits that are paid in addition to the basic amount of assistance by different *Länd*er Governments. It notes that the overall assistance may in some cases reach and even exceed 50% of the median equivalised income. However, although the Committee cannot exclude that the total amount of benefits paid to a recipient of social assistance may in some cases reach the level of 50% of median equivalised income, it does not consider it demonstrated, based on the information at its disposal, that all persons in need are granted social assistance which is adequate. The Committee concludes that the right to the adequate level of social assistance is not guaranteed for all persons in need.

Right of appeal and legal aid

At the beginning of 2014, the Austrian system of redress mechanisms was amended. The 2012 amendment of administrative jurisdiction, among other things, replaced Independent Administrative Tribunals by Administrative Courts of the Provinces (*Landesverwaltungsgerichte*) representing the only appellate instance in the administration of the *Land* and concerning the implementation of federal laws by the *Land* Government. The establishment of the *Landesverwaltungsgerichte* also changed the competences regarding the Minimum Income Act. In appeal proceedings against decisions taken by the competent administrative authorities (*Bezirkshauptmannschaften*) pursuant to the Minimum Income Act, the *Landesverwaltungsgericht* is now the court of decision.

Personal scope

The Committee recalls that, under Article 13§1, States are under the obligation to provide adequate medical and social assistance to all persons in need, both their own nationals as well as nationals of States Parties lawfully resident within their territory, on an equal footing. In addition, with reference to its Statement of Interpretation on Articles 13§1 and 13§4 (Conclusions 2013) regarding the scope of Articles 13§1 and 13§4 in terms of persons covered, the Committee considers that persons in an irregular situation in the territory of the State concerned are also covered under Article 13§1, rather than under Article 13§4, which was previously its practice.

The Committee henceforth examines whether the States who have accepted Article 13§1 ensure the right to:

- adequate social and medical assistance for their own nationals and for nationals of other States Parties lawfully resident within their territory on an equal footing;
- emergency social and medical assistance to persons unlawfully present in their territory.

Nationals of States Parties lawfully resident in the territory

In its previous conclusion the Committee found that the situation was not in conformity with the Charter on the ground that non-EEA nationals, lawfully resident in Austria were subject to a length of residence requirement to be eligible for social assistance.

The report indicates in this regard that in Tyrol and Vorarlberg nationals of States Parties the Social Charter enjoy equal status with Austrian citizens. Carinthia makes no distinction along the lines of citizenship. Any individual entitled to reside in the country for more than four months is eligible for means-tested minimum income. Styria provides social assistance benefits to everyone entitled to residence for more than three months.

However, according to the report, in the statutes of five *Länder*, the entitlement to the benefit is linked to the right to permanent residence in Austria, meaning that in principle a five-year residence period is required. To provide a safety net, all of the *Länder* statutes specify what is referred to as the hardship clause for foreigners, for which nationals from Charter signatory countries are also eligible. The Committee notes that in Vienna, according to Section 39 para 2 WMG non-nationals who do not enjoy equal treatment and have permission to stay in Austria for more than three months may be granted means-tested minimum income benefits due to their personal, family or economic situation in order to avoid any cases of social hardship.

The report further states that net immigration of the overall group of third-country nationals increased more than tenfold from 1996 to 2014 (i.e. 2 983 vs. 29 902 persons). Given these numbers, opening up the system for additional groups of people is, according to the report, not an option.

The Committee recalls that under Article 13§1 equality of treatment must be guaranteed once the foreigner has been given permission to reside lawfully in the territory of a Contracting Party. The Charter does not regulate procedures for admitting foreigners to the territory of Parties, and the rules governing “resident” status are left to national legislation. Equality of treatment means that entitlement to assistance benefits, including income guarantees, is not confined in law to nationals or to certain categories of foreigners and that the criteria applied in practice for the granting of benefits do not differ by reason of nationality.Equality of treatment also implies that additional conditions such as length of residence, or conditions which are harder for foreigners to meet, may not be imposed on them.

The Committee understands that in some *Länder* equality of treatment with nationals is only guaranteed to nationals of other States Parties who have a permanent resident status, which implies that they have to have resided for five years. The Committee therefore, reiterates its previous finding of non-conformity.

Foreign nationals unlawfully present in the territory

In its previous conclusions (XIX-2, 2013) on Article 13§4 the Committee considered that the situation as regards emergency medical and social assistance to unlawfully present persons was in conformity with the Charter.

According to the report, Section 18 of the Federal Hospitals and Sanatoriums Act (*Bundesgesetz über Kranken- und Kuranstalten*, *KAKuG*) obliges each *Land* to provide adequate hospital nursing for impecunious individuals in need of inpatient hospital treatment.

Under Section 23 of the aforementioned Act, nobody may be refused any necessary first medical aid in public hospitals.

In this connection, no differentiation is made by nationality or alien status, so that medical care in an emergency is ensured for all non-nationals while they stay in Austria.

Persons in detention pending deportation are to be granted the necessary medical care to the same extent as described above, irrespective of whether or not the person concerned had to be released from detention on grounds of his/her physical condition.

The *Länder* are responsible for taking care of any other non-nationals who are in need of protection and support.

Basic welfare support comprises accommodation in suitable facilities with due regard to human dignity and consideration of family unity, adequate food, monthly pocket money, medical services, securing of health care, measures for persons in need of nursing care, information, counselling and social care for non-nationals, payment of transport costs (including travelling costs to school), measures to organise a daily structure, benefits in kind or monetary benefits to obtain the requisite clothing etc.

Particular emphasis is placed on identifying groups of people who require special protection and such protection is extended already during the initial interview conducted by the security authorities or during the questioning by the Austrian Federal Office for Immigration and Asylum (*Bundesamt für Fremdenwesen und Asyl, BFA*).

Conclusion

The Committee concludes that the situation in Austria is not in conformity with Article 13§1 of the Charter on the grounds that:

- the right to the adequate level of social assistance is not guaranteed for all persons in need.
- in some *Länder* non-EEA nationals, lawfully resident are subject to a length of residence requirement of five years to be entitled for social assistance.

Article 13 - Right to social and medical assistance

Paragraph 2 - Non-discrimination in the exercise of social and political rights

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

According to the report, the applicable provisions lay down that recipients of means-tested minimum income or social assistance benefits must not be discriminated against. The political and social rights of these people are neither indirectly nor directly compromised. This would conflict with the principle of equality of all citizens, which is enshrined in the Austrian Federal Constitution (Article 7 of the Federal Constitutional Law (*Bundes-Verfassungsgesetz*) and Article 2 of the Basic Law on the General Rights of Nationals (*Staatsgrundgesetz über die allgemeinen Rechte der Staatsbürger*), Imperial Law Gazette No. 142/1867). This principle lays down the constitutional right to equal treatment before the law for all citizens. Privileges based upon birth, sex, estate, class or religion are excluded. The Constitutional Court is responsible for making sure that these principles are observed in legislation. Unlawful decisions can be appealed.

Conclusion

The Committee concludes that the situation in Austria is in conformity with Article 13§2 of the Charter.

Article 13 - Right to social and medical assistance

Paragraph 3 - Prevention, abolition or alleviation of need

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

According to the report, with the exception of labour market related measures, responsibility for most of the social services is in the hands of *Länder*, local and municipal authorities.

According to the report, with regard to services for which there is a legal entitlement, the social assistance authorities must advise and guide people seeking help in accordance with the situation to the extent as is necessary to achieve the goals of social assistance, so that any violation of such obligations can be reviewed in procedures involving services for which there is a legal entitlement within the scope of an appeal. The Committee asks what is the situation which services for which there is no legal entitlement.

The Committee recalls that Article 13§3 concerns free of charge services offering advice and personal assistance specifically addressed to persons without adequate resources or at risk of becoming so. The social services covered by Article 13§3 must play a preventive, supportive and treatment role. This means offering advice and assistance to make those concerned fully aware of their entitlement to social and medical assistance and how they can exercise those rights. In assessing national situations under this provision the Committee specifically examines whether there are mechanisms to ensure that those in need may receive help and personal advice services free of charge and whether such services and institutions are adequately distributed on a geographical basis. The Committee asks the next report to inform how these requirements are met in legislation and practice.

Conclusion

The Committee concludes that the situation in Austria is in conformity with Article 13§3 of the Charter.

Article 13 - Right to social and medical assistance

Paragraph 4 - Specific emergency assistance for non-residents

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

The Committee refers to its conclusion under Article 13§1 (personal scope) and recalls that Article 13§4 from now on will cover emergency social and medical assistance for nationals of States Parties lawfully present (but not resident) in the territory.

The Committee recalls that States Parties are required to provide non-resident foreigners without resources emergency social and medical assistance (accommodation, food, emergency care and clothing, to cope with an urgent and serious state of need (without interpreting too narrowly the 'urgency' and 'seriousness' criteria). No condition of length of presence can be set on the right to emergency assistance (European Federation of national organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, §171).

According to the report, Section 18 of the Federal Hospitals and Sanatoriums Act (*Bundesgesetz über Kranken- und Kuranstalten*, *KAKuG*) obliges each *Land* to provide adequate hospital nursing for impecunious individuals in need of inpatient hospital treatment. Under Section 23 of the aforementioned Act, nobody may be refused any necessary first medical aid in public hospitals. In this connection, no differentiation is made by nationality or alien status, so that medical care in an emergency is ensured for all non-nationals while they stay in Austria.

The social assistance institution may furthermore grant non-nationals who do not enjoy equal treatment and who have permission to stay in Austria benefits to secure their subsistence, help in case of illness and help for pregnant women and women in confinement if this appears to be due in view of their personal, family or economic situation to avoid any social hardship.

Conclusion

The Committee concludes that the situation in Austria is in conformity with Article 13§4 of the Charter.

Article 14 - Right to benefit from social welfare services

Paragraph 1 - Promotion or provision of social services

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

Organisation of the social services

In its previous conclusion (Conclusions 2013), the Committee asked to provide information on the situation regarding social services in each of the nine *Länder.*

The Committee recalls that Article 14§1 guarantees the right to general social welfare services. The right to benefit from social welfare services must potentially apply to the whole population, and the provision of social welfare services concerns everybody who find themselves in a situation of dependency, in particular the vulnerable groups and individuals who have a social problem. Social services must therefore be available to all categories of the population who are likely to need them. It has identified the following groups: children, the elderly, people with disabilities, young people in difficulty and young offenders, minorities (migrants, Roma, refugees, etc.), the homeless, alcoholics and drug addicts, battered women and former detainees. (Conclusions 2009, Statement of interpretation on Article 14§1).

The Committee recalls that social services include in particular counselling, advice, rehabilitation and other forms of support from social workers, home help services (assistance in the running of the home, personal hygiene, social support, delivery of meals), residential care, and social emergency care (shelters). (Conclusions 2005, Bulgaria).

The report indicates that in Austria, regulations regarding the social services and the establishment, maintenance and operation of old-age residential homes and nursing homes are the responsibility of the *Länder*. The social assistance acts of all nine *Länder* provide for the counselling and personal support required to prevent, resolve or alleviate a personal or family emergency. Among the social services provided, they list in particular: home care for the ill, family assistance, household help, general and special counselling, services to promote social contacts and to foster participation in cultural life; respite care for the elderly and disabled, accommodation in homes run by the social assistance service. Advice and counselling on social assistance are primarily provided by bodies at district administrative level and the specialised departments at the offices of the provincial governments. This also applies to services for the disabled, with team consulting on individual cases organised with the participation of medical experts, representatives of the Federal Office for Social and Disabled Services, representatives of the social insurance institutions and representatives of the Public Employment Service. With regard to services for which there is a legal entitlement, the social assistance authorities must advise and guide people seeking help, so that any violation of such obligations can be reviewed in procedures involving services for which there is a legal entitlement within the scope of an appeal. There is no direct right of appeal with regard to general counselling and the provision of assistance within the frame of the private sector administration. This sector is supervised by way of activities by the supervisory authorities (e.g. a telephone hotline for problems of intramural support) or other bodies accepting complaints (ombudsman, etc.). In addition, social services are run by numerous private organisations, such as political parties, religious communities and orders as well as interest groups, partly financed from public funds.

In its previous conclusion (Conclusions 2013), the Committee requested to receive information on the situation in all nine *Länder* saying that, if the necessary information was not provided in the next report, there will be nothing to show that the situation is in conformity with the Charter. The report provides, by way of example, information on the situation in five *Länder*: Lower Austria, Upper Austria, Tyrol, Vorarlberg and Vienna. The Committee reiterates its request to receive specific information on the situation also in the other four *Länder*. The Committee, therefore, despite the additional information provided, concludes that there is nothing to show that the situation is in conformity with the Charter as concerns

the organisation of social services adapted to needs in all nine *Länder* due to a lack of information.

Effective and equal access

The report indicates that in Vienna *Land* in principle, Austrians, EEA citizens as well as third-country nationals have equal access to the various social services. General counselling is provided to every person seeking help irrespective of their nationality. The Committee to this respect asks to be informed that the same principle applies to each of the nine *Länder*.

The report indicates that the *Länder* can adapt their service portfolio offered to meet regional needs (e.g. by preparing need-oriented schemes and development plans). By introducing the long-term care fund (in the Long-term Care Fund Act, *PFG*), the Federal Government supports the *Länder* and municipalities in granting earmarked subsidies and developing and expanding the nursing and care services offer in line with actual demand. The sums allocated from the long-term care fund can be used for services such as: a) mobile nursing and care services;b) fully institutional nursing and care services; c) day-care services; d) temporary care in residential care facilities; e) case and care management; f) alternative forms of living; g) accompanying measures of quality assurance; h) innovative projects. These services are offered in all the *Länder*, albeit in different forms.

In its previous conclusion (Conclusions 2013) the Committee held that the situation in Austria was not in conformity with Article 14§1 of the Charter on the ground that clients of social services have not a right to appeal to an independent body in urgent cases of discrimination and violation against human dignity in all nine *Länder*. The Committee notes from the report that the right to appeal exists in 8 of the 9 *Länder* (Vienna, Carinthia, Styria, Tyrol, Upper and Lower Austria, Vorarlberg, Salzburg). Therefore, the Committee asks to have information on what kind of remedies are available in Burgenland, in terms of complaints or right to appeal to an independent body in urgent cases of discrimination and violation against human dignity.

Quality of services

The Committee recalls that social services must have resources matching their responsibilities and the changing needs of users. This implies that: – staff shall be qualified and in sufficient numbers; – decision–making shall be as close to users as possible; – there must be mechanisms for supervising the adequacy of services, public as well as private.

The report indicates that regional differences exist in the quality and quantity of services and the organisational structure within which they are provided. This is partly due to the fact that Austria has one *Land* (Vienna) that is fully urban in structure, whereas the other eight *Länder* only have a few smaller urban areas. However the supervision of public and private service providers is carried out in all nine Laender, with appropriate inspections and controls of the quality level of the social services, by the *Land* Governement.

Conclusion

The Committee concludes that the situation in Austria is not in conformity with Article 14§1 of the Charter on the ground that it has not been established that, in all nine *Länder*, social services are organised in such a way that they are adapted to needs.

Article 14 - Right to benefit from social welfare services

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

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

The report indicates that participation of private welfare organisations in the establishment and performance of social services is supported chiefly by the granting of subsidies from public funds. A number of social services can be efficiently implemented only by the interplay of private welfare organisations and the social assistance scheme. The report indicates one example, the meals-on-wheels service in several of the *Länder*. To organise this service, private welfare organisations and the social assistance bodies entered into agreements to regulate their cooperation in the social assistance scheme, i.e. the welfare office, provides the funding, while the private organisation supplies the staff and is responsible for performing the service subject to predefined principles.

The Committee understands that the main method used to help voluntary, private organisations to set up good quality social services is to grant them public subsidies. The Committee takes note of the Federal Long-Term Care Fund Act (*Pflegefondsgesetz, PFG*) that entered into force on 30 July 2011 and provides the legal foundation for setting up a long-term care fund allocating to the *Länder subsidies* for safeguarding the establishment and expansion of support and care-giving service offers from 2011-2014 in the long-term care system.The amendment of 6 August 2013 to the Federal Long-Term Care Fund Act (*Pflegefondsgesetz*), extended funding for the period 2015 and 2016 and stipulated a uniform provision target.

The report indicates that the Federal Government, via the long-term care fund, makes a significant contribution to the costs of securing, developing and expanding long-term nursing and care provision by the *Länder* and local governments. Allocated funds for a total of EUR 1.335 billion were provided from the long-term care fund for the years 2011-2016.

The Committee recalls that Article 14§2 also requires States Parties to encourage individuals and organisations to play a part in maintaining services, for example by taking action to strengthen the dialogue with civil society in areas of welfare policy which affect the social welfare services. This includes action to promote representation of specific user–groups in bodies where the public authorities are also represented, and action to promote consultation of users on questions concerning organisation of the various social services and the aid they provide. To this respect the Committee asks that the next report provides information on specific action put in place in different *Länder*, to promote users empowerment, representation and consultation on questions concerning organisation of the various social services and the aid they provide.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in Austria is in conformity with Article 14§2 of the Charter.

January 2018

European Social Charter

European Committee of Social Rights

Conclusions 2017

AZERBAIJAN

This text may be subject to editorial revision.

The following chapter concerns Azerbaijan, which ratified the Charter on 2 September 2004. The deadline for submitting the 10th report was 31 October 2016 and Azerbaijan submitted it on 7 February 2017.

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 "Health, social security and social protection":

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

Azerbaijan has accepted all provisions from the above-mentioned group except Articles 3, 12, 13, 23 and 30.

The reference period was 1 January 2012 to 31 December 2015.

The conclusions relating to Azerbaijan concern 5 situations and are as follows:

– 3 conclusions of non-conformity: Articles 11§1, 11§3 and 14§1.

In respect of the 2 other situations related to Article 11§2 and 14§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 Azerbaijan under the Charter. The Committee requests the authorities to remedy this situation by providing the information in the next report.

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In addition, the report contains also information requested by the Committee in Conclusions 2015 in respect of its conclusions of non-conformity due to a repeated lack of information:

- the right of children and young persons to protection – prohibition of employment of children subject to compulsory education (Article 7§3),
- the right of children and young persons to protection – special protection against physical and moral dangers (Article 7§10),
- the right of employed women to protection of maternity – prohibition of dangerous, unhealthy or arduous work (Article 8§5),
- the right of workers with family responsibilities to equal opportunity and treatment – participation in working life (Article 27§1),
- the right of workers with family responsibilities to equal opportunity and treatment – parental leave (Article 27§2).

The Committee examined this information and adopted the following conclusions:

- 2 conclusions of conformity: Articles 7§10 and 8§5;

- 3 deferrals: Articles 7§3, 27§1 and 27§2.

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The next report will deal with the following provisions of the thematic group "Labour Rights":

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),

- the right to information and consultation (Article 21),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 22),
- the right to dignity at work (Article 26),
- the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28),
- the right to information and consultation in collective redundancy procedures (Article 29).

The report should also contain information requested by the Committee in Conclusions 2016 in respect of its conclusions of non-conformity due to a repeated lack of information:

- the right to work – freely undertaken work (Article 1§2),
- the right to work – vocational guidance, training and rehabilitation (Article 1§4),
- the right to vocational guidance (Article 9).

The deadline for submitting that report was 31 October 2017.

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Conclusions and reports are available at www.coe.int/socialcharter as well as in the HUDOC database.

CONCLUSIONS RELATING TO ARTICLES FROM THE THEMATIC GROUP

‘Health, social security and social protection”

Article 11 - Right to protection of health

Paragraph 1 - Removal of the causes of ill-health

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

Measures to ensure the highest possible standard of health

The Committee notes from WHO that life expectancy at birth in 2015 (average for both sexes) was 72.7 which indicates that it has dropped since the previous reference period when was estimated at 73.8 in 2011. The life-expectancy rate is low compared to other European countries (for example, the average life expectancy at birth in the EU-28 was estimated at 80.6 years in 2015).

The Committee notes from the World Bank data that the death rate (deaths/1,000 population) was 6 in 2015 (compared to 5.9 in 2011 and 6.3 in 2007 as noted in its previous Conclusion 2013).

The Committee noted previously that cardiovascular diseases and cancer continued to be the main causes of death for both men and women, followed by diseases of the digestive and respiratory systems. Tuberculosis still remained a significant health issue (Conclusions 2013). The Committee repeatedly asked what measures were being taken to combat these causes of mortality (Conclusions 2009 and 2013). The report provides information on the measures taken through the 'Action Plan on Combating Tuberculosis 2011'. It also mentions the 'National Strategy on Combating Non-infectious Diseases 2015-2020' through which a screening program is implemented by the National Oncology Centre for early detection of cancer. The Committee asks the next report to provide information on the implementation of these actions and their outcome on the mortality rates as well as measures taken to combat the other causes of mortality.

The report indicates that the infant mortality rate stood at: 10.8 per 1 000 live births in 2013; 10.2 in 2014; respectively 11 per 1 000 live births in 2015 (compared to 10.8 per 1,000 live births in 2011, down from 12,1 per 1,000 live births in 2007 as noted in its previous Conclusions 2013). According to Eurostat, the average EU-28 rate was of 3.7 per 1,000 live births in 2013/2014. The same source indicates that the infant mortality rate in Azerbaijan stood at 10.8 in 2012 and 2013, respectively at 9.7 in 2014.

As regards the maternal mortality rate, the report indicates that the level of maternal 'morbidity' stood at: 14.5 per 100 000 live births in 2013, 14.6 in 2014 and 14.4 in 2015 (the previous report indicating a rate of 15.3 deaths in 2011).

In its previous conclusion the Committee found that the situation was not in conformity with Article 11§1 on the ground the measures taken to reduce infant and maternal mortality rates have been insufficient (Conclusions 2013).

The Committee takes note from the report of the measures taken to improve the situation, mainly the "State Program on Improvement of Maternal and Child Health 2014-2020" through which financial and technical capacity of medical points providing services for mothers and children in cities and rayons has been reinforced, and their provision with various drug and medical equipment has been improved. Furthermore, the report indicates that training courses were held for perinatal staff in leading health clinics in the country and abroad; clinical protocols and methodical instructions have been developed; the single Registry of Pregnant Women set up in 2014 has been improved; health institutions providing antenatal care services in the regions have been supplied with relevant computer equipment; specific programmes have been developed including one of breast-feeding and a project titled "Early detection of acute heart failure among new-born children". The Committee notes that the representative of Azerbaijan to the Governmental Committee stated that significant measures had been taken in recent years to improve the quality of medical services provided to mothers and children. As a result, the infant mortality rate

dropped from 15.5 per 1 000 live births in 2003 to 10.8 per 1 000 live births in 2013. The maternal maternity rate dropped during the same period from 18.5 per 100 000 live births to 14.5 per 100 000 live births (Report of the Governmental Committee concerning Conclusions 2013).

The Committee takes note of the reforms initiated and the measures taken to reduce maternal and child mortality. It asks to be informed on the implementation of such measures, their effect on reducing the maternal and infant mortality rate, updated data regarding the trends of the mortality rates and on any developments in this field. Meanwhile, the Committee maintains its conclusion of non-conformity on this point.

Access to health care

The Committee noted previously that the Constitution states that citizens have the right to the protection of their health and to receive health care services. The Law on Protection of the Health of the Population as well as the Concept on Health Finance Reform also stress the importance of access to health care for every citizen. The Committee asked to be informed on the implementation of recent reform initiatives in the health sector, and whether they are having a positive impact in terms of life expectancy, mortality and quality of life (Conclusions 2013). Since the report does not address this question, the Committee reiterates its question.

In its previous conclusion, the Committee noted that medical institutions subordinated to the Ministry of Health and financed by the State budget provide free medical services to the population since 1 February 2008. There is also a list of drugs which are provided free of charge pursuant to Cabinet of Ministers decision No. 38 of 7 March 2005 (Conclusions 2013). The Committee asked the next report to provide information on the content and scope of the public health care services provided, and in particular whether they are sufficient to meet the health challenges of the population. The report indicates that the number of medications prepared on the basis of free medication prescriptions has been revised in 2013 and their number reached 184. Moreover, state budget allocations for the implementation of targeted state programs are currently available and 11 state programs ensure the free supply of pharmaceutical drugs to the sick.

The Committee noted previously that the average distribution of medical staff across the country disguises significant regional differences, as there are difficulties with recruiting and retaining staff in rural areas. The Committee wished to be kept informed of further measures which might be taken to ensure an adequate presence of healthcare professionals in rural areas (Conclusions 2013). The report does not provide any information on this point. The Committee requests that the next report contain up-to-date information on healthcare facilities and professionals distinguishing between urban and rural areas or between regions.

The Committee recalls that the right of access to health care also requires that arrangements for access to care must not lead to unnecessary delays in its provision. It has repeatedly asked for information about the rules that apply to the management of waiting lists and statistics on average waiting times in health care (Conclusions 2009 and 2013). No information is provided on this point in the report. The Committee reiterates its question. It points out that in the absence of information in this respect in the next report, there will be nothing to show that the situation is in conformity with the Charter on this point.

The Committee previously asked for information on the availability of rehabilitation facilities for drug addicts, and the range of facilities and treatments (Conclusions 2009 and 2013). The report indicates that Action Plan No. 116 dated 07.11.2014 regarding the implementation of the “Program on treatment, rehabilitation and resocialisation of the drug addicts” was approved and the construction of the new building for the Republican Narcological Centre is underway. It is planned to establish a rehabilitation department in the new centre. The Committee wishes to be kept informed on the implementation of this Action

Plan, especially on the rehabilitation facilities, and its impact on preventing and reducing drug consumption. It reserves its position on this point.

In its previous conclusions the Committee found that the situation was not in conformity with the Charter on the ground that the health care budget was significantly lower than that of other European countries (Conclusions 2009) and public healthcare expenditure, in absolute terms and as a share of GDP, is too low (Conclusions 2013). The Committee noted that health expenditure as a percentage of GDP remained stable throughout most of the previous reference period, representing 0,9% in both 2008 and 2011 (whereas in 2008, European Union countries devoted 8.3% of their GDP on average to health spending). The current report indicates that every year the amount of state allocations for the health sector is increasing. For example, the budget allocations for health were 335 mln. manats in 2008; they reached 669 mln. manats in 2013, 725 mln manats in 2014 and 777 mln. manats in 2015. The Committee notes that the Representative of Azerbaijan to the Governmental Committee stated that in 2014 the budget allocation to public health had multiplied by 13 since the year 2004. This figure was equal to 1.8 to 2% of GDP and would be further increased. The Committee notes from WHO data that the out-of-pocket expenditure as a percentage of total expenditure on health reached 72.08% in 2014. It also notes that the OECD average for health expenditure represented 8.9% of the GDP in 2013. Although the report states that public funding on health has risen since 2004, the Committee notes that it is still significantly lower compared to that of other European countries. It maintains therefore its conclusion of non-conformity on this point.

The Committee asks that the next report contain information on the availability of mental health care and treatment services, including information on the prevention of mental disorders and recovery measures.

The Committee asks that the next report contain information on dental care services and treatments (such as who is entitled to free dental treatment, the costs for the main treatments and the proportion of out-of-pocket paid by the patients).

The Committee takes note of the comments submitted by Transgender Europe and the International Lesbian and Gay Association (ILGA- Europe) on the implementation of Article 11 of the Charter in the current cycle stating that Azerbaijan is one of the states that require sterilisation as a condition for legal gender recognition. The Committee asks for information on this matter in the next report, in particular whether legal gender recognition for transgender persons requires (in law or in practice) that they undergo sterilization or any other invasive medical treatment which could impair their health or physical integrity.

Conclusion

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 11§1 of the Charter on the grounds that:

- the measures taken to reduce infant and maternal mortality have been insufficient;
- public healthcare expenditure is too low.

Article 11 - Right to protection of health

Paragraph 2 - Advisory and educational facilities

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

Education and awareness raising

The Committee takes note of the detailed information in the report on the information and awareness raising activities carried out during the reference period on issues such as healthy life style, healthy nutrition, tobacco, drugs, including in schools. Training activities and conferences were organised for medical staff and educators/trainers on topics such as education on reproductive health of adolescents.

As regards health education in schools, the Committee already noted in its previous conclusions that a course entitled "education centered on life skills" was part of the school curricula, and included questions related to healthy lifestyles and sexual education (Conclusions 2009) and that this topic also addressed issues around road safety, healthy eating and the prevention of sexually transmitted diseases (Conclusions 2013).

The Committee recalls States Parties must ensure that sexual and reproductive health education forms part of the ordinary school curriculum; that the education provided is adequate in quantitative terms; that the form and substance of the education, including curricula and teaching methods, are relevant, culturally appropriate and of sufficient quality, in particular that it is objective, based on contemporary scientific evidence and does not involve censoring, withholding or intentionally misrepresenting information, for example as regards contraception and different means of maintaining sexual and reproductive health; and that a procedure is in place for monitoring and evaluating the education with a view to effectively meeting the above requirements (International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Croatia, Complaint No. 45/2007, Decision on the merits of 30 March 2009, §§46 – 47). The Committee asks for information in the next report on whether and how sexual and reproductive education is provided in schools in Azerbaijan.

Counselling and screening

In its previous conclusion, the Committee noted that all women were entitled to free specialised healthcare during pregnancy and childbirth. Having regard to the high infant and maternal mortality rates noted in the Conclusion on Article 11§1, the Committee asks whether this free entitlement is implemented in practice. It asks updated information on the frequency of medical checks and proportion of women covered as well as on the effectiveness of such screenings. The Committee reserves its position on this point.

Moreover, the Committee noted that medical examinations were organised annually for all schoolchildren (Conclusions 2009). Free medical examinations for children and adolescents are organised at state healthcare facilities. The Committee noted previously that in 2011 in Baku, 98.5% of pupils underwent in-depth medical examinations and asked if the coverage rate is equally high in other parts of the country (Conclusions 2013). The report does not address this matter. The Committee wishes to know the proportion of pupils covered by the medical examinations throughout the country, especially in rural areas.

With regard to screening programmes, the Committee noted previously that mass examination tests for the diagnosis of tuberculosis are available pursuant to a Ministry of Health Order of 2001 (Conclusions 2013). The Committee asked if there are other screening programmes available, for example for the detection of cancer or the diagnosis of HIV (Conclusions 2013).

The report indicates that the current healthcare system in the country enables the detection of HIV infection. Anonymous and confidential check-ups are available in the Republican Centre for Combating with HIV infection and its 10 regional laboratories, the laboratories

under Hygiene and Epidemiology Centre, Nakhchivan Autonomous Republic Centre for Combating HIV Infection and 48 voluntary check-up and counselling centres in the regions. Initial screening test of HIV infection also takes place in the specialised diagnostic laboratories of healthcare institutions. In order to increase accessibility of these services, various mobile voluntary examination and counselling services have been established in the country. As a result of these measures, the number of HIV examinations in the country increased each year and reached 777 000 in 2015 compared to 429 000 in 2011.

With regard to screening programmes for cancer, the report indicates that according to the Presidential Decree dated 23 December 2015 on “National Strategy on combating non-infectious diseases, 2015-2020” for early detection of oncological diseases, a screening program is regularly implemented by the National Oncology Centre.

The Committee asks that the next report provide information on screening available in relation to the other principal causes of death.

Conclusion

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

Article 11 - Right to protection of health

Paragraph 3 - Prevention of diseases and accidents

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

Healthy environment

The Committee took note previously of the different pieces of legislation and regulations adopted for the reduction of environmental risks, in particular in the field of air quality, water safety, waste management, noise, ionising radiation and food safety (Conclusions 2013). However it noted that despite taking measures and implementing a number of environmental projects, the levels of air pollution remain high and that supply of safe drinking water was still a problem in several areas of the country (Conclusions 2013). The Committee asked to be kept informed on the implementation of the measures and regulations mentioned in the previous report, as well as on levels of air pollution, contamination of drinking water and food intoxication, namely whether trends increased or decreased during the reference period (Conclusions 2013). The report does not provide any information on this point. The Committee reiterates its question. It points out that in the absence of information in this respect in the next report, there will be nothing to show that the situation is in conformity with the Charter on this point.

In its previous conclusions, the Committee found that the situation was not in conformity with the Charter on the ground that the legislation did not prohibit the sale and use of asbestos (Conclusions 2009 and 2013). It noted previously that draft legislation in this area has been prepared and submitted to the relevant bodies for comments, but it has not been adopted yet (Conclusions 2013). The report does not provide any information on this issue. The Committee notes from another source (“Asbestos Global. Asbestos Bans and Regulation”) that Azerbaijan is one of the countries that has not yet banned asbestos use, nor has regulated the use of asbestos. Thus, the Committee reiterates its previous conclusion of non-conformity.

Tobacco, alcohol and drugs

With regard to tobacco, the Committee noted previously that smoking was banned in healthcare facilities, educational facilities and universities. However, smoke-free legislation does not exist in respect of bars, restaurants, pubs, public transport, or indoor offices (Conclusions 2013). The Committee asked for updated information in the next report on the state of legislation on smoke-free environments, health warnings on tobacco packages, and if there is a ban on tobacco advertising, promotion and sponsorship, throughout the whole country. Prevalence of tobacco use should also be indicated (Conclusions 2013).

The Committee takes note from the report of the applicable legislation related to health warnings on tobacco packages, design of tobacco packages, as well as sale of tobacco, tobacco advertising, promotion and sponsorship.

The report indicates that the prevalence of smoking among adults (15 and above) in Azerbaijan was 18.2% (men: 35.9%; women: 0.0%) (without specifying the year/period). The Committee notes from WHO Report on the global tobacco epidemic 2017 that the estimated prevalence of smoking among those aged 15 years or more in 2015 was 21.3% (43.5 for men and 0.3 for women). The same source indicates that the prevalence for youth (13-15 years old) was 7.3%.

With regard to smoke-free environments, the Committee notes from WHO Report on the global tobacco epidemic 2017, Azerbaijan Country Profile, that smoke-free legislation still does not exist with respect to indoor offices and workplaces, government facilities, restaurants, cafés, pubs and bars, public transport.

The Committee recalls that anti-smoking measures are particularly relevant for the compliance with Article 11 since smoking is a major cause of avoidable death in developed countries. To be effective, any prevention policy must restrict the supply of tobacco through controls on production, distribution, advertising and pricing (Conclusions XVII-2 (2005), Malta). In particular, the sale of tobacco to young persons must be banned (Conclusions XV-2 (2001), Portugal) as must smoking in public places (Conclusions 2013, Andorra) including transport, and advertising on posters and in the press (Conclusions XV-2 (2001), Greece). The Committee assesses the effectiveness of such policies on the basis of statistics on tobacco consumption. The Committee asks for updated information in the next report on trends in the consumption of tobacco (adults and youth) and measures taken to prevent and reduce tobacco consumption. Meanwhile, it reserves its position on this point.

The Committee repeatedly asked for information on policy regarding alcohol consumption and drug consumption (Conclusions 2009 and 2013).

The Committee takes note from the report of the detailed statistics regarding the consumption of alcohol as reflected in a study carried out in 2011. It notes that in 2014, 9.4 per 100 000 population were diagnosed with alcoholism and alcoholic psychosis and 13.4 per 100 000 population were diagnosed with drug and substance abuse. The Committee asks for updated data in the next report on the prevalence of alcohol and drug consumption as well as on trends in consumption.

The report indicates that Action Plan No. 116 dated 07.11.2014 regarding the implementation of the “Program on treatment, rehabilitation and resocialisation of the drug addicts” was approved and the construction of the new building for the Republican Narcological Centre is underway. It is planned to establish a rehabilitation department in the new centre. Trainings in the field of treatment and rehabilitation of the drug addicts were organised for the experts of the Republican Narcological Centre in other countries such as Russia, Belarus and Kazakhstan. The Committee wishes to be informed on the implementation of this Action Plan and its impact on preventing and reducing drug consumption.

Immunisation and epidemiological monitoring

The Committee noted previously that the National Immunisation Schedule of Azerbaijan includes vaccination against ten infections: tuberculosis, hepatitis B, poliomyelitis, diphtheria, pertussis, tetanus, measles, rubella and mumps and, since 2011, Haemophilus influenzae type B (Conclusions 2013).

As regards epidemiological monitoring of infectious diseases, the report indicates that an Electronic Observation System of Contagious Diseases (EOSCD) was established in 2010 in order to improve the process of collection, processing and analysis of data on contagious diseases, as well as to strengthen epidemiological and epizootic observation.

In its previous conclusion, the Committee noted that the number of tuberculosis cases increased slightly between 2008 and 2011 from 4 186 to 4 893, and asked to be kept informed on the measures taken to combat tuberculosis (Conclusions 2013).

The report provides information on the measures taken through the Action Plan on combating tuberculosis 2011 such as: supply of modern equipment for diagnosis, increase in the number of cabinets established for medication in order to provide ambulatory treatment, setting up of specialized TB hospitals for stationary treatment of drug-resistant TB, training of the medical staff. The report further indicates that the number of tuberculosis cases decreased compared to 2011 and TB related deaths decreased from 4.2 to 3.9 per 100 000 persons.

The Committee asks for updated figures on the vaccination coverage in the next report.

Accidents

The Committee previously recalled that under Article 11§3 states must take steps to prevent accidents. The main sorts of accidents covered are road accidents, domestic accidents, accidents at school and accidents during leisure time. The Committee repeatedly asked for information on measures taken to prevent accidents, as well as on trends in accidents (Conclusions 2009 and 2013). In its previous conclusion, the Committee pointed out that in the absence of information in this respect in the next report, there will be nothing to show that the situation is in conformity with the Charter on this point (Conclusions 2013).

Given the lack of information on this point in the report, the Committee concludes that the situation is not in conformity with the Charter as it has not been established that adequate measures were taken to prevent accidents.

Conclusion

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 11§3 of the Charter on the grounds that:

- legislation does not prohibit the sale and use of asbestos;
- it has not been established that adequate measures were taken to prevent accidents.

Article 14 - Right to benefit from social welfare services

Paragraph 1 - Promotion or provision of social services

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

Organisation of the social service

The Committee refers to its previous conclusion (Conclusions 2013) where is indicated that the Law "On Social Services", approved by the Presidential decree No. 600 on 14 March 2012, provides that all persons in need shall benefit from social services of quality that apply modern standards. This law defines four forms in respect of the provision of social services: home social services, semi-stationary social services (daytime), stationary social services and social/consultation assistance.

The current report states that in the Development Concept of “Azerbaijan 2020: Vision to Future” approved with the Presidential Decree No 800, dated December 29, 2012 has been indicated as one of the main priorities, the enlargement of the network and type of centres providing social services. Since 2013, several social projects developed by the Ministry of Labour and Social Protection of the Republic of Azerbaijan have been launched in the regions for provision of social services to the vulnerable groups of population, their social rehabilitation and supporting their families. From 2013 to 2015, 95 projects were developed by several NGOs in different cities and regions, to support social rehabilitation of children and adolescents with specific needs and their families as well as people facing poverty and social exclusion. In this respect the Committee asks that the next report provide information on the implementation and outcome of these projects.

The report states that a new mobile social service is provided by the urban and district departments of the State Social Protection Fund under the Ministry of Labour and Social Protection of Population to the elderly people living alone, people with disabilities in accordance with the "Regulations on social service provision at home (mobile)" approved with Decision No 108, dated April 22, 2014 of the Cabinet of Ministers of the Republic of Azerbaijan, (since the adoption of the law 1253 social workers provided mobile social services to 11901 elderly and disabled people up until 1/7/2016).

Effective and equal access

In its previous conclusion (Conclusions 2013) the Committee found that eligibility criteria established by law, for foreigners legally residing and regularly working in the country to be entitled to receive social services assistance are too restrictive due to the excessive length of residence requirement (five years). Therefore the Committee concluded that the situation was not in conformity on the ground that access to social services by nationals of other States Parties is subject to an excessive length of residence requirement.

The report indicates that Article 3 of the Law of the Republic of Azerbaijan on "Social Services" states that social service is provided to the citizens of the Republic of Azerbaijan who need social services, foreigners permanently residing in Azerbaijan and people without citizenship on equal basis irrespective of ethnical background, religion, disability, age, sexual orientation and political stance. However, the report does not answer the question and therefore the Committee reiterates its conclusion of non-conformity.

Quality of services

The Committee recalls that social services must have resources matching their reponsabilities and users’ changing needs. This implies that:

- staff shall be qualified and in sufficient numbers;
- decision-making shall be as close to users as possible;

- there must be mechanisms for supervising the adequacy of services, public as well as private.

In its previous conclusion (Conclusions 2013), the Committee asked information on these three elements. It also asked the next report to provide information on the qualification of social services' staff and the ratio of staff to users and the supervision of social services provided by private providers.

The report indicates that the Law on Social Services provides that quality of social services is under direct control of the Ministry of Labour and Social Protection. In this respect the Committee asks if the Ministry of Labour and Social Protection is also responsible for supervision of social services provided by private providers.

The report underlines that minimum operational requirements were developed by Ministerial Decree and in accordance with a "Joint Work Plan on Reforms in Child Care System" (2014-2015) signed between the Ministry of Labour and Social Protection of the Republic of Azerbaijan and UNICEF Representative Office in Azerbaijan for the purpose of regulating the activities of several centres providing social services and improve quality of services provided. In this respect the Committee asks what kind of requirements are needed and if they apply to all welfare system.

The report indicates a number of activities and measures aiming at improving the quality of social services provided to different categories of vulnerable people (young unhealthy people ,disabled children, elderly, former prisoners, victims of human trafficking). The report also indicates a number of projects: a) in the framework of TAIEX program on learning international practice in the field of provision of social services to neglected children under social threat and ex-prisoners. and elderly people which started in 2015; b) twinning project on "Improving social services for people in need of special care "for improving institutional capacity of structural divisions of the Ministry working in the area of social services; c) a two-year (June 2015-June 2017) twinning project on "Development of social service provision in Azerbaijan" between Azerbaijan and the relevant authorities of Austrian Republic for specific target group such as low-income families, the elderly, people released from penitentiary institutions and people suffering from domestic violence. These projects aim also to promote good practices in the field of social service provision to the staff working in the area of social service provision (modern social worker model) and improve accessibility to social services, improve training of social workers, and extend the coverage of these services to all regions in Azerbaijan. In this respect the Committee asks the next report to provide information on implementation of projects outcomes and follow up.

The Committee notes that the report does not answer to its questions in particular on the qualification of social services' staff and the ratio of staff to users and the supervision of social services provided by private providers and therefore reiterates its questions and reserves its position on this point. The Committee 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

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 14§1 of the Charter on the ground that access to social services by nationals of other States Parties is subject to an excessive length of residence requirement .

Article 14 - Right to benefit from social welfare services

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

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

The Committee refers to its conclusion 2009 for a general description of the legal framework for the provision of social welfare services by charity organisations which is contained in the Act No. 894-1Q of 13 June 2000. Under this Act, local authorities are invited to work in co-operation with charity organisations to ensure the provision of welfare services.

In its previous conclusion (2013), the Committee asked the next report to provide updated information on public participation in the establishment and maintenance of social services.

The report indicates that an enlargement of the network of centres providing social services is one of the main priorities of the Development Concept of "Azerbaijan 2020: Vision to Future" approved with the Presidential Decree No 800, dated December 29, 2012. Moreover, the report underlines that during 2013-2015, ad hoc projects were implemented by NGO's in different regions on identified priority areas. Initial projects covered two main priority areas: social rehabilitation of unhealthy children and support for families of adolescents under social threat. Later, the project priority areas were extended to include social services to people facing extreme poverty condition.

The report indicates that an accreditation commission was established in accordance with the "Regulation of accreditation of non-governmental assistance centres for people suffering from domestic violence", approved with Decision No 89, dated April 25, 2012 of the Cabinet of Ministers of the Republic of Azerbaijan. Since its adoption, a total of 10 non-governmental centres providing support to people who suffered from domestic violence were accredited by the Commission. In this respect the Committee asks if these non-governmental centres are operational also in other areas of social services.

In its previous conclusions (2013), the Committee asked to know whether and how the Government ensures that services managed by the private sector are effective and are accessible on an equal footing to all, without discrimination at least on grounds of race, ethnic origin, religion, disability, age, sexual orientation and political opinion.

The report indicates that Article 3 of the Law of the Republic of Azerbaijan on "Social Services" states that social service is provided to the citizens of the Republic of Azerbaijan who need social services, foreigners permanently residing in Azerbaijan and people without citizenship on equal basis irrespective of ethnical background, religion, disability, age, sexual orientation and political stance. However, the Committee notes that the report does not answer to the question and therefore reiterates its question and reserves its position on this point. 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 states that a new mobile social service is provided by the urban and district departments of the State Social Protection Fund under the Ministry of Labour and Social Protection of Population to the elderly people living alone, people with disabilities and severely ill people in accordance with the "Regulations on social service provision at home (mobile)" approved with Decision No 108, dated April 22, 2014 of the Cabinet of Ministers of the Republic of Azerbaijan, (since the adoption of the law 1253 social workers provided mobile social services to 11901 elderly and disabled people up until 1/7/2016).

Conclusion

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

CONCLUSIONS RELATING TO CONCLUSIONS OF NON-CONFORMITY DUE TO A REPEATED LACK OF INFORMATION IN CONCLUSIONS 2015

Article 7 - Right of children and young persons to protection

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

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the information submitted by Azerbaijan in response to the conclusion that it has not been established that children who are still subject to compulsory education are guaranteed the benefit of an uninterrupted rest period of at least two weeks during summer holiday.

In its previous conclusion (Conclusions 2015) the Committee asked whether the rest period free of work had a duration of at least two consecutive weeks during the summer holiday. It also asked what are the rest periods during the other school holidays. The Committee notes from the report in this regard that employment of children in compulsory education is prohibited even during their school holiday times, as it is contrary to the law. The Committee notes that the Decision No 362 of 2014 of the Cabinet of Ministers has introduced amendments to the Model Charter of Secondary School which regulates the periods of school term and school holidays.

However, as the Committee noted in its previous conclusion from another source, as of January 2011 20,000 children were working in agriculture (Observation (CEACR) – adopted 2014, published 104th ILC session (2015), Minimum Age Convention, 1973 (No. 138) – Azerbaijan (Ratification: 1992). Therefore, in order to assess the conformity of the situation with the requirements of the Charter, the Committee requests to be provided with data on the situation in practice as regards employment of children subject to compulsory education and information on children carrying out an economic activity in the informal economy during school holidays. In the meantime, it reserves it position on this issue.

Conclusion

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

Article 7 - Right of children and young persons to protection

Paragraph 10 - Special protection against physical and moral dangers

Protection against the misuse of information technologies

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the information submitted by Azerbaïjan in response to the conclusion that it has not been established that children are protected against the misuse of information technologies.

The Committee takes note of the awareness-raising activities carried out by the State Committee on Family, Women and Children Affairs, such as the training on internet security of children (30 September, 2015). The Committee further notes that according to the Law dated April 29, 2016 on making amendments to the Law on Telecommunications, internet operators and providers are obliged to ensure safe access to online information resources at the request of a subscriber for the protection of their children against the information which may be harmful to their health or development.

According to the report, protection of children against information which is harmful totheir health and development is regulated by the amendment introduced to Article 15 of the Law on Children's Rights. Moreover, the Committee notes that the instructions have already been given by the President to prepare a draft law on the protection of children against the misuse of information technologies. The Committee wishes to be informed about this legislative development.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Azerbaijan is in conformity with Article 7§10 of the Charter as regards protection against the misuse of information technologies.

Article 8 - Right of employed women to protection of maternity

Paragraph 5 - Prohibition of dangerous, unhealthy or arduous work

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the information submitted by Azerbaïjan in response to the conclusion that it had not been established that there are adequate regulations on dangerous, unhealthy and arduous work in respect of pregnant women, women who have recently given birth or who are nursing their infant (Conclusions 2015, Azerbaïjan).

Under Article 8§5, the law must ensure a high level of protection against all known hazards to the health and safety of employees who are pregnant, have recently given birth, or are nursing their infants (Conclusions 2003, Bulgaria): it must explicitly prohibit their employment in underground mining and prohibit, or strictly regulate, depending on the risks, their employment in activities which are unsuitable by reason of their dangerous, unhealthy, or arduous nature, such as those involving exposure to lead, benzene, ionizing radiation, high temperatures, vibration or viral agents. If the work is unsuitable to their condition, national law must make provision for their re-assignment, with no loss of pay, and, if this is not possible, they should be entitled to paid leave. They should furthermore retain the right to return to their previous employment (Conclusions 2005, Lithuania).

The report recalls that Article 241 of the Labour Code prohibits women from being employed in hard and dangerous activities and, in response to the Committee's request, refers to a list of prohibited activities, which was adopted by the Cabinet of Ministers with decision No. 170 of 1999. The Committee notes on the one hand that the activities listed are prohibited for all women, not just those who are pregnant or nursing. On the other hand, the Committee notes that the list seems to refer exclusively to industrial activities; it accordingly asks whether specific protection measures are provided for pregnant or nursing women who might be exposed to specific risks in a different context, such as the provision of medical services, which might for example involve exposure to viral agents or ionizing radiation. It reserves in the meantime its position on this issue.

The report also indicates that Article 243 of the Labour Code sets provisions for transferring pregnant women and women with children aged under 1.5 years to lighter duties. For pregnant women production or service norms shall be reduced in accordance with the medical reference or they shall be assigned to lighter duties excluding any influence of harmful production factors. If breastfeeding women face difficulties to concile their work duties with breastfeeding, they can request the employer to be transferred to a lighter work or to be provided with the necessary conditions for breastfeeding up until the child reaches 1.5 years old. When female workers are transferred to a lighter work due to the reasons stated in this Article their average wage shall be maintained. It is prohibited to reduce women's wage due to pregnancy or breastfeeding. The Committee asks whether the women concerned are entitled to a paid leave, if it is impossible to transfer them to lighter duties. It also asks whether, at the end of the protected period, the women transferred are reinstated to their initial post.

The Committee recalls that the situation concerning other aspects covered by Article 8§5 will be examined in the framework of the regular reporting cycle (Conclusions 2019) and asks that relevant and updated information be provided in that context.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Azerbaijan is in conformity with Article 8§5 of the Charter.

Article 27 - Right of workers with family responsibilities to equal opportunity and treatment

Paragraph 1 - Participation in working life

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

Child day care services and other childcare arrangements

The Committee takes note of the information submitted by Azerbaijan in response to the conclusion that it had not been established that there are enough places in childcare facilities. (Conclusions 2015, Azerbaijan).

In its previous conclusion (Conclusions 2015) the Committee wished to receive updated information regarding the numbers of places in kindergartens, by age group and by the number of applications turned down. It wished to know whether services are affordable and of high standard.

The Committee notes that the information provided on children's homes is not relevant to the assessment of national situations under this provision. This information should be provided under Article 17§1 of the Charter. As regards child daycare services, the Committee notes that the Action Plan on implementation of the State Strategy for the development of education, approved in 2015, stipulates the establishment of pre-school educational bodies to achieve 90% involvement of children in pre-school education. The Committee asks the next report to reply to its above questions and provide information about the implementation of this Strategy and the results achieved.

Conclusion

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

Article 27 - Right of workers with family responsibilities to equal opportunity and treatment

Paragraph 2 - Parental leave

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the information submitted by Azerbaijan in response to the conclusion that it had not been established that legislation provides for an individual, non-transferable right to parental leave for each parent, who are not single (Conclusions 2015, Azerbaijan). It notes from the report that Article 117 of the Labour Code provides for additional parental leave for single fathers of two additional days of annual leave. Furthermore, according to Article 127 one of the parents, or other family member, has a right to partially paid social leave to take care of a child up to 3 years of age. The Committee asks whether Article 127 specifically refers to single parents or to one of the parents.

The Committee considers it important that national regulations should entitle men and women to an *individual right* to parental leave on the grounds of the birth or adoption of a child. With a view to promoting equal opportunities and equal treatment between men and women, the leave should, in principle, be provided to each parent and at least some part of it should be non-transferable. The Committee asks the next report to confirm that the right provided for in Article 127 is an individual right of both mothers and fathers (and not only of single parents) and asks whether at least some part of it is non-transferable.

Conclusion

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

January 2018

European Social Charter

European Committee of Social Rights

Conclusions 2017

BELGIUM

This text may be subject to editorial revision.

The following chapter concerns Belgium, which ratified the Charter on 2 March 2004. The deadline for submitting the 11th report was 31 October 2016 and Belgium submitted it on 27 October 2016. The Committee received on 29 March 2017 comments on the 11th report from "*Service de la lutte contre la pauvreté, la précarité et l'excluions sociale*" on the application of Articles 11, 12, 13 and 30. Observations from the Government on the comments from "*Service de la lutte contre la pauvreté, la précarité et l'excluions sociale*" were registered on 28 April 2017. On 31 March 2017, the Comittee received comments on the 11th report from *"Unia, Centre interfédéral pour l'égalité des chances, et de Myria, Centre fédéral Migration"* on the application of Articles 3, 12, 13, 14 and 30. On 31 August, the Committee received comments on the 11th report from "Belgian Disability Forum" on the application of Articles 3, 11, 12, 13, 14 and 30.

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 "Health, social security and social protection":

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

Belgium has accepted all provisions from the above-mentioned group except Article 23.

The reference period was 1 January 2012 to 31 December 2015.

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

– 12 conclusions of conformity: Articles 3§1, 3§2, 3§4, 11§1, 11§2, 11§3, 12§1, 12§2, 12§3, 13§2, 13§3 and 14§2,

– 4 conclusions of non-conformity: Articles 3§3, 12§4, 14§1 and 30.

In respect of the 2 other situations related to Articles 13§1 and 13§4 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 Belgium under the Charter. The Committee requests the authorities to remedy this situation by providing the information in the next report.

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

Article 3§2

- New legislation on the prevention of psychosocial risks at work which d entered into force on 1 September 2014, namely the Act of 28 February 2014 supplementing the Act of 4 August 1996, the Act of 28 March 2014 amending the Judicial Code and the Act of 4 August 1996, and the Royal Decree of 10 April 2014 on the prevention of psychosocial risks at work;
- The Social Criminal Code contains offences relating to the prevention of psychological and social problems caused by work. It is based on the provisions of the Act of 4 August 1996 as amended by the Act of 28 February 2014, on the prevention of psychosocial risks at work including stress, violence and moral or sexual harassment at work. The Royal Decree of 10 April 2014 on the prevention of psychosocial risks at work supplements these new provisions. Under the Act of 26 February 2016 (outside the reference period), the criminal provisions of the Social Criminal Code have been adapted to these new requirements;
- The Royal Decree of 10 October 2012 which stipulates the basic requirements to be met by workplaces, including notably the general rules on layout, lighting,

ventilation, temperature, communal facilities including sanitary installations and chairs for working and resting.

Article 3§3

Under the Royal Decree of 10 July 2013 implementing Chapter 5 entitled “Regulation of certain aspects of the electronic exchange of information between those involved in combating illegal labour and social security fraud” of Title 5 of Book 1 of the Social Criminal Code, as amended by the Royal Decree of 26 December 2013, social inspectors from the Directorate General of Employee Well-being of Belgium’s Federal Public Service for Employment, Labour and Social Dialogue are allowed to issue infringement reports electronically.

Article 12§3

Measures have been taken in the field of health to moderate the price of medicines and offer better protection to persons with chronic conditions, particularly by making it compulsory to include these persons in the direct payment system.

Article 30

- In the Flemish region, the Decree of 21 March 2003 on Combating Poverty was modified on 20 December 2013 allowing the Flemish Authorities to subsidise local governments with a view to developing and supporting local initiatives to combat specifically child poverty.
- In the Walloon region, a number of measures have been taken since 2012 to adopt an overall and coordinated approach with a view to promoting access to social rights such as employment, housing, culture and medical assistance. In 2015, a first cross-cutting plan to combat poverty was adopted in order to provide concrete and effective answers to precise difficulties encountered by people living at risk of poverty.
- The Government of the German-speaking community prepared in 2013 an analysis of poverty and the social vulnerability of its community which led in 2014-2015 to action divided up into three phases: (1) identification of the characteristics of the population targeted by social action and the way in which assistance is deployed on the territory, following a comparison with the other Communities of the Federal State of Belgium; (2) collection of data using a sample of real life stories; (3) analytical phase, allowing the German-speaking community to set up a network of social action.
- The Federal State and the federated entities signed in 2014 a Cooperation Agreement on Homelessness and the Lack of Housing aiming at pursuing, coordinating and harmonising their policies to prevent and fight against homelessness and lack of accommodation.

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The next report to be submitted by Belgium will be a simplified report dealing with the follow up given to decisions on the merits of collective complaints in which the Committee found a violation.

The deadline for submitting that report was 31 October 2017. The report was registered on 30 October 2017.

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Conclusions and reports are available at www.coe.int/socialcharter as well as in the HUDOC database.

Article 3 - Right to safe and healthy working conditions

Paragraph 1 - Health and safety and the working environment

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

General objective of the policy

In its previous conclusion (Conclusions 2013), the Committee asked for the results of the National Strategy and of the survey on the state of health and safety at work. With regard to the results of the National Strategy on well-being at work 2008-2012, the report indicates that the number of accidents at work declined by 10% overall (as compared with a target of 25%), that there has been a change in workers' behaviour thanks to efforts to promote a risk prevention culture and that the functioning of the prevention services has improved, particularly in the case of small and medium-sized enterprises. The report also draws certain conclusions concerning the strategy itself, such as lack of commitment, insufficiently defined framework, lack of structure in terms of objective setting and implementation and lack of communication regarding the strategic and operational objectives, and provides possible pointers as to the structure and content of the new strategy (sustainable employability through quality of work, enhanced prevention structures and culture of prevention, etc.).

The Committee takes note of the findings of a study carried out in 2013 with the aim of providing an assessment of the said Strategy and a preliminary outline of the new National Strategy 2013-2020 detailed in the report. It also takes note of the main findings of a study on the quality of work and employment in Belgium carried out by a consortium of Belgian researchers based on information gleaned from the European Working Conditions Survey (EWCS 2010).

In its previous conclusion (Conclusions 2013), the Committee asked for a description of any changes to the legislative and regulatory framework that took place during the reference period, including an indication as to whether policies and strategies were periodically reviewed and, if necessary, adapted in the light of changing risks. The report notes that, based on the assessment of the National Strategy 2008-2012, a new National Strategy 2016-2020 was in preparation during the reference period. According to Belgium's Federal Public Service for Employment, Labour and Social Dialogue, the National Strategy on well-being at work has been drawn up for the period 2016-2020. It sets out a number of strategic and operational objectives and the steps required in order to achieve them, and effectively incorporates into Belgian law the EU Strategic Framework on Health and Safety at Work 2014–2020. Since the Strategy was introduced outside the reference period, however, the Committee will examine it in its next report.

The Committee points out that new technology, organisational constraints and psychological demands favour the development of psychosocial factors of risk, leading to work-related stress, aggression, violence and harassment. It would also point out that, with regard to Article 3§1 of the Charter, it takes account of stress, aggression, violence and harassment at work when examining whether policies are regularly evaluated or reviewed in the light of emerging risks. The States parties have a duty to carry out activities in terms of research, knowledge and communication relating to psychosocial risks (Statement of Interpretation on Article 3§1 of the Charter, Conclusions 2013). In this context, the Committee notes from the report that psychosocial risks at work must be included in corporate prevention policies following the entry into force of new legislation on 1 September 2014 (Belgian Official Gazette, 28 April 2014).

The Committee maintains its previous finding of conformity in this respect.

Organisation of occupational risk prevention

In its previous conclusion (Conclusions 2013), the Committee asked for information on how occupational risks are assessed and managed in the branches of activity not covered by the

sector-based guides. The report states that employers are responsible for introducing the dynamic system of risk management within their undertakings and for carrying out risk analysis in order to determine the appropriate prevention measures. This analysis must cover all areas of well-being at work (health, safety, psychosocial aspects, ergonomics, industrial hygiene). The report further indicates that the employer has an obligation to deliver results in terms of prevention. The Committee takes note of the analysis methods described in detail in the report and the way in which occupational risks are identified, assessed and managed within undertakings.

In response to the Committee's question about the role played by the Labour Inspectorate in developing a culture of occupational health and safety and in sharing knowledge about risks and their prevention acquired in the course of inspection visits and prevention activities (Conclusions 2013), the report describes in detail the culture related to well-being at work which the Directorate General of Employee Well-being (DG CBE) is trying to improve. The DG CBE covers all workers in Belgium who perform some form of work under authority. It aims to ensure that monitoring is carried out in a uniform manner throughout the country and seeks to improve well-being at work through more effective monitoring in co-operation with specialised partners. It also aims to create a better legal framework and improve training for inspectors.

The report further indicates that a "training" unit has been created in DG CBE to identify training needs and to draw up annual plans to meet those needs as well as training plans. In addition, a network of experts has been set up for each area of well-being, together with a directorate of transversal knowledge for organisational structures, which focuses on the interpretation and implementation of rules and regulations and produces guides for inspectors. According to the report, the remaining time is spent conducting inspection campaigns at local and national level, preceded by a one-day training session.

In reply to the other Committee's questions (Conclusions 2013), the report states that under Section 33 of the Act of 4 August 1996 on the well-being of workers when carrying out their work, every employer is required to set up an internal department for prevention and protection at work and to have at least one prevention counsellor. Under the same provision, employers can perform this role themselves if the undertaking has fewer than 20 employees. According to the report, this requirement is observed by companies and institutions and where they fail to do so, the inspectorate responsible for well-being at work takes action to ensure that the requirement is met by ordering an internal department to be set up.

As regards further details on the prevention and protection department's role, functions and activities and on how employers fulfil these roles, functions and activities in practice in undertakings with fewer than twenty employees, the report states that the role of the internal department is to ensure prevention and protection as regards well-being at work within the undertaking. The department is expected to assist the employer and employees in developing the corporate prevention policy, play a part in assessing risks, including psychosocial risks at work, and the causes of occupational diseases, give its opinion on the organisation of the workplace, develop proposals for the reception, information and training of staff and provide secretarial services to the committee for prevention and protection at work. If the expertise required to perform all these tasks is not available in-house, the employer must call on an external prevention and protection service. The Committee notes from the report that using an external service does not relieve employers of their obligation to have an internal department with at least one counsellor. The Committee notes the distribution of tasks between the internal department and the external service depending on the size of the undertaking and the risks involved.

The Committee notes that risk prevention measures and measures to raise employers' and employees' awareness exist at state and regional government levels and at the level of undertakings. It further notes that the Directorate General of Employee Well-being is involved in the development of a health and safety culture among employers and employees

and shares knowledge of occupational hazards and prevention acquired during inspection activities. The situation is therefore in conformity with Article 3§1 of the Charter in this respect.

Improvement of occupational safety and health

The Committee previously examined (Conclusions 2013) the improvement of occupational safety and health and asked for information on how scientific and technical research in the field is organised and on the arrangements for the participation of the public authorities. The report states that the Federal Public Service (FPS) for Employment, Labour and Social Dialogue has a budget for funding research into health and safety at work. The Directorate for Research on Improving Working Conditions (DiRACT) manages research projects as regards setting objectives, handling the procurement process, monitoring projects via a steering committee, receiving final reports and disseminating findings. The report explains that the bodies which participate in the procurement process are universities or agencies operating on the ground (e.g. external prevention and protection services).

In reply to the Committee's question about how the training of qualified professionals is dispensed in practice (Conclusions 2013), the report states that, under the Royal Decree of 17 May 2007 on the training and retraining of prevention counsellors in internal departments and external services for prevention and protection at work, there are various levels of training for prevention counsellors. The report further indicates the results of a 2014 review of training in well-being at work, in particular courses designed for prevention counsellors. The Committee takes note of the details given in the report and notes the authorities' involvement in the training of occupational health and safety professionals and the definition of training programmes.

The report contains several references to the website of the Federal Public Service for Employment, Labour and Social Dialogue, which provides very comprehensive information on current laws and regulations, research findings and the training of specialists and in-house prevention counsellors together with frequently asked questions about well-being at work.

The Committee notes that there is a system aimed at improving occupational health and safety through research, development and training.

Consultation with employers' and workers' organisations

In reply to the Committee's question (Conclusions 2013), the report states that consultation with employers' and workers' organisations by the public authorities is achieved through consultations with the National Labour Council (CNT) and the National Council for Prevention and Worker Protection (CSPPT), on which these organisations are represented. Both the CNT and the CSPPT can submit opinions on request or of their own accord. The CNT provides, *inter alia*, opinions on the national strategy in this area. It was consulted in connection with the national strategy on well-being at work 2016-2020. The CSPPT's activities include giving opinions at the request of the Ministry of Employment concerning, for example, measures relating to the areas described in the Act of 4 August 1996 on the well-being of workers in the performance of their work.

In its previous conclusion (Conclusions 2013), the Committee also asked for information on consultation of the bodies dealing with occupational health and safety issues within undertakings. In reply, the report states that the committee for prevention and protection at work elected by workers issues opinions and makes proposals on occupational health and safety policy within the undertaking. Under the Act of 4 August 1996, every undertaking with fewer than 50 employees must have such a committee. If none is elected, the trade union delegation in the undertaking takes on the role and tasks of the committee. If there is no trade union delegation, the employer must consult the employees directly about well-being at work. The Committee takes note of the procedure for direct participation described in the

report, a procedure governed by the Royal Decree of 3 May 1999 on the role and functioning of committees for prevention and protection at work.

The Committee notes that employers' and workers' organisations are consulted when designing and implementing the occupational health and safety policy.

Conclusion

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

Article 3 - Right to safe and healthy working conditions

Paragraph 2 - Safety and health regulations

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

Content of the regulations on health and safety at work

In its previous conclusion (Conclusions 2013), the Committee reiterated that the report must provide full, up-to-date information on changes in the legislation and regulations of the state and, where relevant, the regions during the reference period. In reply, the report states that the Well-being at Work Act of 4 August 1996 was amended by the Act of 15 May 2014 insofar as it relates to servants and domestic workers. Section 2§4 (which excludes domestic servants and other domestic personnel and their employers) has been repealed, although according to the report, the new legislation will not enter into force until the date determined by Royal Decree.

The report also mentions laws and regulations on health and safety at work which came into force during the reference period. They concern, *inter alia*, the supervision of workers' health (Royal Decree of 3 April 2013, 20 February 2013, 11 September 2013 and 24 April 2014), occupational prevention and protection services (Royal Decree of 5 November 2012 and 29 January 2013), workplaces (Royal Decree of 10 October 2012, 4 December 2012, 28 March 2014), physical agents (Royal Decree of 4 June 2012), chemical and biological agents (Royal Decree of 9 March 2014, 27 May 2014, 20 July 2015, 17 April 2013) and collective protection equipment (Royal Decree of 30 August 2013).

The Committee points out that under the terms of Article 3§2 of the Charter, regulations concerning health and safety at work must cover work-related stress, aggression and violence specific to work, and especially for workers under atypical working relationships (Statement of Interpretation on Article 3§2 of the Charter, Conclusions 2013). In this connection, the report mentions new legislation on the prevention of psychosocial risks at work which was enacted during the reference period and entered into force on 1 September 2014, namely the Act of 28 February 2014 supplementing the Act of 4 August 1996, the Act of 28 March 2014 amending the Judicial Code and the Act of 4 August 1996, and the Royal Decree of 10 April 2014 on the prevention of psychosocial risks at work.

The Committee considers that the current legislation and regulations meet the general obligation under Article 3§2 of the Charter, which requires that most of the risks listed in the general introduction to Conclusions XIV-2 be specifically covered, in line with the level set by international reference standards.

Levels of prevention and protection

The Committee examines the levels of occupational prevention and protection provided for by the legislation and the regulations in relation to certain risks.

Establishment, alteration and upkeep of workplaces

In its previous conclusion (Conclusion 2013), the Committee asked for information on the legislative or regulatory measures in force at state or regional level establishing prevention and protection levels for occupational hazards related to the establishment of, alteration to, and upkeep of workplaces. In reply, the report states that the requested regulation is contained in the Royal Decree of 10 October 2012 (Belgian Official Gazette of 5 November 2012) which stipulates the basic requirements to be met by workplaces, including notably the general rules on layout, lighting, ventilation, temperature, communal facilities including sanitary installations and chairs for working and resting. The Committee notes that this Royal Decree applies to all premises containing workstations within the undertaking, including any other site on the undertaking's land, to which workers have access when carrying out their work.

Protection against hazardous substances and agents

The Committee notes from the report that Directive 2014/27/EU of the European Parliament and of the Council of 26 February 2014 amending Council Directives 92/58/EEC, 92/85/EEC, 94/33/EC, 98/24/EC and Directive 2004/37/EC of the European Parliament and of the Council, in order to align them to Regulation (EC) No. 1272/2008 on classification, labelling and packaging of substances and mixtures, was incorporated into domestic law by the Royal Decree of 20 July 2015.

The report further states that European Directive 2009/161/EU of 17 December 2009 establishing a third list of indicative occupational exposure limit values was incorporated into Belgian law by the Royal Decree of 9 March 2014 amending the Royal Decree of 11 March 2002 on protecting workers' health and safety from risks linked to chemical agents in the workplace.

Protection of workers against asbestos

In its previous conclusion (Conclusions 2013), the Committee asked for information on measures adopted to incorporate the exposure limit value of 0.1 fibres per cm^3 introduced by Directive 2009/148/EC of the European Parliament and of the Council of 30 November 2009 on the protection of workers from the risks related to exposure to asbestos at work. In reply, the report states that the exposure limit value is stipulated in the Royal Decree of 16 March 2006 on the protection of workers from risks related to exposure to asbestos. The Committee takes note of the measures which have been imposed to keep the degree of exposure as low as possible and in any event to ensure that they do not exceed the exposure limit value.

Protection of workers against ionising radiation

The Committee previously concluded (Conclusions XVI-2, 2007, 2009 and 2013) that prevention and protection level for ionising radiation was in conformity with Article 3§2 of the Charter. It asks whether workers are protected up to a level at least equivalent to that set in the Recommendations by the International Commission on Radiological Protection (ICRP Publication No. 103, 2007).

The Committee concludes that prevention and protection levels for asbestos and ionising radiation are in conformity with Article 3§2 of the Charter.

Personal scope of the regulations

The Committee examines the personal scope of legislation and regulations with regard to workers in atypical employment.

The report states that the Social Criminal Code (Book II) contains offences relating to the prevention of psychological and social problems caused by work. It is based on the provisions of the Act of 4 August 1996 (Chapter Vbis), as amended by the Act of 28 February 2014, on the prevention of psychosocial risks at work including stress, violence and moral or sexual harassment at work. The Royal Decree of 10 April 2014 on the prevention of psychosocial risks at work supplements these new provisions. The individual procedures have been widened to include all psychosocial risks at work. The report also states that the roles of the various parties involved in prevention have been clarified, collective prevention mechanisms developed and the status of confidential counsellors modified. The Committee notes that under the Act of 26 February 2016 (outside the reference period), the criminal provisions of the Social Criminal Code have been adapted to these new requirements.

Temporary workers

In its previous conclusion (Conclusions 2013), the Committee noted that on the whole, temporary workers enjoyed the same levels of protection and health supervision as employees on permanent contracts. It asked for information on the means of identifying and punishing infringements of Royal Decree of 15 December 2010 and the manner in which representation of temporary workers was organised. In reply, the report states that the legal framework for the employment of temporary workers is provided by the Act of 24 July 1987 on temporary work, casual work and the supply of workers by users. For the duration of the period during which a temporary worker works for a user in accordance with the requirements of the said Act, the regulations on well-being at work must be implemented in the workplace and the sanctions set out in the legislation on well-being apply equally to temporary work. According to the report, temporary workers are represented by workers' delegations on the user's committee for the prevention and protection at work, the purpose of which is to identify and suggest solutions and to contribute to any efforts to promote the well-being of workers. Where there is no such committee within the undertaking, the trade union delegation is responsible for performing the relevant tasks. If there is neither a committee nor a trade union delegation within the undertaking, workers have a direct say in matters relating to well-being.

The Royal Decree of 15 December 2010 requires users to consult the committee about the job sheets (see Conclusions 2013) describing the temporary worker's workplace and the prevention measures taken. On this basis, the workers' delegations give an opinion on the working conditions, as they relate to the well-being of the temporary worker concerned. During each inspection visit, the inspector also checks to see whether the requirements of the Royal Decree of 15 December 2015 are being properly implemented and, if they are not, will issue a notice, verbal warning, written warning or pro justitia police report depending on the seriousness of the breach. The Committee takes note of the aspects monitored in these individual cases and notes that in 2011 (outside the reference period), 700 infringements of the Royal Decree were reported.

Other types of workers

In its previous conclusions (Conclusions 2013, 2009, 2007 and XVI-2 (2005)), the Committee concluded that the situation in Belgium with respect to the legal framework relating to the protection of self-employed workers was in conformity with Article 3§2. The report states that the purpose of the Act of 15 May 2014 amending the Act of 4 August 1996 insofar as it relates to servants and domestic workers is to enable the Act of 4 August 1996 on the well-being of workers in the performance of their work to be applied to domestic servants and other domestic personnel. It will enter into force on a date which has yet to be determined by Royal Decree. The Committee asks that the next report provide full and updated information on this point and in particular up-to-date information on the entry into force of the aforementioned legislation.

Consultation with employers' and workers' organisations

In its previous conclusions (Conclusions 2013), the Committee noted that there was a system for consulting employers' and workers' organisations at the level of the public authorities. It asked for updated information on the consultation of employers' and employees' organisations by the public authorities, particularly on the extent of occupational hazards covered by the legislation and regulations on occupational health and safety, levels of prevention and protection afforded thereby, and the application of this legislation and these regulations to workers in insecure employment.

In reply, the report states that consultation with employers' and workers' organisations regarding the legislation and regulations on well-being at work is achieved through consultations with the National Labour Council (CNT) and the National Council for

Prevention and Worker Protection (CSPPT), on which the organisations in question are represented. Both bodies can submit opinions on request or of their own accord. The CNT provides, *inter alia*, opinions on draft legislation, certain draft regulations and the national strategy in this area. The CSPPT's activities include giving opinions at the request of the Ministry of Employment concerning, for example, draft regulations and measures relating to the areas described in the Act of 4 August 1996 on the well-being of workers in the performance of their work. It also gives opinions on reports prepared by the authorities for the EU Commission concerning the practical implementation of the directives on well-being at work.

As regards consultations with the relevant competent bodies within undertakings, the report states that the committee for prevention and protection at work elected by workers issues opinions and makes proposals on occupational health and safety policy within the undertaking (see also the Committee's conclusion under Article 3§1 of the Charter).

Conclusion

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

Article 3 - Right to safe and healthy working conditions

Paragraph 3 - Enforcement of safety and health regulations

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

Accidents at work and occupational diseases

The report states that in 2012, the Industrial Accidents Fund reported a 7.7% reduction in the number of accidents at work in the private sector, which was due to an 8.6% fall in the number of accidents at work and a 1.5% fall in the number of accidents on the way to work (22 013). The recorded number of accidents at the workplace fell from 135 118, 67 of them fatal, to 121 195 in 2014, of which 59 were fatal. The frequency of accidents at work among temporary workers has continued to fall since 2000 and stood at 39.33 in 2015, which, according to the report, means the increase in the employment of temporary workers is rising faster than the number of accidents at work. The Committee notes that the national figures are based on total incapacity lasting at least one day (not including the day of the accident). It also takes note of the figures relating to workplace accidents during the reference period according to the sectors of economic activity detailed in the report.

According to EUROSTAT, in 2014, 65 587 (compared with 58 418 in 2012) non-fatal accidents at work implying at least four calendar days of absence from work were recorded in Belgium and the number of fatal accidents was 52 (compared with 49 in 2012). The standardised incidence of non-fatal accidents per 100 000 persons employed was 1 724 in 2014 (compared with 2 197 in 2012). The Committee notes here that the average in European Union countries (EU 28) was 1 642 in 2014 (compared with 1 717 in 2012). As regards fatal accidents at work, the standardised incidence rate was 1.7 in 2014 (compared with 2.09 in 2012). The average for other countries in the 28-member EU was 2.3 in 2014 (compared with 2.42 in 2012). The Committee notes that standardised rate of incidence of Belgium is almost similar to the average rate in the EU-28 at the end of the reference period.

In its previous conclusion (Conclusions 2013), the Committee asked for the next report to describe measures taken to contain the generally high level of accidents at work and to counter the increase in the number of cases of occupational disease. In reply, the report states that to reduce the level of accidents at work and prevent occupational diseases, various pieces of secondary legislation together with thematic explanations, guides and examples of good practice have been published and refers to websites featuring the relevant information.

On the subject of occupational diseases, the report states that it is difficult to provide statistics that might confirm the results of measures taken to counter the increase in the number of cases of occupational disease. The report states that firstly, regulations to prevent specific risks require a long period of application in order to have an effect. Secondly, Belgian statistics in this area are based on the number of claims filed for compensation and the publication of a regulation on protection against a particular occupational disease often leads to claims for compensation relating to that disease and hence an increase in the number of recorded cases. According to the report, particular attention was given to emerging risks during the reference period and in particular to musculoskeletal disorders (MSDs) and psychosocial risks. The Committee takes note of the measures taken to help undertakings prevent all occupational risks.

According to the 2015 statistics provided by the Occupational Diseases Fund to which the report refers, the Committee notes that 2 460 cases of occupational disease were reported by prevention counsellors/occupational physicians in 2015.

On the basis of both sources with statistical data, the Committee notes that even though the total number of accidents at work increased during the reference period, the standardised incidence rates of fatal and non-fatal accidents remain similar or lower than the EU-28

average. The Committee concludes that the situation is in conformity with Article 3§3 in this respect.

Activities of the Labour Inspectorate

The Committee notes that, according to the National Profile on Occupational Safety and Health developed by Belgium in accordance with ILO recommendations (2015), the Directorate General of Employee Well-being is the labour inspectorate for all matters relating to the occupational health and safety of workers. It incorporates the former technical and medical inspectorates and seeks to ensure policy compliance in the area of well-being at work through its advice, prevention and law enforcement functions in both the private and the public sector.

The report indicates that the implementation of the new Social Criminal Code since 2011 (Conclusions 2013), has had a major impact on the operation of the Directorate General of Employee Well-being. It has been decided to continue applying the ISO9001 standard and to keep ISO9001 certification as an objective. The CBE is pursuing its strategy of issuing standard reports in inspection campaigns. The report further states that under the Royal Decree of 10 July 2013 implementing Chapter 5 entitled “Regulation of certain aspects of the electronic exchange of information between those involved in combating illegal labour and social security fraud” of Title 5 of Book 1 of the Social Criminal Code, as amended by the Royal Decree of 26 December 2013, social inspectors from the Directorate General of Employee Well-being of Belgium’s Federal Public Service for Employment, Labour and Social Dialogue are allowed to issue infringement reports electronically.

The Committee notes that the CBE is working on preparing electronic infringement reports with other Federal Public Services and inspection services, with the Industrial Accidents Fund and the Occupational Diseases Fund regarding the processing of documents and with a Belgian accreditation agency – BELAC – concerning the accreditation of external services for prevention and protection at work, external technical monitoring services, asbestos removal specialists and certain certified laboratories which are also accredited.

According to the report, the Board of Prosecutors General is unable to provide figures for the total amount of criminal fines imposed as there is no standardised IT system for cataloguing case files. As regards the total amount of administrative fines imposed, the total number of infringements established by inspectorates rose from 830 in 2012 to 1 131 in 2015; the number of infringements sanctioned by means of a criminal fine fell from 299 in 2012 to 259 in 2015; the number of infringements pending a final opinion from the labour law prosecutor rose from 145 in 2012 to 563 in 2015; the number of infringements resulting in an administrative fine fell from 180 in 2012 to 84 in 2015; the number of infringements where it was decided not to proceed fell from 130 in 2012 to 51 in 2015; the number of infringements still to be processed by lawyers in the EDC rose from 76 in 2016 to 174 in 2015.

In its previous conclusion (Conclusions 2013), the Committee asked for information on the proportion of workers covered by inspection visits actually carried out during the reference period. In reply, the report explains why the figures are not available. The Committee takes note of this information and notes from the report that when inspection campaigns are being selected and planned, the sectors in which workers are the most vulnerable are examined in detail. During an inspection visit or extension, the inspectors hold discussions with the workers’ delegations or a few workers at the workplace and are not in a position, therefore, to check the working conditions of all workers.

As regards the information requested on the progress made to reduce the length of judicial proceedings (Conclusions 2013), the report states that, under Article 76 of the Social Criminal Code, if, within six months after receiving the infringement report, the prosecution service fails to notify the authority responsible for imposing administrative fines of its decision on whether or not to prosecute, or to propose a settlement or mediation, the said authority can decide whether to institute proceedings for the purpose of imposing an

administrative fine. The Committee notes that the average time between the prosecution department waiving its rights and the decision to impose an administrative fine decreased from 602 days in 2012 to 595 days in 2015. No figures are available, however, as regards the time between issuance of the infringement report and the prosecution service's decision.

The Committee notes that, according to the National Profile on Occupational Safety and Health developed by Belgium in accordance with ILO recommendations (2015), the number of labour inspectors (which fell from 162 in 2012 to 154 in 2014) and the number of workers per labour inspector (which fell from 24 310 in 2012 to 24 034 in 2013) declined slightly over the reference period. The number of inspections carried out per 100 000 workers increased (from 856 in 2012 to 931 in 2013), even though the total number of infringements resulting in legal action (245 in 2012 compared with 215 in 2014) and the total number of infringements resulting in an administrative fine (17 in 2012 compared with 5 in 2014) fell significantly.

The Committee concludes that due to the low level of human resources in the inspectorate service responsible for monitoring compliance with occupational health and safety legislation, the labour inspection system cannot be considered efficient with regard to Article 3§3 of the Charter. The Committee asks that the next report provide information on the measures taken to increase staffing levels in the labour inspectorate. It also asks that the next report provide information on the number, while distinguishing clearly between administrative staff and inspection staff, of inspectors assigned to supervising the application of the legislation and regulations on occupational health and safety; the number of general, thematic and unscheduled inspection visits assigned solely to the occupational health and safety legislation and regulations; the application of the legislation and the regulations on the labour inspectorate throughout the country in practice; details, by category, of administrative measures that labour inspectors are entitled to take and, for each category, the number of such measures actually taken, for each year of the reference period.

Conclusion

The Committee concludes that the situation in Belgium is not in conformity with Article 3§3 of the Charter on the ground that the labour inspection system does not have sufficient human resources to adequately monitor compliance with occupational health and safety legislation.

Article 3 - Right to safe and healthy working conditions

Paragraph 4 - Occupational health services

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

The Committee notes that under Article 3§4 States must promote, in consultation with employers' and workers' organisations, the progressive development of occupational health services for all workers with essentially preventive and advisory functions. These services may be run jointly by several companies. They must be efficient and should be able to identify, measure and prevent work-related stress, aggression and violence (see Statement of Interpretation on Article 3§4, Conclusions 2013; also Conclusions 2003, Bulgaria). It further notes that if occupational health services are not established for all enterprises, the authorities must develop a strategy, in consultation with employers' and employees' organisations, for that purpose. Thus, States "must take measures that allow it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources" (Conclusions 2003, Bulgaria, Conclusions 2009, Albania).

In its previous conclusion (Conclusions 2013), the Committee asked for figures on the number of prevention counsellors in the internal prevention and protection departments and the proportion of workers covered by internal and external occupational health services. In reply, the report states that at the end of 2011 (outside the reference period), there were 227 525 employers spread over 274 399 establishments, including 205 873 undertakings with fewer than 20 workers. In 2011 (again, outside the reference period), 207 737 undertakings were affiliated to external prevention and protection services and 6 985 employers had at least one prevention counsellor who had undergone level II further training (1 864 929 workers).

According to the report, the internal prevention and protection department may include several counsellors, regardless of the size of the undertaking, the risks and the number of administrative offices or technical units. In addition, there are joint internal prevention and protection departments which provide services to several employers.

With regard to external prevention and protection services, the report mentions the following types of prevention counsellors: occupational safety (167 people), ergonomics (45), industrial hygiene (33), psychosocial (154), occupational medicine (976) and others (320).

As regards the contradiction between the requirement to set up internal prevention and protection departments and the almost systematic use of certified external services in practice (Conclusions 2013), the Committee refers to its assessment under Article 3§1 of the Charter.

In its previous conclusion (Conclusions 2013), the Committee asked which types of workers were not covered by health supervision at work and, in particular, what the situation of self-employed workers, home workers and domestic staff was. The report provides information for each type of worker not covered by health supervision at work. As regards self-employed workers, these are considered in the context of well-being at work insofar as they are based in the same workplace as other workers. If that is the case, they are required to co-operate in implementing well-being at work measures, to share information (about risks and measures taken in the field of health and safety) and to co-ordinate their actions (this is a general requirement). In addition, the Act of 4 August 1996 deals with labour relations with third parties (self-employed sub-contractors) and labour relations in the context of temporary or mobile construction sites; it deals with information exchange, co-operation and co-ordination between the various parties involved and establishes a system that allows the employer/contracting authority to ensure that the legislation is actually applied by self-employed sub-contractors. The provisions on working with third parties do not apply where co-ordination is called for, according to the rules for temporary or mobile construction sites. Under these rules, self-employed workers who themselves perform operations on

construction sites must comply with the provisions on well-being at work in the same way as employers vis-à-vis their staff.

On the subject of home workers, the report states that Collective Labour Agreement No. 85 of 9 November 2005 on telework in the private sector and the Royal Decree of 22 November 2006 on telework in the federal civil service require employers to inform teleworkers of the corporate policy regarding health and safety at work, in particular as regards the requirements relating to VDUs. The prevention and protection department may inspect the place where teleworking is carried out, with the consent of the teleworker (if he or she works from home).

On the subject of domestic staff, the report explains that Section 2§4 under which domestic workers were not covered by the legislation on well-being was repealed by the Act of 15 May 2014 amending the Act of 4 August 1996 on the well-being of workers in the performance of their work. This legislation is not yet in force, however. The date will be determined by Royal Decree.

The Committee requests that the next report provide information on access to medical supervision for public service workers.

Conclusion

The Committee concludes that the situation in Belgium is in conformity with Article 3§4 of the Charter.

Article 11 - Right to protection of health

Paragraph 1 - Removal of the causes of ill-health

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

Measures to ensure the highest possible standard of health

The Committee notes from the WHO data that overall life expectancy at birth was 81.1 years in 2015. Life expectancy therefore remains lower than in some other European countries, but has increased since the previous reference period (79.4 years in 2009). According to Eurostat, the average life expectancy at birth in the EU-28 was estimated at 80.6 years in 2015.

The WHO statistics indicate that the maternal mortality rate in 2015 was 7 deaths per 100 000 live births compared to 8 deaths per 100 000 live births recorded in 2010. The infant mortality rate was 3.3 deaths per1 000 live births in 2015 compared to 3.6 deaths per 1 000 live births in 2010.

The Committee notes from the report that in the Flemish community the main causes of death for men are lung cancer, suicide and ischemic heart disease, while for women the main cause of premature mortality is breast cancer followed by lung cancer and suicide. Road accidents and suicide are among the causes of death at a relatively young age, while cancer and heart disease (ischemic) are important causes of death at a later age. The Committee takes note of the information on the main causes of death with regard to the Flemish community. It asks that the next report provide information on the main causes of premature death in respect of all regions of Belgium.

Access to health care

The report indicates that following the sixth reform of the state, the Communities became competent as from 1 July 2014 for the care of the elderly, long-term psychiatric services and rehabilitation services such as services for drug addicts. Health education and prevention remain within the competence of the Communities.

The Committee takes note from the OECD that the share of GDP allocated to health spending (excluding capital expenditure) in Belgium was 10.2% in 2013, compared with an OECD average of 8.9%. The same source indicates that although out-of-pocket spending at 18% of health spending is just below the OECD average (19.5%) and comparable to Finland (19%) and Iceland (18%), it remains higher compared with other western European countries, such as Germany (14%) and France (7%).

With regard to waiting times, the Committee noted previously that a working group has been set up to measure waiting times in hospitals and asked to be kept informed of the developments in this area (Conclusions 2013). Since the report does not provide any concrete data on the real waiting times, the Committee asks updated information on the waiting times in the next report. It notes that according to Euro Health Consumer Index (EHCI) which assesses the performance of national healthcare systems in 35 European countries, Belgium ranks 5th in the EHCI 2015, after the Netherlands, Switzerland, Norway and Finland. The same source indicates that Belgium has the shortest waiting time for healthcare in Europe, where for example cancer treatment starts, on average, less than 21 days after diagnosis.

In its previous conclusion, the Committee asked information on the availability of rehabilitation facilities for drug addicts and the range of options and treatments available (Conclusions 2013). The report indicates that in the Flemish community, the centers for drug addicts receive people who are addicted to illegal drugs, medicines, alcohol or certain psychoactive substances. Some centers receive patients in crisis situations. The centers offer different types of ambulatory or residential support, in order to quit, eliminate the addiction and for a better social integration. The duration of care is limited. Health insurance

can be financially involved in this program. In Flemish community, 13 institutions have concluded a convention for the purpose of treating drug addicts.

The report further indicates that the German-speaking community disposes of a psychiatric hospital. Some organisations such as ASL (Arbeitsgemeinschaft für Suchtvorbeugung und Lebensbewältigung) and the SPZ (Sozial-psychologisches Zentrum) provide practical advice and psychological support to drug addicts. As for rehabilitation purposes, patients are hospitalised in the care facilities of the neighbouring countries, because the German speaking community does not have specific structures. The Committee asks that the next report provide updated information on the availability of rehabilitation facilities for drug addicts and the range of options and treatments available in all regions.

The Committee asks that the next report contain information on the availability of mental health care and treatment services, including information on the prevention of mental disorders and recovery measures for all regions of Belgium.

The Committee asks that the next report contain information on dental care services and treatments (such as who is entitled to free dental treatment, the costs for the main treatments and the proportion of out-of-pocket paid by the patients) for all regions of Belgium.

As regards the right to protection of health of transgender persons, the Committee previously received submissions from the International Lesbian and Gay Association (European Region) (ILGA) stating that "in Belgium there is a requirement that transgender people undergo sterilisation as a condition of legal gender recognition". In this respect, the Committee asked whether in Belgium legal gender recognition for transgender persons requires (in law or in practice) that they undergo sterilisation or any other invasive medical treatment which could impair their health or physical integrity (Conclusions 2013).

The Committee takes note of the comments submitted by Transgender Europe and ILGA-Europe on the implementation of Article 11 of the Charter in the current cycle stating that Belgium is one of the states that require sterilisation as a condition for gender legal recognition.

The report indicates that the federal government undertook in October 2014 to amend the Law on transsexuality of 10 May 2007 in accordance with its international human rights obligations. Discussions on the legislative amendments are ongoing. The report mentions also some measures and progress made during the reference period for protecting the rights of transgender persons. The Committee takes note of the information provided in the report and by other sources, and asks updated information in the next report.

The Committee recalls that in *Defence of Children International (DCI) v. Belgium*, Complaint No. 69/2011, Decision on the merits of 23 October 2012 held that there was a violation of Article 11§1 on the ground that unaccompanied foreign minors and accompanied foreign minors unlawfully present were not guaranteed the right of access to health care. The question of the right to access to healthcare of unaccompanied foreign minors and accompanied foreign minors unlawfully present in Belgium is currently being considered by the Committee as part of the follow-up process of this decision. It will not therefore be considered as part of the reporting procedure for this cycle.

Conclusion

The Committee concludes that the situation in Belgium is in conformity with Article 11§1 of the Charter.

Article 11 - Right to protection of health

Paragraph 2 - Advisory and educational facilities

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

Education and awareness raising

The Committee notes the campaigns to promote health and prevent disease carried out in the Flemish Community. The Agency for Care and Health has concluded agreements with organisations with a view to achieving health goals. For example, the Agency for Care and Health has concluded a management contract for the period 2016-2020 with the Flemish Institute for Health Promotion and Disease Prevention (Vlaams Instituut voor Gezondheidspromotie en Ziektepreventie) with a view to ensuring the promotion of health in general and particularly in education, employment and local authorities, as well as the promotion of mental health for the general population and specific target groups. The Flemish Community also has other projects, activities and campaigns relating to tobacco, drugs, psychoactive substances and other addictions, suicide prevention, healthy eating and exercise, and sexual health.

With regard to the German-speaking Community, the report describes the awareness-raising campaigns and measures taken to prevent smoking and promote sexual education, oral hygiene, healthy eating and physical activity for children.

The Committee asks updated information in the next report on the health education and awareness raising measures with regard to all regions of Belgium, including the French-speaking Community .

Counselling and screening

The report describes in detail the main consultation and screening services in the Flemish Community in schools and for other groups. Pupil support centres (CLBs) provide counselling and screening services at school for children between the ages of 5 and 18. All school pupils are seen by these centres. Pupils, their parents and schools are required to participate in the centres' general sessions, which are obligatory, and in any preventive measures.

In the German-speaking Community, infant and baby clinics for children aged 0 to 3 are provided by the Kaleido-DG service and screen for diseases and developmental delays in the target population. The body mass index of two-year-olds is systematically recorded and special measures, in the form of interviews and medical checks, are arranged to meet the particular needs of their families for any children who are found to be overweight. In 2012, child and infant clinics and school health services introduced joint medical records, making ongoing communication possible, and effective continuation of children's medical care.

The report provides a detailed description of disease screening programmes in the different communities. The German-speaking Community has a breast cancer screening programme for women aged 50 to 69. It also has a colorectal cancer screening programme for persons aged 50 to 74 (men and women). The report mentions that, in the Flemish Community, since May 2016 (outside the reference period), all persons can electronically organise screening appointments and access previous screening results.

The Committee asks updated information in the next report on the counselling and screening programmes/measures with regard to all regions of Belgium, including in the French-speaking Community.

Conclusion

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

Article 11 - Right to protection of health

Paragraph 3 - Prevention of diseases and accidents

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

Healthy environment

The Committee notes the detailed information contained in the report regarding the legal framework and the measures taken by the different communities during the reference period.

The Committee has previously asked for information on air pollution levels, drinking water contamination and food poisoning cases during the reference period, in order to assess whether trends are increasing or decreasing (Conclusions 2013).

The report states that the Flemish Community is achieving a large number of objectives relating to air quality. However, the Committee notes that according to the information provided in the report and its appendices, the values recommended by the World Health Organisation (WHO) are still unattainable for numerous substances. For example, with regard to fine dust, since 2014, concentrations of PM10 have been lower than the European value limits in all of the places measured, but all of these measurements exceed the values recommended by the WHO. The report shows that tap drinking water is of a very high quality over the period 2012-2014 and that the percentage of full compliance is over 99%. Since 2011, a policy has been carried out in the Flemish Community regarding the issue of lead in drinking water; consumers have been made aware of the need to keep home plumbing systems lead free.

The Committee takes note of the information on air quality in Wallonia-Brussels provided in the report's appendices. It notes that in 2014, the Engis industrial zone registered that the daily limit of 50 µg/m³ had been exceeded 40 times. The report states that several measurement campaigns have been implemented in order to identify the reason for limits being exceeded and an industrial support committee has been in place since 2015 in order to take adequate measures to reduce particle emissions. The Committee wishes to be kept informed of any developments on this issue.

The report reiterates that the German-speaking Community is not responsible for monitoring air quality. These measures are carried out by the Walloon Region. The Walloon Region is also responsible for dealing with water pollution and for the rules governing asbestos removal. The report provides information on the prevention and awareness-raising campaigns that correspond to the preceding evaluation round, which had been noted in the Committee's previous conclusion (Conclusions 2013). The Committee asks for the next report to provide updated information on the measures taken by the German-speaking Community to ensure a healthy environment.

The Committee asks for the next report to provide updated information on air pollution levels, drinking water contamination and food poisoning cases during the reference period.

Tobacco, alcohol and drugs

In its previous conclusion, the Committee asked whether smoking had been banned in public places and what restrictions were in force on the sale and advertising of tobacco products (Conclusions 2009 and 2013).

The report states that smoking is prohibited in all indoor public places. The sale of tobacco to children under 16 and online is prohibited. The advertising or direct/indirect promotion of tobacco is prohibited except for a display of the brand in shops where it is sold. In addition, Belgium applies of all the European provisions with regard to labelling and regulating ingredients (Directive 2014/40/EU transposed into Royal Decree of 5 February 2016 relating to the manufacture and marketing of tobacco products).

The report states that in all regions 24% of the population are smokers (19% are daily smokers, 5% are occasional smokers). The percentage of daily smokers in 2013 (19%) has remained stable since the last survey in 2008 (18%), but it has, however, decreased in comparison with the percentages in 2004 (25%) and 2005 (26%).

With regard to alcohol, the Committee asked for updated information on the regulations governing alcohol sales and on consumption trends (Conclusions 2013). The report states that the sale of beer and wine is prohibited to children under 16 and the sale of strong alcohol (spirits) is prohibited to those under 18. The consumption trend has been stable since 2000 (around 11 litres of pure alcohol for every person aged 15 or over).

The report states that in 2013, 89% of the German-speaking Community (aged 15 and over) currently consume alcohol, which is slightly higher than the national level (82%). There are fewer daily drinkers in the German-speaking Community (10%) than in the rest of the country (14%).

Immunisation and epidemiological monitoring

The Committee previously asked for the vaccination coverage rates. The report provides federal vaccination coverage rates for 2015 which are quite high, exceeding 95% for most vaccines.

The report states that the annual data gathered by the Kaleido-DG service show that 72% of pupils in the German-speaking Community have been vaccinated according to the scheme set up by Kaleido. The rate of children vaccinated is therefore constantly increasing. It is estimated that, without taking into account the children who, according to their parents, are vaccinated by a general practitioner, an 82% coverage rate can be achieved.

Accidents

In its previous conclusion (Conclusions 2013), the Committee asked for the next report to provide information on the measures taken to prevent road accidents.

The report states that the aim of the governmental agreement is to ensure that by 2020, the number of people killed in traffic accidents will be half the number in 2010 (840 killed in 2010 compared with 715 in 2014). The Committee notes from the report the numerous measures taken to prevent road accidents, such as reforming the motorcycle licence, repeat offences receiving harsher punishments by allowing a combination of serious offences to be punished at the same time (for example, alcohol and speeding) since 1 January 2015, more effective monitoring using fixed cameras and modern speed cameras, information campaigns in primary and secondary schools, and awareness-raising strategies for specific target groups (motorcyclists, pedestrians, seat belts, etc.).

The report states that in the Flemish Community, a Flemish Road Safety Plan 2012-2014 has been devised by the Department of Mobility and Public Works (MOW), which includes initiatives in four main areas: education and raising awareness; infrastructure and technology; surveillance and regulation; and evaluation, survey and monitoring.

In Wallonia-Brussels, the Walloon Agency for Road Safety (AWSR) was tasked by the Walloon Government with the responsibility for informing, raising awareness and promoting road safety. From the 2015 activity report, the Committee notes that throughout 2015, the AWSR carried out eight awareness campaigns on the main themes of road safety, organised many initiatives aimed at young drivers and introduced the motto “BackSafe”.

The Committee recalls that in Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012 it concluded that there had been a violation of Article 11§3 on the ground that the prevention of epidemic, endemic and other diseases, as well as accidents was not guaranteed in respect of unaccompanied foreign minors and unlawfully resident accompanied minors. These matters are currently being

considered by the Committee as part of the follow-up process of the above mentioned decision. It will not therefore be considered as part of the reporting process for this cycle.

The Committee asks for the next report to provide information on the measures taken to prevent domestic accidents and accidents during leisure.

Conclusion

The Committee concludes that the situation in Belgium is in conformity with Article 11§3 of the Charter.

Article 12 - Right to social security

Paragraph 1 - Existence of a social security system

The Committee takes note of the information contained in the report submitted by Belgium. It also takes notes of the information contained in the comments by the Combat Poverty, Insecurity and Social Exclusion Service, registered on 29 mars 2017; of the comments by Unia, Interfederal Centre for Equal Opportunities, and Myria, Federal Migration Centre, of 31 March 2017; of the addendum to the report by Belgium, transmitted on 28 April 2017 and of the comments of the Belgian Disability Forum asbl, of 31 August 2017.

In the case of **family and maternity** benefits, the Committee refers to its conclusions on, respectively, articles 16 and 8§1.

Risks covered, financing of benefits and personal coverage

The Committee refers to its previous conclusions (Conclusions XVIII-1 (2006)) for a description of the Belgian social security system. It continues to cover all the traditional risks (medical care, sickness, unemployment, old age, employment injuries, family, maternity, invalidity and survivors) and is based on collective financing, with employee, employer and state contributions and further funding from the state budget.

In its previous conclusion (Conclusions 2013), the Committee noted that personal coverage extended to 95% of the population in the case of health care and 85% of employees for family benefits, and that all employees and unemployed persons were covered for old age benefits. It now notes that, according to MISSOC, all employees are covered by compulsory sickness, maternity, occupational accidents and diseases, invalidity and unemployment insurance. Nevertheless, it asks for information in the next report on the number of insured persons as a percentage of the total active population, including the self-employed, for the different benefits paid as income replacement, and points out that this information must be supplied regularly in each report to enable it to assess the extent of actual personal coverage.

Adequacy of the benefits

According to Eurostat data, the median equivalised annual income was €21 654 in 2015, or €1804.50 per month. The poverty level, defined as 50% of the median equivalised income, was €10 827 per annum, or €902 per month.40% of the median equivalised income corresponded to €722 monthly.

Sickness benefits: in reply to the Committee, the authorities state in the report that the minimum monthly sickness benefits paid to an unmarried employee would be €2 400 up to the first day of the seventh month of incapacity for work and €1 520 thereafter. For a self-employed worker there is a fixed monthly allowance of €1 285. The Committee notes that once the employer ceases to pay the wage or salary (after fifteen days for manual and one month for non-manual employees), the social security pays 60% of the wage or salary, subject to a maximum of €133 per day on 1 April 2015, for a maximum period of one year.

Old age benefits: according to the report, the minimum guaranteed pension on 1 June 2015 was €16 844.72 per annum for persons with a dependent family and €13 480.03 for persons living alone. In addition, since 2014, a holiday supplement of up to €885.07 for persons with a dependent family and €708.04 for persons living alone has been paid each May. The report also states that the guaranteed income for elderly people (GRAPA) has been raised by 2% with effect from 1 September 2015 (see also, on this issue, Article 13§1). As regards the comments by Unia and Myria concerning the unfavourable conditions of access to old age pension for migrant workers, the Committee refers to its assessment under Article 12§4.

The report does not present the minimum amounts of the other benefits. The Committee notes from MISSOC 2015 data that:

- for **invalidity** benefits, the minimum for someone in regular employment is between €53.99 and €37.05 per day, according to whether or not there are dependents; for someone in irregular employment the equivalent amounts are, respectively, €41.92 and €31.44 per day;
- for **occupational accidents and diseases**, the daily allowance in cases of total incapacity for work is 90% of the basic wage or salary divided by 365 days;
- in the case of **unemployment benefits**, a gradually decreasing amount is awarded for an unlimited period, subject to conditions. The Committee notes in this context that it has considered the criteria governing acceptance of a "suitable job" and has found the situation to be compatible with the Charter (Conclusions 2013). It notes however, from the comments of the Combat Poverty, Insecurity and Social Exclusion Service, that the applicable criteria have been amended in 2012 (ministerial order of 28 December 2011) in a restrictive way: as a result, a jobseeker cannot henceforth refuse an employment offer when the workplace is within 60km (instead of 25km previously) from his domicile; furthermore, the initial period during which a jobseeker is entitled to refuse an employment offer not matching his/her previous competences or experiences, which used to be six months, has been shortened to three months for workers under 30 years old who have been in employment for less than 5 years, and to five months for other categories of jobseekers. Recipients of unemployment benefits are paid 65% of their most recent pay for the first three months of unemployment and 60% for the nine months that follow. Subsequent reductions are applied until the minimum flat-rate daily allowance is reached. Since this flat-rate allowance only becomes payable after 48 weeks of unemployment and it may be supplemented by additional allowances or occasional sources of income, the Committee considers that the situation is compatible with the Charter. The Committee notes however that, according to the comments of the Combat Poverty, Insecurity and Social Exclusion Service, the granting of degressive amounts has a negative impact notably on cohabiting jobseekers and, in particular, women (53% of jobseeking women are in cohabitation), insofar as the average amounts granted after twelve months unemployment fall below the level of 50% of the median equivalised income. The restrictions, introduced in 2014 to the granting of the professional integration benefit, have resulted in 29 021 persons being excluded from it (mainly young people and women) from January till end of November 2015, according to the Combat Poverty, Insecurity and Social Exclusion Service**;** Unia and Myria, as well as the Belgian Disability Forum, furthermore note in their comments that this reform has a penalising effect in particular on jobseekers with disabilities and forces them to turn to social assistance (integration allowance). In their addendum to the report, transmitted in response to all these comments, the competent Belgian authorities acknowledge an increase in the number of integration allowance claimants (+9.3%), which concerns notably young people and refugees, and which is partly related to the 2014 reform, but also to other circumstances, including in particular the increase in the number of refugees. As regards the integration allowance, the Committee refers to its assessment of the social assistance schemes under Article 13§1. It requests nevertheless the next report to provide updated data concerning the implementation of the 2014 reform and its impact on the number of beneficiaries of unemployment benefits and professional integration benefits and the level of amounts granted**.**

The Committee recalls that, to be compatible with the Charter, the social security benefits that are paid as income replacements must represent a reasonable proportion of the previous income and should never fall below the poverty threshold, defined as 50% of median equivalised income, as calculated on the basis of the Eurostat at-risk-of-poverty threshold. The Committee asks for relevant information on this subject, namely minimum level of benefits paid as replacement income during the reference period, to be regularly

supplied in each report on Article 12§1, to enable it to assess the situation. It also asks for information in the next report on any social assistance benefits that might be available when the minimum level of benefits paid as replacement income under the social security system is below the minimum income provided for in domestic law. Information on the minimum income is also requested (Conclusions 2013, General Introduction).

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in Belgium is in conformity with Article 12§1 of the Charter.

Article 12 - Right to social security

Paragraph 2 - Maintenance of a social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security

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

Belgium has ratified the European Code of Social Security and its Protocol on 13 August 1969 and has accepted parts II-X.

The Committee notes from Resolution CM/ResCSS(2016)1 of the Committee of Ministers on the application of the European Code of Social Security and its Protocol by Belgium (period from 1 July 2014 to 30 June 2015) that the law and practice in Belgium continue to give full effect to all the parts of the Code, as amended by the Protocol, subject to reviewing the method of determining the reference wage for the calculation of benefits.

Conclusion

The Committee concludes that the situation in Belgium is in conformity with Article 12§2 of the Charter.

Article 12 - Right to social security

Paragraph 3 - Development of the social security system

The Committee takes note of the information contained in the report submitted by Belgium. It also takes notes of the information contained in the comments by the Combat Poverty, Insecurity and Social Exclusion Service, registered on 29 mars 2017; of the comments by Unia, Interfederal Centre for Equal Opportunities, and Myria, Federal Migration Centre, of 31 March 2017; of the addendum to the report by Belgium, transmitted on 28 April 2017 and of the comments of the Belgian Disability Forum asbl, of 31 August 2017.

It notes the changes to the legislation during the reference period, as set out in the report, and refers to its previous conclusions for a description of the Belgian social security system.

In the case of **family** and **maternity** benefits, the Committee refers to its conclusions on, respectively, articles 16 and 8§1.

With regard to the other branches of social security, the Committee notes in particular that measures have been taken in the field of **health** to moderate the price of medicines and offer better protection to persons with chronic conditions, particularly by making it compulsory to include these persons in the direct payment system. Such entitlement has now also been extended to insured persons who benefit from preferential arrangements because of their low incomes. Among the improvements, the report refers to the reevaluation of several benefits, including increases in certain old age pensions. Others include an extension of the risks covered under the heading of occupational diseases, for example with regard to tendinitis and tuberculosis, abolition of the waiting period for the payment of sickness allowances and improvements to the protection of unemployed artists.

In connection with **unemployment** benefits, the Committee also notes the adoption of more restrictive measures, in particular the introduction in 2012 of the principle of gradually decreasing benefits, followed in 2014 by stricter conditions for entitlement to benefits, including reduced benefits for temporary unemployment, abolition of the long-service supplement for newly-unemployed older persons, limiting the payment of integration allowances to 36 months and stricter arrangements for determining and monitoring availability for work. It notes from the comments of the Combat Poverty, Insecurity and Social Exclusion Service that the granting of degressive amounts has a negative impact notably on cohabiting jobseekers and, in particular, women. The Combat Poverty, Insecurity and Social Exclusion Service also points out that the restrictions which have been introduced to the granting of the professional integration benefit have resulted in 29 021 persons being excluded from it (mainly young people and women) from January till end of November 2015. Unia and Myria, as well as the Belgian Disability Forum, furthermore note in their comments that these restrictions have a penalising effect in particular on jobseekers with disabilities and force them to turn to social assistance (integration allowance). In response to these comments, the competent Belgian authorities, in their addendum to the report, acknowledge an increase in the number of integration allowance claimants (+9.3%), which concerns notably young people and refugees, and which is partly related to the 2014 reform, but also to other circumstances, including in particular the increase in the number of refugees. The Committee recalls that introducing restrictions into the social security system is not necessarily incompatible with Article 12§3 and asks for details in the next report of the impact of the restrictive measures taken, namely whether and to what extent they entail a reduction in unemployment coverage, in terms of number of recipients and/or the level of benefits, and whether these measures have succeeded in achieving the desired results, in terms of employment promotion, without a significant deterioration in the quality of life of a certain segment of the population.

The report also describes significant developments in 2015 concerning **old age** and **survivors'** pensions. The Committee notes that certain eligibility criteria for benefits have been tightened and that the legal age of retirement has been raised. However, the relevant legislation provides for the gradual entry into force of these changes and certain transitional

measures, such as a transitional allowance in connection with survivors' pensions. Since most of these measures were approved towards the end of the reference period, the Committee asks for information in the next report on their implementation and their effects on the social security system, having regard to the country's Article 12§3 obligations.

In the meantime, it considers that the situation was compatible with this provision during the reference period.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in Belgium is in conformity with Article 12§3 of the Charter.

Article 12 - Right to social security

Paragraph 4 - Social security of persons moving between States

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

Equality of treatment and retention of accrued benefits (Article 12§4)

Right to equal treatment

Equal treatment between nationals and nationals of other States Parties in respect of social security rights shall be ensured through the conclusion of bilateral or multilateral agreements or through unilateral measures.

The Committee recalls that, having regards to the EU legislation on the coordination of social security systems of the EU Member States, governed by Regulations (EC) No. 883/2004 and (EC) No. 987/2009, as amended by Regulation (EU) No. 1231/2010, the EU Member States are considered, as a matter of principle, to ensure equal treatment between, on the one hand, their nationals and, on the other hand, nationals of other EU Member States or member of the EEA, stateless persons, refugees resident in the territory of a Member State who are or have been subject to the social security legislation of one or more Member States, their families and their survivors, as well as nationals of third countries, members of their families and their survivors, provided that they are legally resident in the territory of a Member State and are in a situation which is not confined in all respects within a single Member State.

The Committee recalls that, in any event, under the Charter, EU**/**EEA Member States are required to secure, to the nationals of other States Parties to the 1961 Charter and to the Charter not members of the EU or EEA, equal treatment with respect to social security rights provided they are lawfully resident in their territory (Conclusions XVIII-1 (2006)). In order to do so, they have to either conclude bilateral agreements with them or take unilateral measures.

In its previous conclusion (Conclusion 2013), the Committee asked how equal treatment was secured in practice, and what were the unilateral measures taken by Belgium, if any. The Committee understands from the information provided in the report that equal treatment is only guaranteed to nationals of States Parties with which Belgium has concluded bilateral social security agreements, namely Albania, Bosnia and Herzegovina, "the former Yugoslav Republic of Macedonia", the Republic of Moldova, Montenegro, Serbia and Turkey. It asks whether all these agreements guarantee equal treatment, retention of accrued benefits and the aggregation of insurance or employment periods.

The Committee also notes that there has been no change during the reference period: Belgium did not conclude any new agreement or take any unilateral measures, and negotiations with Albania are still on-going. It asks whether an agreement is contemplated with the States Parties with which Belgium has not reached an agreement yet, i.e. Andorra, Armenia, Azerbaijan, Georgia and the Russian Federation.

In respect of payment to family benefits, the Committee considered that the requirement for the child to reside in the territory of the paying State is in conformity with Article 12§4 (Statement of Interpretation on Article 12§4, XVIII-1 (2006)). However, since not all countries apply such a system, States Parties applying the 'child residence requirement' are under the obligation, in order to secure equal treatment within the meaning of Article 12§4, to enter, within a reasonable period of time, into bilateral or multilateral agreements with those States which apply a different entitlement principle (Conclusion 2006, Cyprus).

In its previous conclusion (Conclusion 2013), the Committee asked whether the condition of five years' residence had been maintained. The report contains no information on this point. The Committee notes from the report of the Governmental Committee concerning Conclusions 2013 that foreign nationals who are not eligible to receive family allowances for

their child under the Belgian, foreign or international scheme may nonetheless ask for the payment of guaranteed family allowances if they satisfy one of the following conditions:

- To be a national (or have children who are nationals) of a State Party to the Charter and hold a valid residence permit;
- To be a refugee or stateless person (or they have children who are refugees or stateless);
- To have a status regularised under the Act of 22 December 1999.

The Committee asks the next report to provide further information on the Act of 22 December 1999.

The Committee also notes from the report of the Governmental Committee concerning Conclusions 2013 that the allocation of family allowances is subject to a requirement of territoriality. However, there are several exceptions, particularly under the EU Regulations, bilateral conventions and ministerial derogations.

Nonetheless, the Committee notes that Belgium has not concluded any agreements with other States Parties which apply a different entitlement principle, namely Andorra, Armenia and Georgia. It also notes that the agreement concluded with Albania does not cover family allowances. The Committee asks for the next report to provide information on any planned agreements and if so, when these might be signed.

With regard to payment of allowances for disabled persons, the Committee considered in its previous conclusion (Conclusion 2009) the situation not in conformity with the Charter on the ground that equal treatment is not guaranteed to nationals of States Parties not members of the EU or bound by agreement with Belgium. Taking into considertation a Constitutional Court decision of 12 December 2007, the Committee asked in its previous conclusion (Conclusion 2013) for more information on the new applicable legislation in this field. The Commitee notes that the report does not address this issue, so it reiterates its question and considers, in the meantime, the situation not in conformity with the Charter on this point.

Right to retain accrued benefits

The Committee recalls the obligation of States, under Article 12§4, to conclude multilateral or bilateral agreements, or to take unilateral measures to ensure the right to retention of accrued benefits whatever the movements of the beneficiary.

The Committee notes from the report of the Governmental Committee concerning Conclusions 2013 that, firslty, retirement or survivor's pensions acquired under Belgian legislation by nationals of an EU/EEA Member State, or of Bosnia and Herzegovina, "the former Yugoslav Republic of Macedonia", Montenegro, Turkey and Serbia, as well as stateless persons, refugees or privileged foreigners may be transferred around the world. However, when awarded to nationals of other States Parties, these pensions may only be transferred to EU Member States (except for Denmark), provided that pensioners legally reside in those countries.

Secondly, it notes survivors' pensions awarded to widowers and widows of ationals of an EU/EEA Member State, or nationals of Bosnia and Herzegovina, "the former Yugoslav Republic of Macedonia", Montenegro, Turkey and Serbia may be transferred around the world, irrespective of the nationality of their beneficiary.

Finally, it notes that Turkish Cypriots also retain their pension, but only when moving to the other part of Cyprus, or to Denmark, France, Germany, the United Kingdom, Greece, Ireland, Iceland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden or Turkey. Only 80% of miners' retirement and survivors' pensions can be transferred.

The Committee also observes that no agreement has been reached with Albania, Andorra, Armenia, Azerbaijan, Georgia, the Republic of Moldova, Ukraine or the Russian Federation regarding the exportability of family allowances. It, therefore, asks for the next report to

explain why there are no agreements with these states and provide information on any planned agreements and, in particular, when they might be signed.

The Committee previously considered (Conclusion 2013) that the retention of accrued benefits in Belgium was not guaranteed to nationals of all other States Parties. As there has been no change in the situation, the Committee reiterates its conclusion on this matter.

Right to maintenance of accruing rights (Article 12§4b)

In its previous conclusion (Conclusion 2013), the Committee considered that the situation was in conformity with the Charter with regard to the right to retain accruing rights. Since the situation remained the same during the reference period, the Committee reiterates its conclusion on this point.

Conclusion

The Committee concludes that the situation in Belgium is not in conformity with Article 12§4 of the Charter on the grounds that:

- equal treatment with regard to access to family allowances is not guaranteed to nationals of all other States Parties;
- the retention of accrued benefits is not guaranteed to nationals of all other States Parties.

Article 13 - Right to social and medical assistance

Paragraph 1 - Adequate assistance for every person in need

The Committee takes note of the information contained in the report submitted by Belgium. It also takes notes of the information contained in the comments by the Combat Poverty, Insecurity and Social Exclusion Service, registered on 29 March 2017; of the comments by Unia, Interfederal Centre for Equal Opportunities, and Myria, Federal Migration Centre, of 31 March 2017; of the Observations from the Government on the comments from Combat Poverty, Insecurity and Social Exclusion Service.

The Committee notes from MISSOC that there are general and special systems under which minimum resources for persons in need are guaranteed. The general system guarantees the right to social integration income, whereas special system guarantees income for elderly persons, both as subjective rights. As regards eligibility criteria, persons are considered to be in need if following the meanst-test it appears that their resources are lower than the amounts of integration income and the guaranteed income for the elderly, respectively. These benefits are paid for as long as the entitlement conditions are met.

Level of benefits

To assess the situation during the reference period, the Committee takes account of the following information:

- Basic benefit: according to MISSOC in 2015 the monthly integration allowance was as follows: a single person living alone received €867,40 per month.
- Additional benefits: subsidies for installation, moving house and rent exist at regional level. Heating allowance granted by the Pubic Centres for Social Assistance at the maximum amount of € 300 per year is paid to low-income households.
- Medical assistance: the Committee notes that there have been no changes to the situation whereby recipients of the guaranteed income and social assistance are entitled to full reimbursement of medical expenses.
- Poverty threshold (defined as 50% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value): it was estimated at €902 per month in 2015.

In the light of the above information, the Committee considers that the levels of social assistance (basic and additional benefits) paid to a single person without resources are adequate on the basis that minimum assistance that can be obtained is compatible with the poverty threshold.

Given that Belgium has not accepted Article 23 of the Charter (the right of elderly people to social protection), the Committee assesses the level of non-contributory pension paid to a single elderly person under this provision. It notes from the report that the guaranteed income for the elderly (GRAPA) amounted to €1,052 (single rate) in 2015.

In the light of the above data, the Committee considers that the level of social assistance paid to an elderly person without resources is adequate.

Right of appeal and legal aid

In its previous conclusion (Conclusions 2013) the Committee asked for updated information regarding the right of appeal against decisions rejecting claims for social assistance, suspension or reduction of benefits. It notes that the report does not provide any information. The Committee reiterates its request and asks the next report to also provide examples of case law.

Personal scope

The Committee recalls that, under Article 13§1, States are under the obligation to provide adequate medical and social assistance to all persons in need, both their own nationals as well as nationals of States Parties lawfully resident within their territory, on an equal footing. In addition, with reference to its Statement of Interpretation of Articles 13§1 and 13§4 (Conclusions 2013) regarding the scope of Articles 13§1 and 13§4 in terms of persons covered, the Committee considers that persons in an irregular situation in the territory of the State concerned are also covered under Article 13§1, rather than under Article 13§4, which was previously its practice.

The Committee will henceforth examine whether the States who have accepted Article 13§1 ensure the right to:

- adequate social and medical assistance for their own nationals and for nationals of other States Parties lawfully resident within their territory on an equal footing;
- emergency social and medical assistance to persons unlawfully present in their territory.

Nationals of States Parties lawfully resident in the territory

In its previous conclusion the Committee found that the situation was not in conformity with the Charter on the ground that the guaranteed income for the elderly (GRAPA) was not granted to foreigners without resources unless they are covered by EU law or are nationals of States which have concluded reciprocity agreements with Belgium.

In this respect, the Committee notes from the report of the Governmental Committee (TS-G (2014)21, §239) that Article 3 of the Law of 8 December 2013 introduced amendments to the Law of 22 March 2001 on the guaranteed income for the elderly provides. According to these amendments, a new category is added to the beneficiaries of the minimum guaranteed income listed under Artice 4 of the Law of 22 March 2001. This category concerns nationals of States Parties to the European Social Charter of 1961 and the Revised Social Charter of 1996.

However, the Committee further observes from the report that the procedure is under way to bring into force Section 110 of the Act of 6 May 2009 extending the personal scope of the income guarantee to the elderly (GRAPA) to all nationals of the States Parties to the Charter.

The Committee considers that the legislative action has been taken to bring the situation into conformity. However, the procedure to bring into force the amendment has not been finalised. It asks the next report to provide updated information regarding the situation in law and in practice. In the meantime, it reserves its position on this issue.

Foreign nationals unlawfully present in the territory

As regards emergency social assistance to unlawfully present persons, in its previous conclusion under Article 13§1 the Committee noted from the report submitted by the *Ligue des doits de l'homme (LDH)*, that asylum seekers can be refused social assistance pending examination of their application and that no social assistance was furthermore available to migrants in an irregular situation, as well as to foreigners lawfully present for less than three months. The Committee notes from the report in this respect that the Federal Agency for Asylum seekers (Fedasil) may temporarily limit provision of social assistance for asylum seekers in line with Article 20 of Directive 2013/33 / EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of persons applying for international protection. Moreover, according to the report, the public social assistance centres (CPAS) may decide to grant other assistance (shelter, food, clothing) to unlawfully present foreigners. However, since there is no provision for such assistance in the law,

CPASs are themselves financially responsible for any assistance that may choose to provide.

In this connection, the Committee recalls that persons in an irregular situation must have a legally recognised right to the satisfaction of basic human material need (food, clothing, shelter) in situations of emergency to cope with an urgent and serious state of need. It likewise is for the States to ensure that this right is made effective also in practice (European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, §187).

The Committee cannot accept the necessity of halting the provision of such basic emergency assistance as shelter, guaranteed under Article 13 as a subjective right, to individuals in a highly precarious situation. The Committee has considered that even within the framework of the current migration policy, less onerous means, namely to provide for the necessary emergency assistance while maintaining the other restrictions with regard to the position of migrants in an irregular situation, remain available to the Government with regard to the emergency treatment provided to those individuals, who have overstayed their legal entitlement to remain in the country (Complaint No. 90/2013, Conference of European Churches (CEC) v. the Netherlands, decision on the merits of 1 July 2014, §123).

The Committee asks the next report to provide evidence that these requirements are met in law and in practice. The Committee holds that it this information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter. In the meantime, the Committee reserves its position on this point.

As regards emergency medical assistance, the Committee notes from the report that such assistance does not represent a financial aid directly to the person concerned but guarantees that persons without resources have access to healthcare, free of charge, by means of covering their medical costs. The scope of such assistance, according to the report, goes beyond urgent interventions and may cover general medical examination. The urgency of medical aid is determined by a doctor and not by the patient or CPASs.

The Committee notes from the comments by Unia, Interfederal Centre for Equal Opportunities, and Myria, Federal Migration Centre that the Federal Healthcare Expertise Centre proposes a reform that would simplify and harmonise administrative procedures of healthcare provided for unlawfully present persons. The proposed reform envisages strengthening the role of CPAs, shifting the responsibility for medical decisions towards doctors, improving information flow between care providers, CPAS and social integration services. The Committee also notes from the observations of the Government that unlawfully present persons are entitled to urgent medical assistance. The system *Mediprima* has been introduced as part of the healthcare reform. For the moment this system covers persons without resources who are not insured on the basis of the Act on Compulsory Health Care Insurance and Indemnities and only covers hospital care. The goal for 2017-2018 is to extend this coverage to general practitioners. The Committee asks the next report to provide updated information in this regard.

Conclusion

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

Article 13 - Right to social and medical assistance

Paragraph 2 - Non-discrimination in the exercise of social and political rights

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

The Committee takes note of the information regarding non-discrimination in the exercise of social and political rights in the Flemish Community and in the German Speaking Community. It notes that the situation which it has found to be in conformity in all its previous conclusions previously (Conclusions XV-1 – 2013) has not changed. The Committee asks the next report to provide information as regards the French speaking community.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Belgium is in conformity with Article 13§2 of the Charter.

Article 13 - Right to social and medical assistance

Paragraph 3 - Prevention, abolition or alleviation of need

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

As regards German speaking Community, according to the report, on 10 April 2014, the Government of the German-speaking Community approved the cooperation agreement between the Federal State, the Flemish Community and the French Community on the fight against homelessness. The objectives of the agreement are to determine the competencies of the various partners as well as to set the agenda for more coordinated cooperation, especially during winter.

The Committee recalls that Article 13§3 concerns free of charge services offering advice and personal assistance specifically addressed to persons without adequate resources or at risk of becoming so. The social services covered by Article 13§3 must play a preventive, supportive and treatment role. This means offering advice and assistance to make those concerned fully aware of their entitlement to social and medical assistance and how they can exercise those rights. In assessing national situations under this provision the Committee specifically examines whether there are mechanisms to ensure that those in need may receive help and personal advice services free of charge and whether such services and institutions are adequately distributed on a geographical basis. The Committee asks the next report to outline how these requirements are met in legislation and practice.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Belgium is in conformity with Article 13§3 of the Charter.

Article 13 - Right to social and medical assistance

Paragraph 4 - Specific emergency assistance for non-residents

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

The Committee refers to its conclusion under Article 13§1 (personal scope) and recalls that Article 13§4 from now on will cover emergency social and medical assistance for nationals of States Parties lawfully present (but not resident) in the territory.

The Committee recalls that States Parties are required to provide non-resident foreigners, without resources, with emergency social and medical assistance. Such assistance must cover accommodation, food, clothing and emergency medical assistance, to cope with an urgent and serious state of need (without interpreting too narrowly the 'urgency' and 'seriousness' criteria). No condition of length of presence can be set on the right to emergency assistance (Complaint No 86/2012, European Federation of national organisations working with the Homeless (FEANSA) v. the Netherlands, decision on the merits of 2 July 2014, §171).

The Committee further recalls that emergency social assistance should be supported by a right to appeal to an independent body. As regards provision of emergency shelter, there must be an effective appeal mechanism before an independent judicial body in order to determine the proper administration of shelter distribution. This right must also be effective in practice (Conference of European Churches (CEC) v. the Netherlands, Complaint No 90/2013, decision on the merits of 1 July 2014 §106).

The Committee refers to its conclusion under Article 13§1 where it reserved its position as regards emergency social assistance for unlawfully present foreign nationals. The Committee asks the next report to provide information regarding lawfully present foreign nationals and in the meantime, it reserves its position.

Conclusion

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

Article 14 - Right to benefit from social welfare services

Paragraph 1 - Promotion or provision of social services

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

The Committee takes also note of the "Comments" made by Belgian disability Forum, received in August 2017 and the Joint Report of Unia, Interfederal Center for Equal Opportunities, and Myria, Federal Migration Center, to the eleventh report of the Government of Belgium on the application of the Revised European Charter received in March 2017 including the observations of the Belgian government.

Organisation of the social services

Social services in Belgium are decentralised and are mainly the responsibility of the regions and communities (Flemish, French-speaking and German-speaking).

Social services in the *Flemish Region* provide general social welfare services, a remote helpdesk, debt mediation and community activities. They also include a Flemish agency providing services for persons with disabilities. The majority of the social services in the Flemish Community are provided by General Social Assistance Centres (CASGs), which have three main goals: general prevention, care and psycho-social support. Because of certain regulatory changes, a number of mergers have been made in this sector. Since 1 January 2014, there have been 11 certified General Social Assistance Centres in Flanders and in Brussels. There are 5 active remote helpdesks, which provide anonymous assistance over the phone or on line, enabling people to describe their problems to expert volunteers. For debt mediation, Flanders has 322 certified bodies (CPASs, CASGs or associations of CPASs). The report also indicates , the creation by decree of social cohesion institutes which are responsible for carrying out specific initiatives and projects dealing with socially disadvantaged persons and with situations of social exclusion.

According to the report**,** the way in which care for persons with disabilities is organised in Flanders has changed completely since the last reporting cycle. The Flemish Agency for Persons with Disabilities (Vlaams Agentschap voor Personen met een Handicap – VAPH) still offers a wide range of measures regarding disabled person’s needs in terms of care but in recent times, it has done so in a more flexible and tailor-made manner. All facilities for minors and adults have been transformed in recent years into flexible provision for adults (Flexibel Aanbod Meerderjarigen – FAM) on the one hand and multi-service centres for minors (Multifunctionele Centra -MFC) on the other. The VAPH recognises three types of directly accessible assistance: support, day care and residential care. The report refers to other types of care and assistance which are not directly accessible and includes figures from the VAPH on the number of beneficiaries per type of care and support.

The report states that over the period from 2012 to 2014, a number of amendments were made to the regulations in the Flemish Community: (a) 25 May 2012, amendment to the Decree of 8 May 2009 on general social assistance; b) 21 June 2013: Flemish Government Order on general social assistance; c) 11 December 2013: Ministerial Order establishing performance indicators and specifying the assistance tasks of general social assistance centres and remote helpdesks. The quality control policy for general social assistance centres and remote helpdesks is set out in the Decree of 17 October 2003 on the quality of healthcare and social assistance facilities. The Committee asks what is the impact of these legislative reforms on social services in practice.

The report states that the Walloon Region authorises various relevant services to provide social and/or medical assistance. They are accessible to all without discrimination. The social services in the Walloon Region comprise social welfare services, namely debt mediation services, accommodation facilities, social service centres, social co-ordination offices and social integration services. With regard to debt mediation services the report indicates that the number of cases dealt with remained constant over the period from 2012

to 2015 (19.825 in 2012, 19.713 in 2015). Moreover, the report underlines the total number of each specialised centre, without giving a specific number of clients and qualified employee working in it: accommodation centres (57 certified centres) that provide socially disadvantaged people with support and accommodation over a limited period in a facility offering targeted assistance; social service centres (27 certified centres) that provide assistance for persons and families in critical situations; social co-ordination offices (7 certified offices) that establish networks of public and private bodies designed to optimise the response to the needs of people in severe social difficulties; social integration services (82 certified services) that run collective activities for and with people, mobilise people's own resources, promote participation in social, economic, political and cultural life and build up individuals' confidence in their own abilities. In this respect the Committee asks to know the number of beneficiaries that used these services and the number of qualified staff employed.

Social services in the German-speaking Community are built around the following bodies and institutions: a) public welfare centres (CPASs): each of the country's municipalities has its own(CPAS), which provides both palliative and curative assistance and preventive aid. They encourage clients to participate in community activities. The social assistance they offer can take the form of material, social, medical, medico-social or psychological support; b)Office of the German-speaking Community for the Disabled (DPB): the DPB promotes every form of independence and self-determination for persons with disabilities in the following areas work, housing, leisure and sexuality. The report indicates also that are operational "social hubs", meeting places for people at risk of social exclusion, to promote their participation in economic, political, social and cultural life. Moreover, the report lists a number of non-profits making associations providing a different range of services such as: the organisation of food banks for people in need, psychological and social support to women in crisis situations, services in the sphere of household management, domestic work; telephone helpline available for anyone needing assistance without discrimination, centres giving advice on the rights and duties of people from an immigrant background living in the German-speaking Community, associations charged with implementing measures to promote social integration, employment and combat poverty. The report indicates, also, that the decree on emergency accommodation (*Notaufnahmewohnungen*) makes provision for forms of accommodation for people in need. In 2016 the decree was amended to make it possible for one partner organisation's accommodation to be used by another, the aim being to make better use of existing capacity.

Effective and equal access

The Committee recalls, that the right to social services must be guaranteed in law and in practice. Under Article 14§1 the Committee reviews rules governing the eligibility conditions to benefit from the right to social welfare services (effective and equal access) and the quality and supervision of the social services (Conclusions 2005, Bulgaria). Persons applying for social welfare services should receive any necessary advice and counselling enabling them to benefit from the available services in accordance with their needs (Conclusions 2009, Statement of Interpretation on Article 14§1.

According to the report in the Flemish Region General Social Assistance Centres (CASGs) are accessible to everyone but, in practice, they must take particular care to cater for vulnerable groups. Definitive figures concerning the actual coverage of the centres are not available. However, provisional figures provided indicate in 2015: 90.762 persons were received by CASGs and 27.350 of these were provided with support. The support provided by general social assistance centres is free; for some aspects of their operations, the costs incurred may be charged to the beneficiary (for residential care, for example). As to remote helpdesks, there are not figures concerning their coverage. However, provisional figures provided indicate in 2015: over the five centres, 599 volunteers worked for a total of 121.209 hours. Together, they were on the telephone for a total of 73.033 hours and on line for a total

of 7.506 hours and over this time, they conducted 74.745 telephone conversations and 6.874 on-line conversations. The support provided by these remote helpdesks is free of charge.

The report states that the Flemish authorities seek the balanced participation of all persons of foreign origin in all spheres of society. The task of drawing up the plan is assigned by decree to the Integration Policy Commission and in July 2015, the Flemish Government set out its objectives. In this regard the Committee asks for the next report to include more detailed information on the progress of the cross-sectoral plan on integration policy and results obtained. Lastly, with regard to anti-discrimination measures, the report on the Flemish Community points to the existence since 2008 of the Flemish Government Decree on equal opportunities and non-discrimination, which was already referred to in previous reports (2009 and 2013).

The report on the Wallonia-Brussels Federation states that the Sixth State Reform,(of September 2013), assigned the Walloon Region additional powers in the areas of health and assistance for people in need. The Walloon Region now has new responsibilities in health promotion, prevention, co-ordination, front-line care, assistance for persons with disabilities, the elderly or persons with mental health problems, quality standards and the funding of the infrastructure, equipment and furniture of social services and hospitals. On 2 December 2015, the Walloon Parliament adopted a decree setting up the Walloon Agency for Health, Social Protection, Disabilities and Families.

In reply to a request made by the Committee in its previous conclusion (Conclusions 2013) the report gives, in annexes, a full description of the state of play in 2014 in the area of disability and legal measures taken in the period of reference 2012 to 2015.

The report on the German-speaking Community states that a decree of 25 January 2016 (outside the reference period) provides for the extension of the jurisdiction of the German-speaking Community's Ombudsman. The Committee asks that the next report provides detailed information on the impact in practice on equal and effective access to social services after the introduction of this measure.

Moreover the Committee asks for detailed information to be included in the next report on progress following the introduction of the Sixth State Reform, which are relevant for the provision of social welfare services in all different Regions and communities (Flemish, French-speaking and German-speaking).

Quality of services

The report states that on 17 July 2014 new legislation in the Flemish Region was introduced establishing performance indicators and specifying the assistance tasks of regional social cohesion institutes. The aim is to gauge the quality of activities more in terms of their results.

With regard to the quality of services, the report states that the Flemish Government does not impose any requirements on General Social Assistance Centres (CASGs) as regards their employees' qualifications. However, training of staff and volunteers is a major focus point of these centres' quality control policies, and this is monitored in particular through performance indicators. Complaints are dealt with initially by the welfare bodies themselves, while the Flemish Mediation Service deals with complaints against CASGs in the second instance. In this respect the Committee asks that the next report provides detailed information on how the quality of social services is ensured and what kind of system for monitoring quality control exists.

The report states that Flemish social cohesion institutes carry out a quality control policy in accordance with the provisions of the Decree of 17 October 2003 on the quality of healthcare and social assistance facilities and according to their specific tasks. Institutes draw up a reference framework for misconduct vis-à-vis users. The authorities also carry out

quality control through inspections and if the institutes do not co-operate with such procedures, their certification may be withdrawn. One of the tasks of the Flemish Social Cohesion Institute is to provide training and further training to workers, managers and volunteers. This also covers persons working for the regional institutes. The authorities keep an up-to-date list of FTE posts in the institutes broken down according to the area of activity including social services.

The appendix to the report indicates that the Walloon Region have set up various forms of consultation in the Walloon Agency for the Integration of Persons with Disabilities (AWIPH). The direct participation of persons with disabilities in public and political decisions in the Walloon Region is secured on a legal basis within the Walloon Committee for Persons with Disabilities, the Management Committee of the AWIPH, the sub-regional co-ordinating committees, the municipal advisory councils on persons with disabilities and the councils for the users of certified and subsidised services. In case of complaints, an independent and accessible management procedure is available, in order to enable the Agency and the managers to identify any problems promptly and users to express their views, with the aim to improve the quality of the services delivered.

The report on the Wallonia-Brussels Federation states that since 1 January 2016, it has been the task of the Walloon Agency for Quality of Life (AviQ) to maximise the cross-linking and efficiency of current measures, rationalising the current array of social and hospital services or creating new ones in response to the needs of the most vulnerable groups. New measures have already been taken by the Walloon Region (whose effects will be steadily augmented by the cross-sectoral approach ushered in by the establishment of the AviQ). In this respect the Committee asks the next report to provide information on the impact in practice on the quality of services following the introduction of the Walloon Agency for Quality of Life (AviQ).

With regard to the provision of places in care and accomodation centres for highly dependent adults with disabilities (see Complaint No. 75/2011, International Federation for Human Rights (FIDH) v. Belgium), the report states that the Walloon Region in order to diversify social services and make them more flexible has specifically set up: (a) an initial “high dependency” plan, which was adopted by the Walloon Government in May 2013 with a budget of €4.5 million earmarked for 2014; (b) a unit for “persons in emergency situations” or “priority cases”, which intervenes on a case-by-case basis; (c) in the mental health sphere, 7 mobile response units (CMIs), which were set up in 2009 in co-operation with the Federal Public Health Service and assist people with psycho-social disabilities and serious behavioural problems, and an agreement between the Regional Psychiatric Centre, the social protection institution, “Les Marronniers”, and the AWIPH; d) specific measures to deal with brain damage.

The report states that during the reference period, the following legislative measures were introduced: (a) the Walloon Government Order of 24 October 2013 amending certain provisions of the Walloon Regulatory Code on Social Welfare and Health, Part 2, Book V, Title XII, on authorisation to care for persons with disabilities and for services organising activities for persons with disabilities; (b) the Walloon Government Order of 18 December 2014 amending the Walloon Regulatory Code on Social Welfare and Health and the Royal Decree of 21 September 2004 establishing the rules on special certification as a convalescent or care home, a day care centre or a centre for acquired brain injuries, as regards the rules applying to convalescent homes and convalescent and care homes. In this respect the Committee asks that the next report provides information on the impact in practice after the introduction of these legislative measures.

In its previous conclusion (Conclusions 2013) the Committee asked information on the main conclusions of the audit of the Disability Agency in the German-speaking community, which was commissioned by the Government. The report indicates that between 2011 and 2014 an audit was carried out at the German-speaking Community’s Office for Persons with

Disabilities. As a result, the following specific measures were taken: (a) organisation and documentation of the Office's main tasks and secondary procedures, and apportionment of responsibilities; b) clarification and updating of the tasks of the "evaluation committee" and change of its name to "specialist advisory body" to reflect its tasks more accurately; (c) description of all of the services provided by the Office in a unified document; (d) production of a guide including a general procedure for the drawing up, implementation and assessment of service agreements between the Office and the organising authorities of the institutions and service providers for persons with disabilities; e) production of a guide comprising a general procedure for the management by the Office of complaints.

In the Assessment of the follow-up of International Federation of Human Rights (FIDH) v. Belgium, Collective Complaint No. 75/2011 with regard to the Flemish Region, the Committee considered that progress has been made towards ensuring that highly dependent adults with disabilities have equal and effective access to welfare services. However, not all of the measures envisaged have been adopted to date and 63% of persons with disabilities are still awaiting a solution. The Committee asked that the information on the follow-up given to decisions that will be submitted in October 2017 indicate the percentage of highly dependent adults with disabilities who have access to welfare services. The Committee will therefore assess the situation on the basis of this information. With regard to the Walloon Region, the Committee considered that progress has been made towards ensuring that highly dependent adults with disabilities have equal and effective access to welfare services. The Committee took note of the measures envisaged and invited the Government to confirm in the information on the follow-up given to decisions that will be submitted in October 2017, whether this objective has been met. With regard to the Brussels-Capital Region, the Committee took note of the measures taken. The Committee considered that progress has been made to ensure that highly dependent adults with disabilities have equal and effective access to welfare services. However, not all of the measures provided for have been adopted to date. The Committee asked that the next information indicate the percentage of highly dependent adults with disabilities who do not have access to welfare services. The Committee will assess whether the measures taken ensure that all members of this group have access to welfare services on the basis of the information on the follow-up given to decisions that will be submitted in October 2017.

The Committee, therefore, found that the situation has not been brought into conformity with the Charter.

In the Assessment of the follow-up International Federation of Human Rights (FIDH) v. Belgium, Collective Complaint No. 75/2011 the Committee noted that there are day centres, housing services and day-to-day assistance centres in the Brussels-Capital Region which provide advice, information and personal assistance to highly dependent adults with disabilities. The Committee asked for confirmation that these welfare services meet the following criteria: trained staff in sufficient numbers; highly dependent adults with disabilities should be involved in decisions concerning them as much as possible; public and private mechanisms for supervising the adequacy of services. The Committee found that the situation has not been brought into conformity with the Charter.

Conclusion

The Committee concludes that the situation in Belgium is not in conformity with Article 14§1 of the Charter on the grounds that:

- there are significant obstacles to equal and effective access for highly dependent adults with disabilities to social welfare services appropriate to their needs;
- there is a lack of institutions giving advice, information and personal help to highly dependent adults with disabilities in the Brussels- Capital Region.

Article 14 - Right to benefit from social welfare services

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

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

The Committee recalls that Article 14§2 requires States to provide support for voluntary associations seeking to establish social welfare services (Conclusions 2005, statement of interpretation on Article 14§2). This does not imply a uniform model, and States may achieve this goal in different ways: they may promote the establishment of social services jointly run by public bodies, private concerns and voluntary associations, or may leave the provision of certain services entirely to the voluntary sector. The “individuals and voluntary or other organisations” referred to in paragraph 2 include, the voluntary sector (non-governmental organisations and other associations), private individuals and private firms. Moreover, in order to control the quality of services and ensure the rights of the users as well as respect for human dignity and basic freedoms, an effective preventive and reparative supervisory system is required.

The Committee takes note of the detailed information on social services in the three federated entities (the Flemish Authority, the Wallonia-Brussels Federation and the German-speaking Community) and requests that the next report include similar updated information concerning the participation and role of non-public providers, quality control mechanisms for services run by non-public organisations, machinery for consulting the users of social services and fees for social services.

In its previous conclusion (Conclusions 2015), the Committee noted the information on the new Flemish Government Agreement for the period 2014-2019 which introduced a number of reforms also pertaining to social services. The Committee requests that the next report includes information about the implementation of this agreement and the results achieved in encouraging individuals and voluntary or other organisations regarding the establishment of social services.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Belgium is in conformity with Article 14§2 of the Charter.

Article 30 - Right to be protected against poverty and social exclusion

The Committee takes note of the information contained in the report submitted by Belgium. It also takes note of the information contained in the comments by the *Service de lutte contre la pauvreté, la précarité et l'exclusion sociale* submitted on 29 March 2017 and in the addendum to the report by the Belgian Government submitted on 28 April 2017; the comments by Interfederal Centre for Equal Opportunities (Unia) and Federal Migration Centre (Myria) submitted on 31 March 2017 and the comments by the Belgian Disability Forum submitted on 31 August 2017.

Measuring poverty and social exclusion

The main indicator used to measure poverty is the relative poverty rate. This corresponds to the percentage of people living under the poverty threshold, which is set at 60% of the equivalised median income.

The Committee notes from Eurostat that in 2015, 21.1% of the Belgian population was at risk of poverty and social exclusion. This rate stood below the average indicator of the EU-28 countries (23.7%). The percentage of children (aged 0 to 17 years old) living in a household at risk of poverty or social exclusion was at 23.3% (EU-28 26.9%), the percentage of adults (aged 18 to 64 years old) was at 21.7% (EU-28 24.7%) and the percentage of elderly was at 16% (EU-28 17.4%).

Still according to Eurostat, the at-risk-of-poverty rate before social transfers stood in 2015 at 26.7%, just above the 25.9% rate in the EU-28. The at-risk-of-poverty rate after social transfers stood in 2015 at 14.9%, which is below the 17.3% rate in the EU-28.

The Committee notes from the 2015 Eurostat data that with respect to Belgium the situation of the population living in poverty and social exclusion did not evolve significantly even if the poverty rate among elderly decreased.

Approach to combating poverty and social exclusion

The Committee recalls that under Article 30 States Parties must provide information on the measures they take to combat poverty and social exclusion at the national level. The Committee takes note of the approach and measures adopted by the different regions and Communities in Belgium.

The report states that in the Flemish region, the Decree of 21 March 2003 on Combating Poverty was modified on 20 December 2013 allowing the Flemish Authorities to subsidise local governments with a view to developing and supporting local initiatives to combat specifically child poverty.

In the Walloon region, a number of measures have been taken since 2012 to adopt an overall and coordinated approach with a view to promoting access to social rights such as employment, housing, culture and medical assistance. On 10 September 2015, a first plan to combat poverty was adopted. This cross-cutting plan is structured around 11 themes aiming to provide concrete and effective answers to precise difficulties encountered by people living at risk of poverty.

In 2013, the Government of the German-speaking community prepared an analysis of poverty and the social vulnerability of its community which led in 2014-2015 to action divided up into three phases. In the first phase a comparison was made with the other Communities of the Federal State of Belgium. This comparison made it possible to identify the characteristics of the population targeted by social action and to see how to deploy the aid scheme in the territory of the German-speaking Community. During the second phase, the collection of data continued using a sample of real life stories. The third phase was analytical and allowed the German-speaking community to set up a network of social action.

According to the Belgian Court of Audit, which in 2016 analysed the quality, the implementation, the monitoring and the evaluation of the Second Federal Plan against Poverty (2012-2015), the risk of poverty in Belgium remains since 2008 at around 21%, but the number of people at risk of poverty is increasing and is higher than in the neighbouring countries. The Court considered that the second plan was "more a list of measures than a public policy instrument" and stressed that the multiplicity of power levels, stakeholders, instruments and public policies strengthened the risk of fragmentation and inefficiency of the public action against poverty. The Court further considered that the social protection system and the social security benefits were insufficient because of the structural gap between the poverty threshold and the lower-lying benefits granted and that administrative services were not sufficiently involved in the formulation and implementation of policy.

The Committee observes that according to the European Semester Country Report for Belgium (2017), poverty among Belgian households is mainly explained by joblessness, but the risk of poverty is mitigated by taxes and transfers. The report points out persistent and increasing disparities between regions in terms of long-term unemployment and inactivity rates, and the low rates of transition to employment. The at-risk-of-poverty rate has decreased among the elderly (over 65) and increased among young people (16-24), notably those with low qualification, disabilities or with a migrant background. A high proportion of non-EU migrants live in poverty or social exclusion: 50.7% in 2015 (compared to 27.5% of migrants born in an EU country and 17% of people born in Belgium), which is higher than the percentage of persons born outside of the EU-28 (40.2% in 2015). Moreover, the gap between people with disabilities and able-bodied people in terms of the at-risk-of-poverty or social exclusion rate amounts to 17.7%, which is significantly higher than the EU average (9.7%).

The Committee notes from the above mentioned comments that:

- the Belgian Court of Audit in 2016 criticised the Second Federal Plan against Poverty (2012-2015);
- there is an agreement between the Federal State, the Regions and the Communities relating to the continuation of the policy in the field of poverty which aims at establishing a transversal global and coordinated policy to fight poverty. Several tools were created for this purpose, such as the *Service de lutte contre la pauvreté, la précarité et l'exclusion sociale* and the Interministerial Conference for Social Integration (CIM). Poverty impact tests have been carried out in the Regions;
- the vast majority of persons with disabilities live in a very difficult socio-economic situation, which has serious repercussions when they face certain costs related to their disability and basic need; their employment rate is below the national average. The allowances system should be revised. The "Handilab" study conducted in 2012 demonstrated the poverty situation in which 40% of the population who receive a disability allowance live, which means that 39.3% has an income below the poverty threshold – compared to 14.9% in the total Belgian population. The National Council for People with Disabilities, however, underlined the high quality of the 2014-2015 report which "enhances the concrete and expected measures and suggests mechanisms that will ensure responses to needs";
- the access to housing for people in precarious situation is particularly difficult as the offer of public housing is insufficient and there are discriminatory approaches whether in public or private housing. The Federal State and the federated entities signed in 2014 a Co-operation Agreement on Homelessness and the Lack of Housing aiming at pursuing, coordinating and harmonising their policies to prevent and fight against homelessness and lack of accommodation. Efforts are made in the Regions for the access of Travellers to housing.
- the lack of access and lack of recourse to the rights ('non-take-up') is quite significant and questions the policy relevance. In its response to the comments,

the Government referred to measures aiming at facilitating the grant of derived rights. For example, a project with the Banque-Carrefour of Social Security for granting derived rights automatically or with a minimum of administrative formalities; similarly, the experimental initiative 'Housing First Belgium' granting access to housing and derived rights for homeless persons.

The Committee further refers to its conclusions of non-conformity under the provisions of the Charter which are relevant to its assessment of compliance with Article 30 (see Conclusions 2013, Statement of Interpretation on Article 30). It refers in particular to:

Article 14§1 and its conclusions that there are significant obstacles to equal and effective access for highly dependent adults with disabilities to social welfare services appropriate to their needs, and that there is a lack of institutions giving advice, information and personal help to highly dependent adults with disabilities in the Brussels-Capital Region (Conclusions 2017);

Article 15§1 and its conclusion that the right of persons with disabilities to mainstream education is not effectively guaranteed (Conclusions 2016).

In its reply to the comments of the Service against poverty and social precariousness, the Government states that the Federal State has established coordination between different ministries in order to harmonise the legislation in the field of social assistance and that the competences concerning the fight against poverty are distributed between the Federal Authority and the federated entities, in particular for (1) measures relating to energy; (2) participation and social activation and (3) fight against homelessness. The Committee asks that the next report explain how the Federal Government coordinates efforts and measures to achieve "an overall and co-ordinated approach" as required by Article 30 of the Charter.

On the basis of the above, the Committee considers that the situation remains in breach of Article 30 as there is no adequate overall and coordinated approach to combating poverty and social exclusion.

Monitoring and assessment

The Committee takes note of the information provided on the monitoring and assessment of poverty and social exclusion. For example, in the Flemish region the action plan against poverty is analysed on a biannual basis. With a similar objective, the German-speaking community has set up an "Observatory of poverty" which is meant to evaluate on a regular basis the poverty indicators. The Committee asks to include in the next report relevant information with respect to monitoring activities carried out by the Walloon region.

The Committee notes that the report does not contain any information on the co-ordinating role of the Federal Belgian Authorities with respect to monitoring and assessment of the poverty and social exclusion at the national level. The Committee asks the Government of Belgium to provide the relevant information in the next report, including on the dialogue established with the civil society as well as persons affected by poverty and social exclusion (see also Statement of Interpretation on Article 30 – Conclusions 2013).

The Committee refers to the decision on the merits of 21 March 2012 in Collective Complaint No. 62/2010, International Federation of Human Rights (FIDH) v. Belgium, as well as to the Committee of Ministers Resolution ResChS(2013)8. In its decision, the Committee found a breach of Article E taken in conjunction with Article 30 on the ground that there was a lack of a co-ordinated policy, in particular in housing matters, with regard to Travellers in order to prevent and combat poverty and social exclusion. On 12 December 2015, the information provided by the Belgian authorities concerning the follow-up of this decision revelaed that the situation had not been made in conformity with the Charter. The Committee will examine again the follow-up on the basis of the next simplified report to be submitted by Belgium by October 2017.

Conclusion

The Committee concludes that the situation in Belgium is not in conformity with Article 30 of the Charter on the ground that there is no adequate overall and coordinated approach to combating poverty and social exclusion.

January 2018

European Social Charter

European Committee of Social Rights

Conclusions 2017

BOSNIA AND HERZEGOVINA

This text may be subject to editorial revision.

The following chapter concerns Bosnia and Herzegovina, which ratified the Charter on 7 October 2008. The deadline for submitting the 7th report was 31 October 2016 and Bosnia and Herzegovina submitted it on 20 February 2017. On 6 September 2017, a request for additional information regarding Articles 7§3, 7§8, 8§2, 8§4 and 16 was sent to the Government which did not submit a reply.

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 "Health, social security and social protection":

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

Bosnia and Herzegovina has accepted all provisions from the above-mentioned group except Article 3, Article 12§§3 and 4, Article 13§4 and Article 30.

The reference period was 1 January 2012 to 31 December 2015.

The conclusions relating to Bosnia and Herzegovina concern 11 situations and are as follows:

– 6 conclusions of non-conformity: Articles 11§2, 11§3, 12§1, 12§2, 13§1 and 13§3.

In respect of the 5 other situations related to Articles 11§1, 13§2, 14§1, 14§2 and 23 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 Bosnia and Herzegovina under the Charter. The Committee requests the authorities to remedy this situation by providing the information in the next report.

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In addition, the report contains also information requested by the Committee in Conclusions 2015 in respect of its conclusions of non-conformity due to a repeated lack of information:

- the right of children and young persons to protection – prohibition of employment of children subject to compulsory education (Article 7§3),
- the right of children and young persons to protection – prohibition of night work (Article 7§8),
- the right of employed women to protection of maternity – illegality of dismissal during maternity leave (Article 8§2),
- the right of employed women to protection of maternity – regulation of night work (Article 8§4),
- the right of the family to social, legal and economic protection (Article 16).

The Committee examined this information and adopted 5 conclusions of non-conformity relating to these Articles.

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The next report will deal with the following provisions of the thematic group "Labour Rights":

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),

- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 21),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 22),
- the right to dignity at work (Article 26).
- the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28)
- the right to information and consultation in collective redundancy procedures (Article 29).

The report should also contain information requested by the Committee in Conclusions 2016 in respect of its conclusions of non-conformity due to a repeated lack of information:

- the right to work – vocational guidance, training and rehabilitation (Article 1§4),
- the right to vocational guidance (Article 9),

The deadline for submitting that report was 31 October 2017. The report was registered on 11 December 2017. Conclusions on the Articles concerned will be published in January 2019.

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Conclusions and reports are available at www.coe.int/socialcharter as well as in the HUDOC database.

CONCLUSIONS RELATING TO ARTICLES FROM THE THEMATIC GROUP

‘Health, social security and social protection”

Article 11 - Right to protection of health

Paragraph 1 - Removal of the causes of ill-health

The Committee takes note of the information contained in the report submitted by Bosnia and Herzegovina.

Measures to ensure the highest possible standard of health

The Committee notes from WHO that life expectancy at birth in 2015 was 76.64 years. The average life-expectancy rate in BiH is still below that in other European countries, for example the EU-28 average that same year was 80,6.

The death rate (deaths/1,000 population) was 11 in 2015.

The Committee notes that infant mortality rate in BiH decreased from 6.4 per 1,000 live births (2011) to 6 in 2015, which remains above to that in other European countries.

During the reference period, the rate of maternal mortality fluctuated from 12 (in 2012) to 11 (in 2015) per 100,000 live births, a rate above to that in other European countries.

In the previous conclusion (2013), the Committee noted that there had been a growth of mortality rate caused by an increase of malignant neoplasms and diseases of the circulatory systems which were the most common causes of mortality. The Committee asked that the next report indicates what measures are being taken to combat these causes of mortality. The current report states that cardiovascular diseases make 57% of all causes of death for women and 50% for men. The second leading cause of death was neoplasms, with a share of 17% for women and 22% for men. Both causes of death accounted for almost 3/4 of all causes of death. The Committee notes that in several areas, public health legislation and action plans have been adopted but they still need to be implemented. The Committee asks the next report to provide updated information on the measures taken to combat the causes of mortality.

The Committee takes note of the specific measures to reduce infant and maternal mortality described by the report. It asks for information in the next report on their implementation and their impact in practice.

The Committee asks the next report to provide updated information on the above-mentionned rates and measures taken to reduce them.

Access to health care

The Committee noted in the 2013 Conclusions that the health system in BiH is decentralized and that the Entities Federation of Bosnia and Herzegovina (FBiH), and the Republika Srpska (RS) and Brcko District (BD) are responsible for the financing, organization and delivery of health care services. The health system in the FBiH is arranged on the principle of decentralization, with a high degree of autonomy of cantons, while in the Republika Srpska (RS) the health care system is centralized. BD has its own health care system.

According to the report, coverage of health insurance in BiH in 2012 was 84.55%, in FBiH 84.55%, in RS and in BD 70.0%. In both entities (FBiH and RS) and in BD there is noticeable reduction of population covered by health insurance.

The report indicates that the share of total health expenditure in GDP in BiH was almost constant from 2009 to 2013, around 9.2% of GDP, which is below the EU average. The share of public health expenditures in GDP amounted to 6.6% in 2012 and 6.7% in 2013 and the share of private expenditure is 2.8% of GDP in 2012 and 2013. In its precedent conclusion, the Committee noted that 38.7% was private spending on health, which entirely related to out-of-pocket payments. The Committee asked the Government to explain this high percentage of out-of pocket payments, namely whether this means that certain health services are not publicly financed and fall outside the public healthcare system. The report

indicates that the out-of-pocket medical costs are necessary because funds from health insurance contributions are not sufficient to cover all costs for all services. In 2014, the Committee notes that out of pocket health expenditure rate was 27.9% and that it remains high.

The report provides details on the health care system in the entities. In FBiH, health care is provided and performed by health care facilities, private practices, health insurance funds, the Agency for Quality and Accreditation in Health, chambers of health, employers, educational and other institutions, humanitarian, religious, sport and other organizations. Local governments, in accordance with established rights and obligations, also ensure favourable conditions for the provision of health care in their territory. The Committee takes note of the main laws in the health field, as well as the number of health facilities. It also notes that in FBiH waiting lists for health care services funded by the Federation Health Insurance Institute have been set up for: multiple sclerosis, some cytostatics with special regime of prescribing, invasive and interventional cardiology and cardiovascular surgery. The reasons for setting up these waiting lists are a lack of funds in the Institute and an increased number of patients suffering from these diseases.

As regards the RS, the Law on Health Insurance provides that all citizens are covered by the RS mandatory health insurance. The mandatory principle means that all citizens are compulsory registered in the health insurance scheme on any of the grounds set out by law.

In BD, access to health services is provided to all District residents through the family medicine system, where the territory is covered by three health care centres and 32 clinics (ambulanta). A plan envisages that 40 clinics (ambulanta) of family medicine will completely cover the entire territory of the District.

The Committee recalls that arrangements for access to care must not lead to unnecessary delays in its provision. It underlines that it will pay particular attention to whether access to treatment is based on transparent criteria, agreed at the national level, taking into account the risk of deterioration, in clinical terms as well as in terms of quality of life (Conclusions XV-2 (2001), United Kingdom).

In the previous Conclusion (Conclusions 2013), the Committee asked if the high degree of decentralisation had created problems from a health system point of view, and namely to clarify if and how the entities and cantons collaborate with each other in health matters. It also asked if the geographical distribution of health facilities in the Entities and cantons ensures an equitable access to health services throughout the country. The Committee also asked to receive specific information on the average waiting time for care in hospitals, as well as for a first consultation in primary care, with a view to showing that access to health care is provided without undue delays in all entities. There is no information provided in the report on these issues, except some information with regard to FBiH. However, in the 2013 European Commission country report, the Committee notes that there were no steps to reduce fragmentation of the entire health system and to harmonise reforms and that the implementation of Entity health strategies is slow.

The Committee notes in the 2015 European Commission country report that with regard to health, progress has been very limited. In particular the socio-economic integration of the Roma minority continues to be undermined by limited action on health. Roma remain the country's most vulnerable and disadvantaged minority. The lack of reliable data hampers effective policy-making. A more comprehensive and integrated approach needs to be adopted for the social inclusion of Roma. The action plans on health and employment have not yet been fully implemented. Health insurance coverage for Roma needs to improve significantly. The Committee asks that the next report provide comments to this report.

The Committee also notes from the same source that internally displaced persons that return in the country continue to face obstacles in access to healthcare. Therefore it asks that the next report provide information on this issue.

In reply to the Committee’s request for information on the availability of rehabilitation facilities for drug addicts (Conclusions 2009 and Conclusions 2013), the report provides detailed information on the facilities and treatments available for drug addicts.

The Committee asks that the next report on Article 11§1 contain information on the availability of mental health care and treatment services, including information on the prevention of mental disorders and recovery measures.

The Committee asks that the next report on Article 11§1 contain information on dental care services and treatments (such as who is entitled to free dental treatment, the costs for the main treatments and the proportion of out-of-pocket paid by the patients).

As regards the right to protection of health of transgender persons, the Committee received submissions from the International Lesbian and Gay Association (European Region) (ILGA) stating that "in BiH there is a requirement that transgender people undergo medical treatment, including sterilisation, as a condition of legal gender recognition". It also claims that "the authorities fail to provide medical facilities for gender reassignment treatment (or the alternative of such treatment abroad), and to ensure that medical insurance covers, or contributes to the coverage of such medically necessary treatment, on a non-discriminatory basis". The report indicates that there is no knowledge about conducting surgeries on adjustments of sex in BiH, and that these surgeries are conducted in Serbia and Slovenia.

Conclusion

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

Article 11 - Right to protection of health

Paragraph 2 - Advisory and educational facilities

The Committee takes note of the information contained in the report submitted by Bosnia and Herzegovina.

Education and awareness raising

The report indicates that strengthening promotion and prevention programs and interventions aimed at raising awareness about the importance of health is an on-going activity that is carried out by the Federation Institute of Public Health and Cantonal Institutes of Public Health, which are, according to the law, responsible for achieving the goals of the public health in the Federation of BiH. Based on the cantonal budgets and priorities in public health, cross-sector prevention and promotion programs are implemented at the cantonal and municipal levels. Municipalities (local communities) also develop local development programs with appropriate operational plans. Quality of life, health and equality in health and welfare, which are provided for in the operational projects and plans, are not formulated as separate goals. They are integrated into series of programs and projects, including transportation, environmental protection, remediation of waste water, air pollution control, and prevention of youth violence.

In its previous conclusion (Conclusions 2013), the Committee asked for updated information on the whole range of activities undertaken by public health services, or other bodies, to promote health and prevent diseases. The Committee also asked the authorities to indicate whether providing health education at schools is a statutory obligation, how it is included in school curricula (as a separate subject or integrated into other subjects), and the content of health education.

The Committee recalls that informing the public, particularly through awareness-raising campaigns, must be a public health priority. The precise extent of these activities may vary according to the nature of the public health problems in the countries concerned (Conclusions 2007, Albania). Measures should be introduced to prevent activities that are damaging to health, such as smoking, alcohol and drugs, and to develop a sense of individual responsibility, including such aspects as a healthy diet, sexuality and the environment (International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Croatia, complaint No. 45/2007, decision on the merits of 30 March 2009, §43). The report does not contain the needed information, therefore the Committee reiterates its request.

Counselling and screening

The Committee recalls that under Article 11§2 States should provide free and regular consultation and screening for pregnant women and children throughout the country. Moreover, free medical checks for children must be carried out throughout the period of schooling. The Committee notes in the European Commission Country report 2015 that primary free-of-charge healthcare for children is available only if the cantonal health institutes contracted this service with local primary health institutions — a measure which is not equally implemented in practice. The Committee asks that information on these matters be included in the next report, including on the frequency of school medical examinations, their objectives, the proportion of pupils concerned and the level of staffing.

In its previous conclusion, the Committee recalled that pursuant to this provision there should be screening, preferably systematic, for diseases such as cancer, cardiovascular diseases or other major causes of mortality. Preventive screening must play an effective role in improving the population’s state of health. The report indicates that the Strategy for the prevention, treatment and control of malignant neoplasms for 2012-2020 is the main document aiming at ensuring early detection and screening of malignant neoplasms.

The Committee notes from the European Commission country report 2015 that cancer screening policies are not systematically in place in the country.

In addition, it further points out that one of the priorities of the Program for Rare Diseases in RS for 2014-2020 is to improve the prevention of rare diseases of genomic origin by organizing extensive "screening" program and raise awareness among professionals and general public about the importance of rare diseases and their impact on the health of population.

The Committee asks the next report to specify the conditions of accessibility to such screening, proportion of persons concerned and the frequency of such examinations.

Conclusion

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 11§2 of the Charter on the ground that screening policies are not systematically in place in the country.

Article 11 - Right to protection of health

Paragraph 3 - Prevention of diseases and accidents

The Committee takes note of the information contained in the report submitted by Bosnia and Herzegovina.

Healthy environment

In its previous conclusion (Conclusions 2013), the Committee asked information on the institutional structures for the proper implementation of the legislation in force. It also wished to receive updated information on the levels of air pollution, contamination of drinking water and food intoxication during the reference period, namely whether trends in such levels increased or decreased. The report does not provide this information. Therefore, the Committee reiterates its request. The Committee emphasises that, if this information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter on this point.

In the absence of relevant information provided in the report, the Committee refers to the 2015 European Commission Country report for BiH.

The Committee notes that with regard to air quality, planning and monitoring systems need upgrading. Moreover, from the European Commission Country report it notes that a country-wide waste management strategy and strategic planning of related investments have yet to be prepared. The municipal waste management plans have been drawn up but have yet to be implemented. Regarding water quality, the country still lacks a consistent and harmonised State-level policy on water management that would include implementing legislation, monitoring and river-basin management plans. The country's capacity to implement the water *acquis* remains insufficient. Investment in infrastructure has brought some improvements in access to drinking water and also in wastewater discharges. Regarding industrial pollution control and risk management, Bosnia and Herzegovina is working on developing a national emissions reduction plan. According to the European Commission Country report, significant further efforts are needed on noise prevention.

The Committee concludes that the situation is not in conformity with Article 11 of the Charter on the ground that it has not been established that adequate measures have been taken to guarantee a healthy environment.

Tobacco, alcohol and drugs

In its previous conclusion (Conclusions 2013), the Committee noted that WHO Framework Convention on Tobacco Control was ratified by BiH in July 2009. Legislation in line with the Convention was subsequently passed in BiH, on restricted use of tobacco products and on the prohibition of sale of tobacco products to persons under 18 years of age. In the previous conclusion, the Committee asked if there is a similar legal framework in the other Entities and cantons. More generally, it wished to receive information on the state of legislation on smoke-free environments, health warnings on tobacco packages, and if there is a ban on tobacco advertising, promotion and sponsorship, throughout the whole country.

The report refers to the Law Prohibiting Smoking of Tobacco Products in Public Places ("Official Gazette of RS"46/04, 74/04, 92/09) prohibiting smoking of tobacco and tobacco products in public places in order to protect non-smokers and risk groups, such as minors, pregnant women and older people from passive smoking. In order to implement preventive measures and improve the health of persons younger than 18 years from the harmful effects of tobacco products, the Law on Prohibiting Sale and Use of Tobacco Products to Persons under 18 provides for a ban on the use and sale of tobacco and tobacco products. The report indicates that, according to the information provided in the RS 2011 Survey, which was carried out by the RS Public Health Institute, 53.6% of adults are exposed to tobacco smoke in the workplace, while the percentage of public places exposed to tobacco smoke is

80.7%. 52.2% of the population have never used tobacco. 28.7% of the adult population smokes tobacco on a daily basis. The average number of years of smoking is 20.2 years. The Committee asks for clarifications on the above figures indicating that workplaces in RS are not smoke-free. Accordingly, the Committee reserves its position on that point.

With respect to smoking, the Committee recalls that anti-smoking measures are particularly relevant for compliance with Article 11 since smoking is a major cause of avoidable death in developed countries. To be effective, any prevention policy must restrict the supply of tobacco through controls on production, distribution, advertising and pricing (Conclusions XVII-2 (2005), Malta). In particular, the sale of tobacco to young persons must be banned (Conclusions XV-2 (2001), Portugal) as must smoking in public places (Conclusions 2012, Andorra) including transport, and advertising on posters and in the press (Conclusions XV-2 (2001), Greece). The Committee assesses the effectiveness of such policies on the basis of statistics on tobacco consumption.The Committee reiterates its request that the next report includes smoking prevalence rates in the other Entities and cantons. It also asks that the next report include information on legal framework in the entities.

In its previous conclusion, the Committee asked what legislation and policies are in force concerning alcohol consumption and, in particular, what the minimum legal age for the purchase of alcoholic drinks is and whether there are legally binding rules on alcohol advertising. It likewise asked for information on consumption trends. The report does not reply to these questions. It only indicates that, among the population group that consumes alcohol, 16.8% of the group consume it on a daily basis. The population group consuming alcohol on average drinks 17 weekly doses of alcoholic beverages (beer, wine, spirits, liquors and cocktails). Therefore the Committee reiterates its question and asks in particular what is the minimum legal age for the purchase of alcoholic drinks in the country.

The report provides detailed information in respect of drugs. The Law on the Prevention and Supression of Drug Abuse, adopted with a view to implementing UN Conventions in this field, was followed by a National Strategy for Combatting and Preventing Drug Abuse in BiH for the period 2009-2013. According to a survey, 4.8% of the adult population is on a psychoactive substance (bensedin, Trodon and amphetamine – 2.8%; marijuana – 0.8%; glue – 0.7,%; hashish – 0.2%; heroin – 0.2%). The Committee asks to be kept informed on the implementation of this policy, namely on its impact concerning trends in drug consumption.

Immunisation and epidemiological monitoring

In its previous conclusion, the Committee took note of the immunisation coverage rate of children in FBiH, which for all of the vaccines except one was low, i.e., below 90%. The Committee asked if any steps were being taken to increase the coverage rates. It also wished to receive information on the immunisation programmes in the other Entities and cantons. From the World Bank Indicators, the Committee notes that the immunisation coverage rate in BiH during the reference period remained below 90%. The report provides information on immunisation coverage rate only in RS. Therefore, the Committee asks the next report to provide the immunisation coverage rate on a State level and for each Entity. The Committee emphasises that, if this information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter on this point.

In its previous conclusion the Committee asked to be kept informed on the results of the national pandemic influenza plan and strategy to respond to AIDS. The report does not contain this information. The Committee accordingly reiterates its request.

Accidents

The Committee notes that States must take steps to prevent accidents. The main types of accidents covered are road accidents, domestic accidents, accidents at school and accidents during leisure time (Conclusions 2005, Republic of Moldova). According to the

report, there is a legal framework in the different entities with measures to prevent traffic accidents, accidents at home and similar accidents. A road safety strategy and related action plan have yet to be adopted. The Committee asks to be provided with information on the other types of accidents, including domestic accidents, accidents at school and accidents during leisure time.

Conclusion

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 11§3 of the Charter on the ground that it has not been established that measures have been taken to guarantee a healthy environment.

Article 12 - Right to social security

Paragraph 1 - Existence of a social security system

The Committee takes note of the information contained in the report submitted by Bosnia and Herzegovina.

It notes from the report that different provisions apply at state level and to the sub-state levels of governance, namely the Federation of Bosnia and Herzegovina (FBiH), the Republika Srprska (RS) and the Brčko District (BD).

With regard to family and maternity benefits, the Committee refers, respectively, to its conclusions relating to Articles 16 and 8§1 (Conclusions 2015).

Risks covered, financing of benefits and personal coverage

The Committee refers to its previous conclusions for a description of the social security system in Bosnia and Herzegovina and relevant legislation in the different entities, and takes note of the legislative developments mentioned in the report for each entity. It notes that the system continues to cover the traditional risks (medical care, sickness, unemployment, old age, work accidents/occupational diseases, family, maternity, invalidity and survivors). The system also continues to rest on collective funding: it is funded by contributions (employers, employees) and by the public budget of the entities.

According to official statistics (UN data, 2016), the population of Bosnia and Herzegovina was estimated to be 3 802 000 in total, and the economically active population was estimated to be 1 074 000 (801 000 employed, of which 606 000 employees, 168 000 self-employed and 27 000 family workers; 273 000 unemployed persons – the inactive persons of working age were on the other hand 1 415 000) according to the Labour Force Survey 2016.

Health insurance in Bosnia and Herzegovina is not regulated at state level but at the level of the entities and, in the case of the FBiH, at the level of Cantons. The Committee notes from Missceo and the report that in all three entities, mandatory health insurance covers both employed and self-employed persons and their dependant families, as well as farmers, pensioners and, upon certain conditons, unemployed persons or other recipients of social welfare benefits. In addition, depending on the entities, further categories of people are covered by mandatory or extended insurance or can subscribe to voluntary insurance. The report does not provide, however, the information requested as regards the percentage of the total population effectively covered in each entity. In addition, the Committee notes that the UN Committee on Economic, Social and Cultural rights (CESCR) had pointed out, in its concluding observations 2013, disparities in the level of enjoyment of economic and social rights, in particular regarding social protection, social services and access to health care between the three entities, as well as between Cantons within the Federation. The CESCR had notably recommended to ensure that disadvantaged and marginalized groups have equal access to health-care services and adequate health insurance throughout the State, including through harmonizing the health-care system, and that the inter-entity agreement on health insurance should be effectively implemented with a view to guaranteeing access to health care by persons who move from one entity to another. The Committee asks the next report to provide updated information on these points.

As regards the other branches of social security, the report indicates that in 2015, in the FBiH, on average the beneficiaries of unemployment benefits were 10 459 per month, the beneficiaries of healthcare were 257 735 per month, the beneficiaries of pension/disability benefits were 445 per month, the beneficiaries of personal disability allowance were 42019. In the RS, the beneficiaries of unemployment benefits were 14 011 in 2014.

The Committee recalls that Article 12§1 guarantees the right to social security to workers and their dependents including the self-employed and that States Parties must ensure this right through the existence of a social security system established by law and functioning in

practice. In particular, health insurance should extend beyond the employment relationship and must cover a significant percentage of the population. The social security system should furthermore cover a significant percentage of the active population as regards income-replacement benefits, such as sickness, maternity and unemployment benefits, pensions, and work accidents or occupational diseases benefits.

As the report does not provide the information requested regarding the total number of persons insured against each risk, out of the total number of active population in the three entities, the Committee considers that it has not been established that that the existing social security schemes cover a significant percentage of the active population.

Adequacy of the benefits

As regards **unemployment** benefits, the Committee previously found that the situation was not in conformity with Article 12§1 of the Charter on the ground that the duration of payment (3 months for a period of contributions of 5 years) was too short (Conclusions 2013). It notes that this situation has not changed in any of the entities (see details below) and accordingly maintains its finding of non-conformity on this point:

- As regards the FBiH, under Article 29 of the Law on Mediation in Employment and Social Security of Unemployed Persons, a person is entitled to unemployed benefits if he/she had been paying contributions for at least eight months in the last 18 months. When determining eligibility for unemployment benefit a period of 12 months is counted as a year of work and part-time work is converted into full time work. The unemployment benefit amounts to 40% of the average net salary paid in the FBiH in the last three months before the termination of employment of the unemployed person, and is paid for 3 months, for a contributory period between 8 months to 5 years, up to 24 months for over 35 years of contributions. According to the information provided to the Governmental Committee (Governmental Committee Report concerning Conclusions 2013), the law does not provide for an initial period during which a person has the right to refuse a job or a training offer that does not match his/her previous skills without losing unemployment benefit. In this respect, the report indicates that the entitlement to unemployment benefit shall cease inter alia if the unemployed person has failed, without reasonable cause, to accept suitable employment. The Committee asks the next report to clarify what is considered to be "suitable employment" and what are the available remedies to contest a decision refusing entitlement to unemployment benefits.
- In the RS, a person is entitled to unemployment benefits if he/she has been working for at least eight months uninterruptedly in the last 12 months or 12 months with interruptions in the last 18 months. Self-employed persons are also entitled to unemployment benefits if her/his business has ceased to run due to economic or technological reasons. The duration of payment depends on the length of insurance of the unemployed person: one month, for an insurance period of up to 12 months; two months, for an insurance period of up to 2 years; three months for an insurance period of up to 5 years; six months, for an insurance period of five to 15 years; nine months for an insurance period of 15 to 30 years and 12 months for an insurance period of over 30 years. The amount of unemployment benefit corresponds respectively to 35% or 40% of the average net salary paid to the unemployed person in the last three months of his/her employment, depending on whether he/she has up to 15 years of pensionable service or more. According to the information provided to the Governmental Committee (Governmental Committee Report concerning Conclusions 2013), the amounts of unemployment benefit cannot be lower than 30% or higher than one average net salary paid in the RS in the last year.
- In the BD, according to the information provided to the Governmental Committee (Governmental Committee Report concerning Conclusions 2013), a person with

five years of contributions is entitled to unemployment benefit and related rights for a period of three months, the payment period is six months if the person has paid contributions for 5 to 15 years, nine months if he/she paid contributions from 15 to 25 years and 12 months for a contribution period of over 25 years. The payment of unemployment benefit can be stopped before its expiration in case, inter alia, of unjustified refusal or wilful interruption of training or in case of refusal "without a good reason, of a job in the place of residence or at a distance of 50 kilometres from the place of residence that suits the person's qualifications and ability to work." The entitlement will not cease when the person refuses a job that does not suit his/her qualifications and ability to work, or a job that is more than 50 kilometres from their place of residence. The amounts of unemployment benefit are 35% or 40% of the average net salary paid to the person during his/her last three months of employment depending on whether he/she has up to 10 years of pensionable service or more. The amount of the benefit cannot be lower than 20% or higher than one average net salary paid in DB in the last year. Accordingly, the minimum unemployment benefit corresponds to 20% of the average net wage.

As regards **sickness** benefits, the Committee takes note of the following information:

- In the FBiH, sickness benefits are paid to employees registered in the mandatory health insurance scheme. The benefit consists of a salary compensation, calculated on the basis of the salary paid to the insured person in the month preceding the sickness, or the average wage at the cantonal level, if the person did not earn any salary during the reference month. The benefit corresponds to 80% of the base for compensation, but cannot be lower than the minimum salary for the reference month. The salary compensation will be 100% of the base for compensation if the temporary incapacity to work results from occupational injuries or diseases, to pregnancy and childbirth, or to transplantation of tissue and organs for the benefit of another person.
- In the RS, the salary compensation is paid by the employer for the first 30 days of sick leave and the by the Health Insurance Fund for a maximum period of 12 months. The base for calculating the salary compensation is the net salary that the worker would have received for regular work, but the basis for calculating the salary compensation cannot be higher than the salary on which contributions for health insurance are calculated and paid.
- The Committee notes from Missceo that in the BD the benefit corresponds to 80% of the last month's net salary and 100% if the incapacity is due to a work related injury.

As regards **Old age** benefits, the Committee refers to its assessment under Article 23.

The report does not contain information on the contributory benefits granted in respect of **work accidents and occupational diseases** or **invalidity** (other than the non-contributory disability allowances and other allowances granted to victims of war). The Committee asks that such information be provided in the next report.

In its previous conclusion (Conclusions 2013), the Committee recalled that where the Eurostat at-risk-of-poverty indicator is not available, it uses the monetary value of the poverty line to assess the adequacy of benefits and considers that the situation is in conformity with the Charter if the minimum level of the income-replacement benefits (old-age, sickness and unemployment) does not fall below the poverty line indicator. It accordingly pointed out that, if the information regarding the minimum levels of income-replacement benefits and the poverty line indicator were not provided, there would be nothing to establish the conformity of the situation. It furthermore asked for information as regards the level of minimum wage, during the reference period, in all the entities. As the report does not provide the information requested, the Committee reiterates its requests and recalls that information on the minimum levels and duration of payment of all social security benefits should be systematically

provided in all reports concerning Article 12§1. It considers in the meantime that it has not been established that the levels of social security benefits are adequate.

Conclusion

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 12§1 of the Charter on the grounds that:

- it has not been established that the existing social security schemes cover a significant percentage of the active population;
- the minimum duration of payment of unemployment benefit for people who have been insured up to five years is too short;
- it has not been established that the levels of social security benefits are adequate.

Article 12 - Right to social security

Paragraph 2 - Maintenance of a social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security

The Committee takes note of the information contained in the report submitted by Bosnia and Herzegovina.

The Committee notes that Bosnia and Herzegoniva has not ratified the European Code of Social Security. Therefore, the Committee cannot take into consideration other sources such as the resolutions of the Committee of Ministers on the compliance of the States bound by the Code.

The Committee recalls that Article 12§2 obliges States to establish and maintain a social security system which is at least equal to that required for ratification of the European Code of Social Security. The Code requires acceptance of a higher number of parts than ILO Convention No. 102 relating to social security; six of the nine contingencies must be accepted, although certain branches count for more than one part (medical care counts for two parts and old-age counts for three).

The Committee notes that Bosnia and Herzegovina has accepted Parts II to VI, VIII and X of the ILO Convention No. 102. Part VI is no longer applicable as a result of the ratification of Convention No. 121.

The Committee in its last assessment (Conclusion 2013) wished to be informed of the replies to the direct request raised by the ILO Committee of Experts on Application of Conventions and Recommendations (CEACR) published in 2013 (102nd ILC session). The Committee notes that the current report refers to the submission to the ILO of a report on implementation of Convention 102 and provides information on the legal framework in Bosnia and Herzegovina, which is described in more detail under Article 12§1.

The Committee recalls that in order to assess whether the social security system stands at a level at least equal to that necessary for the ratification of the Code, it has to be provided with information regarding the branches covered, the personal scope and the level of benefits offered. The Committee refers to its conclusion under Article 12§1 where it notes that the social security system of Bosnia and Herzegovina continues to cover the traditional risks (medical care, sickness, unemployment, old age, work accidents/occupational diseases, family, maternity, invalidity and survivors).

The Committee refers to its conclusion under Article 12§1 that it has not been established that the existing social security schemes cover a significant percentage of the active population. The Committee also refers to its conclusion under Article 12§1 that it has not been established that the levels of social security benefits are adequate. Taking into account its assessment under Article 12§1, the Committee considers that it has not been established that Bosnia and Herzegovina maintains a social security system at a level at least equal to that necessary for ratification of the Code.

Conclusion

The Committee concludes that the situation is not in conformity with Article 12§2 of the Charter on the grounds that it has not been established that Bosnia and Herzegovina maintains a social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security.

Article 13 - Right to social and medical assistance

Paragraph 1 - Adequate assistance for every person in need

The Committee takes note of the information contained in the report submitted by Bosnia and Herzegovina.

It notes from the report that different provisions apply at state level and to the sub-state levels of governance, namely the Federation of Bosnia and Herzegovina (FBiH), the Republika Srpska (RS) and the Brčko District (BD).

Types of benefits and eligibility criteria

Social assistance

Federation of Bosnia and Herzegovina (FBiH)

Social protection is governed by the Law on Principles of Social Protection, Protection of Civilian Victims of War and Protection of Families with Children. This law determines social welfare policy of FBiH. Funds for financing social protection are provided from municipal and cantonal budgets. Beneficiaries of social security benefits are persons in need, in particular children without parental care, persons with disabilities, elderly persons without family, persons of socially unacceptable behaviour etc. Cantonal legislation determines the level of permanent allowance and attendance allowance as well as the conditions of the means-test. The cantonal legislation determines the amounts of allowances and benefits, the requirements for and the procedure of granting them.

The Committee further notes from the report that the different cantonal laws also provide for the conditions of the means test for eligibility for permanent allowance. The report acknowledges that the cantonal laws are not harmonised, and therefore, it may be that they do not accord the same social protection to all citizens. Some cantons have delayed the passage of the law and or passed a law that was not in line with the basic principles and minimum entitlements set forth in the Federation Law. Furthermore, some cantons have passed the Law on Social Protection, Protection of Civilian Victims of War and Protection of Families with Children while others have passed a law only governing social protection. According to the report, this situation has contributed to social security in the Federation of Bosnia and Herzegovina being fragmented as regards its funding and discriminatory against beneficiaries (unequal treatment on the basis of the canton of residence).

Republika Srpska (RS)

The Law on Social Protection regulates the system of social protection, the beneficiaries of social security scheme, entitlements under social security scheme, the procedure and conditions of entitlement, activities of social care institutions, funding, monitoring and other issues relevant to the operation and implementation of social protection. According to the report, social protection is an activity of general interest to the RS and aims at providing assistance to people when they are in need. A situation of need is a situation in which a person needs help to overcome social and other difficulties, provided that his/her basic needs cannot be satisfied through other social security systems.

The beneficiaries of social security are individuals, family members or a family as a whole. The rights are exercised through cash benefits, social security services and other measures aimed at meeting the basic needs and preventing destitution. In addition to the rights under this Law, any local government may issue a decision to provide additional entitlements and services and set conditions and criteria for granting them. For the purpose of the above mentioned law, social protection entitlements are, among others, an allowance, an attendance allowance, one-time cash assistance and counselling.

According to the report, in the period from 2012 to 2015, the RS Government through the Ministry of Health and Social Welfare has significantly improved and modernised the system of social, family and child protection. Under the Law on Social Protection, which was

adopted in March 2012 individual amounts of allowances for social welfare beneficiaries have been significantly increased.

***Brčko District (BD*)**

The Law on Social Protection defines activities in relation to social assistance. Material assistance consists of, among others, a permanent basic allowance, an attendance allowance and one-time cash assistance. The permanent basic allowance is a monetary benefit amounting to 21% of the average monthly salary earned in BD for the preceding month published in the Statistical Report of the Statistics Agency Branch of BD. It is granted to an indigent person under the following conditions: residence in the territory of the District; incapacity to work; lack of any income; lack of any relatives who are responsible by law to maintain that person.In order to determine eligibility, a means test is carried out in accordance with the Law on Administrative Procedure of BD, whereby the evidence of facts relevant to the exercise of the entitlement is collected and the family circumstances of the potential beneficiaries are checked. The allowance is paid on a monthly basis and the entitlement is exercised as of the first day of the month following the month of application. As regards one-time assistance, it cannot exceed the amount of permanent basic allowance or any other material assistance paid in the current month in pursuance of the Law on Social Security of BD and may be granted to a beneficiary up to three times a year. The most common reasons for applying are the purchase of drugs that are not on the essential drug list of the Health Insurance Fund of BD, and the purchase of food, wood and coal.

The Committee recalls that under Article 13 the system of assistance must be universal in the sense that benefits must be payable to 'any person' on the sole ground that he/she is in need. This does not mean that specific benefits cannot be provided for the most vulnerable population categories, as long as persons who do not fall into these categories but are still in need, are also entitled to appropriate assistance. Under Article 13 social assistance should be provided as a subjective right of any person without resources. There must be a precise legal threshold below which a person is considered in need and a common core of criteria underlying the granting of benefits. The text of Article 13§1 clearly establishes that this right to social assistance takes the form of an individual right of access to social assistance in circumstances where the basic condition of eligibility is satisfied, which occurs when no other means of reaching a minimum income level consistent with human dignity are available to that person.

The Committee asks the next report to confirm that social assistance is provided in all Entities, as a subjective right of *any single person*, whether or not capable of working and whether or not belonging to a vulnerable category, on the sole ground that he/she is without resources and is unable to obtain adequate resources by any other means.

Medical assistance

As regards FBiH, health care services as defined in the basic package of health care rights for insured persons, as well as health care services as defined in the basic package of health care rights for uninsured persons are provided in health care facilities that are included in the network of primary health care and the network of hospital health care systems.

The Committee notes that Article 3 of the Law on Health Care of the Federation provides that every person has a right to health care and to achieving the highest possible level of health. Health services are provided on the same terms and conditions to all persons who are insured through a basic package of services. Paragraph XI of the Basic package of health care rights includes a package for uninsured persons with a domicile in the territory of FBiH. The Committee notes that the package covers all uninsured persons under 18 years of age (same entitlements as insured persons), emergency medical aid in life threatening situations, treatment of serious contagious diseases, health care during pregnancy and childbirth, health care in cases of specific chronic diseases etc.

The Committee considers that the right to medical assistance should not be confined to emergency situations and that a system not including primary or specialised outpatient medical care, which a person without resources might require, does not sufficiently ensure health care for poor or socially vulnerable persons who become sick (European Roma Rights Centre (ERRC) v. Bulgaria, complaint No 46/2007, Decision on the merits of 3 December 2008). Furthermore, the seriousness of the illness cannot be a factor in refusing to grant medical assistance. In this context, medical assistance includes free or subsidised health care or payments to enable persons to pay for the care required by their condition.

In its previous conclusion the Committee asked whether adequate medical assistance was available to any person in need, under what conditions and to what extent in all entities. It also asked whether persons from one entity seeking medical care in another entity were entitled to medical assistance on the same level as their own residents, or whether they could only obtain emergency care free of charge. On the basis of the information at its disposal, the Committee observes that there is no evidence that medical assistance is provided to all persons without resources in all Entities. Therefore, the Committee considers that the situation is not in conformity with the Charter on the ground that it has not been established that appropriate medical assistance is provided to all persons in need in all Entities.

Level of benefits

The Committee takes notes of the detailed information regarding expenditure on social protection, including the number of beneficiaries as well as funding allocated by local Governments in RS.

To assess the level of social assistance during the reference period, the Committee takes note of the following information:

- basic and additional benefits: the report does not provide information regarding the amount of basic and additional benefits paid to a single person without resources in each Entity. The Committee requests that the next report provide information on monetary values of all social assistance benefits.
- Poverty threshold: the Committee recalls that to assess the situation under this provision it needs information regarding the poverty threshold, defined as 50% of the median equivalised income. In the absence of this indicator, the Committee takes the national poverty threshold into account.The Committee asks the next report to provide this information.

The Committee considers that in the absence of any information regarding the amounts of social assistance benefits paid to a single person without resources and the poverty threshold, it has not been established that the level of social assistance is adequate. Therefore, the situation is not in conformity with the Charter.

Right of appeal and legal aid

According to the report, in FBiH the Social Welfare Centres are the first instance bodies deciding on social assistance entitlements. The procedure for exercising the right to social protection is defined in the Law on Administrative Procedure. Administrative disputes are settled in the cantonal courts. As regards BD, a person dissatisfied with the decision of an appellate body may initiate an administrative dispute at the Court of BD. At the request of a party or its legal representative or ex officio, authorised officers of the Sub-Department for Social Security may institute proceedings for exercising the right in accordance with the Law on Social Protection of BD. The procedure for exercising the right to social protection is governed by the Law on Administrative Procedure of BD. As regards RS, the right to social protection is enforced by social care institutions. The Committee asks the next report to provide information regarding the right of appeal against decisions of social care institutions

in RS. The Committee asks whether the review bodies are empowered to judge the case on its merits and not only on points of law.

Personal scope

The Committee recalls that, under Article 13§1, States are under obligation to provide adequate medical and social assistance to all persons in need, both their own nationals as well as nationals of States Parties lawfully resident within their territory, on an equal footing. In addition, with reference to its Statement of Interpretation of Articles 13§1 and 13§4 (Conclusions 2013) regarding the scope of Articles 13§1 and 13§4 in terms of persons covered, the Committee considers that persons in an irregular situation in the territory of the State concerned are also covered under Article 13§1, rather than under Article 13§4, which was previously its practice.

The Committee henceforth examines whether the States who have accepted Article 13§1 ensure the right to:

- adequate social and medical assistance for their own nationals and for nationals of other States Parties lawfully resident within their territory on an equal footing;
- emergency social and medical assistance to persons unlawfully present in their territory.

Nationals of States Parties lawfully resident in the territory

The Committee recalls that under Article 13§1, foreigners who are nationals of the States Parties and are lawfully resident in the territory of another States Party and lack adequate resources must enjoy an individual right to appropriate assistance on an equal footing with nationals. Equality of treatment means that entitlement to assistance benefits, including income guarantees, is not confined in law to nationals or to certain categories of foreigners and that the criteria applied in practice for the granting of benefits do not differ by reason of nationality. Equality of treatment also implies that additional conditions such as the length of residence, or conditions which are harder for foreigners to meet, may not be imposed.

The Committee further recalls that under the Charter, nationals of States Parties lawfully resident in the territory cannot be repatriated on the sole ground that they are in need of assistance. Once the validity of the residence and/or work permit has expired, the Parties have no further obligation towards foreigners covered by the Charter, even if there are in a state of need. However, this does not mean that a country's authorities are authorised to withdraw a residence permit solely on the grounds that the person concerned is without resources and unable to provide for the needs of his/her family. The Committee asks whether the legislation and practice comply with these requirements.

Foreign nationals unlawfully present in the territory

The Committee recalls that persons in an irregular situation must have a legally recognised right to the satisfaction of basic human material need (food, clothing, shelter) in situations of emergency to cope with an urgent and serious state of need (including medical condition). It likewise is for the States to ensure that this right is made effective also in practice (European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, §187). The Committee asks the next report to confirm that the legislation and practice comply with these requirements.

Conclusion

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 13§1 of the Charter on the grounds that:

- it has not been established that appropriate medical assistance is provided to all persons in need in all Entities.
- it has not been established that the level of social assistance paid to a single person without resources is adequate.

Article 13 - Right to social and medical assistance

Paragraph 2 - Non-discrimination in the exercise of social and political rights

The Committee takes note of the information contained in the report submitted by Bosnia and Herzegovina.

In its previous conclusion the Committee asked the next report to confirm that in practice no restrictions applied to the beneficiaries of social assistance in their exercise of social and political rights in all Entities. It notes in this respect that the Law on Principles of Social Protection, Protection of Civilian Victims of War and Protection of Families and Children of FBIH provides that social welfare institutions in the Federation shall not impose any restrictions in their operations on the territorial, ethnic, religious, political or any other status of beneficiaries (race, colour, sex, language, social origin and the like). This does not however appear to prohibit discrimination in the exercise of political or social rights on the basis of receipt of social or medical assistance in all circumstances.

As regards RS the Committee notes that according to Article 10 of the Constitution, citizens are equal before the law and they shall enjoy equal legal protection before the state and other authorities irrespective of their race, sex, language, national or social origin, religion, education, property, political or other conviction, social status or any other personal circumstances. With regard to voting rights, in BD the Statute of BD District guarantees fundamental rights and freedoms of citizens without discrimination on any ground. This does not however appear to prohibit discrimination in the exercise of political or social rights on the basis of receipt of social or medical assistance in all circumstances.

The Committee asks the next report to provide updated information as regards whether the provisions enshrining the principle of equality and prohibiting discrimination in the exercise of political or social rights are interpreted in practice in such a way as to prevent discrimination on the basis of receipt of social or medical assistance in all entities.

Conclusion

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

Article 13 - Right to social and medical assistance

Paragraph 3 - Prevention, abolition or alleviation of need

The Committee takes note of the information contained in the report submitted by Bosnia and Herzegovina but highlights the significant gaps in information provided in relation to the specific requirements of Article 13§3.

In its previous conclusion (Conclusions 2013) the Committee noted that social welfare services (in FBiH) and the Centre of Social Work (in BD) provide advisory services concerning entitlements to benefits. However, no information was provided concerning RS.

The Committee further recalls that Article 13§3 concerns free of charge services offering advice and personal assistance specifically addressed to persons without adequate resources or at risk of becoming so. The social services covered by Article 13§3 must play a preventive, supportive and treatment role. This means offering advice and assistance to make those concerned fully aware of their entitlement to social and medical assistance and how they can exercise those rights. In assessing national situations under this provision the Committee specifically examines whether there are mechanisms to ensure that those in need may receive help and personal advice services free of charge and whether such services and institutions are adequately distributed on a geographical basis. The Committee asks the next report to provide information on how these requirements are met in legislation and practice.

In the absence of information concerning all Entities as regards existence of social services specifically addressed to persons without adequate resources to offer them advice and assistance, the Committee considers that it has not been established that there are services offering advice and assistance to persons without resources.

Conclusion

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 13§3 of the Charter on the ground that it has not been established that there are services offering advice and assistance to persons without resources.

Article 14 - Right to benefit from social welfare services

Paragraph 1 - Promotion or provision of social services

The Committee takes note of the information contained in the report submitted by Bosnia and Herzegovina.

However, most of the information in the report does not relate to Article 14§1 in substance. Therefore, the Committee asks that the next report contains a comprehensive description of the situation in law and in practice in different entities of Bosnia and Herzegovina.

Organisation of the social services

Bosnia and Herzegovina is a federal state divided into two entities, the Republic of Srpska (RS) and the Federation of Bosnia and Herzegovina (FBiH) and Brcko District, which has a special district status that falls outside the jurisdiction of the Republic of Srpska. The Republic of Srpska is composed of municipalities (*opština*) and the Federation BiH is composed of municipalities (*općina*) and cantons (*kantoni*). Responsibilities for social policy are divided between the Federation Government and Cantons.

The Committee refers to its previous conclusion (Conclusions 2013) for a description of the organisation of the social welfare system.

Effective and equal access

The Committee refers to its previous conclusion (Conclusions 2013) for general information on effective and equal access to social services.

In its previous conclusion (2013), the Committee asked information on the geographical distribution of social services in different entities.

The information provided in the report does not allow the assessment the geographical distribution of social services. The Committee recalls that the right to social services must be guaranteed in law and in practice and that effective and equal access to social services implies also that social services coverage on the territory shall be sufficiently wide, therefore reiterates its question and reserves its position on this point. Should the next report not provide the information requested, there will be nothing to establish that the situation is in conformity with Article 14§1.

Quality of services

In its previous conclusion (2013), the Committee asked that the next report provides information on the number and qualification of staff and the ratio of staff to users. The Committee also asked to know the mechanisms for supervising the adequacy of services (quality control) provided by public as well as private institutions and whether there is any legislation on personal data protection (people’s right to privacy).

The report does not answer to its questions. Therefore, the Committee reiterates its questions and reserves its position on this point. Should the next report not provide the information requested, there will be nothing to establish that the situation is in conformity with Article 14§1.

Conclusion

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

Article 14 - Right to benefit from social welfare services

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

The Committee takes note of the information contained in the report submitted by Bosnia and Herzegovina.

In its previous conclusion (Conclusions 2013), the Committee requested that the next report provides statistical data on subsidies paid by the central government and local authorities to voluntary organisations which provide social services. and to describe any other types of support that may exist for voluntary organisations, such as, for example, tax incentives.

The report does not reply to its questions. Therefore, the Committee reiterates its questions and reserves its position on this point. Should the next report not provide the information requested, there will be nothing to establish that the situation is in conformity with Article 14§2.

In its previous conclusion (Conclusions 2013), the Committee asked that the next report provides information on the supervisory machinery in charge of monitoring the quality of services.

The report indicates that monitoring is conducted continuously and systematically and it includes direct access, control and other forms of checking the fulfillment of tasks to exercise the right to social protection. The Committee notes that the report does not provide a comprehensive answer to its question. Therefore reiterates its question as to what kind of supervisory machinery in charge of monitoring the quality of services exists both for public and private institutions and in different entities. Should the next report not provide the information requested, there will be nothing to establish that the situation is in conformity with Article 14§2.

In its previous conclusion (Conclusions 2013), the Committee asked if and how the dialogue with civil society in respect of social welfare services is ensured.

The report does not reply to its questions. Therefore, the Committee reiterates its questions and reserves its position on this point. Should the next report not provide the information requested, there will be nothing to establish that the situation is in conformity with Article 14§2.

Conclusion

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

Article 23 - Right of the elderly to social protection

The Committee takes note of the information contained in the report submitted by Bosnia and Herzegovina.

Legislative framework

The Committee points out that the main aim of Article 23 of the Charter is to enable elderly persons to remain full members of society and it consequently invites the States Parties to make sure that they have appropriate legislation, firstly, to combat age discrimination outside employment and, secondly, to provide for a procedure of assisted decision-making.

With regard to the fight against age discrimination, the Committee asked in its previous conclusion (Conclusion 2013) whether Bosnia and Herzegovina had adopted such legislation. The report provides no information. However, the Committee takes note of the Law on the Prohibition of Discrimination of 23 July 2009 (Official Gazette of Bosnia and Herzegovina No. 59/09 of 29 July 2009). It notes that while Article 2 of the law does not expressly refer to age among the prohibited grounds of discrimination, its wording is such that this ground can be included. Therefore, it asks whether there is case law on age discrimination outside employment which could protect elderly persons against such discrimination.

The Committee also requests that the next report provide information on the framework programme for elderly persons developed by the Ministry of Human Rights and Refugees. It asks in particular if the programme has been adopted.

With regard to assisted decision-making for elderly persons, the Committee previously asked whether there were safeguards to prevent the arbitrary deprivation of autonomous decision-making. The report does not provide any information on this subject, so the Committee reiterates its question.

Adequate resources

When examining the adequacy of resources of elderly persons under Article 23, the Committee takes into account all social protection measures provided for elderly persons and aimed at maintaining an income level allowing them to lead a decent life and participate actively in public, social and cultural life. In particular, the Committee examines pensions, contributory or non-contributory, and other complementary cash benefits available to elderly persons. These resources will then be compared with the median equivalised income. However, the Committee points out that its task is to assess not only the law, but also the compliance of the practice with the obligations arising from the Charter. For this purpose, the Committee will also take into consideration relevant indicators relating to at-risk-of-poverty rates for persons aged 65 and over.

The report states that there is no single pension and disability scheme at national level, as the organisation, implementation and enjoyment of rights under the scheme are a matter for the Entities which make up Bosnia and Herzegovina, i.e., the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District.

According to the report, the old-age pension granted by the Federation of Bosnia and Herzegovina is, in principle, paid at full rate to insured persons aged 65, as long as they have contributed for at least 20 years, or to those with 40 years of paid contributions regardless of age. The report points out that insured persons are divided into three categories: the first category receives pensions according to their contributions; the second are covered by Article 126 of the Pension and Disability Insurance Law, and the third receive financial assistance from the budget of the Federation of Bosnia and Herzegovina (cantons and municipalities). The Committee asks for information in the next report on the persons concerned by the second and third categories.

In 2015, the average old-age pension was BAM 397.35 per month (approximately €203.16) and the minimum pension was BAM 310.73 per month (approximately €158.87). The report does not provide any information on the guaranteed old age pension. In this regard, the Committee previously asked (Conclusion 2013) what was the difference between the minimum and guaranteed pensions. As the report does not provide any information on this matter, the Committee reiterates its question. In addition, it notes that there is a discrepancy between the information provided in MISSCEO and that provided in the report. It asks for the next report to clarify the situation.

In the Republika Srpska, insured persons are entitled to an old-age pension upon turning 65 and having 15 years of pensionable service. The report does not provide any information on the amount of this pension. The Committee notes, however, that according to the MISSCEO database, in 2015, the amount of this pension was, at a minimum, BAM 160.00 per month (approximately €81.81).

The report does not provide any information on the old-age pension paid in the Brčko District. However, the Committee notes from the same source that the Brčko District does not have its own pension scheme; Its citizens can either choose the scheme of the Federation of Bosnia and Herzegovina or that of the Republika Srpska.

The Committee also requested information on the benefits/assistance elderly persons not entitled to any pension were entitled to. The report states that elderly persons residing in the Federation of Bosnia and Herzegovina are entitled to a permanent allowance and material assistance (Article 22(1) of the Law on Insurance Pension and Invalidity), an attendance allowance (Article 26 of the Law) and various subsidies (electricity, fuel, funeral costs, etc.).

Regarding the Republika Srpska, elderly persons in need are entitled to cash benefits, one-off assistance and the reimbursement of certain costs (funeral, firewood and coal, medication and food) and/or services (transport).

In the Brčko District, elderly persons may receive an attendance grant, one-off financial assistance of between BAM 150 and BAM 50 (approximately €76.69 and €25.56) depending on the pension received, and partial payment of electricity bills.

The Committee requests that the next report further indicate the amount of each of these allowances, benefits and subsidies. It also asks whether the grants and benefits allocated in one Entity, whether it be the Federation of Bosnia and Herzegovina, the Republika Srpska or the Brčko District, may be combined.

Finally, the Committee asked for information regarding the median equivalised income. The report provides no information on this matter. The Committee notes, however, that according to the report, most pensioners in the Federation of Bosnia and Herzegovina are below, or at least, on the poverty threshold. The report states that reforms to remedy the situation are underway. The Committee reiterates its question on the median equivalised income and also requests that the next report provide more information both on the reforms carried out by the Federation of Bosnia and Herzegovina and on the poverty threshold in Bosnia and Herzegovina (the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District). The Committee points out that if no information is provided in the next report, there will be nothing to show that the situation is in conformity with the Charter on this point. In the meantime, the Committee reserves its position on this issue.

Prevention of elder abuse

In its previous conclusion (Conclusion 2013), the Committee asked for information on what was done to evaluate the extent of the problem and to raise awareness about the need to eradicate elder abuse and neglect. It also asked if any legislative or administrative measures were envisaged in this area. The report does not provide any information on this issue. The Committee reiterates its questions and points out that if no information is provided in the next

report, there will be nothing to show that the situation is in conformity with the Charter on this point

Moreover, the Committee recalls that elder abuse is defined in the Toronto Declaration on the Global Prevention of Elder Abuse (2002) as "a single or repeated act or lack of appropriate action occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person". It can take various forms: physical, psychological or emotional, sexual, financial or simply reflect intentional or unintentional neglect. The World Health Organisation (WHO) and the International Network for the Prevention of Elder Abuse (INPEA) have recognised the abuse of older people as a significant global problem. Hundreds of thousands of older people in Europe encounter a form of elder abuse each year. They are pressed to change their will, their bank account is plundered, they are subjected to physical violence, threatened and insulted and sometimes they are raped or otherwise sexually abused.

Services and facilities

The Committee points out that, although Article 23 makes reference only to information about services and facilities, it presupposes that such services and facilities exist.

With regard to the services and facilities as such, the Committee notes that according to the report, the social model of Bosnia and Herzegovina prioritises family solidarity: elderly persons are cared for by their family. The report specifies that elderly persons who do not have or no longer have family to care for them are entitled to social welfare benefits. The Committee asks whether elderly persons supported by their family are nonetheless entitled to some social welfare benefits.

The Committee notes that according to the report, in the Federation of Bosnia and Herzegovina, services are provided by the municipalities through social welfare centres, NGOs and private sector stakeholders. Article 19 of the Law on the Principles of Social Protection, Protection of Civilian Victims of War and Protection of Families with Children lists the services to which elderly persons are entitled (material assistance, home care, humanitarian aid and the reimbursement of certain costs and services). In order to benefit from these services, the elderly persons concerned or their legal guardian must submit an application at the social welfare centre which takes a decision within 15 to 30 days. Any interested person can appeal against a decision of a centre before the Cantonal Ministry of Labour and Social Policy, except as concerns the attendance allowance, which is dealt with by the Ministry of Labour and Social Policy of the Federation. The Committee notes that audits and inspections of services are generally carried out by the relevant Cantonal Ministry.

In the Republika Srpska, the Council, a public body, helps families resolve their problems and difficulties. It also provides assistance (household services) and home-care for elderly persons. The Committee asks for more information on this issue in the next report. The report also indicates that day care centres for adults provide elderly persons with daytime accommodation, meals, medical supervision and recreational activities.

The Committee notes from the report that a joint project to support social welfare providers by the Federation of Bosnia and Herzegovina and the Republika Srpska was carried out in 2015; the aim was to strengthen the social welfare centres in the pilot areas of these two Entities. The Committee asks what measures were implemented and what their impact on elderly persons was.

Finally, the Committee notes that the services provided by the Brčko District are similar to those offered by the Federation of Bosnia and Herzegovina. The services are provided by the Sub-Department for Social Welfare of the Brčko District at the request of the person concerned or their legal guardian. Any person concerned can appeal against a decision by

the authorities before the Appeals Committee of the Brčko District and, if necessary, file an appeal against the decision before the Court of the Brčko District.

The Committee notes that the report does not address the questions asked previously (Conclusion 2013), namely, whether, firstly, the supply of home help services for the elderly matches the demand, secondly, as concerns the Republika Srpska, how their quality is monitored and if there is the possibility for elderly persons to complain about services, thirdly, if there are any services for those suffering from dementia or Alzheimer's disease and, fourthly, if there are cultural, leisure and educational facilities available to elderly persons. The Committee requests that the next report provide this information.

With regard to measures to inform people about the existence of services and facilities, the Committee requests that the next report provide information on this issue.

Housing

The Committee asked in its previous conclusion (Conclusion 2013) whether the needs of elderly persons were taken into account in national or local housing policies, whether adequate sheltered/supported housing was provided, and whether the supply of such housing was sufficient. The report does not answer any of the questions, but merely states that, regarding the Federation of Bosnia and Herzegovina and the Brčko District, elderly persons unable to care for themselves who have no other alternative, due to their health, housing or family circumstances, are likely to be placed in a host family. The Committee takes note of this information and repeats its questions.

The Committee points out that appropriate housing conditions are very important for an old person's well-being. However, it is also aware that the improvement of housing conditions of senior citizens is not an easy task. Firstly, it requires considerable public funding, as the average elderly person usually cannot afford the costs of modernisation of their dwelling or purchasing a new one of a higher standard. Secondly, improvement of housing conditions by moving elsewhere is often not a viable option in that it uproots the elderly person from their "natural" environment. Bearing in mind these constraints, it wishes to be kept informed of any public policies providing financial assistance for the adaptation of housing. It understands, on the basis of the information contained in the report, that elderly persons mainly live with their families and asks, in this regard, what proportions of elderly persons respectively live with their families, still live at home or have been placed in host families.

Health care

The report states that, according to Article 3 of the Law on Health Care of the Federation, "everyone has a right to health care". The right to health care applies to every person insured under the compulsory health care insurance scheme. Adults who are not insured are nonetheless entitled to some health services (emergency medical assistance, treatment of certain chronic illnesses, prenatal care, etc.). The report adds that specific programmes and services (orthopaedic care, home care, etc.) are provided to elderly persons in accordance with their health and personal circumstances. The report also adds that a Centre for Healthy Ageing was recently opened in Sarajevo, Modriča and Bosanska Dubica. Finally, the report stresses that the Federation Ministry has taken the decision to include, in the package of care, health care and medicine indicated on the List of Essential Medication (Official Gazette of the Federation of Bosnia and Herzegovina, No. 52/08) and those identified in the Order on the List of Medicines in Hospital Health Care that can be used through the Solidarity Fund of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina, Nos. 38/06, 13/08 and 38/08). The Committee requests that the next report provide details on the programmes and health care which are specific to elderly persons and on their financial contribution to the health care and medication included in the health package.

As regards the Republika Srpska, the report indicates that gerontology centres offer interdisciplinary services to elderly persons aimed at improving the quality of care, better co-ordinating the activities of service providers and training those who care for elderly persons. The centres also implement prevention programmes. The Committee asks for more information on this in the next report.

The report states that regarding the Brčko District, Article 8 of the Health Care Law provides for specific measures aimed at protecting those over 65. Health care is organised by the Department of Health and Other Services of the Brčko District, which is in charge of providing and managing primary health care, hospital care, public health activities and health insurance. Health care services are provided by four institutions: a hospital and three health care centres. The Brčko District also provides at-home nursing care. In its previous conclusion (Conclusion 2013), the Committee asked for further information on the initiative of the Assembly of the Brčko District to provide all persons over 65 with free health care. No new information is provided in the report on this subject. The Committee reiterates its question and also points out that if no information is provided in the next report, there will be nothing to show that the situation is in conformity with the Charter on this point.

The Committee recalls the importance of establishing health care programmes and services (in particular primary health care services) specifically aimed at the elderly, as well as guidelines on health care for elderly persons. In particular, there should be mental health programmes for any psychological problems in respect of the elderly, adequate palliative care services and special training for individuals caring for elderly persons. The Committee therefore asks for information on these matters in the next report. It also asked to be informed on any new measures taken on improving accessibility and quality of geriatric and long-term care, or the co-ordination of social and health care services in respect of the elderly.

Institutional care

The report states that 21 elderly care institutions (ten public facilities, five provided by NGOs and six by the private sector) operate in the Federation of Bosnia and Herzegovina and cared for 2 161 elderly persons during the reference period. There are also six nursing homes in the Federation of Bosnia and Herzegovina in Tuzla, Zenica, Sarajevo, Bihać, Mostar and Neum. The Committee notes that there are discrepancies in some of the information provided in the report and asks for more detailed information in the next report in this regard.

In its previous conclusion (Conclusions 2013), the Committee asked whether there were sufficient places in institutions to satisfy demand. The report indicates that demand outstrips supply and that, as a result, there are long waiting lists for placement in institutions.

Regarding the Republika Srpska, the report indicates that elderly persons can, if necessary, be placed in shelters which may, or may not, be part of a social care facility. The shelters provide a number of services, including health care. The duration of a stay should not, in principle, exceed three months. The Law on the Establishment of Shelters provides a definition of the users, services and methods applicable to shelters.

The report identifies three nursing homes and private institutions in the Brčko District. The Sub-Department for Social Welfare of the Brčko District provides housing to 28 elderly persons. The report specifies that there is insufficient capacity and that the prices are relatively high.

The Committee also asked how these facilities were licensed and inspected, and whether procedures existed for complaining about the standard of care and services or about ill treatment in this type of institution. The Committee also asked which authority or body was responsible for the inspection of homes and residential facilities (both public and private).

The report does not provide any information on these issues, so the Committee reiterates its questions.

Conclusion

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

CONCLUSIONS RELATING TO CONCLUSIONS OF NON-CONFORMITY DUE TO A REPEATED LACK OF INFORMATION IN CONCLUSIONS 2015

Article 7 - Right of children and young persons to protection

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

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the information submitted by Bosnia and Herzegovina in response to the conclusion that it had not been established that the effective protection against employment of children subject to compulsory education is ensured in practice.

The Committee notes that the report submitted by Bosnia and Herzegovina contains no new information in response to this conclusion of non-conformity. In the absence of the requested information, the Committee reiterates its finding of non-conformity.

Conclusion

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 7§3 of the Charter on the ground that it has not been established that the effective protection against employment of children subject to compulsory education is ensured in practice.

Article 7 - Right of children and young persons to protection

Paragraph 8 - Prohibition of night work

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the information submitted by Bosnia and Herzegovina in response to the conclusion that it had not been established that the regulations regarding prohibition of night work for young persons under 18 years of age are implemented in practice.

The Committee notes that the report submitted by contains no new information in response to this conclusion of non-conformity. In the absence of the requested information, the Committee reiterates its finding of non-conformity.

Conclusion

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 7§8 of the Charter on the ground that it has not been established that the regulations regarding prohibition of night work for young persons under 18 years of age are implemented in practice.

Article 8 - Right of employed women to protection of maternity

Paragraph 2 - Illegality of dismissal during maternity leave

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the fact that Bosnia and Herzegovina has submitted no information in response to the conclusion that it had not been established that adequate compensation was provided for in cases of unlawful dismissal during pregnancy or maternity leave in the Republika Srpska.

The Committee recalls in this connection that, under Article 8, paragraph 2 of the Charter, where the reinstatement of employees unlawfully dismissed during pregnancy or maternity leave is not possible (e.g. if the enterprise has closed down) or the employee concerned does not wish to be reinstated, adequate compensation must be available. Domestic law must not prevent courts from awarding a level of compensation that is sufficient both to deter the employer and fully compensate the victim of dismissal.

In its previous conclusion (Conclusions 2015), the Committee had noted the information in the report concerning the unemployment benefits available to the employee, the fines which could be imposed on the employer and the fact that no case law was available concerning the unlawful dismissal of employees during pregnancy or maternity leave, but it had reiterated its request for clarification as regards the compensation available, in addition to reinstatement or instead of it, to women unlawfully dismissed during pregnancy or maternity leave. As the report does not provide any information in this respect, the Committee maintains its finding of non-conformity with Article 8§2 of the Charter on this point.

The Committee recalls that the situation concerning other aspects covered by Article 8§2 will be examined in the framework of the regular reporting cycle (Conclusions 2019) and asks that relevant and updated information be provided in that context.

Conclusion

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 8§2 of the Charter on the ground that it has not been established that adequate compensation is provided for in cases of unlawful dismissal during pregnancy or maternity leave in the Republika Srpska.

Article 8 - Right of employed women to protection of maternity

Paragraph 4 - Regulation of night work

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the fact that Bosnia and Herzegovina has submitted no information in response to the conclusion that it had not been established that night work of pregnant women, women having recently given birth and women who are nursing their infant is adequately regulated in the Federation of Bosnia and Herzegovina.

The Committee recalls in this connection that Article 8§4 does not require states to prohibit night work for pregnant women, women who have recently given birth and women nursing their infants, but to regulate it in order to limit the adverse effects on the health of women. The regulations must lay down conditions for night work of pregnant women, women who have recently given birth and women nursing their infants, e.g. prior authorisation by the Labour Inspectorate (where applicable), prescribed working hours, breaks, rest days following periods of night work, the right to be transferred to daytime work in case of health problems linked to night work, etc.

In the light of these criteria, the Committee had previously noted that in the Federation of Bosnia and Herzegovina there was no specific prohibition to perform night-work for women who are pregnant, have recently given birth or are breast-feeding and had asked for further details concerning any relevant regulations. As the report does not provide any information in this respect, the Committee maintains its finding of non-conformity with Article 8§4 of the Charter on this point.

The Committee recalls that the situation concerning other aspects covered by Article 8§4 will be examined in the framework of the regular reporting cycle (Conclusions 2019) and asks that relevant and updated information be provided in that context.

Conclusion

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 8§4 of the Charter on the ground that it has not been established that night work of pregnant women, women having recently given birth and women who are nursing their infant is adequately regulated in the Federation of Bosnia and Herzegovina.

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

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the fact that Bosnia and Herzegovina has submitted no information in response to the conclusion that it had not been established that it has not been established that the child benefit in the Federation of Bosnia and Herzegovina and the Republika Srpska constitutes an adequate income supplement. Therefore, the Committee reiterates its previous finding of non-conformity on this ground.

Conclusion

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 16 of the Charter on the ground that it has not been established that the child benefit in the Federation of Bosnia and Herzegovina and the Republika Srpska constitutes an adequate income supplement.

January 2018

European Social Charter

European Committee of Social Rights

Conclusions 2017

BULGARIA

This text may be subject to editorial revision.

The following chapter concerns Bulgaria, which ratified the Charter on 7 June 2000. The deadline for submitting the 15th report was 31 October 2016 and Bulgaria submitted it on 6 December 2016.

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 "Health, social security and social protection":

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

Bulgaria has accepted all provisions from the above-mentioned group except Article 12§§2 and 4; Article 13§4; Article 23 and Article 30.

The reference period was 1 January 2012 to 31 December 2015.

The conclusions relating to Bulgaria concern 14 situations and are as follows:

– 9 conclusions of conformity: Articles 3§1, 3§2, 3§4, 11§2, 11§3, 12§3, 13§2, 13§3 and 14§2.

– 5 conclusions of non-conformity: Articles 3§3, 11§1, 12§1, 13§1 and 14§1.

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

Article 3§1

As part of the project on "Prevention for Occupational Safety and Health", practical tools for evaluation of the risk at the workplace (under 30 economic activities) were developed. There is an interactive instrument for risk evaluation which is available to all employers, officials and workers through the OiRA platform. The tools allow employers, both Bulgarian and European, to carry out alone, without hiring external consultants, the risk assessment mandatorily required by the law in their enterprises, as well as to conduct trainings and briefings to their workers and employees.

Article 3§2

- Law amending and supplementing the Health and Safety at Work Act (SG, No. 27 of 2014) was adopted. The Law creates the legal basis for issuing authorisations for special and technological blasting operations and a further set of amendments expands the rights of workers regarding the control of working conditions. The Ordinance on the minimum requirements to the microclimate of the working environment (SG, No. 63 of 2014) also was adopted. It sets minimum requirements for the protection of workers from health and safety risks arising from the microclimate parameters of the working environment in buildings and from adverse weather conditions when working outdoors; it also defines limit values of the microclimate parameters of the working environment on buildings (provisions for temperature, humidity and air movement);
- The Ordinance on the Basic Norms of Radiation Protection (SG No. 76 of 5 October 2012) was adopted. It provides the basic requirements for radiation protection, the criteria and levels for exemption from regulation, measures for radiation protection upon the implementation of activities of use of nuclear energy and the sources of ionising radiation (SIR) within the meaning of the Safe Use of Nuclear Energy Act.

Article 3§4

An Ordinance on the Basic Norms of Radiation Protection (SG No.76 of 5 October 2012) was adopted. It contains special provisions concerning an evaluation of the irradiation and medical surveillance. According to this Ordinance, workers exposed to radiation are subject to mandatory medical surveillance in order to establish their health condition and their suitability from a medical standpoint to perform the tasks they are assigned with. The medical surveillance over persons is implemented by healthcare and/or medical establishments. Enterprises and specialised control authorities are bound to submit to healthcare establishments information for the parameters of working environment, conditions of work and the results from the individual monitoring.

Article 12§3

- The personal scope of mandatory insurance for general sickness and maternity, disability on account of a general sickness, old age and death, labour accident and occupational disease and unemployment has been extended to workers and employees hired for up to 5 working days (40 hours) over the calendar month and persons entrusted with the management and / or control of state and municipal enterprises under Chapter Nine of the Commercial Code, their subsidiaries or other legal entities established by law (in 2015); as well as to other categories of workers (candidate junior judges and junior prosecutors in 2012, persons under the Special Surveillance Means Act in 2013);
- The personal scope of insurance for invalidity on account of a general sickness, old age and death and for general sickness and maternity has also been extended, in 2012, to spouses of self-employed persons, craftsmen and farmers (as voluntary insurance);
- The personal scope of insurance for invalidity on account of a general sickness, old age and death and for labour accident and occupational disease has been extended in 2015 to seasonal agriculture employees;
- All labour (contributory) pensions have been increased (for the Public pension insurance, the increase was around 8% during the reference period), to compensate the inflation and an indexation rule (so called "Swiss rule") has been set and applied as from 2014;
- The social pension for old age was also increased (by some 14% during the reference period), as well as the benefits based on the level of the social pension (labour accident benefit, invalidity pension and survivor's pension).

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The next report to be submitted by Bulgaria will be a simplified report dealing with the follow up given to decisions on the merits of collective complaints in which the Committee found a violation.

The report should also contain information requested by the Committee in Conclusions 2016 in respect of its conclusions of non-conformity due to a repeated lack of information:

- the right to work – policy of full employment (Article 1§1),
- the right to work – freely undertaken work (forced labour) (Article 1§2).

The deadline for submitting that report was 31 October 2017. The report was registered on 31 October 2017. Conclusions on the Articles concerned will be published in January 2019.

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Conclusions and reports are available at www.coe.int/socialcharter as well as in the HUDOC database.

Article 3 - Right to safe and healthy working conditions

Paragraph 1 - Health and safety and the working environment

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

General objective of the policy

In its previous conclusion (Conclusions 2013), the Committee asked whether the policy in the field of occupational health and safety is regularly assessed and reviewed in light of changing risks. It also asked for information on any major changes or updates in the legislation and regulations on occupational health and safety.

In reply, the report explains that the Bulgarian Government approved the 2008-2012 Strategy on Safety and Health with a Ministerial Decision on 26 June 2008. The Minister of Labour and Social Policy shall draw up and submit annually to the Council of Ministers for approval an annual National Programme for Safety and Health at Work and the Implementation Report for the Strategy of the previous year. The implementation Reports present the results of the activities implemented under the National Programme in the strategic priority areas. The Committee takes note that the status, trends and problems of the activity for ensuring health and safety at work are analysed and that measures to improve the implementation of certain objectives and priorities are proposed. The Committee refers to its assessment in the light of Article 3§2 of the Charter for a description of the safety and health at work legislation and regulations amended during the reference period.

The report indicates that, pursuant to a Decision of the National Council on Working Conditions, two medium-terms strategic documents will be adopted for the period up to 2020 – National Programmes for Safety and Health at Work which outline the national measures and activities according to the EU Occupational Health and Safety Strategic Framework 2014-2020. The Occupational Health and Safety National Programme 2016-2020 has been drafted, discussed, approved by the National Council on Working Conditions and will be submitted to the Council of Ministers for approval. The Committee asks that the next report provides information on the activities implemented and the results obtained by the programmes.

The Committee points out that new technology, organisational constraints and psychological demands favour the development of psychosocial factors of risk, leading to work-related stress, aggression, violence and harassment. It would also point out that, with regard to Article 3§1 of the Charter, it takes account of stress, aggression, violence and harassment at work when examining whether policies are regularly evaluated or reviewed in the light of emerging risks. The States parties have a duty to carry out activities in terms of research, knowledge and communication relating to psychosocial risks (Statement of Interpretation on Article 3§1 of the Charter, Conclusions 2013). The report does not provide any information on this point. The Committee accordingly reiterates its request.

Organisation of occupational risk prevention

In its previous conclusion (Conclusions 2013), the Committee found that measures for occupational risk prevention were taken at national level and asked for more detailed information on the General Labour Inspection's (GLI) role in the development of a culture of health and safety among employers and workers, on its duty to share knowledge about risks and risk prevention in light of its inspection experience and as part of preventive activities.

In response, the report indicates that the key priorities in the activity of the General Labour Inspectorate Executive Agency (GLI EA) include, *inter alia*, protection from occupational and health risks at work, guaranteeing the workers' rights, enabling them to stand up for their interests and to take part in the decision-making processes. These priorities are implemented by GLI EA through its annual plans and objectives. Labour inspectors report the presence of evidence of general improvement of the activity of securing health and

safety at work. The Committee notes that, according to the report, there are a lot of small and medium enterprises, in which the knowledge of safe and health working conditions is insufficient or frequently absent; in lots of economic sectors part of the Bulgarian production is still carried out by the use of obsolete machinery and equipment that generate harmful effects and hazards for the workers. However, the report stresses out that the specified challenges are analysed in details and evaluated.

The GLI EA has a considerable role for the development of a culture of health at work among employers and workers, as the control authorities share their knowledge of risks and prevention on the light of the experience from their inspections. The Committee notes the number of free consultations on issues related to safe and healthy at work, given by the GLI with respect to the observance of the labour legislation for the reference period and its results (serious progress in the provision of safe and healthy working conditions; increase of the relative share of the enterprises that made a risk evaluation; adoption of a programme for risk elimination and work on the implementation of the latter).

The report states that, as part of the project on “Prevention for Occupational Safety and Health”, practical tools for evaluation of the risk at the workplace (under the 30 economic activities, see below) were developed. There is an interactive instrument for risk evaluation which is available to all employers, officials and workers through the OiRA platform. The tools allow employers, both Bulgarian and European, to carry out alone, without hiring external consultants, the risk assessment mandatorily required by the law in their enterprises, as well as to conduct trainings and briefings to their workers and employees.

The Committee considers that measures for occupational risk prevention, awareness-raising and assessment of work-related risks and information and training for workers are provided at national and undertaking levels. It further notes that the General Labour Inspectorate Executive Agency is involved in the development of a health and safety culture among employers and employees and shares knowledge of occupational hazards and prevention acquired during inspection activities. The situation is therefore in conformity with Article 3§1 of the Charter in this respect.

Improvement of occupational safety and health

In response to Committee’s questions on the improvement of occupational safety and health (Conclusions 2013), the report indicates that the GLI EA implemented project “Prevention for Occupational Safety and Health” co-financed by the EU through the European Social Fund. Within this project, the GLI EA developed 30 profiles under healthy and safe working conditions by economic activities representing structured information for separate economic activities at a section level (Classifier of Economic Activities, 2008). The Committee notes that these 30 economic activities were determined jointly with the social partners on the basis of the results from a national survey of the working conditions, which covered all economic activities and provided up-to-date information for all elements of the working conditions. In this way, the 30 top risk and socially important economic activities were determined, for which models of the safe and healthy working conditions activity management systems were developed. Within the Project, codes of good practices containing technical rules, guidelines containing practical rules and guiding principles on safe and healthy working condition for the said 30 economic activities, were also developed.

The report indicates that training seminars were conducted for experts and officials on the development and introduction of the models of safe and healthy working conditions management systems under economic activities.

The Committee notes that there is a system aimed at improving occupational health and safety through research, development and training.

Consultation with employers' and workers' organisations

In its previous conclusion (Conclusions 2013 and 2009), the Committee noted that the National Council on Working Conditions was effective in promoting social dialogue at national level and that there were equivalent regional councils in all districts. It asked for detailed information on consultation mechanisms at company level. In reply, the report states that bilateral social dialogue at undertaking level in the field of health and safety at work occurs through the Committees and Groups on Working Conditions. Committees on Working Conditions of 4 to 10 members are set up in undertakings with more than 50 employees. In undertakings with sizeable staff, complex structure and territorial fragmentation, committees may be set at the respective structural units in addition to those at undertaking level. Groups on Working Conditions are set up in undertakings (including from the public sector) with 5 to 50 employees inclusive, as well as in the individual structural units of undertakings. In undertakings with less than 5 employees, the employer discusses Occupational Safety and Health matters with the workers, including in case of risks which constitute immediate danger for employee's health and safety or for their life. The social dialogue on OSH at undertaking level is effected also through the collective agreements according to the Labour Code. The Committee refers to the report for a detailed description of consultation mechanisms at company level.

In addition, the report indicates that, pursuant to Article 41 of the Health and Safety at Work Act, sectoral and branch councils on working conditions are set up at individual ministries and institutions. They include representatives of the national sectoral or branch federations, unions and trade unions of the representative employee organisations, of the sectoral or branch structures of the representative employer organisations and an equal number of representatives of the competent ministry or institution. These councils analyse the status of the activity for ensuring OSH in the respective sector, make arrangements for drafting and discussion rules and requirements for ensuring sector specific OSH. They also study and promote experience, organise competitions, workshops, campaigns; organise and hold training, standards and methods ensuring OSH.

Moreover, the Committee takes note that consultations at the national level are carried out within the National Council on Working Conditions, which is the tripartite standing body responsible for coordination, consultation and cooperation for the development and occupational safety and health policy at national level. The National Programme for Safety and Health at Work 2016-2020 has been approved by the National Council on Working Conditions.

The Committee notes that there is genuine co-operation between the authorities and the social partners, both at national and at company level.

Conclusion

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

Article 3 - Right to safe and healthy working conditions

Paragraph 2 - Safety and health regulations

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

Content of the regulations on health and safety at work

The report gives a list of health and safety legislation texts adopted and amended during the reference period. These changes concern, *inter alia*, the protection of workers from the risks related to exposure to chemical agents at work and to exposure to carcinogens and mutagens during work; healthy and safe labour conditions to certain categories of workers (temporary workers, fixed-term workers, pregnant workers, workers who have recently given birth or are breastfeeding, to persons under 18 years of age), safety requirements regarding machines and other technical equipment, and the requirements to the microclimate of the working environment.

The Committee points out that under the terms of Article 3§2 of the Charter, regulations concerning health and safety at work must cover work-related stress, aggression and violence specific to work, and especially for workers under atypical working relationships (Statement of Interpretation on Article 3§2 of the Charter, Conclusions 2013). The report does not provide any information on this point. The Committee accordingly reiterates its request. The Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Bulgaria is in conformity with Article 3§2 of the Charter.

Levels of prevention and protection

The Committee examines the levels of occupational prevention and protection provided for by the legislation and the regulations in relation to certain risks.

Establishment, alteration and upkeep of workplaces

In reply to the Committee's question (Conclusions 2013) regarding the transposition of EU Directives, the report states that Directive 2009/104/EC is fully transposed in the national occupational safety and health legislation by Ordinance No. 7/1999 on the minimum requirements for health and safety at work and upon use of working equipment (SG, No. 88/1999). Directive 2013/35/EU of the European Parliament and of the Council of 26 June 2013 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields) and repealing Directive 2004/40/EC is with a deadline for transposition by members States on 1st July 2016. The Committee notes that, according to the report, Ordinance on the minimum health and safety requirements regarding the exposure of workers to the risks arising from electromagnetic fields has been drafted with a view to transposing the provisions of Directive 2013/35/EC in the national legislation. The draft ordinance is pending public discussion and examination by the National Council on Working Conditions, whereupon it will be jointly endorsed by the Minister of Labour and Social Policy and the Minister of Health.

The report also indicates that during the reference period, a Law amending and supplementing the Health and Safety at Work Act (SG, No. 27 of 2014) was adopted. The Law creates the legal basis for issuing authorisations for special and technological blasting operations and a further set of amendments expands the rights of workers regarding the control of working conditions. The Ordinance on the minimum requirements to the microclimate of the working environment (SG, No. 63 of 2014) also was adopted. It sets minimum requirements for the protection of workers from health and safety risks arising from the microclimate parameters of the working environment in buildings and from adverse weather conditions when working outdoors; it also defines limit values of the microclimate parameters of the working environment on buildings (provisions for temperature, humidity and air movement). The report also indicates that Ordinance amending and supplementing

ordinance No. RD-07/8 of 20 December 2008 on minimum requirements for the provision of safety and/or health signs at work (SG, No. 46 of 2015), implements the requirements of Directive 2014/27/EU of the European Parliament and of the Council of 26 February 2014 amending Council Directives 92/58/EEC, 92/85/EEC, 94/33/EC, 98/24/EC and Directive 2004/37/EC of the European Parliament and of the Council, in order to align them to Regulation (EC) No 1272/2008 on classification, labeling and packaging of substances and mixtures.

In its previous conclusion (Conclusions 2013), the Committee asked for more detailed information on the implementation, on the basis of mandatory workplace risk assessment, of preventive measures geared to the nature of risks, of information and training for workers, as well as of a schedule for compliance. The report indicates that Ordinance No. RD-07-2 on the Conditions and Procedures for the Conduction of Periodical Training and Briefing of Workers and Employees with the respect to the Rules for Provision of OHS determines the conditions and procedures for conduction of training and briefing on safety and health at work and applies in all enterprises and places where work is performed or a training is conducted according to Article 2§§1-2 of the Health and Safety at Work Act. The employer must make sure that each worker has passed an appropriate training and/or briefing on safety and health at work in accordance with the specificity of the profession/performed activity and of the workplace, as he/she must take into account the possible danger and the results from the risk evaluation of the respective workplace.

Protection against hazardous substances and agents

The report indicates that Directive 2009/161/EU establishing a third list of indicative occupational exposure limit values in implementation of Council Directive 98/24/EC and amending Commission Directive 2000/39/EC is implemented by Ordinance amending and supplementing Ordinance No. 13 of 2003 on the protection of workers from the risks related to exposure to chemical agents at work (SG, No. 2 of 2012). According to the report, Directive 2014/27/EU of the European Parliament and of the Council of 26 February 2014 amending Council Directives 92/58/EEC, 92/85/EEC, 94/33/EC, 98/24/EC and Directive 2004/37/EC of the European Parliament and of the Council, in order to align them to Regulation (EC) No. 1272/2008 on classification, labelling and packaging of substances and mixtures, was also implemented by Ordinance amending and supplementing Ordinance No. 13 of 2003 (SG, No. 46/2015), in relation to the minimum requirements for health and safety in case of risks related to exposure to chemical agents at work and in case of risks arising from exposure to carcinogens and mutagens at work. According to this Ordinance, the employer is bound to provide workers and their representatives with training and information for the respective safeguards and the actions that must be taken for self-protection and protection of the other workers, access to the safety data sheets of the chemical agents used, and reliability and update of the information.

Protection of workers against asbestos

In its previous conclusion (Conclusions 2013), the Committee asked for information on the measures adopted to incorporate into domestic law the exposure limit of 0.1 fibres/cm^3 introduced by Directive 2009/148/EC of the European Parliament and of the Council of 30 November 2009 on the protection of workers from the risks related to exposure to asbestos at work. In response, the report indicates that Directive 2009/148/EC is fully transposed into national occupational safety and health legislation by the Law amending and supplementing the Health Act (SG, No. 59 of 2006) and by Ordinance No.9 of the Ministry of Labour and Social Policy and the Ministry of Health of 4 August 2006 on the protection of workers from risks related to exposure to asbestos at work (SG, No. 71 of 2006). The Committee notes that the currently valid concentration level for asbestos is 0.1 fibres/cm^3 (this limit applies to chrysolite and amphibole asbestos, specifically actinolite, amosite, anthophylliten crocidolite and tremolite). The report adds that the activities for demolition and/or removal of asbestos

and asbestos-containing materials are carried out by legal or natural persons who are issued authorisations under the Health Act. The activities for demolition or removal of asbestos and/or asbestos-containing materials from building, structures, undertakings, installations or vessels are carried out upon authorisations from the director of the regional inspectorate on whose territory the activities are carried out. The conditions and procedure for issuing authorisations include requirements pursuant to Section VII "Protection of the Health of Citizens in the Performance of Works with Asbestos and Asbestos-containing Materials" of the Health Act.

In addition, the Republic of Bulgaria put a ban on the import, production and use of all types of asbestos fibres and asbestos-containing products from 1st January 2005. The ban was implemented by the Ordinance on hazardous chemical substances and preparations subject to a ban or restrictions on the trade therein or use thereof.

The Committee takes note of additional intended measures detailed in the report (creation of the National Asbestos Profile, development of a National Programme for the Elimination of Asbestos Related Diseases, development of a register of workers exposed to asbestos at a national level, several inspections and others).

Protection of workers against ionising radiation

The report states that the legal framework and control over the exposition to ionising radiation is implemented in accordance with the Health Act, the Safe Use of Nuclear Energy Act and secondary legislative instruments.

Pursuant to the Safe Use of Nuclear Energy Act, nuclear energy and ionising radiation are to be used in accordance with the requirements and principles of radiation protection for the purpose of ensuring the protection of human life, health and living conditions for the present and future generations, environment and tangible valuables from the harmful impact of ionising radiation. This Act provides that irradiation with ionising radiation of the staff and population must be limited and kept at the lowest reasonably achievable level. The state regulation of the safe use of nuclear energy and ionising radiation shall be implemented by the Nuclear Regulatory Agency.

The Health Act contains a section dedicated to the protection from the effects of ionising radiation. Pursuant to Article 64, the protection of persons from the effect of ionising radiation takes place upon observance of the principles of radiation protection in accordance with this statute and the Safe Use of Nuclear Energy Act. The Committee takes note of protecting measures from the effects of ionising radiation detailed in the report. The medical surveillance of persons who work with sources of ionising radiation is carried out by the National Centre for Radiobiology and Radiation Protection and by medical establishments.

According to the report, the Ordinance on the Basic Norms of Radiation Protection (SG No. 76 of 5 October 2012) was adopted. It provides the basic requirements for radiation protection, the criteria and levels for exemption from regulation, measures for radiation protection upon the implementation of activities of use of nuclear energy and the sources of ionising radiation (SIR) within the meaning of the Safe Use of Nuclear Energy Act.

The Committee concludes that prevention and protection levels for asbestos and ionising radiation are in conformity with Article 3§2 of the Charter. It asks whether workers are protected up to a level at least equivalent to that set in the Recommendations by the International Commission on Radiological Protection (ICRP Publication No. 103, 2007).

Personal scope of the regulations

The Committee examines the personal scope of legislation and regulations with regard to workers in atypical employment.

As regards specific regulations on safety and health at work concerning some categories of workers, the report indicates regulations amended over the reference period: Ordinance No. RD 07-8 of 13 July 2015 on the terms and procedure for submission, registration and reporting of the employment contracts under Article 114a (1) of the Labour Code to the Labour Inspectorate (SG, No. 54/2015) which sets out in detail the terms and procedure for submission, registration and reporting of short-term seasonal farm employment contracts to the Labour Inspectorate; Ordinance No. 07-4 of 15 June 2015 on improvement of working conditions of pregnant workers and workers who have recently given birth or are breastfeeding (SG, 46 of 2015) and Ordinance amending and supplementing Ordinance No. 6 of 2006 on the conditions and order for issuance of work permits to persons under 18 years of age (SG, No. 46/2015), which implement the requirements of Directive 2014/27/EU in relation to the minimum requirements for the health and safety at work.

Temporary workers

In its previous conclusion (Conclusions 2013), the Committee asked for information about the right of temporary workers, interim workers and workers under fixed-term employment contracts to be represented at work. In reply, the report states that, according to Article 68§2 of the Labour Code, employees under a fixed-term employment contract under Article 68§1 of the Labour Code, have the same rights and obligations as employees under a labour contract for an indefinite period of time. They cannot be put at a disadvantage on account only of the fixed-duration nature of their employment relationship compared to employees under a labour contract for an indefinite period of time who perform the same or similar work in the enterprise, except if the law makes the use of certain rights conditional on the possessed qualification or the acquired skills. When there are no employees employed on the same or similar job position, employees under a fixed-term employment contract cannot be disadvantaged in comparison with other workers and employees who work under a employment contract for an indefinite period of time. The Committee takes note that employees working under a fixed-term employment relationship have the same rights to representation as the ones laid down for employees working under an employment relationship for an indefinite period of time.

The report indicates that the legislation grants equal degree of protection from occupational hazards to all employees, the main provisions contained in the Labour Code, the Health and Safety at Work Act, and Ordinance No. 5 of 20 April 2006 on provision of healthy and safe working conditions to workers employed under fixed-term employment contracts or temporary employment contracts. The Ordinance amending and supplementing Ordinance No. 5 of 20 April 2006 (SG, No. 19 of 2013) achieves compliance of the requirements for provision of healthy and safe working conditions to workers employed under fixed-term employment relations and temporary employment relations with the Labour Code amendments regarding home working and teleworking. The report adds that the enhanced control of those conditions for workers who do not have permanent employment contract is an additional measure. The GLI EA has been carrying out inspection campaigns in relation to workers commissioned by temporary-work agencies for two years.

The report also indicates the amendments made to the labour legislation over the reference period in relation to the protection of temporary workers and workers under fixed-term employment contracts: the Law amending and supplementing the Labour Code (SG, No. 7 of 24 January 2012), passed in relation to the ratified ILO Convention No. 181 (1997) on private employment agencies, and Directive 2008/104/EC of the European Parliament and of the Council on temporary agency work, which sets out the specific employment relations between temporary work agencies, workers, and the user undertakings, and the Law amending and supplementing the Labour Code (SG, No. 54 of 17 July 2015), which sets out, among others, the short-term seasonal employment contract in agriculture.

The Committee confirms that temporary workers, interim workers and workers on fixed-term contracts enjoy the same standard of protection as workers on contracts with indefinite duration.

Other types of workers

In response to the Committee's questions, the report states that, according to Article 14§1 of the Health and Safety at Work Act, legal entities and natural persons who independently employ workers, who use workers sent to them by an enterprise providing temporary employment, as well as those who work on their own account alone or in association with others, are bound to provide health and safety at work in all cases related to the work both of workers and of all other persons, which are on another occasion in or nearby the working premises, sites or places. According to Article 2§1 of the Health and Safety at Work Act, it applies in all enterprises and places where work is performed or training is conducted, regardless of the form of organisation, the type of ownership and the ground, on which the work or training is performed, as long as another law or international agreement does not provide for otherwise. According to Article 107d(3) of the Labour Code, the employer is bound to provide a homeworker with healthy and safe working conditions.

The Committee notes that home workers and self-employed persons are included in the scope of the national legislation on safety and health at work.

Consultation with employers' and workers' organisations

In its previous conclusion (Conclusions 2013), the Committee found that the situation was in conformity with Article 3§2 of the Charter on this point. It refers to its examination under Article 3§1 (Conclusions 2017) concerning consultation mechanisms at national level, and considers that the situation is still in conformity on this point.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in Bulgaria is in conformity with Article 3§2 of the Charter.

Article 3 - Right to safe and healthy working conditions

Paragraph 3 - Enforcement of safety and health regulations

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

Accidents at work and occupational diseases

In its previous conclusion (Conclusions 2013), the Committee found that the situation was not in conformity with Article 3§3 of the Charter on the ground that measures to reduce the excessive rate of fatal accidents were inadequate. It asked for information on the measures taken to reduce the number of fatal accidents and to counter possible under-reporting of accidents at work in practice. In response, the report states that in 2014, the General Labour Inspectorate Executive Agency (GLI EA) created on its webpage a Section “Major accidents – reasons and violations” to acquaint the webpage visitors with the causes and the most frequent violations bringing about fatal accidents at work. Furthermore, the GLI EA has provided a free telephone number for consultation and reporting of occurrences of accidents at work. In addition, the report indicates that the focus in the measures envisaged in the annual plans of the GLI EA is on the improvement of the quantitative and qualitative aspects of labour inspection, the systematic and consistent seeking of administrative-penal liability from the persons violating the labour legislation and the achievement of reasonable balance in the control of enterprises with high production risk and high labour traumatism. The performance of inspections in enterprises belonging to economic activities having a considerable impact on the national level of accidents at work and occupational diseases is set as a measure in the annual plan for the activity of the GLI EA within its programme “Inspection of all enterprises from all economic activities for guaranteeing of the observance of the provisions of the Labour Code, the Health and Safety at Work Act, the Employment Promotion Act and the Civil Servant Act”. The Committee also notes from the information provided to the Governmental Committee (Governmental Committee report concerning Conclusions 2013) other measures to reduce the level of the fatal accidents at work and of the accidents leading to disability.

As regards the measures taken to combat possible non-reporting of all accidents at work in the practice, the Committee notes from the information provided to the Governmental Committee (Governmental Committee report concerning Conclusions 2013) that, the procedure for establishing the accidents is legally regulated by the Social Insurance Code and the Ordinance on Establishment, Investigation, Recording and Reporting of Accidents at Work. Key measure to combat the non-reporting of all accidents at work is the procedure for establishing the accidents at work itself (official communication) which is based on the insurance principle.

In its previous conclusion (Conclusions 2013), the Committee asked for information on any sanctions applicable to employers in the event they fail to meet their reporting obligations. The report states that the declaration of an accident is the official reporting of an accident submitted to the respective territorial unit of the National Social Security Institute (NSSI). The declaration may be submitted both by the insurer, respectively the enterprise-user, when the person is sent to perform temporary work, and by the victim or his heirs. The NSSI is the competent institution that verifies that the obligations established by the aforementioned Ordinance are complied with. The Committee notes from the information provided to the Governmental Committee (Governmental Committee report concerning Conclusions 2013) that, the failure of the insurer to report an accident at work is considered as a violation of the legislation on the state social security and is subject to administrative and criminal liability. The entities violating the legislation are imposed a penalty from 100 to 2,000 BGN (from € 51 to €1,022) on a case-by-case basis and the insurers – legal entities and sole proprietors – are imposed a penalty payment from 500 to 2,000 BGN (from € 255 to €1,022) on a case-by-case basis. In the event of further violation a penalty payment and / or a fine in the double amount of the original one is imposed.

The report states that, according to the Eurostat figures, the number of non-fatal accidents at work causing at least four calendar days of absence remains stable during the referenced period (2,278 in 2012 and 2,246 in 2014). The standardised rate of incidence of non-fatal accidents at work per 100,000 workers fell slightly from 84.87 in 2012 to 82.45 in 2014. The Committee notes that this rate is significantly lower than the average rate in the EU-28 (1,717.15 in 2012 and 1,642.09 in 2014). The number of fatal accidents at work increased from 98 in 2012 to 117 in 2014. The standardised incidence rate of fatal accidents at work per 100,000 workers rose from 4.65 in 2012 to 5.43 in 2014. The Committee notes that the standardised rate of incidence of fatal accidents is significantly higher than the average rate in the EU-28 (2.42 in 2012 and 2.32 in 2014). According to the report, sectors of activity with high number of fatal accidents during the period of reference are manufacturing, construction, motor vehicles and motorcycles, transportation and storage.

In its previous conclusion (Conclusions 2013), the Committee asked for figures on cases of occupational disease. The Committee takes notes that, according to Article 56 of the Social Insurance Code, an occupational disease is a disease that occurred exceptionally or mostly under the influence of the harmful factors of the working environment or of the process on the organism and caused temporary disability for work, permanent disability for work or death. An occupational disease is included in the list of Occupational Diseases issued by the Council of Ministers on the proposal of the Minister of Health. A disease not included in this list can be recognised as an occupational disease, when it is found to be caused mostly and directly by the usual labour activity of the insured person and to have caused temporary inability to work, permanently decreased ability to work or death of the insured person. The Committee takes note of the distribution of registered occupational diseases by years (these occupational diseases are recognised for the first time in the monitored year) and major classifications detailed in the report.

In its previous conclusion (Conclusions 2013), the Committee asked to explain the disparity between the number of fatal accidents indicated in the report, by EUROSTAT and by ILOSTAT. The report does not provide any information. The Committee notes from the information provided to the Governmental Committee (Governmental Committee report concerning Conclusions 2013) that, this difference is due to the different methodology used by the two institutions in terms of the scope of accidents (see the Governmental Committee report for more details). The National Social Insurance Institute provides an external statistical data to the National Statistical Institute (NSI) in terms of the statistics on the accidents at work. It provides statistics on the accidents at work to the Ministry of Labour and Social Policy, directly to Eurostat and to the International Labour Organisation – LABORSTA (ILOSTAT).

The report also indicates that amendments were made to the Social Insurance Code whereby the insurer's obligations under the procedure for the registration and reporting of accidents at work apply also to an enterprise-user when employees are sent thereto for performance of temporary work (Ordinance on the Procedure for Reporting, Registering, Confirming, Appealing against and Accounting Occupational Diseases and Ordinance on the Establishment, Investigation, Registration and Accounting of Labour Accidents).

The Committee considers, on the basis of the provided data, that measures to reduce the excessive rate of fatal accidents are still insufficient. The Committee asks the next report to provide the most frequent causes of accidents at work and the preventive and enforcement activities undertaken to prevent them.

Activities of the Labour Inspectorate

In its previous conclusion (Conclusions 2013), the Committee deferred its conclusion on this point, and asked for information on the new labour inspection system set out in the Act of 19 June 2008. In response, the report indicates that new Organic Rules of GLI EA were adopted by Decree No.83 of 22 April 2008 of the Council of Ministers (SG No.44 of 9 May

2008). The new rules provided a new structure of GLI EA where the number of Labour Inspectorate directorates was decreased from 28 in 2008 to 21 in 2014. The number of the staff in GLI EA is 495 payroll positions. In addition, the aforementioned Organic Rules were repealed by Decree No.2 of 13 January 2014 of the Council of Ministers, effective from 29 January 2014 (SG, No.6 of 21 January 2014). According to the new Organic Rules, the staff number of the Agency was not changed. The new rules again changed the territorial structure of the Agency, as a Labour Inspection directorate general was created for the first time, and comprises 28 Labour Inspection territorial directorates (the number of the directorates was increased). The structure is conformed to the administrative division of the country, and the directorates are positioned in the administrative centres of the regions of the state.

According to the report, the GLI EA performs its activity by exerting complete control over the observance of the labour legislation in all sectors and activities; exerting specialised control over the observance of the Health and Safety at Work Act, the Employment Encouragement Act, the legislation related to the performance of civil service and the rights and obligations of the parties to a civil-service relationship, and of other legal instruments, when a law requires from it to do so; giving information and technical advice to employers and employees about the most effective methods of observance of the labour legislation, of the legislation regulating health and safety at work, and of other legal instruments, the control over which is vested in the Agency by an act. Moreover, the Agency notifies the competent authorities of gaps and defects found in the labour legislation in force.

The report specifies that, according to Article 4 of the Labour Inspection Act (ZIT), labour inspection includes the control over the observance of the labour and social and health insurance legislation and the specialised control under the Health and Safety at Work Act and the Employment Promotion Act. According to Article 5(1), labour inspection shall be carried out either independently or jointly by executive authorities or administrative structures thereof of the specialised administration, which are assigned by a law to carry out the activities covered under Article 4.The Committee takes note of activities which should be directed and coordinated by the Minister of Labour and Social Policy, according to Article 6 of the Labour Inspection Act.

The Committee takes note of the projects implemented by GLI EA in 2013 for the purpose of enhancement of its administrative capacity. The report adds that GLI EA organises and conducts upgrade training activities for labour inspectors, in order to enhance the administrative capacity of the Agency (15 trainings of 436 employees in 2013). In addition, many publications and broadcasts on topics related to the Agency’s activities were produced in national and regional media and a large number of information services for media and citizens were provided.

The report underlines that, according to Article 404 §1(5) of the Labour Code, a coercive administrative measure allows labour inspectors to suspend from work employees who are not acquainted with the health and safety at work regulations or do not have the required training and knowledge. With regard to the application of the coercive administrative measure implying suspension from work of employees who are not acquainted with the health and safety at work regulations, as well as on account of a violation of the provisions of Articles 281-284 of the Labour Code and the provisions of Ordinance No. RD-07-2 of 16 December 2009 on the Conditions and Procedure for the Conduction of Periodical Training and Briefing of Workers and Employees with Respect to the Rules for Provision of Health and Safety at Work, the report indicates that the measure was applied in 27 cases in 2012, 28 in 2013, 31 in 2014 and 34 in 2015.

The report indicates that the number of workers covered by the inspections remains stable, 1,539,744 workers in 2015 and 1,575,447 in 2012.

In its previous conclusion (Conclusions 2013) the Committee also asked for updated information on measures taken and sanctions imposed (number of infringements, types of

measures and notices, numbers and volume of fines, number of suspension of activity, types of notices, number of filing with prosecution authorities) by public authorities. In response, the report indicates that, in 2015 the number of violations established related to health and safety at work remains stable (111,117 in 2012, 101,945 in 2013, 114,135 in 2014, and 111,895 in 2015). The number of penal provisions issued for violations related to health and safety at work decreased from 3,661 in 2012 to 2,393 in 2015. The types of administrative penalties imposed for violations of the labour legislation, including for violation of statutory requirements for health and safety at work are fine – with respect to natural persons (€2,174,452.7 (BGN 1,111,780) in 2012 and €929,723.4 (BGN 475,360 in 2015)), and property sanction – with respect to legal entities and sole proprietors (€34,379,718.6 (BGN 17,578,071) in 2012 and €23,779,880.8 (BGN 12,158,460 in 2015)). The report stresses that the Labour Inspectorate does not have detailed information as to how many of the administrative penalties imposed for violations of health and safety at work are in the form of a fine or a property sanctions.

In its previous conclusion (Conclusions 2013), the Committee also asked for information on any sanctions taken against employers who were found to infringe obligation to provide instruction, training and examination, as required by Articles 281-284 of the Labour Code. The report indicates that in 2015, a total of 18,241 violations concerning briefings and trainings were found in 2015 (17,720 in 2014, 15,847 in 2013, and 16,107 in 2012). Moreover, in 2015, a total of 670 statements of administrative offences were drawn up for established violations concerning briefings and trainings (556 in 2014, 597 in 2013, and 761 in 2012) and 643 penal provisions were issued (550 in 2014, 578 in 2013, and 732 in 2012).

In addition, the report indicates that the number of violations established concerning the sanitary service rose from 1,361 in 2012 to 2,409 in 2015 (Article 282 of the Labour Code, the obligation of the employer to provide conditions for sanitary and medical servicing of workers and employees in accordance with the sanitary norms and requirements).

The Committee takes note of the information provided. However, this information is not sufficient to assess compliance with this part of Article 3§3 of the Charter. The Committee therefore asks that the next report indicate the proportion of workers who are covered by inspections and the percentage of companies which underwent a health and safety inspection in the years covered by the reference period. In the meantime, it reserves its position on this point.

Conclusion

The Committee concludes that the situation in Bulgaria is not in conformity with Article 3§3 of the Charter on the grounds that measures to reduce the number of fatal accidents are inadequate.

Article 3 - Right to safe and healthy working conditions

Paragraph 4 - Occupational health services

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

The Committee previously examined (Conclusions 2013) the gradual introduction of occupational health services. It deferred its conclusion pending receipt of information on measures taken to promote the progressive development of occupational health services within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources; and on strategies geared to provide access to such services for all workers in all sectors of activity and all undertakings. It also considered that if the requested information is not provided in the next report, there would be nothing to establish that the situation in Bulgaria was in conformity with Article 3§4 of the Charter.

The Committee notes that the Republic of Bulgaria ratified the ILO Convention No. 161 on Occupational Health Services (1985) on 1st March 2012. The Committee also notes that, according to the information from the comments raised by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) published in 2016 (105nd ILC session) on Occupational Health Services Convention 161 (1985), the policy for occupational health services is an integral part of the national policy for occupational safety and health (OSH), which is implemented through national OSH programmes developed annually in consultation with the social partners. According to the same source, in the 2014 National OSH Programme, the measures concerning occupational health services included the development of training modules and training for specialists, conducting postgraduate qualification and courses for specialists, developing risk assessment tools and determining the terms and procedures for the mandatory regular medical examinations of factory and office workers.

In its previous conclusion (Conclusions 2013), the Committee asked for the number of occupational physicians in relation to the labour force. The report indicates that, according to data from an analysis conducted in 2015 by the National Center of Public Health and Analyses, a total of 473 labour medicine services are registered in the Republic of Bulgaria by regions, as 196 of them are active also in other regions, in addition to the one they are registered in. The Committee notes that 403 physicians with specialty labour hygiene and 56 physicians without this specialty work in labour medicine services. About 3% of the physicians with specialty labour medicine/labour hygiene have also a second specialty. A total of 576 persons with higher technical education work in labour medicine services; 15% of them are mechanical engineers; there are also electrical engineers, as well as engineers in safety and health at work. The staff of labour medicine services comprise also 557 other specialists, of which 48 nurses, 65 economists, 267 technical specialists, 97 persons with secondary education and 80 specialists with higher education who have a different profile such as chemists, physicists, biologists.

As regards the measures taken with respect to employers who did not secure servicing of the workers by labour medicine services, the report indicates that the number of statements of violation of Article 25 of the Health and Safety at Work Act, which obligates employers to secure servicing by labour medicine services, decreased from 70 in 2012 to 35 in 2015.

In its previous conclusion (Conclusions 2013), the Committee also asked for absolute figures, beyond those based on effected labour inspection visits, on the rate of enterprises which have in-house occupational health and safety services or which share those with other enterprises. The report states that in 2015 the total number of inspected enterprises having secured servicing by labour medicine services was 30,948, which was 80% of the total number of inspected enterprises (compared to 33,435 in 2012). In 290 enterprises servicing was secured on the basis of a prescription issued by the control authorities of the General labour Inspectorate Executive Agency (compared to 467 in 2012).

In reply to the Committee's question relating to the application of the changes in the legal framework, the report states that Decree No.331 on the promulgation in State Gazette of the Act Amending and Supplementing the Health Act (SG No.98 of 14 December 2010) introduces changes in the organisations of medical expert examination and the powers of the regional health inspectorates. Decree No.142 of the Act Amending and Supplementing the Health Act was promulgated in State Gazette (No.41 of 02 June 2009). The amendments to the statute cause changes in the medical expert examination, in the status of the National Expert Medical Board (NEMB), in the powers of regional health inspectorates and Executive Agency "Medical Audit" was created.

In addition, the report indicates that an Ordinance on the Basic Norms of Radiation Protection (SG No.76 of 5 October 2012) was adopted. It contains special provisions concerning an evaluation of the irradiation and medical surveillance. According to this Ordinance, workers exposed to radiation are subject to mandatory medical surveillance in order to establish their health condition and their suitability from a medical standpoint to perform the tasks they are assigned with. The medical surveillance over persons is implemented by healthcare and/or medical establishments. Enterprises and specialised control authorities are bound to submit to healthcare establishments information for the parameters of working environment, conditions of work and the results from the individual monitoring.

According to the report, the main legal instruments regulating the requirements to labour medicine services are the Health and Safety at Work Act and Ordinance No.3 of 25 January 2008 on the Conditions and Procedure for the Performance of the Activity of Labour Medicine Services. There are provisions in the Act Amending and Supplementing the Health and Safety at Work Act of 2007 (SG No.40 of 2007) and Ordinance No.3 of 2008 on the Conditions and Procedure for the Performance of the Activity of Labour Medicine Services, which determine a procedure for registration of labour medicine services, provide for specialised control over their activity and the documentation kept by them. The report adds that specific penalties are set forth for persons registered as providers of labour medicine services,but do not fulfil their obligations under the law.

Conclusion

The Committee concludes that the situation in Bulgaria is in conformity with Article 3§4 of the Charter.

Article 11 - Right to protection of health

Paragraph 1 - Removal of the causes of ill-health

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

Measures to ensure the highest possible standard of health

The Committee notes from WHO that life expectancy at birth in 2015 (average for both sexes) was 74.5 (according to Eurostat, the EU-28 average that same year was 80,6). The average life-expectancy rate in Bulgaria is still low relative to other European countries, around six years shorter than the European Union average.

The death rate (deaths/1,000 population) was 15 in 2015, which is high compared to other European countries.

In its previous conclusion (2013), the Committee asked what measures are being taken to combat the main causes of mortality. The Committee notes from the report that, in 2015, cardiovascular diseases remain the main cause of mortality followed by oncologic diseases. The report indicates that measures were taken to reduce these diseases such as the adoption of the National Program for Prevention of chronic non-communicable diseases for the period 2014-2020, the establishment of 71 structures on invasive cardiology, the modernization of oncologic hospitals infrastructure and annual awareness campaigns. The Committee asks the next report to provide updated information on the measures taken to combat the causes of mortality.

Infant mortality fluctuated marginally during the reference period, from a rate of 7 per 1 000 live births in 2013, to 6.6 in 2015. The Committee notes the decreasing trend in infant mortality, but it nevertheless remains above the rate in other European countries (the EU-28 rate in 2015 was 3.6 per 1,000).

As regards maternal mortality rate, the Committee notes that the rate was 11 per 100,000 live births in 2015. This remains above the rate in other European countries.

The Committee notes in the **2015** European Commission Country Report (https://ec.europa.eu/info/sites/info/files/cr2016_bulgaria_en.pdf) that the Bulgarian healthcare system continues being affected by weak performance. Bulgaria ranks as the worst EU Member State in terms of child mortality (1-14 years), the second worst in perinatal mortality and the fourth worst in terms of amenable (preventable) mortality. Life expectancy and mortality place Bulgaria at one of the lowest positions in the EU. Mortality from circulatory system diseases is the highest among all Member States.

The Committee considers that the prevailing high infant and maternal mortality rates, examined together with the still comparatively low life expectancy rate, show that the situation in Bulgaria is below the average in other European countries, and point to weaknesses in the health system. It therefore finds that insufficient efforts and progress has been made in respect of such indicators.

Access to health care

The Committee notes in the report that the National Health Insurance Fund (NHIF) provides full payment for the dental care to specific social population groups such as persons placed in homes for medical and social services; children placed in specialised schools and homes and detainees. Access to dental assistance for people, living in settlements under unfavorable conditions, was improved due to the NHIF additional payment to the dentists for the activities carried out in these areas. The Committee asks that the next report contain information on dental care services and treatments (such as the costs for the main treatments and the proportion of out-of-pocket paid by the patients).

The Committee also asks that the next report contain information on the availability of mental health care and treatment services, including information on the prevention of mental disorders and recovery measures.

In its previous conclusion (Conclusions 2013), the Committee noted that citizens as well as medical professionals were dissatisfied with the health care system and equity. The Committee invited the Government to submit comments on this matter. The report does not reply to this particular question. In this respect, the Committee notes that the European Commission Country Report Bulgaria 2015 (https://ec.europa.eu/info/sites/info/files/cr2016_bulgaria_en.pdf) points out that the healthcare system faces major challenges, including limited accessibility, low funding, and poor health outcomes. It is estimated that 12% of Bulgarians do not have health coverage. This lack of coverage is unevenly distributed across society. Income inequalities are reflected in access inequalities with the worst-off having the greatest problems in receiving services from the public system. In particular, the lack of health coverage is prominent among the Roma population. Limited access to healthcare is illustrated by the high share of reported unmet medical needs, mainly due to costs. The Bulgarian healthcare system continues to be affected by low funding and its population is insufficiently protected against the financial risk of ill health. Public expenditure on healthcare was 4.52% of GDP in 2013 (well below the EU average). This is particularly striking as regards pharmaceuticals. Public spending on medicines in Bulgaria as a share of overall medicinal spending in the outpatient sector is the lowest in the EU (23.8% in 2013, as compared with an EU average of 58.4%). The publicly underfinanced healthcare system is not able to ensure appropriate access for the whole population. Bribery and informal payments are widespread in the health system, as is an ineffective distribution and use of resources. The Committee asks that the next report provide comments on this report.

The Committee recalls that arrangements for access to care must not lead to unnecessary delays in its provision. It underlines that it will pay particular attention to whether access to treatment is based on transparent criteria, agreed at the national level, taking into account the risk of deterioration, in clinical terms as well as in terms of quality of life (Conclusions XV-2 (2001), United Kingdom). **I**n its previous conclusion (Conclusion 2013), the Committe asked for information about the rules that apply to the management of waiting lists and statistics on average waiting times in health care. The report indicates that by Decree No.58 of the Council of Ministers of 21 March 2015 amendments were adopted to the Ordinance on the Implementation of the Right to Access to Medical Aid. The amendments regulate the conditions and procedure, under which persons insured under health insurance schemes, can use health services paid by the National Health Insurance Fund, which guarantee every person insured under health insurance schemes accessible medical treatment in accordance with the development, severity and acuteness of the respective disease. Further the report indicates that there is no statistical data in Bulgaria about the waiting time for hospitalization. The Committee asks that the next report provide statistical data on the actual average waiting times for primary and specialised care as well as inpatient and outpatient care, including surgeries.

Moreover, the Committee also notes in the European Commission country report that health professionals' emigration is driven mainly by higher remuneration in other Member States but also by the lack of appropriate opportunities for professional development in Bulgaria. Again this is partially caused by low health funding.

The Committee finds that it has not been established that sufficient measures have been taken to ensure access to health care.

In the last examination of Article 11, the Committee adopted a general question addressed to all States on the availability of rehabilitation facilities for drug addicts, and the range of facilities and treatments. In reply the report indicates several residential and non-residential rehabilitation programmes endorsed as a good practice in accordance with Ordinance No.8

of 7 September 2011 on the Conditions and Procedure for Implementation of Programmes for Psychosocial Rehabilitation of Persons who were Addicted or Abused of Narcotic Substances, issued by the Ministry of Health.

Follow-up of collective complaint European Roma Rights Centre (ERRC) v. Bulgaria *(complaint No. 46/2007, decision on the merits of 12 March 2008)*

The Committee concluded that there was a violation of Article 11§§1, 2 and 3 in conjunction with Article E of the Charter on the ground that there was a failure of the authorities to take appropriate measures to address the exclusion, marginalization and environmental hazards which Roma communities were exposed to in Bulgaria, as well as the problems encountered by many Roma in accessing health care services.

The Government indicated in the information registered on 4 December 2014 that there are several measures to improve medical services for socially vulnerable persons, including Roma. First, the information mentions that the activities and priorities set in the Health Strategy for disadvantaged persons who belong to ethnic minorities (2005-2015) are included in section "Healthcare" of the National Roma Integration Strategy 2012-2020 and the Action Plan. In the framework of this Action Plan, the Ministry of Health annually allocated funds for carrying out prophylactic examinations and tests in Roma settlements using the 23 mobile examination rooms provided under the PHARE Programme. During the period 2010-2013, 60,164 examinations and tests have been carried out in such mobile rooms. The examinations are accompanied by lectures and campaigns. Second, the information mentions the figure of health mediators, who are in charge of overcoming the cultural barriers in communication between Roma communities and the medical personnel in various locations. In 2014, there were 150 health mediators. Third, the information states that during the period 2010-2013, 7 National Conferences were organised under the project "Initiative for Health and Vaccine Prohylaxis".

In its 2015 findings, the Committee considered that the situation has not been brought into conformity with the Charter. The Committee will assess the practical implication of the above-mentioned measures on the basis of detailed information and data on the number of Roma living in Bulgaria to be submitted in October 2017.

Conclusion

The Committee concludes that the situation in Bulgaria is not in conformity with Article 11§1 of the Charter on the ground(s) that:

- the measures taken to reduce infant and maternal mortality have been insufficient;
- it has not been established that sufficient measures have been taken to effectively guarantee the right of access to health care.

Article 11 - Right to protection of health

Paragraph 2 - Advisory and educational facilities

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

Education and awareness raising

The report indicates that new and updated programmes have been introduced into the curricula related to health education that covered topics ranging from physical health, mental health to social well-being (healthy food, sexual education, self-knowledge, prevention of alcohol, tobacco and drugs consumption).

The report contains a variety of awareness campaign activities on healthy f; activity and sports; dental health; body hygiene, sexual culture; anti HIV/AIDS campaigns- “Health and Sexual Culture” information campaign; anti smoking etc.

The regional health inspectorates all over the country organised and conducted 1,283 campaigns and education activities on HIV prevention and promotion of sexual and reproductive health. The campaigns and educational initiatives covered 122,237 young people.

Within the “HIV/AIDS Prevention and Control” programme of the Ministry of Health, financed by the Global Fund to Fight AIDS, Tuberculosis and Malaria, different activities were carried out through a created network of 18 youth clubs for peer education, with the assistance of non-governmental organisations working with children and young people at risk.

Counselling and screening

In its previous conclusion (Conclusions 2013) the Committee asked whether children have access to medical checks during the period of schooling, and in the affirmative, what is the frequency of such examinations, their objectives and the proportion of pupils covered.

In reply, the report indicates that pursuant to the requirements of Ordinance No.39 of 2004 on the Prophylactic Examinations and Prophylactic System, prophylactic examinations and tests are aimed at early revealing of diseases. Prophylactic examinations of children are carried out by the general practitioner. When he does not have an acquired specialty in children diseases, prophylactic examinations of children may, at the parent’s or guardian’s request, be made by a physician who has a specialty in children’s diseases from a medical establishment for specialised outpatient care. The Ordinance sets forth for school students (aged 7-18) an annual prophylactic examination aimed at testing and evaluating the condition of development of the juvenile (condition of puberty development) and routine general check of the school students’ health. The examination includes an anamnesis and detailed status; measurement of height, weight, chest measurement; arterial tension measurement, assessment of the physical development; survey of the visual acuity and colour sensation; deviations in the development of the bones and joints; urine protein test. Prophylactic examinations of children accommodated in medical-and-social care homes are carried out by a physician working in the relevant medical establishment. Prophylactic examinations of children accommodated in specialised establishments depending on the Ministry of Education and Science, the Ministry of Labour and Social Policy, the Ministry of Justice and the Ministry of Interior, as well as the social services of a resident type for children are provided by a physician, respectively a dental medicine physician who provides medical service of children. In 2015 the average number of the reported prophylactic examinations of the persons aged from 7 to 18 is 0,85 examinations per child in this age category while the programme requires 1 examination per year. The prophylactic activities under the “Children’s Health Care” programme for children aged from 7 to 18 are carried out by the general practitioner of the child or a specialist – paediatrician.

Moreover, the report indicates that pursuant to the Health Act, consulting rooms are set up in kindergartens, schools and specialised institutions for provision of social services for

children. The activities in consulting rooms are performed by a physician and/or by other medical specialists who keep reporting forms and systematize the information from the dental medicine physician for the process of prophylaxis and treatment with respect to the dental status of children and school students in kindergarten, schools and specialised institutions for provision of social services for children.

The current report confirms that examinations for pregnant women are free-of-charge and regular (under the "healthcare for mothers programme" examinations are carried out from the moment of identifying the pregnancy up to the 42nd week of child-bearing). Women without health insurance also have access to genetic examinations and other check-ups. The Committee asks the next report to provide information on the proportion of women covered. It also asks for information on access to such screenings for women living in rural areas.

As regards preventive screening for the population at large, the report states that prophylactic examinations for diseases which constitute the principal causes of death are available pursuant to Ordinance No. 39 of 2004. The risk factors considered are cardiovascular diseases, diabetes and malignant neoplasms. The scope and frequency of check-ups are established on the basis of age and risk factors. In its previous conclusion, the Committee asked information on specific examples of screening programmes available and the persons which have access to them. In reply the report indicates that a National Screening Centre information system and a notification system under project BG051PO001-5.3.02-0001-C0001 “STOP and have an examination” is adopted, put into operational and in process of maintenance. Information campaigns reached 2,000,000 people through broadcasts in the mass media. 1,000,000 invitations (first and second) were sent for a screening examination to 619 120 people from the target groups. A total of 55,898 screening examinations and tests were made 12,269 of which for large intestine cancer and colon cancer; 10,392 for mammary gland cancer and 33,237 for cervical cancer. Those who have passed a screening test can check their results after registration in the National Screening Centre by using the citizen code written in their invitation. Reporting and payment is made with respect to the screening examinations and tests under the project. With regard to diseases which constitute the principal causes of death, the Committee asks the next report to provide information on the screening coverage rate.

Conclusion

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

Article 11 - Right to protection of health

Paragraph 3 - Prevention of diseases and accidents

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

Healthy environment

The Committee notes that in pursuance with the National Environment and Health Action Programme 2008 – 2013 (NEHAP) measures were taken for improvement of the control and protection of water, air, soil, prevention of the harmful impact of hazardous chemical substances, industrial accidents, noise, enhancement of health and ecological education and participation of the public in the decision-making process, development of ecological infrastructure, etc.

During the reference period, construction of the necessary infrastructure for improvement of Water-Supply and Sewerage Networks continued with the construction of 158 km of water-supply and sewerage network. The share of the population subject to water-supply restrictions on account of shortage of water decreased from 2,9% (2013) to 0,6% (2014). The share of the population connected to urban waste water purification plants increased from 41% in 2005 to 56,8% in 2014. The relative share of the population connected to a public sewerage network increases – from 69% (2005) to 74,9% (2014). A Strategy for the development and management of water-supply and sewerage in the Republic of Bulgaria for the period 2014-2023 was developed and adopted in 2014.

With regard to air quality, in the period 2012-2015 legislative changes were made to the Ambient Air Purity Act and secondary legislation instruments with regard to application of measures for gradual limitation of issues of harmful substances (sulphur and nitrogen oxides, dust, heavy metals, volatile organic compounds, etc.) from immovable sources.

The Committee wishes to receive updated information on the levels of air pollution, contamination of drinking water and food intoxication during the reference period, namely whether trends in such levels increased or decreased. It also asks for information on the noise pollution, waste management, risks related to asbestos.

Tobacco, alcohol and drugs

The report indicates that there are several national programmes in place (involving both the authorities and NGO's) to reduce smoking, alcohol and drug consumption.

As regards tobacco, pursuant to section 56 of the Health Act smoking is banned in indoor public places, as well as in workplaces and a number of specified outdoor locations (for example, close to nurseries, schools or sport sites). Some limited exceptions permit smoking in special facilities in public places, but persons under 18 are not allowed access to these. Despite tobacco control measures and programmes, smoking remains very popular in the country and according to the report increased during the reference period. According to data of the National Statistical Institute, presented in 2014, 40% of men and 20% of women in Bulgaria are smokers. Occasional smokers are only 10%, while non-smokers are 50% of men and 70% of women. Data show that the most active smokers are men aged between 25 and 44 years – over 55% of the Bulgarian active smokers. The most active female smokers are women also aged between 25 and 44 years, and the least active smokers are women over 65 years – only 2%. In Bulgaria, cigarette smoking accounts for the death of 1000 in 100,000 people.

Concerning alcohol policy, the Committee notes from WHO that the national legal minimum age for both on-premise (as well as off-premise) sale of alcoholic beverages is 18 years. Regulations on advertsing and product placement are also in place. As regards trends, the report mentions the results of a survey on risk factors among the 25-64 age group, carried out by the National Center for Public Health, which shows that 23.2% of the population drink

alcohol regularly. The Committees asks that the next report provide information on trends in alcohol.

The report does not provide information on illicit drug abuse. As regards the consumption of illicit drugs, the Committee wishes to receive updated information on legislation on the use of drugs as well as trends in consumption.

Immunisation and epidemiological monitoring

The report reiterates that mandatory vaccination against 11 infectious diseases is available. In the previous conclusion, the Committee noted that the coverage immunisation rate was high, around 95%. Maintaining high immununisation rates continues being a health priority according to the report. The Committee wishes to receive updated information in this regard.

Accidents

The report indicates that a National Strategy for the improvement of road traffic safety for the period 2011-2020 was adopted in December 2011. The main goal is to reduce by 50% the number of persons deceased and injured in road accidents by 2020. Detailed statistical information on road accidents is provided: a decrease in the number of accidents was recorded during the reference period, but figures were still high in 2015, with 7 225 severe road accidents, in which 708 persons died and 8 971 persons were injured (of which 6 676 lightly and 2 295 severely). However the current report provides numerous information on measures taken to prevent road accidents. During the period under review (2011–2015) a number of measures and key campaigns were implemented for the prevention not only of road accidents, but also of domestic accidents and free time injuries, some of which are particularly common among specific vulnerable population groups.

The “Informed and Healthy” project, implemented by the Ministry of Health with financial support from the European Social Fund, incorporated targeted campaigns aimed at preventing domestic accidents. The project “Be aware of the risks, in order to avoid them!” united events in 19 cities throughout the country, aimed at raising the awareness of the population regarding the most common threats and the proper ways to prevent and respond to accidental or deliberate domestic accidents.

The Committee recalls that states must take steps to prevent accidents. The main types of accidents covered are road accidents, domestic accidents, accidents at school and accidents during leisure time (Conclusions 2005, Republic of Moldova). The Committee asks to be provided with information on the other types of accidents, including domestic accidents, accidents at school and accidents during leisure time.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Bulgaria is in conformity with Article 11§3 of the Charter.

Article 12 - Right to social security

Paragraph 1 - Existence of a social security system

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

In the case of **family** and **maternity benefits**, the Committee refers to its conclusions on, respectively, articles 16 and 8§1 (Conclusions 2011).

Risks covered, financing of benefits and personal coverage

The Committee refers to its previous conclusions (Conclusions 2004, 2006, 2009 and 2013) for a description of the Bulgarian social security system and notes from the report that the Social Security Code covers eight out of nine contingencies under ILO Convention No. 102 (sickness, invalidity, maternity, family, work accidents and occupational diseases, old age, death, unemployment) and is based on collective financing, as it is funded by contributions (employers, employees and the state) and also by the State budget. As regards healthcare and medical assistance, the report indicates that this contingency is covered by the National Health Insurance Fund and the Ministry of Health.

According to the report, all Bulgarian nationals, long-term residents and refugees are entitled to medical care, as well as foreign students and nationals of EU States legally residing and working in Bulgaria. In response to the Committee's question, the report indicates that, as of end 2015, the number of compulsorily insured persons in the National Health Insurance Fund was 6 355 184 out of a total population of 7 177 991, that is 88.5%. The report indicates however that 1 950 331 persons had suspended health insurance rights (Bulgarian nationals temporarily covered by another EU state's health insurance scheme, foreign nationals who reside abroad for more than 183 days in a year or have not registered for health insurance); the Committee asks the next report to clarify whether the number of persons with suspended health insurance rights is included in the total number of insured or not. It furthermore notes that according to the EU Commission country report 2016 for Bulgaria "it is estimated that 12% of Bulgarians (who do not permanently live abroad) do not have health coverage" and that "in particular, the lack of health coverage is prominent among the Roma population". The Committee asks the next report to provide clarifications on this point as well as updated information on the percentage of the total population covered by health insurance.

Out of an economically active population of 3 276 000 people, those insured under the "Unemployment Fund" were reportedly 2 462 520 in 2015 (75% of the economically active population). As regards the other social security branches, the Committee notes from the report that, as of 2015, all employees (including those who are employed for up to five working days or 40 hours within a calendar month, previously excluded – see also Conclusions on Article 12§3) are compulsorily insured against all the risks covered. The same applies to certain special occupational categories such as civil servants, judges, managers, soldiers, priests etc. Self-employed workers (registered freelance professionals and craftsmen, sole entrepreneurs, owners or partners in commercial companies, registered farmers, working pensioners) are compulsorily insured only against invalidity, old age and death. They may furthermore get voluntary insurance against sickness, but not for work accidents and occupational diseases or unemployment. In the light of this information, the Committee understands from the report that, in 2015, 84.1% (2 755 906 persons) of the economically active population were on average insured against invalidity, old age and death, including 74.7% (2 477 588 persons) of the active population insured against all risks. It asks the next report to clarify whether this interpretation is correct and whether these data include people insured both under the compulsory and the voluntary schemes. While noting that most categories of workers are compulsorily insured, and that therefore a significant percentage of the active population is presumably covered as regards income-replacement benefits, the Committee reiterates nevertheless its request for more detailed data in the next report, concerning the respective number of insured people for each risk.

Adequacy of the benefits

According to Eurostat data, the median equivalised annual income was €3 332 in 2015, or €278 per month. The poverty level, defined as 50% of the median equivalised income, was €1 666 per annum, or €139 per month.40% of the median equivalised income corresponded to €111 monthly.

In its previous conclusion (Conclusions 2013), the Committee held that the situation in Bulgaria was not in conformity with Article 12§1 of the Charter on the ground that the minimum levels of pension benefit and of unemployment benefit were inadequate.

The Committee notes from the report that, as regards **old-age** benefits, the Public pension insurance (First Pillar) covers all employees and self-employed and functions as a standard pay-as-you-go insurance scheme. In addition, a supplementary compulsory pension insurance based on contributions (Second Pillar) applies, under the Universal Pension Fund, to persons born after 31/12/1959 or, under the Professional Pension Fund, to those working under hard labour conditions (see also Conclusions 2017 in respect of Article 12§3). Furthermore, a non contributory social pension for old age applies to persons aged at least 70 who do not qualify for contributory old-age pensions (see Conclusions 2017 in respect of Article 13§1). As the supplementary pension under the Second Pillar does not apply in all cases, and does not provide for a minimum amount, the Committee takes into account only the Public insurance (First Pillar), and notes that according to the report its minimum monthly amount was, at the end of 2015, BGN 157.44 (€80). As this amount falls largely below the poverty level, the Committee holds that it is manifestly inadequate.

As regards **sickness benefits**, the Committee refers to its previous Conclusion (Conclusions 2013), where it noted that, in order to be entitled to benefits, a person must have been insured at least 6 months and that the benefits are paid until recovery of the working capacity or the establishment of invalidity. The daily cash benefit is 80% of the average daily gross earnings or the average daily contributory income on which contributions have been paid during the 18 months before the incapacity for work occurred, but no more than the average daily net remuneration for the period on the basis of which the benefit is calculated. According to the report, the average daily cash benefit was BGN 25.47 in 2015 (i.e. BGN 764.10 for 30 days, i.e. € 389). If instead of the average daily net remuneration the level of minimum wage is taken into account, which was BGN 380 (€194) in 2015, then the minimum level of sickness benefits would rather correspond to €155. The Committee considers that the situation is in conformity with the Charter on this point.

Those who have been insured for at least 9 months during the last 15 months are entitled to **unemployment benefits**, and the benefits are paid for a maximum of 4 months for an insurance period of up to 3 years, and up to 12 months for an insurance period of over 25 years. The Committee previously noted (Conclusions 2006, 2009) that the unemployment benefits could be withdrawn if the beneficiary unjustifiably refused a job offer or an activation measure, and that such decision may be appealed before the director of the unit, whose decision in turn may be appealed before the administrative court of first and second instance. It furthermore noted (Conclusions 2016 concerning Article 1§2) that, during the first 18 months of registration as unemployed, “suitable work” is defined as any work which is compatible with the person’s education, qualifications and state of health and is located nearby or no more than 30 km away provided that there is appropriate public transport; after this period, “suitable work” is any work that is compatible with the person’s state of health and satisfies the above proximity requirements. The amount of the benefits corresponds to 60% of the average daily contributory income for the last 24 months preceding the termination of the insurance, but the minimum amount, which the Committee previously considered to be manifestly inadequate (Conclusions 2013), has not been modified during the reference period. Such minimum amount, which is paid to persons whose labour contract has been terminated by their own accord or by summary dismissal, has thus remained set at

BGN 7.20 (€3.68, i.e., for an average number of 21 working days in a month, €77 monthly). Accordingly, the situation remains not in conformity in this respect.

As regards **labour accidents and occupational diseases**, the benefits amount to 90% of the average daily gross remuneration or the average daily contributory income on which insurance contributions have been paid during the 18 months before the incapacity for work occurred. On the basis of the level of minimum wage, the minimum monthly level would be, for 2015, BGN 342 (€174), which is in conformity with the Charter.

The minimum amount of **invalidity benefits**, for a person with reduced working capacity/ degree of disability over 90% was, in 2015, BGN 181.06 (€93), that is 115% of the minimum amount of the contributory old-age pension. The report also refers to non-contributory benefits such as the civil disability pension and the social disability pension. For a person with permanent reduced working capacity/ degree of disability over 90%, the minimum amounts correspond respectively to 150% and 120% of the minimum social old age pension, that is, for 2015 respectively BGN 172.73 (€88) for the civil disability pension and BGN 138.18 (€70) for the social disability pension. The Committee notes that all these amounts fall largely below the poverty level. The situation is therefore not in accordance with the Charter on this point.

Conclusion

The Committee concludes that the situation in Bulgaria is not in conformity with Article 12§1 of the Charter on the grounds that:

- the minimum level of contributory old age benefits is inadequate;
- the minimum level of unemployment benefits is inadequate;
- the minimum level of invalidity (contributory and non contributory) benefits is inadequate;

Article 12 - Right to social security

Paragraph 3 - Development of the social security system

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

It notes the changes to the legislation during the reference period, as detailed in the report, and refers to its previous conclusions, as well as to its conclusions under Article 12§1, for a description of the Bulgarian social security system. The Committee also notes that during the reference period changes were introduced with regard to maternity and family benefits. Since Bulgaria has ratified Articles 8§1 and 16 of the Charter, the Committee will assess the scope and impact of such changes when it next examines compliance with these articles.

As regards other branches of social security, the report mentions, in particular, the following improvements:

- the personal scope of mandatory insurance for general sickness and maternity, disability on account of a general sickness, old age and death, labour accident and occupational disease and unemployment has been extended to workers and employees hired for up to 5 working days (40 hours) over the calendar month and persons entrusted with the management and / or control of state and municipal enterprises under Chapter Nine of the Commercial Code, their subsidiaries or other legal entities established by law (in 2015); as well as to other categories of workers (candidate junior judges and junior prosecutors in 2012, persons under the Special Surveillance Means Act in 2013);
- the personal scope of insurance for invalidity on account of a general sickness, old age and death and for general sickness and maternity has also been extended, in 2012, to spouses of self-employed persons, craftsmen and farmers (as voluntary insurance);
- the personal scope of insurance for invalidity on account of a general sickness, old age and death and for labour accident and occupational disease has been extended in 2015 to seasonal agriculture employees;
- all labour (contributory) pensions have been increased (for the Public pension insurance, the increase was around 8% during the reference period), to compensate the inflation and an indexation rule (so called "Swiss rule") has been set and applied as from 2014;
- the social pension for old age was also increased (by some 14% during the reference period), as well as the benefits based on the level of the social pension (labour accident benefit, invalidity pension and survivor’s pension).

The report furthermore refers to improvements made to some non-contributory pensions (military disability pension, civil disability pension, social pension for old age, social disability pension and other social assistance pensions).

Other measures are mentioned in the report whose impact in terms of personal coverage and benefits’ levels does not appear to be clear at this stage. The Committee notes in particular the adoption, on 28 July 2015, of a major pension reform (Law amending and supplementing the Social Insurance Code (LASSIC), SG, No. 61 / 11.08.2015). According to the report, the reform aims at ensuring financial stability of the pension system and improving the adequacy of pensions, and in particular at:

- Increasing the revenues of the social insurance system through the increase of the social insurance contribution for the Pensions Fund;
- Optimising the costs of the social insurance system by setting stricter and fairer conditions for access to pensions for all groups of socially insured persons – the amendments notably provide for the equalisation on the long term of retirement age for men and women and the progressive increase of pensionable age and required contributory service; for the possibility to grant reduced rate pensions to persons who do not have the required contributory service or in case of early retirement; for the setting of a pensionable age for workers in the Defence and

Security sector, dancers, teachers, workers employed in heavy and arduous professions (as from 2016) and its progressive increase;

- Improving the adequacy of pensions, by gradually increasing (as from 2017) by 1.5% the weight of one year of contributory service when calculating the pension amount (newly granted pensions as well as pensions already granted which will be recalculated). This will also affect the coefficients used for the common disease disability pensions, employment-injury and occupational-disease disability pensions;
- Developing and improving the three-pillar pension model by introducing the possibility, as from 2015, for persons born after 31 December 1959 to choose whether to insure for additional pension in a Universal Pension Fund (UPF) or only for lifelong pension in the public social insurance system and, upon certain conditions, to change this choice. It is explained in the report that those insured in a universal pension fund are entitled, in addition to the normal old-age pension granted on the basis of the contributory-service period and age requirements, to a supplementary old-age pension (including in case of early retirement) and to a lump-sum payment in case of permanent invalidity by more than 89,99% or in favour of the survivors in case of death. The amount of pensions granted from a universal pension fund is determined on a capital-based principle, i.e. on the basis of the amount accrued in the individual account from the contributions made and from the return on the investment of the said contributions, reduced by the fees and deductions provided for in the Code, and depending on the life expectancy after retirement. The report furthermore points out that since 2012 the weight of years of insured period acquired after the attainment of the pensionable age was increased for the persons who postpone their retirement, although their insured period exceeds the one required for acquiring a pension. The increase refers only to those who have an actual insured period acquired after 31 December 2011.

The Committee notes from the report that, in the framework of the pension system reform, a new cumulative condition for acquiring the right to a pension (instead of the previous point-based system) has been set; that the contributory period and the pensionable age are being gradually increased between 2011 and 2020 (although the raise was suspended during the reference period) and further increases are expected by 2037; and that specific changes have been made as regards the pensionable age and insurance period requirements for staff from specialised departments (military officers, police officers, investigators, etc.) and teachers. As most of these changes have been adopted towards the end of the reference period, the Committee asks the next report to provide information on the implementation of the reforms and their impact.

Conclusion

The Committee concludes that the situation in Bulgaria is in conformity with Article 12§3 of the Charter.

Article 13 - Right to social and medical assistance

Paragraph 1 - Adequate assistance for every person in need

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

Types of benefits and eligibility criteria

The Committee notes from the report that the assistance programme is implemented on the legal grounds of Article 9 of the Rules for implementing the Social Assistance Act. The scope of the programme covers the persons and families who meet the legally determined conditions and requirements concerning the income, property and health situation, the marital status, age, study and work load, and others. The conditions and requirements are in accordance with the provisions of the Social Assistance Act and the Rules for implementing it.

In its previous conclusion (Conclusion 2013) the Committee found that the situation was not in conformity with the Charter on the ground that persons registered with the Employment Office Directorates were not entitled to social assistance before a minimum period of six months.

The Committee notes in this respect from the report of the Governmental Committee (GC(2014)21) and the national report that in case of reasonable grounds for support, the Social Assistance Act and its Rules for Implementation provide for a one-time assistance for the person concerned in the amount of up to five times the Guaranteed Minimum Income (GMI). Thus, in practice, the six-month regular registration at the Labour Office does not mean that during this period, the person is limited in his/her right to receive social support from the State. Therefore, according to the report, persons concerned are not fully deprived of monthly social assistance, if the statutory conditions and requirements are met.

The Committee further notes from MISSOC that for the period from the date of registration with the Employment Office Directorate until the 6th month of the registration no differentiated minimum income will be determined for the unemployed person. In case an unemployed member of the family does not have a registration with the Employment Office Directorate, the monthly social assistance allowances will be granted only after a detailed social evaluation of the actual family situation. The Committee considers that there has been no change to the situation which it has previously found not to be in conformity with the Charter. The Committee reiterates its previous finding of non-conformity on the ground that persons registered with the Employment Office Directorates are not entitled to social assistance before a minimum period of six months.

As regards medical assistance, in its assessment of the follow-up given in 2015 to the Complaint No 46/2007 European Rome Rights Centre (ERRC) v. Bulgaria, decision on the merits of 3 December 2008, the Committee considered that it was still not established that people not receiving social assistance are entitled to medical assistance, other than emergency care, obstetrical care and hospital treatment. The Committee will assess the practical impact of the measures taken in this regard as well as and whether similar measures are envisaged for other vulnerable groups, on the occasion of the information on the follow-up given to decisions that will be submitted in October 2017.

Level of benefits

To assess the situation during the reference period, the Committee takes note of the following information:

- Basic benefit: the Committee notes from MISSOC that the amount of the monthly social assistance allowance is equal to the difference between the differentiated minimum income and the income of the person concerned. The differentiated minimum income is determined as a percentage of the Guaranteed Minimum Income (GMI) which stood at BGN 65 (€ 33) per month during the reference

period. A person under 65 years of age, living alone received 73% of the GMI, i.e. € 24. A person over 65 years of age living alone received 140% (€ 46), while a person over the age of 75 living alone received 165% of the GMI (€ 54) per month.

- Additional benefits: the Committee takes note of the special-purpose heating allowance and the conditions for granting it. The Committee notes that the conditions are in line with those for social assistance itself. It further notes that in case of unemployed persons, the condition of having been registered at the Employment Office at least six months prior to applying for assistance also holds. The assistance is for the respective heating season and the amount is determined by the Order of the Minister of Labour and Social Policy, on the basis of electricity prices for a household consumer. The Committee notes from MISSOC that the differentiated minimum income for heating is determined as a percentage of the GMI and varies from 167% to 311% according to the category of persons in the same way as the differentiated minimum income for monthly social assistance allowances. The Committee further takes note of one-time allowance which is paid in an incidentally critical situation, as regards vital needs related to health, education, living conditions and others. The amount is determined in accordance to the specific circumstances in the amount up to 5 times the amount of GMI. The report further indicates other types of additional benefits, such as the special-purpose allowance for paying municipal housing rent, one-time allowance for the issue of an identity card.
- Poverty threshold (defined as 50% of median equivalised income and calculated on the basis of the Eurostat at-risk-of-poverty threshold value): it was estimated at € 139 in 2015.

The Committee notes from the report that social assistance is designed to satisfy the main vital needs, in accordance with the socio-economic development of the country. The social support system is sufficiently flexible and mobile and depending on the available financial resources in accordance with the budgetary possibilities can ensure a wider scope as well as higher amounts of the allowances.

The guaranteed minimum income (GMI) is a legally determined amount used as the basis for determining the levels of social allowances in order to ensure a minimum income to cover the persons' basic vital needs according to their age, marital status, health and property status, work and study load. This is done via a system of correcting percentages going up to 165% in accordance with the criteria defined in this way. The GMI value serves for determining the amount of social allowances under the Social Assistance Act.

According to the report, the persons receiving monthly social allowances and special-purpose heating allowances in accordance with the Social Assistance Act, if not insured on other grounds, receive health insurance at the expense of the state budget.

The Committee takes note of the example provided by the report concerning of a person over 75 years of age, living alone, who, with a correcting percentage of 165% receives a monthly allowance of 107,25 BGN (€54). In addition, during the heating season this person receives a monthly special-purpose heating allowance of BGN 72,20 (€38) at the current level of electricity prices.

The Committee recalls that under Article 13§1 it only considers the situation of a single person without resources. Therefore, it does not take into account the examples of families with children. The Committee notes that in the above examples of a single person over 75 years of age, the total amount of assistance, including the differentiated minimum income and heating allowance, would be around € 92. A person under 65 years of age, living alone receives 73% of the differentiated income, i.e. € 24. Even considering that such person receives the same amount in heating allowances, the total amount will still be much below

the 50% of median equivalised income in all cases illustrated in the report. The same is true for a person over 75 years of age.

The Committee, therefore, considers that the level of social assistance is not adequate on the basis that the total amount of assistance that can be obtained by a person without resources, including elderly persons, is not compatible with the poverty threshold.

The Committee takes notes of the statistics provided by the Agency for Social Assistance concerning the numbers of persons in receipt of monthly allowances and the total amounts spent in allowances.

Right of appeal and legal aid

The Committee asks the next report to provide updated information regarding right of appeal and legal aid.

Personal scope

The Committee recalls that, under Article 13§1, States are under the obligation to provide adequate medical and social assistance to all persons in need, both their own nationals as well as nationals of States Parties lawfully resident within their territory, on an equal footing. In addition, with reference to its Statement of Interpretation of Articles 13§1 and 13§4 (Conclusions 2013) regarding the scope of Articles 13§1 and 13§4 in terms of persons covered, the Committee considers that persons in an irregular situation in the territory of the State concerned are also covered under Article 13§1, rather than under Article 13§4, which was previously its practice.

The Committee henceforth examines whether the States who have accepted Article 13§1 ensure the right to:

- adequate social and medical assistance for their own nationals and for nationals of other States Parties lawfully resident within their territory on an equal footing;
- emergency social and medical assistance to persons unlawfully present in their territory.

Nationals of States Parties lawfully resident in the territory

In its previous conclusion the Committee asked whether foreign nationals, lawfully resident could be repatriated on the sole ground that they are in need.

According to the report foreign nationals holding a permanent residence permit have the same rights to social assistance and the provision of social services as Bulgarian citizens.

The Committee notes from another source (https://www.angloinfo.com/how-to/bulgaria/moving/residency/residence-permits) that there are two types of residence permit issued to foreigners moving to Bulgaria: long-Term Residence Permit, issued for one year to non-EU citizens and for five years to EU citizens and Permanent Residence Permit, issued for an indefinite period of time by the National Migration Directorate and its local branches.

The Committee notes from the report that foreign nationals will only be entitled to social assistance after having obtained permanent residence, which may be issued for an indefinite period of time after five years of uninterrupted residency in Bulgaria. This entitles the person to the same rights as Bulgarian citizens.

The Committee thus understands only foreigners with permanent residence permit can be entitled to social assistance, which, in turn, requires five years of prior residence. The Committee asks whether this understanding is correct that reserves its position on this issue.

Foreign nationals unlawfully present in the territory

The Committee recalls that persons in an irregular situation must have a legally recognised right to the satisfaction of basic human material need (food, clothing, shelter) in situations of emergency to cope with an urgent and serious state of need (including medical condition). It likewise is for the States to ensure that this right is made effective also in practice (European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, §187). The Committee asks the next report to confirm that the legislation and practice comply with these requirements.

Conclusion

The Committee concludes that the situation in Bulgaria is not in conformity with Article 13§1 of the Charter on the grounds that:

- persons registered with the Employment Office Directorates are not entitled to social assistance before a minimum period of six months;
- the level of social assistance paid for a person without resources, including the elderly, is inadequate.

Article 13 - Right to social and medical assistance

Paragraph 2 - Non-discrimination in the exercise of social and political rights

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

According to the report, Article 3 of the Social Assistance Act prohibits direct or indirect discrimination in the exercise of the right to social assistance and social services. As regards the Committee's question in its previous conclusion concerning cases in which the beneficiaries of social assistance have suffered discrimination in the exercise of social and political rights, the report states that the Ministry of Labour and Social Policy has not been summoned in the capacity of an interested party to cases initiated by the Commission for Protection against Discrimination, in relation to the grounds in article 4, paragraph 1 of the Anti-Discrimination Act. Furthermore, no complaints or signals for discriminatory practices have been submitted to the Ministry by beneficiaries of assistance.

Conclusion

The Committee concludes that the situation in Bulgaria is in conformity with Article 13§2 of the Charter.

Article 13 - Right to social and medical assistance

Paragraph 3 - Prevention, abolition or alleviation of need

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

In its previous conclusion (Conclusions 2013) the Committee asked whether social services for persons without resources were provided free of charge. It notes in this respect that one of the functions of the Social Assistance directorates at the Agency for Social Assistance is to provide information and advice to natural persons as regards their rights to social and family assistance. The persons concerned receive advice free of charge. The advice of the National Health Insurance Fund is also free of charge.

Conclusion

The Committee concludes that the situation in Bulgaria is in conformity with Article 13§3 of the Charter.

Article 14 - Right to benefit from social welfare services

Paragraph 1 - Promotion or provision of social services

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

Organisation of the social services

The report indicates that the Government adopted two strategic documents for de-institutionalization of children and adults: in 2010 the National Strategy "A Vision for De-institutionalization of Children in the Republic of Bulgaria" was adopted along with an Action Plan for its implementation; in 2014 the National Strategy for Long-term Care was adopted, concerning the de-institutionalization of care for persons of legal age. The adoption of an Action Plan for its implementation is forthcoming. The Committee notes that the information provided concerns only childcare services and the measures are adopted outside the reference period, whereas the overall description of the social welfare services' system in the country during the reference period is missing. The Committee asks to be informed on the organisation of social services for all categories of people concerned by Article 14§1.

The Committee recalls that Article 14§1 guarantees the right to general social welfare services. The right to benefit from social welfare services must potentially apply to the whole population, which distinguishes the right guaranteed by Article 14 from "the various articles of the Charter which require States Parties to provide social welfare services with a narrowly specialised objective". The provision of social welfare services concerns everybody who finds him- or herself in a situation of dependency, in particular vulnerable groups or individuals. Social services must therefore be available to all categories of the population who are likely to need them. The Committee has identified the following groups: children, the elderly, people with disabilities, young people in difficulty and young offenders, minorities (migrants, Roma, refugees, etc.), the homeless, alcoholics and drug addicts and former detainees.

The list is not exhaustive as the right to social welfare services must be open to all individuals and groups in the community. The other provisions of the Charter dealing with social services for specific target groups, including those falling within the scope of Article 13§3, concern – as noted above – services "with a narrowly specialised objective". When these various provisions have not been accepted by a State Party the situation is examined with regard to social services for the specific target groups concerned under Article 14. (Conclusions 2009, Statement of Interpretation on Article 14§1).

Effective and equal access

The report indicates that pursuant to the Social Assistance Act people entitled to social services are: Bulgarian citizens, families and cohabitants as well as foreign nationals with a long-term or permanent residence permit in the Republic of Bulgaria, foreign nationals who have been granted asylum, persons with refugee status or under humanitarian protection and persons for whom there are provisions to that effect in an international agreement to which the Republic of Bulgaria is a party. When social services are provided, direct or indirect discrimination is prohibited on all grounds laid down in a law or an international agreement to which the Republic of Bulgaria is a party.

In its previous conclusion (Conclusions 2013), the Committee asked that the next report provide information on whether "the temporary residents", i.e. foreign nationals who are residing lawfully and working regularly on the territory of the country and who are not permanent residents, have the same access to social services as Bulgarian citizens. With regard to the Committee's request, the report indicates that following the amendment to the Asylum and Refugees Act, in force since 16 October 2015, article 11 of the Act has been repealed (i.e. the legislation does not contain any longer the term "temporary protection"). According to the report there are no limitations as regards the access of refugees and persons enjoying humanitarian protection to social services under the regulations of article

36, paragraph 2 of the Rules for implementing the Social Assistance Act, as they have equal rights as Bulgarian citizens.

The Committee notes that the report, despite his long description, does not answer to its question and reiterates its request that the next report provide information on whether “the temporary residents”, i.e. foreign nationals who are residing lawfully and working regularly on the territory of the country and who are not permanent residents, have the same access to social services as Bulgarian citizens. If such information is not provided there will be nothing to establish that the situation is in conformity with the Charter.

Quality of services

In Conclusions 2015, the Committee took note of the detailed statistics from the Social Assistance Agency according to which the total number of staff employed in social services was 12,208 in 2008 and increased to 13,234 in 2011. The Committee requested clarification as to the distribution of staff between the state and the municipal level and it asked estimates (or examples) of the number of staff providing social services as part of municipal activity and or as private providers.

The Committee recalls that under Article 14§1 the right to social services must be guaranteed in law and in practice. Social services must have resources matching their responsibilities and the changing needs of users. This implies that: – staff shall be qualified and in sufficient numbers; – decision–making shall be as close to users as possible; – there must be mechanisms for supervising the adequacy of services, public as well as private (Conclusions 2005, Bulgaria).

The report indicates that as of 31 May 2016 a total of 1.266 state-delegated-activity social services are in place. Among them, 1.077 are social services within the community and 189 are specialised institutions for childcare. The report underlines that the minimum number of personnel working in state-delegated-activity social services is determined by the Procedure on the number of personnel at specialised institutions and social services within the community, approved by the Minister of Labour and Social Policy. The number of the personnel is dependent on the type of social service. Each social service provider may hire more personnel depending on the users’ needs. The number of personnel is determined by multiplying the number of places per a coefficient of the respective social service.

The Committee notes that no answer is provided to its questions in the current report, in particular, the report does not contain the updated figures on the distribution of staff between the state and the municipal level or the estimates (or examples) of the number of staff involved in social services provision as part of municipal activity and with private providers, as well as on the staff qualification. The Committee therefore considers that the situation in Bulgaria remains not in conformity with Article 14§1 of the Charter.

The Committee recalls that under Article 14§1 it reviews, inter alia, the rules governing the eligibility conditions to benefit from the right to social welfare services (effective and equal access) and the quality and supervision of the social service (Statement of Interpretation on Article 14§1,Conclusions 2009). In this respect the Committee asks what kind of mechanisms exist to monitor and supervise the adequacy of social services, public as well as private. The Committee also asks whether there is any legislation on personal data protection.

Conclusion

The Committee concludes that the situation in Bulgaria is not in conformity with Article 14§1 of the Charter, on the ground that it has not been established that the number of social services staff is adequate and has the necessary qualification to match user’s needs.

Article 14 - Right to benefit from social welfare services

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

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

The Committee recalls that Article 14§2 requires States Parties to provide support for voluntary associations seeking to establish social welfare services.

In its previous conclusion (Conclusions 2013) the Committee asked that the next report present statistical data on the subsidies paid by the government and local authorities to voluntary organisations providing social services. The Committee also required that the next report describes all other kinds of incentives which are in place for the voluntary organisations, such as tax concessions.

The Committee also asked to be informed whether and how the government guarantees that the services managed by the private sector are effective and are accessible under equal conditions to everyone, without discrimination, at least on the basis of race, ethnicity, religion, disability, age, sexual orientation and political beliefs.

The report provides information on criteria for registration in the Register of social service providers, kept by the Agency for Social Assistance. In 2016 changes were introduced in the Social Assistance Act, in particular the procedure for registration and submitting information to the register by the social service providers was facilitated and a requirement was introduced that all information already available by another institution will be automatically exchanged. The Committee notes that the report provides information outside the reference period and asks that the next report provides updated information and developments following changes introduced in the Social Assistance Act.

The report underlines that the mechanism for financing of state-delegated-activity social services in Bulgaria is not related to payment of subsidies. The funding for state-delegated-activity social services comes from the state budget via the municipalities budget in accordance with the State Budget Act of the Republic of Bulgaria for the respective budget year. It should be noted that the social services are decentralised and managed by the municipalities who are responsible for the allocation of the funds in the sector. In view of encouraging private entrepreneurship in the social sphere and establishing partnership with the NGO sector, the mayor of a municipality may assign the management of a social service to an external provider via a competitive procedure in accordance with the Rules for implementing the Social Assistance Act. The assignment is based on a competitive selection observing the principles of non-discrimination and equal treatment of all participants.

In reply to the question on the amount of subsidies paid by the state to voluntary organisations providing social services, the report indicates that the annually allotted state-budget resources for providing social services are significant and there was a constant increase in the reference period, the state budget for social services in 2014 was 183.205.800 BGN, in 2015 – was 189.803.600 BGN. The report indicates that, due to the fact that the municipalities are responsible for the allocation of state budget resources to private social service providers, no data is available. In this respect the Committee reiterates its requests the next report to provide the geographical distribution in different municipalities of the state budget resources devoted to voluntary organisations providing social services and describe all other kinds of incentives which are in place for the voluntary organisations, such as tax concessions.

In reply to the request on efficiency and effectiveness of the social services managed by the private sector, the report indicates that over the past years a range of legislative changes were introduced in the social services sector, aiming at improving the accessibility, the quality and the effectiveness of social services, as well as better satisfaction of their users' needs. These changes concern all social services providers including the private sector. In 2015, changes were enforced in the Rules for implementing the Social Assistance Act, introducing a differentiating criterion for the placement of users with various needs in the

social services within the community. The change was also with regard to the application of a differentiated approach when defining the standards for financing of state-delegated-activity social services through the municipal budgets. Moreover, in 2016, changes were introduced in the Social Assistance Act to improve access and higher effectiveness of the social services. These changes further ensured the application of an individual approach aiming to guarantee users' rights – via the introduction of an individual assessment and an individual support plan by a multidisciplinary team, avoiding permanent institutionalization of vulnerable persons and fostering their participation in the process of guidance and providing the service. The Committee notes that the report provides information outside the reference period and asks that the next report provides updated information and developments following changes introduced in the Social Assistance Act to improve access and higher effectiveness of the social services.

The report indicates that the government, in view of the increasing important role of social services in the national context, also in relation with different needs of persons with disabilities, is undertaking an integral reform in the social sector with the elaboration of a new draft of the Social Services Act aiming to improve the planning, funding, quality, monitoring of and control of social services. In this respect, the Committee asks to know in the next report on the follow up to the reform, undertaken by the government in the social services sector and what kinds of supervisory mechanism are put in place to control the quality of social services and ensure respect of the user's rights.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Bulgaria is in conformity with Article 14§2 of the Charter.

January 2018

European Social Charter

European Committee of Social Rights

Conclusions 2017

ESTONIA

This text may be subject to editorial revision.

The following chapter concerns Estonia, which ratified the Charter on 11 September 2000. The deadline for submitting the 14th report was 31 October 2016 and Estonia submitted it on 23 November 2016.

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 "Health, social security and social protection":

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

Estonia has accepted all provisions from the above-mentioned group except Article 3§4 and Article 23.

The reference period was 1 January 2012 to 31 December 2015.

The conclusions relating to Estonia concern 17 situations and are as follows:

– 12 conclusions of conformity: Articles 3§1, 3§2, 11§1, 11§2, 11§3, 12§2, 12§3, 13§2, 13§3, 13§4, 14§1 and 14§2.

– 4 conclusions of non-conformity: Articles 3§3, 12§1, 12§4 and 13§1.

In respect of the other situation related to Article 30 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 Estonia under the Charter. The Committee requests the authorities to remedy this situation by providing the information in the next report.

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

Article 3§1

- The Health and Safety at Work Network inside Estonia was re-established in 2012. Its aim is the development of the field of occupational health and safety issues by providing a framework for institutions that enables the use of health and safety information, experience and knowledge in a more efficient way among the network members;
- An electronic tool "Tööbik" has been developed in 2011-2015. It enables an enterprise to administer data related to its work environment, to conduct risk assessment and to maintain necessary data bases.

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The next report will deal with the following provisions of the thematic group "Labour Rights":

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 21),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 22),
- the right to dignity at work (Article 26),
- the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28),

- the right to information and consultation in collective redundancy procedures (Article 29).

The deadline for submitting that report was 31 October 2017. The report was registered on 3 January 2018. Conclusions on the Articles concerned will be published in January 2019.

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Conclusions and reports are available at www.coe.int/socialcharter as well as in the HUDOC database.

Article 3 - Right to safe and healthy working conditions

Paragraph 1 - Health and safety and the working environment

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

General objective of the policy

The report states that according to the EU Strategic Framework on Health and Safety at Work 2014-2020, Estonia has to take into account various objectives in designing OSH policy and relevant legislation: enforcement of OSH legislation, facilitate compliance with OSH legislation, particularly by micro and small enterprises, take into account the emerging new risks, prevention of work-related and occupational diseases, collect reliable statistical data on accidents at work and occupational diseases, etc.

According to the report, the National Occupational Health and Safety Strategy 2010-2013 defines the areas of development for the years 2010-2013, notably legislative framework for occupational health and safety, raising awareness on the value of a health-preserving work environment, OSH training, occupational health services, emerging risks in the work environment, etc. The report also indicates that the goals and actions in the field of occupational health and safety are described in the National Health Plan 2009-2020 which has been reviewed and modified annually. The Committee takes note of the relevant fields of activity, goals and some of the results achieved in the reference period, according to Action Plan of Health and Safety Strategy, detailed in the report (the legislative framework of OSH issues is up to date, improvement of the risk assessment, awareness of different stakeholders has increased, development of occupational health services, etc.).

The Committee points out that new technology, organisational constraints and psychological demands favour the development of psychosocial factors of risk, leading to work-related stress, aggression, violence and harassment. It would also point out that, with regard to Article 3§1 of the Charter, it takes account of stress, aggression, violence and harassment at work when examining whether policies are regularly evaluated or reviewed in the light of emerging risks. The States parties have a duty to carry out activities in terms of research, knowledge and communication relating to psychosocial risks (Statement of Interpretation on Article 3§1 of the Charter, Conclusions 2013). The report indicates target inspection of psychosocial risk factors in 2012 and campaigns conducted by Estonian Labour Inspectorate during the reference period on psychosocial risks at work (2012) and on work-related stress (2014-2015). The Committee asks the next report provide more information on this point.

The Committee notes that there is a national policy which is intended to develop and preserve a culture of prevention in the occupational health and safety field.

Organisation of occupational risk prevention

The report indicates that an electronic tool “Tööbik” has been developed in 2011-2015. It enables an enterprise to administer data related to its work environment, to conduct risk assessment and to maintain necessary data bases. According to the research of Estonian Working Life (2015), risk assessment has been conducted in 89% of organisations.

The Health and Safety at Work Network inside Estonia was re-established in 2012. Its aim is the development of the field of occupational health and safety issues by providing a framework for institutions that enables the use of health and safety information, experience and knowledge in a more efficient way among the network members.

In addition, the report provides an update of Labour Inspectorate information campaigns in order to raise awareness, change behaviour and enhance the safety culture in Estonian companies, including the campaigns on work related stress, and other activities such as producing of a magazine on work life, newsletters for start-up enterprises, Working life Portal, a database of best practices, brochures, leaflets, manuals and others.

The report indicates that the Labour Inspectorate's advisory service plays an important role in increasing the safety and quality of working life alongside state supervision and informational activities. The advisory service is directed to all parties of labour relations (employees, employers, and professional associations). The counsellors mainly include counselling lawyers and work environment specialists, or labour inspectors and labour inspector-lawyers giving advice at the office. The purpose is, among others, to enable parties to labour relations to act consciously in compliance with legal acts regulating labour relations and occupational health and safety and to promote law-abiding behaviour in labour relations. From 2015 onwards, the Labour Inspectorate offers corporate working environment counselling service. The Committee notes from the report that the counsellor will not conduct state supervision over the company and will not issue a precept. The counsellor also will not prepare any documents (e.g. risk analyses, safety instructions, etc.) and will not instruct employees individually.

The Committee considers that measures for occupational risk prevention, awareness-raising and assessment of work-related risks and information and training for workers are provided. It also notes that the Labour Inspectorate develops a culture of health and safety among employers and workers duty to share their knowledge about risk prevention in light of their inspection experience and as part of preventive activities.

Improvement of occupational safety and health

In its previous conclusion (Conclusions 2013), the Committee found that the State was involved in scientific and technical research on occupational health and safety, as well as in the training of qualified professionals and asked for concrete examples of the State's involvement in knowledge activities and of the design of certification schemes and training modules. In reply, the report indicates all kind of activities toward to the raising awareness of a healthy working environment: OSH training in different school levels, training of health and safety representatives at the workplace, vocational training of occupational health specialists in the universities, in-service training of occupational health specialists, etc. Several training courses for occupational health specialists on the matter were carried out by the Minister of Social Affairs in 2012-2014 (electromagnetic fields, chemical risks, psychosocial risks, radiation and nanoparticles in the working environment, protection of the upper respiratory system, the usage of individual protective devices, etc.).

In addition, during 2012-2013, the professional standards for occupational health services providers (ergonomists, work hygienists and work psychologists) have been developed where the specialists from the Ministry of Social Affairs and from different universities were taking part. The Committee takes note of the activities of the Ministry of Social Affairs in the field of occupational health during the reference period detailed in the report (36 instruction were draw up, a manual for vocational schools was prepared, the Month of Ergonomics was held).

The report also lists research in the field of occupational health and safety during the reference period and the main conclusions in the field of occupational health in 2015.

The Committee notes that there is a system aimed at improving occupational health and safety through research, development and training. It also observes that the public authorities are involved in scientific and applied research and training on safety and health at work.

Consultation with employers' and workers' organisations

The Committee previously deferred its conclusion and asked for information on the amendments to the Act of 16 June 1993 on employees' representatives introduced by the Act of 13 December 2006 which transposed Directive No. 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community. In reply, the report states

that Directive 2002/14/EC is covered by Employees' Trustee Act (2006). This Act regulates the activities of an employees' trustee in representing the employees, who authorised him or her, in relations with the employer and the employees. A trustee is an employee of an employer who is elected by the general meeting of the employees of the employer as their representative in the performance of the duties arising from the law in relations with the employer.

The Committee takes note of the examples of the involvement of social partners in shaping occupational health and safety policy in practice. Social partners participate in the steering committee of the National Health Plan 2009-2020 and the Welfare Development Plan 2016-2023 twice a year. In addition, they were involved in mapping the main problems related to the occupational health and safety policy in 2015. Moreover, the results of studies related to this issue were discussed with social partners (four meetings in 2015).

The Committee notes that social partners are consulted in the design and implementation of the occupational health and safety policy.

Conclusion

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

Article 3 - Right to safe and healthy working conditions
Paragraph 2 - Safety and health regulations

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

Content of the regulations on health and safety at work

In its previous conclusion (Conclusions 2013), the Committee considered that the legislation and regulations in force satisfied the general obligation under Article 3§2 of the Charter and asked for information on any amendments to the legislation and regulations adopted during the reference period. In reply, the report states that there have been no significant changes of OSH legislation. However, the Occupational Health and Safety Act was amended in 2014. The amendment changed the order of registration of non-medical occupational health service providers.

In its previous conclusion (Conclusions 2013), the Committee asked for information on any measures adopted to transpose Directive 2008/46/EC of the European Parliament and of the Council of 23 April 2008 amending Directive 2004/40/EC of the European Parliament and of the Council of 29 April 2004 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields). In reply, the report indicates that the Government Regulation No. 44 on occupational health and safety requirements in working environments affected by electromagnetic fields, limits of electromagnetic fields and procedure for measuring electromagnetic fields was adopted on 1 April 2016 (outside the reference period) and takes over the Directive 2013/35/EU repealing the Directive 2004/40/EC.

As regards measures taken to implement the legal framework, the report indicates that, according to EC decision K/2011/9200 Estonia compiled in 2014 the Country Summary Report on practical implementation of 24 EU occupational safety and health Directives in Estonia. The aim of this report was a mapping of the implementation of the OSH Directives in Estonia and in the EU as a whole, and it was based on a desk-study and interviews with national stakeholders. The Committee notes from European Commission Staff Working document on “Ex-post evaluation of the European Union occupational safety and health Directives (REFIT evaluation)” (2017) that the Estonian legislation in the area of the occupational health and safety covers all sectors, without distinction, including the public sector and all types of enterprises.

In reply to the other questions of the Committee, the report indicates that the ratification of any OSH conventions is coordinated by the tripartite social dialogue body – the ILO Council of Estonia. It makes proposals and develops a position in relation to the new ILO conventions and recommendations, and proposes the application of non-ratified ILO conventions in legislation and practice. The provisions of non-ratified conventions are also covered by relevant regulations in Estonia. The report however specifies that the all EU OSH directives, e.g. the Framework Directive 89/391 and the associated individual directives, were transposed into national legislation.

The Committee points out that under the terms of Article 3§2 of the Charter, regulations concerning health and safety at work must cover work-related stress, aggression and violence specific to work, and especially for workers under atypical working relationships (Statement of Interpretation on Article 3§2 of the Charter, Conclusions 2013). The report does not provide any information on this point. The Committee nevertheless notes that, according to the information provided in a joint report from the European Foundation for the Improvement of Living and Working Conditions and the EU-OHSA on Psychosocial risks in Europe (2014), the need to take psychosocial risks or mental health into consideration when dealing with OSH is highlighted in Estonian legislation. The Committee invites the authorities to comment on this observation in the next report.

The Committee notes that, according to ILO database NORMLEX, the number of ILO Conventions ratified by Estonia is particularly low, whereas the Community *acquis* on occupational health and safety law has been mostly transposed into domestic law. Pending receipt of the requested information, the Committee therefore considers that the legislation and regulations on occupational health and safety are in conformity with the general requirement of Article 3§2 of the Charter, which provides for specific cover aligned with the level of international reference standards for the large majority of risks listed in the general introduction to Conclusions XIV-2.

Levels of prevention and protection

The Committee examines the levels of occupational prevention and protection provided for by the legislation and the regulations in relation to certain risks.

Establishment, alteration and upkeep of workplaces

In its previous conclusion (Conclusions 2013), the Committee asked for information on the transposition of Directive 2009/104/EC of the European Parliament and of the Council of 16 September 2009 concerning the minimum safety and health requirements for the use of work equipment by workers at work. It also asked for detailed information on the implementation of preventive measures geared to the nature of the risks identified during mandatory workplace risk assessment, as well as any schedule for compliance. The report does not provide any information on this point. The Committee reiterates its questions.

The Committee nevertheless notes from European Commission Staff Working document on "Ex-post evaluation of the European Union occupational safety and health Directives (REFIT evaluation)" (2017) that, with regard to Directive 90/269/EC (manual handling of loads), more detailed provisions are laid down concerning risk assessment and preventive and protective measures for women, pregnant/breastfeeding workers and young people at work. With regard to Directive 90/270/EEC (display screen equipment), the Committee notes from the same source that national legislation covers "computer systems mainly intended for public use" which are among the elements expressly excluded from the scope of application of the directive. In addition, several of the minimum requirements are further developed, in particular on risk assessment, the duration of breaks, the conditions and periodicity of medical examinations.

The Committee points out that the report must provide full, up-to-date information on changes in the legislation and regulations during the reference period. In the meantime, it reserves its position on this point.

Protection against hazardous substances and agents

The Committee asks that the next report indicate the international or EU standards on protection against hazardous substances and agents which the legislation and regulations issued and/or amended during the reference period are designed to incorporate.

Protection of workers against asbestos

In its previous conclusion (Conclusions 2013), the Committee asked for information on any measures adopted to incorporate into domestic law the exposure limit of asbestos introduced by Directive 2009/148/EC. In reply, the report indicates that, according to paragraph 2 of the Government Regulation No. 224 on "Occupational health and safety requirements from the risks related to exposure to asbestos at work" adopted on 11 October 2007, the limit value of the exposure limit of asbestos is 0.1 fibres/cm^3, as introduced by Directive 2009/148/EC.

The Committee considers that the situation in Estonia is in conformity with the Charter on this point.

Protection of workers against ionising radiation

The report indicates that the workers radiation protection is covered by Radiation Act (2004) which was amended in 2016 (outside the reference period).

The Committee asks that the next report provide full, up-to-date information on changes in the legislation and regulations which occurred during the reference period. It asks whether workers are protected up to a level at least equivalent to that set in the Recommendations by the International Commission on Radiological Protection (ICRP Publication No. 103, 2007).

Personal scope of the regulations

The Committee examines the scope of legislation and regulations with regard to workers in atypical employment.

Temporary workers

The Committee previously deferred its conclusion and asked for concrete examples of the way in which temporary workers, interim workers and workers on fixed-term contracts are provided information on hazards, training on safe working methods, medical examination when rehired or reassigned to new tasks. It also asked for information on whether these workers have a right to representation at work.

The report indicates that there are no differences in OSH requirements between temporary and regular workers in Estonian law. According to paragraph 13(1)13 of the Occupational Health and Safety Act, an employer is required to arrange for the employee to receive occupational health and safety instructions and training corresponding to the employee's position and occupation, before this employee commences work or changes jobs. Instruction or training shall be repeated if the work equipment or technology is changed or upgraded. The principles of the health control of workers are regulated in the Regulation No. 74 of 24 April 2003 of Minister of Social Affairs on the procedure of medical examination of workers.

According to paragraph 12(1) of the Occupational Health and Safety Act, if duties are performed by way of temporary agency work, the user undertaking shall guarantee the conformity with occupational health and safety requirements in the user undertaking. The report indicates that this provision also applies to the representation of the interests of temporary workers while working at the user undertaking.

The Committee confirms that temporary workers and interim workers enjoy the same standard of protection as workers on contracts with indefinite duration.

Other types of workers

In reply to Committee's question on any restrictions based on the number of employees, the report indicates that there are no restrictions to the implementation of the current legislation and regulations based on the number of employees in the Occupational Health and Safety Act, thus all workers are afforded the same level of protection in practice.

According to paragraph 12(1) of the Occupational health and Safety Act, the employer shall ensure the conformity with occupational health and safety requirements in every work-related situation. So, if a home or domestic worker and his/her employer have concluded an employment contract, then they are protected by law in the event of damage to health related to work.

The report states that the Occupational Health and Safety Act covers basic requirements to self-employed person according to Council Recommendation 2003/134/EC. Under the paragraph 12(7) and (8), a sole proprietor (self-employed worker) shall ensure the soundness and correct use of the work equipment, personal protective equipment and other equipment belonging to him or her in every work situation. If a sole proprietor works at a workplace concurrently with one or several employees of an employer, he or she shall notify

the employer who organises the work or, in the absence of such employer, the other employers of the hazards relating to his or her activities, and shall ensure that his or her activities do not endanger other employees.

The Committee considers that home workers and self-employed persons are included in the scope of the national legislation on safety and health at work. The Committee asks for information in the next report on the measures making it possible to check and ascertain whether the protection provided by the regulations for self-employed workers, home workers and domestic staff is applied in practice.

Consultation with employers' and workers' organisations

The Committee previously deferred its conclusion and asked for information on any steps taken to increase the number of work environment representatives and work environment councils in enterprises. The report states that employers' and workers' organisations are involved in implementing the Strategy for 2010-2013. The work life survey 2015 shows that 54% of all enterprises have a work environment representative (48% in 2009) and 98% a person who deals with the work environment (90% in 2009). The report also sets out the approach of the working environment (health and safety) representative and working environment council as well as the election procedure.

In addition, the report indicates that there are 814 collective agreements between employers and employees registrated in Estonia up to September of 2015. The occupational health and safety aspects are included in 86% of the agreements (medical examination of employees, co-operation, and health promotion activities at the workplace). By type of work activities, there are 54 active collective agreements in the construction sector, 8 agreements in the mining sector and 16 agreements in the agriculture, fishing and wood industry sector.

The Committee considers that the situation is therefore in conformity regarding this point.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in Estonia is in conformity with Article 3§2 of the Charter.

Article 3 - Right to safe and healthy working conditions

Paragraph 3 - Enforcement of safety and health regulations

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

Accidents at work and occupational diseases

The Committee previously deferred its conclusion (Conclusions 2013) and, in view of the persistent under-reporting, asked for information on the implementation of Government Regulation No. 75 in practice, in particular how many non-fatal accidents were investigated by the Labour Inspectorate; whether physicians were aware of their reporting obligations in practice; whether steps were taken to counter potential arrangements between employers and workers; and whether sanctions were applied to employers or physicians in the event they fail to meet their reporting obligations. The report does not provide the information requested. The Committee reiterates its questions.

The report indicates that the number of non-fatal accidents at work increased during the reference period, from 4,147 in 2012 to 4,774 in 2015. The number of fatal accidents at work was 15 in 2012 and 16 in 2015. In addition, the report specifies that in 2013, 4,183 work accidents happened, in 3,388 cases of which employees suffered from a minor bodily injury, in 775 cases a serious bodily injury and in 20 cases the employee died as a result of the work accident. Compared to 2012, the number of registered accidents at work has increased by 26 cases. The number of accidents at work registered per 100,000 employees rose from 676 in 2012 to 745 in 2015. The Committee takes note of the number of accidents at work by areas of activity detailed in the report.

EUROSTAT data confirm the trend with regard to the number of accidents at work (more than three days' absence excluding commuting accidents) (from 5,847 in 2012 to 6,288 in 2014), the incidence rate of such accidents (1,005.49 in 2012 and 1,137.9 in 2014), and the manifestly low level in relation to the average incident rate in the EU-28. The data also confirm the trend with regard to the number of fatal accidents (14 in 2012 to 16 in 2014) and to the incidence rate for such accidents (from 1.85 in 2012 to 2.16 in 2014) which lower than the average rate in the EU-28 (2.42 in 2012 and 2.32 in 2014).

The report specifies that, taking into consideration of the size of population of Estonia, there are not many deaths and thus the statistics are more dependent on a single accident at work. The number of serious accidents at work has been relatively stable in recent years. The total amount of accidents at work increases in terms of minor accidents at work, which indicates, according to the report, the improvement of registering accidents at work, the awareness of employers, and increase in legal compliance.

As regards the occupational diseases, the report indicates that the Occupational Health and Safety Act classifies health disorders caused by work as occupational diseases, illnesses caused by work, and work-related illnesses. In 2013, the labour Inspectorate received notifications of diagnosis of occupational diseases concerning 56 employees and notifications of work-related diseases concerning 190 cases. The Committee notes from the report that the number of occupational diseases (57 in 2012 and 50 in 2015) and illnesses caused by work (172 in 2012 and 128 in 2015) decreased during the reference period. The Committee understands this to mean that occupational diseases, illnesses caused by work, and work-related illnesses together comprise the meaning of occupational diseases in the meaning of the Charter, and asks the Government to confirm. It also asks for information on the legal definition of occupational diseases; the mechanism for recognising, reviewing and revising of occupational diseases (or the list of occupational diseases); the incidence rate and the number of recognised and reported occupational diseases during the reference period (broken down by sector of activity and year), including cases of fatal occupational diseases, and the measures taken and/or envisaged to counter insufficiency in the declaration and recognition of cases of occupational diseases; the most frequent

occupational diseases during the reference period, as well as the preventive measures taken or envisaged.

In its previous conclusion, the Committee also asked for information on steps taken to reduce the high level of fatal accidents and the increasing cases of occupational disease. In reply, the report indicates that Estonian Labour Inspectorate conducts campaigns on occupational health every year in order to raise awareness, change behaviors and enhance the safety culture in companies. Its main priority is to decrease the number of serious and fatal accidents at work. To ensure this, the plans included an increase in the volume of state supervision and intensification of supervision or improvement of quality. Work environment inspections are conducted, based on the risk score of companies. A major task of the Labour Inspectorate in addition to supervision and counselling is prevention and information in the field of occupational health and safety and labour relations, with the objective to make work environment safe and increase the quality of work.

Activities of the Labour Inspectorate

The Committee notes that under Article 3§3 of the Charter, States Parties must implement measures to focus labour inspection on small and medium-sized enterprises (Statement of Interpretation on Article 3§3, Conclusions 2013). The report indicates that the Labour Inspectorate has organised trainings on health and safety at work for representatives of SME-s and for work environment specialists (3,656 participants during 2009-2014).

The Committee previously deferred its conclusion (Conclusions 2013) and asked for information on the application of Government Regulation No. 48 and Ministry of Social Affairs Order No. 26 in practice. It also asked for data on the number of labour inspectors and for information on steps taken to stop the persistent decrease in the number of workers covered by inspection visits. The report indicates that occupational health and safety inspections are based on the Occupational Health and Safety Act (Chapter 6) and Law Enforcement Act, passed in 23 February 2011. The Labour Inspectorate has composed an instruction manual of conducting working environment supervision for the inspectors. The main types of supervision are inspection, specific inspections, follow-up inspections, inspection of a new or reconstructed construction and marker monitoring of personal protective equipment. The Labour Inspectorate inspects occupational health and safety in all areas of activity and collaborates with the Police Authority and the Tax and Customs Board, conducting joint inspections. In case of a violation of legislative requirements, a labour inspector has the right to issue a precept which is mandatory for an employer. In case of a failure to comply with a precept, a labour inspector may impose a penalty payment.

The report indicates an increase in the number of enterprises inspected during the reference period (from 3,132 in 2012 to 3,838 in 2015) and in the number of visits (from 4,616 in 2012 and 5,347 in 2015). However, this trend is not matched by the number of workers covered by inspection visits (166,233 in 2012 and 97,581 in 2015) and the proportion of workers indicated in the report (27% in 2012 and 15% in 2015). The Committee reiterates its request on steps taken to stop the persistent decrease in the number of workers covered by inspection visits.

The Committee notes, according to figures published by ILOSTAT, that the number of labour inspectors remains stable (38 in 2012, 37 in 2013 and 2014, and 39 in 2015), the average number of labour inspectors per 10,000 employed persons was 0.6 during the reference period, the number of labour inspection visits to workplaces during the year increased slightly from 3,771 in 2012 to 4,246 in 2015, and the average of labour inspection visits per inspector also increased during the reference period (from 99.2 in 2012 to 108.9 in 2015). The Committee requests the next report to explain why the numbers of workplace inspections which are stated in the report and those published by ILOSTAT are different.

In its previous conclusion (Conclusions 2013), the Committee noted the very low number of fines imposed in relation to the number of reported infringements and the very low amount of

fines imposed, even in misdemeanour proceedings, given that paragraphs 27.1 and 27.2 of the OHS Act provide for maximum fines of €2 600 and €2 000, respectively. In order to gauge the deterrent nature of the penalties in practice, and given the persistent level of under-reporting, the Committee asked for information on the number of convictions resulting in imprisonment as a result of proceedings under paragraphs 197 and 198 of the Penal Code. In reply, the report indicates that the labour inspector initiates a misdemeanor procedure if an act with the attributes of a misdemeanour has been perpetrated. The misdemeanour procedure is conducted pursuant to the Penal Code and the Code of Criminal Procedure. The number and character of detected violations as well as assessments of labour inspectors (i.e. inspections based on assessment lists) show that sanctions should be applied to a greater extent. The reason of their non-application is, on the one hand, that employers eliminate the detected shortcomings as soon as possible, while on the other hand, the labour inspectors still have the attitude that their work should cover supervision as well as consultation of the employer. Therefore, according to the report, they do not always want to initiate a misdemeanour procedure.

According to the Penal Code (§ 197 and 198), violation of occupational health and safety requirements caused by negligence that result in significant damage to the health of a person or the death of a person are punishable by a pecuniary punishment or up to three years' imprisonment. The report indicates number of proceedings according to Penal Code, made by the Labour inspectorate (3 in 2012, 1 in 2013 and 0 in 2014 and 2015).

It also indicates that, under the OHS Act, the Labour Inspection reported 12,280 infringements in 2012 and 17,611 in 2015; issued 680 warnings of fines in 2012 and 628 in 2015; imposed 25 fines in 2012 and 47 in 2015 for an overall amount of €4,485 in 2012 and €8,690 in 2015; and initiated 326 misdemeanour proceedings for infringement of occupational health and safety requirements (§ 27.1 of the OHS Act) or concealment of an occupational accident or disease (§ 27.2 of the OHS Act) in 2012 (301 fines for an overall amount of €63,473) and 156 in 2015 (150 fines for an overall amount of €43,575).

The Committee considers that in the reference period, labour inspection structures were not sufficiently developed in practice to establish that there is an efficient labour inspection, and that in absolute terms, the number of fines imposed and the amounts involved remain too low to have a dissuasive effect. Therefore, the situation is not in conformity with the Charter on the ground that the labour inspection system, insofar as it concerns occupational health and safety, is inefficient.

Conclusion

The Committee concludes that the situation in Estonia is not in conformity with Article 3§3 of the Charter on the ground that the labour inspection system, insofar as it concerns occupational health and safety, is inefficient.

Article 11 - Right to protection of health

Paragraph 1 - Removal of the causes of ill-health

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

Measures to ensure the highest possible standard of health

The Committee notes from WHO that life expectancy at birth in 2015 (average for both sexes) was 77.6 years. The life expectancy rate is still below that of other European countries, but has increased since the last reference period. The report indicates that by comparison with 2012 data (76.5 years), life expectancy at birth has increased by an average of 0.7 years. The Committee notes from Eurostat that life expectancy at birth in the EU-28 was estimated at 80.6 years in 2015.

The Committee takes note from the report that the death rate has decreased slightly from 11.68 per 1,000 population in 2012 to 11.59 per 1,000 population in 2015. The main causes of death are cardiovascular diseases, neoplasms and injuries. The Committee takes note of the detailed information and statistics provided in the report with regard to the main causes of premature death. The report indicates that cardiovascular diseases mortality rate is decreasing, but it still constitutes 52.3% of all registered deaths in 2015 (compared to 54.1% in 2012). The statistics show that the number of new cases (incident cases) of HIV infection as well as the number of deaths related to HIV have decreased during the reference period.

In reply to a previous question of the Committee on the implementation of the National Stategy for HIV and AIDS 2006-2015, the report indicates that all the activities from the strategy have been integrated into the application plan 2013–2016 of the National Health Plan 2009-2020. The strategy facilitated the achievement of the National Health Plan, limiting the spreading of HIV infection and ensuring high-quality treatment to people with AIDS. An evaluation of the National HIV and AIDS Prevention Strategy for 2006-2015 is currently under way.

According to the data of Statistics Estonia, infant mortality rate decreased during the reference period from 3.6 per 1000 live births in 2012 to 2.5 per 1000 live births in 2015. The Committee notes that the rate currently stands below the average for other European countries (the EU-28 rate in 2015 was 3.6 per 1000 live births).

As regards maternal mortality, the Committee notes from the data provided in the report that there were 23 cases of death registered in 2012 compared to 12 cases in 2013, 14 cases in 2014 and 16 cases of death in 2015. The Committee asks that the next report contain updated data on the maternal mortality rate.

Access to health care

The Committee takes note from OECD that health spending in Estonia (excluding capital expenditure) was 6.0% of GDP in 2013, well below the OECD average of 8.9%. It notes from the report that the share of GDP allocated to health spending slightly increased during the reference period from 5.8% in 2012 to 6.0% in 2013 and respectively to 6.2% in 2014 and 6.5% in 2015.

The Committee takes note of the statistics provided in the report concerning bed capacity in hospitals. The report indicates that numbers of Estonian medical staff for physicians are around EU average and for nurses and midwives slightly below the EU average.

In reply to a previous question requesting information on the trends of out-of-pocket expenditure, the report indicates that the out-of-pocket payments share of total health expenditures has increased from 17.6% in 2011 to 23.8% in 2014. Meanwhile, out-of-pocket medical spending as a share of final household consumption in Estonia compared with OECD countries average is lower (Estonia 2,4%, OECD 2,8%). The report provides information on the measures taken to reduce the out-of-pocket payments such as

campaigns to promote the use of generic pharmaceuticals carried out by Estonian Health Insurance Fund (EHIF) or the policy to prescribe an active ingredient implemented with the pharmacists. The Committee wishes to receive updated information in the next report on the evolution of the situation with regard to out-of-pocket payments and the impact of the measures taken to reduce these payments.

As regards waiting times, the Committee noted previously that the maximum length of waiting time was extended to six weeks for out-patient specialised medical care (previously 4 weeks) and it asked to be kept informed of further developments in this area (Conclusions 2013). The report indicates that the maximum waiting times for specialist (not emergency) care is six weeks for ambulatory specialized care and eight months for inpatient care and day surgery. Some interventions have longer maximum waiting times. The report further mentions that according to a series of surveys conducted by EHIF in 2013, the lack of medical doctors in some specific areas rather than limited financial resources has become the main hindrance to timely access to care. The report provides statistical data on the average times for access to the family physician or nurse services as well as access to specialist care, as resulted from patient satisfaction surveys.

The Committee takes note from the report of the measures taken to improve efficiency during the reference period such as: (i) e-consultation and e-visits were included into EHIF services basket in 2013; (ii) central e-registering system for all public sector hospitals is in the process of implementation, which will enable hospitals to have a better overview of the real on-line occupancy rate and gives patients the possibility to compare waiting times by different providers; (iii) strengthening primary care to reduce the pressure to the special and hospital care is the main goal of a project of building the network of primary health care centres with multi-professional teams of specialists in every centre; (iv) reorganising hospital sector and networking between big competence centres and small county hospitals helps to ensure necessary ambulatory specialist care and day care in rural areas; (v) ensuring competitive wages policy and training for health professionals. The Committee asks to be informed on the trends in waiting times and whether the measures taken have had any impact on reducing the waiting times.

The Committee takes note from the report of the detailed information concerning rehabilitation facilities and treatments available for drug addicts.

The Committee asks that the next report contain information on the availability of mental health care and treatment services, including information on the prevention of mental disorders and recovery measures.

The Committee asks that the next report contain information on dental care services and treatments (such as who is entitled to free dental treatment, the costs for the main treatments and the proportion of out-of-pocket paid by the patients).

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Estonia is in conformity with Article 11§1 of the Charter.

Article 11 - Right to protection of health

Paragraph 2 - Advisory and educational facilities

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

Education and awareness raising

In its previous conclusion, the Committee noted that public awareness-raising and information on health is promoted by the Public Health Department of the Ministry of Social Affairs and asked for information on specific measures and campaigns undertaken during the reference period to promote health/prevent diseases (Conclusions 2013).

The Committee notes from the information provided in the report under Article 11§1 that according to the National Health Plan for 2009-2020 (NHP), strategic goals are set for continuous improvement of the public health and the following policies were developed: (i) the Green Paper on Alcohol Policy which has as goals to reduce alcohol-related health and social damages and to establish a safe growth environment for children and adolescents; (ii) the Green Paper on Tobacco Policy established a tobacco policy work group to observe the implementation of the Green Paper in its respective sphere of responsibility. „Suitsuprii klass“(Smoke Free Class) competition, organized by National Institute for Health and Development, was one of the many preventive measures; (iii) the White Paper on Drug Prevention Policy serves as the basis for determination of the course of action for curbing the availability of drugs, prevention of use, and treatment of addicts. In 2014, work groups specialized in supply reduction, addiction treatment and rehabilitation, re-socialization and primary prevention convened, and the results were presented at a meeting of the drug prevention commission of the Government; and (iv) the Green Paper on Nutrition on Physical Activity is currently under development in the Ministry of Social Affairs in cooperation with all other relevant ministries.

The Committee recalls that informing the public, particularly through awareness-raising campaigns, must be a public health priority. The precise extent of these activities may vary according to the nature of the public health problems in the countries concerned (Conclusions 2007, Albania). Measures should be introduced to prevent activities that are damaging to health, such as smoking, alcohol and drugs, and to develop a sense of individual responsibility, including such aspects as a healthy diet, sexuality and the environment (Conclusions XV-2, the Slovak Republic). The Committee takes note from the report of the positive trends which were observed in the performance report of the second period (2013-2014) of the National Health Plan for 2009-2020. The same report lists as the most important challenges: suicide rates among children and adolescents do not decrease; suicidal trends among the elderly show an increase; new cases of diseases in mental and behavioural disorders among children and adolescents; mortality among children and adolescents aged 0–19, including injury death rate, does not show a decrease; overweight and obesity (starting already from childhood). The Committee asks the next report to provide information on the specific measures and awareness raising campaigns undertaken during the reference period, including in schools, to promote health and to address some of the above mentioned challenges.

Counselling and screening

The Committee takes note from the report of the up-to-date information and data on screening programmes, in particular screening programmes for neonates and pregnant women and for breast and cervical cancers.

The report indicates that pregnant women in specific risk groups are also screened for hereditary and chromosome diseases. The report adds that since 2015, the screenings for both pregnant women and neonates have been integrated into the package of services provided for monitoring pregnancies and neonates.

The report mentions that most of the cytological cervical tests (80%) are performed during regular health examinations. A mammography bus offers tests in counties to increase the availability and participation rates of screening. Screening programmes for breast and cervical cancers are financed by the Estonian Health Insurance Fund and coordinated by the National Institute for Health Development and Cancer Screening Registry. In 2016 (outside the reference period), a new screening for colorectal cancer started, the target group being insured men and women aged 60–69. The patients involved in the screening will be screened every 2 years thereafter.

The Committee asks that the next report provide up-to-date information with regard to health checks for children at schools.

Conclusion

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

Article 11 - Right to protection of health

Paragraph 3 - Prevention of diseases and accidents

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

Healthy environment

The Committee previously asked for updated information on environmental protection measures and policies and their implementation, as well on air pollution levels and trends, or cases of pollution of drinking water or food poisoning during the reference period (Conclusions 2013).

With regard to air quality, the report indicates that the amount of small particulate matter in air has shown a steady decrease, with a major decrease in 2008 when EU directive 2008/50/EC on ambient air quality and cleaner air for Europe went into effect. The amount of SO2 in ambient air has shown a steady decrease thanks mainly to tough regulations on the sulphur content in fuels. Even though the average amount of particulate matter has gone down in all urban monitoring stations, 24h maximum values have gone up in most monitoring stations.

With regard to drinking water, the report indicates that under the Water Act special requirements were set up to prevent the deterioration of water characteristics as well as to protect the water intake constructions. The Committee takes note from the report of the measures taken which include formation of sanitary protection areas around water extraction points and limiting access and activities within these areas depending on the volume of water intake. The report further mentions that following such measures and important investments, the population rate that is connected with central drinking water supply systems and therefore supplied with drinking water that meets all the requirements rose from 88% in 2012 to 98% in 2015.

As regards food safety, the report indicates that the Ministry of Rural Affairs develops requirements and legislation and organises national inspection and monitoring of the food chain. For most areas official controls are performed by the Veterinary and Food Board, an authority under the Ministry of Rural Affairs. In 2015, a total of 11 500 checks were performed at food businesses and approximately 5200 food samples were taken. The number of non-compliant samples counted 3.4% from the total number of samples, which represents a slight increase compared to 2014 (2.5%). The Committee asks to be kept informed on the trends of food poisoning in the next report.

The Committee also asks to be kept informed of measures taken and developments in the field of waste management.

Tobacco, alcohol and drugs

The Committee noted previously that there are places where it is prohibited to smoke, for example, the production room of a warehouse or sport premises. It asked whether there were plans to extend smoke-free environments to other public places such as bars, restaurants, discos and pubs (Conclusions 2013). The report provides a list of places where smoking is allowed only in a smoking room or smoking area such as: the premises of institutions of higher education; the premises of recreation centres; the premises of agencies or enterprises providing health services; local trains, long-distance trains and passenger ships; sports halls and sports facilities and recreational facilities. The report makes the distinction between a “smoking room” and a “smoking area” and states that starting from 1st of June 2017 indoor smoking areas will be prohibited and smoking will be allowed only in smoking rooms.

The Committee takes note from the report of the programmes and awareness raising campaigns which were implemented during the reference period to prevent the consumption of drugs such as the White Paper on Drug Prevention Policy, measures to prevent access of

drugs to prisons and to ensure systematic therapy and in-prison rehabilitation for drug addicts, trainings on the use of naloxone for prevention of drug overdose-induced deaths, provision of counselling services for persons with addiction problems and their close ones in different regions of Estonia. The report states that the number of drug overdose-induced deaths has decreased significantly in 2014 as compared to 2012 and 2013.

With regard to alcohol consumption, the Committee takes note of the information provided in the report related to the measures taken under the Green Paper on Alcohol Policy (under Article 11§1).

The Committee asks that the next report provide information on the concrete effects of the implementation of the above mentioned measures on the prevention/reduction of consumption of tobacco, alcohol and drugs and the trends in consumption.

Immunisation and epidemiological monitoring

The Committee takes note from the report of the measures and data regarding the control of tuberculosis. In 2012, the goal of the national programme for prevention of tuberculosis was achieved – to decrease initial contraction of tuberculosis by 2012 to 20 cases per 100,000 inhabitants (in 2012, the incidence of initial contraction counted to 17.5 new cases per 100,000 inhabitants. In 2013-2015, contraction of tuberculosis remained under control and the number of new tuberculosis cases decreased constantly. The tuberculosis incidence rate per 100,000 inhabitants in 2014 was 15.6.

With regard to immunisation, the report indicates that in 2012, the coverage of immunisation of children up to the age of 2 years dropped, compared to 2011, with respect to all the vaccines, involved in the immunisation plan. The recommended level by WHO, 95%, was not achieved for nine diseases. The Committee asks to be kept informed on the immunisation coverage levels.

Accidents

The Committee takes note from the report of the information on the measures taken to reduce all types of injuries and the trend in the number of accidents. The report outlines that the accident related mortality rate decreased during the reference period, representing 7.4% of all registered deaths in 2012 and 5.7% in 2015.

The report further indicates that a task force led by the Government Office was established to examine the causes of injury deaths and propose measures to prevent them more efficiently. All relevant ministries and institutions will follow the recommendations of the task force and plan and carry out the proposed actions by year 2020. The Committee wishes to be kept updated on the implementation and effects of the task force recommendations.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Estonia is in conformity with Article 11§3 of the Charter.

Article 12 - Right to social security

Paragraph 1 - Existence of a social security system

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

In the case of **family** and **maternity benefits**, the Committee refers to its conclusions on, respectively, articles 16 and 8§1 (Conclusions 2015).

Risks covered, financing of benefits and personal coverage

The Committee refers to its previous conclusions for a description of the Estonian social security system, and notes that it continues to cover all the traditional risks (medical care, sickness, unemployment, old age, work accidents/occupational diseases, family, maternity, invalidity and survivors). The system continues to rest on collective funding: it is funded by contributions (employers, employees) and by the State budget.

According to the report, as of 2015, 94% of the population was covered by health insurance; 89.6% of the active population (total number of employed and unemployed persons) was covered by unemployment insurance. As regards old-age pension, about 99% of persons of pensionable age (men and women over 63 years old) were insured with the pension system. The number of unemployment allowance recipients has decreased from 27 307 in 2012 to 24 791 in 2015, while the number of unemployment insurance benefit recipients has remained rather stable, from 26 163 in 2012 to 26 533 in 2015. As regards sickness insurance, the Committee notes from the report that 615 333 persons out of 683 200 (total number of employed and unemployed persons) were insured, namely 90% of the active population. The Committee asks the next report to provide also information on the coverage rate concerning invalidity as well as work accidents and occupational diseases.

Adequacy of the benefits

According to Eurostat data, the median equivalised annual income was €7 889 in 2015, or €657 per month. The poverty level, defined as 50% of the median equivalised income, was €3944.5 per annum, or €329 per month. 40% of the median equivalised income corresponded to €263 monthly.

In its previous conclusions (Conclusions 2013), the Committee found that the minimum levels of unemployment allowance and unemployment insurance benefits, as well as of national pension were manifestly inadequate.

Sickness benefits are paid from the third day of sickness till a maximum of 182 days (up to 240 days in case of tuberculosis). In response to the Committee's question (Conclusions 2013), the report states that the benefit's rate corresponds to 70% of a person's average daily income. The minimum level of sickness benefit is applied in case of insured employed and self-employed persons, for whom the social tax was not paid during the preceding year. In 2015, the minimum rate of sickness benefit (calculated on a monthly basis) was €209.30 for an employed person and €190.46 for a self-employed person. As these rates are below the threshold of 40% of the median equivalised income, the situation is not in conformity with the Charter.

Unemployment insurance benefits are paid up to between 180 calendar days (for an insured period between 1 and 5 years) and 360 calendar days (for an insurance period of at least ten years). The insured person is entitled to 50% of the reference earnings during the first 100 days, and to 40% afterwards. The level of minimum unemployment insurance benefits is set at half of the national minimum wage of the previous year, divided by 30. Accordingly, in 2015, the minimum unemployment insurance daily rate was €5.91, which corresponded, on a monthly basis (31 days), to €183.21. A non-contributory unemployment assistance can be granted, on a means-tested basis, to people not qualifying for unemployment insurance benefits or having exhausted their right to such benefits. The daily rate for 2015 was €4.01, which corresponded, on a monthly basis (31 days), to €124.31. As

both these levels fall largely below the threshold of 40% of the median equivalised income, the Committee does not consider that the aggregation with other benefits, mentioned in the report (such as subsistence benefits and family benefits), can bring the situation into conformity. The situation remains therefore not in conformity with the Charter.

In response to the Committee's question (Conclusions 2013), the report indicates that the notion of "suitable employment" covers employment which is not contraindicated for health reasons and which does not involve a daily journey of more than two hours by public transport or cost more than 15% of the person's monthly wage. However, during the first twenty weeks of unemployment, a "suitable employment" should also correspond to the education, profession and earlier work experience of the person, while afterwards an employment offer is deemed to be "suitable" even though it is temporary work or work not corresponding to the education, profession and earlier work experience of the person, as long as the salary proposed is higher than the unemployment insurance benefit and is not lower than the minimum monthly wage. Progressive sanctions apply when a person refuses without a good reason a suitable work offer: after a first unjustified refusal, the person will lose entitlement to unemployment insurance benefits; after a second unjustified refusal, the payment of unemployment assistance benefits is suspended for ten days; then, after a third unjustified refusal, the person will no longer be registered as unemployed, and will therefore no longer be entitled to any unemployment benefits. The Committee refers to its Conclusions 2016, concerning Article 1§2, where it noted that the unemployment insurance fund's decision to suspend or terminate unemployment benefits can be appealed within 30 days of notification of the decision. The appeal may be filed first with the fund and then with the administrative court or, alternatively, directly with the administrative court. In the light of the information provided, the Committee considers that the situation is in conformity with the Charter on this point.

As regards **old age** pension, the Committee previously noted that the employment-based old age pension does not have a statutory minimum rate, as it is calculated taking into account a base amount (€144, in 2015), the length of service (€5.2 multiplied by the number of years – the minimum length of service being 15 years) and an insurance part based on the income. The Committee asks the next report to provide information on the estimated net pension of a single person without dependants having worked 15 years at a minimum wage. As regards the (non contributory) national pension awarded to people who do not qualify for the employment-based old age pension, the Committee refers to its assessment under Article 13§1.

In case of **invalidity**, the contributory period required to be entitled to the contributory pension depends on the age at which the invalidity occurred. The minimum amount corresponds to that of the (non contributory) national pension, which was, in 2015, €158.37. Although the rate of national pension was increased by 18% during the reference period, the Committee notes that it is still largely below the poverty level (it represents barely 24% of the median equivalised income). The situation remains therefore not in conformity with the Charter on this point.

The Committee notes from MISSOC that **accidents at work and occupational diseases** are covered by the Health insurance, and that benefits, payable for a maximum length of 182 days (240 in case of tuberculosis) amount to 100% of the reference wage. The Committee finds that the situation is in conformity with the Charter on this point.

Conclusion

The Committee concludes that the situation in Estonia is not in conformity with Article 12§1 of the Charter on the following grounds:

- the minimum level of sickness benefit is inadequate;
- the minimum levels of unemployment allowance and unemployment insurance benefit are inadequate;
- the minimum level of national invalidity pension is inadequate.

Article 12 - Right to social security

Paragraph 2 - Maintenance of a social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security

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

The Committee notes that Estonia has ratified the European Code of Social Security and has accepted parts II to V (medical care, sickness, unemployment and old-age benefits) and VII to X (family, maternity, invalidity and survivors' benefits).

The Committee notes from Resolution CM/ResCSS(2016)5 on the application of the European Code of Social Security by Estonia (period from 1 July 2014 to 30 June 2015) of the Committee of Ministers that the law and practice in Estonia continue to give effect to all accepted Parts of the Code, subject to providing complementary information with respect to the level of periodical payments.

Conclusion

The Committee concludes that the situation in Estonia is in conformity with Article 12§2 of the Charter.

Article 12 - Right to social security

Paragraph 3 - Development of the social security system

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

It refers to its previous conclusions for the description of the Estonian social security system. Since Estonia has ratified Article 8§1 and Article 16 of the Charter, the Committee will assess the scope and impact of the changes occurred in the area of maternity and family benefits when it will next examine compliance with these provisions.

According to the report, during the reference period no major developments occurred, apart from the regular increase in the benefits' rates: from 2012 to 2015, the unemployment allowance rate increased by 90%; the unemployment insurance benefit rate increased by almost 28%; the minimum sickness benefit rate increased by around 34% for employees and by almost 28% for self-employed persons.

The report refers nevertheless to developments introduced in 2016, out of the reference period, concerning respectively the duration of sickness benefits and the replacement of the incapacity for work pension system by a new support system for people with decreased work ability. It also indicates that a detailed study on minimum benefits, covering all the fields of social insurance and in-cash social aid benefits was under way and was expected to be completed by the end of 2017. The Committee asks for information in the next report on the changes made, specifying the effect of these changes on the personal scope of the system and the minimum level of income replacement benefits.

Conclusion

The Committee concludes that the situation in Estonia is in conformity with Article 12§3 of the Charter.

Article 12 - Right to social security

Paragraph 4 - Social security of persons moving between States

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

Equality of treatment and retention of accrued benefits (Article 12§4a)

Right to equal treatment

Equal treatment between nationals and nationals of other States Parties in respect of social security rights shall be ensured through the conclusion of bilateral or multilateral agreements or through unilateral measures.

The Committee recalls that, having regards to the EU legislation on the coordination of social security systems of the EU Member States, governed by Regulations (EC) No. 883/2004 and (EC) No. 987/2009, as amended by Regulation (EU) No. 1231/2010, the EU Member States are considered, as a matter of principle, to ensure equal treatment between, on the one hand, their nationals and, on the other hand, nationals of other EU Member States or member of the EEA, stateless persons, refugees resident in the territory of a Member State who are or have been subject to the social security legislation of one or more Member States, their families and their survivors, as well as nationals of third countries, members of their families and their survivors, provided that they are legally resident in the territory of a Member State and are in a situation which is not confined in all respects within a single Member State.

The Committee recalls that, in any event, under the Charter, EU/EEA Member States are required to secure, to the nationals of other States Parties to the 1691 Charter and to the Charter not member of the EU or EEA, equal treatment with respect to social security rights provided they are lawfully resident in their territory (Conclusions XVIII-1 (2006)). In order to do so, they have either to conclude bilateral agreements with them or take unilateral measures.

As regards unilateral measures undertaken by Estonia, the report indicates that the State Pension Insurance Act has been amended. However, the Committee notes that those amendments will enter into force as from 1st of January 2018, that is say outside the reference period. It asks the next report to provide for comprehensive information on this amended Act and its impact on the principle of equal treatment.

As regards bilateral agreements concluded with other States Parties that are not members of the EU or EEA, the Committee notes that Estonia had not concluded new agreements during the reference period.

Firstly, the report points out that no agreement with Andorra has been concluded or is foreseen since no citizens of Andorra reside or have been residing in Estonia for the last five years.

Secondly, the report points out that Estonia applies the provisions contained in the Stabilisation and Association Agreements (SAAs) concluded between the EU and its Member States, on the one hand, and Albania, Bosnia and Herzegovina, "the former Yugoslav Republic of Macedonia", Montenegro and Serbia, on the other hand, with respect to social security to nationals of those States. The Committee notes, however, that no provision explicitly enshrines the principle of equal treatment in this respect between the nationals of EU Member States and the nationals of Albania, Bosnia and Herzegovina, "the former Yugoslav Republic of Macedonia", Montenegro and Serbia legally residing in one of those Member States. It also observes that the SAAs do not preclude States Parties to the SAAs concluding bilateral agreements or adopting unilateral measures in order to implement their provisions and, in this context, the EU Member States, including the EU itself, are committed to ensuring that the arrangements undertaken do not lead to discriminatory situations between nationals of the EU member States and nationals of Albania, Bosnia and

Herzegovina, "the former Yugoslav Republic of Macedonia", Montenegro and Serbia legally residing in the territory of one EU Member States.

Thirdly, the report points out that Estonia ensures equal treatment to Armenian nationals with respect to labour conditions pursuant to the EU-Armenia Partnership and Cooperation Agreement (EU-Armenia Agreement). The Committee notes that there is no provision in the EU-Armenia Agreement referring explicitly to the coordination of social security systems.

Lastly, the report points out that equal treatment to Turkish nationals is ensured in Estonia pursuant to the Agreement establishing an Association between the European Economic Community and Turkey signed, on the one hand, by the Republic of Turkey and, on the other hand, by the EU and its Member States and, in particular Decision No. 3/80 to this Agreement. The Committee recalls, in this regards, that the purpose of Decision No. 3/80 is to coordinate the social security systems of the EU Member States so as to enable Turkish workers working or having worked in one or more EU Member States, members of those workers' families and survivors of such workers to enjoy benefits in the traditional branches of social security. The Committee also notes from the constant Court of Justice of the EU case-law that equal treatment is effectively ensured to Turkish nationals by virtue of decision No. 3/80 (See, for instance *Raad van bestuur van het Uitvoeringsinstituut werknemersverzekeringen (Uwv) contre M.S. Demirci e.a*. ruled by the Court of justice of the EU (case C-171/13, ECLI:EU:C:2015:8)).

The Committee considers therefore that the principle of equal treatment is not guaranteed to nationals of other States Parties to the Charter, *inter alia* Albania, Armenia, Bosnia and Herzegovina, "the former Yugoslav Republic of Macedonia", Montenegro and Serbia.

In respect of payment to family benefits, the Committee considered that the requirement for the child to reside in the territory of the paying State is in conformity with Article 12§4 (Statement of Interpretation on Article 12§4, XVIII-1 (2006)). However, since not all countries apply such a system, States Parties applying the 'child residence requirement' are under the obligation, in order to secure equal treatment within the meaning of Article 12§4, to enter, within a reasonable period of time, into bilateral or multilateral agreements with those States which apply a different entitlement principle (Conclusion 2006, Cyprus).

The Committee notes from MISSOC that Estonia applies the rules whereby the payment of family benefits is conditional on the claimant's children being resident in Estonia.

According to the report, granting family benefits to parent or guardian of the child who lives in the countries which apply a different entitlement principle, in particular where the State concerned also apply the means-test, would, in the light of the Estonian system, represent an important administrative burden to Estonia and, consequently, it does not foresee concluding any agreement covering family benefits or taking unilateral measures to provide family benefits to persons residing abroad.

The Committee recalls that in the absence of an agreement, Estonia is required under Article 12§4 of the Charter to take unilateral steps to comply with the requirements of this provisions. The Committee considers therefore the situation not to be in conformity with the Charter on this point.

Right to retain accrued benefits

The Committee notes from previous conclusion (Conclusion 2013) that the retention of accrued benefits is in principle guaranteed for nationals of others States members of the EU or the EEA.

According to the report, amendments to the State Pension Insurance Act allow old-age pensions and survivors' pensions earned in Estonia by Estonian nationals and nationals of other States Parties covered with pension agreements, to be exported to any other States.

However, the Committee recalls that such amendments will only enter into force as from 1st of January 2018. It asks the next report to provide further information on this matter.

Furthermore, the Committee notes that the SAAs and and the EU-Armenia Agreement do not provide sufficient guarantees as such since they do not coordinate social security systems of Albania, Bosnia and Herzegovina, "the former Yugoslav Republic of Macedonia", Montenegro and Serbia with those of the EU Member States, but rather entrusts the Stabilisation and Association Councils (SACs) with this tasks by adopting decisions. The Committee considers that, in absence of such decisions, the SAAs and the EU-Armenia Agreement do not guarantee as such the retention of accrued benefits for nationals of Albania, Armenia, Bosnia and Herzegovina, "the former Yugoslav Republic of Macedonia", Montenegro and Serbia.

The Committee recalls States' obligation, under Article 12§4, to conclude multilateral or bilateral agreements, or to take unilateral measures to ensure the right to retention of accrued benefits whatever the movements of the beneficiary, and reiterates its conclusion of non-conformity on this point.

Right to maintenance of accruing rights (Article 12§4b)

The Committee recalls that there should be no disadvantage for persons who change their country of employment where they have not completed the period of employment or insurance necessary under national legislation to confer entitlement and determine the amount of certain benefits. This requires, where necessary, the aggregation of employment or insurance periods completed in another territory and, in the case of long-term benefits, a pro-rata approach to the conferral of entitlement, the calculation and payment of benefit (Conclusion XIV-1 (1998), Portugal). States may choose between the following means in order to ensure maintenance of accruing rights: Multilateral convention, bilateral agreement or, unilateral, legislative or administrative measures.

The principle of accumulation of insurance or employment periods applies to nationals of States Parties covered by EU regulations.

As regards States Parties which are not EU Member States or members of the EEA, the report provides no information.

The Committee notes that, in the absence of decisions adopted by SACs, the SAAs and the EU-Armenia Agreement do not guarantee as such the accumulation of insurance or employment periods for nationals of Albania, Armenia, Bosnia and Herzegovina, "the former Yugoslav Republic of Macedonia", Montenegro and Serbia. Consequently, it reiterates its conclusion of non-conformity on this point.

Conclusion

The Committee concludes that the situation in Estonia is not in conformity with Article 12§4 of the Charter on the grounds that:

- equal treatment with regard to social security rights is not guaranteed to nationals of all other States Parties;
- it has not been established that equal treatment with regard to access to family allowances is guaranteed to nationals of all other States Parties;
- the retention of accrued benefits is not guaranteed to nationals of all other States Parties;
- the right to maintenance of accruing rights is not guaranteed to nationals of all other States Parties.

Article 13 - Right to social and medical assistance

Paragraph 1 - Adequate assistance for every person in need

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

Types of benefits and eligibility criteria

According to the report, during the reference period social assistance was provided on the basis of the Social Welfare Act of 1995. The arrangement of the provision of social services, emergency social assistance and other assistance, as well as granting and payment of social benefits isthe responsibility of local authorities (rural municipalities and city governments).

The Committee takes note of some amendments with regard to the subsistence benefit which entered into force in 2015, such as the expansion of categories of income not taken into account when calculating the subsistence benefit (e.g. benefits paid from local authority budget, needs-based special allowances and allowances paid from a special allowance fund established by an educational institution, paid on the basis of the Study Allowances and Study Loans Act).

In addition as of January 2015 local authorities were given the possibility to make a discretionary decision not to include grants paid for a specific purpose or benefits paid to cover specific expenses or loss in the income of a person living alone or a family.

In 2015 amendments entered into force also with regard to the housing expenses compensated from the funds of the subsistence benefit. The list of housing expenses compensated was supplemented with repayment of loan taken for renovation of an apartment building.

One of the provisions which enables the local authority not to grant a subsistence benefit, was also supplemented in January 2015. Now it is *expressis verbis* stated that the local authority has the right to refuse to grant a subsistence benefit to a person between the age of 18 and the pensionable age with ability to work who is not working or studying and who is not registered as unemployed with the Estonian Unemployment Insurance Fund. The reference to not being registered as unemployed with the Estonian Unemployment Insurance Fund was not stated before. According to the report, the purpose of this amendment is to emphasise the importance of seeking employment, when the person applying for a subsistence benefit is unemployed. In this connection, the Committee refers to its conclusion of 2009 where it noted that in case the benefit is refused where the person repeatedly refuses an employment offer, such persons have the right to emergency social assistance in accordance with Section 28 of the SWA, if they find themselves in a socially helpless situation due to the loss or lack of means of subsistence. The Committee asks whether emergency social assistance is always maintained even in those cases where persons are refused social assistance due to the fact that they fail to register as unemployed.

As regards medical assistance, the Committee noted in its conclusion 2013 that 92,0% of the population was covered by health insurance. The Committee further notes from the report that the most vulnerable groups continue to be covered by health insurance, on an equal footing with insured persons. At the beginning of 2015, 93.9% of the population was covered by mandatory health insurance offered by the Estonian Health Insurance Fund (EHIF).

The uninsured (6,1% of population) are mostly among the working-age population between 20 and 60 years who are economically inactive (but not registered as unemployed) or working abroad. The uninsured are entitled to emergency ambulance care, emergency primary care and emergency hospital care financed from state budget. Most of local municipalities also cover primary and special care services for their uninsured citizens. For example capital city Tallinn (where almost 1/3 of the population lives) has developed

separate system for uninsured persons financed by city government. All registered unemployed persons are covered by health insurance since 2009.

In reply to the Committee question in the previous conclusion regarding social assistance for the elderly persons, the report states that the Social Welfare Act does not include any restrictions to receiving social services and social benefits based on age of the persons. Therefore, elderly people have the right to receive social aid, including the subsistence benefit. With regard to the subsistence benefit, elderly people who are at pensionable age, do not have to participate in active labour market measures nor be registered as unemployed with the Estonian Unemployment Insurance Fund.

Level of benefits

To assess the situation during the reference period, the Committee takes note of the following information:

- Basic benefit: according to the report and the MISSOC single person or first person in the family received €90 in subsistence benefit.
- Additional benefits: the recipient of subsistence benefit whose family members are all minors (under 18 years of age) has the right to receive a supplementary social benefit *(Täiendav sotsiaaltoetus)* of €15 in addition to the subsistence benefit. According to MISSOC, the exact amount of the subsistence benefit depends on family composition and housing expenses. The Committee notes that the housing expenses are taken into account within the limits of socially justified standards of dwelling and limits set by the local authorities.

The Committee has previously (2013) observed that the housing costs represented 47% of the total amount of the subsistence benefit in 2009. The Committee notes from the report that in 2015 the Social Welfare Act was also supplemented with provisions according to which a subsistence benefit applicant who was granted a subsistence benefit to cover housing expenses was required to ensure payment of such expenses. If the subsistence benefit applicant failed to cover housing expenses in the previous month, the local authority has the right to pay the housing expenses out of the subsistence benefit granted to the person. The Committee asks whether the benefit to meet the housing costs in granted *in addition* to the subsistence benefit or is already included in the amount granted (€ 90 in 2015). In the former case, the Committee wishes to be informed of the average amount granted as housing benefit to a single person in receipt of subsistence benefit.

- Poverty threshold, defined as 50% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value was estimated at € 329 in 2015.

In the light of the above data, the Committee considers that the level of social assistance for a single person is inadequate on the basis that the minimum social assistance that can be obtained falls below the poverty threshold.

Right of appeal and legal aid

The Committee asks the next report to provide updated information regarding the right of appeal and legal aid.

Personal scope

The Committee recalls that, under Article 13§1, States are under the obligation to provide adequate medical and social assistance to all persons in need, both their own nationals as well as nationals of States Parties lawfully resident within their territory, on an equal footing. In addition, with reference to its Statement of Interpretation of Articles 13§1 and 13§4 (Conclusions 2013) regarding the scope of Articles 13§1 and 13§4 in terms of persons covered, the Committee considers that persons in an irregular situation in the territory of the

State concerned are also covered under Article 13§1, rather than under Article 13§4, which was previously its practice.

The Committee henceforth examines whether the States who have accepted Article 13§1 ensure the right to:

- adequate social and medical assistance for their own nationals and for nationals of other States Parties lawfully resident within their territory on an equal footing;
- emergency social and medical assistance to persons unlawfully present in their territory.

Nationals of States Parties lawfully resident in the territory

According to the report, all aliens residing in Estonia on the basis of a residence permit or a right of residence, have the possibility to apply and receive the subsistence benefit and other social assistance measures, regardless of the fact whether they are temporary or permanent residents of Estonia. However, as regards temporary residents, the fact that the person has received subsistence benefit, might hinder his/her opportunities of renewing the temporary residence permit or obtaining a long-term residence permit. Namely according to the Aliens Act, one of the conditions of acquiring a residence permit is a sufficient legal income. Legal income is defined by the Aliens Act as lawfully earned remuneration for work, parental benefits, unemployment benefits, income received from lawful business activities or property, pensions, scholarships, means of subsistence, benefits paid by a foreign state and the subsistence ensured by family members earning legal income. This means that subsistence benefit and other means-based social benefits are not considered as legal income.

The Committee recalls that under Article 13§1, foreigners who are lawfully resident in the territory of a Contracting Party and lack adequate resources must enjoy an individual right to appropriate assistance on an equal footing with nationals, i.e. beyond emergency assistance. Furthermore, they cannot be repatriated on the sole ground that they are in need of assistance. Once the validity of the residence and/or work permit has expired, the Parties have no further obligation towards foreigners covered by the Charter, even if they are in a state of need. However, this does not mean that a country's authorities are authorised to withdraw a residence permit solely on the grounds that the person concerned is without resources and unable to provide for the needs of his family.

The Committee understands that the person's residence permit may not be renewed but it will not be withdrawn before its legal expiry, on the sole ground that the person concerned is in need. The Committee asks if this understanding is correct.

Foreign nationals unlawfully present in the territory

The Committee recalls that persons in an irregular situation must have a legally recognised right to the satisfaction of basic human material need (food, clothing, shelter) in situations of emergency to cope with an urgent and serious state of need. It likewise is for the States to ensure that this right is made effective also in practice (European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, §187).

The Committee cannot accept the necessity of halting the provision of such basic emergency assistance as shelter, guaranteed under Article 13 as a subjective right, to individuals in a highly precarious situation. The Committee has considered that even within the framework of the current migration policy, less onerous means, namely to provide for the necessary emergency assistance while maintaining the other restrictions with regard to the position of migrants in an irregular situation, remain available to the Government with regard to the emergency treatment provided to those individuals, who have overstayed their legal entitlement to remain in the country (Complaint No. 90/2013, Conference of European Churches (CEC) v. the Netherlands, decision on the merits of 1 July 2014, §123).

The Committee notes from the report that according to the Social Welfare Act, every person staying in Estonia has the right to receive emergency social assistance. Therefore also for the citizens of other countries who do not live in Estonia on the basis of a residence permit or right of residence, emergency social assistance is guaranteed (for example people who stay in Estonia on the basis of a visa, but also people who do not have a legal basis to stay in Estonia). Emergency social assistance is defined by the Social Welfare Act as necessary social welfare measures in correspondence with the situation of a person without sufficient means of subsistence which guarantees the person at least food, clothing and temporary abode. The provision of emergency social assistance to an alien temporarily staying in Estonia is administered by the rural municipality or city government in whose administrative jurisdiction the person is staying at the time he or she is in need of assistance.

According to the report, the arrangement of the provision of social services, emergency social assistance and other assistance, as well as granting and payment of social benefits is in the responsibility of local authorities. Abode and food may be provided also by the Police and Border Guard Board, when they detect unlawful entry to the Republic of Estonia or when persons staying in Estonia without a legal basis are placed in a detention centre on the basis of a judgement of an administrative court judge. The detention centre, if necessary, will provide the person to be expelled with clothing without charge. The centre organises the provision of food whereas as far as possible, persons to be expelled are permitted to observe the dietary habits of their religion at their own expense. The person who ensures the provision of medical care in the detention centre supervises the preparation of the menu of the detention centre and the provision of food. At least once a week and upon reception into the detention centre, persons to be expelled are provided with an opportunity to use a sauna, bath or shower. Once a month, hairdressing and barber’s services is provided. Toiletries are provided by the detention centre if the person to be expelled does not have these or funds to acquire these. A person to be expelled shall be ensured access to medical examination and necessary health services. The detention centre has permanent treatment facilities for the supervision of the state of health of persons to be expelled. Health services in detention centres are provided by persons with family physician’s qualifications pursuant to the provisions regulating the provision of specialised outpatient care.

Conclusion

The Committee concludes that the situation in Estonia is not in conformity with Article 13§1 of the Charter on the ground that the level of social assistance paid to a single person without resources is not adequate.

Article 13 - Right to social and medical assistance

Paragraph 2 - Non-discrimination in the exercise of social and political rights

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

According to the report, there have not been any changes compared to the previous reference period. The political and social rights of persons are not restricted in relation to receiving social and medical assistance. The provisions of the Constitution, the Personal Data Protection Act and the Social Welfare Act, as indicated in the previous report, were in force in the period of 2012-2015.

Conclusion

The Committee concludes that the situation in Estonia is in conformity with Article 13§2 of the Charter.

Article 13 - Right to social and medical assistance

Paragraph 3 - Prevention, abolition or alleviation of need

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

The Committee notes that according to the Social Welfare Act valid until the end of 2015, local governments provide social counselling services to the subsistence benefit applicants and their family members in need of assistance upon granting the subsistence benefit. The organisation of providing social services, emergency social assistance and other assistance as well as granting and paying social benefits continues to be the obligation of local governments.

According to the Social Welfare Act, social counselling has to be provided to the recipients of subsistence benefit and their family members. During the period of 2012-2015, 447 506 applications for subsistence benefit were satisfied. Since the arrangement of social services is the task of local authorities, the provision of many social services are financed from the local authorities budgets.

Conclusion

The Committee concludes that the situation in Estonia is in conformity with Article 13§3 of the Charter.

Article 13 - Right to social and medical assistance

Paragraph 4 - Specific emergency assistance for non-residents

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

The Committee refers to its conclusion under Article 13§1 (personal scope) and recalls that Article 13§4 from now on will cover emergency social and medical assistance for nationals of States Parties lawfully present (but not resident) in the territory.

The Committee recalls that States Parties are required to provide non-resident foreigners, without resources, with emergency social and medical assistance. Such assistance must cover accommodation, food, clothing and emergency medical assistance, to cope with an urgent and serious state of need (without interpreting too narrowly the 'urgency' and 'seriousness' criteria). No condition of length of presence can be set on the right to emergency assistance (Complaint No 86/2012, European Federation of national organisations working with the Homeless (FEANSA) v. the Netherlands, decision on the merits of 2 July 2014, §171).

The Committee further recalls that emergency social assistance should be supported by a right to appeal to an independent body. As regards provision of emergency shelter, there must be an effective appeal mechanism before an independent judicial body in order to determine the proper administration of shelter distribution. This right must also be effective in practice (Conference of European Churches (CEC) v. the Netherlands, Complaint No 90/2013, decision on the merits of 1 July 2014 §106).

The Committee notes from the report that according to the Act on Granting International Protection to Aliens, applicants for international protection who live in the accommodation centre or, for security reasons, outside the accommodation centre and who do not work, have the right to receive financial support. The amount of financial supports to applicants for international protection equals to the subsistence level. Moreover, an applicant residing at the accommodation centre for asylum seekers was during the reference period paid a monetary benefit for urgent small expenses in the amount of 10% of the rate of the subsistence level. The accommodation centre arranges also services for applicants of international protection as necessary: the provision of accommodation, supply of foodstuffs, supply of essential clothing and other necessities and toiletries, supply of money for urgent small expenses, access to medical examinations and necessary health services, essential translation services and Estonian language instruction, information regarding their rights and duties and transportation necessary for the performance of procedural acts.

Applicants for international protection are not entitled to health insurance, but they have the right to receive health care services listed in the Health Insurance Fund, with the exemption of services related to handling and transplantation of cells, tissues and organs and dental care of adults. However, emergency dental care and treatment prescribed by medical doctor is provided. The provision of health care services and medicinal products that are used to provide these services are financed from the state budget. The accommodation centre arranges, if necessary, access to medical examinations and necessary health services. The accommodation centre has entered into contract with selected health care service providers for that purpose. The specific situation of a vulnerable person and the special needs arising therefrom are taken account of in the international protection proceedings. Applicants for international protection with specific medical or psychological special needs are granted access to health care services, including mental health care services (psychological counselling, psychiatric aid etc).

The Committee refers to its conclusion under Article 13§1 where it found that the situation as regards emergency social and medical assistance to unlawfully present foreign nationals is in conformity with the Charter and considers that the situation is also in conformity with the Charter regarding lawfully present foreign nationals.

Conclusion

The Committee concludes that the situation in Estonia is in conformity with Article 13§4 of the Charter.

Article 14 - Right to benefit from social welfare services

Paragraph 1 - Promotion or provision of social services

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

Organisation of the social services

In reply to the request for a detailed description of the organisation and functioning of social services, the report indicates that since 1 January 2016 the Estonian social welfare is regulated by two Acts adopted on 9 December 2015. The Act provides the organisational, economic and legal basis for social welfare. For the first time, the Act aims to unify the quality of local government social services and establishes service-based minimum requirements to social services. The Act establishes a list of local government social services – domestic service, general care service provided outside the home, support person service, curatorship of adults, personal assistant service, shelter service, safe house service, social transport service, provision of dwelling, debt counselling service – their objectives, content, obligations of local authorities and requirements for service delivery. Moreover, the Act sets the obligation that the person's need for aid has to be assessed and appropriate care has to be offered.

The Committee takes note of the legislative developments which have taken place outside the reference period and asks that the next report provides information on the impact of these measures in practice.

The Committee notes that the report refers mainly to changes that have been introduced in the rehabilitation services and outside the reference period. The Committee recalls that social services include in particular counselling, advice, rehabilitation and other forms of support from social workers, home help services (assistance in the running of the home, personal hygiene, social support, delivery of meals), residential care, and social emergency care (shelters) (Conclusions 2005, Bulgaria). The Committee further recalls that Article 14§1 guarantees the right to general social welfare services and that the right to benefit from social welfare services must potentially apply to the whole population; the provision of social welfare services concerns everybody who find themselves in a situation of dependency, in particular the vulnerable groups and individuals who have a social problem, therefore, social services must be available to all categories of the population who are likely to need them. (...) (Conclusions 2009, Statement of interpretation on Article 14§1). In this respect the Committee asks that the next report provides updated information on the situation regarding all categories of social services.

Effective and equal access

In its previous conclusion (Conclusions 2013) the Committee asked to be updated on the situation on equal and effective access to social services for lawful residents.

The report indicates that the provisions regarding the lawful legal residents have not been changed. According to the General Part of the Social Code Act, Estonian citizens residing in Estonia, as well as aliens residing in Estonia on the basis of a long-term residence permit or permanent right of residence, as well as aliens residing in Estonia on the basis of a temporary residence permit or temporary right of residence are entitled to the social services. In cases provided by the law, these rights may also apply to other persons. Access to social services and benefits of the beneficiaries of international protection is guaranteed on the same grounds as other permanent residents. This means that there are no time limits established for the application of services and benefits.

The most important result during recent years is the elaboration and adoption of the Welfare Plan for 2016-2023 in March 2016. The main focus of the Strategy is on the prolongation of people's working life, support for independent living and coping as long as possible and to mitigate social risks by providing: services and benefits according to people's actual needs;

services that support independent coping in everyday environment; developing community based services and flexible innovative solutions; paying more attention on prevention; enforcing cooperation between local governments. The Committee takes note of the changes that have taken place outside the reference period and asks that the next report provides updated information on the implementation of the Welfare Plan for 2016-2023.

The Committee in its previous conclusion (Conclusions 2013) asked to know what are the impacts of the uneven geographical distribution of social services in Estonia on effective and equal access to social services. The report indicates that the lack of social services especially in the small local governments and with low population density may hinder the employment and quality care possibilities. Due to the lack of care services, the labour market participation of family members, who take care of their relatives is hampered and has a long-term effect on their income, poverty, sickness benefits and pensions in the longer run. To respond to these challenges, the local government reform focuses on the improvement of accessibility and quality of social and other public services. In this respect the Committee asks the next report to provide a detailed information on concrete measures on effective and equal access to social services.

Quality of services

The report indicates that the improvement of quality of social services has been the Estonian priority for several years. In order to assist local governments and service providers to implement the Social Welfare Act, the Ministry of Social Affairs, together with relevant stakeholders, elaborated service specific guidelines in 2011 . Since then those guidelines have been implemented during the reference period and are going to be further developed with the elaboration of specific general social services quality guidelines that will be operational from 2017. In order to make the monitoring system effective and beneficial for the improvement of quality of social services, the Ministry of Social Affairs has initiated the concept of advisory monitoring which has started in the Centre for Quality in Social Services established in 2012 as EQUASS Competence Centre and has enlarged its duties since then. In this respect the Committee asks to know about the impact in practice of these measures.

The report indicates that the Special Care Development Plan 2014-2020, approved by the Minister of Social Protection in September 2014, prioritise the development of supportive services, focusing on community-based development of person-centred, high-quality services. Supportive services must enable prevention of people's need for 24-hour forms of services and must support the principles of deinstitutionalisation. In this respect the Committee asks to receive updated information on the result of the Special Care Development Plan 2014-2020.

The report provides figures, statistics to demonstrate effective access of individuals to social services and the participation of the voluntary sector to the provision of social services. The number of social service providers has increased during the reporting period. The increase has occurred due to the fact, that state supports the development of services, that are provided out of institutions and in the usual living environment (i.e. at home) or closest possible to the home. The number of welfare institutions for adults has increased due to the ageing population (from 131 in 2011 to 150 in 2015). The number of service users has increased due the fact that the state has invested to shorten the waiting lists of a number of services (rehabilitation (from 13.538 in 2011, to 16.142 in 2015), 24 hour special care services (from 2.782 to 3.214), technical aids (from 57.760 to 73.445). The number of staff members of social welfare institutions in the end of 2015 was over 6 311 . Nearly 25% of them are carers, social care workers and providers of nursing care and 34% are persons involved in teaching and development.

The report provides information on the expenditure and financing sources of welfare services during the reference period, by types of services and sources of financing.The report indicates that according to the Social Welfare Act, the social services may be financed from

state budget, local government budget and other sources (different funds, donations etc). The fee may be collected from social services users. The amount of fee depends on the amount of services, cost of services and the economic situation of service users and their family members. It can be noted that there is an increase of total expenses in all different sectors, for example institutional welfare services for adults from 34.211.944 in 2011 to 49.789.879 in 2015.

The report indicates that local governments have the main responsibility in providing assistance to the people in need. During the reporting period, the local government's social protection expenditures have increased. This is, again, caused by the socio-economic situation, ageing and need for investments. According to the statistics, the biggest share of social protection expenditure was the social protection of elderly, which, in average, forms slightly over 40% of total expenditure. The elderly are followed by children and families (approximately 22% of total expenditure) and social protection of the disabled people (around 16% of the total expenditure). State budget expenditure on social insurance has been steadily increasing since 2011 amounting to 2,78 million Euros in 2013. Despite of the increase in total expenditure, the percentage of social protection expenditure in GDP has steadily decreased from 15,7% in 2011 to 14,8% in 2013. The initial estimations of Statistics Estonia show, that the slight decrease continued also in 2014, when the social protection expenditure formed 14,7% of GDP.

In its previous conclusion (Conclusions 2013) the Committee asked to know how many complaints have been lodged at local level and how many have been dealt with. regarding quality control of social services. The report states that the Ministry of Social Affairs does not collect information about the complaints lodged at local level. However, in the framework of yearly monitoring, the local governments may present the number of complaints submitted during the year, but this practice is not very common. Only few local governments submit the number of complaints. Most of the complaints are on the granting and payment of subsistence and other benefits. Nevertheless, the report indicates that the low and scarce number of complaints shows the poor knowledge of persons in need and their family members about their rights. With the elaboration and dissemination of service-based quality guidelines (to be elaborated by the end of 2016) and other activities such as, information articles about social services, dissemination of information via Ministry's website the Ministry of Social Affairs has planned to raise public awareness about user's rights, including enforcement and empowerment of advocacy organisations. The Committee takes note of the reply and requests that the next report provides information on the improvement following the elaboration and dissemination of service-based quality guidelines by the government, regarding raising public awareness about user's rights, including enforcement and empowerment of advocacy organisations.

Regarding the request from the Committee to know about the ratio number of staff to users, the report indicates that the Ministry of Social Affairs does not monitor and publish the requested information regularly. The survey on social workers referred in the previous report, was one fold and currently no other surveys are planned. In this respect the Committee reiterates its request to know about the ratio number of staff to users in social services.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Estonia is in conformity with Article 14§1 of the Charter.

Article 14 - Right to benefit from social welfare services

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

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

The report indicates that the public participation in the establishment and maintenance of social welfare services is not regulated by the law. However, according to the Social Welfare Act, the service providers must meet established quality criteria. In this respect the Committee asks to know what are the quality criteria that service providers must meet.

The Committee recalls that Article 14§2 requires States Parties to provide support for voluntary associations seeking to establish social welfare services (Conclusions 2005, Statement of Interpretation on Article 14§2). This does not imply a uniform model, and States Parties may achieve this goal in different ways: they may promote the establishment of social services jointly run by public bodies, private concerns and voluntary associations, or may leave the provision of certain services entirely to the voluntary sector. (...). The Committee examines all forms of support and care mentioned under Article 14§1 as well as financial assistance or tax incentives for the same purpose. States Parties must ensure that private services are accessible on an equal footing to all and are effective, in conformity with the criteria mentioned in Article 14§1. Specifically, States Parties must ensure that public and private services are properly coordinated, and that efficiency does not suffer because of the number of providers involved. In order to control the quality of services and ensure the rights of the users as well as the respect of human dignity and basic freedoms, effective preventive and reparative supervisory system is required.

The report indicates that the involvement of civil society is regulated by the handbook for officials and non-governmental organizations that describes good practices for inclusion of NGO's in the development and provision of social and other public services. Moreover, the Estonian Regional Development Strategy 2014-2020 sets out the goal of ensuring availability and accessibility of high-quality public services for different social groups and improve satisfaction including measures for public transport all over Estonia. Living independently and being included in the community are cornerstones of the new Welfare Development Plan 2016-2023 which also includes the activities for raising public awareness about the rights and provision of social services and empowerment of people and representative organisations of different user's groups. The Committee notes that the report provides information outside the reference period and asks that the next report provides updated information and developments following the adoption of the new Welfare Development Plan 2016-2023, in particular on activities for raising public awareness about the rights and provision of social services and empowerment of people and representative organisations of different user's groups.

The report indicates that in 2012 the Estonian Social Enterprise Network was established. The network currently involves 48 of the top Estonian Social Enterprises. The main aim of Estonian Social Enterprise Network is to increase the number, organisational capacity and societal impact of social enterprises. During 2014-2015, the Gambling Tax Board and National Foundation of Civil Society have financed a development programme on social entrepreneurship and programme on increasing the potential of public services in the social sphere through inclusion of volunteers. The selected projects aimed to give practical professional counselling and training in the establishment and development of social enterprises and inclusion of volunteers in their activities. In this respect, the Committee asks to know whether and how the government ensures that services managed by the private sector are properly and effectively supervised and that private services are accessible on an equal footing to all.

The report indicates that the Ministry of Social Affairs does not collect official statistics regarding the voluntary sector participation in the provision of social services. However, in 2012, the Social Enterprises Network has carried out a survey about the activity fields of social enterprises in Estonia. According to the survey, a total of 38% of social enterprises

have defined social welfare as their field of activity. According to statistics of the Ministry of social affairs, the report indicates that people volunteering in providing care services to people in need increased in the reference period from 350 in 2011 to 729 in 2015.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Estonia is in conformity with Article 14§2 of the Charter.

Article 30 - Right to be protected against poverty and social exclusion

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

Measuring poverty and social exclusion

The main indicator used by the Committee to measure poverty is the relative poverty rate. This corresponds to the percentage of people living under the poverty threshold, which is set at 60% of the equivalised median income.

The Committee notes from Eurostat that the at-risk-of-poverty rate (cut-off point: 60% of median equivalised income after social transfers) increased from 17.5% in 2012 to 21.6% in 2015 (the latter figure nevertheless representing a decrease compared to 2014 where the rate reached 21.8%). The at-risk-of-poverty rate before social transfers went from 24.9% in 2012 to 27.8% in 2015. The Committee notes in this respect that the poverty reducing effect of social transfers in Estonia is one of the lowest among EU states. It also notes that the Europe 2020 headline poverty indicator increased from 23.4% in 2012 to 24.2% in 2015.

The Committee further notes that the at-risk-of-poverty rate of elderly people over 65 has increased steadily since 2010 and reached 39.8% in 2015, which is one of the highest rates in the EU.

Finally, the Committee notes that poverty levels are significant and well above EU averages, however it also notes that there was an improvement in the situation from 2014 to 2015 with overall rates going down. The severe material deprivation rate fell from 6.7% in 2014 to 5.7% in 2015 which is close to the EU average of 5.1%.

Approach to combating poverty and social exclusion

With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, Article 30 requires States Parties to adopt an overall and coordinated approach, which should consist of an analytical framework, a set of priorities and measures to prevent and remove obstacles to access fundamental social rights. The overall and coordinated approach must link and integrate policies in a consistent way, moving beyond a purely sectoral or target group approach and coordinating mechanisms, including at the level of delivery of assistance and services to those living in or at risk of poverty, should exist.

As to the legislative framework, the Committee notes that the Estonian legislation does not define poverty. However, since 2011 a law prescribes that, before passing any legislation, it is necessary to assess its social impact.

According to the report, the best way to alleviate poverty is to bring back people into employment. Access to labour market services has been improved for the elderly and disabled people. In addition, the Employment Programme 2014 – 2015 establishes the possibility for old age pensioners to be supported in obtaining further qualifications.

The Committee takes note of the monthly amounts of needs-based family benefits which are dependent on the number of children in the family. As for pensions it is noted that they continuously increase 5% per year.

The Committee takes note of the policy measures taken to implement the legal framework. For example, the strategic vision ‘Sustainable Estonia 21’ aims to increase welfare and social inclusion by 2030. To reach this goal, specific active labour market measures will be developed, a system of life-long learning will be created as well as a system of support measures meant to endorse the participation of excluded groups in the labour market. The Committee asks the next report to provide information on the results achieved. It also asks whether specific measures are foreseen for the elderly in view of the very high poverty rate of this group.

The ‘National Reform Programme ‘Estonia 2020’ aims to reduce the at-risk-of-poverty rate to 15% by 2020. To reach this goal, measures are taken to increase the employment of disadvantaged groups in the labour market (elderly, disabled people, etc.). The Committee asks the next report to provide information on the results.

Information should also be provided on the existence of coordination mechanisms for these measures, including at delivery level (that is, how coordination is ensured in relation to the individual beneficiaries of assistance and services).

The Committee notes that according to the European Semester Country Report Estonia 2017 the effect of social transfers has declined and is limited, going from over 36% in 2010 to just 22% in 2015. The Committee asks whether and what measures are taken or foreseen to ensure that social transfers effectively reduce poverty.

The Committee further observes that total Government expenditure on social protection fluctuated around 12% of GDP during the reference period while increasing slightly in 2015 to 12.9%. The Committee notes that this is significantly below the EU average of 19.2% in 2015 and asks that the next report contain detailed data demonstrating that the budgetary resources allocated to combating poverty and social exclusion are sufficient in view of the scale of the problem at hand.

Finally, the Committee refers to its conclusions of non-conformity under other provisions of the Charter which are relevant to its assessment of compliance with Article 30 (see Conclusions 2013, Statement of interpretation on Article 30). It refers in particular to Article 12§1 and its conclusion that the minimum level of several social security benefits (sickness, unemployment, old age and invalidity pensions) are manifestly inadequate (Conclusions 2017), to Article 13§1 and its conclusion that the level of social assistance paid to a single person without resources is not adequate (Conclusions 2017) and to Article 16 and its conclusion that family benefits are not of an adequate level for a significant number of families (Conclusions 2015).

In view of all of the above, the Committee does not see it clearly demonstrated that Estonia implements an overall and coordinated approach to combating poverty and social exclusion which is adequate to the scale of the problem, however having regard to the relative paucity of the information at its disposal and also to the modest improvement in the situation from 2014 to 2015, it nevertheless reserves its position as to the conformity of the situation with Article 30.

Monitoring and evaluation

The Committee notes from the report that statistical data concerning poverty and social exclusion are published yearly by Statistics Estonia. This information is then analyzed in various studies, for example on subsistence allowance, children, people with disabilities and elderly. These analyses evaluate the impact of social benefits to the social protection systems and the at-risk-of-poverty rates.

However, the Committee recalls that Article 30 of the Charter requires the existence of monitoring mechanisms for reviewing and adapting the efforts in all areas and sectors, at all levels, national, regional, local, to combat poverty and social exclusion; mechanisms which should involve all relevant actors, including civil society and persons directly affected by poverty and exclusion (see Conclusions 2003, France, Article 30). It therefore asks that the next report contain comprehensive information on such mechanisms covering all sectors and areas of the combat against poverty and social exclusion. In this respect, the Committee also wishes to know how individuals, research institutions and voluntary associations take part in assessing measures to combat poverty (see also Conclusions 2013, Statement of interpretation on Article 30).

Conclusion

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

January 2018

European Social Charter

European Committee of Social Rights

Conclusions 2017

FINLAND

This text may be subject to editorial revision.

The following chapter concerns Finland, which ratified the Charter on 21 June 2002. The deadline for submitting the 12th report was 31 October 2016 and Finland submitted it on 28 October 2016. The Committee received on 22 February 2017 observations from the central Organisation of Finnish Trade Unions (SAK), the Finnish Confederation of Professionals (STTK), and the Confederation of Unions for Professional and Managerial Staff in Finland (Akava) on the application of Articles 3, 12 and 13. The Committee received on 5 April 2017 observations from the Finnish League for Human Rights and the Finnish Society of Social Rights,on the implementation of Articles 11, 12, 13, 23 and 30 .

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 "Health, social security and social protection":

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

Finland has accepted all provisions from the above-mentioned group, except Articles 3§§2 and 3.

The reference period was 1 January 2012 to 31 December 2015.

The conclusions relating to Finland concern 17 situations and are as follows:

– 12 conclusions of conformity: Articles 3§1, 3§4, 11§1, 11§2, 11§3, 12§2, 12§3, 13§2, 13§3, 14§1, 14§2 and 30.

– 3 conclusions of non-conformity: Articles 12§1, 12§4 and 13§1.

In respect of the 2 other situations related to Articles 13§4 and 23 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 Finland under the Charter. The Committee requests the authorities to remedy this situation by providing the information in the next report.

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

Article 3§4

A Government Decree on Good Occupational Health Practice Principles, Content of Occupational Health Care, and Education of Occupational Professionals and Experts (708/2013) took effect on 1 January 2014. The Decree underlines active cooperation between occupational health care professionals and the workplace in maintaining work ability of the workforce and also obligated occupational health units to develop and to follow the quality and the effectiveness of their services.

Article 12§3

- In 2014, the qualifying period for unemployment benefits was shortened from 34 weeks to 26 weeks for employees and from 18 to 15 months for self-employed persons (amended Unemployment Security Act, No. 1049/2013);
- As from 2013, the income of the beneficiary's spouse is no longer taken into account when assessing entitlement to the non contributory unemployment benefits (labour market support), which has reduced unemployment periods without benefits;
- As of the beginning of 2014 (amended Health Insurance Act, No. 1197/2013), entitlement to parenthood allowance (maternity, paternity or parental allowance) has been extended to people covered by the Finnish social security system for at

least 180 days immediately before the due date of birth of the child. Previously, the Act required the person to have lived in Finland for the same period of time, which meant that foreigners from "third countries", regularly working in Finland and covered by the Finnish social security system but not satisfying the length of residence condition were excluded from the parenthood allowance;

- At the beginning of 2013, another amendment to the Health Insurance Act, extended a father's right to paternity allowance to 54 working days; fathers can choose to stay at home and be entitled to paternity allowance for 1 to 18 days at the same time as the child's mother is paid maternity or parental allowance. The rest of the paternity allowance can be paid after the parental allowance has ended. Fathers can also, if they wish so, use all of the paternity allowance entitlement after the parental allowance period, but before the child is two years old;
- Through further amendments to the Health Insurance Act (No. 1224/2004), in 2014, partial sickness-allowance was extended from 72 days to 120 days (No. 972/2013);
- The Disability Benefits Act (No. 570/2007) was amended to the effect that, as of 1 June 2015, the specific costs resulting from the illness, impairments or injuries are better taken into account when deciding the level of the benefits granted; as a result, according to the report there would be approximately 10 000 newly eligible minimum basic benefits recipients over 16 years of age by the end of 2020. The amendment will extend benefits, inter alia, to those who are under the threat of disability, such as people suffering from long-term mental and behavioural disorders, those with multiple sclerosis or rheumatoid arthritis, or persons with cerebral palsy;
- Another amendment concerning rehabilitation took effect at the beginning of October 2015, whereupon the person being rehabilitated can receive a partial rehabilitation allowance for those rehabilitation days when he/she is working part-time alongside the rehabilitation.

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The next report to be submitted by Finland will be a simplified report dealing with the follow up given to decisions on the merits of collective complaints in which the Committee found a violation.

The deadline for submitting that report was 31 October 2017. The report was registered on 30 October 2017.

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Conclusions and reports are available at www.coe.int/socialcharter as well as in the HUDOC database.

Article 3 - Right to safe and healthy working conditions

Paragraph 1 - Health and safety and the working environment

The Committee takes note of the information contained in the report submitted by Finland. It also takes notes of the information contained in the comments by the Central Organisation of Finnish Trade Unions (SAK), the Confederation of Unions for Professional and Managerial Staff in Finland (Akava) and the Finnish Confederation of Professionals (STTK), transmitted on 17 February 2017.

General objective of the policy

In its previous conclusion (Conclusions 2013), the Committee considered that the general objective of the policy was in conformity with Article 3§1 of the Charter and asked for updated information on the legislative, regulatory and case law developments that occurred during the reference period. The report contains little relevant information for the reference period. It states that the policies for the working environment and well-being at work until 2020 set out the long-term goals for occupational safety and health and the measures required for achieving the goals. In 2015, the Department for Occupational Safety and Health of the Ministry of Social Affairs and Health has produced a comprehensive review of working life, “Working Life 2025 Review. Effects of the changes in working life and the working environment on occupational safety and health and well-being at work”. In addition to the changes in work and working life, the review presents, among others, actions to be taken by occupational safety and health administration today in order to be able to meet the future challenges in time and aims to avoid undesired development or to achieve a course of development that is better than expected. According to the report, the legislative changes concerning occupational safety took effect during the reporting period.

The Committee points out that new technology, organisational constraints and psychological demands favour the development of psychosocial factors of risk, leading to work-related stress, aggression, violence and harassment. It would also point out that, with regard to Article 3§1 of the Charter, it takes account of stress, aggression, violence and harassment at work when examining whether policies are regularly evaluated or reviewed in the light of emerging risks. The States parties have a duty to carry out activities in terms of research, knowledge and communication relating to psychosocial risks (Statement of Interpretation on Article 3§1 of the Charter, Conclusions 2013). In this context, the report indicates that the guidelines for both the Supervision of Physical Violence and Its Threat (2015) and for Psychosocial Strain (2013) were implemented for the use of Occupational Safety and Health Divisions.

The Committee underlines that, in accordance with Article 3§1 of the Charter, the main objective of the policy must be to foster and preserve a culture of prevention in respect of occupational health and safety. Occupational risk prevention must be incorporated into the public authorities’ activities at all levels and form part of other public policies (on employment, persons with disabilities, equal opportunities, etc.). The policy and strategies adopted must be regularly assessed and reviewed, particularly in the light of changing risks. The Committee considers the information provided useful but insufficiently detailed regarding the national policy. Insofar as the description of the general objective of the national policy is concerned, the Committee asks that the next report focuses on these particular aspects.

Organisation of occupational risk prevention

According to the report, the Ministry of Social Affairs and Health directs the implementation of its Occupational Safety and Health Strategies through performance negotiations carried out annually with the Occupational Safety and Health Divisions. The activities are based on a four-year frame agreement on the performance objectives and a supplementary annual performance agreement. The Committee notes that the number of written advice rose from

45,450 in 2012 to 56,207 in 2015. The number of improvement notices also rose from 6,420 in 2012 to 8,342 in 2015.

The Committee considers that the report contains little relevant information for the reference period. It asks for information on the measures taken by the Labour Inspectorate to develop an occupational health and safety culture among employers and employees and share its experience in implementing instructions, prevention measures and consultations. It also asks for information on the involvement of the public authorities in the implementation of prevention measures (risk assessment, awareness-raising, protective measures) at national and company level.

Improvement of occupational safety and health

The report does not provide any new information on the involvement of public authorities in research relating to occupational health and safety, training of qualified professionals, definition of training programmes or certification of processes. The Committee asks the next report to provide updated information on the involvement of the public authorities in the analysis of sector-specific risks.

Consultation with employers' and workers' organisations

The report states that the Finnish work life is based on the principle of tripartite collaboration between the Government, the employers and the employees. All the key policies related to work life, occupational safety and health, social security and the labour market are negotiated collectively between the Government, employers and trade unions, and agreements are signed on a consensual basis. The Advisory Committee on Occupational Safety and Health, appointed by the Government, is located within the jurisdiction of the Ministry of Social Affairs and Health. The members of the Committee are appointed to represent the most significant organisations of the social partners as well as other important stakeholders in the development of occupational safety and health. According to the report, another Advisory Committee relevant to occupational safety and health in the Government Administration is the Advisory Committee on Occupational Health Services, which is located within the Health Administration of the Ministry of Social Affairs and Health.

Conclusion

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

Article 3 - Right to safe and healthy working conditions

Paragraph 4 - Occupational health services

The Committee takes note of the information contained in the report submitted by Finland. It also takes notes of the information contained in the comments by the Central Organisation of Finnish Trade Unions (SAK), the Confederation of Unions for Professional and Managerial Staff in Finland (Akava) and the Finnish Confederation of Professionals (STTK), transmitted on 17 February 2017.

The Committee recalls that under Article 3§4 States must promote, in consultation with employers' and workers' organisations, the progressive development of occupational health services for all workers with essentially preventive and advisory functions. These services may be run jointly by several companies. The services must be efficient and should be able to identify, measure and prevent work-related stress, aggression and violence (see Statement of interpretation on Article 3§4, Conclusions 2013; also Conclusions 2003, Bulgaria). It further recalls that if occupational health services are not established for all enterprises, the authorities must develop a strategy, in consultation with employers' and employees' organisations, for that purpose. Thus, States "must take measures that allow it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources" (Conclusions 2003, Bulgaria, Conclusions 2009, Albania).

The report states that a Government Decree No. 708/2013 on Good Occupational Health Practice Principles, Content of Occupational Health Care, and Education of Occupational Professionals and Experts took effect on 1 January 2014. The Decree underlines active cooperation between occupational health care professionals and the workplace in maintaining work ability of the workforce and also obligated occupational health units to develop and to follow the quality and the effectiveness of their services.

In reply to the Committee's question regarding the outcome of the amendments and strategies implemented (Conclusions 2013), the report recalls that the Amendments to the Health Insurance Act (19/2012) and the Occupational Health Care Act (20/2012) took effect in June 2012 and obliged employers to inform the occupational health care services if an employee's cumulative absence due to illness has continued for more than one month (Section 10a of the Occupational Health Care Act). In 2015, this employer's obligation was checked in 51 inspection targets (workplaces), of these 35 got a written advice on the matter. Initial Occupational Health in Finland 2015 results show that the occupational health care professionals have moved their activities more toward early prevention whereas the proportion of treatment has remained stable.The Committee notes that, according to the Finnish Pension Security Centre statistics 2015, the number of disability retirements has decreased by about 2,000 persons between 2012-2014 and the number of over nine sick leave days has decreased by about 730,000 days from 2010-2013.

In its previous conclusion (Conclusions 2013), the Committee asked for information clarifying the manner in which access to occupational health services takes place in practice for temporary workers, self-employed workers and workers whose status is not governed by an employment contract. The report states that temporary workers whose status is governed by contract are included in occupational health care. Self-employed workers can arrange occupational health services for themselves. The Committee notes from the report that there were 239,970 self-employed people at the end of the year 2014, and according to the preliminary results of Occupational Health in Finland 2015 survey, only 37,088 had arranged services for themselves. As regards workers whose status is not governed by an employment contract, they are not included in occupational health services, because a contract or service is a prerequisite for occupational health services and the employer is obligated to arrange and finance them. However, those whose status is not governed by an employment contract, like trainees and those in work-try-out are included in occupational safety that concerns the workplace, but not in individual medical care.

The Committee notes from the trade unions' comments received (see above) that the central organisations point out deficiencies in the coverage of occupational health services, especially in small enterprises with fewer than 10 employees. The trade unions' report indicates that even if occupational health services are in place formally, their content may not meet the requirements of the Occupational Health Care Act in all respects, and e.g. all health checks in regard of work presenting a special risk of illness have not been conducted as required by the Act. Coverage problems also exist in fixed-term employment relationships and temporary agency work. The Committee invites the authorities to comment on this observation in the next report and to provide all relevant information in this respect.

In its previous conclusion, the Committee asked information on the number of occupational physicians in relation to the total workforce; the number of workers monitored by occupational health services; and the percentage of employers covered by occupational health services. The report states that in 2015, the number of occupational physicians was 2,832. The total workforce was 2,387,000 (average of the period 1/2014–4/2015), and the number of wage earners was 2,034,106. The percentage of employers covered by occupational health services was 96%. There were 1,968,029 workers monitored by occupational health services. The Committee also notes from the report the amount of inspections carried out on obligations on the occupational health care agreement, on the action plan on occupational care, and on the work place survey.

In reply to the Committee's question regarding the participation of employee organisations in the consultations held before the amendments and strategies were implemented, the report states that the occupational safety and health are negotiated collectively between the Government, employers and trade unions, and agreements are signed on a consensual basis. The members of the Advisory Committee on Occupational Safety and Health are appointed to represent the most significant organisations of the social partners as well as other important stakeholders in the development of occupational safety and health.

The Committee considers in the meantime that the situation was in conformity with Article 3§4 during the reference period. It asks the next report to provide information, with appropriate figures, on the development of occupational health services for all workers, and particularly the implementation of the measures to improve coverage in small enterprises concerning fixed-term workers.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in Finland is in conformity with Article 3§4 of the Charter.

Article 11 - Right to protection of health

Paragraph 1 - Removal of the causes of ill-health

The Committee notes from the report submitted by Finland that there have been no changes to the situation which it has previously found to be in conformity with Article 11§1 of the Charter. It asks that the next report provide an up-to-date description of the situation. It also takes notes of the information contained in the comments submitted on 5 April 2017 by the Finnish League for Human Rights and Finnish Society of Social Rights.

Measures to ensure the highest possible standard of health

The Committee notes from WHO data that overall life expectancy at birth was 81.1 years in 2015. Life expectancy therefore remains lower than in some other European countries, but has increased since the previous reference period (79.3 years in 2009). The Committee notes from Eurostat that life expectancy at birth in the EU-28 was estimated at 80.6 years in 2015.

The Committee notes from Statistics Finland that the infant mortality has continued to decline. In 2015, a total of 97 children died during their first year and the infant mortality per 1,000 live births was 1.7 (compared to 2 per 1 000 live births in 2010). The same source indicates that in 2014, there were three maternal deaths, which meant that maternal mortality was 5.2 deaths per 100,000 live-born children (compared to 4.92 per 100 000 live births in 2010 and 8.4 deaths per 100 000 live births in 2008).

The Committee asks the next report to provide information and statistical data on the life expectancy at birth, the overall mortality rate and the main causes of premature death, the infant mortality rate and maternal mortality rate for the respective reference period.

Access to health care

The Committee notes that according to Euro Health Consumer Index (EHCI) which assesses the performance of national healthcare systems in 35 European countries, Finland ranks the 4th in the EHCI 2015, after the Netherlands, Switzerland and Norway, and seems to have rectified its traditional waiting times problems. The Committee asks for updated information on the waiting times in the next report.

The Committee asks that the next report contain information on the availability of mental health care and treatment services, including information on the prevention of mental disorders and recovery measures.

The Committee asks that the next report contain information on dental care services and treatments (such as who is entitled to free dental treatment, the costs for the main treatments and the proportion of out-of-pocket paid by the patients).

As regards the right to protection of health of transgender persons, the Committee previously received submissions from the International Lesbian and Gay Association (European Region) (ILGA) stating that "in Finland there is a requirement that transgender people undergo sterilisation as a condition of legal gender recognition". In this respect, the Committee asked whether in Finland legal gender recognition for transgender persons requires (in law or in practice) that they undergo sterilisation or any other invasive medical treatment which could impair their health or physical integrity (Conclusions 2013).

The Committee takes note of the comments submitted by Transgender Europe and ILGA-Europe on the implementation of Article 11 of the Charter in the current cycle stating that Finland is one of the states that require sterilisation as a condition for gender legal recognition. The report indicates that two specialised units in the Helsinki University and Tampere University Hospitals examine the requirements for legal gender recognition as provided by Section 1 of the Act on Legal Recognition of the Gender of Transsexuals (563/2002). A medical statement is required from the psychiatric specialists of each hospital,

based on a personal appointment. Hormonal and surgical treatment will only be provided after sufficient examinations. Hormonal treatment will, if provided to a sufficient extent, impede the functioning of reproductive organs and this is deemed to fulfill the infertility requirement. If hormonal treatment is provided, sterilisation does not need to be carried out as a separate procedure. The Committee takes note of the information provided in the report and by other sources. It asks for updated information in the next report.

Conclusion

The Committee concludes that the situation in Finland is in conformity with Article 11§1 of the Charter.

Article 11 - Right to protection of health

Paragraph 2 - Advisory and educational facilities

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

Education and awareness raising

The Committee notes from the report that there have been no changes to the situation under this heading which it previously found to be in conformity with the Charter. It asks that the next report provide an up-to-date description of the situation.

Counselling and screening

With regard to screening, the report indicates that under Finland's National Screening Programme, municipal health centres must arrange screening for the early detection of breast cancer, cervical cancer, foetal chromosome and growth defects during pregnancy. Municipalities may also arrange other screening examinations for diagnostic purposes and early disease detection than those set out in the national screening programme. The Government Decree on Screenings (1339/2006) lays down the rules regarding the organisation of screenings.

The report adds that in 2016 (outside the reference period), a working group led by the Ministry of Social Affairs and Health was tasked with reviewing the Screening Decree with regard to breast cancer, cervical cancer, intestinal cancer and cancer screening of genetic groups at risk. Expert opinions will be heard and possible changes to the Decree will be discussed thereafter. The Committee asks to be kept informed of any developments and amendments to the legislation on screening in the next report.

With regard to health checks of children, the Committee asked in its previous conclusion what were the main problems identified in this area, and information on the follow-up action taken by the supervisory authorities (Conclusions 2013). The report indicates that according to several national monitoring reports (2011–2014), legislation has improved the implementation of health checks of children. Almost all health centres conducted extensive health checks in child health clinics and in school health care in 2014.

The report further indicates that the number of public health nurses and medical doctors has increased. The health checks in maternity clinics have been implemented well in accordance with legislation and new national guidelines (2013). However, there is a need to improve the whole service system of children, young people and families to better meet their needs in order to integrate the services cross-sectorally, to facilitate timely access to services and early support and care, and to increase participation of children and families in their own matters.

The report adds that supervisory authorities have supervised the implementation of preventive services of children and young people based on their supervisory programme (2012–2014) and monitoring reports. They have used their supervisory measures such as information letters, notifications and accounts when necessary. The Committee notes from the report that a new Government Programme LAPE (2015–2018) to address reform in child and family services has been initiated. It asks that the next report provide information on the implementation of this programme.

Conclusion

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

Article 11 - Right to protection of health

Paragraph 3 - Prevention of diseases and accidents

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

Healthy environment

The Committee noted previously that in 2011 Finland began the drafting of a national Water Safety Plan (WSP) and asked to be kept informed on its adoption and implementation (Conclusions 2013). The report indicates that the Government has adopted a National Water Safety Plan (WSP) and Sanitation Safety Plan (SSP) that was prepared during the years 2011–2015. The Programme is based on a risk-based approach for the whole water supply chain from source through tap and back. Training courses on the web-based WSP/SSP Risk Management Programme were organised for regional state officials (about 150 persons). During early 2016 small scale water suppliers (about 80 persons) tested the web-based Programme in Western Finland. Nowadays about 150 water suppliers including 330 people use the WSP/SSP Programme for risk assessment of drinking water in Finland.

The Committee asks that the next report provide updated information on the measures taken as well as on the levels and trends with regard to air pollution, water contamination and food safety during the reference period.

Tobacco, alcohol and drugs

The report indicates that following the entry into force of the EU Tobacco Products Directive (2014/40/EU) in 2014, a new Tobacco Act (549/2006) was adopted and took effect on 15 August 2016 (outside the reference period). The aim of the Act is to end the use of tobacco and other nicotine-containing products. The Act bans all characterizing flavors in cigarettes, roll-your-own tobacco and liquids for electronic cigarettes. The Committee takes note of some of the measures introduced through this new Act and asks for information in the next report on its implementation and the impact of such measures on the rate of tobacco consumption, supported by statistics.

The report indicates that a new Act on Prevention of Alcohol, Tobacco, Drugs and Gambling (523/2015), which replaced the old Temperance Act, entered into force on 1 December 2015. The Act defines that the state and the municipalities are responsible for prevention of alcohol, tobacco, drugs and other intoxicants and gambling related harm, in cooperation with the civil society. The Committee notes that an Action Plan on Alcohol, Tobacco, Drugs and Gambling Prevention was published on 1 December 2015 as a tool for people who work in the prevention of harms related to alcohol, smoking, drugs and gambling in municipalities and regions, their managers and other actors at national level. The Committee asks for information on the implementation of this Plan.

The Committee notes that during the reference period, smoking prevalence has decreased among both adults and youth. The rate of daily smoking among adults was 17% in 2012 and 15% in 2014. Daily smoking among men was 17% and among women 15% in 2014. The percentage of young persons aged 14–18 using tobacco products daily decreased from 13% in 2013 to 12% in 2015. The daily smoking rate was 13% among boys and 10% among girls in 2015.

As regards the consumption of alcoholic beverages, the report states the decreasing trend in the total consumption has continued during the reference period. The Committee notes from the information provided on the website of the National Institute for Health and Welfare, that in 2015, the total consumption of alcoholic beverages equalled 10.8 litres of pure alcohol consumed per person aged 15 years or older. Total consumption fell by 3.6% compared with 2014. The report states that the Government has the intention to prepare a total reform of the Finnish Alcohol Act with the aim to liberalize the Finish alcohol market to some degree and discussions took place in this sense, but the drafting of the new act has not yet begun.

The Committee asks to be kept informed with regard to any legislative reform as well as the trends in alcohol consumption.

The Committee asks for information in the next report on the drug situation in Finland.

Immunisation and epidemiological monitoring

The Committee takes note from the report of the information on the national vaccination programme, as well as the statistical data on the vaccination coverage. At the end of 2015, the national vaccine coverage was high for the childhood vaccines DTaP-IPV-Hib (98%), rota (92%), pneumococcus (93%), and MMR (95%).

The Committee takes note of the HIV and AIDS situation in Finland and of the mortality rate of HIV infected patients during the reference period 2012–2015.

Accidents

In its previous conclusion, the Committee noted that 80% of accidents happen at home and during leisure time and asked information in the next report on the measures taken to prevent these accidents. The prevention of home and leisure time accidents and injuries is being coordinated and steered by a multi stakeholder coordination body, the Coordination Group for the Prevention of Home and Leisure Accident Injuries, which was established in 2012. Its mandate was renewed in 2015 for years 2016–2020. The Coordination Group drafted a National Action Plan for years 2014–2020 for the Prevention of Home and Leisure Time Accidents and Injuries. The action plan encompasses 92 actions, for each of which the responsible bodies have been nominated. The objectives of the action plan include reaching a good safety level in all environments, a 25% reduction in the number of serious accidents and injuries by 2025 and an allocation of more substantial and permanent resources for accident injury prevention.

The report indicates that the number of deaths caused by home and leisure time accidents has decreased from 2 441 in 2011 to 2 221 in 2014.

The Committee wishes to be informed of the implementation and impact of the above mentioned measures on the number of deaths caused by home and leisure time accidents, supported by statistics. It also asks for updated information on the measures taken and the trend in the number of road accidents.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Finland is in conformity with Article 11§3 of the Charter.

Article 12 - Right to social security

Paragraph 1 - Existence of a social security system

The Committee takes note of the information contained in the report submitted by Finland. It also takes notes of the information contained in the comments submitted on 5 April 2017 by the Finnish League for Human Rights and Finnish Society of Social Rights.

With regard to **family benefits**, the Committee refers to its conclusions concerning Article 16 (Conclusions 2011).

The Committee recalls that the assessment of the follow-up to the collective complaint Finnish Society of Social Rights v. Finland, Complaint, No. 88/2012, decision on the merits of 9 September 2014, will be done in the framework of Conclusions 2018 (in this complaint, the Committee found that the level of Sickness benefits, Maternity benefits and rehabilitation benefits, Basic unemployment allowance and Guarantee (old age) pension, fell below 40% of median equivalised income and was therefore inadequate, regardless of the possible impact of other supplementary benefits such as social assistance benefits and housing allowance).

Risks covered, financing of benefits and personal coverage

The Committee refers to its previous conclusions (Conclusion 2006, 2009, 2013) for a description of the Finnish social security system and notes that it continues to cover the branches of social security corresponding to all traditional risks: medical care, sickness, unemployment, old age, employment injury, family, maternity, invalidity and survivors. The system also continues to rest on collective funding: it is funded by contributions (employers, employees) and by the State budget.

As regards personal coverage, the Committee previously noted (Conclusions 2013 and 2006) that all legal permanent residents are covered by social security schemes which govern basic pensions (national pensions, concerning old age, invalidity and death risks), sickness and maternity benefits, and unemployment benefits. In addition, all employees are entitled to benefits based on employment, such as earning-related pension and benefits for employment-related injuries. Furthermore, all people residing in Finland are covered by the health insurance. As regards the number of the total active population, the Committee notes from the report that it amounted to 2 822 000 persons in 2014 and, from Statistics Finland, that it amounted to 2 630 000 persons in 2015. According to official statistics referred to in the report, in 2015, there were around 662 000 pension recipients (when considering both contributory and non-contributory pensions, the total number of pension recipients in 2015 was 1 424 000), 314 000 disability benefits recipients, 293 000 sickness allowances recipients, 238 000 unemployment allowance or labour market subsidy recipients, 55 000 maternity grant recipients, and 246 000 housing allowance recipients. The report does not provide the information requested by the Committee (Conclusions 2013), concerning the percentage of all persons insured against unemployment, sickness and old-age risk out of the total active population (i.e. total number of employed and unemployed persons). The Committee accordingly reiterates its request to provide updated data in this respect. It also requests the next report to provide information on the number of persons insured against invalidity, as well as against work accidents and occupational diseases, out of the total active population.

Adequacy of the benefits

According to Eurostat data, median equivalised income in 2015 was €23 763, or €1 980 a month. The poverty threshold, defined as 50% of median equivalised income, was therefore €11 881, or €990 on a monthly basis. 40% of the median equivalised income corresponded to €792 monthly.

In its previous conclusion (Conclusions 2013), the Committee held that the minimum levels of sickness benefits and old age benefits were inadequate.

As regards **sickness benefits**, the report indicates that the minimum level of sickness allowance is paid at a rate of at least €23.93 per day, or €598,25 per month (i.e. approximately 30% of the median equivalised income).

As regards **old age benefits**, the Committee refers to its assessment under Article 23.

The Committee refers to its previous conclusion (Conclusions 2013) as regards the eligibility criteria and the rules applicable as regards the initial period during which a job can be refused as unsuitable without losing entitlement to the unemployment benefits. It notes from MISSOC that unemployment benefits can be paid for up to 500 days, and even longer in some cases.It notes from the report that the basic (earning based) **unemployment allowance**, at the end of the reference period, was €32.68 per day, that is approximately €703 monthly, or 35.5% of the median equivalised income, and considers that this level is inadequate.

The Committee furthermore notes from MISSOC that, for the first 56 weekdays of the maternal leave, the **maternity allowance** *(äitiysraha)* and special maternity allowance *(erityisäitiysraha)* are 90% of earned income up to €56 032 (annual) and 32.5% for an income exceeding this level. For the rest of the maternity leave (49 days) the allowance is 70% up to earned income of €36 419, 40% between €36 420 and €56 032 and 25% of earned income exceeding this latter level. For the first 30 weekdays the **parental allowance** *(vanhempainraha)* and paternity allowance *(isyysraha)* are 75% of earned income up to €56,032 (annual) and 32.5% for an income exceeding this level. Both parents are eligible for an increased rate for the first 30 weekdays. For the rest of the leave the parental allowance and paternity allowance are 70% up to earned income of €36 419, 40% between €36 420 and €56 032 and 25% of earned income exceeding this latter level. However, the minimum cash benefits were in 2015 €24.02 per day (€516.43 per month, i.e. 26% of the median equivalised income), which is below 40% of median equivalised income and is therefore inadequate.

For a description of other benefits and how they are calculated, the Committee refers to its previous conclusions (Conclusions 2006, 2009 and 2013). It asks the next report to provide updated information concerning the minimum amount of benefits granted in respect of invalidity as well as work accidents and occupational diseases.

Conclusion

The Committee concludes that the situation in Finland is not in conformity with Article 12§1 of the Charter on the grounds that:

- the minimum level of sickness benefits is inadequate;
- the minimum level of unemployment allowance is inadequate;
- the minimum level of maternity allowance is inadequate.

Article 12 - Right to social security

Paragraph 2 - Maintenance of a social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security

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

The Committee recalls that Article 12§2 obliges states to establish and maintain a social security system which is at least equal to that required for ratification of the European Code of Social Security. The Code requires acceptance of a higher number of parts than ILO Convention No. 102 relating to social security; six of the nine contingencies must be accepted although certain branches count for more than one part (medical care counts for two and old-age for three).

The Committee notes that Finland has not ratified either the European Code of Social Security or ILO Convention No. 102. Therefore the Committee cannot take into consideration findings under these treaties, such as the resolutions of the Committee of Ministers on the compliance of the States bound by the European Code of Social Security and has to make its own assessment based on the information received in the report.

The Committee notes that the social security system of Finland covers all the nine branches corresponding to traditional risks and that the situation is in conformity under Article 12§1 in this respect. The assessment under Article 12§1 also indicates an adequate personal coverage by social security schemes with regard to basic pensions, sickness, maternity, unemployment benefits, employment-related benefits and health insurance. The Committee refers to its request for updated data on the percentage of all persons insured against unemployment, sickness and old-age risk out of the total active population. The Committee also refers to its conclusion of non-conformity under Article 12§1 with regard to the minimum level of benefits for sickness, unemployment and maternity. As regards old-age benefits, the Committee refers to its assessment under Article 23.

The Committee notes that the situation in Finland is in conformity under Article 12§3.

The Committee takes into account that Finland has ratified ILO Conventions No. 121 (Employment Injury Benefits, 1964), No. 128 (Invalidity, Old-Age and Survivors' Benefits, 1967), No. 130 (Medical Care and Sickness Benefits, 1969) and No. 168 (Employment Promotion and Protection against Unemployment, 1988). The ratification of these conventions is an indicator of the possibility for Finland to accept the corresponding branches of the Code.

Conclusion

The Committee concludes that the situation in Finland is in conformity with Article 12§2 of the Charter.

Article 12 - Right to social security

Paragraph 3 - Development of the social security system

The Committee takes note of the information contained in the report submitted by Finland. It also takes notes of the information contained in the comments by the Central Organisation of Finnish Trade Unions (SAK), the Confederation of Unions for Professional and Managerial Staff in Finland (Akava) and the Finnish Confederation of Professionals (STTK), transmitted on 17 February 2017. It furthermore takes note of the comments submitted on 5 April 2017 by the Finnish League for Human Rights and Finnish Society of Social Rights.

It refers to its previous conclusions for the description of the Finnish social security system. Since Finland has ratified Article 16 of the Charter, the Committee will assess the scope and impact of developments with regard to family benefits when it will next examine compliance with this article.

As regards other branches of social security, the Committee takes note of the legislative developments during the reference period. In particular, the report mentions the following improvements:

- in 2014, the qualifying period for unemployment benefits was shortened from 34 weeks to 26 weeks for employees and from 18 to 15 months for self-employed persons (amended Unemployment Security Act, No. 1049/2013);
- as from 2013, the income of the beneficiary's spouse is no longer taken into account when assessing entitlement to the non contributory unemployment benefits (labour market support), which has reduced unemployment periods without benefits;
- as of the beginning of 2014 (amended Health Insurance Act, No. 1197/2013), entitlement to parenthood allowance (maternity, paternity or parental allowance) has been extended to people covered by the Finnish social security system for at least 180 days immediately before the due date of birth of the child. Previously, the Act required the person to have lived in Finland for the same period of time, which meant that foreigners from "third countries", regularly working in Finland and covered by the Finnish social security system but not satisfying the length of residence condition were excluded from the parenthood allowance;
- at the beginning of 2013, another amendment to the Health Insurance Act, extended a father's right to paternity allowance to 54 working days; fathers can choose to stay at home and be entitled to paternity allowance for 1 to 18 days at the same time as the child's mother is paid maternity or parental allowance. The rest of the paternity allowance can be paid after the parental allowance has ended. Fathers can also, if they wish so, use all of the paternity allowance entitlement after the parental allowance period, but before the child is two years old;
- through further amendments to the Health Insurance Act (No. 1224/2004), in 2014, partial sickness-allowance was extended from 72 days to 120 days (No. 972/2013);
- the Disability Benefits Act (No. 570/2007) was amended to the effect that, as of 1 June 2015, the specific costs resulting from the illness, impairments or injuries are better taken into account when deciding the level of the benefits granted; as a result, according to the report there would be approximately 10 000 newly eligible minimum basic benefits recipients over 16 years of age by the end of 2020. The amendment will extend benefits, *inter alia*, to those who are under the threat of disability, such as people suffering from long-term mental and behavioural disorders, those with multiple sclerosis or rheumatoid arthritis, or persons with cerebral palsy;
- another amendment concerning rehabilitation took effect at the beginning of October 2015, whereupon the person being rehabilitated can receive a partial

rehabilitation allowance for those rehabilitation days when he/she is working part-time alongside the rehabilitation.

The Committee notes on the other hand from the comments received (see above) that certain benefits have been subject to cuts. The abovementioned trade unions allege in particular that the level of earnings-related employment benefits was lowered in 2015 and that their maximum duration of serving was shortened as from 2014, when it was graded according to employment history.

Other restrictive measures are mentioned in the comments, which did not however take effect during the reference period. The Committee asks the next report to provide all relevant information in this respect.

In this connection, the Committee also notes that a major pension reform will take effect in 2017, out of the reference period. It asks the next report to provide all relevant information about its impact (categories and numbers of people concerned, levels of allowances before and after the reform) and considers in the meantime that the situation was in conformity with Article 12§3 during the reference period.

Conclusion

The Committee concludes that the situation in Finland is in conformity with Article 12§3 of the Charter.

Article 12 - Right to social security

Paragraph 4 - Social security of persons moving between States

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

Equality of treatment and retention of accrued benefits (Article 12§4)

Right to equal treatment

Equal treatment between nationals and nationals of other States Parties in respect of social security rights shall be ensured through the conclusion of bilateral or multilateral agreements or through unilateral measures.

The Committee recalls that, having regards to the EU legislation on the coordination of social security systems of the EU Member States, governed by Regulations (EC) No. 883/2004 and (EC) No. 987/2009, as amended by Regulation (EU) No. 1231/2010, the EU Member States are considered, as a matter of principle, to ensure equal treatment between, on the one hand, their nationals and, on the other hand, nationals of other EU Member States or member of the EEA, stateless persons, refugees resident in the territory of a Member State who are or have been subject to the social security legislation of one or more Member States, their families and their survivors, as well as nationals of third countries, members of their families and their survivors, provided that they are legally resident in the territory of a Member State and are in a situation which is not confined in all respects within a single Member State.

The Committee recalls that, in any event, under the Charter, EU/EEA Member States or part to the EEA are required to secure, to the nationals of other States Parties to the 1961 Charter and to the Charter not members of the EU or EEA, equal treatment with respect to social security rights provided they are lawfully resident in their territory (Conclusions XVIII-1 (2006)). In order to do so, they have either to conclude bilateral agreements with them or take unilateral measures.

In its previous conclusion (Conclusions 2013), the Committee found that the situation of Finland was not in conformity with the Charter because no bilateral agreement on social security existed with Albania, Andorra, Armenia, Azerbaijan, Georgia, “the former Yugoslav Republic of Macedonia”, the Republic of Moldova, the Russian Federation and Serbia. The Committee notes from the report that no agreements were concluded with those States during the reference period. However, the Committee notes from the Governmental Committee report concerning Conclusions 2013 that Finland intend to conclude new agreements on social security. The Committee asks therefore whether the conclusion of such agreements is foreseen with the following States: Albania, Andorra, Armenia, Azerbaijan, Georgia, “the former Yugoslav Republic of Macedonia”, the Republic of Moldova, Serbia and Russia, and if so, within what timescale.

The Committee recalls that equal treatment may also be achieved on the basis of unilateral measures, legislative or administrative. Nevertheless, as there is no indication in the report that such measures have been taken or are planned, the Committee considers that the situation is not in conformity with the Charter in this respect.

In respect of payment of family benefits, the Committee considered that the requirement for the child to reside in the territory of the paying State is in conformity with Article 12§4 (Statement of Interpretation on Article 12§4, Conclusions XVIII-1 (2006)). However, since not all countries apply such a system, States Parties applying the ‘child residence requirement’ are under the obligation, in order to secure equal treatment within the meaning of Article 12§4, to enter, within a reasonable period of time, into bilateral or multilateral agreements with those States which apply a different entitlement principle (Conclusions 2006, Cyprus).

The Committee notes from MISSOC that Finland applies the rules whereby the payment of family benefits is conditional on the claimant’s children being resident in Finland.

The Committee recalls that in the absence of an agreement, Finland is required under Article 12§4 of the Charter to take unilateral steps to comply with the requirements of this provisions.

Given that no agreements have been concluded with States which apply a different principle to that of a child residence requirement for entitlement to family benefits (Albania, Andorra, Armenia, Georgia and Turkey), the Committee concludes that equal treatment is not guaranteed with regard to access to family allowances in respect of nationals of all other States Parties.

Right to retain accrued benefits

The Committee points out that in its previous conclusion (Conclusions 2015), it considered the situation to be in conformity as far as the retention of accrued benefits was concerned. Given that the situation has not changed, it reiterates its conclusion of conformity.

Right to maintenance of accruing rights (Article 12§4b)

In its previous conclusion (Conclusions 2013) the Committee found that the aggregation of insurance or employment periods was not guaranteed in respect of nationals of other States Parties. As there has been no change in the situation, the Committee confirms its finding of non-conformity in this regard.

Conclusion

The Committee concludes that the situation in Finland is not in conformity with Article 12§4 of the Charter on the grounds that:

- equal treatment with regard to social security rights is not guaranteed to nationals of all other States Parties;
- equal treatment with regard to access to family allowances is not guaranteed to nationals of all other States Parties;
- the right to maintenance of accruing rights is not guaranteed to nationals of all other States Parties.

Article 13 - Right to social and medical assistance

Paragraph 1 - Adequate assistance for every person in need

The Committee takes note of the information contained in the report submitted by Finland. It also takes notes of the comments submitted on 5 April 2017 by the Finnish League for Human Rights and Finnish Society of Social Rights.

Types of benefits and eligibility criteria

According to the report, in 2014, 253 500 households (8.4% of Finnish households) or 393 300 individuals (7.2% of the population) received social assistance. 102 300 households received supplementary social assistance and 25 600 households received preventive social assistance. According to the National Institute for Health and Welfare statistical publications, the gross expenditure on social assistance was € 745.5 million in 2015.

The Committee takes note of the Working Group Examining the Modernisation of Social Assistance which was in charge of outlining the role, structure and contents of the social assistance dealt with by municipalities, the development of supplementary and preventive social assistance as a social work tool, a more effective support for the independent living of social assistance clients and as a prevention of their social exclusion.

Level of benefits

To assess the situation during the reference period, the Committee takes account of the following information:

- Basic benefit: according to MISSOC and the report the monthly amount of the basic social assistance benefit stood at € 485.50 in 2015;
- Additional benefits: according to MISSOC there are separate statutory housing allowances. Housing costs are taken into consideration in determining the amount of the housing allowance. According to the report, the component of social assistance in national statistics are basic social assistance (basic amount of social assistance and amount of assistance for other basic expenses, including housing), supplementary social assistance and preventive social assistance. However, the Committee notes from the report that the national statistics do not indicate the amount of assistance for housing expenses. It varies according to needs, expenses and municipality of residence. In its conclusion 2009 the Committee noted that the basic benefit on average represented around 40% of the total social assistance, with housing expenditure making up another 40% and the rest accounting for everything else. The Committee asked in its previous conclusion (Conclusions 2013) whether these estimations were still valid.
- Poverty threshold, defined as 50% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value: it was estimated at € 990 in 2015.

The Committee recalls that in its decision on the merits of 9 September 2014 in Finnish Society of Social Rights v. Finland, Complaint No. 88/2012, where the complainant alleged that the level of both social assistance benefits and the labour market subsidy (a non contributory benefit which is paid to persons who have no history of employment or are no longer entitled to basic unemployment allowance), fell short of the requirements of the Charter, the Committee held that there was nothing in the information submitted to the Committee to show that social assistance recipients are always entitled to the maximum possible allowance and although the Committee could not exclude that the total amount of benefits paid to a recipient of social assistance could reach the level of 50% of median equivalised income, it did not consider it demonstrated, based on the information at its disposal, that all persons in need are granted social assistance which is adequate.

Furthermore, in its decision on the merits of 8 December 2016 in Finnish Society of Social Rights v. Finland, Complaint No. 108/2014, the Committee noted that nothing in the information brought to its attention indicated that the beneficiaries of the labour market subsidy are always entitled to the maximum amount of the allowance (§68) and held that there was a violation of Article 13§1 of the Charter on the ground that labour market subsidy is not sufficient to enable its beneficiaries to meet their basic needs.

The Committee reiterates its findings of non-conformity in the above mentioned complaints on the ground that the amount of social assistance, consisting of basic assistance and any additional benefits that may apply is not adequate.

The Committee notes from the comments of the Finnish League for Human Rights and Finnish Society of Social Rights that since the decision of the Committee regarding Complaint No 88/2012, the conditions have deteriorated. Instead of raising social assistance benefits to the level required by the Charter, the Government decided in 2016 to reduce the amount of the labour market subsidy.

The Committee recalls that the assessment of the follow-up to Finnish Society of Social Rights v. Finland, Complaint No. 88/2012, decision on the merits of 9 September 2014, will be done in the framework of Conclusions 2018.

Right of appeal and legal aid

The Act on Social Assistance was amended (1312/2014) to comply with the period for filing an appeal on a decision on social assistance as prescribed in the Social Welfare Act (1301/2014) which took effect on 1 April 2015. The appeal period was increased to 30 days.

Personal scope

The Committee recalls that, under Article 13§1, States are under the obligation to provide adequate medical and social assistance to all persons in need, both their own nationals as well as nationals of States Parties lawfully resident within their territory, on an equal footing. In addition, with reference to its Statement of interpretation on Articles 13§1 and 13§4 (Conclusions 2013) regarding the scope of Articles 13§1 and 13§4 in terms of persons covered, the Committee considers that persons in an irregular situation in the territory of the State concerned are covered under Article 13§1, rather than under Article 13§4, which was previously its practice.

The Committee henceforth examines whether the States who have accepted Article 13§1 ensure the right to:

- adequate social and medical assistance for their own nationals and for nationals of other States Parties lawfully resident within their territory on an equal footing;
- emergency social and medical assistance to persons unlawfully present in their territory.

Nationals of States Parties lawfully resident in the territory

In its previous conclusion the Committee found that the situation was not in conformity with the Charter on the ground that the granting of social assistance benefits to foreign nationals from certain States Parties to the Charter, lawfully residing in Finland, was subject to an excessive length of residence condition. The Committee notes from the report of the Governmental Committee (GC(2014)21, §245) that according to the representative of Finland foreign nationals have the same rights to social assistance benefits, irrespective of the length of residence. If a foreign national obtained a permanent residence permit or a residence permit limited in duration, he/she is immediately eligible for the grant of social assistance.

Nevertheless, the Committee further notes from MISSOC that social assistance is paid to all permanent residents. The report indicates that provision of emergency healthcare, unlike

provision of social assistance is not conditional on permanent residence status. The Committee infers from the information at its disposal that nationals of other States Parties are granted social assistance on an equal footing with nationals only after having resided in Finland for four years (the condition for obtaining a permanent residence permit). Therefore, the Committee reiterates its previous finding of non-conformity on the ground that the granting of social assistance to nationals of other States Parties is subject to a length of residence requirement.

Foreign nationals unlawfully present in the territory

In its previous conclusion under Article 13§4 the Committee asked the next report to provide updated information and details of the nature and extent of the emergency social assistance which can be provided to foreign nationals in immediate and urgent need and, in particular, to undocumented aliens.

The Committee notes from the report in this regard that Article 19, paragraph 1 of the Constitution of Finland guarantees all those within the Finnish jurisdiction who cannot obtain the means necessary for a life of dignity a right to receive indispensable subsistence and care. This constitutional provision is implemented in the Social Assistance Act. Social assistance is paid to those in need of support who cannot ensure subsistence by means of paid employment, entrepreneurship or from other sources. These include other primary benefits, other income or other means. The Social Assistance Act does not differentiate between Finnish and foreign nationals, and the Act does not contain requirements for the permanent nature or type of stay in Finland. When applying the Act in practice, emphasis has been placed on the permanent nature of the stay. However, if the other requirements are met, those in need of social assistance when staying temporarily in the country are entitled to an urgently paid critical support.

In this connection, the Committee recalls that persons in an irregular situation must have a legally recognised right to the satisfaction of basic human material need (food, clothing, shelter) in situations of emergency to cope with an urgent and serious state of need. It likewise is for the States to ensure that this right is made effective also in practice (European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, §187).

The Committee cannot accept the necessity of halting the provision of such basic emergency assistance as shelter, guaranteed under Article 13 as a subjective right, to individuals in a highly precarious situation. The Committee has considered that even within the framework of the current migration policy, less onerous means, namely to provide for the necessary emergency assistance while maintaining the other restrictions with regard to the position of migrants in an irregular situation, remain available to the Government with regard to the emergency treatment provided to those individuals, who have overstayed their legal entitlement to remain in the country (Conference of European Churches (CEC) v. the Netherlands, Complaint No. 90/2013, decision on the merits of 1 July 2014, §123).

The Committee asks the next report to provide evidence that these requirements are met in law and in practice. The Committee holds that it this information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter.

Conclusion

The Committee concludes that the situation in Finland is not in conformity with Article 13§1 of the Charter on the grounds that:

- the amount of social assistance, consisting of basic assistance and any additional benefits that may apply is not adequate;
- the granting of social assistance to nationals of other States Parties is subject to a length of residence requirement of four years.

Article 13 - Right to social and medical assistance

Paragraph 2 - Non-discrimination in the exercise of social and political rights

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

According to the report, the new Non-Discrimination Act (1325/2014) took effect on 1 January 2015. As a result of the reform, the Ombudsman for Minorities was replaced by a Non-Discrimination Ombudsman, which is empowered to consider a broader range of discrimination issues. The new Act expanded the scope of protection against discrimination. The Act is applied to all public and private activities, excluding private life, family life and practice of religion. The National Discrimination Tribunal and the Equality Board were merged to create a new body, the National Non-Discrimination and Equality Tribunal of Finland, the mandate of which covers all discrimination grounds, as set out in the Act on the National Non-Discrimination and Equality Tribunal (1327/3014).

The Committee asks the next report to provide updated information regarding non-discrimination in the exercise of social and political rights as guaranteed by Article 13§2, in the light of the above mentioned legislative developments.

Conclusion

The Committee concludes that the situation in Finland is in conformity with Article 13§2 of the Charter.

Article 13 - Right to social and medical assistance

Paragraph 3 - Prevention, abolition or alleviation of need

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

The Committee recalls that Article 13§3 concerns free of charge services offering advice and personal assistance specifically addressed at persons without adequate resources or at risk of becoming so. The social services covered by Article 13§3 must play a preventive, supportive and treatment role. This means offering advice and assistance to make those concerned fully aware of their entitlement to social and medical assistance and how they can exercise those rights. In assessing national situations under this provision the Committee specifically examines whether there are mechanisms to ensure that those in need may receive help and personal advice services free of charge.

The Committee notes that the Social Welfare Act was reformed in 2014 and the new Act (1301/2014) took effect in 2015. The new Act shifts the focus of social welfare activities from corrective measures to promoting wellbeing and early support.

The Committee notes that the Handbook on Social Assistance has been updated and is intended for municipal authorities dealing within social assistance. The publication is available also on the website of the Ministry of Social Affairs and Health. The purpose of the Handbook is to support the municipal officials applying the Act on Social Assistance and other persons in their work, to clarify the content and aim of the Act and to contribute to improving the legal protection of clients. The Handbook underlines the clients' and employees' statutory rights and obligations in processing social assistance applications. In drawing up the client service plan it is stressed that the plan shall, as a rule, always be drawn up in both a "normal" situation of applying for social assistance and in particular in connection with reducing the basic amount. The responsibility of the municipal officials granting social assistance to give advice and guidance is stressed, and so is the responsibility under Section 14a (4) of the Act on Social Assistance to provide the client an opportunity to discuss personally with the social worker or instructor.

Conclusion

The Committee concludes that the situation in Finland is in conformity with Article 13§3 of the Charter.

Article 13 - Right to social and medical assistance

Paragraph 4 - Specific emergency assistance for non-residents

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

The Committee refers to its conclusion under Article 13§1 (personal scope) and recalls that Article 13§4 from now on will cover emergency social and medical assistance for nationals of States Parties lawfully present (but not resident) in the territory. In its previous conclusion (Conclusions 2013) the Committee found that the situation was in conformity with the Charter as regards foreign nationals lawfully present.

The Committee recalls that States Parties are required to provide non-resident foreigners, without resources, with emergency social and medical assistance. Such assistance must cover accommodation, food, clothing and emergency medical assistance, to cope with an urgent and serious state of need (without interpreting too narrowly the 'urgency' and 'seriousness' criteria). No condition of length of presence can be set on the right to emergency assistance (European Federation of national organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, §171).

The Committee further recalls that emergency social assistance should be supported by a right to appeal to an independent body. As regards provision of emergency shelter, there must be an effective appeal mechanism before an independent judicial body in order to determine the proper administration of shelter distribution. This right must also be effective in practice (Conference of European Churches (CEC) v. the Netherlands, Complaint No. 90/2013, decision on the merits of 1 July 2014, §106).

The Committee refers to its conclusion under Article 13§1 where it reserved its position as regards emergency social assistance for unlawfully present foreign nationals. The Committee asks the next report to provide information regarding lawfully present foreign nationals and in the meantime, it reserves its position.

Conclusion

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

Article 14 - Right to benefit from social welfare services

Paragraph 1 - Promotion or provision of social services

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

Organisation of the social services

The report indicates that the Social Welfare Act was reformed in 2014 and the new Act (1301/2014) took effect in 2015. The new Act shifts the focus of social welfare activities from corrective measures to promoting wellbeing and early support. The Act 817/2015 on Social Welfare Professionals entered into force in 2016 and applies to public and private agencies, as well as persons working as self-employed professionals. The National Supervisory Authority for Welfare and Health (Valvira) acts as the licensing authority. To become a licenced social worker, a person has to have completed a master's degree, with major studies or studies equivalent to major studies in social work. To become a licensed worker in instructive social services *(sosionomi)* or elderly care services *(geronomi)*, a person must have a polytechnic degree in the field of social services (Bachelor of Social Services or Bachelor of Social Services and Health Care).

Effective and equal access

The report indicates that the aim of the Social Welfare Act (1301/2014) is to promote equal availability and accessibility of social welfare services, to emphasise a client-centred and comprehensive approach and to support people in their everyday environments. The purpose of the Social Welfare Act is to promote and maintain the population's welfare and social security, reduce inequalities and reinforce social inclusion, to secure the availability of high-quality social services, promote client-centred services and clients' rights, as well as to improve the cooperation between social welfare services and various municipal sectors and other stakeholders. The Act applies mainly to municipal social welfare. The Social Welfare Act promotes wellbeing through guidance and advice, structural social work, monitoring and promoting the wellbeing of children and taking into account the needs and wishes of clients when developing activities and services. The Act includes provisions for securing the quality of services. Social welfare units shall draw up a publicly accessible and regularly updated plan for in-house control in order to secure the quality, safety and appropriateness of their social welfare work. The new Social Welfare Act has changed the focus of family services.

The new primary focus is on family services outside child welfare client relationships. The Act emphasises early interventions and preventive measures. Family services can be received on the basis of an assessment of need for service also when the family is not a child welfare client.

The report indicates that social services are organised on the basis of need for support. These needs include assistance for everyday life, need for economic support, need for support because of interpersonal or domestic violence or maltreatment, safeguarding the balanced development and wellbeing of a child, support for housing, sudden crisis situation, prevention of social exclusion and reinforcement of social inclusion, need for support due to alcohol or drug abuse, mental problems or other trauma or illness, or due to ageing, other problems with functional capacity and the need to support family members and close persons to the client. The need for social services is assessed in the beginning of the client relationship. A client plan is then composed on the basis of the assessment. The client plan shall include, for example, the necessary services to support the health and wellbeing of the client, estimated duration of the client relationship and division of information and responsibilities between the various cooperation partners from different sectors. The social services responding to the needs of clients are social work, social guidance, social rehabilitation, family work, home services, home care, housing services, institutional services, services supporting physical activity, substance abuse services, mental health

work, child guidance and family counselling, supervised contact sessions between parents and children and other necessary services.

Moreover the report indicates that users have a subjective right to certain social services, such as services for the disabled. Apart from place of residence, access to social services is based on individual need. The Social Welfare Act described in the previous section aims to promote effective and equal access to services for all. Several of the current Government Key Projects promote effective and equal access to social services. *The Programme to Address Reform in Child and Family Services*, focuses on creating knowledge-based tools for monitoring children's wellbeing, assessing how decision-making impacts children and devising child-focused budgeting.

The maximum fees charged for municipal social and health services and services free of charge are stipulated in the Act and Decree on Social and Health Care Client Fees (734/1992 and 912/1992). The fees charged for long-term care are earnings-related. Municipalities may opt to use lower rates or to provide the relevant service free of charge. Municipalities are not permitted to collect fees for services above the amount of the production cost of the services. The fees for certain public services have an upper limit per calendar year, beyond which clients to do not have to continue paying fees. Municipalities must reduce or not charge fees for social care, and determine health care fees according to the clients' ability to pay, if charging them will undermine the income or statutory maintenance obligations of clients or their families. Client fees are reviewed every two years, based on indexes. The decision to grant services is generally taken by local authority officials. In the event of disagreement, users may lodge complaints to the unit or the local authority concerned within 30 days of notification of the decision. They can further appeal against the latter's decision to the Administrative Court within 30 days of notification of this decision. Severely disabled persons are further entitled to take appeals concerning their subjective rights to the Supreme Administrative Court without leave to appeal, which is required in other cases. Where users disagree with social services agencies about the quality of the service provided, various other internal remedies are available to them, and they can also take the matter to the Regional State Administrative Agency or the Ombudsman.

Quality of services

In its previous conclusion (Conclusions 2013) the Committe asked that the next report provided an assessment of the *Kaste* Programme, a national development plan for social welfare and health care, launched for the period 2012-2015.

The report indicates that the *Kaste* Programme, adopted by the Government in February 2012, targets stated that inequalities in welfare and health will be reduced and social welfare and healthcare structures and services will be organised in a client-oriented way. The purpose was to shift the focus from the treatment of problems to promoting physical, mental and social wellbeing and preventing problems across the entire population. An external evaluation of the *Kaste* Programme was published in April 2016. In the evaluation it was noted that municipal social welfare and health care services had become more client-oriented during the programme period. The positive changes were reflected in the new operating models resulting in more effective service pathways and in more client-oriented attitudes. At least some of the results can be attributed to the *Kaste* Programme. According to the Programme's findings, inequalities in wellbeing and health were not reduced during the programme period. However, there were few instruments in the *Kaste* Programme that could have helped to achieve this objective. At the same time, the conclusion was that the widening of inequalities in wellbeing and health had probably slowed down as a result of the *Kaste* Programme. The most important and unequivocal result of the *Kaste* Programme is that the programme organisation has helped to increase interaction between social welfare and health care actors within and between regions. This has prompted municipalities to

engage in multisectoral development cooperation that also covers areas outside the *Kaste* Programme.

The report indicates that according to the Government Resolution in 2012 on Securing Individual Housing and Services for Persons with Intellectual Disabilities, persons with intellectual disabilities have a right to housing similar to that of other municipal residents. Society must offer them the opportunity to live in individual housing, rather than in institutions or their childhood homes. This requires also that municipalities have individual services to replace institutional care. The housing programme for persons with intellectual disabilities (KEHAS) included measures taken in 2010–2015 in order to achieve this goal. During the programme in years 2010–2015 houses designed for about 3 400 persons with intellectual disabilities were built. The objective of the programme is that no persons with intellectual disabilities will be living in institutions by 2020.

The report indicates that in 2010 the Government adopted a new Disability Policy Programme (VAMPO) for the years 2010–2015. Most of the measures described in the previous report have been realised in line with the programme by the ending of the programme period.

Conclusion

The Committee concludes that the situation in Finland is in conformity with Article 14§1 of the Charter.

Article 14 - Right to benefit from social welfare services

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

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

In its previous conclusion (Conclusions 2013) the Committee asked that the next report provide an up-to-date description of current legislation and practice with regard to non-public providers of social services.

The report indicates that in Finland, municipal social welfare and health care services, implemented with government support, form the basis of the social welfare and health care system. Private companies also provide services alongside the public sector. In addition, Finland has a wide range of social welfare and health care organisations, providing services both free of charge and for a fee. Municipalities are responsible for organising social welfare and health care. They can provide basic social welfare and health care services alone, or form joint municipal authorities with other municipalities. Municipalities may also purchase social welfare and health care services from other municipalities, organisations or private service providers (including the voluntary sector). Social and health organisations play a significant role in the provision and development of services for special groups. In addition to service provision they provide extensive help for those in need, including peer support and opportunities for social inclusion.

The report indicates that the Finnish Patent and Registration Office keeps register of the associations. Voluntary organisations must register themselves as associations in order to act as legal persons. In 2015, there were over 142 000 associations in the register. An estimated 10 000 of these associations is working in the field of social and health services. Regional State Administrative Agencies guide and monitor municipal and private social welfare and health care services and evaluate the availability and quality of basic services provided by municipalities. They grant licenses to private service providers in the region. If the private service provider acts in the area of more than one Regional State Administrative Agency, the National Supervisory Authority for Welfare and Health (Valvira) acts as the licensing and supervisory authority. Private social service providers providing round-the-clock services must apply for a license from the correct licensing authority, provide annual reports and draw up a publicly accessible and regularly updated plan for in-house control in order to secure the quality, safety and appropriateness of their social welfare work. Any private round-the-clock social service provider (for- and non-profit) must meet certain conditions in order to receive a license. The service unit must have adequate and appropriate premises, equipment and staffing. The amount of staff must meet the service need and number of clients. In addition, the service provider must be able to take care of its financial obligations. Private social service providers providing other than round-the-clock services are required to notify in written form the municipality they act in about their service provision. The municipalities then inform the Regional State Administrative Agencies which register the service providers.

The report indicates that public services can be organised through contracting out the service provision to, for example, private companies or third sector organisations. The decision to grant public services is generally taken by local authority officials. This ensures equal access to all of those in need of services. The Non-Discrimination Act prohibits discrimination on the basis of age, ethnic or national origin, nationality, language, religion, belief, opinion, health, disability, sexual orientation or other personal characteristics. The Constitution guarantees individual civil rights. The Non-Discrimination Ombudsman is an independent and autonomous authority, whose task is to advance equality and to prevent and tackle discrimination on all bases.

The report underlines that dialogue between the Government and individuals and organisations is a key element in the legislative drafting process. Stakeholders and interest groups are consulted in the regulatory drafting. The Government has also adopted several digital platforms that promote civil society and public participation in welfare politics. The

digital services allow citizens to participate in the decision-making processes and provide decision makers the possibility to listen to the citizens' and other stakeholders' opinions on suggested reforms.

Conclusion

The Committee concludes that the situation in Finland is in conformity with Article 14§2 of the Charter.

Article 23 - Right of the elderly to social protection

The Committee takes note of the information contained in the report submitted by Finland. It also takes notes of the information contained in the comments submitted on 5 April 2017 by the Finnish League for Human Rights and Finnish Society of Social Rights.

Legislative framework

The Committee notes from the report that in 2014 all local authorities had established a Municipal Council for the elderly. It also notes that in 2014 the Ministry of Interior published a report on the experiences of discrimination by elderly minority members. It asks the next report to provide more information about the report and all other projects and initiatives in this field, including the results and measures envisaged to address them. Having found no information on the National Plan, it asks that the next report provide information on this matter.

The Committee points out that the main aim of Article 23 of the Charter is to enable elderly persons to remain full members of society and therefore it invites the States Parties to make sure that they have appropriate legislation to, firstly, combat age discrimination outside employment and**,** secondly, to provide for a procedure of assisted decision making.

With regard to age discrimination, the Committee asked in its previous conclusion (Conclusions 2015) for more information on the Equal Treatment Act, if adopted. The report states that the Anti-Discrimination Act (No. 21/2004), as amended in 2014, prohibits all forms of discrimination based, *inter alia*, on age. The Act requires, in particular, all public authorities at all levels, to take all necessary measures, following an assessment, to promote equal treatment and prevent any form of discrimination. The National Non-Discrimination and Equality Tribunal and the Human Rights Commissioner, who is in charge of non-discrimination issues, ensure that the law is respected.

With regard to assistance with decision making for elderly people, the report states that Acts No. 812/2000 and No. 785/1992 require the elderly person to be notified and give consent before any measure is taken whether this is a medical treatment or a social service and that this may, if necessary, lead to the intervention of a legal representative or any other trusted person (next of kin or other close person) to support his or her decision.

The Committee previously (Conclusions 2013) asked for more information on the follow-up to the working group's proposals. The report states that the relevant Government Bill expired before it could be adopted.

Adequate resources

When assessing the adequacy of resources of elderly persons under Article 23, the Committee takes into account all social protection measures guaranteed to elderly persons and aimed at maintaining an income level allowing them to lead a decent life and participate actively in public, social and cultural life. In particular, the Committee examines pensions, contributory or non-contributory, and other complementary cash benefits available to elderly persons. These resources are then compared with median equivalised income. However, the Committee points out that its task is to assess not only the law, but also the compliance of practice with the obligations arising from the Charter. For this purpose, it also takes into consideration relevant indicators relating to at-risk-of-poverty rates for persons aged 65 and over.

The Committee points out that the Finnish system is based on two pension schemes: the earnings-related pension scheme (*Työeläke)* and the universal pension scheme. The universal scheme includes a national pension (*Kansaneläke)* and a guarantee pension (*Takuueläke),* which are paid to persons aged 65 or more with a low income residing in Finland for at least three years*.* According to MISSOC, the amount of the national pension (*Kansaneläke)* varied between €564.96 and €636.63 per month in 2015 depending on

whether the person lived alone or with a partner. The amount of the pension is adjusted in proportion to the length of residence and the pensioner's income. A pensioner may also, under certain circumstances, be entitled to the guarantee pension (*Takuueläke)*. The amount of the guarantee pension (*Takuueläke)* depends on the amounts of other pensions received by the insured person. The guarantee pension (*Takuueläke)* is granted at its maximum level (€743.38 per month in 2014, and €746.57 per month in 2015) when the beneficiary does not receive any other pensions.

The Committee notes from MISSOC that the average amount of the household's housing allowance (*eläkkeensaajan asumistuki*) granted for a dwelling was €223 per month. The care allowance (*Eläkettä saavan hoitotuki*) amounted to €62.48, €155.53 or €328.87 per month in 2015.

The poverty threshold, defined as 50% of median equalised income and calculated on the basis of the Eurostat at-risk-of-poverty threshold value, was estimated at €11 881 per year (or €990 per month) in 2015. The poverty threshold, defined as 40% of median equivalised income, amounted to €792 per month. The Committee considers that the level of guaranteed resources to elderly persons is in conformity with the Charther on this point. However, the Committee asks to be informed of any changes in the situation.

The Committee previously (Conclusions 2013) asked what measures had been taken to address the situation of people aged 65 and over with income falling below 40% of median equivalised income. The report does not provide any information in this respect. The Committee notes, however, that according to Eurostat data, the number of people concerned decreased compared to the figures for 2011, falling from 1% to 0.7% in 2015. The Committee takes note of this change but nonetheless repeats its question.

Prevention of elder abuse

In its previous conclusion (Conclusions 2013), the Committee asked for more information on how Finland evaluated the extent of the problem if it did so, and if any legislative or other measures had been taken or were planned in this area. The report states that Finland adopted and published guides and instructions to raise awareness among the elderly and the general public about the types of violence committed against the elderly. The report points out that Finland's Slot Machine Association has been financing an awareness-raising project called "Root 2013-2017", run by the "Suvanto Association – For a Safe Old Age", in partnership with the Oulo Association of Mother and Child Homes and Shelters. The Committee asks to be informed of the results of this project in the next report. It also asks if Finland has adopted or is planning to adopt training programmes in this area so that health professionals are able to detect signs and situations of abuse.

Services and facilities

The Committee points out that, although Article 23 makes reference only to information about services and facilities, it presupposes that such services and facilities exist.

With regard to the services and facilities themselves, the Committee refers to previous conclusion for an overview of the most important health services for elderly people (Conclusions XVII-2 (2005)).

In its previous conclusion (Conclusions 2013), the Committee asked to be updated on any evaluation on the effectiveness of the system of individual service needs assessment for persons over 80 years of age. The report states that the Act on Services for Older Persons came into force on 1 July 2013. The Act places a whole series of obligations on the municipal decision-making bodies responsible for social protection, particularly in terms of supervision, organisation, accessibility, transparency and financing. According to section 15 of the Act an elderly person's need for services must be assessed in his or her presence or, where necessary, in the presence of his or her family members or any other person that is

close to him or her. The report states that a survey on the capacity of municipalities to assess the needs of the elderly was carried out in 2014. The Committee asks for information in the next report on this survey and its results.

The report adds that the costs of services paid for by the beneficiaries are determined by the Act No. 734/1992 on Social and Health Care Client Fees. However, if the fee appears unreasonable for the beneficiary, it can be reduced or lifted.

With regard to information on the existence of the services and facilities available, the Committee notes that the visits made to elderly people when assessing their needs for services is also a means of informing them about the services and facilities placed at their disposal by the municipality in which they live.

The Committee points out that in its decisions of 4 December 2012 on the merits in The Central Association of Carers in Finland v. Finland, Complaints No. 70/2011 and No. 71/2011, it concluded for the violation of Article 23 on the grounds that:

- the legislation allows practices leading to a part of the elderly population being denied access to informal care allowances or other alternative support (Complaint No. 70/2011);
- insufficient regulation of fees for service housing and service housing with 24-hour assistance combined with the fact that the demand for these services exceeds supply, does not meet the requirements of Article 23 of the Charter insofar as these:
    - Create legal uncertainties to elderly persons in need of care due to diverse and complex fee policies. While municipalities may adjust the fees, there are no effective safeguards to assure that effective access to services is guaranteed to every elderly person in need of services necessitated by their condition.
    - Constitute an obstacle to the right to the provision of information about services and facilities available for elderly persons and their opportunities to make use of them as guaranteed by Article 23 of the Charter (Complaint No. 71/2011).

The follow-up to these decisions will be examined by the Committee in 2018.

Housing

According to the report, Finland continued with its policy of support for the financing of housing for certain groups of people, including the elderly. In addition to subsidies for loans and investment (Conclusions 2013), Finland awards renovation grants for the repair and renovation of the homes of the elderly and persons with disabilities on social grounds.

The Committee notes that in Finland, approximately 90.5% of people aged 75 or over were living in their own homes in 2014, either independently, or making use of certain services (11.8% regularly received home help and 4.5% were covered by informal care services).

In its previous conclusion (Conclusions 2013), the Committee asked for information on the impact of the 2012-2015 programme to develop housing for the elderly. The report does not provide any information on the programme or on its results. Nevertheless, it indicates that a new development programme for housing for the elderly for 2013-2017 has been adopted. The new programme proposes, among other things, to repair existing buildings, construct new types of housing and sheltered housing (including related services) and to develop environments that are suitable for housing for the elderly.

The Committee also asked for more detailed information and statistics in order to assess the housing situation of the elderly, particularly whether the housing provided is suited to the elderly's particular needs, and whether the supply is sufficient. The Committee notes that the information provided in the report does not enable it to assess whether the supply meets the

demand or to gauge the quality of housing in the light of elderly people's specific needs, and therefore it reiterates its request.

Health care

In its previous conclusion (Conclusions 2013), the Committee asked to be informed of progress on the draft Act on Supporting the Functional Capability of the Ageing Population and on Social and Health Services for Older Persons. According to the report, Act No. 980/2013 on Services for the Elderly, combined with a recommendation, requires the local authorities to provide not only social services but quality health services geared to the elderly's needs. The Committee asks for information in the next report on health care programmes and services specifically aimed at the elderly, palliative care services available to the elderly and mental health programmes for persons with dementia and related illnesses.

Institutional care

In its previous conclusion (Conclusions 2013), the Committee asked whether the supply of institutional facilities and alternative services for elderly persons was sufficient, whether the costs of such facilities were affordable or, if not, whether financial aid was available, and how the quality of such services was ensured. According to the report, Finland intends to limit institutional-type care, giving preference to home help, informal care and outpatient services (and housing services). To achieve this, Finland adopted the Act No. 980/2012 on Services for the Elderly and a structural policy programme, which it subsequently fleshed out with a programme for housing for the elderly for 2013-2017, a government project to improve home help for the elderly and support informal carers (or nurses) and a series of legislative reforms.

The Committee notes from the report that in 2014, only a very small proportion of the elderly were housed in long-term establishments, whether in service housing with 24-hour assistance (6.7%), long-term inpatient care in a health centre (2.6%) or hospitals (0.4%).

The report also states that the Regional State Administrative Agencies guide and monitor municipal and private social welfare and health care services and their staff's skills. It also assesses the availability and quality of municipal services. The Committee asks for further information on this point.

Furthermore, the Committee notes that the report does not answer any of the other questions put, so it repeats them.

Conclusion

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

Article 30 - Right to be protected against poverty and social exclusion

The Committee takes note of the information contained in the report submitted by Finland. It also takes notes of the information contained in the comments submitted on 5 April 2017 by the Finnish League for Human Rights and Finnish Society of Social Rights.

Measuring poverty and social exclusion

The main indicator used to measure poverty is the relative poverty rate. This corresponds to the percentage of people living under the poverty threshold, which is set at 60% of the equivalised median income.

The Committee notes from Eurostat that in 2015 the at-risk-of-poverty rate (cut-off point: 60% of median equivalised income after social transfers) stood at 12.4% having decreased slightly compared to 2012 (13.2%) and well below the EU average of 17.2%. Still according to Eurostat, the at-risk-of-poverty rate before social transfers in 2015 stood at 26.8%, just above the EU-28 rate of 25.9%. The European Semester headline poverty indicator was 16.8% in 2015 compared to 17.2% in 2012.

The Committee notes the explanations in the report on the permanent production of indicators and statistics (e.g. income distribution statistics, statistics on adolescents, homeless people and other vulnerable groups) pertaining to the living conditions of the population and available to decision-makers when preparing the Government's strategic objectives.

Finally, the Committee notes that overall poverty rates are at a comparatively low level and have even declined during the reference period, although it also observes that according to the European Semester Country Report Finland 2017 (SWD(2017)91 final) a significant poverty gap remains for non-EU born population groups vis-à-vis the rest of the population (23.3% at-risk-of-poverty rate). The Committee asks that the next report contain information on specific measures taken to address the situation of these groups.

Approach to combating poverty and social exclusion

The Committee takes note of the legislative measures adopted in 2014 to combat poverty and social exclusion. The Act on Multi-sectorial Joint Services Promoting Employment has the objective to promote the employment of long-term unemployed people. The Non-Discrimination Act is to provide protection against discrimination of all sorts. The new Social Welfare Act pays specific attention to young people in danger of social exclusion.

The Committee notes from the report that the Government in 2013 introduced a monthly € 300 "protected share" to the unemployment benefit and the general housing allowance which encouraged part-time work rather than unemployment.

According to the Evaluation Report on Basic Security in Finland 2011 – 2015, the level of basic social security improved due to several changes during these years. For example, the unemployment benefit and the housing allowance increased in 2012.

The reduction of poverty and social exclusion was one of the three priority areas of the 2011 – 2015 Government Programme. A cross-sectorial programme was launched which included seven themes and 35 priority projects addressing 9 ministries. The programme was steered by the Ministry of Social Affairs and Health.

The Committee takes note of the specific measures for the reduction of poverty of particularly vulnerable groups such as the young people, persons with disabilities and the Roma population described in the report.

The Committee asks that the next report explain how coordination of the various measures takes place, including at delivery level. It asks whether the Ministry of Social Affairs and Health consults with other ministries on an overall and coordinated policy as set out in Article

30. In addition, it asks for relevant information on the dialogue established with civil society as well as with persons directly affected by poverty and social exclusion (see Conclusions 2013, Statement of interpretation on Article 30).

The Committee notes from comments on the report submitted by the Finnish League of Human Rights and the Finnish Society of Social Rights that the right to protection against poverty and social exclusion is not a prime target of the Government and that Finland will not be able to meet the objective of the Europe 2020 strategy of reducing the number of the poor by 150,000 by 2020. The comments also state that the Government has not carried out any prior assessment of the impact of cuts to social benefits on various groups, such as children, the elderly, persons with disabilities or other minority groups.

The Committee further observes from the European Anti-Poverty Network Assessment of the Country Reports and Proposals for Country-Specific Recommendations 2017 (Country Fiche Finland) the priority recommendations of raising the level of basic income security benefits, building more affordable housing, especially in the big cities, improving the situation of low income families and the elderly, addressing the persistent problem of long-term unemployment and reducing health inequalities.

The Committee asks that the next report contain information addressing these various comments.

Finally, the Committee refers to its conclusions of non-conformity under other provisions of the Charter which are relevant to its assessment of compliance with Article 30 (see Conclusions 2013, Statement of interpretation on Article 30). It refers in particular to Article 12§1 and its conclusion that the minimum level of several social security benefits (sickness, old age, unemployment and maternity) is inadequate (Conclusions 2017) and to Article 13§1 and its conclusion that the amount of social assistance, consisting of basic assistance and any additional benefits that may apply is not adequate and that the granting of social assistance to nationals of other States Parties is subject to a length of residence requirement of four years (Conclusions 2017).

The Committee also refers to its decision in Finnish Society of Social Rights v. Finland, Complaint No. 88/2012, decision on the merits of 9 September 2014 in which it found that the level of several social security and social assistance benefits fell manifestly below the poverty threshold in violation of Articles 12§1 and 13§1, respectively. In its Findings 2015, the Committee found that these violations had not yet been remedied. The next examination of the follow-up to the decision in this complaint will take place in 2018.

Nevertheless, on the basis of all the information at its disposal and notably the comparatively low poverty rates, the above-average positive effect of social transfers as well as the fact that government spending on social protection as a share of GDP increased during the reference period (from 23.8% in 2012 to 25.6% in 2015) and being the highest among EU states (average 19.2%), the Committee considers that the situation remains compatible with Article 30.

Monitoring and evaluation

The report states that the National Institute for Health and Welfare conducts a mandatory evaluation of the adequacy of basic social security in Finland every four year in application of the 2010 Act on the National Pension Index. The relevant evaluation reports were published in 2011 and 2015 and according to the report it constitutes research-based information for decision-makers.

The Committee asks whether other institutions are also involved in the evaluation of policies aimed at combating poverty and social exclusion and it refers to its question above on the involvement of civil society and persons directly affected by poverty and social exclusion.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Finland is in conformity with Article 30 of the Charter.

January 2018

European Social Charter

European Committee of Social Rights

Conclusions 2017

FRANCE

This text may be subject to editorial revision.

The following chapter concerns France, which ratified the Charter on 7 May 1999. The deadline for submitting the 16th report was 31 October 2016 and France submitted it on 7 December 2016.

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 "Health, social security and social protection":

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

France has accepted all provisions from the above-mentioned group.

The reference period was 1 January 2012 to 31 December 2015.

The conclusions relating to France concern 19 situations and are as follows:

– 14 conclusions of conformity: Articles 3§1, 3§4, 11§1, 11§2, 11§3, 12§2, 12§3, 13§2, 13§3, 13§4, 14§1, 14§2, 23 and 30.

– 5 conclusions of non-conformity: Articles 3§2, 3§3, 12§1, 12§4 and 13§1.

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

Article 3§1

- A framework agreement on the prevention of psychosocial risks in public service jobs was signed by all the employers' representatives and most trade unions and Prime Ministerial Circular on the implementation of the framework agreement was signed on 20 March 2014.
- The Law of 17 August 2015 on social dialogue and employment set up a system for the representation of employees and employers in companies with fewer than 11 employees through regional interoccupational joint committees (CPRIs) set up on 1 July 2017 whose task is to provide information, advice and co-ordination relating to the specific problems of very small companies, particularly with regard to working conditions and health.

Article 3§2

- Decree No. 2012-639 of 4 May 2012 on the risks of exposure to asbestos adds a requirement to Article R. 4412-100 of the Labour Code for employers to respect an occupational exposure limit value of 100 fibres/litre of air inhaled over eight hours of work and provides for this value to be lowered to 10 fibres/litre from 1 July 2015 onwards.
- Decree No. 2015-789 of 29 June 2015 on the risks of exposure to asbestos also adds a requirement to Article R. 4412-110 of the Labour Code for employers to provide workers with individual protection equipment ensuring that this exposure limit is respected and to assess the risks of exposure to asbestos.

Article 12§3

Improvement in 2014 in access to health care through the extension of supplementary universal health coverage (CMU-C) and assistance for the payment of supplementary health insurance (ACS); the number of recipients of these benefits grew by 6.5% and 3.9% respectively between 2013 and 2014, reaching a total of 6 million persons covered by the end of 2014.

Article 13

The Act of 17 August 2015 on social dialogue and employment introduced *the Activity Premium.* Financed by the State, the Activity Premium is a supplement to income for low-income workers. Yung people between the ages of 18 and 24, whether employed or self-employed, are now eligible for this allowance.

Article 23

According to the report, France has implemented a secure information system which facilitates quantitative and qualitative analysis of reports received on the national listening and assistance hotline in order to respond to situations where elderly people, among other people, who are living at home or in institutions are being ill-treated.

Article 30

Numerous measures have been undertaken to combat poverty and exclusion, both on the prevention side and on accompanying people living in poverty, in particular within the Multi-annual Antipoverty and Social Inclusion Plan (2013-2017), which is overseen by the Government, has an inter-ministerial nature and was designed by a number of players, including individuals experiencing hardship. The Plan has led to decompartmentalising social policies.

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The next report to be submitted by France will be a simplified report dealing with the follow up given to decisions on the merits of collective complaints in which the Committee found a violation.

The report should also contain information requested by the Committee in Conclusions 2016 in respect of its conclusions of non-conformity due to a repeated lack of information:

- the right to work – vocational guidance, training and rehabilitation (Article 1§4),
- the right to vocational training – full use of facilities available (Article 10§5),
- the right of persons with disabilities to independence, social integration and participation in the life of the community – vocational training for persons with disabilities (Article 15§1),
- the right of persons with disabilities to independence, social integration and participation in the life of the community – employment of persons with disabilities (Article 15§2),
- the right of persons with disabilities to independence, social integration and participation in the life of the community – integration and participation of persons with disabilities in the life of the community (Article 15§3).

The deadline for submitting that report was 31 October 2017. The report was registered on 29 November 2017. Conclusions on the Articles concerned will be published in January 2019.

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Conclusions and reports are available at www.coe.int/socialcharter as well in the HUDOC database.

Article 3 - Right to safe and healthy working conditions

Paragraph 1 - Health and safety and the working environment

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

General objective of the policy

In its previous conclusion (Conclusions 2013), the Committee asked if occupational health and safety policy was regularly re-assessed in the light of new risks. In reply the report states that occupational health and safety policy is based on five-year plans and regularly adjusted in line with risks. The findings of these regular reviews form the basis for the next five-year plan.

The report states that Health at Work Plans 1 and 2, for 2005-2009 and 2010-2014, brought progress which resulted in a reduction in claims in major sectors of activity (construction and civil engineering, timber industries, garages and the chemistry sector) and made it possible to take account of risks that were specific to the geographical areas concerned. Furthermore, the third Health at Work Plan for 2016-2020 was adopted on 8 December 2015 by the Advisory Board on Working Conditions. It takes account of an improvement in prevention policy, which anticipates occupational hazards and secures employees' good health and quality of life at work. The Committee asks for information in the next report on the results of this plan.

In its previous conclusion (Conclusions 2013), the Committee noted the finding of the Court of Justice of the European Union that France had failed to properly transpose Directive 89/391/EEC (Commission of the European Communities v. French Republic, Case C-226/06 of 5 June 2008) into domestic law and asked what steps had been taken to remedy that situation. In reply, the report states that Decree No. 2010-78 of 2 January 2010 on information for employees on health and safety risks was published in the Official Gazette of 22 January 2010. This decree amends the Labour Code, adding minimum requirements on the information of employees in all establishments including those employing fewer than 50 persons. The European Commission closed the case at its College meeting of 18 March 2010.

As to the agricultural sector, the report states that a new project entitled Ecophyto II adopted in October 2015 provides for a 50% reduction over ten years in the use of phytopharmaceutical products in France. The measures in a plan relating to the agricultural professions were co-ordinated with those of Ecophyto II and the agricultural workers health and safety plan for 2016-2020 approved in December 2015. Furthermore, in co-ordination with the measures provided for in the third Health at Work Plan regarding the prevention of chemical risks in industry, it is planned to step up measures to evaluate occupational risks in companies, ensure that the impact of these products on workers' health is monitored and strengthen the state's oversight of scientific knowledge on these risks.

The Committee recalls that new technology, organisational constraints and psychological demands favour the development of psychosocial factors of risk, leading to work-related stress, aggression, violence and harassment. With regard to Article 3§1 of the Charter, it takes account of stress, aggression, violence and harassment at work when examining whether policies are regularly evaluated or reviewed in the light of emerging risks. The States parties have a duty to carry out activities in terms of research, knowledge and communication relating to psychosocial risks (Statement of Interpretation on Article 3§1 of the Charter, Conclusions 2013).

The report states that the framework agreement on the prevention of psychosocial risks in public service jobs was signed by all the employers' representatives and most trade unions. A Prime Ministerial Circular on the deployment of the framework agreement was signed on 20 March 2014 and provided a political framework for the launch of the national plan for the prevention of psychosocial risks in the three branches of the civil service. In the

state civil service, the prevention of psychosocial risks is clearly identified as one of the main priorities of the prevention policies run by government departments and is the subject of substantial social dialogue within health, safety and working conditions committees (CHSCTs) at both ministerial and local level. A review committee has also been set up by the agreement's signatories and it meets regularly to monitor the deployment of the plan in administrative departments.

The Committee notes from information published on Eurofound that according to the Ministry of Labour, measures to combat burn-out will be included in the health and safety plan for the beginning of summer 2015. The Ministry of Labour has set up a working group on this issue.

The Committee notes that there is a national policy to develop and preserve a culture of prevention in the occupational health and safety field.

Organisation of occupational risk prevention

In its previous conclusion (Conclusions 2013), the Committee asked for information on the participation of the Labour Inspectorate in the development of a health and safety culture among employers and workers and on the sharing of knowledge of occupational hazards and prevention acquired during inspection activities. The report states that state action to promote occupational health and safety is based mainly on the Health at Work Plans (for 2005-2010, 2010-2015 and 2015-2020), which the Labour Inspectorate was involved in devising and one of whose aims is to disseminate a culture of prevention in the workplace. Labour inspectors provide information and give advice both in the field (during visits to establishments and worksites and meetings of health, safety and working conditions committees) and in their own offices during conversations with users or in their informal relations with employers, employees and employer and trade union representatives. The report also states that the Labour Inspectorate is particularly vigilant in the area of chemical hazards (asbestos) and exceptionally arduous work, as defined by the law.

The report states that since the signature of the agreement on occupational health and safety in the civil service of 20 November 2009, fleshed out in 2013 by a framework agreement on the prevention of psychosocial risks, practically all the planned measures have been implemented: work begun previously has been taken a stage further thanks to several reports by the inspectorate general on the subjects of the reassignment of staff declared unfit for work for health reasons (2011), the accidents at work and occupational diseases scheme (2012), preventive medicine (2014), disability policy (2014) and preventing arduous working conditions (2016).

As to the competent bodies and staff working in the area of occupational health and safety, a monitoring body on health and safety has been set up for the civil service, the powers of CHSCTs have been extended and the operating methods of these bodies have been improved.

In addition, the network of staff responsible for advice on and assistance with the implementation of health and safety rules has been remodelled through the creation of two levels of authority, namely a local level (prevention assistants) and a co-ordinating level (prevention advisors). In 2014, these staff numbered 20 000 for the state civil service alone. The functioning of the network of occupational health and safety inspectors has been improved through the professionalisation of their initial training (in the state civil service, 150 inspectors working for the government departments' general inspectorates conducted 2 200 on-site inspections in 2014).

With regard to the prevention of various occupational hazards, the report states that priority was placed on the prevention of psychosocial risks. Risks connected to muscular and skeletal strain were the subject of a prevention guide disseminated in connection with a specialised training course in February 2015.

The report also states that under Article L. 4121-3 of the Labour Code, employers are required to assess risks to employees' health and safety and draw up a single risk evaluation document on the basis of this assessment.

The Committee notes that at federal and company level, there is a system for the assessment of occupational risks, preventive measures geared to the nature of the risks involved, and information and training measures for workers. It also notes that the labour inspection authorities participate in the development of a health and safety culture among employers and workers and share the knowledge acquired during inspection activities.

Improvement of occupational safety and health

The report states that efforts in the area of risks already identified such as falls from heights, muscular and skeletal strain and stress at work are the subjects of more targeted action forming part of the third Health at Work Plan for 2016-2020. However, knowledge gathering and research play a major role in the plan, particularly with regard to forecasts about newly emerging risks such as endocrine disrupters, nanomaterials, new forms of work, etc.

The report also states that the National Research and Safety Institute, which has been given the task of disseminating information and raising awareness by the Ministry of Labour, has published a document entitled "Integrating the 'electromagnetic radiation' risk into the single document for the assessment of occupational hazards" (2011), which identifies and lists machines producing radiation, presents the results of measurements taken for this type of equipment by a group of experts and identifies existing means of protection.

The Committee maintains its previous finding of conformity and asks for information in the next report on the participation of public authorities in training qualified professionals and in designing training modules and certification schemes.

Consultation with employers' and workers' organisations

In reply to the Committee's question on how consultation with establishments with fewer than 50 employees is organised (Conclusions 2013), the report states that there is no obligation to set up a health, safety and working conditions committee (CHSCT) in such companies, so employers are not required to take stock of the general situation as regards health, safety and working conditions in their establishment or to produce an annual programme for the prevention of occupational hazards and improvement of working conditions. On the other hand, it is a requirement for staff representatives to be appointed in companies with 11 employees or more. They are subject to the same obligations as members of CHSCTs, pursuant to Article L. 2316-16 of the Labour Code. Among their duties, they are required to help with prevention measures and the protection of workers' health and safety (Article L. 4612-1 of the Labour Code) and to assess occupational hazards and working conditions (Article L. 4612-2).

The report also states that the Law of 17 August 2015 on social dialogue and employment set up a system for the representation of employees and employers in companies with fewer than 11 employees, through committees intended to represent employees and employers at regional level and in sectors which have not set up, by agreement, joint committees with the same powers and the same geographical jurisdiction. These new regional interoccupational joint committees were set up on 1 July 2017 (outside the reference period) and are supposed to provide information, advice and co-ordination relating to the specific problems of very small companies, particularly with regard to working conditions and health.

The Committee also takes note of the functioning of the joint committees on health, safety and working conditions (CPHSCTs, 17 in 2013) which have been set up for every *département* and are tasked, among other things, with helping to improve health and safety conditions and assessing risks to the health and safety of the employees of farms and companies in the agricultural production sector.

The Committee notes the existence of effective social dialogue in the formulation, implementation and periodic review of policy.

Conclusion

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

Article 3 - Right to safe and healthy working conditions

Paragraph 2 - Safety and health regulations

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

Content of the regulations on health and safety at work

In its previous conclusion (Conclusions 2013), the Committee noted that the current legislation and regulations met the general obligation under Article 3§2 of the Charter and asked for information on the measures taken to transpose Directive 2000/54/EC on the protection of workers from risks related to exposure to biological agents at work, and Directive 2004/40/EC of the European Parliament and of the Council of 29 April 2004 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields), as amended by Directive 2008/46/EC of the European Parliament and of the Council of 23 April 2008, into domestic law.

In reply, the report states that Directive 2000/54/EC has been transposed into French law by various provisions, particularly Articles L. 4421-1 and R. 4421-1 – 4427.5 of the Labour Code, the Order of 18 July 1994, amended, establishing the list of biological pathogens and the Orders of 4 November 2002, 24 November 2003 and 16 July 2007.

The report also explains that Directive 2013/35/EU of 26 June 2013 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents, which repealed Directive 2004/40/EC, and the related practical guide published by the European Commission in December 2015, made it possible to begin the work of transposition needed to adopt specific provisions on the matter in the Labour Code. Between 2012 and 2015, the protection of employees liable to be exposed to electromagnetic fields was provided for in domestic law by the implementation of the general prevention principles laid down in Articles L. 4121-1 and L. 4121-2 of the Labour Code. The report also states that a working group set up in September 2015 by the Advisory Board on Working Conditions has worked on Decree No. 2016-1074 of 3 August 2016 on the protection of workers from risks caused by electromagnetic fields, which supplements the provisions of the Labour Code. The Committee asks for it to be stated in the next report whether the limit values specified in the Directive are actually in force and whether they are being adhered to.

The Committee points out that under the terms of Article 3§2 of the Charter, regulations concerning health and safety at work must cover work-related stress, aggression and violence specific to work, and especially for workers under atypical working relationships (Statement of Interpretation on Article 3§2 of the Charter, Conclusions 2013). The report does not provide any information on this point. The Committee accordingly reiterates its request. The Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in France is in conformity with Article 3§2 of the Charter.

Levels of prevention and protection

The Committee examines the levels of occupational prevention and protection provided for by the legislation and the regulations in relation to certain risks.

Establishment, alteration and upkeep of workplaces

In its previous conclusion (Conclusions 2013), the Committee considered that the levels of prevention and protection in relation to the establishment, alteration and upkeep of workplaces were in conformity with Article 3§2 of the Charter and asked for information on steps taken to transpose Directive 2009/104/EC of the European Parliament and of the Council of 16 September 2009 concerning the minimum safety and health requirements for the use of work equipment by workers at work into domestic law. In reply, the report explains that as the transposition of Directive 2009/104/EC called only for the consolidation of

successive directives which had already been transposed into French law, it was not necessary to adopt national implementing measures.

The report also presents examples of measures to prevent falls from heights, and the maintenance of machines in service in line with standards designed to contribute to the implementation of existing regulations, and to encourage companies to pay more attention to the principles of prevention laid down in the regulations.

The Committee maintains its previous finding of conformity in this respect.

Protection against hazardous substances and agents

In its previous conclusion (Conclusions 2013), the Committee asked for information on the measures adopted to transpose Directive 2004/37/EC of the European Parliament and of the Council of 29 April 2004 on the protection of workers from the risks related to exposure to carcinogens or mutagens at work. In reply, the report states that this directive was transposed into domestic law through the Order of 13 July 2006 amending the Order of 5 January 1993 setting out the list of carcinogenic substances, preparations or processes within the meaning of the second paragraph of Article R. 231-56 of the Labour Code. This order adds activities exposing workers to formaldehyde to the list of substances, preparations and processes regarded as carcinogenic. According to the report, French law already complied with all the other provisions of this directive.

However, the Committee notes from EUR-Lex that Directive 2014/27/EU of the European Parliament and of the Council of 26 February 2014 amending Council Directives 92/58/EEC, 92/85/EEC, 94/33/EC, 98/24/EC and Directive 2004/37/EC of the European Parliament and of the Council, in order to align them to Regulation (EC) No 1272/2008 on classification, labelling and packaging of substances and mixtures was transposed into domestic law by Decrees Nos. 2015-612 and 2015-612 of 3 June 2015, and by Law No. 2016-1088 of 8 August 2016 (outside the reference period) on labour, modernisation of social dialogue and safeguarding of career paths.

Protection of workers against asbestos

In its previous conclusion (Conclusions 2013), the Committee noted that there had been a reform of the regulations on prevention and protection with regard to asbestos and decided to examine the impact of the reform during the next supervision cycle. The report states that the exposure limit value of 0.1 fibres per cm^3 was introduced into French regulations by a Decree of 6 July 1992 on particular health measures applicable in establishments where the staff are exposed to the effect of asbestos dust. Decree No. 2012-639 of 4 May 2012 on the risks of exposure to asbestos adds a requirement to Article R. 4412-100 of the Labour Code for employers to respect an occupational exposure limit value of 100 fibres/litre of air inhaled over eight hours of work and provides for this value to be lowered to 10 fibres/litre from 1 July 2015 onwards. Decree No. 2015-789 of 29 June 2015 on the risks of exposure to asbestos also adds a requirement to Article R. 4412-110 of the Labour Code for employers to provide workers with individual protection equipment ensuring that this exposure limit is respected and to assess the risks of exposure to asbestos. These regulatory measures were also supplemented by those of the implementing order of 14 August 2012 on the arrangements for measuring dust levels, for monitoring compliance with the limit value for occupational exposure to asbestos fibres and for certifying bodies carrying out such measurements. The Committee notes from the report that the aim of this major reform was to significantly raise the prevention levels for workers against the risk of asbestos exposure and it was the subject of other implementing orders during the reference period.

In reply to the Committee's question on the implementation by private-sector property owners and employers of the technical asbestos assessments (Conclusions 2013 et 2009), the report states that the French authorities have taken various steps to improve information gathering. These include the annual activity reports by identification officers and hence the

implementation of an information system under the Interministerial Asbestos Action Plan for 2016-2019 (outside the reference period) and inspections by regional health inspectors (inspecting 312 establishments in 2014, and issuing 13 injunctions for breaches of the regulations). In addition, the Interministerial Asbestos Roadmap, validated by the Prime Minister's Office in 2015 and transformed into an interministerial plan, provides for the production of a map showing asbestos-containing materials in the current building stock.

The Committee concludes that prevention and protection levels for asbestos are in conformity with Article 3§2 of the Charter.

Protection of workers against ionising radiation

According to the report there has been no change in the situation which the Committee found previously to be in conformity with the Charter (Conclusions 2013). Given that no update has been provided, the Committee asks for information in the next report on any changes made with regard to the protection of workers against ionising radiation. It asks whether workers are protected up to a level at least equivalent to that set in the Recommendations by the International Commission on Radiological Protection (ICRP Publication No. 103, 2007).

Personal scope of the regulations

The Committee examines the personal scope of legislation and regulations with regard to workers in atypical employment.

Temporary workers

In reply to the Committee's question (Conclusions 2013) concerning the access of non-permanent, temporary or agency workers to information and training regarding occupational safety and health upon recruitment or when changing job, the report states that all agency workers must be given safety training under the same conditions as a company's permanent employees. Under Article L.4141-1 of the Labour Code, companies must provide temporary workers with practical and appropriate training on safety measures. Such training is compulsory, save for agency workers called in to carry out urgent work required by safety measures who already have the requisite qualifications for such work. In the latter case, the manager of the establishment concerned must ensure that agency workers receive all of the information needed for their safety. These provisions complement the general requirement to provide information on health and safety risks and the measures taken to counter them, pursuant to Article L.4141-2. In addition temporary workers assigned to posts exposing them to particular health and safety risks must be given extra safety training in the company by which they are employed (L. 4142-2 and L. 4154-2).

As to access for these types of worker to medical supervision (Conclusions 2013), the report states that under Decree No. 2012-137 of 30 January 2012 on the organisation and functioning of occupational health services, adopted in accordance with Article L.4625-1 (Law No. 2011-867 of 20 July 2011), the general provisions on the medical supervision of these types of worker (provided for in Chapters I-IV of Title II of the Labour Code) are applicable, subject to the special arrangements provided for by Articles D 4625-2 et seq. The occupational health services (SSTs) responsible for supervising these employees are independent or inter-company services which are certified by the Regional Director for Companies, Competition, Consumer Affairs, Labour and Employment (DIRECCTE) (D 4625-2). SST certification is subject in particular to the condition that the service undertakes to provide data for the joint file provided for by Article D 4625-17, which makes it possible to centralise records on the medical fitness of the employees concerned. It is specified that companies which make use of SSTs providing occupational health services for temporary employees may only access information showing that employees are fit for one or more jobs (D 4625-18).

In reply to the Committee's question (Conclusions 2013) on access for employees on fixed-term contracts to collective representation, the report states that their staff membership status is calculated on the basis of their presence over the last 12 months (L. 1111-2 of the Labour Code) and they may vote in elections for works councils or staff representatives if they have accumulated three months' service and may stand in such elections if they have accumulated six months' (L. 2314-17 and 18, L. 2324-16 and 17). With regard to the representation of agency workers, the report sets out the rules that apply within temporary work agencies (where they count as permanent staff and may vote in elections after three months of service and stand after 6 months of service) and those that apply in the company to which they are assigned (where they may neither vote nor stand). The Committee also takes note of the conditions of access of seconded staff to collective representation.

The report also states that ILO Convention No. 181 on private employment agencies was ratified on 28 October 2015 and came into force on 28 October 2016.

The Committee concludes that temporary workers, interim workers and workers on fixed-term contracts enjoy the same level of protection as workers on permanent contracts.

Other types of workers

In its previous conclusion (Conclusions 2013), the Committee found that occupational health and safety legislation and regulations did not afford protection for self-employed workers in conformity with Article 3§2 of the Charter. The report states that the Labour Code, which is intended to govern relationships between employers and employees, does not apply to self-employed workers. However, under Article L. 4535-1 of the Labour Code, self-employed workers and employers carrying out work directly on building or civil engineering sites are required to apply the general principles of prevention to other persons working on the site and to themselves. In the agricultural sector, this requirement for co-ordination between all the parties only applies in the forestry sector (L. 717-8 and 9 of the Countryside and Maritime Fishing Code). The report also states that Article 19 of Law No. 2014-1170 of 13 October 2014 on the future of agriculture, food and forestry and Decree No. 2015-756 of 24 June 2015 on co-operation on health and safety issues between employers and self-employed workers in the agricultural professions include provisions on such co-operation, except in the area of forestry work.

The Committee also asked for information on the way in which medical supervision of domestic employees is organised in practice. According to the report, there are no provisions in the Labour Code laying out any arrangements for the medical supervision of domestic employees. However, a judgment of the Court of Cassation (Cass. Soc 16 January 1997 No. 94-45086) has extended the rules of ordinary law of the Labour Code regarding medical supervision to domestic workers.

With regard to seasonal workers, the report states that supervision of their state of health is also provided for by Article L 4625-1 of the Labour Code, so they must enjoy equal protection to other workers. According to Article D 4625-22, the arrangements for this supervision include a compulsory medical examination on taking up employment for persons hired for 45 days or more except if they are hired for a job that is equivalent to one they have occupied before and they have not been declared unfit for work at a previous medical examination in the preceding 24 months. For employees who are hired for less time, a medical examination is not required. The SST organises training and prevention programmes, which can cover several companies.

The Committee notes from information provided to the Governmental Committee (Report on Conclusions 2013), that the Health at Work Plan for 2010-2014 (PST2) includes measures targeting self-employed workers, whose aim is to foster the development of activities to prevent occupational hazards. The lead agency for these activities is the Directorate General of Labour, working in partnership with the Professional Organisation for the Prevention of Accidents in Buildings and Public Works (OPPBTP), the National Agency for the

Improvement of Working Conditions (ANACT), the welfare scheme for the self-employed (RSI) and labour and management. The Advisory Board on Working Conditions (COCT), which is a national body for consultation between labour and management and the public authorities, monitors the results of this activity. In this context, the National Union of the Liberal Professions (UNAPL) is a member of the COCT and helps to monitor the PST2. The RSI has established a website which conducts a survey of occupational hazards by occupation and offers advice to professionals.

Reiterating that all workers, all places of work and all sectors of activity must be covered by the applicable legislation and regulations on health and safety at work, the Committee concludes that self-employed workers lack sufficient protection within the meaning of Article 3§2 of the Charter.

Consultation with employers' and workers' organisations

In its previous conclusion (Conclusions 2013), the Committee confirmed that a system for consulting employers' and workers' organisations existed at the level of the national and regional authorities and at company and civil service level. It asked how consultation on risk identification and the levels of prevention and protection required was organised in practice in establishments with fewer than 50 employees. In addition to the special provisions on the system for the consultation of employers' and workers' organisations at the level of the national and regional authorities, companies and the civil service (Conclusions 2013), the Committee notes from the report that in the agricultural sector, a specialist COCT committee in charge of issues relating to agricultural activities is consulted on all draft occupational health and safety legislation and on the national occupational health priorities arising from the occupational health and safety plan for agricultural activities for 2016-2020 in accordance with Article D 717-33 of the Code. This plan is co-ordinated with the Third Health at Work Plan (PST3), particularly with respect to very small businesses (with between 0.5 and 10 employees), which accounted for 100 663 establishments in the agricultural sector in 2014 with 217 144 full-time-equivalent employees. In addition, Regional Technical Committees (CTRs) are charged with assessing applications for assistance from companies with the management and promotion of occupational hazard prevention and giving their opinions on the occupational health and safety plan implemented by each of the funding offices of the agricultural mutual insurance fund (MSA) in their own region.

The Committee confirms that consultation of employers' and workers' organisations on questions relating to occupational health and safety is in conformity with Article 3§2 of the Charter.

Conclusion

The Committee concludes that the situation in France is not in conformity with Article 3§2 of the Charter on the ground that certain categories of self-employed workers are not sufficiently covered by the occupational health and safety regulations.

Article 3 - Right to safe and healthy working conditions

Paragraph 3 - Enforcement of safety and health regulations

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

Accidents at work and occupational diseases

The report states that the total number of accidents at work decreased by 3.5% between 2012 and 2013. The frequency of work accidents also decreased and reached a historic low of 33.8 per 1 000 employees in 2013. The seriousness of work accidents and the number of deaths also fell from 3.5% in 2012 to 3% in 2013. The Committee notes that these figures relate to just one year out of the reference period, and remains that figures should be given for the whole of the reference period.

The Committee takes note from EUROSTAT data that the number of non-fatal accidents at work increased from 587 090 in 2012 to 724 662 in 2014. The standardised rate of incidence of non-fatal accidents at work also rose from 3 047.86 in 2012 to 3 385.73 in 2014. The Committee notes that this is higher than the average rate in the EU-28 (1 717.15 in 2012; 1 642.09 in 2014). The Committee also notes that the number of fatal accidents increased slightly from 576 in 2012 to 589 in 2014. The standardised incidence rate of fatal accidents at work per 100,000 workers also increased from 3.48 in 2012 to 3.74 in 2014. The Committee notes that the standardised incidence rate in France is still higher than the average calculated for the EU-28 (2.42 in 2012; 2.32 in 2014).

In its previous conclusion (Conclusions 2013), the Committee asked for information on measures taken to contain the substantial increase in fatal accidents and the large number of cases of fatal occupational diseases. It also asked for information on the measures taken to stem the increase in cases of occupational disease other than muscular and skeletal disorders and emphasised that if this information was not provided in the next report, it would not have the information it required to establish that the situation in France is in conformity with Article 3§3.

The report states with regard to the distribution of deaths per category of accident in the agricultural sector, that the largest number of these are the result of cardio-vascular problems or the use of machines. These accidents and other particularly serious accidents are currently being investigated by labour inspectors. The Committee notes the changes in the tables of occupational diseases in the agricultural system, which are to be applied to agricultural employees and self-employed workers so as to prevent occupational diseases linked to the after-effects of chemical products including phytopharmaceutical products and to improve compensation for these diseases. Tables were drawn up by the Minister of Agriculture following the opinion of the High Commission for Occupational Diseases in Agriculture (COSMAP), which is also responsible for any question relating to the discovery of the occupational origin of pathologies and the link between compensation and prevention.

The report also states that the Professional Organisation for the Prevention of Accidents in Buildings and Public Works (OPPBTP), which gives advice to the building and public works sector on accident prevention and the improvement of working conditions in companies and on sites, provides a platform for exchange between the social partners. So as to help promote the prevention of accidents at work and improve working conditions in the companies involved, it takes part in the oversight of occupational hazards, conducts studies on working conditions and investigates the causes of occupational hazards.

According to the report the number of cases of occupational disease decreased by 4.7% between 2012 and 2013. This fall of some 2 500 cases can be accounted for among other things by a reduction in the number of cases of occupational disease linked to asbestos (the second cause of occupational diseases, accounting for 7.9% of all diseases for which compensation was granted in 2013). The report notes a major prevalence of periarticular

complaints, which represented 78.9% of occupational diseases. Lumbago has been the third cause of occupational diseases (5.6%) since 1999.

The Committee notes that the number of fatal work accidents is still too high compared to the average in the EU-28. It considers that the measures taken to reduce the number of fatal accidents are still inadequate and asks the next report to indicate what are the most common causes of work accidents and what prevention activities and other measures are organised to prevent them.

Activities of the Labour Inspectorate

The Committee points out that under Article 3§3 of the Charter, States Parties must implement measures to focus labour inspection on small and medium-sized enterprises (Statement of Interpretation on Article 3§3, Conclusions 2013). In reply, the report states that the Labour Inspectorate's central authority, the Directorate General of Labour, adopts national communication measures, whose aim is to inform and raise awareness among the general public about little-known or changing aspects of risk prevention, drawing attention to priority issues through various channels (meetings, colloquies, etc.) and, in particular, disseminating information through an internet portal entitled "*Travailler mieux*" ("Be Better at Work"), given over entirely to issues of health, safety and working conditions. This website gives access to practical tools for employers or employees to work with, particularly in small or very small businesses, in order to improve working conditions and reduce occupational hazards.

In its previous conclusions (Conclusions 2013 and 2009), the Committee asked for information on the proportion of the labour force covered by inspection visits made during the reference period. It also asked how many inspection visits were made in the civil service and how effective inspection and reports on the civil service were, including in the regional and hospital civil services, given that ISSTs had no coercive or punitive powers. It also pointed out that if this information was not included in the next report, there would be nothing to show that the situation was in conformity with Article 3§3.

In reply, the report states that the Labour Inspectorate's information system is not capable of providing figures for the number of workers covered by the inspection visits actually carried out each year and points out that the ratio between the part of the active population whose employment and working conditions the Labour Inspection is entitled to investigate (18 200 000 workers) and the number of inspections (103 650) is hardly significant in itself. The average number of establishments per inspector (856 in 2012, 814 in 2014 and 831 en 2015), the average number of employees per inspector (8 710 in 2013, 8 139 in 2014 and 8 500 in 2015) and the average number of inspections per inspector (145 in 2013 and 92 in 2015) all decreased during the reference period. The Committee notes from figures published by ILOSTAT that there were 2 101 labour inspectors in 2013 and 2 031 in 2014, and the average number of inspectors per 10 000 employees was 0.8 in 2013 and 2014.

The report also states that some of the provisions of the Labour Code are applicable to the civil service. The Labour Inspectorate does not, on the face of it, have any jurisdiction over labour relations in the civil service, whose staff's working conditions are governed by special regulations. Labour inspectors are responsible for checking compliance with Part IV of the Labour Code in public health establishments but their authority to report offences committed i**n that context** is limited. However, the Labour Inspectorate does play a role in the non-hospital civil service as an advisor and a source of expertise and arbitration, albeit without taking any administrative decisions and only in cases expressly provided for by the law. Provision is made to refer to a labour inspector only if a prior intervention by a health and safety inspector has failed to resolve the disagreement (11 cases in 2013). The criminal liability of staff, particularly that of heads of department responsible for good working conditions, may be incurred. The Committee notes that, according to the report, data for the staff of local government and hospital services are not available.

In its previous conclusion (Conclusions 2013), the Committee also asked for information on the impact of regulations on the protection of labour inspectors from interference in the performance of their duties in practice. In reply, the report states that incidents affecting the performance of supervision and inspection duties can be identified both through the statistical and qualitative monitoring of activities and through management of the operational protection afforded inspection staff. In 2015 Article L.8114-1 of the Labour Code on obstacles to inspection work was referred to 1 198 times in written observations to employers (1636 times in 2014, 2 148 in 2013, 1 787 in 2012) and 156 times in reports of offences (221 in 2014, 316 in 2013 and 300 in 2012). Article L.8114-2 of the Labour Code on insults to officials was referred to 73 times in observations (93 times in 2014, 151 in 2013 and 117 in 2012) and 9 times in reports (respectively 20, 30 and 28). Applications for the protection of inspectors when performing their functions decreased slightly from 102 in 2012 to 46 in 2015. The Committee notes that during the reference period, the number of cases of insult, threats, verbal or physical violence and assault against inspectors during their work decreased but continues to be at a high level. The Committee asks for information in the next report on any changes in the situation and any measures taken to enhance the protection of labour inspectors.

The Committee notes that according to NATLEX, Decree No. 2014-359 of 20 March 2014 on the organisation of the labour inspection system came into force on 1 January 2015. This law has altered the internal organisation of the Labour Inspectorate at the local, regional and national levels. The Committee also notes from EUROFOUND that Decree No. 2013-875 of 27 September 2013 sets out the timetable for the progressive reclassification of inspectors from 1 October 2013 onwards and the redeployment of auditors to labour inspection posts. According to the Labour Inspectorate's report, in 2014, labour inspection sections and auditing units numbered 232 local units and 28 regional units.

In its previous conclusion (Conclusions 2013), the Committee requested information concerning criminal and administrative fines and, where applicable, their overall volume. With regard to the legal remedies at the disposal of the Labour Inspectorate to contribute to the prevention of accidents and health risks, the Committee notes that there has been a recent reform (Order No. 2016-413 of 7 April 2016 on the supervision of the application of labour law, adopted outside the reference period) relating to the system of powers and penalties. This has been complemented by a settlement procedure and the possibility of applying administrative penalties. However, the Committee decides to examine the impact of the reform during the next supervision cycle.

The Committee takes note of an assessment included in the report of the inspection campaign carried out in 2013-2014 by the Labour Inspectorate on logging and forestry worksites (focusing on safety on jointly worked sites, site organisation measures, measures to protect workers and site hygiene) and the follow-up measures taken.

The Committee notes from the Labour Inspectorate's report for 2014 that the Labour Inspectorate adopted a range of administrative measures during the reference period: written observations (163 000 in 2012; 131 639 in 2014); preliminary notices to comply, with or without deadlines (5 515 in 2012; 3 068 in 2014); full criminal proceedings (7 624 in 2012; 3 748 in 2014); orders to halt work or activities in the event of serious and imminent danger (6 223 in 2012; 4 498 in 2014); urgent civil applications in the event of imminent risks (31 in 2012; 63 in 2013 and 13 in 2014); and investigations concerning accidents at work or occupational diseases (59 665 in 2012 and 55 626 in 2014, compared with 6 797 in 2009).

The Committee asks that the next report include updated and detailed information on the activities and resources of the Labour Inspectorate during the reference period (including the number of inspections made) and on measures taken against employers who failed to comply with the rules on safety and training or who did not provide their employees with relevant training.

Conclusion

The Committee concludes that the situation in France is not in conformity with Article 3§3 of the Charter on the ground that measures taken to reduce the number of accidents at work are insufficient.

Article 3 - Right to safe and healthy working conditions

Paragraph 4 - Occupational health services

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

The Committee points out that under Article 3§4 States must promote, in consultation with employers' and workers' organisations, the progressive development of occupational health services for all workers, with essentially preventive and advisory functions. These services may be run jointly by several companies. They must be efficient and should be able to identify, measure and prevent work-related stress, aggression and violence (see Statement of Interpretation on Article 3§4, Conclusions 2013; also Conclusions 2003, Bulgaria). The Committee further notes that if occupational health services are not set up for all enterprises, the authorities must develop a strategy, in consultation with employers' and employees' organisations, for that purpose. Thus, the state concerned "must take measures that allow it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources" (Conclusions 2003, Bulgaria, Conclusions 2009, Albania).

In its previous conclusion (Conclusions 2013), the Committee asked for information on the number of undertakings which, in practice, provide access to independent or intercompany occupational health services and the means of checking that the duty to use occupational health services is implemented in practice. In reply, the report states that in 2014, there were 1 033 occupational health services (SSTs) including 277 intercompany occupational health services (SSTIs) and 756 independent occupational health services (SSTAs). However, according to the report, there are no reliable, consolidated data on access to occupational health services because of the lack of a suitable computing system. Nonetheless, the data provided make it possible to identify the main trends: the number of employees supervised by the occupational health services was 15 674 100 in 2012 and 16 347 311 in 2013. In 2013, 93% of employees were supervised by SSTIs (according to data for 23 regions) and in 2012 the figure was 96%. The report explains that since the reform of the organisation of occupational medicine stemming from Law No. 2011-867 of 20 July 2011 on the organisation of occupational medicine and the Decrees of 30 January 2012 (Decrees Nos. 2012-137 of 30 January 2012 on the organisation and functioning of occupational health services and 2012-135 of 30 January 2012 on the organisation of occupational medicine, Conclusions 2013), the number of staff covered by SSTIs is calculated on the basis of numbers of employees supervised by each multidisciplinary team.

As to the number of undertakings offering access to occupational health services, the report states that there are no consolidated figures on this subject but it is possible to make an estimation based on various reports. According to information from the National Institute of Statistics and Economic Studies (INSEE), in 2012, there were 3 559 733 undertakings of all sizes (according to the INSEE's definition, undertakings include micro-businesses and self-entrepreneurs whose main activity is not agricultural and not in the public sector), including 3 416 182 micro-businesses, employing a total of 13 397 092 full-time-equivalent staff. According to the administrative and financial reports forwarded by SSTs and analysed by occupational health inspectors, some 1 235 000 undertakings in 20 of mainland France's 22 regions were given advice by SSTs in 2012. The report attributes the difference between these figures and the INSEE figures to the fact that a single worker could have been seen and counted more than once if he or she was employed by more than one undertaking in the course of the same year.

As to the means of checking use, the report states that under Article L. 8112-1 implementation of the provisions of the Labour Code is supervised by labour inspectors. Under Article 8123-1 on the application of the regulations on occupational health, labour inspectors work with occupational health inspectors, who have the same powers and duties as labour inspectors apart from the power to issue notices to comply or report offences (L. 8123-2). They check that undertakings have joined an SST and that the SST

operates in compliance with the licence issued by the relevant regional directorate (the DIRECCTE). The activities of occupational health inspectors relate in particular to the organisation and functioning of occupational health services; they are authorised to act alone in undertakings and SSTs and to issue written observations (L.8123-2). The Committee notes that according to the Labour Inspectorate's report for 2014, there were 35 occupational health inspectors in 2012 and 2013 and 31 in 2014.

The occupational health services in the agricultural sector are intercompany services run jointly in accordance with Article L. 717-3 of the Countryside and Maritime Fishing Code.According to the report these services are managed by the central body of the agricultural mutual insurance fund, particularly its national occupational health and safety tier, which co-ordinates the services' activities and draws up an annual national activity report in consultation with the social partners. In 2014, 293 455 check-ups were carried out on a total population of employees numbering 1 190 744, 15% of whom are under enhanced medical supervision.

In its previous conclusion (Conclusions 2013), the Committee also asked for information on access to occupational health services for self-employed, domestic and temporary workers. The report gives the definition of a domestic worker as outlined in Article L. 7412-1 of the Labour Code and states that no provision is made in the Labour Code for the medical supervision of domestic workers. As to access for temporary workers, the report states that their medical supervision varies from region to region. However, some occupational health inspectors have launched activities in their region to improve supervision of temporary employees' state of health (see also the considerations under Article 3§2, Conclusions 2017). In the agricultural sector, Decree No. 2012-706 of 7 May 2012 on occupational health services and the prevention of occupational risks in agriculture (Official Gazette of 8 May 2012) and Decree No. 2012-837 of 29 June 2012 on the organisation and functioning of occupational health services in the agriculture sector (Official Gazette of 30 June 2012) amended the organisation of occupational health services in the agriculture sector to enhance the medical supervision of employees who were most exposed to risks. The Committee asks the next report to provide any regulated framework on access to occupational health services for self-employed, domestic and agency workers.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in France is in conformity with Article 3§4 of the Charter.

Article 11 - Right to protection of health

Paragraph 1 - Removal of the causes of ill-health

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

Measures to ensure the highest possible standard of health

The Committee notes from the World Health Organization (WHO) data that life expectancy at birth (average for men and women) was 82.4 years in 2015 (81.76 years in 2009). The Committee notes from Eurostat that life expectancy at birth in the EU-28 was estimated at 80.6 years in 2015.

The Committee requests that the next report contain updated information about the mortality rate (the number of deaths per 1,000 inhabitants), the most frequent causes of death and the measures taken to remedy them. It also asks updated information on the infant mortality rate (number of deaths per 1,000 live births).

The Committee notes from the World Health Organization (WHO) data that the maternal mortality rate was 8 per 100,000 live births in 2015. The report mentions that the fact that maternal mortality has not decreased is partly due to the continuingly high maternal age at birth. The Committee previously asked whether the measures taken have further reduced the maternal mortality rate (Conclusions 2013). The report states that a morbidity indicator has been developed and was first published in 2015; it is the rate of admission of women in a gravido-puerperal state (pregnant or up to three months after birth) to resuscitation or intensive care units. The report mentions that is too early to assess the relevance of this indicator for monitoring severe maternal morbidity. The Committee asks for information on the outcome of this last development and updated information on maternal mortality rate in the next report.

Access to health care

The report describes the main changes introduced by the Health System Modernisation Law, which was based on the National Health Strategy launched by the government in 2013 and enacted on 26 January 2016 (outside the reference period). This law has three main strands: prevention, access to care and patient rights and safety. The law revises the regional health project and creates a specific care organisation system for mental health based on a number of regional mechanisms.

The Committee requests that the next report contain updated information about the availability of mental health care services and treatment, including information about the prevention of mental disorders and recovery measures.

The report states that, in order to support access to care, in 2013 the government committed itself to improving the coverage of health care expenses, particularly for insured persons on the lowest incomes. The number of beneficiaries of the CMU-C (supplementary universal health cover) and ACS (help to pay for supplementary health insurance) continued to grow in 2014 and reached 6 million people, as stated in the 2014 activity report of the CMU Fund. This document states that 5.2 million people were benefiting from the CMU-C scheme at the end of 2014 (an increase of 6.5% in one year) and 1.2 million people (+ 3.9%) from the ACS.

With regard to the excessive strain on emergency services, the Committee asked to be informed about the implementation of the measures envisaged to improve the situation. It also requested that the next report provide updated information about how waiting lists are managed (Conclusions 2013). The report sets out the measures that have been taken since 2012 with regard to pre-emergency care, internal organisation and post-emergency care, such as the national bed management programme, in order to fluidify the onward movement of patients following emergency care. An action plan for emergency care was implemented in 2012 covering three aspects: guaranteeing access to emergency care within thirty minutes, dealing with the saturation of emergency care services, and dealing with strain or

risks of strain on emergency services. In addition, a meeting of the working group of the Conseil national des urgences hospitalières (CNUH, National Hospital Emergencies Council) was convened by its chairperson in the first half of 2013. This group produced “proposals for good practice recommendations to facilitate the hospitalisation of patients originating from emergency services” which were submitted to the minister in September 2013.

With regard to triage on arrival in emergency units, the report states that, in 2013, the Société Française de Médecine d’Urgences issued a report proposing recommendations for triage in emergency units. In 2014, over 75% of emergency units had a healthcare operator in charge of admissions and orientation (an admission and orientation nurse in 96% of cases and an admission and orientation doctor in 4% of cases). Emergency triage is therefore used to classify patients upon admission according to their “care needs”. The Committee asks for up-to-date information about waiting times in general (not only in emergency units) in the next report. The Committee outlines that if such information is not provided, there will be nothing to establish that the situation is in conformity with the Charter on this point.

In response to the question asked by the Committee about the availability of rehabilitation facilities and treatment for drug addicts (Conclusions 2009, 2013), the report states that various public-sector and private-sector facilities offer withdrawal courses for alcohol, illegal drugs and other addictions requiring medical treatment. The report sets out the types of treatment that are available at Centres de Soins, d’Accompagnement et de Prévention en Addictologie (CSAPA – Addiction Treatment, Support and Prevention Centres), which offer medical and psychological care including consultations with professionals, confidentially and free of charge, in all départements of France and at hospital addiction units.

The Committee asks that the next report contain information on dental care services and treatments (such as who is entitled to free dental treatment, the costs for the main treatments and the proportion of out-of-pocket paid by the patients).

With regard to the right to health protection for transgendered persons, the Committee asked in its previous conclusion whether legal recognition of the gender identity of transgendered persons requires them to undergo sterilisation. The report states that Article 56 of Law No. 2016-1547 of 18 November 2016 on the modernisation of justice in the 21st century provides, in the part entitled “change of sex in civil status documents,” that “the fact of not having undergone medical treatment, a surgical operation or sterilisation shall not be a ground for refusing to grant the request.”

The Committee recalls that in its decision of 11 September 2012 on the merits of *Médecins du Monde – International* v. France, complaint No. 67/2011, it held that there was a violation of Article E in conjunction with Article 11§1 of the Charter on the ground that the State Party breached its positive obligation to ensure that Roma migrants, regardless of their residency situation, including children, had adequate access to healthcare. The situation will be examined by the Committee as part of the follow-up given to this decision. It will therefore not be examined in the reporting procedure for this cycle.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in France is in conformity with Article 11§1 of the Charter.

Article 11 - Right to protection of health

Paragraph 2 - Advisory and educational facilities

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

Education and awareness raising

The report states that health promotion comprising the three strands of health education, prevention and protection, which takes place from nursery to upper secondary school, contributes to the gradual acquisition of the knowledge and skills, including psychosocial skills, which must enable students to make informed and responsible choices in health matters for themselves and others. In this regard, schools play a vital role in health education, identification, prevention, information and orientation. The social and health education policy is set out in Circular No. 2015-117 of 10 November 2015 and is in line with other public policies.

The Committee requests updated information in the next report about specific health promotion and disease prevention campaigns, and efforts to raise the awareness of the population as a whole about specific health problems in France.

Counselling and screening

The Committee had previously requested a description of the free counselling and screening available for pregnant women (Conclusions 2009 and Conclusions 2013). The report states that seven medical examinations, including tests for certain diseases (rubella, toxoplasmosis, etc.), are compulsory during pregnancy. Pregnancy must be reported after the first examination (before the end of the third month of pregnancy). The cost of these tests is covered by the national health insurance scheme. In addition, from the fourth month of pregnancy and until 12 days after birth, pregnant women can undergo a dental check-up without any costs having to be advanced.

The Committee also previously asked about programmes to screen for diseases which constitute the main causes of death for the population as a whole. The report states that there are two screening methods: (i) screening for two very common types of cancer: breast cancer (screening for women aged 50 to 74) and bowel cancer (screening is offered to women and men aged over 50); and (ii) individual screening for persons who have an above-average risk of developing a disease (for example, there is individual screening for three major types of cancer: cervical cancer, skin tumours and prostate cancer).

The Committee points out that in its decision of 11 September 2012 on the merits *Médecins du Monde – International* v. France, complaint No. 67/2011, it concluded that there was a violation of Article E in conjunction with Article 11§2 of the Charter on the ground that the possibilities for migrant Roma pregnant women and children to receive free and regular counselling and testing were inadequate. The situation will be examined by the Committee shortly as part of the follow-up given to this decision. It will therefore not be examined in the reporting procedure for this cycle.

Conclusion

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

Article 11 - Right to protection of health

Paragraph 3 - Prevention of diseases and accidents

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

Healthy environment

In its previous conclusion, the Committee took note of the Plan national santé environnement (PNSE2) [National Environmental Health Plan] for 2009-2013 and the actions envisaged in this regard (Conclusions 2013). The Committee requested that the next report contain information about the implementation of these actions and information about air pollution levels or cases of contamination of drinking water and food poisoning identified during the reference period.

The report states that the second Plan national santé environnement (2009-2013) was assessed by the Haut Conseil de la santé publique (HCSP) [High Council for Public Health] and several general inspection units. The HCSP noted an overall trend towards an improvement in tap water quality in relation to a very broad range of contaminants such as nitrates, pesticides, metals (including lead, mercury and arsenic) and an improvement in the situation with regard to exposure to lead in housing. No clear change since the beginning of the 2000s was found in the quality of external air (overall stagnation in the concentrations of several contaminants in ambient air at urban sites despite falling emissions at national level) or exposure to carbon monoxide and radon in housing.

Based on this evaluation under the PNSE2, a third Plan national santé environnement (PNSE 3) was drawn up and published on 12 November 2014 for the 2015-2019 period. In terms of themes, incorporation of the concept of the exposome, the link between health and biodiversity and climate change constitute advances in this PNSE. It now needs to be broken down at local level into the third regional environmental health plans (PRSE 3).

The Committee requests that the next report contain information on the implementation of this third environmental health plan and reiterates its request for information on air pollution levels or cases of contamination of drinking water and food poisoning which were identified during the reference period.

Tobacco, alcohol and drugs

With regard to efforts to curb smoking, the Committee takes note of the measures and campaigns implemented, such as the “Programme national de réduction du tabagisme” (PNRT) [National Smoking Reduction Programme], the ban on flavours and additives (such as menthol capsules) which are particularly attractive to young people, plain cigarette packets, and the creation of a smoking prevention fund, with a budget of EUR 32 million as of this year. The report states that regular smoking fell slightly in 2014 (from 29.1% in 2010 to 28.2% in 2014) according to the INPES Health Barometer. Between 2011 and 2014, daily use among adolescents continued to increase very slightly, rising from 31.5% to 32.4%.

The report states that alcohol consumption by people aged 15-75 remained steady overall from 2010 to 2014 according to the INPES Health Barometer. In 2014, 86% of persons aged 15-75 said that they had drunk alcohol over the past twelve months, with a declared number of glasses drunk per week estimated at 5.5 on average. In addition, alcohol consumption rose among young adults between 2010 and 2014 according to the INPES Health Barometer. Between 2010 and 2014, the proportion of young people aged 18-25 who stated that they consumed alcohol every week rose from 36% to 40%, and stood at 51% for men and 30% for women. The report adds that the ban on supplying alcohol to minors has been strengthened; it is now compulsory to require proof of age when selling alcohol, whereas this was optional in the past.

The Committee takes note of the statistics on the consumption of illegal drugs and the measures taken in this regard, such as the first government plan to combat drugs and

addictive behaviours, which was adopted on 19 September 2013. The new measures include lower-risk consumption rooms (SCMRs), which are intended to reduce the risks run by drug users. They are spaces where adult drug addicts who are in a vulnerable situation and are outside the health system can come and take their psychoactive substances in suitable hygiene conditions with sterile equipment and under the supervision of healthcare professionals.

The Committee asks to be informed of all developments with regard to alcoholism, drug addiction and smoking (updated figures on consumption levels and trends), in particular concerning young people.

Immunisation and epidemiological monitoring

The report states that, in relation to hepatitis B and C control, a "Report on recommendations for the treatment of persons infected with hepatitis B or hepatitis C", the result of a collective approach led by the Minister of Health and pursued under the aegis of the Agence nationale de recherches sur le sida et les hépatites virales (ANRS) and the Association française pour l'étude du foie (AFEF), was produced in 2014. Through the measures that it promotes, this report sets out to: (i) relaunch hepatitis B and C prevention, which is considered to be lagging behind in several respects (particularly hepatitis B vaccination), (ii) coordinate the stages of treatment for hepatitis B and C patients for different care pathways and specific treatment strategies which are unique to them, and (iii) support, at all levels, the values of equity in care through concrete measures to combat social inequality. The Committee asks for information on how other infectious diseases are prevented in general.

The Committee requests updated information about the rate of vaccination coverage**.**

Accidents

A National Plan for the Prevention of Accidents in Everyday Life has been in place since 2007. It comprises ten actions divided into three areas: measures to prevent accidents in the home (burning and intoxication in the event of house fires) and the risks of falling and defenestration; actions designed to prevent outdoor accidents (head injuries and drowning); cross-cutting actions. The report states that the prevention of day-to-day accidents (DTDAs) is based on actions in relation to behaviours, products and the environment. It is structured around three areas: preventive communication; collection of epidemiological data; and the development and implementation of recommendations, standards and regulations. The Committee takes note of the evaluation report on actions to prevent accidents, both indoor and outdoor, and the cross-cutting actions. The Committee takes note of the data on mortality due to road accidents or day-to-day accidents. It requests updated data in the next report on the number of road accidents as well as domestic accidents and accidents during leisure time.

The Committee points out that in its decision of 11 September 2012 on the merits of *Médecins du Monde – International* v.France, complaint No. 67/2011, it concluded that there was a violation of Article E in conjunction with Article 11§3 of the Charter on the ground of a failure to prevent diseases and accidents within Roma communities. The situation will be examined by the Committee shortly as part of the follow-up given to this decision. It will therefore not be examined in the reporting procedure for this cycle.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in France is in conformity with Article 11§3 of the Charter.

Article 12 - Right to social security

Paragraph 1 - Existence of a social security system

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

With regard to **family benefits** and **maternity benefits**, the Committee refers to its conclusions concerning Article 16 and 8§1 respectively.

Risks covered, financing of benefits and personal coverage

The Committee refers to its previous conclusions (Conclusion 2006, 2009 and 2013) for a description of the French social security system and notes that it continues to cover the branches of social security corresponding to all traditional risks: medical care, sickness, unemployment, old age, employment injury, family, maternity, invalidity and survivors. The system continues to rest on collective funding: it is funded by contributions (employees, employers) and by the State budget.

As regards personal coverage, the Committee noted previously (Conclusions 2009 and 2013) that the entire resident population is covered for health care through Universal Health Coverage (CMU). It also noted that:

- all persons in employment or permanently and lawfully resident in France are entitled to family benefits as well as to maternity/paternity benefits;
- all persons in employment except for certain self-employed persons are eligible for sickness cash benefits and employment injury and occupational disease benefits (the report states that 78.7% of employees are protected in this respect);
- all persons in employment are eligible for invalidity, survivor's and old age pensions (the report states that 75.9% of employees are covered by the old age branch; according to INSEE, in 2014 there were 15 828 000 pensioners, 554 000 of whom were in receipt of the minimum old age pension); and
- all persons in salaried employment are eligible for unemployment benefits.

The Committee points out that, to be in conformity with Article 12§1 of the Charter, the social security system must cover a significant proportion of the population in respect of health insurance (health cover should extend beyond employment relationships) and of family benefits and the system must cover a significant proportion of the active population as regards sickness benefits, maternity and unemployment benefits, pensions and employment injury and occupational disease benefits. Insofar as the report does not provide the data requested (Conclusions 2013), the Committee again asks for more detailed information on the rate of coverage (percentage of persons insured out of the total active population) for unemployment, sickness, old age, maternity and invalidity benefits. In the meantime, it reserves its position on this point.

Adequacy of the benefits

According to Eurostat data, the median equivalised income in 2015 was €21 415 a year, or €1 785 per month. The poverty threshold defined as 50% of median equivalised income was therefore €10 708 a year, or €892 per month. The poverty threshold defined as 40% of median equivalised income amounted to €714 per month.

The report does not answer the questions put before (Conclusions 2013) concerning in particular the minimum level of social security benefits. In this connection, the Committee points out that when social security benefits are income-replacement benefits, their level should be fixed so as to stand in reasonable proportion to previous income and it should never fall below the poverty threshold defined as 50% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value. When an income-substituting benefit stands between 40% and 50% of median equivalised income as defined above, account will also be taken of other supplementary benefits, including social assistance. Where the level of an income-substituting benefit falls below 40% of median

equivalised income, it is manifestly inadequate and its combination with other benefits cannot bring the situation into conformity with Article 12§1.

As regards **old age pension**, the Committee refers to its assessment under Article 23.

The Committee previously noted that, to be entitled to receive contributory **unemployment** benefit (assistance with return to work, ARE), insured persons must be involuntarily unemployed, registered as jobseekers and actively seeking work. Benefits are suspended in cases of refusal without legitimate reason to accept an offer of employment compatible with a person's qualifications, to undergo training or an apprenticeship or to search for a job; and fraud to the system. Appeals in cases of refusal to grant the benefit are possible at administrative and judicial level (Conclusions 2006). The Committee also noted the arrangements for the definition of a reasonable job offer and the procedure that could lead to the suspension of benefits in the event of refusal without legitimate reason of two reasonable job offers (see Conclusions 2013). According to MISSOC, entitlement to unemployment benefit is also subject to completion of an insurance period of four months (122 days) during the 28 months preceding the end of employment, and the length of payment is the same as the insurance period on which entitlement is based: from four months to two years (up to three years if the beneficiary is aged 50 years or over). The minimum amount of unemployment benefit in 2015 was €28.67 per day (approximately €860 per month), or between 40% and 50% of the median equivalised income. The Committee noted previously that this amount could be supplemented with other benefits such as the specific solidarity allowance (ASS), a means-tested non-contributory benefit paid to persons with five years of salaried employment during the 10 years preceding termination of employment, which is paid for renewable periods of six months. The maximum amount of the ASS in 2015 was €16.25 per day (€488 per month). The Committee requests that the next report indicate the minimum amount of the ASS and the minimum amounts of any other benefits which job seekers may receive simultaneously. In the meantime, it reserves its position on this point.

With regard to **sickness** insurance cash benefits, according to the information available (MISSOC, ISSA, CLEISS), the daily allowance amounts to 50% of the average daily wage for the three months before the illness for the first 30 days of sick leave; and 66.6% of that wage from the 31st day, if the insured person has at least three dependent children. The benefit is payable after a waiting period of three days and is limited to 1.8 times the national minimum wage (SMIC). As the report does not indicate the minimum level of the benefit, the Committee estimates on the basis of the minimum wage, which was €1 458 in 2015, that the monthly minimum level of sickness benefits was approximately €729, or between 40% and 50% of median equivalised income. The Committee requests that the next report indicate whether this estimate is correct and whether the amount is supplemented by employers or by other benefits which may be received simultaneously (except benefits for specific cases, such as the daily allowance for assisting terminally ill persons or the parental allowance for a sick child). In the meantime, it reserves its position on this point.

In the case of **invalidity** benefits, according to MISSOC, the guaranteed minimum amount in case of total incapacity for work (category 2) was €3 380 a year in 2015, or approximately €282 per month, which was supplemented with a means-tested non-contributory benefit, the supplementary invalidity benefit (ASI), which stood at €404 in 2015. The Committee notes that, even when the two benefits are combined, the minimum amount (€686) remains below 40% of equivalised median income and is therefore inadequate.

In the case of **employment injuries** and **occupational diseases**, insured persons are entitled to 60% of their basic wage for 28 days, up to a maximum of €190 per day, and 80% thereafter, up to a maximum of €254 a day. Taking the minimum wage as a reference, the Committee estimates that the minimum monthly amount in 2015 was approximately €875. The Committee requests that the next report indicate whether this estimate is correct and whether any other benefits may supplement this amount.

Conclusion

The Committee concludes that the situation in France is not in conformity with Article 12§1 of the Charter on the ground that the minimum level of invalidity pensions is inadequate.

Article 12 - Right to social security

Paragraph 2 - Maintenance of a social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security

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

France has ratified the European Code of Social Security on 17 February 1986 and has accepted parts II and IV-IX.

The Committee notes from the Committee of Ministers Resolution CM/ResCSS(2016)6 on the application of the European Code of Social Security by France (period from 1 July 2014 to 30 June 2015) that the law and practice in France continue to give full effect to the parts of the Code which have been accepted, subject to reviewing the method of determining the reference wage for the calculation of benefits.

Conclusion

The Committee concludes that the situation in France is in conformity with Article 12§2 of the Charter.

Article 12 - Right to social security

Paragraph 3 - Development of the social security system

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

Since France has ratified Articles 8§1 and 16 of the Charter, the Committee will assess the scope and impact of the changes noted in the area of maternity and family benefits when it next examines compliance with these articles.

As regards the other branches of social security, the Committee takes note of the legislative developments during the reference period. The report refers to the following improvements in particular:

- a major reform of the pension system (Law No. 2014-40 of 20 January 2014), aimed at ensuring its sustainability. The report states that the new system takes greater account of the arduousness of work (introduction in 2015 of measures facilitating access to early retirement among other things), diversity of careers and the situation of persons with “interrupted” careers (improvement from 2015 in the account taken for the calculation of pensions of vocational training courses by workers in precarious employment, periods of part-time employment, etc.). The reform was also applied to the special schemes;
- the improvement in 2014 in access to health care through the extension of supplementary universal health coverage (CMU-C) and assistance for the payment of supplementary health insurance (ACS); the number of recipients of these benefits grew by 6.5% and 3.9% respectively between 2013 and 2014, reaching a total of 6 million persons covered by the end of 2014;
- the increase in 2014 in the minimum solidarity allowance for the elderly (ASPA), the minimum contributory pension, the general basic pension scheme for employees (RGAV) and invalidity and employment injury and occupational disease benefits as well as the compulsory pay-as-you-go supplementary pension scheme for private sector employees (ARRCO);
- the relaxation of the entitlement conditions for sickness, maternity and invalidity cash benefits – all persons who worked for at least 150 hours (instead of 200) in the three months preceding the cessation of work are now entitled to these benefits.

At the same time, the Committee notes that in order to ensure the sustainability of the pension system, the length of the contribution period required for entitlement to a full pension is gradually being increased and employee and employer contributions have been increased. In addition, the report refers to the slowing down in upward adjustments of supplementary pension benefits.

The report also mentions the introduction of Universal Health Coverage (PUMA) on 1 January 2016, which was outside the reference period. The Committee requests that the next report provide information on the implementation and impact of the reform (categories and numbers of people concerned, levels of benefits before and after the reform).

With regard to the other changes mentioned in the report, the Committee points out that in order to assess their scope in relation to Article 12§3 and thus assess whether they involve improvements to the system or restrictions, it must be informed of their impact (categories and numbers of people concerned, levels of benefits before and after alteration). It therefore requests that future reports always provide corresponding information.

Conclusion

The Committee concludes that the situation in France is in conformity with Article 12§3 of the Charter.

Article 12 - Right to social security

Paragraph 4 - Social security of persons moving between States

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

Equality of treatment and retention of accrued benefits (Article 12§4)

Right to equal treatment

Equal treatment between nationals and nationals of other States Parties in respect of social security rights shall be ensured through the conclusion of bilateral or multilateral agreements or through unilateral measures.

The Committee recalls that, having regards to the EU legislation on the coordination of social security systems of the EU Member States, governed by Regulations (EC) No. 883/2004 and (EC) No. 987/2009, as amended by Regulation (EU) No. 1231/2010, the EU Member States are considered, as a matter of principle, to ensure equal treatment between, on the one hand, their nationals and, on the other hand, nationals of other EU Member States or member of the EEA, stateless persons, refugees resident in the territory of a Member State who are or have been subject to the social security legislation of one or more Member States, their families and their survivors, as well as nationals of third countries, members of their families and their survivors, provided that they are legally resident in the territory of a Member State and are in a situation which is not confined in all respects within a single Member State.

The Committee recalls that, in any event, under the Charter, EU/EEA Member States are required to secure, to the nationals of other States Parties to the 1961 and the Charter not member of the EU or EEA,equal treatment with respect to social security rights provided they are lawfully resident in their territory (Conclusions XVIII-1 (2006)). In order to do so, they have either to conclude bilateral agreements with them or take unilateral measures.

As regards the bilateral agreements concluded with States Parties which are not members of the EU or EEA, there is nothing in the report to indicate that France concluded, during the reference period, one or more agreements guaranteeing the principle of equal treatment with nationals of those States.

As regards unilateral measures undertaken by France, the Committee notes that the French legislation in force, and in particular Articles L 311-7 and L 816-1 of the Social Security Code, provides, in the absence of any bilateral agreement between France and a State Party, a strict equality of treatment between nationals and foreign nationals holding a residence permit or document justifying the regularity of their stay in France. The Committee notes that no condition of length of residence is required for the payment of social security benefits.

In respect of payment to family benefits, the Committee considered that the requirement for the child to reside in the territory of the paying State is in conformity with Article 12§4 (Statement of Interpretation on Article 12§4, XVIII-1 (2006)). However, since not all countries apply such a system, States Parties applying the ‘child residence requirement’ are under the obligation, in order to secure equal treatment within the meaning of Article 12§4, to enter, within a reasonable period of time, into bilateral or multilateral agreements with those States which apply a different entitlement principle (Conclusion 2006, Cyprus).

The Committee notes from MISSOC that France applies the rules whereby the payment of family benefits is conditional on the claimant’s children being resident in France.

In this respect, in its previous conclusion (Conclusion 2013), the Committee requested whether France plans to conclude agreements with States Parties with which there are no such agreements (Albania, Armenia and Georgia), or unilateral measures and, if so, when.

The report provides no information in this regard, so that the Committee reiterates its request.

Right to retain accrued benefits

In its previous conclusion (Conclusion 2013), the Committee considered, in the light of the information provided in previous reports, that social benefits for nationals of States Parties are exportable whether or not they are bound by bilateral agreements. In this regard, the Committee asked whether its understanding is correct. As the report provides no information on this, the Committee reiterates its request and, in the meantime, reserves its position on this point.

Right to maintenance of accruing rights (Article 12§4b)

The Committee notes that the situation, which it was considered (Conclusion 2013) not to be in conformity with the Charter, remains unchanged, so that it is still not possible for nationals of States Parties that are not covered by EU Regulations or bound by bilateral agreements to aggregate periods of insurance or employment. It notes that information provided by the CLEISS (French Liaison Centre for European and International Social Security) confirm the situation. For these reasons, the Committee reiterates its conclusion of non-conformity on this point.

The Committee recalls that there should be no disadvantage for a person who changes his/her country of employment, where he/she has not completed the period of employment or insurance necessary under national legislation to be entitled to certain benefits. This requires, where necessary, the aggregation of employment or insurance periods completed in another territory and, in the case of long-term benefits, a pro-rata approach to the conferral of entitlement, the calculation and payment of benefits (Conclusion XIV-1 (1998), Portugal). To this end, States Parties may choose between the following means: multilateral convention, bilateral agreement or, unilateral, legislative or administrative measures.

Conclusion

The Committee concludes that the situation in France is not in conformity with Article 12§4 of the Charter on the grounds that:

- equal treatment with regard to access to family allowances is not guaranteed to nationals of all other States Parties;
- the right to maintenance of accruing rights is not guaranteed to nationals of all other States Parties.

Article 13 - Right to social and medical assistance

Paragraph 1 - Adequate assistance for every person in need

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

Types of benefits and eligibility criteria

The Committee has since Conclusions 2000 found that the situation is not in conformity with the Charter on the ground that the minimum age for entitlement to social assistance is 25 years. In this connection, the Committee takes note of the following complementary mechanisms designed to provide assistance to young persons under 25 who are not eligible for the Active Solidarily Income (RSA):

- Young people under the age of 25, including the unemployed and students, can benefit from the RSA on condition that they provide a proof of a minimum period of activity. T*he Youth RSA* is funded by the State (RSA being, for the rest, financed by the Departments), through the National Solidarity Fund (FNSA). In June 2015, 7,710 young people under the age of 25 were beneficiaries of the Youth RSA. In this connection, the Committee also notes from the report of the Governmental Committee (GC(2014)21, § 248-259) that since September 2010, young people between the ages of 18 and 25 had been entitled to the active solidarity income (RSA), which amounted to €500 per month, provided that they had been in work for the equivalent of two years full-time over a reference period of three years preceding the claim.
- *The Youth Guarantee* is aimed at young people aged 16 to 25 years, who are neither in employment, nor in training. Under this mechanism, the beneficiary can follow an active career path with the assistance of public authorities and their partners, who will accompany him/her in identifying employment opportunities and provide financial support. Supervised by an adviser, the beneficiary will follow an intensive path to employment and training. He/she will benefit from a year-long intensive coaching and financial assistance of € 461,72 per month to facilitate his access to employment. The Youth Guarantee was initially set up as a pilot project in 10 territories (urban and rural) selected in 2013, involving 10,000 young people. In December 2015 46,000 young people had benefited from it. A new measure known as the Youth Guarantee, stemming from the Multi-Year Plan to Combat Poverty and Promote Social Inclusion, had been operational since the second half of 2013 and the main aim is be to encourage young people in extremely vulnerable situations to establish themselves in the world of work. This measure was the follow-up to the recommendation of the European Council of 22 April 2013 on establishing a Youth Guarantee. France's operational programme entitled "An initiative for Youth Employment" had been validated by the European Commission on 3 June 2014.
- Furthermore, the Committee notes from the report that the Act of 17 August 2015 on social dialogue and employment introduced *the Activity Premium*, which replaces the former RSA Activity and the premium for employment as of January 2016. Financed by the State, the Activity Premium is a supplement to income for low-income workers. According to the report, young people between the ages of 18 and 24, whether employed or self-employed, are now eligible for this allowance. The report states that this allowance encourages professional activity and boosts the purchasing power of single persons earning less than € 1500 per month. The students and apprentices over the age of 18 may also be eligible if they can provide evidence of salary/income amounting to at least € 893.25 per month). As of April 20, 2016, more than 2.3 million households, representing more than 3.8 million persons were beneficiaries of the scheme. 400 000 persons under 25 years of age have received this premium. The Committee understands that the amount of this benefit depends on the individual

circumstances. It asks however what is the typical amount of benefit paid on average to persons aged 18-15 years.

The Committee understands that with all these measures that have been taken since 2010, young persons aged between 18 and 25 are now eligible for certain benefits, such as the Youth RSA for those unemployed who can prove a minimum period of activity, the Youth Guarantee for those who are unemployed, and the activity premium for those who are employed or self-employed but whose income is below a certain threshold. The Committee asks how these benefits interact and whether a refusal to grant them can be appealed. It also asks whether there still is a category of young persons, without resources, who would not be eligible for any of the above mentioned benefits. In the meantime the Committee reserves its position on this point.

Level of benefits

In its previous conclusion (Conclusions 2015) the Committee found that it had not been established that the level of social assistance was adequate. More specifically, the Committee had noted from the report that determining the amount of supplementary benefits in the abstract was difficult due to the fact that most social benefits depend on the personal circumstances of the applicant. The Committee asked the next report to specify as far as possible the combined (total) amount of basic and supplementary benefits available for a single person, if necessary, by providing information on/an/or examples of total amounts received by 'typical' single beneficiaries on a monthly basis.

- Basic benefit: the Committee notes from the report that in 2016 the amount of RSA paid to a single person stood at € 535,17, which is reduced by € 61,67 in case the person concerned is the owner of his housing or receives housing allowance. The Committee notes from MISSOC that in 2015 the amount of RSA was € 513.
- Additional benefits: in addition, according to the report, the persons concerned also receive housing aid, in the amount of either 231 (Aide personnelle au logement (APL)) or aide de logement sociale (ALS) at € 189. According to the report, taking into account the basic benefit and supplementary benefits, according to the research conducted by the Directorate of statistical research and evaluation (DREES) of June 2015, the beneficiaries of RSA have a median income of € 740 per month. Moreover, according to the report, the beneficiaries of RSA also receive other benefits, such as the universal medical coverage, the Christmas bonus (€ 152 in 2015) as well as reduction of electricity bill (in the range of € 71-140 per year) and the gas bill (in the range of € 23 and 123 per year). Furthermore, according to the report, social assistance is also provided by local authorities, such as communes, departmental and regional councils and in the form of special tariffs for transport, assistance for cultural and sports events and holidays. However, according to the report, it is not possible to produce statistics concerning the average amount of such assistance.
- Poverty threshold (defined as 50% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value: it was estimated at € 892 in 2015.

The Committee considers that in the light of all the elements provided by the report, including the basic amount of assistance as well as any other applicable types of benefits, the overall level of assistance falls below the at-risk-of-poverty threshold of € 892. Therefore, the situation is not in conformity with the Charter on the ground that the amount of social assistance, consisting of basic assistance and any additional benefits that may apply is not adequate.

Right of appeal and legal aid

The Committee notes from the report that the reform of the procedure in the social welfare courts has not been adopted by the Parliament during the reference period. It asks the next report to provide updated information on this issue.

Personal scope

The Committee recalls that, under Article 13§1, States are under the obligation to provide adequate medical and social assistance to all persons in need, both their own nationals as well as nationals of States Parties lawfully resident within their territory, on an equal footing. In addition, with reference to its Statement of Interpretation of Articles 13§1 and 13§4 (Conclusions 2013) regarding the scope of Articles 13§1 and 13§4 in terms of persons covered, the Committee considers that persons in an irregular situation in the territory of the State concerned are also covered under Article 13§1, rather than under Article 13§4, which was previously its practice.

The Committee henceforth examines whether the States who have accepted Article 13§1 ensure the right to:

- adequate social and medical assistance for their own nationals and for nationals of other States Parties lawfully resident within their territory on an equal footing;
- emergency social and medical assistance to persons unlawfully present in their territory.

Nationals of States Parties lawfully resident in the territory

Since its conclusions XV-1(2000), the Committee found that the situation is not in conformity with the Charter on the ground of length of residence requirement of 5 years for non-EEA nationals to be eligible for RSA.

It notes from the report in this regard that non-EU nationals remain subject, for access to the RSA, to a requirement of five years of residence permit authorising work. It also for this reasons that eligibility for it is conditional on the evidence of stable and sustainable residence in the territory. According to the report, the condition of prior residence is therefore based on an objective justification and has a direct relationship with the objective pursued by the law.

The Committee recalls that under Article 13§1 equality of treatment must be guaranteed once the foreigner has been given permission to reside lawfully in the territory of a Contracting Party. The Charter does not regulate procedures for admitting foreigners to the territory of Parties, and the rules governing “resident” status are left to national legislation. Equality of treatment means that entitlement to assistance benefits, including income guarantees, is not confined in law to nationals or to certain categories of foreigners and that the criteria applied in practice for the granting of benefits do not differ by reason of nationality.Equality of treatment also implies that additional conditions such as length of residence, or conditions which are harder for foreigners to meet, may not be imposed on them.

The Committee further notes from the report of the Governmental Committee (GC(2014)21, § 260) that there had been no change to the situation: non-EU nationals were required to have lived in France stably, effectively and permanently and have held a residence permit entitling them to work for at least five years. The rule imposing a five-year residence requirement stems from a desire to be consistent with France’s obligations, particularly those deriving from Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents.

The Committee notes that there have been no changes to the situation which it has previously found not to be in conformity with the Charter. Therefore, it reiterates its previous finding of non-conformity.

As regards the violation of Article E taken in conjunction with Article 13§1 in the decision on the merits of 11 September 2012, *Médecins du Monde International c. France,* complaint No 67/2011, on the ground of the lack of medical assistance for migrant Roma lawfully resident or working regularly in France for more than three months, and the violation of Article 13§4 because of the lack of medical assistance for migrant Roma lawfully resident or working regularly for less than three months, the Committee will consider their follow up on the basis of the information that will be submitted by the Government in October 2017.

Foreign nationals unlawfully present in the territory

The Committee refers to its previous conclusion on Article 13§4 where it held that the situation was in conformity with the Charter as regards emergency medical and social assistance to unlawfully present foreign nationals. The Committee notes from the report that there have been no changes to this situation.

In this connection, the Committee recalls that persons in an irregular situation must have a legally recognised right to the satisfaction of basic human material need (food, clothing, shelter) in situations of emergency to cope with an urgent and serious state of need. It likewise is for the States to ensure that this right is made effective also in practice (European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, §187).

The Committee cannot accept the necessity of halting the provision of such basic emergency assistance as shelter, guaranteed under Article 13 as a subjective right, to individuals in a highly precarious situation. The Committee has considered that even within the framework of the current migration policy, less onerous means, namely to provide for the necessary emergency assistance while maintaining the other restrictions with regard to the position of migrants in an irregular situation, remain available to the Government with regard to the emergency treatment provided to those individuals, who have overstayed their legal entitlement to remain in the country (Conference of European Churches (CEC) v. the Netherlands, Complaint No. 90/2013, decision on the merits of 1 July 2014, §123).

The Committee asks the next report to provide updated information on how these requirements are met in law and in practice as regards unlawfully present foreign nationals.

Conclusion

The Committee concludes that the situation in France is not in conformity with Article 13§1 of the Charter on the grounds that:

- the amount of social assistance, consisting of basic assistance and any additional benefits that may apply is not adequate.
- non-EU nationals are subject to a length of residence requirement of five years to be eligible for RSA.

Article 13 - Right to social and medical assistance

Paragraph 2 - Non-discrimination in the exercise of social and political rights

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

The Committee notes that the situation which it has found to be in conformity with the Charter (Conclusions 2013) has not changed. The Committee reiterates its previous finding of conformity and asks the next report to provide updated information.

Conclusion

The Committee concludes that the situation in France is in conformity with Article 13§2 of the Charter.

Article 13 - Right to social and medical assistance

Paragraph 3 - Prevention, abolition or alleviation of need

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

The Committee notes that the situation which it has found to be in conformity with the Charter (Conclusions 2009) has not changed. The Committee asks the next report to provide updated information as regards the operation of social services offering advice and personal assistance specifically addressed at persons without adequate resources or at risk of becoming so.

Conclusion

The Committee concludes that the situation in France is in conformity with Article 13§3 of the Charter.

Article 13 - Right to social and medical assistance

Paragraph 4 - Specific emergency assistance for non-residents

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

The Committee refers to its conclusion under Article 13§1 (personal scope) and recalls that Article 13§4 from now on will cover emergency social and medical assistance for nationals of States Parties lawfully present (but not resident) in the territory.

The Committee recalls that States Parties are required to provide non-resident foreigners, without resources, with emergency social and medical assistance. Such assistance must cover accommodation, food, clothing and emergency medical assistance, to cope with an urgent and serious state of need (without interpreting too narrowly the 'urgency' and 'seriousness' criteria). No condition of length of presence can be set on the right to emergency assistance (European Federation of national organisations working with the Homeless (FEANSA) v. the Netherlands, Complaint No 86/2012, decision on the merits of 2 July 2014, §171).

The Committee refers to its conclusion under Article 13§1 where it found that the situation as regards emergency social and medical assistance to unlawfully present foreign nationals is in conformity with the Charter and considers that the situation is also in conformity with the Charter regarding lawfully present foreign nationals.

It asks the next report to provide updated information regarding emergency medical and social assistance to nationals of States Parties lawfully present in the territory.

Conclusion

The Committee concludes that the situation in France is in conformity with Article 13§4 of the Charter.

Article 14 - Right to benefit from social welfare services

Paragraph 1 - Promotion or provision of social services

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

Organisation of the social services

In its previous conclusion (Conclusions 2013), the Committee requested that the report list those services for which a fee can be charged and indicate the average fee charged to users.

The report states that the social services receive advice, inform and provide assistance to all persons experiencing difficulties. These services are free of charge. There are multiple forms of social assistance, and those that entail financial contributions (such as school canteens, childcare, personal care, etc.) are mostly the responsibility of local or regional authorities, so there is no reference fees structure at the national level. In addition, they generally depend on people's income. The Committee understands that the cost of accessing social services varies according to the nature of the social service and the person's income.

The Committee reiterates that, under Article 14§1, it reviews rules governing the eligibility conditions to benefit from the right to social welfare services (effective and equal access) and the quality and supervision of social services, as well as issues of rights of beneficiaries and their participation in the establishment and maintenance of social welfare services (Article 14§2). Persons applying for social welfare services should receive any necessary advice and counselling enabling them to benefit from the available services in accordance with their needs (Conclusions 2009, Statement of Interpretation on Article 14§1). The Committee given the time that has passed since the last description of the organisation of social services, asks that the next report provides a new description updating or confirming the information as necessary, also with regard to the eligibility conditions to benefit from the right to social welfare services (effective and equal access).

Conclusion

The Committee concludes that the situation in France is in conformity with Article 14§1 of the Charter.

Article 14 - Right to benefit from social welfare services

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

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

In its previous conclusion (Conclusions 2013), the Committee requested that the report assessed the effectiveness of the measures for involving beneficiaries in the operation and assessment of the RSA [Active Solidarity Income].

The report states that Law No. 2008-1249 of 1 December 2008 generalising the RSA made provision for real involvement of beneficiaries in its operation. It provides, in Article L. 262-39 of the Social Welfare and Families Code, that *département* councils shall create multi-disciplinary teams made up of social and vocational integration professionals, representatives of the *département* as the authority which manages social assistance, and representatives of beneficiaries of the RSA.

Beneficiaries are also involved in the general assessment of the RSA system and its reforms. This is the purpose of the panel of persons in a situation of poverty and vulnerability (8th panel) of the National Council for Policy to Combat Poverty and Social Exclusion (CNLE), which was established on an experimental basis in 2012 and made permanent by the decree of 17 December 2013. On 10 October 2013[1], the CNLE published an opinion on the proposed reform of support for those on low occupational incomes, including assessment of the "RSA activité" income supplement. The CNLE also has working groups which monitor the multi-annual plan for poverty reduction and social inclusion, one of which deals more specifically with the issue of minimum social protection. Ad hoc consultations made it possible to involve beneficiaries more closely in the assessment of the RSA. The work that led to the creation of the operational income supplement, under Title IV of the Law of 17 August 2015 (see more details about this system in the response to the Committee's requests in relation to Article 13§1), included a day of discussions, in April 2013, with a panel of beneficiaries of minimum social protection, established in order to obtain an opinion on possible improvements to the current system. The panel was made up of members of the 8th panel of the CNLE and competent associations: Secours catholique, the Salvation Army, ATD Fourth World and the Agence nouvelle des solidarités actives (ANSA).

In its previous conclusion (Conclusions 2013), the Committee requested information about the nature and scope of internal and external assessments of the social and medical welfare establishments and services provided for by the Social Modernisation Act.

The report states that, with regard to their internal assessment obligations, the social and medical welfare establishments and services (ESSMS), as defined in Article L. 312-1 of the Social Welfare and Families Code, are obliged by Article L. 312-8 of the same Code to conduct internal assessments of their activities and the quality of the services they provide, having regard in particular to procedures, references and recommendations for good professional practice which have been validated or, where none exist, drawn up for each category of establishment or services. The results of these assessments are transmitted every five years to the authority that licensed them to operate. As for external assessment obligations, the establishments and services also arrange for assessments of their activities and the quality of the services that they deliver through an external body. The bodies authorised to conduct such assessments must comply with specifications which are laid down by decree. The list of these bodies is established by a decree on the basis of a list drawn up by the National Agency for the Evaluation and Quality of Social and Medical Welfare Establishments (ANESM). The results of these assessments are also transmitted to the authority that issued the licence. Establishments and services must obtain two external assessments between the date of issue of the licence and its renewal. The timetable for these assessments is set by decree. A body can carry out assessments only for the categories of establishments and services for which procedures, references and recommendations for good professional practice have been validated or developed by ANESM.

The Committee also asked whether ANESM, which is responsible for authorising the bodies responsible for external assessments, verifies the quality of such assessments.

The report states that the Agency was created by the Social Security Finance Act for 2007 in order to help social and medical welfare establishments and services (ESSMS) to carry out the internal and external assessments made compulsory by the Law of 2 January 2002. For internal assessments, the functions of the ANESM stem directly from the obligations of the ESSMS, which must implement a continuous assessment of their activities and the quality of the services they deliver. According to Article L 312-8 of the Social Welfare and Families Code (CASF), assessments are carried out in the light of the procedures, references and recommendations regarding good practice which have been validated or developed by the Agency. For external assessments, the establishments and services must report every five years to the *département* councils and/or the State, and must have external assessments carried out by a body authorised by the Agency. The second function of the ANESM is therefore to authorise external bodies which will carry out the external assessments to which the ESSMS are subject. The Agency thus provides ESSMS with the necessary conditions so that internal and external assessments of their activities and the quality of their services can be carried out and so that the authorities that have licensed them can receive these results. This mechanism is also directly connected with the decision to renew the operating license of the establishment or service. Article L 313-1 of the CASF provides that the renewal decision is subject solely to the results of the external assessments carried out by a body authorised by the Agency, in accordance with specifications laid down by Decree No. 2007-975 of 15 May 2007.

Conclusion

The Committee concludes that the situation in France is in conformity with Article 14§2 of the Charter.

Article 23 - Right of the elderly to social protection

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

Legislative framework

The Committee points out that the main purpose of Article 23 is to enable elderly persons to remain full members of society and, in this respect, it invites the States Parties to create a suitable legal framework which, firstly, makes it possible to combat age-based discriminations beyond employment and, secondly, makes provision for a procedure for "assisted decision making".

With regard to combating age-based discriminations, the Committee recalls that the legislation for combating discrimination which was put in place by Articles 225-1 et seq. of the Criminal Code offers guarantees which are adequate to protect elderly persons from all discrimination based on such a ground. It also notes that the Defender of Rights is combating age-based discrimination. In this regard, the report states that 6.9% of the complaints that were handled by the Defender in 2015 in relation to tackling of discrimination were based on age (4 846 complaints). However, the report states that not all cases necessarily concerned elderly persons.

With regard to the procedure for "assisted decision making" put in place for elderly persons, the report states that there are different systems which make it possible to protect elderly persons from persons with bad intentions or potentially to protect them from themselves, such as "power of attorney", mandates for future protection, judicial protection, supervision and guardianship. The Committee note from the French administration's official website that there is also, in addition to these systems, the personalised (Masp) or judicial (Maj) social support measures and "family authorisation". Law No. 2015-1776 of 28 December 2015 on the Adaptation of Society to Ageing also introduced new guarantees with regard to consent to the process of admission to a retirement home by enabling elderly persons to nominate a person of trust in case they encounter difficulties in ascertaining and understanding their rights.

Adequate resources

When assessing adequacy of resources of elderly persons under Article 23, the Committee takes into account all social protection measures guaranteed to elderly persons and aimed at maintaining an income level allowing them to lead a decent life and participate actively in public, social and cultural life. In particular, the Committee examines pensions, contributory or non-contributory, and other complementary cash benefits available to elderly persons. These resources will then be compared with median equivalised income. However, the Committee recalls that its task is to assess not only the law, but also the compliance of practice with the obligations arising from the Charter. For this purpose, the Committee will also take into consideration relevant indicators relating to at-risk-of-poverty rates for persons aged 65 and over.

The Committee points out that in the general system, a distinction is made between the basic pension and the additional pension. The basic retirement pension is calculated according to the assessed contributory salary over the 25 best years on the one hand, and the insurance period on the other hand. It is paid at the full rate from the age of 62 if the person has the required period of minimal insurance (in 2015, 166 quarters for a person born in 1955) or from the age at which this minimum period is reached or, failing this, from the age of 67. The full-rate minimum pension which is paid to insured persons who meet one of the aforementioned requirements is EUR 687 per month – the contributory minimum. If the contribution period is less than this, the amount is reduced in proportion. Pensions can, however, be increased if the insured person has continued to work beyond the minimum requirements for eligibility for the full-rate pension, taking additional quarters of work carried out into account.

The “ARRCO” compulsory additional retirement pension is calculated according to the number of points obtained each year for the contributions paid each year multiplied by the annual purchase value of a pension point which is known as the “reference salary”. It is paid with no deductions from the statutory age provided that the payee demonstrates that they have contributed for the required insurance period in order to receive a full-rate pension for the basic pension.

This system makes it possible to guarantee a minimum amount of 85% of the net minimum wage (basic and additional pensions combined) for employees who have spent their entire career on the minimum wage.

The Committee notes from the report that pensioners on low incomes who are aged 65 (or 60-62 if they are unfit for work) can receive the "Solidarity Allowance for Elderly Persons" (ASPA). ASPA is a non-contributory differential benefit which is paid in addition to the insured person’s resources to bring them up to a guaranteed minimum amount: €801 per month for a single person in 2015 and €1 246.97 for a couple.

Beneficiaries of old-age pensions who need assistance due to dependence are entitled to a supplement for assistance from a third party which corresponds to 40% of the pension but cannot be less than €13 236.98 per year in 2015.

The French administration’s official website states that a “single social assistance allowance for elderly persons” is available if the latter are not receiving a retirement pension and their application for ASPA has been refused. The single allowance is paid by the State. It is granted either at the full rate or at a reduced rate, according to the person’s means. At the full rate, the at-home single allowance is set at €9 638.42 per year (or €803.20 per month) for a single person and €14 963.65 per year (or €1 246.97 per month) for a couple.

The report also states that another allowance, the “personalised independence allowance” (APA), is paid to any person aged 65 or over who has lost their independence, in accordance with Article L. 232-1 of the Social Action and Families Code. The maximum monthly amount of APA ranges from €1 714.79 to €663.61 according to the “iso-resources group” to which the person belongs.

Persons on low incomes (including recipients of ASPA or APA) can also receive cash benefits, including various housing allowances whose amounts can vary for different households: these are personalised housing assistance or social housing allowance (these two forms of assistance cannot be received at the same time). In addition, the cost of health care for these persons is covered and no deductions are made to this end from their monthly pensions.

The poverty threshold, which is set at 50% of the median income adjusted and calculated on the basis of the poverty risk threshold set by Eurostat, was estimated at €10 707.50 per year in 2015, or €892 per month. The Committee considers that the level of guaranteed resources, inclusive of supplements and free medical cover, is in conformity with the Charter.

With regard to the measures taken by France to resolve the situation for the 1% of persons aged 65 and over whose income is less than 40% of the adjusted median income, the Committee takes note of Law No. 2014-40 of January 2014 guaranteeing the future and fairness of the pension system. The most important measures include changing the rules on the validation of quarters, maintaining the date of revaluation of the old age minimum (ASPA) and raising the upper limit for the contributory minimum.

Prevention of elder abuse

In its previous conclusion (Conclusion 2013), the Committee asked for more information on the practical implementation of the programmes and tools developed by France to combat elder abuse. The report states that during the reference period, France endeavoured to develop and promote an active culture of "good treatment" of elderly persons. In this regard, the National Agency for the Evaluation of the Quality of Social and Medico-social Services and Institutions has made several recommendations for good professional practice and internal and external assessment procedures. The National committee to guard against elder abuse was re-established in 2013 under the name of the National committee for good treatment and rights of elders and people with disabilities. France has also taken measures to raise awareness and train staff in good treatment.

According to the report, France has put in place a secure information system which facilitates quantitative and qualitative analysis of reports received on the national listening and assistance hotline in order to respond to situations where elderly people, among other people, who are living at home or in institutions are being ill-treated. A progress report on this system is drawn up each year. In January 2015, 80% of the French departments were benefiting from these local intermediaries. The report also states that State departments have implemented multi-year inspection programmes for medico-social institutions. The current programme has been established for the 2013-2017 period. It particularly targets facilities and activities which pose a risk or which have been complained about or reported, in order to remedy the failings, punish abuse and support the necessary changes. The Committee asks how many institutions which only accommodate elderly persons have been listed in France, how many have been inspected, how inspections are organised in principle, and what penalties and/or measures are taken against an institution which is declared responsible for a failing or abuse.

With regard to the implementation of the "MobiQual" programme, the report does not provide any precise information other than proposing reference scientific and teaching tools which are essential in order to inform, raise the awareness of and train professionals who work with elderly persons who have lost their independence, both in institutions and in their homes. The Committee asks for more information on this point.

Services and facilities

The Committee points out that, although Article 23 makes reference only to information about services and facilities, it presupposes that such services and facilities exist.

With regard to the services and facilities themselves, the Committee notes that in accordance with the Law on the Adaptation of Society to Ageing, France is endeavouring to deal better with the problem of the loss of independence. In this regard, the Committee notes that during the reference period, a significant amount was raised in order to finance long-term care for elderly persons in institutions and relaunch and restructure the home assistance and support sector.

The report adds that 758 000 home services were made available to elderly persons in 2014. The Committee requests more precision in these figures. It also asks how many elderly persons have received home help and/or meals.

Finally, the Committee notes that since June 2013, a single file format has been used for requests for admission to residential homes for dependent elderly persons (EHPAD) throughout the country, whether in respect of administrative information or medical information.

With regard to information on the existence of the services and facilities available, the report provides no information. The Committee asks the next report to provide information on this matter.

Housing

The report states that so-called “intermediate” housing (supported housing or “independence homes”) must be developed. These facilities receive financial assistance, the “independence charge”, which finances prevention and support action for the most vulnerable elderly persons. Investment grants for works to modernise independence homes will also be offered.

The report also states that the national plan for adapting private housing to the needs of persons with loss of autonomy provides that, by 2017, 80 000 private homes will be renovated.

The Committee asks what the outcomes and consequences of the “Living Better” programme have been and whether it has indeed helped 300 000 households to carry out thermal renovation works. It also asks the next report to provide updated information about changes and modernisations of EHPADs, the actions taken by ANAH to adapt housing to the loss of independence, the actions of the National Housing Expertise Centre, and any legislative, regulatory or institutional changes.

Health care

The report states that since 2007, the CNSA notified €846.5 million for the creation of 85 622 places for elderly persons in order to implement the Old Age Solidarity Plan. It adds that 79 128 places had been authorised at the end of 2015 and 69 068 places installed, including 35 015 EHPAD places; 6 653 day care places; 4 027 places in temporary accommodation and 23 373 home nursing care places.

The report also states that the Alzheimer’s Plan (2008-2012) made it possible to adopt consistent measures and suitable communication to help sufferers and their families. One of the measures in this Alzheimer’s plan was the provision of training to non-professional carers. The CNSA notified €273 million to Health Regional Agencies for the creation of 8 340 places, and adapted activity and care units and support and respite platforms.

The report also states that the Neurodegenerative Diseases Plan 2014-2019 was implemented in 2014. The Plan is aimed at all sufferers of Alzheimer’s disease, Parkinson’s disease and multiple sclerosis and is extended to all neurodegenerative diseases. It guarantees that elderly persons who are beneficiaries of assistance and social action arrangements can choose freely between staying at home and receiving suitable assistance and living in an institution. At the end of 2015, €221.6 million had been committed by Health Regional Agencies and 6 398 places, including 1 544 places in enhanced accommodation units and 4 854 places with specialist Alzheimer’s teams, had been created.

Institutional care

Institutional care includes accommodation in a social or medico-social institution and hospitalisation at a medical facility or in an EHPAD. According to the report, 7 208 new places were created in 2015. At the end of 2015, there were over 720 400 places in medico-social institutions and services for elderly persons in France, which were broken down as follows: 575 262 places in permanent accommodation; 10 861 places in temporary accommodation; 13 969 day care places; 119 095 home nursing care places; and 1 286 places in enhanced accommodation units. This equates to just over 117 places in medico-social institutions or services for elderly persons per 1 000 persons aged over 75. The report states that availability varies from one département to another, ranging from 54 places to 194 places per 1 000 persons aged over 75. According to the report, this availability must be linked with other services for elderly persons, such as nursing care services or care in long-term care units. Some départements which have few medico-social facilities have, for instance, large numbers of freelance nurses.

Conclusion

The Committee concludes that the situation of France is in conformity with Article 23 of the Charter.

Article 30 - Right to be protected against poverty and social exclusion

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

Measuring poverty and social exclusion

The Committee takes note of the statistical information provided in the report and deriving from INSEE, the National Institute of Statistics and Economic Studies, and from Eurostat. In addition to monetary indicators, France uses the indicator of poverty in terms of living conditions, which identifies those people whose living conditions are the most adverse, by means of a list of difficulties measured in the SILC (European Union Statistics on Income and Living Conditions) scheme.

According to Eurostat in 2015 17.7% (18.5 in 2014) of the French population was at risk of poverty **or** social exclusion. The rate was well below the average indicator of the EU-28 countries (23.7%). In 2015 the percentage of children (aged 0 to 17 years old) was 21.2% (EU-28: 26.9%), the percentage of adults (aged 18 to 64 years old) was 19.0% (EU-28: 24.7%) and the percentage of elderly was 9.3% (EU-28: 17.4%). The poverty rate in terms of living conditions decreased from 12.5% in 2013 to 11.7% in 2015. Nevertheless the Committee notes that single-parents families remain at particularly high-risk of poverty (from 32.6% in 2013 to 36.7% in 2015 – rates increasing with more than one child) as well as the risk of in-work poverty of the increasing population of part-time workers, particularly women (from 6.5% in 2010 to 7.5% in 2015) (European Semester Country Report France 2017).

Still according to Eurostat, the at-risk-of-poverty rate before social transfers was 23.9% in 2015 (24.0% in 2014), whereas the EU-28 rate was 25.9% (26.1% in 2014). The at-risk-of-poverty rate after social transfers was 13.6% in 2015 (13.3 in 2014), which is well below the EU-28 rate of 17.3% in 2015.

In reply to the Committee's question on poverty rates for specific target groups as well as on geographical distribution, the Committee notes from the report the disparities in monetary poverty according to the geo graphical origin of the household: 11.2% of non-immigrant household against 37.6% of immigrant households are living under the threshold of poverty according to INSEE. 44.3% of immigrant household where the reference person is born in Africa is considered poor versus 22.9% when the person is born in Europe.

In reply to the Committee's question on indicators used to measure social exclusion, the Committee notes from the report that Eurostat indicators are used considering people facing one of the three conditions: people at risk of poverty or social exclusion (according to EU-SILC 2014, 13.3% in Metropolitan France versus 17.2% in EU-28); severely materially deprived people (in 2014, in Metropolitan France 11.9% versus 18.5% in EU-28); people living in household with very low work intensity (in 2014, in Metropolitan France 9.6% versus 11.2% in EU-28).

The Committee notes from the 2015 Eurostat data with respect to France that the indicators measuring poverty and income inequalities stood well below the EU average despite the difficult economic situation.

Approach to combating poverty and social exclusion

The Committee takes note of the numerous measures that have been undertaken to combat poverty and exclusion, both on the prevention side and on accompanying people living in poverty, in particular within the Multi-annual Antipoverty and Social Inclusion Plan (2013-2017). The Plan, which is overseen by the Government, has an inter-ministerial nature and was designed by a number of players, including individuals experiencing hardship. The Plan has paved the way for an integrated approach to poverty and its consequences and has led to decompartmentalising social policies. The plan comprises 54 measures informed by five guiding principles of anti-poverty policy: objectivity, non-stigmatisation, participation, fair entitlement and decompartmentalisation of social policies. The 2015/2017 road map includes

one additional principle: support, with the view of comprehensively address individuals' needs in terms of access to rights and to ensure that everyone has access to the arrangements available under ordinary law and to assistance schemes. For the period 2015-2017 the plan should be completed by new actions developed with the actors of the fight against exclusion, including a road map describing all of the steps involved in reducing the risk of social exclusion.

In the field of employment and vocational training, the measures are based on the assumption that everyone is employable and are addressed to employees or to persons distant from the labour market. For example, 187 000 young people received a job during 2013 and 2014 as part of the 'job for the future' programme. Provisions for a better protection of employees working part time are included in the Law on Securing Employment No. 2013-504.

The Committee refers to its conclusions of non-conformity under the provisions of the Charter which are relevant to its assessment of compliance with Article 30 (see Statement of interpretation on Article 30, Conclusions 2013). It refers in particular to:

Article 12§1 and its conclusion that the minimum level of invalidity pensions is inadequate (Conclusions 2017)

Article 12§4 and its conclusions that equal treatment with regard to access to family allowances is not guaranteed to nationals of all other States Parties and that the right to maintenance of accruing rights is not guaranteed to nationals of all other States Parties (Conclusions 2017)

Article 13§1 and its conclusions that the amount of social assistance, consisting of basic assistance and any additional benefits that may apply is not adequate and that non-EU nationals are subject to a length of residence requirement of five years to be eligible for RSA (Conclusions 2017).

As regards housing, the Committee notes from the report the detailed information on housing policy in favour of migrant populations and of the most deprived and the intention of the Government to move away from emergency management and to focus on long-term housing solutions. In 2013 – 2014, 220 000 new social housing units were funded.

As for the Committee's decision in International Movement ATD Fourth World v. France, Complaint No. 33/2006, decision on the merits of 5 December 2007; the Committee's decision in European Roma Rights Centre (ERRC) v France, Complaint 51/2008, decision on the merits of 19 October 2009; the Committee's decision in European Roma and Travellers Forum v. France, Complaint No 64/2011, decision on the merits of 24 January 2012 and the Committee's decision in *Médecins du Monde* – International v. France, Complaint No 67/2011, decision on the merits of 11 September 2012, the Committee refers to its Findings 2015 on follow-up to decisions in collective complaints in which it held that the situation has still not been remedied or only partially remedied. The Committee takes note of the information provided in the report in this respect, however it refers to its next examination of the follow-up to these decisions, which will take place in 2018.

Taking into account all the above, the Committee considers that the situation is compatible with Article 30.

Monitoring and evaluation

The Committee notes from the report that policies are monitored, evaluated and revised on a continuous basis in consultation with relevant actors. As elaborated in its 2013 Conclusions, the Committee notes in particular the role of the National Council for Policy to Combat Poverty and Social Exclusion (CNLE) established in 1992. It is composed of representatives from Government, Parliament, elected bodies at territorial level, the social partners, NGOs, various institutional actors as well as of individuals with a particular expertise. CNLE

provides advice to the Government on draft legislation and other measures as well as on general issues relating to the fight against poverty and social exclusion and may also on its own initiative make proposals pertaining to this domain. It also takes part in the follow-up of the implementation of the Multiannual Anti-Poverty and Social Inclusion Plan.

The Committee further notes of the institutionalisation in 2013, within the CNLE, of a College of people living in a situation of poverty or precariousness (so-called 8th College), composed by eight full members, nominated for three years by the Prime Minister, following proposals by associations dealing with poverty and social exclusion.

The Committee also recognises the role of the National Observatory on Poverty and Social Exclusion (ONPES) which was established pursuant to Act No. 98-657 of 29 July 1998 with a view to gathering data on poverty and exclusion and to contribute to develop knowledge about poverty-related situations.

The Committee considers that the participation of those who experience poverty and social exclusion in the implementation, monitoring and evaluation of poverty reduction measures is important for ensuring the pertinence and efficiency of these measures. The report provides information on the Government's efforts to involve the users of measures in their operation and evaluation.

Conclusion

The Committee concludes that the situation in France is in conformity with Article 30 of the Charter.

January 2018

European Social Charter

European Committee of Social Rights

Conclusions 2017

GEORGIA

This text may be subject to editorial revision.

The following chapter concerns Georgia, which ratified the Charter on 22 August 2005. The deadline for submitting the 10th report was 31 October 2016 and Georgia submitted it on 7 December 2016. On 8 June 2017, a request for additional information regarding Articles 7§9, 27§1, and 27§2 was sent to the Government which did not submit a reply.

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 "Health, social security and social protection":

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

Georgia has accepted all provisions from the above-mentioned group except Article 3, Article 12§§2 and 4, Article 13, Article 23 and Article 30.

The reference period was 1 January 2012 to 31 December 2015.

The conclusions relating to Georgia concern 7 situations and are as follows:

– 3 conclusions of conformity: Articles 12§3, 14§1 and14§2,

– 4 conclusions of non-conformity: Articles 11§1, 11§2, 11§3 and 12§1.

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

Article 12§3

- The launching of a Universal Healthcare Programme in February 2013, by virtue of which the personal coverage of health care has been significantly extended, from 29.5% of the population in 2010, to 100% after 2013. The Universal Healthcare Programme covers the basic package of planned and emergency in- and out-patient clinical care, including oncology and maternity services (see information provided under Article 11 of the National Report);
- The extension, in 2013, of paid maternity leave from 126 to 183 days (and from 140 to 200 days in case of complications) and the increase of minimum maternity benefits from GEL 600 to GEL 1000 (€382 at the rate of 31/12/2015).

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In addition, the report contains also information requested by the Committee in Conclusions 2015 in respect of its conclusions of non-conformity due to a repeated lack of information:

- the right of children and young persons to protection – fair pay (Article 7§5),
- the ight of children and young persons to protection – regular medical examination (Article 7§9),
- the right of employed women to protection of maternity – prohibition of dangerous, unhealthy or arduous work (Article 8§5),
- the right of children and young persons to social, legal and economic protection – assistance, education and training (Article 17§1),
- the right of migrant workers and their families to protection and assistance – assistance and information on migration (Article 19§1),
- the right of migrant workers and their families to protection and assistance – co-operation between social services of emigration and immigration states (Article 19§3),

- the right of migrant workers and their families to protection and assistance – equality regarding employment, right to organise and accommodation (Article 19§4),
- the right of migrant workers and their families to protection and assistance – family reunion (Article 19§6),
- the right of workers with family responsibilities to equal opportunity and treatment – participation in working life (Article 27§1),
- the right of workers with family responsibilities to equal opportunity and treatment – (Article 27§2).

The Committee examined this information and adopted the following conclusions:

- 1 conclusion of conformity: Article 19§3,

- 8 conclusions of non-conformity: Articles 7§5, 7§9, 8§5, 17§1, 19§1, 19§4, 19§6 and 27§1,

- 1 deferral: Article 19§11.

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The next report will deal with the following provisions of the thematic group "Labour Rights":

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 21),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 22),
- the right to dignity at work (Article 26),
- the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28),
- the right to information and consultation in collective redundancy procedures (Article 29).

The report should also contain information requested by the Committee in Conclusions 2016 in respect of its conclusions of non-conformity due to a repeated lack of information:

- the right to work – freely undertaken work (non-discrimination, prohibition of forced labour, other aspects) (Article 1§2),
- the right to work – vocational guidance, training and rehabilitation (Article 1§4),
- the right to vocational training – apprenticeship (Article 10§2).

The deadline for submitting that report was 31 October 2017. The report was registered on 30 October 2017. Conclusions on the Articles concerned will be published in January 2019.

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Conclusions and reports are available at www.coe.int/socialcharter as well as in the HUDOC database.

CONCLUSIONS RELATING TO ARTICLES FROM THE THEMATIC GROUP

‘Health, social security and social protection”

Article 11 - Right to protection of health

Paragraph 1 - Removal of the causes of ill-health

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

Measures to ensure the highest possible standard of health

The Committee notes from WHO that life expectancy at birth in 2015 (average for both sexes) was 74.4 (compared to 73.77 in 2009). The life-expectancy rate is still low relative to other European countries. For instance, life expectancy at birth in the EU-28 was estimated at 80.6 years in 2015.

The report indicates that according to the data provided by the National Statistics Office, the mortality rate (deaths/1,000 population) was 13.2 in 2014 and 2015, 10.8 in 2013 and 11.0 in 2012. The report indicates that cardiovascular diseases and cancer remain the main causes of death, followed by diseases of the respiratory and digestive systems, injury, poisoning and other external sources. The Committee asks what measures are being taken to address the major causes of premature death.

In its previous conclusion the Committee found that the situation was not in conformity with Article 11§1 on the ground that the measures taken to reduce infant and maternal mortality rates have been insufficient (Conclusions 2013).

As regards the maternal mortality rate, the Committee noted previously that it has increased considerably. In 2011 the rate reached 27.58 deaths per 100,000 live births, up from 14.4 in 2008 (and reaching a peak of 52.1 in 2009) (Conclusions 2013). The current report indicates that Georgia has reduced maternal mortality rate by more than half from 49.2 in 2000 to 31.1 in 2013 per 100,000 live births. The Committee notes from WHO data that the maternal mortality rate in 2015 was estimated at 36 per 100,000 live births. These rates are significantly above the average in other European countries, and one of highest rates in 2015 in Europe.

The Committee noted previously that the infant mortality rate decreased slightly from 14.1 per 1,000 live births in 2007 to 11.2 per 1,000 live births in 2010 (Conclusions 2013). The report indicates that according to official vital statistics (GeoStat), Georgia has substantially reduced under-5 mortality rate from 24.9 in 2000 to 11 per 1000 live births in 2015. The Committee notes from WHO data that the under-5 mortality rate in 2015 stood at 11.9 per 1,000 live births which is still high relative to other European countries. Infant mortality is estimated by WHO/Europe at 11 per 1,000 live births. It further notes from Eurostat that the infant mortality rate in Georgia stood at 11.1 in 2013 and 9.5 in 2014 compared to the EU-28 rate of 3.7 per 1,000 live births in 2013/2014).

The report further mentions that the largest share in child mortality is still attributed to infant mortality (87.5%) and the situation has not changed significantly since 2000 when the infant mortality rate fraction in under -5 mortality rate was 90%. It adds that 66.7% of mortal cases in infants were caused by conditions originating in the perinatal period, with stillbirths being the main cause of perinatal death (73.6%). The report indicates that, according to the WHO data, stillbirths to early neonatal deaths ratio should not exceed 1.2. This ratio stood at 2.6 in 2015 in Georgia.

The Committee takes note from the report of the measures taken by the Government to improve the situation, mainly through the programme dedicated to maternal and child health which is one of the priorities of the Healthcare System State Concept 2014-2020, such as an emergency notification system to improve accountability and registration of maternal and child mortality cases. The report outlines that “Mother’s and Children’s health programme provides for visits in the frame of antenatal observation; investigation of newborns on hypothyroid, phenilketonuria, hyperphenilalaninemia and mucoviscidoses; screening of pregnant women on genetic pathology; ensure adequate in-patient care for high risk pregnants, women in childbirth and after childbirth”. In order to improve the quality and the

efficiency of the perinatal services, a process of perinatal regionalisation was carried out in 2015 in two regions (Imereti and Racha-Lechkhumi) and expanded in 2016 to Tbilisi and Kvemo Kartli regions. The completion of perinatal regionalisation nationwide is planned in 2018. The report adds that in 2016 (outside the reference period) an Electronic Module of Health Care for Pregnant Women and Newborns ("Birth" Registry) was set up to monitor the health situation of pregnant women since the first antenatal visit till the childbirth as well as the health situation of babies at the moment of birth.

The Committee takes note of the reforms initiated and the measures taken to reduce maternal and child mortality. It asks to be kept informed on the implementation of such measures, their effect on reducing the maternal and infant mortality rate, updated data regarding the trends of the mortality rates and on any developments in this field. However, it notes that the situation has not improved substantially since the previous reference period. In view of the increasing/high rate of maternal mortality, as well as the prevailing high infant mortality rate, the Committee finds that insufficient efforts have been undertaken in this field, and therefore reiterates its previous finding of non-conformity on this point.

Access to health care

The Committee concluded previously that the situation in Georgia was not in conformity with Article 11§1 of the Charter on the ground that out-of-pocket payments in general and medication costs in particular represent too high a burden for the individual, effectively being an obstacle to universal access to health care (Conclusions 2015). In reaching this conclusion, the Committee noted that despite the reform initiated in February 2013 through the Universal Health Care Programme (UHP), the out-of-pocket payments for health care, especially for medication, were still very high and very limited coverage of medication costs was provided under the UHP (Conclusions 2015).

The report indicates that as a result of the reform, 100% of the population benefits from publicly financed health coverage after 2013, up from 40% in 2012 and 29.5% in 2010. The Universal Healthcare Programme (UHP) covers the basic package of planned and emergency in- and out-patient clinical care, including oncology and maternity services. According to the report, most of those benefiting from the UHP did not have any health coverage before the reform. The Committee takes note of the detailed information provided in the report on specific public healthcare programs and treatments in relation to hepatitis C, breast cancer, tuberculosis, HIV/AIDS, mental illnesses.

The Committee notes that according to the results of the survey "Health care utilisation and expenditure" carried out in 2014, people are more likely now than in 2010 to consult a health care provider when sick; financial barriers to access have declined, especially for outpatient visits and hospital care; and user experience of the health system has improved. The report mentions that the share of patients reporting that they expected to pay for a consultation with a doctor at the nearest facility halved between 2010 and 2014, falling from 73.7% in 2010 to 35.6% in 2014. This fall was large in urban areas.

The Committee further notes from the WHO reports that public spending remains low in Georgia, in comparison to most countries in the WHO European Region (7% of the GDP according to WHO estimates), while out-of-pockets are high (Report on meeting held in Tiblisi on 24 June 2015 to discuss the findings of the survey on health care utilisation and expenditure). Analysis supported by WHO/Europe shows that out-of-pocket payments for medicines are the most important source of financial hardship for people in Georgia.

The Committee takes note of the reform on the health system through the Universal Healthcare Programme and the measures taken by Georgia during the reference period. However, it seems that the out-of-pockets payments for covering the costs of medication remain high .The Committee recalls that the right of access to care requires *inter alia* that the cost of health care should be borne, at least in part, by the community as a whole (Conclusions I (1969), Statement of Interpretation on Article 11) and the cost of health care

must not represent an excessively heavy burden for the individual. Out-of-pocket payments should not be the main source of funding of the health system (Conclusions 2013, Georgia). Steps must be taken to reduce the financial burden on patients from the most disadvantaged sections of the community (Conclusions XVII-2 (2005), Portugal).

The Committee asks whether the reforms initiated have reduced the costs of medicines for the population at large, and in particular for vulnerable groups and those with chronic conditions. It also asks whether new legislation/reforms on medicines are envisaged in this sense. The Committee asks updated information in the next report on the out-of-pocket payments. Meanwhile, the Committee reserves its position on this point.

The Committee recalls that the right of access to health care also requires that arrangements for access to care must not lead to unnecessary delays in its provision. It therefore asks again the next report to provide information about the rules that apply to the management of waiting lists and statistics on average waiting times in health care. The Committee outlines that if such information is not provided, there will be nothing to establish that the situation is in conformity with the Charter on this point.

In its previous examinations of Article 11, the Committee asked for information on the availability of rehabilitation facilities for drug addicts, and the range of facilities and treatments (Conclusions 2009, 2013). The Committee requested that information on this also be included in the next report (Conclusions 2013). The report indicates that under the “Drug use prevention program, drug users are provided with drug replacing therapy and medical supervisory care; visits in-patient detoxication and rehabilitation purposes”. The report adds that an Intersectoral action plan 2014-2015 was adopted by the Inter-Agency Coordinating Council on Combating Drug Abuse on the meeting of the Council on 4 of December 2013. All agencies which participate in the implementation process prepare quarterly reports on the implementation of 2014-2015 Action Plan. The Committee wishes to be kept informed on the implementation outcomes of this Action Plan, whether the measures taken improved the situation of the drug addicts and the available facilities and treatments.

The Committee asks that the next report contain information on the availability of mental health care and treatment services, including information on the prevention of mental disorders and recovery measures.

The Committee asks that the next report contain information on dental care services and treatments (such as who is entitled to free dental treatment, the costs for the main treatments and the proportion of out-of-pocket paid by the patients).

As regards the right to protection of health of transgender persons the Committee received submissions from the International Lesbian and Gay Association (European Region) (ILGA) stating that in Georgia there is a requirement that transgender people undergo medical treatment, including sterilisation, as a condition of legal gender recognition. It also claimed that the authorities fail to provide medical facilities for gender reassignment treatment, and to ensure that medical insurance covers, or contributes to the coverage of such medically necessary treatment, on a non-discriminatory basis. The Committee invited the Government to submit comments on this matter (Conclusions 2013). The report does not provide any information on this point. The Committee takes note of the comments submitted by Transgender Europe and ILGA- Europe on the implementation of Article 11 of the Charter in the current cycle stating that Georgia is one of the states that require sterilisation as a condition for legal gender recognition. The Committee reiterates its request for information on this particular matter.

Conclusion

The Committee concludes that the situation in Georgia is not in conformity with Article 11§1 of the Charter on the ground that the measures taken to reduce infant and maternal mortality have been insufficient.

Article 11 - Right to protection of health

Paragraph 2 - Advisory and educational facilities

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

Education and awareness raising

The Committee took note previously that information campaigns to prevent and control chronic diseases are conducted by different agencies of the healthcare system. Some of the campaigns have targeted the prevention of HIV, Tuberculosis, tobacco and drug consumption. The Committee requested that the next report should include updated information on the whole range of activities undertaken by public health services, or other bodies, to promote health and prevent diseases (Conclusions 2013).

The report mentions that under Tobacco Control National Action Plan, measures were designed to be implemented which include educational campaigns on tobacco and inclusion of tobacco education in secondary and graduate education system, awareness raising campaigns in collaboration with Ministry of Sport and Youth, public broadcaster and other relevant agencies. The Committee asks information on the implementation of these measures.

The Committee recalls that informing the public, particularly through awareness-raising campaigns, must be a public health priority. The precise extent of these activities may vary according to the nature of the public health problems in the countries concerned (Conclusions 2007, Albania). Measures should be introduced to prevent activities that are damaging to health, such as smoking, alcohol and drugs, and to develop a sense of individual responsibility, including such aspects as a healthy diet, sexuality and the environment (International Centre for the Legal Protection of Human Rights (Conclusions XV-2, the Slovak Republic). Thus, the Committee reiterates its request for information on concrete/specific activities, such as educational or awareness-raising campaigns/initiatives, undertaken by public health services, or other bodies, to promote health and prevent diseases. It outlines 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 on this point.

As regards health education in schools, the report indicates that under the National Education Plan 2011-2016, health education at schools is addressed through separate subjects and activities (nature, biology, chemistry, social sciences, sports and supervisory meetings between teachers-students). The Committee takes note of the detailed description of health aspects dealt with under each of the above mentioned subjects. It notes that the supervising meetings with the students cover the following topics: healthy lifestyle, personal hygiene, disease spreading sources, healthy food, time management, day regime, sports significance, danger of bad habits.

The Committee recalls that States Parties must ensure that sexual and reproductive health education forms part of the ordinary school curriculum; that the education provided is adequate in quantitative terms; that the form and substance of the education, including curricula and teaching methods, are relevant, culturally appropriate and of sufficient quality, in particular that it is objective, based on contemporary scientific evidence and does not involve censoring, withholding or intentionally misrepresenting information, for example as regards contraception and different means of maintaining sexual and reproductive health; and that a procedure is in place for monitoring and evaluating the education with a view to effectively meeting the above requirements (International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Croatia, Complaint No. 45/2007, Decision on the merits of 30 March 2009, §§46 – 47). The Committee asks for information in the next report on whether and how sexual and reproductive education is provided in schools in Georgia.

Counselling and screening

In its previous conclusions, the Committee found that the situation was not in conformity with this provision on the ground that measures for counselling and screening of pregnant women and children were not adequate (Conclusions 2009, Conclusions 2013).

The report indicates that one of the main priorities of the Georgian Healthcare System State Concept 2014-2020 is support for maternal and child birth. The report adds that the Ministry of Labour, Health and Social Affairs of Georgia (MoHLSA) is implementing a state maternal and child health programme, which funds four antenatal care visits.

The report further indicates that antenatal screening is being implemented for HIV-infection, hepatitis B and syphilis, and the "confirmatory research among the pregnant women revealed through the screening is carried out". In the framework of the mother and children health program, antenatal supervision is universally available as well as the medical care services for pregnant and birth-giving women.

Data provided in the report indicate that maternal mortality rate has been reduced from 49.2 per 100,000 live births in 2000 to 31.1 per 100,000 live births in 2013. The report mentions that in 2015 the MoHLSA started perinatal regionalisation process in two regions and the completion of the process for the whole country is planned for 2018. A pilot project is planned to ensure home visit model for early detection of developmental delays before age of 3 and to ensure timely referral of identified cases to relevant medical institutions.

The Committee recalls that there must be free and regular consultation and screening for pregnant women and children throughout the country (Conclusions 2005, Republic of Moldova). The Committee noted in its Conclusion on Article 11§1 that the rate of infant and maternal mortality are still high in the country. For instance, according to the WHO data for 2015, the infant mortality rate was 11 deaths per 1,000 live births and the maternal mortality rate was 36 deaths per 100,000 live births. In view of these prevailing high mortality rates, the Committee considers that the antenatal services and examinations for pregnant women and children have not improved sufficiently. It therefore maintains its conclusion of non-conformity on this point.

Moreover, the Committee recalled that free medical checks for children must be carried out through the period of schooling. It therefore asked that information on this be included in the next report, including on the frequency of school medical examinations, their objectives, the proportion of pupils concerned and the level of staffing (Conclusions 2013). In the absence of such information, the Committee reiterates its question and holds that if such information is not provided, there will be nothing to establish that the situation is in conformity with the Charter.

The Committee recalls that pursuant to this provision there should be screening, preferably systematic, for the diseases which constitute the principal cause of death (Conclusions 2005, Republic of Moldova). Preventive screening must play an effective role in improving the population's state of health.

In its Conclusions 2013, in the absence of any information on counseling and screening for the population at large, the Committee concluded that the situation was not in conformity with Article 11§2 of the Charter on the ground that it has not been established that prevention through screening is used as a contribution to the health of the population. The Committee re-examined this conclusion of non-conformity for repeated lack of information in its Conclusions 2015 and since no information was provided on nationwide screening programmes for diseases constituting the main causes of death, the Committee considered that the situation was still not in conformity with the Charter on the ground that it has not been established that screening programmes are adequately used as a contribution to the health of the population (Conclusions 2015).

The report indicates that under the state program for early detection of the diseases, the following cancer screening programmes have been implemented: (i) breast cancer screening for 40-70-year-old women; (ii) cervical cancer screening for 25-60-year-old women; (iii) prostate cancer screening for 50-70-year-old men; (iv) colorectal cancer screening for 50-70-year-old population.

The report adds that through “the epidemiological safety programme is ensured the timely detection and prevention of communicable and non-communicable diseases for children and for adults on a primary healthcare level. The above mentioned programme provides for the surveillance of sexually transmitted diseases and HBsAg, antiHBc, antiHCV, study of patients with the diseases non-associated, viral hepatitis and its risk factors. Surveillance component for nosocomial infections, diarrheal diseases and manning encephalitis and hemorrhagic fever have been launched for two years.”

The Committee also takes note from the report of the information on control and prevention measures concerning HIV/AIDS, tuberculosis and malaria. However, the Committee noted previously that there are high rates of mortality and morbidity from cardiovascular and respiratory diseases (Conclusions 2013). The Committee reiterates its request for specific information on mass screening programmes for these diseases. Meanwhile, it reserves its position on this point.

Conclusion

The Committee concludes that the situation in Georgia is not in conformity with Article 11§2 of the Charter on the ground that measures for counselling and screening of pregnant women and children are not adequate.

Article 11 - Right to protection of health

Paragraph 3 - Prevention of diseases and accidents

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

Healthy environment

The Committee noted previously that the Environment Protection Law of 1996 is the framework legislation in the field of environmental protection. Specific laws had been passed for the protection of air quality, water safety, on the protection of the population against the risks from ionising radiation and asbestos, as well as in the area of food safety (Conclusions 2013). The Committee asked for information on the institutional structures for the proper implementation of the above-mentioned legislation and wished to receive information on levels of air pollution, as well as on cases of water and food intoxication, and whether trends increased or decreased during the reference period (Conclusions 2013).

The report only lists a number of regulations approving technical regulations with regard to harmful substances in the air, ionising radiation and radioactive substances, radiation safety standards, rules and standards of food organisation, waste collection, storage and treatment from therapeutic and prophylactic facilities, waste landfills etc. The Committee reiterates its question that the report provide information on the concrete measures taken, including comprehensive environmental legislation and regulations, as well as on the levels and trends with regard to air pollution, waste management, water contamination and food safety during the reference period. The Committee outlines that if such information is not provided, there will be nothing to establish that the situation is in conformity with the Charter on this point.

In its previous conclusion, the Committee concluded that the situation in Georgia was not in conformity with Article 11§3 of the Charter on the ground that adequate measures have not been taken to ensure access to safe drinking water in rural areas (Conclusions 2015).

The report lists again a number of resolutions concerning sanitation and hygiene adopted in 2014, including several pertaining to water, such as Resolution N58 of 15 January 2014 on potable water, Resolution N73 of 15 January 2014 on the water supply system, Resolution N62 of 15 January 2014 on disinfection of water supply facilities and Resolution N425 of 31 January 2014 on protection of surface water from pollution. However, no indication is given as to whether these resolutions specifically address the situation regarding access to safe drinking water in rural areas.

The Committee considers that having access to safe drinking water is central to living a life in dignity and upholding human rights. It also recalls that "under Article 11§1 of the Charter, health systems must respond appropriately to avoidable health risks, i.e. ones that can be controlled by human action, and states must guarantee the best possible results in line with the available knowledge" (Conclusions XV-2, Denmark). The Committee asks that the next report provide detailed and up-dated information on the situation as regards access to safe drinking water in rural areas as well as information on any measures taken (including the the above-mentioned Government resolutions, if relevant) and their impact on the situation. Meanwhile, the Committee reiterates its conclusion that the situation is not in conformity with the Charter as regards measures to ensure access to safe drinking water in rural areas.

Tobacco, alcohol and drugs

The Committee noted previously that WHO Framework Convention on Tobacco Control was ratified by Georgia on 14 February 2006. The Committee asked to be kept informed on the implementation of the applicable legislation and other tobacco control strategies. More generally, it wished to receive updated information in the next report on the state of legislation on smoke-free environments, health warnings on tobacco packages, and if there is a ban on tobacco advertising, promotion and sponsorship, throughout the whole country (Conclusions 2013). The report indicates that the Law on Tobacco Control bans smoking in

certain public places and all public transport, regulates tobacco products packaging and labeling, sales of tobacco products etc. The Law on Advertisement bans tobacco advertising through cinema, radio, video services and television. The report further indicates that on 15 March 2013 the State Committee on Tobacco Control was created to strengthen tobacco control in Georgia, with a view to ensuring the effective implementation of the 2010 Law on Tobacco Control and make necessary legislative amendments. The working group of the Committee elaborated a Tobacco Control National Strategy and Action Plan 2013 – 2018. The measures included in the Action Plan regard activities on prevention of smoking for youth, comprehensive tobacco ban advertisement, educational and awareness raising campaigns on tobacco, annual raise of tobacco tax, enforcement of partial smoking ban in public places and preparation of total ban after 2015 etc. The report mentions that the implementation of the above mentioned activities was planned for 2016 and new legislation on tobacco control is expected.

The report indicates that according to WHO data, Georgia is one of the countries with the highest level of tobacco consumption in the European region and the world. The smoking prevalence is high among adult men (55%). The Committee notes that surveys carried out in 2015 show that the prevalence of tobacco smoking is quite high among youth (the majority of students (83.2%) replied that their friends smoke tobacco (84.7% of boys and 82.3% of girls). The Committee notes the measures taken in the field of tobacco control. However, the report indicates that new legislation on tobacco control is expected. The Committee asks for information in the next report on any new developments in this field, in particular on legislation on smoke-free environments, health warnings on tobacco packages, and tobacco advertising, as well updated figures and trends in tobacco consumption. Pending receipt of the information requested, the Committee reserves its position on this point.

The report does not provide information on the level of alcohol consumption in Georgia. The Committee asks that the next report provide updated figures on the level and trends of alcohol consumption. Pending receipt of the information requested, the Committee reserves its position on this point.

The Committee takes note of the National Drug Strategy and Action Plan 2014-2015. The report indicates that there are approximately 40000 intravenous drug users, that correspond to 1.5% of the population aged 15-64. The most commonly used intravenous drugs in the country belong to the group of opioids. The Committee asks to be kept informed on the implementation of the Action Plan, in particular whether the measures taken have reduced the number of drug users/consumption.

Immunisation and epidemiological monitoring

The Committee wished to receive updated information on the national immunisation programme, namely which vaccines are included and the coverage rate (Conclusions 2013).

The report lists the vaccines which are included in the national immunisation programme, namely BCG, Hepatitis B, DPT-HepBHib, DPT, OPV/IPV, MMR and DT. It adds that new vaccines were introduced during the reference period such as Rotavirus in 2013, Pneumococcal in 2014 and hexavalent vaccine in 2015. An action plan for transition from the trivalent oral polio vaccine to bivalent vaccine was set up. In respect of immunisation against measles, in 2015, the coverage rate stood at 94%, sligthly below the level recommended by WHO of 95%.

The Committee takes note from the report of the detailed information regarding the prevention and control of hepatitis C, tuberculosis, malaria and HIV/AIDS. It asks for updated information and any new developments in the next report on the national vaccination programme, the trends in the coverage rate and measures taken with regard to prevention and control of infectious diseases.

Accidents

In its previous conclusion, the Committee asked for information on specific measures taken to prevent the road accidents, as well as other accidents such as those during leisure time and in the home environment. The report only reiterates that the Law on Traffic Security is the legal basis for promoting road safety. A state programme in this area is being implemented.

The Committee reiterates its request for information on the measures taken and the trend in the number of road accidents as well as domestic accidents and accidents during leisure time. It holds that if such information is not provided, there will be nothing to establish that the situation is in conformity with the Charter on this point.

Conclusion

The Committee concludes that the situation in Georgia is not in conformity with Article 11§3 of the Charter on the ground that the measures taken to ensure access to safe drinking water in rural areas have been insufficient.

Article 12 - Right to social security

Paragraph 1 - Existence of a social security system

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

As Georgia has not accepted Articles 8§1 and 16 of the Charter, the Committee assesses maternity benefits and family benefits under this provision.

Risks covered, financing of benefits and personal coverage

The Committee notes from the report (information provided under Article 11) the launch of a Universal Healthcare Programme in February 2013, by virtue of which the personal coverage of **health care** has been significantly extended, from 29.5% of the resident population in 2010, to 100% after 2013. According to the report, the Universal Healthcare Programme, which is publicly financed (taxation, state and local budgets), covers the basic package of planned and emergency in- and out-patient clinical care, including oncology and maternity services.

In case of **sickness/temporary incapacity**, the report indicates that the employer pays 100% of the salary for the whole period of incapacity, subject to a reexamination by a medical commission after the first 30 days of sickness. According to the report, all employees are covered, and 88% of the active population was insured in 2015.

As regards **maternity benefits**, the Committee notes from MISSCEO that benefits are paid for 183 calendar days (200 days in case of complications) to all employees. Up to GEL 1000 (€382), the amount is paid by the state but, according to ISSA, the employer pays a complementary amount. The Committee asks the next report to clarify what proportion of the employee's daily wage is paid, when the employer's complementary amount is taken into account.

Old age, **disability** and **survivors** pensions are covered by non-contributory schemes, covering all residents and publicly financed. Old age pensions are granted to women aged 60 and men aged 65 (707 709 pensioners in 2015). Disability pensions are granted in case of disability, as established by a medical commission, without distinction between work and non-work related disability (123 809 beneficiaries in 2015). Survivors' pensions are granted to children up to the age of 18 in case of death of the family's breadwinner (24 832 beneficiaries in 2015).

The Committee previously noted that the social security system did not cover **family benefits**. Although the report mentions several social assistance measures available to certain categories of vulnerable families (families living in mountain regions or regions where mortality rate exceeds the birth rate, families with disabled children, families with 7 or more children), the Committee notes that there no family or child benefits are provided as part of social security, available either universally or subject to a means-test (see Conclusions 2006, Statement of interpretation on Article 16). Accordingly, it maintains that the family benefit system as described in the Georgian report cannot be assimilated with the family benefit branch of social security in the meaning of Articles 12 and 16 of the Charter.

As the social security system does not cover **unemployment**, the Committee maintains its previous finding of non-conformity in this respect.

The Committee furthermore notes from the report that there is no social security scheme in respect of **work injuries/occupational diseases**. The only protection available, under the Labour Code, the Civil Code, the Law on Medical and Social Appraisal and Governmental Decree No. 45 of 1 March 2013 "Rules of remuneration for damage caused to workers' health", is the employer's liability to reimburse any damage caused to the worker's health, as long as the employer's fault is established by a court. The Committee points out that such mechanism cannot be assimilated to a social security insurance scheme, and holds

therefore that the social security system does not cover the work injuries/occupational diseases branch.

The report mentions a number of social assistance allowances (household subsidy; subsistence allowance; social package; assistance for internally displaced, refugees and persons with humanitarian status) available to persons in need. In this connection, the Committee points out that the Charter approaches social security and social assistance in two separate Articles (Articles 12 and 13) carrying different undertakings. Whilst taking into consideration the views of the state concerned as to whether a particular benefit should be seen as social assistance or as social security, the Committee pays most attention to the purpose of and the conditions attached to the benefit in question. It thus considers as social assistance benefits for which individual need is the main criterion for eligibility, without any requirement of affiliation to a social security scheme aimed to cover a particular risk, or any requirement of professional activity or payment of contributions. Moreover, assistance is given when no social security benefit ensures that the person concerned has sufficient resources or the means to meet the cost of treatment necessary in his or her state of health (Conclusions XIII-4 (1996), Statement of Interpretation on Articles 12 and 13). On the other hand, Article 12§1 guarantees the right to social security to workers and their dependents including the self-employed. States Parties must ensure this right through the existence of a social security system established by law and functioning in practice. Social security, which includes universal schemes as well as professional ones, includes contributory, non-contributory and combined allowances related to certain risks. These are benefits granted in the event of risks which arise but they are not intended to compensate for a potential state of need which could result from the risk itself. A social security system exists within the meaning of Article 12§1 when it complies with the following criteria:

- number of risks covered: the social security system should cover the traditional risks and therefore provide the following benefits: medical care, sickness benefit, unemployment benefit, old age benefit, employment injury benefit, family benefit, and maternity benefit.
- personal scope: the social security system must cover a significant percentage of the population for the health insurance and family benefit. Health coverage should extend beyond employment relationships. The system should cover a significant percentage of the active population as regards income-replacement benefits, such as sickness, maternity and unemployment benefits, pensions, and work accidents or occupational diseases benefits.
- funding: the social security system must be collectively financed, which means funded by contributions of employers and employees and/or by the state budget. When the system is financed by taxation, its coverage in terms of persons protected should rest on the principle of non-discrimination, without prejudice to the conditions for entitlement (means-test, etc.).

In the light of these criteria, the Committee considers that the social security system in Georgia does not cover an adequate number of risks, as it does not provide for family benefits, unemployment benefits or work injuries/occupational diseases benefits.

Adequacy of the benefits

In the absence of the Eurostat median equivalised income indicator, the Committee notes from official statistics (Geostat) that, as of November 2015 the minimum subsistence level for an average consumer was GEL 146.8 (€56) per month (approximately GEL 5 daily). The Committee previously noted that this indicator is derived on the basis of current average prices of food and non-food products.

Sickness benefits correspond to 100% of the salary. However, the report does not indicate the minimum level of sickness benefits and no minimum wage exists either, which could be used as a reference. Accordingly, the Committee reiterates its request for information on this

point and considers in the meantime that it has not been established that the level of minimum sickness benefits is adequate.

Up to GEL 1000 are paid in respect of **maternity benefits** for the whole period covered (183-200 days). The Committee asks the next report to clarify whether this represents the minimum amount granted and reserves in the meantime its position on this point.

As regards **old age** pension, the report indicates that the level was raised in September 2015 from GEL 150 to GEL 160. The Committee considers this amount to be adequate.

A flat rate of GEL 150 was granted in respect of severe **disability** pensions till September 2015, and then raised to GEL 180. The Committee considers this amount to be adequate.

Conclusion

The Committee concludes that the situation in Georgia is not in conformity with Article 12§1 of the Charter on the following grounds:

- the number of risks covered by the system of social security is inadequate, as there is no provision for family benefits, unemployment benefits or work injuries/occupational diseases benefits;
- it has not been established that the level of minimum sickness benefits is adequate.

Article 12 - Right to social security

Paragraph 3 - Development of the social security system

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

It takes note of the legislative developments during the reference period, in particular:

- the launching of a Universal Healthcare Programme in February 2013, by virtue of which the personal coverage of health care has been significantly extended, from 29.5% of the population in 2010, to 100% after 2013. The Universal Healthcare Programme covers the basic package of planned and emergency in- and out-patient clinical care, including oncology and maternity services (see information provided under Article 11 of the National Report);
- the extension, in 2013, of paid maternity leave from 126 to 183 days (and from 140 to 200 days in case of complications) and the increase of minimum maternity benefits from GEL 600 to GEL 1000 (€382 at the rate of 31/12/2015);
- the increase, in September 2015, of the amount of the social package for persons with severe disabilities, from GEL 150 (€57) to GEL 180 (€69);
- the increase, in September 2015, of the state pension (for women aged 60 and men 65) from GEL 150 GEL to GEL 160 (€61). Further increases, according to the report, occurred out of the reference period. The Committee asks the next report to provide information on their implementation and impact.

As regards the other measures detailed in the report, concerning vulnerable categories such as people with disabilities, people living in mountain areas, internally displaced persons, refugees, victims of human trafficking or domestic violence etc., the Committee notes that they do not appear to be relevant to Article 12, as they concern social assistance, rather than social security. The Committee recalls in this respect that Article 12§3 requires States Parties to improve their social security system, for example by expanding schemes, protecting against new risks or increasing the level of benefits.The notion of a social security system implies that a significant proportion of the population is covered and in essence based on collective funding and that the social risks which are considered essential must be covered by the system.(Statement of Interpretation on Article 12, Conclusions 2002). The improvements should lead to a gradual raising of the social security system of the country in question above the level required by International Labour Convention No. 102 (Statement of Interpretation on Article 12§3, Conclusions III (1973)).

In the light of the information provided, the Committee considers that, although the measures taken during the reference period have not been sufficient to bring the social security system to an adequate level (see Conclusions 2017 on Article 12§1), they have nevertheless brought it to a higher level. Accordingly, the situation is in conformity with Article 12§3.

Conclusion

The Committee concludes that the situation in Georgia is in conformity with Article 12§3 of the Charter.

Article 14 - Right to benefit from social welfare services

Paragraph 1 - Promotion or provision of social services

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

Organisation of the social services

The Committe recalls that the right to benefit from social welfare services provided for by Article 14§1 requires Parties to set up a network of social services to help people to reach or maintain well-being and to overcome any problems of social adjustment (Conclusions 2005, Bulgaria).

The Committee in its previous conclusion (Conclusions 2013) deferred its position and asked if there was a general social services system in Georgia.

The report in reply to the question indicates that there is a centralised system of Social Services functioning throughout the country. LEPL Social Service Agency, operates under the control of the Ministry of Labour, Health and Social Affairs of Georgia and is responsible for implementing social programmes. LEPL Social Service Agency has territorial units (branches) in every district and region. In order to receive service a person should apply to the local branch of the social service agency by place of residence.

Effective and equal access

The Committee in its previous conclusion (Conclusions 2013) asked what the notion of "permanent residency" implied and whether temporary residents lawfully residing and regularly working had access to social services.

The report indicates that social services offered by the state are available without any restrictions and exception. Beneficiaries of the services are: all citizens of Georgia, persons holding a document verifying their citizenship (including children under 18 – personal number or birth certificate), the citizens with a neutral ID card, neutral travel documents and persons having status of "without Georgian citizenship", persons seeking shelter in Georgia, persons with refugee or humanitarian status.

The report indicates that the state budget finances basic social services (listed in the report), while local municipalities within the frames of their own budgets implement and fund additional social programmes for the local population, including services to support vulnerable families and large families with newborns registered in the database of vulnerable households, assistance programmes for children of persons who became disabled in the fight for Georgia’s territorial integrity; cofinancing of medical services for persons in economic crisis. The Committee points out that fees may be charged for social services provided that they are not so onerous as to prevent effective access. For persons who do not have the necessary resources, service must be provided free of charge. The Committee asks that the next report lists those services for which a fee can be charged and indicate whether these services are free for those who do not have the means to pay for them.

Quality of services

The report indicates that in 2015, 239 social workers operated under the responsibility of the LEPL Social Service Agency. The number of social workers has increased by 28 units in 2016. The report indicates also that a programme of deinstitutionalisation of large childcare institutions was conducted during the period 2011-2015. Currently two medium size institutions for children with disabilities are operating. The Committee notes that the report also provides information outside the reference period and asks the next report to provide information on developments and results following the conclusion of the Memorandum of Understanding in January 2016 between the LEPL Social Service Agency of the Ministry of Labour, Health and Social Affairs of Georgia and UNICEF.

Moreover, in relation to the monitoring procedures to check efficacy, effectiveness and quality of social services the Committee asked to have information on the outcome of a study conducted by the organisation "BCG Research" during the period 2009-2011 and whether in Georgia, there is any legislation on personal data protection.

In reply, the report indicates that results of the study conducted by the organisation "BCG Research" were taken into account and financing mechanisms, activities and approaches in some services in 2012 have been changed. As a result of that the quality of provided services and goods has increased.

As regards the personal data protection the report indicates that in order to ensure personal data protection, Georgia ratified Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data in 2006 and its additional Protocol in 2013. In 2012 the Law of Georgia on Personal Data Protection entered into force.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Georgia is in conformity with Article 14§1 of the Charter.

Article 14 - Right to benefit from social welfare services

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

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

In its previous conclusion (Conclusions 2013) the Committee found that the situation was not in conformity with Article 14§2 of the Charter on the ground that it has not been established that measures are taken to encourage individuals and voluntary organisations to participate in the establishment and running of social welfare services. In 2015 the Committee found that the situation was brought into conformity with the Charter (Conclusions 2015). Moreover, the Committee, since the information provided mainly concerned social services for persons with disabilities, asked that the next report contains information on the participation of individuals and voluntary organisations in the establishment and running of social services for other groups of users such as children, family, the elderly, young people with problems, young offenders, refugees, homeless, alcohol and drug addicted, victims of domestic violence and former prisoners. It also asked to receive up-dated information on the public and/or private funding set aside for encouraging such participation.

In response to the Committee's questions, the report indicates that providers of social services must be registered as providers by the Social Protection Department of the Ministry of Labour, Health and Social Affairs of Georgia. Specific requirements needed include reference to infrastructure and technical base of the organisation, qualification of personnel and experience. The organizations implementing the upbringing activities are required to hold the relevant license. Registering for the social service provision is possible for any organisation, which meets the requirements foreseen by law. Representatives of the monitoring division at the Ministry of Labour, Health and Social Affairs of Georgia, within 20 working days, make sure that the applicant organisation is in-compliance with the requirements. The Committee takes note of the information provided and since no up-dated information on the public and/or private funding set aside for encouraging participation of individuals and voluntary organisations in the establishment and running of social services is provided, reiterates its requests and 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 indicates that civil society takes active part in the planning and implementation of services, almost all providers of social services are non governmental organisations. NGO's are participating in the establishment and running of social services for children, families, for elderly, victims of domestic violence etc. Currently there are 71 NGOs registered as service providers in Georgia. The persons with disabilities and their representative organizations also are involved in the process of development of policy and programmes and in provision of social services for specific target groups.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Georgia is in conformity with Article 14§2 of the Charter.

CONCLUSIONS RELATING TO CONCLUSIONS OF NON-CONFORMITY DUE TO A REPEATED LACK OF INFORMATION IN CONCLUSIONS 2015

Article 7 - Right of children and young persons to protection

Paragraph 5 - Fair pay

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the information submitted by Georgia in response to the conclusion that it had not been established that the minimum wage paid to young workers is fair.

Young workers

In its previous conclusion, the Committee requested information on the corresponding minimum wages paid to young workers in practice in the economic activities mentioned in the report.

According to the report, remuneration of young workers is the same as that of adult workers. The report reiterates that in the private sector the minimum wage amounts to 20 GEL (President Order No 351) and in the public sector it amounts to 135 GEL (President Order No 43). It also reiterates that in practice minimum wages are higher. The Committee notes that the average monthly nominal salary of employees has grown from GEL 597 in 2010 to GEL 900 in 2015. The Committee also takes note of the average monthly nominal salary by economic activity. It also takes note of the State Strategy of Labour Market Formation and its Implementation Action Plan for 2015-2018, which also envisages the minimum wage reform. According to the report, the minimum wage reform along with the existing minimum wage analysis will be presented by the Trade Union Confederation for discussion with social partners and then submitted to the Tripartite Social Partnership Commission.The Committee asks the next report to provide information on these developments.

The Committee notes that the report, again, fails to provide information on the minimum wages paid to young workers in practice in different economic activities, for the Committee to compare it with the reference wage (average wage). Therefore, the Committee reiterates its previous finding of non-conformity on the ground that it has not been established that the minimum wage paid to young workers is fair.

Conclusion

The Committee concludes that the situation in Georgia is not in conformity with Article 7§5 of the Charter on the ground that it has not been established that the minimum wage paid to young workers is fair.

Article 7 - Right of children and young persons to protection

Paragraph 9 - Regular medical examination

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the information submitted by Georgia in response to the conclusion that it had not been established that there is an initial medical check-up at recruitment and regular medical check-ups thereafter of young workers under 18 years of age employed in occupations specified by national laws and regulations.

The Committee notes that the report submitted by Georgia contains no new information in response to this conclusion of non-conformity. In the absence of the requested information, the Committee reiterates its finding of non-conformity.

Conclusion

The Committee concludes that the situation in Georgia is not in conformity with Article 7§9 of the Charter on the ground that it has not been established that there is an initial medical check-up at recruitment and regular medical check-ups thereafter of young workers under 18 years of age employed in occupations specified by national laws and regulations.

Article 8 - Right of employed women to protection of maternity

Paragraph 5 - Prohibition of dangerous, unhealthy or arduous work

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the information submitted by Georgia in response to the conclusion that it had not been established that there are adequate regulations on dangerous, unhealthy or arduous work in respect of pregnant employees, employees who have recently given birth or who are nursing their infants (Conclusions 2015).

Under Article 8§5, the law must ensure a high level of protection against all known hazards to the health and safety of employees who are pregnant, have recently given birth, or are nursing their infants (Conclusions 2003, Bulgaria): it must explicitly prohibit their employment in underground mining and prohibit, or strictly regulate, depending on the risks, their employment in activities which are unsuitable by reason of their dangerous, unhealthy, or arduous nature, such as those involving exposure to lead, benzene, ionizing radiation, high temperatures, vibration or viral agents. If the work is unsuitable to their condition, national law must make provision for their re-assignment, with no loss of pay, and, if this is not possible, they should be entitled to paid leave. They should furthermore retain the right to return to their previous employment (Conclusions 2005, Lithuania).

The report confirms that the Labour Code prohibits the employment of pregnant or nursing women in dangerous, unhealthy or arduous work and that this also applies to officials and support staff in the public sector. However, no detailed reglementation has been adopted yet. In this respect, the report states that detailed provisions regarding the protection against all known hazards to the health and safety of women are included in a draft law on Health and Safety at work, which is under discussion, but has not been submitted yet to the Parliament for adoption.

The Committee takes note of this information and asks the next report to provide updated information on the adoption of the new law and any other relevant amendments to the Labour Code. Information should be provided in particular on whether the law explicitly prohibits the employment of women who are pregnant, have recently given birth or are nursing, in underground mining; whether it defines a list of activities unsuitable to the condition of such women and prohibits or strictly regulate their employment there, in particular by providing that, during the protected period, they should be reassigned to an adequate post with no loss of pay or be entitled to paid leave, and that, at the end of such period, they be entitled to return to their previous employment. In the meantime, the Committee finds that, during the reference period, there were no adequate regulations on dangerous, unhealthy and arduous work in respect of pregnant women, women who have recently given birth or who are nursing their infant.

Conclusion

The Committee concludes that the situation in Georgia is not in conformity with Article 8§5 of the Charter on the ground that, during the reference period, there were no adequate regulations on dangerous, unhealthy and arduous work in respect of pregnant women, women who have recently given birth or who are nursing their infant.

Article 17 - Right of children and young persons to social, legal and economic protection

Paragraph 1 - Assistance, education and training

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the information submitted by Georgia in response to the conclusion that it had not been established that prohibition of all forms of corporal punishment of children in the home, in schools and in institutions had a precise legislative basis.

Protection from ill-treatment and abuse

The Committee previously (2015) noted from the report that existing legislation provides for a blanket prohibition on all forms of corporal punishment, including directed against children and adequately protects children from any form of corporal punishment, and that Georgia therefore did not intend to amend the applicable legislation. The Committee considered, however, that in the absence of information regarding the specific legal basis for prohibition of all forms of corporal punishment in the home, in schools and in institutions, the situation was not in conformity with the Charter as it had not been established that such prohibition in the home, in schools and in institutions has a precise legislative basis.

The Committee now notes from the report that amendments were made in 2014-2016 to the Law of Georgia on 'elimination of domestic violence, protection and support to the victims'. The guidelines for identification of domestic violence cases against minors, reporting procedures of domestic violence have been defined. In September 2016 the Government adopted the child protection referral procedures by the Decree No 437. This Decree determines the violence forms against a child and the separation mechanism of a child from abuser. However, the Committee notes that there is no explicit prohibition of all forms of corporal punishment in the legisalation.

The Committee further notes from the country report on Georgia of the Global Initiative to End Corporal Punishment of Children that corporal punishment is not yet fully prohibited in the home. In 2014, the Civil Code was amended to prohibit "methods of upbringing of a minor by a parent that cause physical or psychological pain to a minor" (Article 1198). Battery or other violence which causes physical pain is punishable under the Criminal Code. However, these provisions do not explicitly prohibit all corporal punishment. There is no explicit prohibition of corporal punishment in formal early childhood care settings (nurseries, crèches, etc) or in formal day care for older children (day centres, after-school childcare, childminding, etc).

The Committee notes that in its Concluding observations on the fourth periodic report of Georgia (2016) the UN Committee of the Rights of the Child observed that while efforts were made by the State party to combat domestic violence, including amendments to the law on combating domestic violence and the new child protection referral mechanism adopted in 2016, the programme on the identification and prevention of violent and behavioural disorder, piloted from 2016 onwards, the Committee was strongly concerned by the prevalence of corporal punishment in the home as well as schools and institutions as well as by the lack of awareness-raising activities to combat that practice. It recommended that Georgia adopts legislation explicitly prohibiting all forms of corporal punishment of children in all settings, including educational institutions, alternative care institutions and the home.

The Committee recalls that under Article 17§1 prohibition of all forms of corporal punishment does not necessarily have to be in the criminal law, a prohibition in civil law may be sufficient. Neither is it necessary that the prohibition be laid down by legislation, case law

may suffice, if it emanated from a superior court, was unequivocal and binding on all lower courts, i.e. there was no possibility for lower courts to apply a right of correction or a right of reasonable chastisement. However, even if violence against the person was punished under the criminal law and provided for increased penalties where the victim was a child, this would not constitute a sufficient prohibition in law to comply with the Charter unless a state could demonstrate that such legislation was interpreted as prohibiting all forms of corporal punishment against children and effectively applied as such.

The Committee considers that the legislation does not comply with this approach. Therefore, the situation is not in conformity with the Charter.

Conclusion

The Committee concludes that the situation in Georgia is not in conformity with Article 17§1 of the Charter on the ground that not all forms of corporal punishment are prohibited in the home, in schools and in institutions.

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

Paragraph 1 - Assistance and information on migration

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31st October 2016 on conclusions of non-conformity for repeated lack of information in conclusions 2015.

The Committee takes note of the information submitted by Georgia in response to the conclusion that it had not been established that adequate measures were taken against misleading propaganda in relation to emigration and immigration.

The report indicates that Georgia adopted the Migration Strategy 2016-2020 which gives a special emphasis to the development of mechanisms facilitating return and reintegration of Georgian citizens, protection of the rights and integration of persons with refugee or humanitarian status, and asylum seekers in Georgia. Effective measures are being taken, according to the report, to improve the existing mechanism against illegal migration. Moreover, a unified Migration Analytical System is being developed in order to facilitate informed decision-making in migration management and the policy planning process. The report further indicates that the Law on Legal Status of Aliens and Stateless Persons provides, among other things, legal guarantees for aliens and stateless persons in compliance with internationally recognized human rights and freedoms; to protect universal human rights for aliens and stateless persons irrespective their race, language, sex, religion, etc.

The Committee notes that the report provides no information on measures undertaken by Georgia on combating misleading propaganda stereotypes, prejudice and misconceptions towards minorities.

However, the Committee notes from the ECRI's fifth report on Georgia, adopted on 8th December 2015, that the Public Defender, an independent institution elected by Parliament, may examine complaints from natural and legal persons, as well as investigate cases on his/her own initiative. The Public Defender can only make recommendations, following the examination of a case, to try to settle it by mutual agreement. The recommendation is not legally binding. If it is not accepted by the discriminating party, the Public Defender can bring a case to the relevant court and act as an interested third party. The ECRI noted that staffing levels of regional offices are not adequate, especially given the wide mandate of the Public Defender.

The ECRI's report also indicates that hate speech against ethnic and religious minorities continues to be a widespread problem in Georgia, including among political parties, and that xenophobic attitudes are present in the media. In this respect, the Committee requests the next report to provide information on the implementation of the Broadcasters' Code of Conduct, in particular its provisions requiring broadcasters to create public appellate bodies which can receive complaints from the public and take binding decisions in this field.

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). It stresses the importance of promoting responsible dissemination of information, and of deterring the promulgation of discriminatory views.

The Committee also notes from the ECRI report that the 2009-2014 National Concept for Tolerance and Civic Integration and its associated Action Plan were based on six strategic directions: rule of law, education and state language, media and access to information, political integration and civic participation, social and regional integration, and culture and preservation of identity. The ECRI noted that the Action Plan was largely implemented, in conjunction with positive legislative changes. Following the expiry of the National Concept on

Tolerance and Civic Integration 2009-2014 and its Action Plan, the authorities are in the process of drafting and adopting a new Civic Equality and Integration Strategy 2015-2020. However, the ECRI report further noted that historical ethnic minorities in Georgia continue to experience problems in the field of education and that marginalisation also persists with regard to social services in minority regions.

The Committee understands, therefore, from the ECRI report that no appropriate measures have been undertaken to tackle stereotypes, prejudice and misconceptions towards minorities. It recalls in this regard 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).

Conclusion

The Committee concludes that the situation in Georgia is not in conformity with Article 19§1 of the Charter on the ground that no appropriate measures have been taken to counter misleading propaganda relating to emigration and immigration.

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

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31st October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the information submitted by Georgia in response to the conclusion that it had not been established that appropriate co-operation between social services, public and private, in emigration and immigration countries was sufficiently promoted.

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 Committee notes from IOM that the number of immigrants in Georgia is relatively low. It notes however that a large number of Georgians now reside or work outside of its territory, and therefore may require assistance. 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.

In this regard, the report refers to a new Pilot project on temporary Labour Migration of Georgian workers to Poland and Estonia launched on 9 December 2015. The project is funded and implemented by the IOM in collaboration with the Ministry of Labour, Health and Social Affairs. The objective of the project is to develop operational frameworks for facilitating worker mobility from Georgia to Poland and Estonia that promote effective job-matching, migrant skill development and protection of their labour and human rights. This objective is being achieved through three specific outcomes: 1) informing the Georgian Government and partners in Estonia and Poland about relevant regulative frameworks and economic needs for labour migration from Georgia; 2) facilitating labour migration from Georgia in a cooperative and comprehensive manner and in compliance with ethical recruitment standards and practices; and 3) improving future temporary and circular labour migration support schemes out of Georgia. The report points out that in this context, Georgia intends to develop interstate cooperation in the sphere of labour migration by means of bi- or multilateral agreements with other countries and *inter alia* with Austria, Romania and Greece.

In response to the Committee's request as to the implementation of the Mobility Partnership, the report indicates that Georgia adopted the Migration Strategy 2016-2020 aiming at facilitating return and reintegration of Georgian citizens, protection of the rights and integration of persons with refugee or humanitarian status, and asylum seekers in Georgia. In order to effectively address contemporary challenges and fulfill international obligations, effective measures are being taken to improve the existing system of fighting illegal migration.

The Committee 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 (Conclusions XV-1 (2000), Belgium). 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. Common situations in which 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 provides no information on practical co-operation or collaboration with other States' services. The Committee notes from IOM that "[d]ue to the underdeveloped regulatory framework and support mechanism, Georgian migrants use personal contacts and networking or resort to services of private recruitment agencies or acquaintances to find work abroad. The predominantly informal nature of employment increases their vulnerability to labour and human rights abuses". The Committee asks the next report to comment on this issue.

In light of the information available, the Committee considers the situation to be in conformity with the Charter.

Conclusion

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

Article 19 - Right of migrant workers and their families to protection and assistance
Paragraph 4 - Equality regarding employment, right to organise and accommodation

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31st October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the information submitted by Georgia in response to the conclusion that it had not been established that migrant workers lawfully resident in the country were treated not less favourably than nationals with regard to remuneration and working conditions, or accommodation.

Remuneration and other employment and working conditions

The report states that, pursuant to the Legal Status of Aliens and Stateless Persons Act, as amended in 2015, migrants in Georgia may carry out work activity in compliance with the law. In particular, they shall have the same rights, freedoms and obligations as citizens of Georgia. Migrants in Georgia shall be equal before the law irrespective of their origin, social and material status, race, nationality, sex, education, language, religion, political or other beliefs, field of activity, other conditions. Georgia shall guarantee the protection of the life, personal inviolability, rights and freedoms of a foreigner (migrant) on its own territory.

The report also states that the Labour Inspectorate is responsible for monitoring labour conditions of migrant workers and, where necessary, sanctioning companies in case of infringement. In order for the Labour Inspectorate to cooperate with other governmental bodies with a view to preventing forced labour/exploitation and human trafficking of migrant workers, the "Memorandum of Mutual Cooperation on Promotion of Detection of Cases of Trafficking in Human Beings" was signed between the Ministry of Labour, Health and Social Affairs of Georgia and Ministry of Internal Affairs of Georgia on August 13, 2015. The Committee asks the next report to provide information on the implementation of this memorandum.

The Committee notes that the information provided in the report does not permit it to assess the situation properly. It 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" (Conclusions VII (1981), United-Kingdom). The Committee considers that it has not been demonstrated that equal treatment is secured in practice between migrant workers and nationals with regard to remuneration and working conditions.

Accommodation

The Committee recalls that the undertaking of States under this sub-heading is to eliminate all legal and *de facto* discrimination concerning access to public and private housing (European Roma Rights Centre (ERRC) v. France, Complaint No. 51/2008, decision on the merits of 19 October 2009, §§111-113). There must be no legal or *de facto* restrictions on home–buying, access to subsidised housing or housing aids, such as loans or other allowances" (Conclusions IV (1975), Norway – Conclusions III (1973), Italy).

In its previous conclusions (Conclusions 2011 and 2015) the Committee asked for information proving the absence of discrimination in practice of migrant workers with regard to accommodation or on any possible measure taken to remedy cases of discrimination. As the report provides no information on this matter, the Committee reiterates its question and considers, in the meantime, that it has not been established that equal treatment is secured in practice between migrant workers and nationals with regard to accommodation.

The Committee recalls that the situation concerning other aspects covered by Article 19§4 will be examined in the framework of the regular reporting cycle (Conclusions 2019) and asks that relevant and updated information be provided in that context.

Conclusion

The Committee concludes that the situation in Georgia is not in conformity with Article 19§4 a and c of the Charter on the grounds that it has not been established that equal treatment is secured in practice between migrant workers and nationals with regard to remuneration and working conditions, and accommodation.

Article 19 - Right of migrant workers and their families to protection and assistance
Paragraph 6 - Family reunion

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31st October 2016 on conclusions of non-conformity for repeated lack of information in conclusions 2015.

The Committee takes note of the information submitted by Georgia in response to the conclusion that it had not been established that the State facilitated as far as possible the reunion of the families of foreign workers.

The Committee refers to its previous conclusions (Conclusions 2011 and 2015) as regards the persons who, pursuant to the Law on Legal Status of Aliens and Stateless Persons, can apply for family reunion in Georgia. The Committee asked for clarifications about the procedure and decision making process referred to in Article 17(10) of the abovementioned Law, in order to assess whether the granting of a residence permit on family reunion grounds was discretionary or not. It asked in particular: what bodies were authorised to assess whether the granting of a residence permit to a person would be advisable or not with regard to the safeguard of state security and/or public safety interests; what types of considerations such a decision could take into account; what was the procedure applied, once a decision on the advisability of granting a permit was taken, to decide whether a permit may be issued; what requirements, if any, applied as to health, means, accommodation, language skills, or time limits prior to eligibility for family reunion. The Committee also required information and statistical data concerning appeals relating to the granting of residence permits on family reunion grounds.

According to the report, a permanent residence permit is issued to a parent, child, or spouse of a Georgian national, as well as to an alien who has been living in Georgia on the basis of a temporary residence permit during the last six years (except as regards periods of study, medical treatment or work in diplomatic missions). A temporary residence permit for up to six years may be issued, according to the report, to the family member (spouse, parent or child) of an alien or stateless person for family reunion purposes.

In response to the Committee's question, the report indicates that, as regards family reunion, there are no additional requirements as to health, means, accommodation, language skills or time limits prior to eligibility for family reunion. However, this statement contradicts the information detailed in the report concerning the procedure for granting residence permits pursuant to the Government Ordinance No. 520 of 1 September 2014.

In fact, according to this Ordinance, the Public Service Development Agency of the Ministry of Justice (the Agency), which is in charge of processing the residence permits requests, may request a health certificate in cases where there is a spread of disease in another country, and where the nature, gravity and duration of the disease may pose a risk to the population of Georgia. In this respect, the report specifies that under the Law on Legal Status of Aliens and Stateless Persons, an alien may indeed be denied a residence permit if he/she has such infectious or other diseases as identified and listed by the Ministry of Labour, Health and Social Affairs. 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. These are the diseases requiring quarantine which are stipulated in the World Health Organisation's International Health Regulations of 1969, or other serious contagious or infectious diseases such as tuberculosis or syphilis. Very serious drug addiction or mental illness may justify refusal of family reunion, but only where the authorities establish, on a case-by-case basis, that the illness or condition constitutes a threat to public order or security. In the light thereof, the Committee asks the next report to clarify what are the diseases listed by the Ministry of Labour, Health and Social Affairs as an obstacle to the granting of a permit. It also requests information on how this

requirement is applied in practice, in the light of any available data concerning refusal of a family reunion permit, on grounds of health.

The report furthermore indicates that, in case of residence permit for family reunion, the ordinance explicitly requires evidence that the legal income of the family member already residing in Georgia is not less than double the amount of the minimum subsistence level for average consumers in Georgia. Evidence of the legal income of the person already residing in Georgia is also required when requesting a permanent residence permit for family reunion purposes, but no income threshold is specified in the Ordinance. The Agency may also request, at any stage of the administrative procedure, the submission of documents supporting individual facts and circumstances that are crucial for the decision to grant a permit. The Committee recalls that the level of means required by States Parties to bring in the family or certain family members should not be so restrictive as to prevent any family reunion, and social benefits shall not be excluded from the calculation of the income of a migrant worker who has applied for family reunion. It asks whether social benefits are included when assessing the income of the person requesting a permit for members of his/her family. It furthermore asks the next report to provide additional information concerning the number and rate of refusals of family reunion permits on grounds of insufficient income.

As regards the procedure for assessing a permit application, the Ordinance provides that a decision on the granting or renewal of a residence permit be issued within 30 days after all necessary documents have been submitted. If the Agency needs to consult other public authorities, it must do so within three days from the receipt of the application and the requested information must be transmitted to the Agency within five days from the request. Based on the information available, an authorised official of the Agency shall issue an individual administrative-legal act on granting or refusing a residence permit. The Agency shall issue a residence card to an alien who has obtained a residence permit. In case of refusal, the alien might re-apply on the same grounds not earlier than one month after the decision of refusal. The decisions may be appealed to a court, in accordance with the Law, within one month after the communication of the decision. While taking note of this information, the Committee considers that it does not reply its request of information on the criteria applied to assess the risks to state security or public safety interests in relation to the granting of a residence permit for family reunion. It furthermore does not reply its request for information on statistical data concerning refusals of family reunion permits and related appeals. The Committee accordingly reiterates its requests. It furthermore asks the next report to clarify whether the family members of a foreign worker have an independent right to stay for the whole length of their residence permit, even if the foreign worker’s permit should expire earlier.

In light of the information available and of the questions which remain outstanding, the Committee maintains that it has not been established that the State facilitates as far as possible the reunion of the families of foreign workers.

Conclusion

The Committee concludes that the situation in Georgia is not in conformity with Article 19§6 of the Charter on the ground that it has not been established that the State facilitates as far as possible the reunion of the families of foreign workers.

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

Paragraph 11 - Teaching language of host state

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31st October 2016 on conclusions of non-conformity for repeated lack of information in conclusions 2015.

The Committee takes note of the information submitted by Georgia in response to the conclusion that it had not been established that the State adequately promoted and facilitated the teaching of the national language to migrant workers and members of their families.

In its previous conclusion (Conclusions 2015), the Committee asked for information on programmes specifically aimed at teaching the national language to migrant workers and their families, in particular: on what basis foreign citizens had the right to instruction of the national language; whether any special or extracurricular classes, or other forms of assistance, were provided to the children of migrant workers to enable them to learn the language and participate fully in their education; what courses, if any, were available to adult migrants to assist their learning, and what were the costs associated with such classes.

In response to the Committee's questions, the report indicates that the Law on General Education was amended in 2015, so as to extend funding of general education in favour not only of Georgian citizens, but also to foreigners, stateless persons and refugees or other persons under international protection. Pursuant to the Minister Order No. 98/2 on "Approval of the Procedure of Validation of Georgian Educational Documents and Recognition of Foreign Education and Fees", a foreigner can enrol in a general education institution. The Education Quality Enhancement Centre (EQE) is in charge of the recognition of qualifications acquired abroad (see details in the report). On the basis of the assessment by the EQE of the person's certificates or of his/her competences, the person will be enrolled in a class corresponding to his/her age or lower. The Committee notes that, as regards higher education, the report clarifies that foreign bachelor students, during their first year of studies, can take a Georgian language preparation programme and get a certificate after completing the programme, before continuing their studies. It furthermore notes from the report that, as from 2015, a Georgian language programme exists for asylum seekers, refugees and persons under international protection under the age of 18 and is divided into two modules, one addressing children between 6 and 11 and the other addressing the age group from 11 to 18.

The Committee asks whether children of migrant workers, who arrive in Georgia without knowing the language, and are not refugees, asylum seekers etc., can also attend special Georgian language courses, free of charge, in order to rapidly integrate at school and in society with children of their age. The Committee asks the next report to provide all relevant information on such courses, if they exist.

As regards adults, the report states that, since 2016 (out of the reference period), Georgian language courses are available in the framework of vocational education. Furthermore, an official language teaching programme is implemented by the Zurab Zhvania School of Public Administration for any interested person and the courses, which are fully financed by the state, take place in 8 regional centres of the school, but also outside the centres and are carried out on three language levels.

The Committee asks the next report to provide further details on the language courses carried out within vocational education institutes and through the School of Public Administration. It asks in particular to confirm, in the light of any existing data on attendance by foreigners, that foreign persons can attend such courses free of charge.

Conclusion

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

Article 27 - Right of workers with family responsibilities to equal opportunity and treatment

Paragraph 1 - Participation in working life

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the information submitted by Georgia in response to the conclusion that it had not been established that:

- there are employment services providing vocational guidance, training and retraining of workers with family responsibilities;
- the legislation provides for facilitation of reconciliation of working and private life for persons with family responsibilities;
- workers on parental leave maintain their social security rights.

The Committee notes that the report submitted by Georgia contains no new information in response to these conclusions of non-conformity. In the absence of the requested information, the Committee reiterates its findings of non-conformity.

Conclusion

The Committee concludes that the situation in Georgia is not in conformity with Article 27§1 of the Charter on the grounds that:

- it has not been established that there are employment services providing vocational guidance, training and retraining of workers with family responsibilities;
- it has not been established that the legislation provides for facilitation of reconciliation of working and private life for persons with family responsibilities;
- it has not been established that workers on parental leave maintain their social security rights.

Article 27 - Right of workers with family responsibilities to equal opportunity and treatment

Paragraph 2 - Parental leave

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the information submitted by Georgia in response to the conclusion that it had not been established that fathers have a right to use a part of parental leave on an individual, non-transferable basis and that arrangements (i.e. benefits under social security or social assistance schemes) exist for remuneration of parental leave (after 183 days) or extra child care leave of absence.

The Committee notes from the report that the Law on the Public Service was amended (entry into force on 1 January 2017). The new law defines parental leave and its Article 64 (6) provides that only the parent actually taking care of an adopted child may enjoy the adoption leave provided for by paragraphs 1 and 4 of this Article. An officer shall be granted a leave of 550 calendar days, 90 calendar days of which are paid, provided the child's mother has not used the leave provided for by this article. The Committee asks whether this provision only concerns adopted children.

The report further states that drafting of the amendments are envisaged in order to ensure the parental (both parents) leave for the employees employed in the private sector. The Committee asks the next report to provide information in this respect.

The Committee considers that the report does not provide information on whether the fathers have an individual right to parental leave and whether there are arrangements for remuneration to cover the unpaid part of parental leave. Therefore, the Committee reiterates its previous findings of non-conformity.

It asks the next report to provide the following information:

- does Article 27 of the Labour Code cover both maternity and parental leaves (within 730 days) and if so, what is the proportion of parental leave?
- do fathers have an individual right to parental leave, at least some part of which would be non-transferable in both, public and private sectors?
- in view of the fact that parental leave (after 183 days) as well as extra child care leave of absence (Article 30 of the Labour Code) are unpaid, are there any arrangements for remuneration (e.g. benefits under social security or social assistance schemes) for parents who take them?

Conclusion

The Committee concludes that the situation in Georgia is not in conformity with Article 27§2 of the Charter on the grounds that:

- it has not been established that fathers have a right to use a part of parental leave on an individual, non-transferable basis;
- it has not been established that arrangements (i.e. benefits under social security or social assistance schemes) exist for remuneration of parental leave (after 183 days) or extra child care leave of absence.

January 2018

European Social Charter

European Committee of Social Rights

Conclusions 2017

HUNGARY

This text may be subject to editorial revision.

The following chapter concerns Hungary, which ratified the Charter on 20 April 2009. The deadline for submitting the 7th report was 31 October 2016 and Hungary submitted it on 27 February 2017.

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 "Health, social security and social protection":

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

Hungary has accepted all provisions from the above-mentioned group except Article 12§§2 to 4; Article 23 and Article 30.

The reference period was 1 January 2012 to 31 December 2015.

The conclusions relating to Hungary concern 14 situations and are as follows:

– 8 conclusions of conformity: Articles 3§1, 3§4, 11§2, 11§3, 13§2, 13§3, 13§4 and 14§2;

– 5 conclusions of non-conformity: Articles 3§2, 11§1, 12§1, 13§1 and 14§1.

In respect of the situation related to Article 3§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 Hungary under the Charter. The Committee requests the authorities to remedy this situation by providing the information in the next report.

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

Article 11§2

In accordance with the Act CXXII of 2015 on Primary Health Service, school health services are now part of the primary health service which is a mandatory responsibility of municipal governments.

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In addition, the report contains also information requested by the Committee in Conclusions 2015 in respect of its conclusions of non-conformity due to a repeated lack of information regarding the right of the family to social, legal and economic protection (Article 16).

The Committee examined this information and adopted a conclusion of non-conformity relating this Article.

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The next report will deal with the following provisions of the thematic group "Labour Rights":

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 21),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 22),

- the right to dignity at work (Article 26).
- the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28)
- the right to information and consultation in collective redundancy procedures (Article 29).

The report should also contain information requested by the Committee in Conclusions 2016 in respect of its conclusions of non-conformity due to a repeated lack of information:

- the right to vocational training – full use of facilities available (Article 10§5),
- the right of persons with disabilities to independence, social integration and participation in the life of the community – vocational training for persons with disabilities (Article 15§1),
- the right of persons with disabilities to independence, social integration and participation in the life of the community – employment of persons with disabilities (Article 15§2),
- the right of persons with disabilities to independence, social integration and participation in the life of the community – integration and participation of persons with disabilities in the life of the community (Article 15§3).

The deadline for submitting that report was 31 October 2017.

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Conclusions and reports are available at www.coe.int/socialcharter as well as in the HUDOC database.

CONCLUSIONS RELATING TO ARTICLES FROM THE THEMATIC GROUP

‘Health, social security and social protection”

Article 3 - Right to safe and healthy working conditions

Paragraph 1 - Health and safety and the working environment

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

General objective of the policy

The Committee previously noted that Hungary was in the process of adopting a national programme for occupational health and safety at work and had requested further information on this policy (Conclusions 2013). According to the report the government has drawn up a national programme on occupational health and safety – National Policy of Occupational Safety 2016-2022, but outside the reference period.

The National Occupational Safety and Health Policy sets out Hungary's occupational safety and health priorities for the period of 2016-2022 in line with the EU's current 2014-2020 strategy for health and safety at work and WHO Global Action Plan. The Committee requests the next report to provide information on the content and results of the strategy.

The Committee points out that new technology, organisational constraints and psychological demands favour the development of psychosocial factors of risk, leading to work-related stress, aggression, violence and harassment. It would also point out that, with regard to Article 3§1 of the Charter, it takes account of stress, aggression, violence and harassment at work when examining whether policies are regularly evaluated or reviewed in the light of emerging risks. The States parties have a duty to carry out activities in terms of research, knowledge and communication relating to psychosocial risks (Statement of Interpretation on Article 3§1 of the Charter, Conclusions 2013).

The report does not provide any information on this point. The Committee accordingly reiterates its request.

The report provides details of amendments made to the Act on Occupational Health and Safety Act XCIII of 1993, which included updating definitions, establishing new organisations and updating regulations in light of current best practice. The Committee also notes the introduction of several Decrees regulating health and safety at work during the reference period.

Organisation of occupational risk prevention

The Committee previously noted pursuant to the relevant provisions of the Act on Occupational Health and Safety Act XCIII of 1993, an Occupational Safety Committee (OHS), made up of representatives of employees' and employers' interest advocacy organisations and the Government, was established. Dialogue and discussion on health and safety at work issues also takes place at the sectoral level, through sectoral dialogue panels as well as the undertaking level through occupational safety committees.

As regards risk assessment the Committee notes that amendments to the Act on Occupational Health and Safety Act XCIII of 1993 inter alia, introduced a requirement for all employers to carry out a risk assessment prior to the commencement of any activity. It further notes that the Occupational Health and Safety Committee (OHSC) published methodological manuals for psycho-social risk assessments in 2013, and for general risk assessments in 2014.

EU Council Directive 2010/32/EU implementing the Framework Agreement on prevention from sharp injuries in the hospital and healthcare sector was transposed by Decree 51/2013 (VII. 15.) The decree contains detailed rules relating to risk assessment, risk management and risk prevention to be performed by the healthcare service provider, rules relating to training workers and providing them with information.

Improvement of occupational safety and health

The Committee noted previously (Conclusions 2013) that the labour Inspectorate carries out a number of national campaigns and controls and requested further information on these. The report provides information details of national inspections in such sectors as mining, agriculture, and on psycho social risk management, activities involving biological risks, risks of injuries infections in the course of providing healthcare services, construction. It also provides information on a campaign to implement the European Union campaign to prevent “slips and trips”.

Consultation with employers’ and workers’ organisations

Consultation takes place through the OSH Committee which has a classical tripartite composition. It is made up of representatives designated by the Government and the associations of employers and employees and operates according to its own regulations. The OSH, inter alia, evaluates legislation and draft legislation, provides information and carries out awareness raising activities. It participates in the creation, evaluation and supervision of annual executive plans

Consultation on safety and health issues also takes place at the sectorial and enterprise level.

The report provides details of meetings held by the OSH during the reference period.

Conclusion

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

Article 3 - Right to safe and healthy working conditions

Paragraph 2 - Safety and health regulations

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

Content of the regulations on health and safety at work

In its previous conclusions the Committee found that the the general scope of the national regulations on the occupational risks covered was in conformity with the Charter in so far as the great majority of the risks enumerated in the general introduction to Conclusions XIV-2 (1998) were covered.

The report provides details of amendments to the Act on Occupational Health and Safety Act XCIII of 1993 enacted during the reference period (see Conclusion on Article 3) as well as decrees relating, inter alia, to chemical safety, on the protection of workers exposed to asbestos related risks, the protection of workers exposed to vibration, minimum health and safety requirements for work with display screen equipment.

The Committee previously pointed out that under the terms of Article 3§2 of the Charter, regulations concerning health and safety at work must cover work-related stress, aggression and violence specific to work, and especially for workers under atypical working relationships (Statement of Interpretation on Article 3§2 of the Charter, Conclusions 2013). It requested information on this issue.

The report does not provide any information on this point. The Committee accordingly reiterates its request.

Levels of prevention and protection

The Committee considers the levels of prevention and protection that the legislation specifies for certain risks.

Establishment, alteration and upkeep of workplaces

The Committee previously considered that levels of prevention and protection in relation to the establishment, alteration and upkeep of workstations complied with Article 3§2 of the Charter (Conclusions 2013).

It requested information on the transposition of Directive 2009/104/EC of 16 September 2009 concerning the minimum safety and health requirements for the use of work equipment by workers at work and Directive 2008/46/EC of the European Parliament and of the Council of 23 April 2008 amending Directive 2004/40/EC on minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields). It also asked for more detailed information on the implementation, on the basis of mandatory workplace risk assessment, of preventive measures geared to the nature of risks, of information and training for workers, as well as of a schedule for compliance.

According to the report Directive 2009/104/EC of 16 September 2009 concerning the minimum safety and health requirements for the use of work equipment by workers at work was originally ensured by Decree 14/2004 (IV. 19.) FMM of the Ministry for Employment and Labour Affairs on the minimum level of safety and health requirements for work equipment but was repealed from 5 May 2016 (out of the reference period), and replaced by Decree 10/2016 (IV. 5.) NGM of the Ministry for National Economy on the minimum level of safety and health requirements for work equipment and its use.

Directive 2013/35/EU of the European Parliament and of the Council on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields) repealing Directive 2004/40/EC was published in the Official

Journal of the European Union on 29 June 2013. The deadline for transposing the requirements set out in the Directive into national law was 1 July 2016.

As regards risk assessment the Committee notes that amendments to the Act on Occupational Health and Safety Act XCIII of 1993 inter alia, introduced a requirement for all employers to carry out a risk assessment prior to the commencement of any activity.

Protection against hazardous substances and agents

The Committee asks the next report to provide details on the provisions relating to the protection of risks of exposure to benzene.

Protection of workers against asbestos

The Committee previously requested information on the measures adopted to incorporate Directive 2009/148/EC of the European Parliament and of the Council of 30 November 2009 on the protection of workers from the risks related to exposure to asbestos at work and Directive 2004/37/EC of the European Parliament and of the Council of 29 April 2004 on the protection of workers from the risks related to exposure to carcinogens or mutagens at work.

According to the report the provisions of the Decree of the Minister of Health No. 12/2006 are applicable to all activities performed in the scope of organised work, where employees are or may be exposed to risks deriving from asbestos or materials or products containing asbestos, or from activities performed with products containing asbestos. The employer must send written notification about the activities falling under the scope of the decree to the metropolitan and county government office, as well as the occupational safety and health authority, 15 days before work commences.

Further compliance with Directive 2009/148/EC is ensured by the Decree of the Minister of Health No. 12/2006 on the protection of workers exposed to asbestos-related risks, and by, inter alia, a Decree of the Minister of Health No. 26/2000 (IX.30.) on protection against occupational carcinogens and preventing harm caused by them, as well as by the Occupational Safety and Health Act XCIII of 1993.

The manufacturing, distribution and use of asbestos fibres and materials containing intentionally added asbestos fibers is prohibited. The use of materials containing asbestos fibers, which were already installed and/or in service before 1 January 2015 is still allowed until they are disposed of or reach the end of their useful life.

The Committee asks whether the authorities have considered drawing up an inventory of all contaminated buildings and materials. Bearing in mind the importance of this question in the light of the right to health of the population (Article 11), the Committee asks the next report to provide specific information on steps taken to this effect.

Protection of workers against ionising radiation

As regards protection of workers against ionising radiation the Committee previously found the situation to be in conformity with the Charter (Conclusions 2013).

The Committee seeks confirmation that workers are protected up to a level at least equivalent to that set in the Recommendations by the International Commission on Radiological Protection (ICRP Publication No. 103, 2007).

Personal scope of the regulations

The Committee examines the scope of legislation and regulations with regard to workers in atypical employment.

Temporary workers and other types of workers

The report states that health and safety legislation applies to all workers; temporary and fixed term included.

However the Committee notes that organised work is described as work performed within the framework of an employment relationship and does not include, inter alia, work in the household of a natural person employer within the framework of simplified employment, public employment, government service, judges' service relationship, judicial staff's service relationship, prosecution service relationship, work at vocational training institutes by students during the fulfilment of vocational training requirements in, work performed as convict or other detainee,

It recalls that it previously found that the situation not to be in conformity with Article 3§2 of the Charter on the grounds that domestic workers and self employed persons were not covered by occupational health and safety legislation. The Committee notes that there has been no change to this situation.

The Committee asks how the other categories of "workers" such as those in government service, judges etc. listed above are protected against occupational risks and hazards.

Consultation with employers' and workers' organisations

The Committee recalls that consultation takes place primarily through the Occupational Health and Safety Committee (OSHC) which is a tripartite body (see Article 3§1). The OSHC inter alia issues recommendations on health and safety and is consulted on draft legislation.

Conclusion

The Committee concludes that the situation in Hungary is not in conformity with Article 3§2 of the Charter on the ground that self-employed and domestic workers as well as other categories of workers are not protected by occupational health and safety regulations.

Article 3 - Right to safe and healthy working conditions

Paragraph 3 - Enforcement of safety and health regulations

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

Accidents at work and occupational diseases

According to the report the number of accidents at work resulting in the loss of earning capacity for more than 3 days or in death from the total number of accidents at work reported to the Department for Labour Inspectorate and to the National Office of Mining and Geology (according to ESAW methodology) were in 2012 17 129 (65 fatal) in 2013 17 236 (55 fatal) and in 2014 19 572 (81 fatal) (this is the data supplied to EUROSTAT).

Data from the occupational health and safety authority (which is compiled based on information submitted by employers) indicated that the number of accidents at work in 2012, 2013 and 2014 was 17 025, 17 222 and 19 661 respectively. The number of fatal accidents during the same period was 62, 75, and 78 respectively.

This indicates a downward trend compared to previous reference period.

Data from EUROSTAT indicates that the number of fatal accidents for 2012, 2013 and 2014, was 65, 55 and 81 respectively, this corresponds to an incidence rate per 100 000 workers of 2.03, 1.75 and 2.86 (the UE-28 average being 2.42, 2.26, and 2.32).

EUROSTAT data also indicates that the standardised rate of incidence of non fatal accidents at work per 100 000 workers was 534.44 in 2012 and 549.03 in 2014 well below the EU-28 average.

The number of occupational diseases in 2012, 2013 and 2014 was 120, 168 and 191 respectively, the number of fatal diseases was 5, 0 and 8 respectively and the number of occupational diseases per 10 000 employees was 0.4, 0.6 and 0.7 respectively. The Committee notes that the rate of occupational diseases has increased during the reference period.

The Committee asks that the next report provide information on the concept of occupational diseases, mechanisms for recognizing, reviewing and revising of occupational diseases (or the list of occupational diseases , the incidence rate and the number of recognised and reported occupational diseases during the reference period, broken down by sector of activity and year), including cases of fatal occupational diseases and the measures taken and/or envisaged to counter insufficiency in the recognition and declaration of cases of occupational diseases, the most frequent occupational diseases during the reference period, as well as the preventative measures taken or envisaged. It reserves in the meantime its position on these issues.

Activities of the Labour Inspectorate

The Committee previously noted as a result of the reorganisation of metropolitan/county government offices, regional occupational safety inspectorates were transferred from the National Occupation Safety and Labour Inspectorate (OMMF) now the “Occupational Safety and Health and Labour Inspections Directorate" (NMH-MMI) structure to the organisation of metropolitan/county government offices as of 1 January 2011. According to the report this led to the establishment of 20 inspectorates as opposed to 7 regional inspectorates.

The Committee notes from the information supplied in the report that the average number of inspectors decreased further during the reference period. It noted previously that over the last reference period the average number of inspectors in 2011 was 123.5. In 2014 it was 103.25.

However the Committee notes that the number of inspections carried out and employers inspected has remained relatively stable; in 2012 30 795 visits concerning 16 761 employers in 2014 31 658 inspections covering 16 941 employers.

The Committee notes from ILO that the organization of inspections may be based on either a nationwide inspection directive which is prepared by the head of the labour authority (typically the deputy director of NMH-MMI) and published in the official gazette of the Ministry of National Economy every year or on a targeted annual inspection plan which is created by the leader of the NMH-MMI and further specifies the inspection requirements and targets. Alternatively inspections may be based on casual inspection orders which may be ordered by the head of the labour authority in cases deemed to need a national or regional labour inspection response. Such inspections might target specific employers, sectors or labour law topics. Inspection may also result from inspection plans of the labour inspection units, complaints or information from other authorities.

The Committee notes that under Article 3§3 of the Charter States Parties must implement measures to focus labour inspections on small and medium sized enterprises (Statement of Interpretation on Article 3§3 of the Charter, Conclusions 2013.

The report does not provide any information on this point. The Committee accordingly reiterates its request.

In cases of violations of health and safety rules, labour inspectors are entitled to recommend the imposition of fines to the competent head of the regional labour inspectorate. They are obliged to propose penalties for certain types of infringements. The heads of the regional labour inspectorates impose fines based on these recommendations. Inspectors can undertake follow-up visits to check if employers have fulfilled their obligations as indicated in the improvement notices. In cases where penalties imposed have not been paid by the employers, inspectors have the power to initiate the collection of overdue amounts. Since arrears are considered as public debts that can be collected as tax, the assistance of the tax authorities can be requested in such cases. In cases of less severe violations, inspectors issue compulsory improvement notices and call the employers' attention to the area of non-compliance and the requirement to rectify the violation.

Conclusion

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

Article 3 - Right to safe and healthy working conditions

Paragraph 4 - Occupational health services

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

The Committee has previously found the situation to be in conformity with the Charter (Conclusions XIX (2009), Conclusions 2013).

Under the Occupational Health and safety Act XCIII of 1993, employers are required to arrange, at their own expense, professional-level occupational health services for their employees in order to prevent work-related health risks. Employers can purchase occupational health services for their employees from a municipal health center or other organization offering occupational health services such as a private medical centre. Employers can also operate an occupational health unit themselves or in cooperation with other employers

According to the report in 2015, occupational health services were provided by 2 665 medical experts for 2 168 206 employees. 982 of the medical experts providing services were full time, while 1 683 medical experts performed these tasks part-time.

The Committee asks the next report to provide information on the development of access to occupational health services for temporary workers, interim workers self- employed workers and domestic workers as well as on measures taken to ensure that employers from small and medium sized enterprises comply with the legislation.

Conclusion

The Committee concludes that the situation in Hungary is in conformity with Article 3§4 of the Charter.

Article 11 - Right to protection of health

Paragraph 1 - Removal of the causes of ill-health

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

Measures to ensure the highest possible standard of health

The Committee notes from the WHO that life expectancy at birth in 2015 (average for both sexes) was 75.8 (compared to 74.45 in 2009). The life-expectancy rate is still below that of other European countries. For instance, life expectancy at birth in the EU-28 was estimated at 80.6 years in 2015.

The death rate (deaths/1000 population) fluctuated from 13 in 2012 to 12.8 in 2013 and 2014 and increased to 13.4 in 2015 (according to World Bank indicators). The Committee notes that the death rate has increased compared to the previous reference period (12.92/1000 population in 2011).

The report indicates that the diseases of the circulatory system and cancer were responsible for three quarters of total mortality and for over two thirds of early mortality before the age of 65 in Hungary in 2013. The report provides statistical data on the number of deaths by causes of death for men and women.

The Committee takes note from Eurostat that the infant mortality rate decreased slightly during the reference period: from 4.9 deaths per 1000 live births in 2012 to 4.2 in 2015 (compared to 5.3 per 1000 live births in 2010). The Committee notes that the rate stood above the average for other European countries (the EU-28 rate in 2015 was 3.6 per 1000).

As regards the maternal mortality rate, the Committee noted previously that in 2010 the rate reached 15.5 deaths per 100 000 live births, showing no improvement since the last reference period and asked the next report to indicate if any measures are being taken to improve the situation in this field (Conclusions 2013). The Committee notes from the World Bank indicators that the maternal mortality rate increased since the previous reference period. It stood at 16 deaths per 100 000 live births during 2011-2014 and even increased further to 17 deaths per 100 000 live births in 2015. The report mentions some measures taken in the field of prenatal care and positive conscious family planning. Through the Decree of the Minister of Human Capacities No. 26/2014 on Prenatal Care, which entered into force in 2014, prenatal care represents a complex service performed as a cooperation among the district nurse, the GP, the obstetrician and gynaecologist, the midwife if chosen by the pregnant woman (which is a new measure) and the pregnant woman. A midwife may provide prenatal care only in the case of low-risk pregnancy (diagnosed by the specialist for obstetrics and gynaecology). The Committee asks to be informed on the implementation of these measures in practice and on their impact on reducing the maternal mortality rate in the next report.

While taking note of the measures taken during the reference period, of the still comparatively low life expectancy and in particular of the high maternal mortality rate, the Committee considers that the measures taken to reduce maternal mortality have been insufficient, and reiterates its previous finding of non-conformity.

Access to health care

The report provides a detailed description of the legal regulations on healthcare which were subject to changes during the reference period. Among the measures taken during the reference period the report lists some oncological developments, the prohibition of smoking in closed areas, cervix screening to be performed by district nurses, the vaccination of girls between 12 and 13 years of age against Human papilloma virus, large intestine screening undertaken in 3 counties.

The Committee asks to be kept informed on the implementation of the healthcare reforms mentioned in the report, on how these are meeting the health needs of the population, their impact on health care costs, and whether the outcome of the reforms are translating into decreasing rates of avoidable mortality.

The Committee notes from the OECD data that health spending in Hungary (excluding investment expenditure in the health sector) was 7.4% of GDP in 2013, below the OECD average of 8.9%. The same source indicates that the share of out-of-pocket spending has increased slightly in Hungary over the last few years. In 2013, it accounted for 28% of total health spending, well above the OECD average of 19%. The Committee asks that the next report contain updated information on the share of out-of-pocket spending and on the measures taken to reduce the out-of-pocket payments. The Committee asks that the next report provide information on the share of out-of-pocket expenses attributable to informal payments, the frequency of informal payments and whether the informal payments represent a common practice in Hungary.

The Committee repeatedly asked for specific information on the average waiting time for care in hospitals, as well as for a first consultation in primary care (Conclusions 2013, Conclusions XIX-2 (2010), Conclusions XVII-2 (2005)). The report provides information on the management of waiting lists for out-patient care, in-patient care and transplants. The report mentions that as of 1 July 2012 an updated national waiting list register provides immediate and public information concerning the national status of waiting lists broken down by region, institute or waiting list (available at the website: www.oep.hu).

The report further indicates that, based on the first analysis after the introduction of the national waiting list registration system, a clear difference could be noted between the planned average waiting times calculated on the basis of the surgery dates set at the inclusion of patients in the waiting lists and the actual waiting times determined on the basis of performed surgeries. Actual waiting times were shorter than planned waiting times, and the decrease in waiting times – with the exception of knee replacements – practically reached the reduction rate set as the first phase (for knee and hip replacement waiting lists were reduced to 180 days and for cataract surgeries to 90 days). Moreover, for knee replacement surgeries there was a clear improvement in waiting time (from 684 days to 400 days). The Committee asks to be kept informed of the trend in the actual waiting times for the medical interventions which are on the compulsory waiting list.

The Committee notes from the OECD data that the obesity rates in Hungary are among the highest in OECD countries. The report indicates that the Act CIII of 2011 on Public Health Product Tax as of 1 September 2011 has introduced a tax on foods with high sugar, salt or caffeine content that are proven to carry health risks. The report adds that new mass catering norms have been introduced too. The Committee wishes to be kept informed on the implementation of these measures and whether other measures are being taken to address this problem (e.g. poor diet and insufficient physical activity).

In reply to a previous general question of the Committee on the availability of rehabilitation facilities for drug addicts, and the range of facilities and treatments, the report indicates that several out- and inpatient healthcare forms and treatment units are accessible all over the country to treat drug users. Treatment of drug users is a task shared by the healthcare system and social services, with the participation of the non-governmental organisations. As regards the treatment possibilities, there are no specialised treatment programs targeted at the users of specific drug types, but the programs are generally targeted at the users of all the drug types or generally at the addictions and those struggling with psychiatric problems. An exception applies to opioid substitution therapy which has been accessible to drug users long struggling with opiate dependence in Hungary since 1994. The drug users' care does not form a special category in either the social or the healthcare system, but in general it belongs to the group of addictology and psychiatric care. Preventive and awareness service can be provided in any type of care, and a great number of non-governmental organisations

provide this type of service. The report further provides information on the main objectives of the National Anti-drug Strategy and statistical data on the number of treatment units and the number of persons receiving treatment.

The Committee notes that, according to Eurostat, Hungary was the Member State with the largest share of population reporting depressive symptoms (10.5% compared to an EU average of 6.8% of the adult population (18 years and over) in the EU) in 2014. The Committee asks that the next report contain information on the availability of mental health care and treatment services, including information on the prevention of mental disorders and recovery measures.

The Committee asks that the next report contain information on dental care services and treatments (such as who is entitled to free dental treatment, the costs for the main treatments and the proportion of out-of-pocket paid by the patients).

Conclusion

The Committee concludes that the situation in Hungary is not in conformity with Article 11§1 of the Charter on the ground that measures taken to reduce the maternal mortality have been insufficient.

Article 11 - Right to protection of health

Paragraph 2 - Advisory and educational facilities

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

Education and awareness raising

In its previous conclusion, the Committee asked for updated information on the full range of activities carried out by the public health services or other bodies to promote good health and prevent diseases (Conclusions 2013). The report provides information on measures and health awareness campaigns carried out during the reference period on healthy nutrition and promotion of physical activities (especially in schools), multidisciplinary teenager ambulance, health awareness projects directed at preventing the consumption of tobacco, alcohol and drugs. The report adds that 61 health promotion offices (HPO) were established and started their activity in Hungary in 2013 and in 2014 in order to support the prevention capacity of the healthcare system. The report mentions that 20 HPOs are in most disadvantaged and 18 HPOs in disadvantaged townships. The HPOs coordinate the health promotion programs of the townships, function as a liaison between basic health care, out-patient specialty care (independent or integrated with in-patient care) and the entities implementing health promotion programs. The HPOs implemented altogether 2,865 community-based health education and health promotion programs, and accessed 87,215 persons with their physical activity programs in the project period.

The Committee previously asked whether providing health education at schools is a statutory obligation, how it is included in school curricula (as a separate subject or integrated into other subjects), and the content of health education (Conclusions 2013). The report lists the relevant regulations applicable to health education. It states that one of the priorities of the pedagogical programme is health education and environmental education. The health education programme is an integral part of the educational programme. The Committee recalls that health education in school shall cover the following subjects: prevention of smoking and alcohol abuse, sexual and reproductive education, in particular with regard to prevention of sexually transmitted diseases and AIDS, road safety and promotion of healthy eating habits. It asks confirmation in the next report that the above mentioned subjects are covered by the school curriculum.

Counselling and screening

As regards school health services, the Committee previously asked information on the proportion of pupils covered by health checks at school throughout the country (Conclusions 2013). The report indicates that in accordance with the Act CXXII of 2015 on Primary Health Service, school health services are part of the primary health service which is a mandatory responsibility of municipal governments. The kindergartens and schools ensure the regular attendance of the 3-18 age group and the persons participating in full-time upper-secondary school education above the age of 18 in preventive school health services organised within the framework of primary health service. The report states that in Hungary school health service covers the whole country and is extended to all students.

School health services are ensured by the school doctor and the district nurse, with the cooperation of a dentist and a dental assistant. The report lists the responsibilities of school doctors, such as the examination and follow-up of the health conditions of children and students, examination of children and prevention in case of communicable diseases, participation in school education of healthy lifestyle and execution of the national core curriculum, communication with parents and teachers. There are approximately 200 full-time school doctors working in school health service, and the rest are mainly general practitioners, pediatricians, i.e. they perform this task besides their regional medical work. The report further indicates that the regional nursing service covers the whole country. The nurses participate in school health education programmes and their organisation, perform

the nurse screening of students, check their personal hygiene (if public health need arises), organise school doctor examinations and school campaign vaccinations, and communicate with the parents, if necessary.

With regard to screening, the Committee noted previously that screening of breast, cervix, colon and prostate cancer were available (Conclusions 2009) as well as screening for the newborn, from 0-6 year old age group (Conclusions 2013). The current report indicates that screening tests can be made on a wide range of population (split by age groups), in connection with infectious diseases and for certain chronic and non-infectious diseases. The report provides information on the organised breast screening, cervical screening and large intestine screening. The report adds that the National Screening Register, managed by the Office of the Chief Medical Officer of State, is in charge of monitoring each of the three types of public health-focused organised screenings (breast, large intestine and cervical screening), and assessing their performance and quality. The Committee asks updated information in the next report.

Conclusion

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

Article 11 - Right to protection of health

Paragraph 3 - Prevention of diseases and accidents

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

Healthy environment

The Committee takes note of the detailed information provided in the report on the regulations and measures taken for the reduction of environmental risks, in particular in the field of air quality, water quality, soil and waste hygiene, climate change, ionising radiation, nuclear and other radioactive materials as well as healthy nutrition.

The Committee noted previously that waste management in Hungary is of particular importance since the country is not rich in raw materials and energy sources. It asked to be kept informed of policies in this area (Conclusions 2013). The report indicates that a new Act CLXXXV of 2012 on waste was adopted which has reviewed the previous Act XLIII of 2000 on waste management. Consequently, the relevant legislation on waste management in the healthcare sector (such as the Decree no. 1/2002 of the Minister of Health on the medical waste produced in health institutions) needs to be reviewed and amended. The report further mentions that the National Institute of Environmental Health prepared a professional paper in March 2012 entitled 'The impact of illegal incinerators on human health and environment', which represents an important awareness raising information paper until the amendments to legislation will be completed.

The Committee asks to be informed on the implementation of the new legislation and any new developments in these fields. It also asks updated information on the levels of air pollution, contamination of drinking water and food intoxication during the reference period.

Tobacco, alcohol and drugs

The Committee takes note from the report of the measures taken during the reference period to prevent the consumption of tobacco, alcohol and drugs.

The report outlines that smoking has been prohibited in enclosed public areas and community areas since 1 January 2012. The majority of tobacco products may only be commercialised in a packaging containing photos, illustrations and health protection warnings as of 1 January 2013. Tobacco products may only be sold in special controlled shops, national tobacco shops as of 1 July 2013. Through the ratification of the WHO Framework Convention on Tobacco Control, Hungary had established and operated a Focal Point for Tobacco Control since 2005. The report further indicates that in view of the non-smokers' protection, the labelling of the packaging unit and the collective packages shall not include any deceiving information, and the health protection warnings have been enlarged. Moreover, the distance selling of tobacco products has been prohibited. The report mentions the case study with WHO support on the impact assessment of the amendment of the act on the protection of non-smokers, under the title 'Tobacco Smoke-free Hungary' carried out by the Focal Point for Tobacco Control of the National Institute for Health Promotion. The Committee notes from the WHO Report on the global tobacco epidemic, 2017 country profile that smoking is not permitted in most of the public places which are by law smoke free environments, with the exception of public transport. The Committee recalls that smoking in public places, including transport, must be banned. It asks that the next report provide information on the measures taken in this sense.

With regard to alcohol, the report indicates that according to the data base of WHO HFA (World Health Organisation – Health for All) the consumption of clean alcohol was 10.88 liters per capita in 2013, so that Hungary was ranked on the 8th place among the EU Member States. The report mentions some local programmes for the prevention of drug and alcohol consumption. It further mentions that on behalf of Hungary, the National Centre for Addictology in the National Institute for Health Promotion takes part in the international

project RARHA (Joint Action for Reducing Alcohol Related Harm). Its main target is to reduce alcohol-related harms, in conformity with the EU strategy. The Committee asks to be informed of the impact of such programs/projects on the consumption of alcohol and reduction of its harmful effects on health. The Committee reiterates its request to receive updated information on legislation in respect of the sale of alcohol.

The Committee takes note from the report of the main objectives of the National Anti-drug Strategy 2013-2020. It notes from the Country Drug Report 2017 of the European Monitoring Centre for Drugs and Drugs Addiction (EMCDDA) that the Strategy addresses three areas of intervention: (i) health development and drug prevention; (ii) treatment, care and recovery; and (iii) supply reduction. The strategy outlines indicators for monitoring its implementation and the organisations responsible for collecting information. The same source indicates that, in Hungary, cannabis is the most commonly used illicit substance among the general population and its use is concentrated among young adults aged 18-34 years. The most recent data point to a decrease in last-year cannabis use among young adults. Against this background, use of MDMA/ecstasy, cocaine and amphetamines increased in 2007-2015. The Committee asks that the next report provide information on the implementation of the Strategy and its impact on preventing/reducing the consumption of drugs.

The Committee wishes to receive updated information in the next report on measures taken to reduce/prevent the consumption of tobacco, alcohol and drugs and trends in such consumption.

Immunisation and epidemiological monitoring

The report indicates that compulsory vaccinations linked to age for infants and children born after 30 June 2014 now provide protection against 11 communicable diseases (invasive diseases caused by tuberculosis, diphtheria, pertussis, tetanus, poliomyelitis anterior acuta, morbilli, rubella, mumps, Haemophilus influenzae B and pneumococcus, hepatitis B). As part of the complex cervical cancer preventive programme, the free and voluntary vaccination against the Human Papillomavirus (HPV) was introduced in the 2014/2015 school year, which can be administered to girls over the age of 12 and studying in 7th grade in the given school year. The Committee takes note of the information in the report on the measures taken during the reference period with regard to HIV/AIDS prevention.

The Committee notes that the coverage rate for the 11 compulsory vaccinations during the reference period was very high, between 99.1% and 99.9%. The Committee asks to be kept informed on the types of vaccinations and the coverage rates.

Accidents

As regards accidents, the report indicates that injuries (accident and violence) are the most frequent causes of death among the 10-19-year-old persons. It further mentions that 132 children lost their lives due to some injury in Hungary in 2013. The most frequent types of fatal injuries are mis-swallowing and choking for the less than 5-year-old and traffic accidents for those above 5 years of age (Office of the Chief Medical Officer of State, 2015). The report indicates that mortality and injury due to traffic accidents decreased for both the 0-17 and 18-24-year-old age groups between 2006 and 2013.

The report further mentions some measures taken to prevent accidents such as the introduction of the chapter ‘Life and practice’ in the National Core Curriculum in 2012 which describes the elements of safety education by age groups, in particular the prevention of domestic and traffic accidents, hazard recognition and first aid; and the study made by the National Institute for Health Promotion in 2013 on ‘Interventions for the community-level prevention of injuries and accidents’ with the aim of formulating recommendations for accident prevention.

The Committee recalls that under Article 11§3, States Parties must take steps to prevent accidents. The main sorts of accidents covered are road accidents, domestic accidents, accidents at school, and accidents during leisure time. The Committee asks for information on the measures taken to prevent/reduce the number of these types of accidents as well as on trends in the number of accidents.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in Hungary is in conformity with Article 11§3 of the Charter.

Article 12 - Right to social security

Paragraph 1 - Existence of a social security system

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

In the case of **family** and **maternity benefits**, the Committee refers to its conclusions on, respectively, articles 16 and 8§1 (Conclusions 2015).

Risks covered, financing of benefits and personal coverage

The Committee refers to its previous conclusions (Conclusions 2013) for a description of the Hungarian social security system, and notes that it continues to cover all the traditional risks (medical care, sickness, unemployment, old age, work accidents/occupational diseases, family, maternity, invalidity and survivors). The system also continues to rest on collective funding: it is funded by contributions (employers, employees) and by the State budget. The report recalls that unemployment benefits are covered by a separate system (under the Employment Act of 1991, which was amended during the reference period), while the other benefits are provided through the mandatory social security schemes and state managed schemes of social services (see report for details on the relevant legislation and the amendments which occurred during the reference period).

The Committee previously noted that all gainfully employed persons (employees and self-employed), minors and beneficiaries of various benefits and allowances were entitled to **healthcare**, and that voluntary insurance was also available. Although the report does not provide updated information on the coverage in respect of the total population, the Committee notes from the OECD healthcare database that 95% of the population was covered in 2015. In response to the Committee's question, the report indicates that, in 2015, 62% of the total active population was covered in respect of **old age and invalidity** and that nearly 91% of the total active population is entitled to cash **unemployment** benefits, once they're registered as jobseekers. The report does not provide information on the personal coverage in respect of sickness cash benefits as well as in respect of work accidents and occupational diseases. The Committee recalls that, to be in conformity with Article 12§1 of the Charter, the social security system must cover a significant proportion of the active population as regards sickness benefits, maternity and unemployment benefits, pensions and employment injury and occupational disease benefits. The Committee accordingly asks that updated information on the rate of coverage (percentage of persons insured out of the total active population) for all these branches be systematically provided in each report concerning Article 12 of the Charter.

Adequacy of the benefits

According to Eurostat data, the median equivalised annual income was €4 556 in 2015, or €380 per month. The poverty level, defined as 50% of the median equivalised income, was €2 278 per year, or €190 per month. 40% of the median equivalised income corresponded to €152 monthly. In 2015, the minimum wage was €333 per month.

In its previous conclusion (Conclusions 2013), the Committee found that the minimum level of old-age benefits and jobseekers' aid was inadequate.

According to Missoc, the minimum amount of social insurance **old-age** pension (*Öregségi nyugdíj*) was HUF28,500 (€91) per month in 2015, provided that the beneficiary had an insurance period of at least 20 years. As this amount falls largely below the poverty threshold, even when defined as 40% of the median equivalised income, the Committee maintains its finding that the minimum level of old-age pensions is manifestly inadequate.

As regards **unemployment** benefits, the report indicates that the amount of the jobseeker's allowance corresponds to 60% of the contribution base (beneficiary's earlier average wage), but cannot be higher than 100% of the minimum wage. If the jobseeker's average wage cannot be determined, the amount of the allowance is calculated on the basis of 130% of the

national minimum wage. On this basis, the Committee notes that the jobseeker's allowance would amount to 60% of €433, i.e. €260, and considers this amount to be adequate. Jobseeker's aid is granted to unemployed persons who have exhausted their entitlement to jobseeker's assistance (after receiving it for at least 45 days) and will reach pensionable age within five years. Its amount corresponds to 40% of the minimum wage, i.e. €133. The Committee notes that this amount remains manifestly inadequate. Beneficiaries of jobseeker's allowance or aid can furthermore obtain the reimbursement of any justified costs, which arise from the use of interurban public transport (and, in some cases, also local transport) in connection with jobseeking. As regards the notion of "adequate job offer" and the conditions upon which unemployment benefits can be suspended, the Committee refers to its previous conclusions (Conclusions 2009, 2013). The Committee furthermore recalls that, to be in conformity with Article 12 of the Charter, unemployment benefits must be payable for a reasonable duration (Conclusions 2006, Malta). It notes in this respect that to be entitled to unemployment allowance, a person must have paid contributions for at least 360 days during the previous 3 years and that one day of jobseeker's allowance is paid for every 10 days of prior insurance, up to a maximum of 90 days of benefit. Accordingly, the duration of payment ranges from 36 to 90 days, a duration which is too short, at least for persons who have contributed for several years. The Committee asks whether the jobseeker's aid is also submitted to a maximum duration of payment.

A major reform of the benefits system for persons with disabilities took place as of 1 January 2012 (see details on legislation in the report). The report indicates that, under the new system, the previous invalidity pension, work accident invalidity pension, regular social allowance and temporary allowance were replaced by a new, unified sickness cash benefit in the framework of health insurance benefits. The Committee notes from the report that the minimum amounts of **invalidity** benefits, where the impairment is at least 70%, correspond to 50%-55% of the minimum wage, i.e. €167-€183 monthly. As these amounts fall between 40% and 50% of the median equivalised income, they could be adequate if added to other additional benefits. In this connection, the report refers, in response to the Committee's question, to the public health care provision, which is an allowance covering medical expenses; its amount consists of an individual budget depending on the monthly medical expenses (between HUF1000 and 12000, i.e. €3-38) and an hoc budget in case of acute illness (a one-time amount of HUF6000, i.e. €19, once a year). Public health care provision also covers free of charge use of medical devices and medical services. In the light of this information, the Committee considers that the situation is in conformity with the Charter. It notes however that, where the level of impairment is less than 70%, but the persons are not considered to be employable and their occupational rehabilitation is not recommended, the minimum level of benefit is only 30% to 45% of the minimum wage (€100-150), which falls below 40% of the median equivalised income and is therefore inadequate. The same finding of non conformity applies to the rehabilitation benefit, which is granted to persons with temporary incapacity to work and corresponds to 30%-40% of the minimum wage (€100-€133), depending on the level of impairment.

The report does not provide information on cash benefits granted in case of sickness, work accidents and occupational diseases. The Committee notes from Missoc that, in case of **sickness**, 70% of the wage is paid by the employer for up to 15 days a year, and that sickness cash benefits correspond to 50%-60% of the daily average gross earnings. On the basis of the minimum wage, in 2015 the minimum sickness benefits amounted therefore to €167, i.e. between 40% and 50% of the median equivalised income. The Committee refers to the information provided above on the additional benefits, namely the public health care provision, and considers the situation to be in conformity with the Charter. It asks nevertheless the next report to provide comprehensive and updated information on the minimum level of sickness benefits and any other additional benefits which can be added. It notes in this respect that the report mentions the municipal aid, which can be granted by local authorities to cover housing costs etc. However, the report explains that this aid is granted in life-threatening situations and at full discretion of the local authorities, and does

not therefore constitute a regular additional benefit relevant to Article 12 of the Charter. Although **work accidents and occupational diseases** are also covered by the healthcare scheme, like sickness benefits, the Committee notes from Missoc that in case of work-related injuries or diseases the benefits' level corresponds to 100% of the average income, and 90% in case of injury sustained during travel between home and work. On the basis of the minimum wage, the Committee considers the level to be adequate.

Conclusion

The Committee concludes that the situation in Hungary is not in conformity with Article 12§1 of the Charter on the grounds that:

- the minimum amount of old-age pensions is inadequate;
- the minimum amount of jobseeker's aid is inadequate;
- the maximum duration of payment of jobseeker's allowance is too short;
- the minimum amount of rehabilitation and invalidity benefits, in certain cases, is inadequate.

Article 13 - Right to social and medical assistance

Paragraph 1 - Adequate assistance for every person in need

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

Types of benefits and eligibility criteria

The Committee takes note of the classification of benefits under the scope of the Social Act. *Income replacement allowances* provide subsistence support for people with no alternative income (support for persons of active age, old-age allowance and nursing fee). *Compensation of expenses* provides support for people in need to cover their regular expenses (home maintenance support, debt management service, public healthcare provision). *Benefits relating to a crisis situation* are ad hoc allowances for the purpose of dealing with problems arising in crisis situations (settlement aid, municipal Government aid).

Persons entitled to an allowance for persons of active age may be granted two kinds of monetary allowance, namely the *employment substitution support* and *regular social allowance*. The employment substitution support is deemed to be an allowance for people of active working age who are available for employment. The beneficiary of this allowance is obliged to cooperate with the Governmental employment body.

In its Conclusions 2015 the Committee noted that while the benefit structure described in the reports appeared complex and rather fragmented, the various benefits taken together as a minimum income guarantee for persons in need were in their scope in principle compatible with Article 13§1. However, the Committee asked that the next report clarify whether persons in need who had income from employment below 90% of minimum old-age pension were entitled to employment substituting benefit. The Committee notes in this regard that the allowance for persons of active age is an allowance for persons in a disadvantaged position in the labour market. It is available, among others, to persons for whom the period of disbursement of unemployment benefit, job seeker's allowance, job seeker's support or entrepreneurial allowance has expired. It is also available for persons for whom, due to the pursuance of income-earning activity, the disbursement of job-seeking support has terminated. The Committee asks the next report to confirm that the persons who pursue an income-earning activity may still be granted the allowance for persons of active age, provided that they still satisfy the means-test (e.g. have income from income-earning activity below 90% of minimum old-age pension).

The Committee takes note of the amendments (and improvements) introduced during the reference period. It notes that the upper threshold for regular social allowance (which equals 90% of net public employment wages) has been moved, as of 1 January 2014, from HUF 44 508 to HUF 45 569. For families with a member entitled to employment substitution support, the amount of regular social allowance has been increased from HUF 21 708 to HUF 22 769 as of 1 January 2014. Furthermore, the upper threshold for regular social allowance (which equals 90% of net public employment wages) has been moved, as of 1 January 2015, from HUF 45 569 to HUF 46 662. For families with a member entitled to employment substitution support, the amount of regular social allowance has been increased from HUF 22 769 to HUF 23 862 as of 1 January 2015. The Committee notes that the allowance under the name 'regular social allowance' ceased to exist as of 1 March 2015.

The Committee also notes from MISSOC that benefit for persons in active age *(aktív korúak ellátása)* is provided to ensure a minimum standard of living for those persons of active age who are not employed. The benefit is financed from the central budget. There are two types of cash benefits: a benefit for people suffering from health problems or taking care of a child and are therefore unable to work *(egészségkárosodási és gyermekfelügyeleti támogatás)* and employment substituting benefit *(foglalkoztatást helyettesítő támogatás)* for people who are able to work. The amount of the former depends on the size, composition and income of the family, whereas the amount of the latter is fixed.

As regards old-age allowance, the Committee notes from MISSOC that *Időskorúak járadéka is* provided to ensure a minimum standard of living for persons in old-age. The benefit is financed from the central budget. The benefit amount is fixed in case the claimant and his/her spouse has no income at all. In case they have some income, this income is supplemented to the amount defined by law.

The Committee further notes from the report that old-age allowance is a kind of support granted to old-age persons with no livelihood supporting income. The eligibility for old-age allowance may be established for those who have reached the relevant retirement age-limit**.** The sum of old-age allowance for those without any income equals 95% of the minimum amount of the old-age pension in effect at any given time (i.e. HUF 27 075) if the applicant is single and is under the age of 75; 130% of the minimum amount of the old-age pension in effect at any given time (i.e. HUF 37 075) if the applicant is single and is above the age of 75. For those with an income, the amount of the allowance shall be defined by the difference between the above sum and the entitled person's monthly income.

As regards medical assistance, public health care is a contribution provided for socially disadvantaged persons to reduce their expenses in relation to the preservation and restoration of their health. The person holding the public health care card is entitled to receive certain services – as specified in separate legislation – covered by the social security scheme, free of charge. Persons entitled to public healthcare under subjective right are persons receiving central social allowance**.** The Committee further notes that the medicine allowance consists of the individual medicine allowance for supporting regular medical needs.

Eligibility for health care services can be established by the notary on the grounds of social deprivation, for a person in whose family the monthly income per capita does not exceed 120% of the minimum old-age pension (150% of the minimum old-age pension in case of a person living alone) and the family has no property or assets. An official certificate shall be issued by the notary for the verification of social deprivation. The certificate shall be valid for one year. The certificate can be issued again if the eligibility conditions are met.

Accoridng to the report, from among the social allowances available to persons who have no income and live alone, public health care is worth highlighting. It is a wage subsidising allowance provided with the aim to reduce the costs related to the preservation and restoration of health conditions. The said allowance is granted by district offices.

As regards other types of assistance, the Committee notes that as of 1 January 2014 the temporary allowance and the funeral allowance ceased to exist as an independent form of benefit, and were merged into municipal Government aid. As of 1 March 2015 the municipal Government aid ceased to exist. From the said date on, the allowance provided by local Governments pursuant to the Social Act bear the single name 'settlement aid'.

In its previous conclusion (Conclusions 2013) the Committee asked to specify the obligations of cooperation applying to the claimants of social assistance. It notes from MISSOC that the persons concerned are obliged to report to the Public Employment Service (PES) for registration and to cooperate with the PES. The entitlement to the benefit is terminated if the person is deleted from the registry of job-seekers due to his/her own fault.

The Committee further notes from the report in this regard that according to Section 35 (2) of the Social Act, any person eligible for employment substitution support shall request his or her registration as job-seeker at a governmental employment body, and shall cooperate with the Governmental employment body.

According to Section 36 (2) of the Social Act, eligibility for allowance for persons of active age shall be terminated for persons eligible for employment substitution allowance if they refuse the job offered through their cooperation with the Governmental employment body or unlawfully terminate their public employment, or their public employment was terminated with immediate effect by the employer; they have been deleted from the registry of job-

seeker, by the Governmental employment body, for reasons attributable to them; they do not apply for registration as job-seeker at the Governmental employment body, before the deadline set out in the decision concerning the establishment of allowance for persons of active age. The Committee asks whether in such cases the allowance is withdrawn in its entirety depriving the person concerned of his/her means of subsistence.

Level of benefits

To assess the level of social assistance during the reference period, the Committee takes note of the following information:

- Basic benefit: The Committee notes from MISSOC that employment substituting benefit *(foglalkoztatást helyettesítő támogatás)* equals 80% of the minimum old-age pension *(öregségi nyugdíj minimum)*, i.e. HUF22,800 (€ 72) per month in 2015. As regards the old-age allowance *(Időskorúak járadéka)*, it stood at 80% of the minimum old-age pension in case of an old-aged person with a spouse; 95% of the minimum old-age pension in case of one-person households below 75 years of age; 130% of the minimum old-age pension in case of one-person households above 75 years of age.The Committee further notes from the report that the average monthly amount of old-age allowance stood at HUF 27 362 (€ 86). The minimum old age pension stood at HUF 28 500. (€ 90)
- Additional benefits: the Committee takes note the statistics regarding the monthly average amounts of allowances, such as nursing fee, home maintenance support, support for debt discharging etc. It also notes that these were removed from the Social Act as of 1 March 2015. Local governments may provide support in the framework of the settlement aid. The Committee also takes note of the regulations governing debt management services to help with housing loan arrears, which were also removed from the Social Act as of March 2015. The Committee notes that local Governments are now responsible for settlement aid. It asks the next report to indicate whether settlement aid is provided to any person in need (who satisfies the condition) or the decision on its granting is left to the discretion of the local Government and therefore, is not guaranteed as a subjective right.
- The poverty level, defined as 50% of the Eurostat median equivalised income, was €2 278 per year, or €190 per month.

In its previous conclusion the Committee held that the level of social assistance paid to a single person without resources, including the elderly, was manifestly inadequate as it was not compatible with the poverty threshold. It notes from the report in this regard that the changes introduced to the benefits system in the past few years have been driven by the ambition that all persons available for employment should earn their living through work instead of benefits, since employment is the most important tool for breaking out of poverty. The Government aims to make the opportunity of employment available to everyone.

The Committee notes that the amount of social assistance that can be obtained by a single person without resources, including elderly persons, falls below the poverty threshold and therefore, is not adequate. The Committee reiterates it previous finding of non-conformity.

Right of appeal and legal aid

The Committee recalls that the right secured by Article 13§1 places an obligation on states "which they may be called on in court to honour". The review body might be an ordinary court or an administrative body, provided that it offers the following guarantees:

- it must be a body independent of the executive and of the parties. In deciding whether a body may be considered independent, the Committee looks at the manner of appointment of its members, the duration of their term of office and existing safeguards against outside pressures (rules governing removal of office, dismissal, instructions, qualifications required etc.);
- all unfavourable decisions concerning the granting and maintenance of assistance must be subject to appeal, including decisions to suspend or reduce assistance benefits, for example in the event of refusal by the person concerned to accept an offer of employment or training;
- the review body must have the power to judge the case on its merits, not merely on points of law. If this requirement concerning the scope of the appeal is not satisfied in the first instance, it must be satisfied at the subsequent level of review.

  In order to guarantee applicants the effective exercise of their right of appeal, legal aid must be provided.

In reply to its previous question, the Committee notes from the report as of 1 March 2015 the granting of allowances for persons of active age, which used to fall within the competence of notary, constitutes an authorised activity of the district office. An appeal may be lodged against the social administrative decisions made by the district office. It is the Government office in the capital or in the county that shall act, as an authority with competence to decide on an appeal, in administrative matters attributed, at first instance, to the district office, in accordance with the Social Act. [Government Decree 63/2006 (III. 27.) laying down detailed rules on the claiming, establishment and payment of social benefits in cash and in kind, Section 6/A, paragraph (2)] .

Pursuant to Act CXL of 2004 on the general rules of administrative proceedings and services (hereinafter referred to as Ket.) the authority making a decision at second instance may approve of, modify or annul the decision. Subsequent to the exhaustion of the right to appeal, judicial control may be proposed (Administrative and Labour Court). The Committee understands that in case of benefits granted by the district office (e.g. benefit for persons in active age and old-age allowance, nursing fee and medical assistance) the right of appeal is guaranteed under the Act CXL of 2004.

As regards additional benefits (see above) that may be granted by local Governments (e.g. the settlement aid) ,the Committee notes from the report that pursuant to Section 41 (4) of Act CLXXXIX of 2011 on local Governments in Hungary, the representative body may confer its jurisdiction and competence, with the exception of the ones specified in the Act, to the mayor, the relevant board, the panel of the municipal Government responsible for a specified part of the settlement, the notary or to its association. Decision-making on appeals lodged in connection with local Government-related issues falls within the competence of the representative body, if the decision at first instance was not made by the representative body. [Ket., Section 107, paragraph (1)] .

According to the report, eligibility conditions for allowances provided under the competence of the local Government are laid down in local Government decrees. Review of legality is exercised over the operation of local Governments by the county-based Government office. In this framework, the said Government office is authorised to assess whether the local Government regulations comply with the legislative requirements. It is exclusively the lawful nature of the local Government decision that may be examined by way of judicial proceedings. The Committee understands that for the benefits in question the review body

does not have the power to judge the case of its merits but only only on points of law. In this regard, the Committee refers to its above question under *additional benefits.*

Personal scope

The Committee recalls that, under Article 13§1, States are under the obligation to provide adequate medical and social assistance to all persons in need, both their own nationals as well as nationals of States Parties lawfully resident within their territory, on an equal footing. In addition, with reference to its Statement of Interpretation of Articles 13§1 and 13§4 (Conclusions 2013) regarding the scope of Articles 13§1 and 13§4 in terms of persons covered, the Committee considers that as regards emergency social and medical assistance, foreign nationals in an irregular situation in the territory of the State concerned are also covered under Article 13§1 , rather than under Article 13§4, which was previously its practice.

The Committee henceforth examines whether the States who have accepted Article 13§1 ensure the right to:

- adequate social and medical assistance for their own nationals and for nationals of other States Parties lawfully resident within their territory on an equal footing;
- emergency social and medical assistance to foreign nationals unlawfully present in their territory.

Nationals of States Parties lawfully resident in the territory

According to the report, the Social Act applies to persons living in Hungary – citizens, migrants and settled persons, stateless persons, persons recognised as refugees. The Committee notes that as regards the temporary allowance, the scope of the Social Act covers nationals of the States Parties, legally residing in the territory. As regards old-age allowance, the Act, as of January 2014, applies to third-country nationals who hold a single permit and are legally residing in the territory. With regard to allowances replacing the temporary support (namely the municipal Government aid and the funeral allowance) the scope of the Social Act covers, similar to that of the temporary support, nationals of States Parties lawfully residing in the territory. The Committee asks whether there is a length of residence requirement before foreign nationals concerned become eligible for benefits.

The Committee recalls that under Article 13§1, foreigners who are lawfully resident in the territory of a Contracting Party and lack adequate resources must enjoy an individual right to appropriate assistance on an equal footing with nationals, i.e. beyond emergency assistance. Furthermore, they cannot be repatriated on the sole ground that they are in need of assistance. Once the validity of the residence and/or work permit has expired, the Parties have no further obligation towards foreigners covered by the Charter, even if there are in a state of need. However, this does not mean that a country's authorities are authorised to withdraw a residence permit solely on the grounds that the person concerned is without resources and unable to provide for the needs of his family. The Committee asks whether the legislation and practice comply with these requirements.

Foreign nationals unlawfully present in the territory

The Committee recalls that persons in an irregular situation must have a legally recognised right to the satisfaction of basic human material need (food, clothing, shelter) in situations of emergency to cope with an urgent and serious state of need. It likewise is for the States to ensure that this right is made effective also in practice (European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, §187).

The Committee cannot accept the necessity of halting the provision of such basic emergency assistance as shelter, guaranteed under Article 13 as a subjective right, to individuals in a highly precarious situation. The Committee has considered that even within

the framework of the current migration policy, less onerous means, namely to provide for the necessary emergency assistance while maintaining the other restrictions with regard to the position of migrants in an irregular situation, remain available to the Government with regard to the emergency treatment provided to those individuals, who have overstayed their legal entitlement to remain in the country (Complaint No. 90/2013, Conference of European Churches (CEC) v. the Netherlands, decision on the merits of 1 July 2014, §123).

The Committee asks the next report to confirm that the legislation and practice comply with these requirements

Conclusion

The Committee concludes that the situation in Hungary is not in conformity with Article 13§1 of the Charter on the ground that the level of social assistance paid to a single person without resources, including elderly persons, is not adequate.

Article 13 - Right to social and medical assistance

Paragraph 2 - Non-discrimination in the exercise of social and political rights

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

The Committee asks whether the provisions enshrining the principle of equality and prohibiting discrimination in the exercise of political or social rights are interpreted in practice in such a way as to prevent discrimination on the basis of receipt of social or medical assistance.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Hungary is in conformity with Article 13§2 of the Charter.

Article 13 - Right to social and medical assistance

Paragraph 3 - Prevention, abolition or alleviation of need

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

According to the report, no substantial changes have been made to the social service system during the reporting period. Access to the necessary information and personal assistance to persons in need continue to be guaranteed.

The Committee further recalls that Article 13§3 concerns free of charge services offering advice and personal assistance specifically addressed to persons without adequate resources or at risk of becoming so. The social services covered by Article 13§3 must play a preventive, supportive and treatment role. This means offering advice and assistance to make those concerned fully aware of their entitlement to social and medical assistance and how they can exercise those rights. In assessing national situations under this provision the Committee specifically examines whether there are mechanisms to ensure that those in need may receive help and personal advice services free of charge and whether such services and institutions are adequately distributed on a geographical basis. The Committee asks the next report to provide updated information on how these requirements are met in legislation and practice.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Hungary is in conformity with Article 13§3 of the Charter.

Article 13 - Right to social and medical assistance

Paragraph 4 - Specific emergency assistance for non-residents

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

The Committee refers to its conclusion under Article 13§1 (personal scope) and recalls that Article 13§4 from now on will cover emergency social and medical assistance for nationals of States Parties lawfully present (but not resident) in the territory.

The Committee recalls that States Parties are required to provide non-resident foreigners, without resources, with emergency social and medical assistance. Such assistance must cover accommodation, food, clothing and emergency medical assistance, to cope with an urgent and serious state of need (without interpreting too narrowly the 'urgency' and 'seriousness' criteria). No condition of length of presence can be set on the right to emergency assistance (Complaint No 86/2012, European Federation of national organisations working with the Homeless (FEANSA) v. the Netherlands, decision on the merits of 2 July 2014, §171).

In reply to the Committee's question, the report states that with regard to the allowances defined in Section 7 (1) of the Social Act, the scope of the Act covers nationals of States Parties to the European Social Charter, who are legally residing in the territory. According to the Social Act, Section 7 (1), irrespective of its jurisdiction and competence, the municipal government must provide any person in need with municipal aid, food and accommodation, if the lack thereof would threaten the said person's life or physical health. Thus the municipal Government must provide municipal aid, food and accommodation to the nationals of States Parties. Registered residence is not required for the purpose of the provision of such services.

Conclusion

The Committee concludes that the situation in Hungary is in conformity with Article 13§4 of the Charter.

Article 14 - Right to benefit from social welfare services

Paragraph 1 - Promotion or provision of social services

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

Organisation of the social services

The Committee notes that the report does not provide any information on the overall organisation of social services and that such information was lastly provided too long ago. It accordingly asks that the next report provide an updated description of the organisation of social services and activities implemented by the social services, public or private institutions, or other types of organisations.

The Committee notes that the report provides detailed information on the reform of Act XXXI of 1997 on the Protection of children and Guardianship Administration (Child Protection Act) as of 1 January 2012, which aims at creating a more efficient functioning of the child welfare services, in particular as regards the warning system and the protection of the institution or person making a report.

The report points out the introduction, as from 1 January 2014, of a uniform legal employment relationship for foster parents, in view of reforming the system of professional child protection services. By legally recognizing as an employment relationship the role of foster parents, they are entitled to receive different kinds of benefits (basic, supplementary and additional allowances respectively 30%, 20% and 5% of the minimum wage in relation to the number of children cared). A number of other provisions regulate the criteria required to become a foster parent, prioritise the placement with foster parents of children under the age of twelve, and set up a legal institution, the child protection guardian, responsible to supervise the legal representation of children. The report also indicates that since 1 May 2011 the system of professional child protection services must provide for the care of unaccompanied minors (including migrants) and for this purpose two specific institutions were created. In order to ensure a proper level of professional care also to unaccompanied minors some regulations were modified and supplemented in Autumn 2015, establishing the temporary admission capacities for the placement of unaccompanied minors. This is a specific care service provided to unaccompanied minors who are not recognised as refugees, beneficiaries of subsidiary protection and beneficiaries of temporary protection and who are arriving for a shorter residence time.

The report indicates that as from January 2013, an amendment to Act III of 1993 on Social Administration and Social Services (hereinafter Social Act) introduced the supported housing (allowance) as a basic social service benefit with the aim to provide care for people with disabilities, psychiatric diseases or different kind of addictions by supporting them in their independent living.

The report indicates that all county local government institutions assets and tasks (from 1 January 2013), including health social services for people with disabilities, psychiatric diseases or different kind of addictions and child protection institutions, were transferred under the state ownership and competence. The Committee asks the next report to provide information on the impact of these reforms on users of social services.

The Committee further takes note from the report of the specific measures/flagship projects undertaken and completed, aiming to implement the legislation and improve social services (modernisation of social services, surveys on child and family welfare services, de-institutionalisation of disabled persons, establishment of innovative, integrated regional services to promote social inclusion , programme to reduces homelessness etc.).

Effective and equal access

The Committee recalls that social services must be guaranteed to all nationals of other States Parties who are lawfully resident or regularly working in the territory on an equal footing with nationals.

In its previous conclusion on this issue (Conclusions 2015) the Committee took note that persons who are subject to free movement rules, i.e. EU/EEA nationals, are eligible for the social benefits and services if they have a registered place of residence and have been exercising their right of residence for a period exceeding three months. Moreover, persons having a special status such as refugees and stateless persons are entitled to social benefits and services without regard to any length of residence and all foreigners having obtained a permanent residence permit in Hungary are fully eligible for social benefits.

However the Committee also noted that citizens of the countries having ratified the Revised European Social Charter are entitled to basic social services by virtue of their rightful residence in the country if there is a risk to life or physical integrity, i.e. nationals of other States Parties (non-EU/EEA) who are lawfully resident, but without having a permanent residence permit, are entitled to social services in the meaning of Article 14 only to a limited extent and only in emergency situations where life and physical integrity are at stake. The present report confirms this information. Recalling that lawfully resident nationals of all States Parties must be treated on an equal footing with nationals, the Committee concludes that the situation is not in conformity with Article 14§1 of the Charter, on this point.

Quality of services

In its previous conclusion (Conclusions 2013) the Committee asked information on the conditions for the application of the social administrative fine which was introduced since 2008 in view to ensuring the expected quality, that is defined by law, and protecting the rights of the clients of social services.

The report indicates that the body authorising the operation may impose a social administrative fine on the institutions providing social services without authorisation. In the case of service providers with an operating licence, an administrative contract will be concluded. The report also indicates annual aggregated data of social administrative fines in the period of reference.

In response to the Committee's request of information on the number of staff providing social services and its ratio to the number of persons using the services, the report provides detailed statistical data on social services, indicating type of care, number of people employed with specific qualification, either working on part-time or full-time basis. It also gives, during the reference period, the number and distribution of services (by service type, also in percentage), situation in aggregated distribution of social services and qualified social workers by region as of 31 December 2015, number of service users by service type.

The report does not provide however any answer as regards the regulations regarding the protection of personal data in the context of the use of social services. The Committee accordingly reserves its position on this point, reiterates its question and 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

The Committee concludes that the situation in Hungary is not in conformity with Article 14§1 of the Charter on the ground that equal access to social services is not guaranteed for lawfully resident nationals of all States Parties.

Article 14 - Right to benefit from social welfare services

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

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

The report indicates that as of 31 December 2015, pursuant to Sub-section (1) of Section 92/K., provided that the conditions prescribed by law are satisfied, any provider may provide social services if (the headquarters or site of) the social service provider is in the register of service providers. In this respect the Committee asks what are the criteria for registration of social services providers.

In its previous conclusion (Conclusions 2013) the Committee requested information on the funding of non-governmental social services providers. According to the report the financing logic changed with regard to certain social services in the reporting period. As of 2013, the normative funding was replaced by a funding distribution based on average wages in the case of professional social and child protection services. According to the report the non-state providers receive a higher amount of funding through the modification of financing. Nevertheless, every benefit related to a social services included in the statutory financing system and taking into account the geographical coverage of social services is regulated by the Act concerning the budget of the current year. In this respect the Committee asks how the system on the funding of non-governmental social services providers works in practice.

As regards the Committee's question on how the social consultation procedure operates in the case of social services, the report indicates that the participation of social services in the social consultation procedure is fulfilled on the basis of Act CXXXI of 2010 on the Participation of Civil Society in the Preparation of Legislation; the Minister responsible for preparing the legislation establishes strategic partnership agreements with the organisations that are ready for mutual co-operation and represent a wide social interest in preparing the regulation of given legislative areas. On the providers side, thus, for instance, non-profit organisations, recognised churches are also included in the process of direct negotiation. In this respect the Committee asks what kind of social services are provided by non-profit organisations.

In its previous conclusion (Conclusions 2013) the Committee also asked how the Government ensured that the services provided by non-state service providers were equally and efficiently available to everybody without discrimination on grounds of gender, ethnicity, religion, disability, age, sexual orientation and political opinion. In response, the report indicates that The Social Act imposes obligations on municipal and state actors. Nevertheless, the commitment of church and non-profit providers is on a voluntary basis, but it is compulsory to determine the professional content in the case of every institution providing social services irrespective of the type of provider so the obligations and responsibilities are the same in the case of both providers. Pursuant to Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunity the access is guaranteed, irrespective of race, gender, age, ethnic and religious belonging, disability, political views and sexual orientation. The requirement of equal treatment should be observed by the persons and institutions providing social and child welfare care, as well as child welfare services in the course of establishing their legal relationship and in their legal relationships, procedures and measures. In this respect the Committee asks what kind of preventive and reparative supervisory system is put in place, in order to control the quality of services and ensure the rights of the users as well as the respect of human dignity and basic freedoms.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Hungary is in conformity with Article 14§2 of the Charter.

CONCLUSIONS AU SUJET DE CONCLUSIONS DE NON-CONFORMITE EN RAISON D'UN MANQUE REPETE D'INFORMATIONS DANS LES CONCLUSIONS 2015

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

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31st October 2016 on conclusions of non-conformity for repeated lack of information in conclusions 2015.

The Committee takes note of the information submitted by Hungary in response to the conclusion that it had not been established that there is an adequate supply of housing for vulnerable families.

The Committee recalls that under 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 size considering the composition of the family in question, and include essential services (such as heating and electricity). Furthermore, the obligation to promote and provide housing extends to ensuring enjoyment of security of tenure, which is necessary to ensure the meaningful enjoyment of family life in a stable environment (*ERRC v. Greece*, Complaint No. 15/2003, decision on the merits of 8 December 2004, § 24).

The Committee notes from the report that Hungary adopted the following two strategies: The "National Social Inclusion Strategy" (NTFS) in 2011 (and updated in 2014) and the "Policy Strategy underpinning the management of living in slum-like environments" in 2015.

According to the report, one of the main aim of the the NTFS is to improve housing conditions. The Committee asks the next report to provide further information on the measures implemented and their impacts on the group of people concerned.

As to the "Policy Strategy underpinning the management of living in slum-like environments", the report indicates that it provides the framework for managing the housing problems of underdeveloped parts of settlements. The overall aim is to eliminate slums and to establish the basis for directions and contents of the policy applicable until 2020. The Committee requests the next report to provide information and statistics about the concrete measures undertaken under this Strategy and their results.

The Committee takes note of the efforts made by Hungary; However nothing in the report allows it to assess the impact of those strategies on the situation of the persons concerned, in particular, the number of social housing units built, rehabilitated or renovated, the number of vulnerable families moved into an adequate housing and, measures undertaken to accompany families in finding adequate housing. Consequently, the Committee considers that the the situation is not in conformity with Article 16 of the Charter on the ground that it has not been established that there is an adequate supply of housing for vulnerable families.

The Committee recalls that the situation concerning other aspects covered by Article 16 will be examined in the framework of the regular reporting cycle (Conclusions 2019) and asks that relevant and updated information be provided in that context.

Conclusion

The Committee concludes that the situation in Hungary is not in conformity with Article 16 of the Charter on the grounds that it has not been established that there is an adequate supply of housing for vulnerable families.

January 2018

European Social Charter

European Committee of Social Rights

Conclusions 2017

IRELAND

This text may be subject to editorial revision.

The following chapter concerns Ireland, which ratified the Charter on 4 November 2000. The deadline for submitting the 14th report was 31 October 2016 and Ireland submitted it on 21 December 2016. The Committee received on 13 April 2017 observations from the Irish Human Rights and Equality Commission on the application of Articles 3, 11, 12, 13, 14, 23 and 30.

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 "Health, social security and social protection":

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

Ireland has accepted all provisions from the above-mentioned group.

The reference period was 1 January 2012 to 31 December 2015.

The conclusions relating to Ireland concern 19 situations and are as follows:

– 5 conclusions of conformity: Articles 3§1, 11§2, 13§2, 13§3, 13§4.

– 13 conclusions of non-conformity: Articles 3§2, 3§3, 3§4, 11§1, 11§3, 12§1, 12§2, 12§3, 12§4, 13§1, 14§1, 14§2 and 30.

In respect of the other situation related to Article 23 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 Ireland under the Charter. The Committee requests the authorities to remedy this situation by providing the information in the next report.

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

Article 3§1

The online risk assessment tool, BeSMART, which supports and assists small business to deal with health and safety in their workplaces, was further developed in the period 2013-2015. It caters for more than 250 different business types. In 2015, the number of BeSMART users increased by 6,896 users to bring the total users to 30,278 by year end. In addition, the HSA launched two new modules for the high risk construction and agribusiness sectors.

Article 12§3

- The extension of voluntary social insurance coverage (as regards the contributory old-age state pensions and the maternity/paternity benefits), in 2014, to certain spouses and civil partners of people who are self-employed;
- The introduction in 2012 of a new Partial Capacity Benefit scheme, which allows people with disabilities who can work to avail of employment opportunities while continuing to receive an income support payment.

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The next report to be submitted by Ireland will be a simplified report dealing with the follow up given to decisions on the merits of collective complaints in which the Committee found a violation.

The report should also contain information requested by the Committee in Conclusions 2016 in respect of its conclusions of non-conformity due to a repeated lack of information:

- the right to work – freely undertaken work (Article 1§2);
- the right of persons with disabilities to independence, social integration and participation in the life of the community – integration and participation of persons with disabilities in the life of the community (Article 15§3).

The deadline for submitting that report was 31 October 2017. The report was registered on 30 October 2017. Conclusions on the Articles concerned will be published in January 2019.

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Conclusions and reports are available at www.coe.int/socialcharter as well as in the HUDOC database.

Article 3 - Right to safe and healthy working conditions

Paragraph 1 - Health and safety and the working environment

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

General objective of the policy

The Committee previously deferred its conclusion (Conclusions 2013) and requested information on how this provision of the Charter was applied. In reply, the report indicates that the Department of Jobs, Enterprise and Innovation has the role of formulating and developing occupational safety and health policy relating to and including reviewing legislative requirements and work environment developments on an ongoing basis. The administration, enforcement and promotion of occupational safety and health have been delegated to the Health and Safety Authority (HSA) established under the Safety, Health and Welfare at Work Act (1989). The HSA is responsible for proposing policy measures to the Minister for Jobs, Enterprise and Innovation. To help develop sound policies and good workplace practices the HSA works with various advisory committees and task forces which focus on specific occupations or hazards.

As regards national policy, the report indicates that the HSA prepares a national strategic plan every three years. The plan is implemented through annual programmes of work. The HSA aims to achieve a continued downward trend in work related deaths, injuries and ill-health and an increase in the safe use of chemicals.

The Committee notes from the OSHWiki, that the National Strategy of the HSA runs from 2013-2015. According to the HSA's Strategy Statement, the Strategy defines five priorities. One of them is to achieve a high standard of compliance with safety, health and welfare and chemical laws. The report states that the HSA's review of the implementation of its Strategy confirmed that one of its positive outcomes was a reduction in the rates of work-related deaths, injuries and ill health.

The report also indicates that the National Strategy of the HSA was adopted for 2016-2018 and details its priorities. The Committee notes that the Strategy was introduced outside the reference period, it accordingly invites the next report to provide updated information on its implementation.

The Committee points out that new technology, organisational constraints and psychological demands favour the development of psychosocial factors of risk, leading to work-related stress, aggression, violence and harassment. It also points out that, with regard to Article 3§1 of the Charter, the Committee takes account of stress, aggression, violence and harassment at work when examining whether policies are regularly evaluated or reviewed in light of emerging risks. The States parties have a duty to carry out activities in terms of research, knowledge and communication relating to psychosocial risks (Statement of Interpretation on Article 3§1 of the Charter, Conclusions 2013). The report indicates that, as part of the new 2016-2018 Strategy with its focus on health and wellbeing, the HSA provided advice on reducing exposure to work-related stress through a range of seminars arranged in conjunction with Mental Health Ireland. The Committee also notes from the HSA website, that in 2010, the European Social Partners signed guidelines to tackle third party violence and harassment at work. Moreover, there are available publications for guidance and download in relation to preventing violence at work (violence at work, Prevention of Violence in Healthcare). However, the Committee asks the next report to provide more information on this point.

The Committee notes that there is a national policy which is intended to develop and preserve a culture of prevention on the occupational health and safety field.

Organisation of occupational risk prevention

The report indicates that the online risk assessment tool, BeSMART, which supports and assists small business to deal with health and safety in their workplaces, was further developed in the period 2013-2015. It caters for more than 250 different business types. In 2015, the number of BeSMART users increased by 6896 users to bring the total users to 30 278 by year end. In addition, the HSA launched two new modules for the high risk construction and agribusiness sectors.

According to the OSHWiki, there are a number of OSH professional bodies: the Institute of Occupational Safety and Health, the National Irish Safety Organisation, which provides information and services to help improve safety in the workplace, including information, advisory and training services, and HSA. The Committee notes from the HSA website that it promotes education, training and research in the field of health and safety.

According to the report, in 2013, the HSA commenced a programme for the public sector. As a result of this programme, in 2014-2015, they completed 273 inspections and 50 investigations in the public sector. These inspections involved reviews of the health and safety management systems.

As regards specific sectors, the report indicates that the HSA completed its five-year Work-related vehicle safety programme in 2014 and will finalise a new three-year programme in 2016 following a 2015 review of the programme outcomes. The HSA provided guidance on topics such as load-securing for high risk loads, safe delivery from vehicles and preventing falls from vehicles. In 2015, 119 inspections were completed to check compliance with load-securing and a further 183 were completed in relation to driving to work.

The Committee considers that measures for occupational risk prevention, awareness-raising and assessment of work-related risks and information and training for workers are provided at national and undertaking levels. It further notes that the HSA is involved in the development of a health and safety culture among employers and employees and shares knowledge of occupational hazards and prevention acquired during inspection activities. The situation in Ireland is therefore in conformity with Article 3§1 of the Charter in this respect.

Improvement of occupational safety and health

The report states that the HSA focused particular attention on occupational health and safety initiatives regarding chemical, physical and biological agents. It provided significant levels of guidance and advice, including guidance on writing occupational hygiene reports, legionella in water towers, composting sites, tradesman awareness flyer on asbestos etc. This guidance was coupled with extensive engagement with relevant sectors through seminars, workshops and agreed actions.

The HSA also published information sheets and guidance documents on the manual handling of glazing sheets, Ergonomic Good Practice in the Irish Workplace. The report contains several references to the HSA website, which provides its all publications, including annual reports.

The Committee notes that there is a system aimed at improving occupational health and safety through research, development and training.

Consultation with employers' and workers' organisations

The report indicates that the HSA is responsible for proposing policy measures to the Minister for Jobs, Enterprise and Innovation. Such proposals are determined by the twelve members of the tripartite Board of the HSA, representing the social partners (government, employers and workers) and other interests concerned with safety and health in the workplace and chemical safety. The HSA engages in public consultation on the renewal of its three year strategic plan and consults widely with employers, employees and their

respective organisations on the development of its legislative programme. Moreover, to help develop sound policies and good workplace practices the HSA works with various advisory committees and task forces which focus on specific occupations or hazards.

The Committee notes from the website of the HSA that it consults with employers, employees and their respective organisations. According to Section 25 of the Safety, Health and Welfare at Work Act 2005, employees are permitted to select a safety representative to represent them on safety and health matters in consultations with their employer. A safety representative may consult with, and make representations to, the employer on safety, health and welfare matters relating to the employees at work. The employer must consider these consultations, and act on them if necessary.

The Committee notes that there is genuine co-operation between the authorities and the social partners, both at national and at company level.

Conclusion

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

Article 3 - Right to safe and healthy working conditions

Paragraph 2 - Safety and health regulations

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

Content of the regulations on health and safety at work

The Committee previously deferred its conclusion and requested information on how this provision of the Charter was applied. The report gives a list of the health and safety legislation (primary and secondary) adopted or amended during the reference period. These changes relate primarily to general application of the Safety, Health and Welfare at Work Regulations (S.I. 370 of 2016; S.I. 70 of 2016, etc.), chemical agents (S.I. 623 of 2015), electromagnetic fields (S.I. 337 of 2016),carcinogens (S.I. 662 of 2015), machinery (S.I. 621 of 2015), docs (S.I. 521 of 2015), control of major Accident Hazards Involving Dangerous Substances (S.I. 604 of 2016, S.I. 209 of 2015), pressure equipment (S.I. 288 of 2015, S.I. 81 of 2015, etc.), prevention of sharps injuries in the Healthcare Sector (S.I. 135 of 2014), biological agents (S.I. 572 of 2013), construction (S.I. 291 of 2013, S.I. 182 of 2013, etc.), and asbestos (S.I. 248 of 2011 and S.I. 589 of 2010).

The Committee takes note of Codes of Practice published by the Health and Safety Authority (HSA) and available on its website. The report indicates that some of the codes of practice were developed specifically for employers who have three or less employees.

The Committee points out that under the terms of Article 3§2 of the Charter, regulations concerning health and safety at work must cover work-related stress, aggression and violence specific to work, and especially for workers under atypical working relationships (Statement of Interpretation on Article 3§2 of the Charter, Conclusions 2013). The report does not provide any information on this point. The Committee accordingly reiterates its request. The Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Ireland is in conformity with Article 3§2 of the Charter.

Levels of prevention and protection

The Committee examines the levels of occupational prevention and protection provided for by the legislation and the regulations in relation to certain risks.

Establishment, alteration and upkeep of workplaces

The report does not contain any information on the levels of prevention and protection in relation to the establishment, alteration and upkeep of workplaces.

The Committee notes from HSA's website that EU Directive 2013/35/EU on the minimum health and safety requirements regarding the exposure of workers to the risks from electromagnetic fields was transposed into Irish law on 1st July 2016 by the Safety, Health and Welfare at Work (Electromagnetic Fields) Regulations 2016 (S.I. No. 337 of 2016) (outside the reference period).

In view of the lack of information in the report, the Committee is not in a position to examine whether the legislation and regulations in force satisfy the obligation under Article 3§2 of the Charter, which requires that levels of prevention and protection mandated by the legislation and regulations in relation to the establishment, alteration and upkeep of workplaces be in line with the level set by international reference standards. Therefore, the situation is not in conformity with the Charter. The Committee asks that the next report provide information on the transposition of Directive 2009/104/EC of 16 September 2009 concerning the minimum safety and health requirements for the use of work equipment by workers at work. It also asks for more detailed information on the implementation of preventive measures geared to the nature of risks, on the provision of information and training for workers, as well as on a schedule for compliance.

Protection against hazardous substances and agents

The Committee notes from the HSA's website, that the Chemical Act (Control of major Accident Hazards involving Dangerous Substance) Regulations 2015 (S.I. No. 209 of 2015) came into force on 1 June 2015. It transposes Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC. The Committee asks the next report to indicate the international or EU standards as regards the protection against hazardous substances and agents which the legislation and regulations issued and/or amended during the reference period are designed to incorporate

Protection of workers against asbestos

The report indicates that legislation is in place that prohibits the use, reuse, sale, supply, and further adaptation of materials containing asbestos fibres. As for the restriction conditions for asbestos fibres, the report states that the measures are listed in Annex XVII to Regulation (EC) No. 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), amended by Regulation (EC) No. 552/2009. The HSA is the lead Competent and Enforcement Authority for REACH in Ireland.

In addition, the report indicates that the Chemicals (Asbestos Articles) Regulations 2011 ("CAA") (S.I. No. 248 of 2011) specify how the HSA may issue a certificate to exempt an asbestos-containing article, or category of such articles, from the prohibition on the placing on the market of an asbestos-containing article provided for by Article 67 and Annex XVII of the EU REACH Regulation 1907/2006.

The Safety, Health and Welfare at Work (Exposure to Asbestos) Regulations, 2006 (S.I. No. 386 of 2006), amended by S.I. No. 589/2010 aim to protect the health and safety of all employees who may be exposed to dust from asbestos containing materials, during the course of their work activities. The regulations apply to all work activities and workplaces where there is a risk of people inhaling asbestos dust.

Moreover, the report indicates complementary guidance materials which have been disseminated by HSA in order to protect the workers from all aspects of asbestos exposure. The Committee notes from the Practical guidelines on Asbestos-containing Materials published in 2013 by HSA that the exposure limit value for all types of asbestos is 0.1 fibres/cm^3.

The Committee concludes that prevention and protection levels for asbestos are in conformity with Article 3§2 of the Charter. The Committee asks that the next report provide full, up-to-date information on changes in the legislation and regulations which occurred during the reference period.

Protection of workers against ionising radiation

The Committee previously concluded (Conclusions XVI-2 (2003)) that the levels of prevention and protection in relation to ionising radiation were satisfactory. The report does not provide any information on this point.

The Committee notes from NATLEX database of national labour, social security and related human rights legislation, that the Radiological Protection (Miscellaneous Provisions) Act 2014 (Act No. 20 of 2014) was adopted on 23 July 2014. This Act provides for the dissolution of the Radiological Protection Institute of Ireland and the transfer of all its functions, assets, liabilities and staff to the Environmental Protection Agency; gives effect to the Amendment to the Convention on the Physical Protection of Nuclear Material done at Vienna on 8 July 2005; amends the Radiological Protection Act 1991, the Environmental Protection Agency Act 1992 and certain other enactments; and provides for matters

connected therewith. The Committee asks the next report to provide updated information on relevant legislation and regulations, including confirmation that workers are protected up to a level at least equivalent to that set in the Recommendations (2007) by the International Commission on Radiological Protection (ICRP Publication No. 103, 2007).

Personal scope of the regulations

The Committee examines the personal scope of legislation and regulations with regard to workers in atypical employment.

Temporary workers

The Committee previously found (Conclusions 2009) that temporary and agency workers enjoyed the same level of protection of safety and health at work as workers on indefinite contracts. The report does not provide any specific information on temporary workers. The Committee asks the next report to provide full and updated information on this point.

Other types of workers

In its previous conclusion (Conclusions 2009), the Committee asked for updated information regarding whether self-employed workers, including home workers and domestic employees were covered by health and safety regulations. The report does not provide any information on this point.

The Committee notes from European Commission Staff Working document on "Ex-post evaluation of the European Union occupational safety and health Directives (REFIT evaluation)" (2017) that the national legislation also applies to domestic workers.

In addition, the Committee notes that Ireland ratified the ILO Convention No. 189 on Domestic Workers (2011) on 28 August 2014. According to the Workplace Relations Commission, legally employed workers have the same rights and protections as any other workers under Irish Law. The Committee asks the next report to provide updated information on the measures in place to ensure the occupational health and safety of self-employed and domestic workers.

Consultation with employers' and workers' organisations

The report indicates that all measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework are done in consultation with employers' and workers' organisations.

Conclusion

The Committee concludes that the situation in Ireland is not in conformity with Article 3§2 of the Charter on the ground that it has not been established that the levels of prevention and protection required by the legislation and regulations in relation to the establishment, alteration and upkeep of workplaces are in line with the level set by international reference standards.

Article 3 - Right to safe and healthy working conditions

Paragraph 3 - Enforcement of safety and health regulations

The Committee takes note of the information contained in the report submitted by Ireland. It also takes notes of the information contained in the comments of the Irish Human Rights and Equality Commission, transmitted on 13 April 2017.

Accidents at work and occupational diseases

The Committee previously deferred its conclusion (Conclusions 2013) and requested information on how this provision of the Charter was applied. The report indicates that the rate of non-fatal accidents increased from 6804 in 2012 to 7775 in 2015 and the rate of fatal injuries also increased only slightly during the reference period. Sectors of activity with a high number of fatal accidents are agriculture, forestry, fishing and construction. The report explains that as employment growth in Ireland has picked up, injury and illness rates have increased too: reported injuries had been steadily reducing between 2010 and 2013, but in 2014 the number of injuries reported to the Authority increased by 13%.

According to the Eurostat figures, the number of non-fatal accidents at work causing at least four calendar days of absence rose from 15 284 in 2012 to 18 115 in 2014. The standardised rate of incidence of non-fatal accidents at work per 100 000 workers also rose from 809.57 in 2012 to 1071.99 in 2014. The Committee notes that this rate is lower than the average rate in the EU-28 (1717.15 in 2012 and 1642.09 in 2014). The number of fatal accidents at work increased from 43 in 2012 to 47 in 2014. The standardised incidence rate of fatal accidents at work per 100 000 workers fell slightly from 3.41 in 2012 to 3.12 in 2014. The Committee nevertheless notes that the standardised rate of incidence of fatal accidents is higher than the average rate in the EU-28 (2.42 in 2012 and 2.32 in 2014).

The Committee finds that the report does not provide any relevant figures for the number of occupational diseases. It therefore considers that monitoring of occupational diseases was not satisfactory over the reference period. The Committee also notes from MISSOC that 56 occupational diseases are prescribed. The list of prescribed diseases is maintained by the Department of Social Protection. It asks that the next report provide information on the legal definition of occupational diseases; the mechanism for recognising, reviewing and revising of occupational diseases (or the list of occupational diseases); the incidence rate and the number of recognised and reported occupational diseases during the reference period (broken down by sector of activity and year), including cases of fatal occupational diseases, and the measures taken and/or envisaged to counter insufficiency in the declaration and recognition of cases of occupational diseases; the most frequent occupational diseases during the reference period, as well as the preventive measures taken or envisaged.

The Committee considers, on the basis of the provided information, that measures to reduce the number of fatal accidents are insufficient and holds, accordingly, that the situation is not in conformity with Article 3§3 on this point. It asks the next report to provide the most frequent causes of accidents at work and the preventive and enforcement activities undertaken to prevent them.

Activities of the Labour Inspectorate

The Committee notes that under Article 3§3 of the Charter, States Parties must implement measures to focus labour inspection on small and medium-sized enterprises (Statement of Interpretation on Article 3§3, Conclusions 2013). The Committee notes from European Commission Staff Working document (2017) on “Ex-post evaluation of the European Union occupational safety and health Directives (REFIT evaluation)” that the HSA provides a series of practical information and guidance notes in relation to small businesses. Also the BeSMART tool has been developed especially for SMEs and micro-enterprises. Moreover, a Safety Management Pack for Contractors Employing twenty or less workers (SMP 20) was

also developed and launched in order to assist small contractors in establishing and maintaining an effective safety management system.

The report states that the HSA implements a balanced workplace inspection and enforcement programme across all of its mandates over the period of the strategy. The great majority of inspections and investigations resulted in either verbal or written advice being issued, aimed at achieving voluntary compliance. Enforcement action, up to and including prosecution, was taken where this was necessary to achieve safe and healthy working conditions and the safe use of chemicals. The report adds that the HSA uses an electronic inspection management system to provide an integrated record of all inspections, enforcement actions, correspondence and reported incidents and customer contacts.

The report indicates that the number of workplace inspections and investigations decreased during the reference period from 13 835 in 2012 to 10 880 in 2015. The report explains that this is due to staff reductions and changes in the character of inspection activity, notably in the farm sector. Over 9500 inspections and investigations were carried out in 2015, including almost 3000 inspections in the agriculture sector (including forestry and fishing). The Committee nevertheless notes from the information provided by the Irish Human Rights and Equality Commission that rates of workplace health and safety inspections and investigations have fallen over the reference period, from 7.48 per 1000 workers in the economy in 2012 to 5.49 per 1000 workers in 2015 (a drop of over 25%).

In the construction sector the HSA responded to the economic recovery in that sector and the influx of returning and new workers by increasing its inspection rate and completing over 3000 inspections. In addition, HSA inspectors completed over 1000 investigations of fatal accidents, serious injuries and complaints on safety, health and chemicals. Across their inspection programme, the HSA provided written advice in over 4300 cases. Where inspectors found more serious breaches, they issued improvement notices (489 notices) and prohibition notices (488 notices). The HSA concluded 16 prosecutions in 2015, resulting in the imposition of fines totalling €541 000.

Moreover, the HSA completed 406 healthcare inspections and 70 investigations in the period 2014-2015. The majority of these inspections looked at healthcare safety issues, including violence and aggression in the healthcare sector, and safety with medical sharps. Twenty nine inspections were carried out in the healthcare sector as part of the EU campaign on slips, trips and falls in 2014, covering areas such as management, cleaning, housekeeping, pedestrian surfaces, entrances, stairs and footwear. In relation to occupational health issues, manual handling was also reviewed during 585 inspections across all work sectors in 2014.

The Committee notes that, according to figures published by ILOSTAT, the number of labour inspectors remains stable (58 in 2012 and 2013, and 57 in 2014 and 2015), the average number of labour inspectors per 10 000 employed persons was 0.3 during the reference period. The number of labour inspection visits to workplaces during the year increased slightly from 4689 in 2012 to 5,185 in 2015, and the average of labour inspection visits per inspector also increased during the reference period (from 80.8 in 2012 to 93 in 2015). The Committee requests the next report to explain why the numbers of workplace inspections which are provided in the report differ from those published by ILOSTAT. It also asks to be informed of the percentage of workers who are covered by inspection visits in each sector of activity.

The Committee asks the next report to indicate the proportion of workers that is covered by inspections and the percentage of companies which underwent a health and safety inspection during the reference period.

Conclusion

The Committee concludes that the situation in Ireland is not in conformity with Article 3§3 of the Charter on the grounds that measures taken to reduce the number of fatal accidents at work are insufficient.

Article 3 - Right to safe and healthy working conditions

Paragraph 4 - Occupational health services

The Committee takes note of the information contained in the report submitted by Ireland. It also takes notes of the information contained in the comments of the Irish Human Rights and Equality Commission, transmitted on 13 April 2017.

In its previous conclusion (Conclusions 2015) the Committee found that the situation was not in conformity with Article 3§4 of the Charter on the ground that there was no strategy to develop occupational health services for all workers.

The Committee recalls that when accepting Article 3§4 States undertook to give all workers in all branches of the economy and every undertaking access to occupational health services. These services may be run jointly by several undertakings. If occupational health services are not established by every undertaking the authorities must develop a strategy, in consultation with employers' and employees' organisations, for that purpose. The Committee will then assess whether sufficient progress has been made.

The report indicates that there is no statutory requirement in Ireland for employers to provide access to occupational health services but many employers now have the knowledge and tools to systematically manage health and safety in their workplaces. Larger organisations in both the public and private sectors may directly provide occupational health services for employees. These services are provided voluntarily and on a full or part time basis depending on the number of employees and the particular employment sector. The services provided may include rehabilitation, absence management and health promotion.

The report states that the preventive and advisory activities will be developed in light of the increased focus in the HSA's Strategy 2016-2018 on workplace and wellbeing, aimed at promoting the progressive development of occupational health services for all workers. The Committee notes that the Strategy was introduced outside the reference period, it accordingly asks the next report to provide updated information on its implementation. In the meantime, it reiterates its previous finding of non-conformity.

Conclusion

The Committee concludes that the situation in Ireland is not in conformity with Article 3§4 of the Charter on the ground that during the reference period there was no strategy to develop occupational health services for all workers.

Article 11 - Right to protection of health

Paragraph 1 - Removal of the causes of ill-health

The Committee takes note of the information contained in the report submitted by Ireland. It also takes notes of the information contained in the comments of the Irish Human Rights and Equality Commission, registered on 13 April 2017.

Measures to ensure the highest possible standard of health

The Committee notes from WHO that life expectancy at birth in 2015 (average for both sexes) was 81.4 (compared to 80.6 in 2010). According to Eurostat, life expectancy at birth in the EU-28 was estimated at 80.6 years in 2015.

The report indicates that three quarters of deaths in Ireland are due to three chronic disease areas: cancer, cardiovascular and respiratory diseases. Measures were taken by the Health Service Executive (HSE) to prioritise a number of chronic diseases such as COPD, asthma, heart failure and diabetes. A national policy framework for the prevention and management of chronic disease has been in place since 2008. The Committee requests updated information on the implementation of the measures taken to address the main causes of death.

The Committee notes from Eurostat that the infant mortality rate has slightly decreased during the reference period from 3.5 deaths per 1,000 live births in 2012 to 3.3 deaths per 1,000 live births in 2014 and 3.4 deaths per 1,000 live births in 2015. Maternal mortality remained stable during the reference period (8 per 100,000 live births in 2015). The Committee asks for updated figures in the next report on the death rate, as well as on infant and maternal mortality rates.

The report provides information on the national framework – '*Healthy Ireland, A Framework for Improved Health and Wellbeing 2013-2025'* and its action plans. The Committee asks to be kept informed on the outcomes and impact of the measures undertaken under this framework on the health and well-being of the population.

Access to health care

The Committee notes from OECD statistics that the total expenditure on health as a percentage of GDP amounted to 9.4% in 2015 (an increase on 2006 when such expenditure amounted to 7.5%), while it amounted to 10.1% in 2012 and 2014).

The Committee noted previously that the Irish health care system is a mix of both public and private institutions and funders. It is primarily tax financed. It also noted that the health care system has been subject to ongoing changes since the adoption in 2003 of the Health Service Reform Programme (Conclusions 2009). The Committee asks the next report to provide an updated description of the health care system.

As regards waiting times, the Committee noted previously that a common waiting list operated by public hospitals will apply to both public and private patients. Status on the common waiting list will be determined by need only. It also noted that the National Treatment Purchase Fund (NTPF) was established to purchase treatments, primarily in private hospitals for public patients who had been longest of surgical in patient waiting lists (Conclusions 2009). The report does not provide any information on this matter.

The Committee takes note of the comments submitted by the Irish Human Rights and Equality Commission stating that given the particular public – private mix in the Irish healthcare system, excessive delays in accessing medical care represent a significant problem. The Commission also provides data showing that for both outpatient and inpatient treatments, waiting times for patients in the public health care system have increased during the reference period. The Committee asks that the next report provide information on the measures taken to reduce the waiting times both for outpatient and inpatient treatments as

well as concrete figures on the average waiting times for both the public and private systems.

The Committee further takes note of the comments of the Irish Human Rights and Equality Commission stating that the most recent official data shows significant differences in mortality and illness between different socio–economic groups. Moreover, data show that the charges for prescribed medicines increased during the reference period (from Eur 0.50 to Eur 1.50); a recent study found that the introduction and the increase of the prescription charges were associated with decreases in the use of prescribed medicines. The Committee asks the next report to provide updated information on the proportion of out-of-pocket payments for health care.

The Committee notes from the report that levels of overweight and obesity have increased dramatically with 60% of adults and one in four children in Ireland either overweight or obese. It further notes that the programme *'A Healthy Weight for Ireland – Obesity Policy and Action Plan 2016-2025'* was launched in September 2016 (outside the reference period). The policy and action plan aim to reverse obesity trends, to prevent health complications and reduce the overall burden for individuals, families, the health system and society more widely and the economy. '*A Healthy Weight for Ireland*' recognises that there are socio-economic inequalities in the occurrence of obesity in Ireland with rates considerably higher in the most disadvantaged areas. Action will be taken by the Health Service Executive to develop community based health promotion programmes with special focus on disadvantaged areas. The Committee takes note of the range of actions planned to be undertaken to address the growing concerns about overweight and obesity. It requests that the next report contain updated information on the implementation of such measures and their outcomes.

With regard to mental health, the Committee takes note of the comments of the Irish Human Rights and Equality Commission concerning access to mental health services by women living in direct provision, the treatment of individuals under 18 years in adult facilities in practice, and the fact that the provision of mental health services is significantly below the level identified as necessary in the national strategy for mental health. The Committee asks that the next report contain information on the availability of mental health care and treatment services. This should include information on measures focued on ensuring both the prevention of and recovery from mental disorders.

Given the lack of information in the report, in particular as regards waiting times and the proportion of out-of-pocket payments for healthcare, the Committee considers that it has not been established that the right of access to healthcare is guaranteed in practice.

The Committee asks that the next report contain information on dental care services and treatments (such as who is entitled to free dental treatment, the costs for the main treatments and the proportion of out-of-pocket payments made by patients).

In its previous conclusion, the Committee asked whether legal gender recognition for transgender persons requires (in law or in practice) that they undergo sterilisation or any other invasive medical treatment which could impair their health or physical integrity (Conclusions 2013, General Introduction). The report does not provide any information on this point. The Committee takes note of the comments of the Irish Human Rights and Equality Commission alleging that health care for transgender persons is inadequate in terms of meeting their needs, reflecting complex processes, inadequate provision of services, and inadequate levels of knowledge and awareness among health professionals. The Committee reiterates its question.

Conclusion

The Committee concludes that the situation in Ireland is not in conformity with Article 11§1 of the Charter on the ground that it has not been established that the right of access to healthcare is guaranteed in practice.

Article 11 - Right to protection of health

Paragraph 2 - Advisory and educational facilities

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

Education and awareness raising

The report states that the programme '*Healthy Ireland, A Framework for Improved Health and Wellbeing 2013-2025'*, will contribute to raising awareness and promoting healthy lifestyle choices among the public by understanding and acknowledging the broad causes of ill-health and by devising targeted, intersectoral public information strategies and actions to address those causes.

The report further indicates that one of the measures taken through "Healthy Ireland" is a commitment to fully implement Social Personal and Health Education (SPHE) in primary, post-primary and Youthreach settings, including implementation of the Physical Education programme and the Active Schools Flag initiative. Other measures concern the commitment to support, link with and further improve existing partnerships, strategies and initiatives that aim to improve the capacity of parents, carers and families to support healthier choices for their children and themselves. The Committee asks to be kept informed on the implementation of such measures and their impact on the health and well-being of pupils and youth.

The Committee notes that a consultation was conducted with children and young people to ensure their input of informed '*A Healthy Weight for Ireland, Obesity Policy and Action Plan, 2016-2025*'. Actions proposed in *A Healthy Weight for Ireland* directly address the issues raised in the consultations with children and young people on what helps them and what challenges they face in having a healthy lifestyle, including those on the importance of healthy food, physical activity, the consequences of smoking, etc.

The Committee takes note of the information provided in the report on the awareness raising campaigns on topics such as smoking, mental health, sexual health, breastfeeding, healthy food, physical activity, cancer and diabetic screens.

Counselling and screening

The Committee previously took note of the screening programmes available for children at school and for pregnant women, as well as for certain types of cancers (Conclusions 2009). It asked for updated information on this point (Conclusions 2013).

The report does not provide any information on this point. The Committee asks for updated information on the types of consultation and screening available for pregnant women and children throughout the country, in urban as well as rural areas.

The Committee recalls that pursuant to this provision there should be screening, preferably systematic, for the diseases which constitute the principal cause of death (Conclusions 2005, Republic of Moldova). Preventive screening must play an effective role in improving the population's state of health. The Committee reiterates its request for specific information on mass screening programmes for diseases which constitute the main causes of death. Meanwhile, it reserves its position on this point.

Conclusion

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

Article 11 - Right to protection of health

Paragraph 3 - Prevention of diseases and accidents

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

Healthy environment

The report does not provide any information on the concrete measures taken to reduce air and water pollution. Nor does it provide any figures on levels and trends with regard to air pollution and water contamination during the reference period. The Committee underlines 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 on this point.

Concerning asbestos, in its Conclusions 2015, the Committee noted that the placing on the market, supply, use and further adaptation of asbestos fibres of all types, and of products containing asbestos fibres, is prohibited under the EU Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) Regulation. It concluded that the situation was in conformity with the Charter on this point (Conclusions 2015). The current report adds that the Health and Safety Authority is the lead competent and enforcement authority for REACH in Ireland.

With regard to food safety, the Committee takes note of the measures taken through the policy "*A Healthy Weight for Ireland – Obesity Policy and Action Plan 2016-2025*" which was launched in September 2016 (outside the reference period). It asks the next report to provide updated information on the implementation/progress of this Plan and its outcomes.

Tobacco, alcohol and drugs

As regards awareness raising measures on the risks associated with tobacco, alcohol and drugs the Committee refers to its conclusion under Article 11§2.

The Committee takes note from the report of the information regarding the tobacco control measures already taken such as graphic warnings, a ban on smoking in cars where children are present and adoption of the EU Tobacco Products Directive. The tobacco policy "*Tobacco Free Ireland*" sets a target for Ireland to be tobacco free by 2025 (namely a smoking prevalence rate of less than 5%) and introduced the Public Health (Standardised Packaging of Tobacco) Act 2015 as well as the development of legislation for the sale of tobacco products and non-medicinal nicotine delivery systems. The Healthy Ireland 2016 Survey found that 19% of those aged 15 years and older smoke daily (24% in 2007). The Health Behaviour in School Children Survey 2014 found that 8% of those between 10 and 17 years currently smoke (defined as smoking at least once a month), down from 15% in 2006.

With regard to measures taken to reduce alcohol consumption, the report indicates that under the "*Healthy Ireland*" national framework, a Public Health (Alcohol) Bill is planned to be adopted which includes provision for labeling of alcohol products, the regulation of advertising and marketing of alcohol, as well as the regulation of sale and supply of alcohol in certain circumstances. The Committee asks for any developments regarding the adoption of this Bill. It also requests updated figures on the rates and trends in alcohol consumption.

The Committee asks for information in the next report on the measures taken to address drug addiction and updated figures on drug consumption.

Immunisation and epidemiological monitoring

The Committee takes note of the detailed information concerning the Primary Childhood Immunisation Schedule and the Schools Immunisation Programme, as well as the imunisation programmes for adults. Both Childhood and Adult immunisation programmes are delivered by the Health Service Executive (HSE) through their National Immunisation Office (NIO).

The Committee notes the coverage rates for various vaccines which are quite high. The report mentions that vaccination uptake rates for MMR vaccine (measles, mumps, and rubella) continue to show improvements. Figures for 2014/2015 show that HPV (Infection with Human Papillomavirus) vaccine uptake was 87%, the highest rate since the programme began in 2010.

The Committee takes note from the report of the international and national regulations concerning the prevention and control of infectious diseases. The report mentions that the prevention of ill-health caused by sexually transmitted infections is a key priority under '*Healthy Ireland*'.

Accidents

The Committee has repeatedly requested information on measures taken to prevent accidents, in particular road accidents and domestic accidents, as well as information on trends in accidents. The report failed to provide information on this topic, therefore the Committee concluded that it has not been established that the situation is in conformity with the Charter in this respect (Conclusions 2009 and 2013).

In its Conclusion 2015, the Committee reiterated its conclusion that it has not been established that adequate measures were in place to prevent and reduce accidents, since no information on the main sorts of accidents examined under Article 11 was provided (Conclusions 2015).

The Committee notes that the current report provides information mainly on accidents at work. However, as indicated previously, the Committee examines such accidents under Article 3 and it refers to its most recent conclusions in respect of these provisions (Conclusions 2013 on Article 3, Ireland). The report only provides information on the measures taken to prevent harmful falls amongst persons aged 65 years and older. AFFINITY (Activating Falls and Fracture Prevention in Ireland Together) is the national project to implement the '*National Strategy for the Prevention of Falls and Fractures in Ireland's Ageing Population'* (2008). AFFINITY aims to prevent harmful falls amongst persons aged 65 years and older, enhance the management of falls and improve health and wellbeing through a focus on bone health (fracture prevention).

As regards accidents, the Committee recalls that States must take steps to prevent them. The main sorts of accident covered are road accidents, domestic accidents, accidents at school and accidents during leisure time (Conclusions 2005, Republic of Moldova). Noting that the report fails again to provide information on the figures and measures taken to prevent and reduce the main sort of accidents as examined under Article 11§3, the Committee maintains its conclusion of non-conformity on this point.

Conclusion

The Committee concludes that the situation in Ireland is not in conformity with Article 11§3 of the Charter on the ground that that it has not been established that adequate measures are in place to prevent accidents.

Article 12 - Right to social security

Paragraph 1 - Existence of a social security system

The Committee takes note of the information contained in the report submitted by Ireland. It also takes notes of the information contained in the comments of the Irish Human Rights and Equality Commission, transmitted on 13 April 2017.

With regard to **family** and **maternity benefits**, the Committee refers to its conclusions on, respectively, articles 16 and 8§1 (Conclusions 2011).

Risks covered, financing of benefits and personal coverage

The Committee refers to its previous conclusions for a description of the Irish social security system, and notes that it continues to cover all the traditional risks (medical care, sickness, unemployment, old age, work accidents/occupational diseases, family, maternity, invalidity, and survivors). The system also continues to be based on collective funding: it is funded by contributions (employers, employees) and by the State budget.

The Committee previously noted that the Irish social security system did not cover self-employed workers under all of its branches, such as work accidents and professional diseases and asked for clarifications in this respect. It notes from the report that no statistical data are available as regards the coverage of self-employed, as they are indeed excluded from the public social security system. It notes from MISSOC that self-employed workers are also excluded from sickness, invalidity and unemployment insurance schemes. As regards employees, the report indicates that, in 2014, there was 95% coverage for Illness benefits (2 227 854 insured against a total number of employees of 2 342 700), Jobseekers' benefits (2 227 695 insured), Contributory State Pension, Maternity benefits, and Invalidity benefits (2 227 844 insured for each of these branches). There was 98% coverage as regards Widow's/Widower's or Surviving Civil Partner (Contributory) Pension and Guardian's payment (2 299 991 insured). Coverage was 99.6% as regards Occupational Injury benefits (2 334 390 insured). According to the report, the total population of Ireland was estimated to be 4 609 600 in 2014, and approximately 60% of it (2 755 058 people, including self-employed persons and voluntary contributors) were active social insurance contributors.

The Committee recalls that in the meaning of Article 12 of the Charter, social security systems encompass universal schemes as well as professional ones and include contributory, non-contributory and combined allowances related to certain risks. With a view to guaranteeing effective protection of all members of society against the occurrence of social and economic risks, States must ensure the maintenance of their social security systems. Social security systems must be maintained at a sufficiently extensive and compulsory level. (Statement of Interpretation on Article 12, Conclusions XIV-1 (1998)). To assess whether a significant proportion of the total and/or active population in Ireland is guaranteed an effective right to social security with respect to the benefits provided under each branch, States parties are required to provide figures in percentage indicating the personal coverage of each branch of social security. The Committee requests that the next report provide updated detailed information concerning the personal coverage of social security risks during the relevant reference period. For healthcare, the report should provide the percentage of covered persons out of the entire population. For income-replacement benefits (unemployment, sickness, maternity and old-age), the report should provide the percentage of insured individuals out of the total active population. In the meantime, it reserves its position as regards the adequacy of social security coverage in Ireland.

Adequacy of the benefits

The Committee previously found (Conclusions 2009) that the minimum levels of sickness, unemployment, survivors, employment injury and invalidity benefits were inadequate. In its Conclusions 2013, the Committee maintained the same finding, as no report had been submitted.

The report contests the methodology followed for the assessment of the adequacy of benefits, and claims that National Statistics should be used (Central Statistics Office (CSO) – Survey on Income and Living Conditions), instead of the Eurostat data. The Committee recalls that in assessing the adequacy of the benefits, it compares the minimum benefits to certain threshold values of median equivalised disposable income for a single person expressed in Euros, threshold values which are available from Eurostat and/or from official national statistics using the same definition and methodology: the income of a household is established by summing all monetary income received from any source by each member of the household. In order to reflect differences in household size and composition, this total is divided by the number of "equivalent adults" using a standard scale (the so-called modified OECD equivalence scale). The resulting figure is attributed to each member of the household (Finnish Society of Social Rights v. Finland Complaint No. 88/2012, Decision on the merits of 9/09/2014). The Committee notes from the report that the national indicator proposed by the Irish authorities in the report is different from the Eurostat indicator, in that it takes into account additional available income (notably income from private insurance schemes) and uses a different scale than the standard OECD scale. The threshold value resulting from the Irish indicator cannot accordingly be considered to be equivalent, as regards its definition and methodology, to the indicator that the Committee applies, wherever possible, to all other States parties.

The report also claims that certain benefits can be supplemented by additional benefits. The Committee recalls in this respect that additional benefits are taken into account when the rate of minimum income replacement benefits, for a single person, stand between 40% and 50% of the median equivalised income (Conclusions 2013, Hungary). It is for the States Parties to prove that the supplementary benefits are effectively provided to all the persons concerned by social security benefits falling below the 50% threshold (Finnish Society of Social Rights v. Finland Complaint No. 88/2012, Decision on the merits of 9/09/2014). Furthermore, reliance on supplementary benefits of a social assistance nature should not transform the social security system into a basic social assistance system (Statement of interpretation on Article 12, Conclusions XIV-1 (1998)). The Committee notes that certain supplementary benefits referred to in the report are not relevant, as they do not concern a single person living alone (adult allowance for a couple, qualified child increase for dependant children, child benefits, back to school clothing and footwear allowance, early childcare supplement, family income supplement, family income supplement for low paid working families). It will take account on the other hand, where applicable, of the Living alone increase (€7.70 weekly) and the means-tested household fuel allowance (€10 weekly). As regards the household benefits package (€18.60 weekly), it notes that it is applicable to persons over 70 years old, and only in certain circumstances to people under 70. It asks the next report to clarify the circumstances under which this benefit is available to persons under 70.

The report provides some data concerning the level of benefits in 2014, compared to the CSO national indicator of 50% median income (€174.49 per week) and to the Eurostat data. The Irish Human Rights and Equality Commission indicates, in its comments, that the CSO national indicator of 50% median equivalised income was €180.76 per week in 2014 (40% was €144.61) and €191.65 per week in 2015 (40% was €153.32). The Committee notes, on the one hand, that the data presented in the report in respect of the CSO national indicator are not consistent and, on the other hand, that those presented in respect of Eurostat do not correspond to those available from the Eurostat database. It will accordingly use the official, publicly available data. According to these data, in 2014, the median equivalised income was €20 169 (€1681 monthly, €420 weekly). The poverty level, defined as 50% of the median equivalised income, was €10 085 (€840 monthly, €210 weekly) and 40% of the median equivalised income corresponded to €8 068 (€672 monthly, €168 weekly). In 2015, the median equivalised annual income was €21 688 (€1807 monthly, €452 weekly). 50% of it was €10 844 per year (€904 monthly, €226 weekly) and 40% of it was €723 monthly (€181 weekly).

The Committee previously noted that **sickness** benefits are granted in the form of a flat-rate illness benefit and family supplements, and that the system does not provide for the continuation of payment of salary from the employer. According to MISSOC, all employees and apprentices having paid the required number of weekly contributions (104, including 39 during the year preceding the year when the benefit is claimed or 26 in each of the two years preceding the year when the benefit is claimed) are eligible to it, except civil and public servants recruited prior to 6 April 1995, people aged 66 or more and those earning less than €38 per week. Self-employed people are also excluded from sickness insurance. Sickness benefits can be paid for up to 52-104 weeks, but no benefit is paid during the first 6 days of sickness. During the whole reference period, the rate of the benefit was set at €188 per week, i.e. between 40% and 50% of the median equivalised income. While certain family supplements may apply for dependant adults and children, the report does not indicate that any general supplement applies for a single person. The Committee accordingly considers that the minimum amount of sickness benefits is inadequate. Furthermore, the Irish Human Rights and Equality Commission points out in its comments that the rate of this benefit fell below the 50% threshold also when compared with the CSO national indicator.

The same flat-rate benefit of €188 per week (with supplements for dependant adults or children) is granted to employees in case of temporary incapacity due to **work accidents** or **occupational diseases**. These benefits are paid for a maximum duration of 156 days (Sundays excluded). The Committee considers that the minimum amount of this benefit is inadequate, for the same reasons as those indicated in respect of sickness benefits.

According to the report, a single person aged under 66 years in receipt of an **invalidity** pension received €193.50 per week in 2014 and, upon conditions of means, could also receive additional assistance benefits (Household Benefits Package and Fuel Allowance), which gave a total welfare income of €214.58 per week in 2014. The Committee notes that the global amount was adequate in 2014. However, as the invalidity pension rate remained unchanged during the whole reference period, the level of the benefit would fall below 50% of the median equivalised income in 2015, unless the Household Benefits Package and Fuel Allowance were increased. It asks the next report to specify the conditions under which a person might be entitled to Household Benefits Package and Fuel Allowance, the respective amounts of these supplements, and whether they are regularly updated. In the meantime it reserves its position on this point.

As regards **old-age pensions**, the Committee refers to its assessment under Article 23 as well as to its Conclusions under Article 12§3 as regards the reforms which affected the old-age pensions system during the reference period.

Unemployment benefits are a compulsory social insurance scheme with flat rate benefits (see Conclusions 2006 for details). The Committee notes from Missoc that, compared with the situation examined in Conclusions 2006, the qualifying conditions have been strengthened (a minimum of 104 weeks of contributions is now required, instead of 52, of which at least 39 weeks paid or credited in the previous contribution year, or 26 weeks paid in the two previous contribution years) and the maximum duration of payment has been shortened, from 390 days to 234 days (9 months), or 156 days (6 months) if the applicant paid less than 260 weekly contributions since first entering insurance (except if the applicant is 65, in which case the allowance will be paid until pension age, at 66, if 156 weekly contributions have been paid). Unemployment assistance is available, subject to a means test, to persons who have exhausted their entitlement to unemployment benefits and can be paid until the person qualifies for old-age pension.

The Committee previously noted (Conclusions 2006) that, during the first three months of unemployment, jobseekers could refuse to take up a job offer on the grounds that it did not meet their occupational requirements or experience without risking losing their unemployment benefits. It asks the next report to indicate whether this condition still applies,

on what grounds a jobseeker can refuse a job offer and what remedies are available to appeal against a suspension of unemployment benefits.

The rate of unemployment insurance benefits was, during the whole reference period, €188 per week. The same amount of €188 per week was granted in respect of unemployment assistance, except in case of new claimants aged below 25 years of age. In this case the unemployment assistance was €100 per week for persons aged 18 to 24 years and €144 per week for persons aged 25. The Committee notes that unemployment assistance for persons aged 25 years or below is manifestly inadequate and that the amount of unemployment assistance in the other cases and of unemployment insurance benefits falls between 40% and 50% of the median equivalised income. The Committee asks whether additional benefits are applicable to a single person and under what conditions. In the meantime, it reserves its position on this point. The Committee notes in this respect that the Irish Human Rights and Equality Commission points out in its comments that the rate of unemployment insurance benefits fell below the 50% threshold (and even below the 40% threshold as regards the payments to those aged 25 and younger in 2014 and 2015) even when compared with the CSO national indicator.

Conclusion

The Committee concludes that the situation in Ireland is not in conformity with Article 12§1 of the Charter on the grounds that:

- the minimum amount of sickness benefits is inadequate;
- the minimum amount of work injury and occupational diseases benefits is inadequate;
- the level of unemployment assistance for persons aged below 25 years is inadequate.

Article 12 - Right to social security

Paragraph 2 - Maintenance of a social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security

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

The Committee notes that Ireland ratified the European Code of Social Security on 16 February 1971 and has accepted Parts III (sickness benefit), IV (unemployment benefit, V (old-age benefit), VII (family benefit) and X (survivors' benefit).

The Committee notes from Resolution CM/ResCSS(2016)9 of the Committee of Ministers on the application of the European Code of Social Security by Ireland (period from 1 July 2014 to 30 June 2015) that the law and practice in Ireland continue to give full effect to Parts V, VII and X of the Code but do not fulfil obligations under Parts III and IV because they establish stricter conditions of entitlement to sickness and unemployment benefits than those provided under the Code.

The Committee notes from the report that the conditions referred to relate to the qualifying contribution conditions for Illness Benefit and Jobseeker's Benefit and the number of waiting days for Illness Benefit. The Committee also notes from the report that the Government was not in a position in Budget 2016 to alter these conditions; however, it is intended that they will be reconsidered in the context of the ongoing review and reform of Ireland's social welfare system, and prevailing fiscal constraints. The report also states that while Ireland's social security arrangements may not technically be in accordance with the Code, the spirit of those Parts is met by virtue of the comprehensive and inclusive nature of the overall system of supports.

The Committee recalls that in order to comply with Article 12§2 of the Charter, the social security system of states party shall satisfy at least six Parts of the European Code of Social Security (old-age counting for three under the Code). It follows that Ireland gives full effect to only five Parts.

Conclusion

The Committee concludes that the situation in Ireland is not in conformity with Article 12§2 of the Charter on the ground that Ireland gives full effect to only five Parts of the European Code of Social Security.

Article 12 - Right to social security

Paragraph 3 - Development of the social security system

The Committee takes note of the information contained in the report submitted by Ireland. It also takes notes of the information contained in the comments of the Irish Human Rights and Equality Commission, transmitted on 13 April 2017.

Since Ireland has ratified Articles 8§1 and 16 of the Charter, the Committee will assess the scope and impact of the changes noted in the area of maternity and family benefits when it next examines compliance with these articles.

As regards the other branches of social security, the Committee takes note of the legislative developments during the reference period. The report refers to the following improvements in particular:

- the extension of voluntary social insurance coverage (as regards the contributory old-age state pensions and the maternity/paternity benefits), in 2014, to certain spouses and civil partners of people who are self-employed;
- the introduction in 2012 of a new Partial Capacity Benefit scheme, which allows people with disabilities who can work to avail of employment opportunities while continuing to receive an income support payment;
- the maintenance of low social contributions rates (a worker is insurable where his/her earnings reach €38 in any week), which allows employees working at the national minimum wage for less than 4.5 hours per week to remain covered by social insurance.

The Committee notes however the adoption of certain restrictive measures, as noted also in the comments of the Irish Human Rights and Equality Commission and other sources (ISSA, Missoc, ETUI), in particular:

- the 2012 introduction of more restrictive rules to be entitled to Disablement benefit (from January 2012, new applicants are required to have a disability classified at more than 15% in order to qualify for the Benefit – the Committee notes from Missoc that this change also concerns an incapacity occurring as a result of an occupational injury);
- the adoption, with effect from 1 January 2012, of taxation on all payments under the Occupational Injury Benefit scheme (prior to that, payments in the first six weeks in a tax year had been exempt from tax). The Committee notes from Missoc that this change also concerns Sickness benefits;
- the 2012 adoption of new rules concerning the payment of Jobseeker's Benefits whereby those who secure part-time work are entitled to a five-day week payment instead of six-day week payment;
- the reduction, in 2013, of the duration of payment of Jobseeker's Benefits for new claimants – the duration was reduced from 12 months to 9 months for recipients with 260 or more contributions paid and from 9 months to 6 months for recipients with fewer than 260 contributions paid;
- the increase, as from January 2014, of the waiting period (from 3 days to 6 days) before receiving Illness Benefits. The Committee notes from Missoc that this change also concerns Occupational Injury Benefits;
- the reduction in the amounts paid in respect of the contributory State Pension for one third of those who received pensions for the first time after September 2012 (see details under Article 23);
- the reduction, in April 2012, from 5 years to 6 months of the period during which a claim for a contributory state pension could be backdated;
- the abolition as from 2014 of the former State Pension (Transition), which was based on contributions and concerned workers born after 1947, and raising of the qualifying age for State pensions from 65 to 66 years, to be further raised to 67 in 2021 and 68 in 2028 (Social Welfare and Pensions Act 2011);

- the reduction of several secondary payments to recipients of the contributory and the non-contributory State Pensions (in 2012, the period of payment of the Fuel Allowance was reduced from 32 to 26 weeks, resulting in a reduction of €120 per year; in 2013, the Telephone Allowance was reduced from €26 to €9.50 per month, resulting in a reduction of €234 that year; in January 2014, the Telephone Allowance was abolished, resulting in a reduction of €114 in each of the remaining years of the reporting period and, in January 2015, the Electricity Allowance was changed to €35 per month, resulting in a reduction of approximately €105 per year).

The weekly rates of payments have furthermore remained unchanged over the whole reference period. The Irish Human Rights and Equality Commission points out in this regard that the maintenance of the level of benefits constant in terms of nominal amounts while incomes in the wider economy have risen over the reporting period (the median equivalised income increased by 8.2%) has resulted in more of the payment levels falling below the poverty threshold (see Conclusions 12§1).

The Committee recalls that a restrictive evolution in the social security system is not automatically in violation of Article 12§3, depending on the nature of the changes, the reasons given for them in the framework of the social and economic policy in which they arise, their extent, the existence of measures of social assistance for those who find themselves in a situation of need because of the changes made, and the results obtained by such changes. Even when individual restrictive measures are in conformity with the Charter, their cumulative effect can bring about a significant degradation of the standard of living and the living conditions of some groups of population, which would be not in conformity with Article 12§3 of the Charter. In particular, measures taken in order to consolidate public finances may be considered as a necessary means to ensure the maintenance and sustainability of the social security system. However, any modifications should not undermine the effective social protection of all members of society against social and economic risks and should not transform the social security system into a basic social assistance system (Federation of employed pensioners of Greece ((IKA –ETAM) v. Greece, Complaint No. 76/2012, decision on the merits of 7 December 2012).

The report explains that the mainteinance of the same rates of benefits during the reference period was necessary in order to achieve fiscal consolidation by the end of 2014 and points out that no reduction to the weekly rates of payment was applied despite the increase in welfare dependency. According to the report, during the recession Ireland adopted certain practices to minimise the impact of fiscal consolidation on vulnerable groups through consultation, social impact assessment and maintaining a basic level of social protection. It also indicates that, as the country has recovered financial stability since then, the Government intends to take new measures aimed at improving the living standards of families in the country. The measures at issue relate mainly to job creation and incentives to work (for example, the introduction of the Back to Work Family Dividend in 2015).

While taking note of the explanations provided to justify the introduction of restrictive measures during the economic recession, the Committee notes that the report does not clarify what concrete steps were taken to prevent a significant degradation of the standard of living and the living conditions of some groups of the population and what was the impact of such measures. It also notes that many of the restrictions introduced were still in force at the end of the reference period, after the economic situation had improved. It accordingly considers that the situation is not in conformity with Article 12§3 of the Charter on account of the restrictive evolution of the social security system during the reference period.

The report also mentions measures that have come into force outside the reference period, in particular increases in the welfare support package for low-waged households and measures aimed at promoting employment and return to work, also in respect of beneficiaries of illness and disability benefits. Furthermore, according to the report, the

Government is considering extending social insurance coverage in terms of Invalidity and Partial Capacity Benefit to self-employed people. The Committee asks the next report to provide information on the implementation and impact of these measures.

Conclusion

The Committee concludes that the situation in Ireland is not in conformity with Article 12§3 of the Charter on account of the restrictions introduced in terms of the social security system during the reference period, as well as the fact that some of these restrictions were maintained even after the economic situation had improved.

Article 12 - Right to social security

Paragraph 4 - Social security of persons moving between States

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

Equality of treatment and retention of accrued benefits (Article 12§4)

Right to equal treatment

Equal treatment between nationals and nationals of other States Parties in respect of social security rights shall be ensured through the conclusion of bilateral or multilateral agreements or through unilateral measures.

The Committee recalls that, having regard to the EU legislation on the social coordination of social security systems of the EU Member States (governed by Regulations (EC) No. 883/2004 and (EC) No. 987/2009, as amended by Regulation (EU) No. 1231/2010), EU Member States are considered, in principle, to ensure equal treatment between, on the one hand, their nationals and, on the other hand, nationals of other EU Member States or member of the EEA, stateless persons, refugees resident in the territory of a Member State who are or have been subject to the social security legislation of one or more Member States, their families and their survivors, as well as nationals of third countries, members of their families and their survivors, provided that such persons are legally resident in the territory of a Member State and are in a situation which is not confined in all respects within a single Member State.

The Committee recalls that, in any event, under the Charter, EU/EEA Member States are required to secure to the nationals of other States Parties to the 1961 Charter and to the Charter (regardless of their EU or EEA membership), equal treatment with respect to social security rights provided they are lawfully resident in their territory (Conclusions XVIII-1 (2006)). In order to do so, they have either to conclude bilateral agreements with them or take unilateral measures.

As regards bilateral agreements concluded with States Parties not members of the EU or EEA, the report provides no information.

As regards unilateral measures taken by Ireland, the report states that equal treatment between nationals and nationals of other States Parties in the social welfare system is secured under Irish legislation without the need for bilateral agreements in so far as social security benefits are not subject to nationality conditions. In other words, a person of any nationality can qualify for benefits on the same basis and is subject to the same conditions as Irish nationals. Payment of benefits requires, under Irish legislation, the persons claiming together with their dependants, to be habitual resident in Ireland. This applies to short-term social insurance benefits, Child benefit and all social assistance benefits.

With regard to the "habitual resident" condition (HRC), the Committee previously noted (Conclusions 2006) that such a condition applies to anyone with a right to reside coming to Ireland from elsewhere, including Irish nationals returning after time abroad. The Committee notes from the guidelines of the Ministry of Employment Affairs and Social Protection on the determination of Habitual Residence that the HRC does not apply to the EEA/EU nationals working regularly in Ireland. It notes however that a person with habitual residence in the “Common Travel Area” who exercised his or her right to freedom of movement and then returns to resume his or her residence in the said area may not be habitually resident immediately on his or her return, pursuant to the *Swaddling v. CAO* case ruled by the Court of Justice of the EU (case C-90/97, ECLI:EU:C:1999:96).

The Committee also observes from the abovementioned guidelines that the HRC has two steps: a test of legal right to reside, and a test of factual habitual residence, taking into account the individual’s personal circumstances and not only the length of residence in

Ireland. According to the guidelines, the HRC "implies a close association between the applicant and the country [...] and relies heavily on fact".

Thus, when deciding where a person is habitually resident, the competent authorities take into account at least the five following factors (See case *Di Paolo* ruled by the Court of justice of the UE (case 76/76, ECLI:EU:C:1977:32)):

- The person's main center of interest (for example where the person has a home or a close family);
- The length and continuity of residence in the country (the person concerned must have actually taken up residence and lived there "for some time, from a date in the past, and is intending to stay for a period into the foreseeable future". The period is not fixed and depends on the facts of each case, given that the right of residence alone does not guarantee in itself that a person is habitually resident);
- The length and purpose of the absence from that country;
- The nature of the employment found in the other country to which the person moved for a time, and
- The intention of the claimant.

These factors are neither exhaustive nor conclusive and any other relevant information must also be considered.

The abovementioned guidelines also emphasize that a claimant must be habitually resident in the State at the date of the time of making the application, and must, since the entry into force of Section 246 (1) (a) inserted by the Social Welfare and Pensions Act 2014 on 17 July 2014, remains habitually resident afterwards in order for any entitlement to subsist.

Finally, the Committee notes that a claimant who is not satisfied with the decision of the competent authorities has the right of review and/or appeal.

To enable it to assess the situation precisely, the Committee asks for information in the next report on the number of foreign nationals who have been refused the payment of social benefits and/or allowances on the ground that they did not satisfy the HRC. It also asks for Ireland to provide relevant national case-law related to this subject matter, in particular related to the required period of time for eligibility for such payments. In the meantime, the Committee reserves its position on this point.

In respect of payment of family benefits, the Committee considered that the requirement for the child to reside in the territory of the paying State is in conformity with Article 12§4 (Statement of Interpretation on Article 12§4, Conclusions XVIII-1 (2006)). However, since not all countries apply such a system, States Parties applying the 'child residence requirement' are under the obligation, in order to secure equal treatment within the meaning of Article 12§4, to enter, within a reasonable period of time, into bilateral or multilateral agreements with those States which apply a different entitlement principle (Conclusions 2006, Cyprus).

According to the report, family benefits are paid to all parents residing in Ireland with their children regardless of their nationality. The report further indicates that Ireland does not intend to negotiate agreements with States which apply a different principle.

For these reasons, the Committee considers that the Irish legislation with respect to family benefits in force does not ensure equal treatment between nationals and nationals of other States Parties.

Right to retain accrued benefits

The report states that Ireland has no plan to conclude any new bilateral agreements with other States Parties. It considers otherwise that nationals of other States Parties who are legally resident in the EU and are in a cross border situation are covered by Regulations (EC) No. 883/2004 and 987/2009 on the coordination of social security systems, in accordance with Regulation (EU) No. 1231/2010. As regard those who are not covered by

the above Regulations, the report refers to the Association and Stabilisation Agreements (SAAs) concluded between the EU and its Member States, on the one hand, and Albania, Bosnia and Herzegovina, "the former Yugoslav Republic of Macedonia", Montenegro and Serbia, on the other hand.

The Committee notes the SAAs do not provide sufficient guarantees as such since they do not coordinate social security systems of Albania, Bosnia and Herzegovina, "the former Yugoslav Republic of Macedonia", Montenegro and Serbia with those of the EU Member States, but rather entrust the Stabilisation and Association Councils (hereinafter "SACs") with this task. The Committee considers that, in absence of SACs decisions on the matter, the SAAs do not guarantee as such the retention of accrued benefits for nationals of Albania, Armenia, Bosnia and Herzegovina, "the former Yugoslav Republic of Macedonia", Montenegro and Serbia.

The report also states that, in addition to these agreements, Irish legislation already guarantees the possibility of exporting benefits and pensions to other States Parties.

The Committee recalls its previous conclusions (Conclusions 2006, 2009 and 2013) where it found the situation to be in conformity with the Charter because old age benefit, invalidity benefit, survivor's benefit and work accidents or occupational disease benefit acquired under the legislation of one State according to the eligibility criteria laid down under national legislation are maintained whatever the movements of the beneficiary and irrespective of nationality.

The Committee therefore considers that the situation is in conformity in this respect.

Right to maintenance of accruing rights (Article 12§4b)

The Committee recalls that there should be no disadvantage for persons who change their country of employment where they have not completed the period of employment or insurance necessary under national legislation to confer entitlement and determine the amount of certain benefits. This requires, where necessary, the aggregation of employment or insurance periods completed in another territory and, in the case of long-term benefits, a pro-rata approach to the conferral of entitlement, the calculation and payment of benefit (Conclusions XIV-1 (1998), Portugal).

States Parties may choose between the following means in order to ensure maintenance of accruing rights: multilateral convention, bilateral agreement, or unilateral, legislative or administrative measures.

The report indicates that nationals of States Parties covered by EU regulations on the coordination of social security systems or those that fall under the terms of bilateral social security agreements concluded by Ireland can aggregate contributions to enable them to qualify for payments covered by these regulations and agreements. The report provides no information on nationals of States Parties not covered by those EU Regulations or bound by bilateral agreement. The Committee notes in this regard that SAAs do not provide sufficient guarantees. This is because they do not coordinate social security systems of Albania, Bosnia and Herzegovina, "the former Yugoslav Republic of Macedonia", Montenegro and Serbia with those of the EU Member States, but rather entrust the SACs with this task. The Committee considers that, in absence of SACs decisions in the matter, the SAAs do not guarantee as such the accumulation of insurance or employment periods for nationals for nationals of Albania, Armenia, Bosnia and Herzegovina, "the former Yugoslav Republic of Macedonia", Montenegro and Serbia. Since the situation has not changed, the Committee reiterates its finding of non-conformity on this point.

Conclusion

The Committee concludes that the situation in Ireland is not in conformity with Article 12§4 of the Charter on the grounds that:

- equal treatment with regard to access to family allowances is not guaranteed to nationals of all other States Parties;
- nationals of States Parties not covered by EU regulations or not bound by an agreement concluded with Ireland have no possibility of accumulating insurance or employment periods completed in other countries.

Article 13 - Right to social and medical assistance

Paragraph 1 - Adequate assistance for every person in need

The Committee takes note of the information contained in the report submitted by Ireland. It also takes notes of the information contained in the comments by the Irish Human Rights and Equality Commission, transmitted on 13 April 2017.

Types of benefits and eligibility criteria

According to the report, there have been no changes to the types of benefits and eligibility criteria. The Supplementary Welfare Allowance scheme provides differential flat-rate cash benefits for persons whose means are insufficient to meet their needs.

Level of benefits

To assess the level of assistance during the reference period, the Committee takes account of the following information:

- Basic benefits: the Committee notes from MISSOC that Supplementary Welfare Allowance stood at € 806 for a single person. Jobseeker's Allowance stood at € 815 for a single person in 2015. According to the report, the basic Supplementary Welfare Allowance rate is € 186 per week, while Jobseeker's Allowance stood at € 188 per week. The Committee notes that the level of the basic Supplementary Welfare Allowance has remained unchanged since the previous reference period.
- Additional benefits: according to the report, the Rent Supplement scheme provides short-term support to those eligible persons living in private rented accommodation whose means are insufficient to meet their accommodation costs. The level of support depends on the location of the rented accommodation and the size of the family. The Fuel Allowance was increased from € 20 to € 22,50 in 2016 and was paid for 26 weeks in the 2015-2016 season. The Committee notes that the duration of this benefit was reduced from 32 to 26 weeks compared to the previous reference period. The Committee also notes that the Mortgage Interest Supplement scheme was discontinued for new applicants from 1 January 2014.
- Medical assistance: in its previous conclusion the Committee noted that persons fully dependent on a non-contributory minimum have full eligibility for health services. It notes from the report that any person who present for healthcare will be treated.
- The poverty threshold, defined as 50% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty value, was estimated to be € 904 in 2015.

In the light of the above data, the Committee considers the level of social assistance is not adequate on the basis that the total amount of assistance that can be obtained by a single person without resources, including the basic assistance as well as other benefits is not compatible with the poverty threshold.

The Committee notes from the comments of the Irish Human Rights and Equality Commission that where an applicant for Jobseeker's Assistance is aged 24 or younger and is living with his/her parent or step-parent, the means test takes account of parental income. These rules assume that the person under 24 is provided with free or subsidised meals and accommodation.The Commission is concerned that the regime in respect of Jobseeker's Allowance for persons under the age of 24 years often denies them access to an adequate minimum income where they are living in the family home.

The Committee asks whether young persons below 24 years of age, living with their parents would be eligible for the Supplementary Welfare Allowance at the full rate.

Right of appeal and legal aid

The Committee notes that the report does not provide any update concerning the right of appeal and legal aid.

The Committee notes from the comments of the Irish Human Rights and Equality Commission that there are a number of concerns in respect of the independence of the Social Welfare Appeals office. The Commission refers to the report by an NGO (Free Legal Advice Centres), according to which it is not clear, given the position of the Appeals Office as a section of the Department, that all the necessary safeguards are in place to ensure its actual and perceived independence.

The Committee recalls that when examining the national situations, the Committee focuses on the judicial role of the review body, which is to rule on cases within its jurisdiction and hand down binding decisions based on the law. The body may therefore be an ordinary court or an administrative body, provided that it is a body independent of the executive and of the parties. In deciding whether a body may be considered independent, the Committee examines the manner of appointment of its members, the duration of their term of office and existing safeguards against outside pressures (rules governing removal from office, dismissal, instructions, qualifications required, etc.).The review body must have the power to judge the case on its merits, not merely on points of law. If this requirement concerning the scope of the appeal is not satisfied in the first instance, it must be satisfied at a subsequent level of review.

The Committee asks the next report to explain how these requirements are met in law and in practice.

Personal scope

The Committee recalls that, under Article 13§1, States are under the obligation to provide adequate medical and social assistance to all persons in need, both their own nationals as well as nationals of States Parties lawfully resident within their territory, on an equal footing. In addition, with reference to its Statement of Interpretation of Articles 13§1 and 13§4 (Conclusions 2013) regarding the scope of Articles 13§1 and 13§4 in terms of persons covered, the Committee considers that as regards emergency social and medical assistance, foreign nationals in an irregular situation in the territory of the State concerned are also covered under Article 13§1, rather than under Article 13§4, which was previously its practice.

The Committee henceforth examines whether the States who have accepted Article 13§1 ensure the right to:

- adequate social and medical assistance for their own nationals and for nationals of other States Parties lawfully resident within their territory on an equal footing;
- emergency social and medical assistance to foreign nationals unlawfully present in their territory.

Nationals of other States Parties lawfully resident in the territory

In its conclusion 2015 the Committee considered that the situation as regards access to medical assistance for lawfully resident foreign nationals was in conformity with the Charter. The Committee understands (Conclusions 2009, 2013 and 2015) that nationals of other States Parties ordinarily resident in Ireland are treated on an equal footing with nationals as regards access to both social and medical assistance for persons without resources.

The report reiterates that the Irish Public Health System provides for two categories of eligibility for persons ordinarily resident in the country: full eligibility (medical cardholders) and limited eligibility (all others). Full eligibility is determined mainly by reference to income limits. Determination of an individual's eligibility status is the responsibility of the Health Service Executive. The Committee asks whether persons without resources in receipt of

Supplementary Welfare allowance or Jobseeker's allowance (including nationals of other States Parties lawfully resident in the territory) would be entitled to adequate medical assistance.

Foreign nationals unlawfully present in the territory

In its Conclusion 2015 the Committee sought confirmation that migrants in an irregular situation would also benefit from urgent medical care in case of need.

In this connection, the Committee recalls that persons in an irregular situation must have a legally recognised right to the satisfaction of basic human material need (food, clothing, shelter) in situations of emergency to cope with an urgent and serious state of need. It likewise is for the States to ensure that this right is made effective also in practice (European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, §187).

The Committee cannot accept the necessity of halting the provision of such basic emergency assistance as shelter, guaranteed under Article 13 as a subjective right, to individuals in a highly precarious situation. The Committee has considered that even within the framework of the current migration policy, less onerous means, namely to provide for the necessary emergency assistance while maintaining the other restrictions with regard to the position of migrants in an irregular situation, remain available to the Government with regard to the emergency treatment provided to those individuals, who have overstayed their legal entitlement to remain in the country (Complaint No. 90/2013, Conference of European Churches (CEC) v. the Netherlands, decision on the merits of 1 July 2014, §123).

The Committee asks the next report to explain how these requirements are met in law and in practice.

Conclusion

The Committee concludes that the situation in Ireland is not in conformity with Article 13§1 of the Charter on the ground that the level of social assistance provided to a single person without resources is not adequate.

Article 13 - Right to social and medical assistance

Paragraph 2 - Non-discrimination in the exercise of social and political rights

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

The Committee notes from the report the Government's view that the receipt of social and medical assistance does not diminish political or social rights in any way. The Committee asks the next report to provide updated information as regards the prohibition of discrimination against persons receiving social and medical assistance in the exercise of their political or social rights. In particular, the Committee requests information about the existence of legal provisions that prohibit such discrimination.

Conclusion

The Committee concludes that the situation in Ireland is in conformity with Article 13§2 of the Charter.

Article 13 - Right to social and medical assistance

Paragraph 3 - Prevention, abolition or alleviation of need

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

According to the report, the Citizens Information Board (CIB) supports the provision of information, advice (including money advice and budgeting) and advocacy services on a wide range of public and social services. It provides some services directly to the public through the website which has a prominent link on the www.gov.ie and www.welfare.ie homepages. It provides core developmental supports and directly funds and supports an extensive range of services through its delivery partners.

The Committee notes from the report that the main functions of the CIB are to ensure that individuals have access to accurate, comprehensive and clear information relating to social services. This is achieved through:

- assisting and supporting individuals, in particular those with disabilities, in identifying and understanding their needs and options;
- promoting greater accessibility, coordination and public awareness of social services;•
- supporting, promoting and developing the provision of information on the effectiveness of current social policy and services and highlighting issues which are of concern to users of those services;•
- Supporting the provision of, or directly providing, advocacy services for people with disabilities.

The Committee takes note of the activities of the Service Delivery Partners of CIB, such as a network of 42 Citizens Information Services (CISs) which operate from 223 locations nationwide. The Citizens Information Services handled almost 991,000 queries from some 608,000 people nationwide in 2015. The queries related to social welfare, health, employment, money tax, housing and local issues.

Conclusion

The Committee concludes that the situation in Ireland is in conformity with Article 13§3 of the Charter.

Article 13 - Right to social and medical assistance

Paragraph 4 - Specific emergency assistance for non-residents

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

The Committee refers to its conclusion under Article 13§1 (personal scope) and recalls that Article 13§4 from now on will cover emergency social and medical assistance for nationals of States Parties lawfully present (but not resident) in the territory.

The Committee recalls that States Parties are required to provide non-resident foreigners, without resources, with emergency social and medical assistance. Such assistance must cover accommodation, food, clothing and emergency medical assistance, to cope with an urgent and serious state of need (without interpreting too narrowly the 'urgency' and 'seriousness' criteria). No condition of length of presence can be set on the right to emergency assistance (Complaint No 86/2012, European Federation of national organisations working with the Homeless (FEANSA) v. the Netherlands, decision on the merits of 2 July 2014, §171).

The Committee noted in its Conclusion 2015 that any person lawfully present and not ordinarily resident is granted healthcare at the discretion of the local health manager (for an individual service when s/he considers this to be justified on hardship grounds) under Section 45(7) of the Health Act 1970, to allow them to continue their stay in Ireland or else until the person is well enough to return home. The treatment does not extend to non-urgent or elective treatment which can reasonably be postponed until they return to their own country. Such discretion is not prescribed. However in practice, there is no question of urgent medical care being refused to persons who are not ordinarily resident and neither is distinction made as to whether the person is legally present or otherwise.

The Committee notes from the report that the HSE has, under Section 45(7) of the Health Act 1970, the discretion to consider any person who is not ordinarily resident in the State as being a person with full eligibility for health services and receive the service free of charge, if such person is unable, without undue hardship, to provide a service (in the relation to their health) .

A person presenting with an urgent medical need, as determined by a medical practitioner, will be given the necessary treatment regardless of the legality of their presence in the state territory. Consequently, no data exists as to the number of cases where medical assistance has been refused on the basis of a failure to satisfy the requirement to be ordinarily resident, as such refusals do not occur. According to the report, denial of access to care for any group is not an option.

The report further explains that the person's status with regard to being ordinarily resident is however taken into account when it comes to the treatment provider's attempts to recoup the costs of the treatment provided. This is due to the fact that those persons as described above are liable to be charged for the economic cost of treatment received. Section 45(7) of the Health Act 1970 provides discretion to the local health manager in determining whether paying for the service provided will cause the person undue hardship. This does not mean that the treatment is provided free of charge. An appropriate charge is raised and hospitals must take reasonable steps to recover any such charge. However, they may, on direction of the local health manager, not actively pursue recovery of that charge where it is considered not to be cost effective to do so.

The report provides information concerning persons seeking international protection. According to the report, the State provides support services through a system known as the direct provision system. The quality of services provided to those in the direct provision system is under constant review. Each centre is inspected without notice three times a year. Contract with service providers are continually updated so that best practice in the provision of care to those seeking international protection is continually provided.

The Committee notes from comments of the Irish Human Rights and Equality Commission that significant numbers of people seeking asylum in Ireland remain in direct provision for very long periods. The annual report of the Reception and Integration Agency for 2015 records that more than one third (34.7%) of asylum seekers had been in the direct provision system for longer than four years, and 14% had been in direct provision for more than seven years. The Committee asks whether the scope of social and medical assistance provided in these cases is still limited to emergency assistance.

The Committee asks the next report to provide updated information about the provision of emergency social and medical assistance to all lawfully present foreign nationals, including asylum seekers.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Ireland is in conformity with Article 13§4 of the Charter.

Article 14 - Right to benefit from social welfare services

Paragraph 1 - Promotion or provision of social services

The Committee takes note of the information contained in the report submitted by Ireland. It also takes also note of the information contained in the comments of the Irish Human Rights and Equality Commission, transmitted on 13 April 2017.

Organisation of the social services

In reply to the Committee's request for information on specific services for children and young persons (Conclusions 2013), the report indicates that a specific programme called "Area Based Childhood"(ABC) Programme exists for the period 2013-2017. This is a prevention and early intervention initiative consisting of committed funding for an area-based approach aimed at helping to improve outcomes for children by reducing child poverty. The ABC Programme aims to break "the cycle of child poverty within areas where it is most deeply entrenched and where children are most disadvantaged, through integrated and effective services and interventions". The focus of activities under the ABC programme covers in the main Child Health & Development; Children's Learning; Parenting; and Integrated Service Delivery. The ABC Programme is jointly funded by the Department of Children and Youth Affairs and the Atlantic Philanthropies (the total amount is €29.7m). In addition, the report provides information on the provision of a number of specific social welfare services including children's supports (area-based measures to reduce child poverty, foster and residential care), and the Child and Family Agency established in 2014 with the aim to supporting and encouraging the effective functioning of families.

The Committee notes from the examples given in the Irish Human Rights and Equality Commission's comments that homeless services, domestic violence services, children's services, disability services, and care services for older people demonstrate significant shortcomings in the overall organisation and functioning of social services as required by Article 14§1, in particular as regard to the level of provisions, the absence of standards or inadequate standards in a range of social services. Therefore, the Committee asks that the next report provide updated information on the organisation of social services and reserves its position on this point.

Effective and equal access

In Conclusions 2015, the Committee considered again that it has not been established that the situation was in non-conformity with Article 14§1 of the Charter since the report failed to reply, in particular to the information requested in relation to fees for social services and on the total amount of annual spending on social services and on the total number of staff and their qualification.

The Committee notes that the report does not address the two matters that gave rise to a finding of non-conformity with Article 14§1 when the Committee last examined Ireland on this paragraph (Conclusions 2015): fees for social welfare services and whether fees prevent effective access to social services. Therefore, the Committee reiterates its conclusion of non-conformity on these grounds.

Quality of services

The Committee recalls that under Article 14§1 the right to social services must be guaranteed in law and in practice. Social services must have resources matching their responsibilities and the changing needs of users. This implies that: – staff shall be qualified and in sufficient numbers; – decision–making shall be as close to users as possible; – there must be mechanisms for supervising the adequacy of services, public as well as private (Conclusions 2005, Bulgaria).

The Committee notes that despite the lengthy description on a number of aspects of the health services no answers to its questions on the total amount of spending on social services, the total number of social services, the total number of staff working in social services and their qualifications is provided. Therefore, the Committee reiterates its conclusion of non-conformity on these points.

Conclusion

The Committee concludes that the situation in Ireland is not in conformity with Article 14§1 of the Charter on the grounds that:

- it has not been estabished that there is an effective and equal access to social services;
- it has not been established that the quality of social welfare services meets users' needs.

Article 14 - Right to benefit from social welfare services

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

The Committee takes note of the information contained in the report submitted by Ireland. It also takes also note of the information contained in the comments of the Irish Human Rights and Equality Commission (an independent public authority), transmitted on 13 April 2017.

The Comments of the Irish Human Rights and Equality Commission indicate that, according to a 2014 study, the Government's funding for the community and voluntary sector was reduced by 35 percent in the period 2008-2014.The same study reported that 'funding has fallen most sharply in those funding lines reaching the most disadvantaged groups and communities, especially community development'. In this respect the Committee asks about the impact of funding cuts and structural changes on the capacity of the community and voluntary sector to participate in the delivery of social services.

In its previous conclusions (Conclusions 2013 and 2015), the Committee repeatedly requested information about user involvement in the management of social services. As the report, once more, fails to provide this information, the Committee considers that there is nothing to establish that the situation is in conformity with the Charter on this point.

The Committee also previously requested information (Conclusions 2015): a) on the Charities Regulatory Authority; b) on the kinds of supervisory quality control mechanisms that are in place to ensure the quality of services;c) on the remedies available to users in case of shortcomings; d) on how non-discrimination is ensured in respect of social services provided by the community and voluntary sector.

In reply to these questions the report indicates that the Charities Regulator is Ireland's national statutory regulator for charitable organisations. The Charities Regulator is an independent authority and was established in October 2014 in terms of the Charities Act 2009. Its key functions are to establish and maintain a public register of charitable organisations operating in Ireland and to ensure their compliance with the Charities Acts. Under Part IV of the Charities Act 2009, the Regulator has the power to conduct statutory investigations into any organisation believed to be non-compliant with the charities acts. Anyone with information of wrongdoing can contact the Regulator, including by email, and all concerns raised are dealt with in confidence.

The Committee recalls that States Parties must ensure that public and private services are properly coordinated, and that efficiency does not suffer because of the number of providers involved. In order to control the quality of services and ensure the rights of users as well as respect for human dignity and basic freedoms, an effective preventive and reparative supervisory system is required (Conclusions 2005, Bulgaria). In this respect, the Committee asks what kind of supervisory quality control mechanisms are in place to ensure the quality of services, including in the private sector.

The report also indicates that, with regard to the non-discrimination question, Ireland has comprehensive and robust equality legislation in place, which prohibits discrimination on nine specified grounds: gender, civil status, family status, age, race, religion, disability, sexual orientation, and membership of the Traveller community. The legislation is designed to promote equality and prohibit discrimination (direct, indirect and by association) and victimisation. It provides for positive measures to be taken to ensure full equality across the nine grounds. The Equal Status Acts 2000–2012 prohibit discrimination outside the workplace, in particular in the provision of goods and services. Equality legislation also provides for remedies for those who have suffered discrimination. The Acts outlaw discrimination in all services that are generally available to the public whether provided by the state or the private sector.

Conclusion

The Committee concludes that the situation in Ireland is not in conformity with Article 14§2 of the Charter on the ground that it has not been established that the government is taking the steps necessary to foster user participation in the management of social services.

Article 23 - Right of the elderly to social protection

The Committee takes note of the information contained in the report submitted by Ireland. It also takes notes of the information contained in the comments of the Irish Human Rights and Equality Commission, transmitted on 13 April 2017.

Legislative framework

The Committee points out that the main purpose of Article 23 of the Charter is to enable elderly persons to remain full members of society and, in this regard, it requires States Parties to provide a framework which, firstly, makes it possible to combat age discriminations beyond employment and, secondly, provides for a procedure of assisted decision making.

With regard to age-based discrimination, the report provides no updated information. However, the Committee refers to its previous conclusion (Conclusions 2013), where it found the situation to be in conformity with the Charter due to the existence of the Equal Status Acts 2000-2004 which provide elderly persons with adequate guarantees of protection against age discrimination outside the employment context.

The report provides no information with regard to assisted decision making for elderly persons. The Committee notes from the comments of the Irish Human Rights and Equality Commission that Ireland adopted the Assisted Decision-Making (Capacity) Act 2015 which has entered into force only in part. In this regard, the Commission has raised concerns about the adequacy of the Act in terms of ensuring full respect for the rights of the concerned people to make decisions. According to the Commission, the Act sets down rules governing various mechanisms that exist to protect a person whose capacity is in question, but it does not provide sufficient support to the person concerned for him or her to exercise as such his or her legal capacity. The Act rather enables decision-making capacity to be transferred from a person to another (for instance, a decision-maker, a co-decision-maker or a decision-making assistant), without ensuring the full participation of the person with disabilities. The Committee wishes to receive more information on this Act in the next report.

Adequate resources

When assessing the adequacy of resources of elderly persons under Article 23, the Committee takes into account all social protection measures that are guaranteed to elderly persons and that are aimed at maintaining income level allowing them to lead a decent life and participate actively in public, social and cultural life. In particular, the Committee examines pensions (contributory or non-contributory) and other complementary cash benefits available to elderly persons. These resources will then be compared with median equivalised income. However, the Committee points out that that its task is to assess not only the law but the compliance of practice with the Charter obligations. For this purpose, the Committee will also take into consideration relevant indicators relating to at-risk-of-poverty rates for persons aged 65 and over.

The report provides no information on this matter. According to the Commission, the Social Welfare and Pension Act 2011 removed the State Pension (Transition) in January 2014. The Committee notes from the Commission's comments that the State Pension (Contributory) is divided into six bands (instead of four prior to September 2012) reflecting the yearly contributions that the pension recipient has been credited with during his or her employment. The maximum amount of the State Pension (Contributory) is €230.30 per week and its minimum rates amount to €92 per week. That is, €998 and €398.63 per month respectively. The Committee notes from the same source that the period for which a claim for a State Pension (Contributory) could be backdated was reduced to six months in 2012 (instead of five years).

The State Pension (Non-Contributory) is a means-tested payment for people aged 66 or over who do not qualify for State Pension (Contributory) based on their social insurance

record. The maximum personal rate of State Pension (Non-Contributory) applies if the person's weekly means are €30 or less. A specific earnings disregard of €200 per week was introduced so that income from employment can be earned without losing pension entitlements (it does not apply to earnings from self-employment). The maximum amount of the pension for a single person (aged 66 and over) in 2015 amounts to €954.6 per month and €997.6 for a single person aged over 80.

Recipients of the State Pension (Contributory) and of State Pension (Non-Contributory) aged 66 or over who are living alone may receive an extra allowance of €9 per week (Living Alone Allowance). Pensioners aged 80 years or over are granted an extra allowance of €10 per week (Over 80 Allowance). Pensioners may also be granted dependent's supplements. In addition, recipients of this pension may qualify for Fuel Allowance (€4.6 per week on 26 weeks), Electricity Allowance (€35 per month) and Free tv licence. The Telephone Allowance was removed in January 2014.

First of all, the Committee notes that the rates paid over the reference period for the State Pensions (Contributory and Non-contributory) remained unchanged. Second, it notes that significant reductions in secondary benefits have occurred.

The poverty threshold, defined as 50% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value, was estimated at €10 844 per year (or €904 per month) in 2015. The Committee notes that the levels of the full old-age pensions – both contributory and non-contributory – are above the poverty line. Bearing in mind that a number of supplements are available, the Committee considers that the level of those benefits is adequate.

In its previous conclusion (Conclusion 2013), the Committee asked for clarification as to why such a high percentage of persons aged 65 and over received income falling below 40% of the median equivalised income. It also asked for information on what specific measures are taken to address their situation. The report provides no information in this respect. The Committee observes that the rate of persons aged 65 and over received income falling below 40% of the median equivalised income has increased, reaching 5.4% in 2014 and decreased in 2015 to 3.5%. This rate remains higher than the average level in the EU (respectively, 3.0% and 2.9% in 2014 and 2015). It therefore reiterates its questions on this point and, in the meanwhile, reserves its position on this point.

Prevention of elder abuse

The report indicates that residents in nursing homes must be safeguarded and protected from abuse and they must be provided with accessible information. It also notes from the National Safeguarding Committee report that at the end of 2014, the Health Service Executive (HSE) published a new policy on safeguarding vulnerable persons at risk of abuse, including the elderly (Strategic Plan 2017-2020). The policy provided for the establishment of a National Safeguarding Committee, which held its first meeting in December 2015. According to the National Safeguarding Committee report, the Department of Health established a partnership with the HSE and an organisation entitled the Healthy and Positive Ageing Initiative to monitor progress in the implementation of the National Positive Ageing Strategy. It also states that there is an absence of legislation in respect of the deprivation of liberty in nursing homes and other care and residential accommodation. The Committee wishes to be informed of any developments in this respect in the next report.

The Committee notes from the National centerfor the Protection of Older People report entitled "Older People in Residential Care Settings" that the HSE National Elder Abuse Steering Committee is responsible for overseeing the HSE's elder abuse service at national level as well as ensuring the recommendations outlined in the report entitled 'Protecting Our Future'. It also notes that the HSE published guidelines on the protection of elderly persons for health professionals and the public.

Services and facilities

The Committee points out that, although Article 23 makes reference only to information about services and facilities, it presupposes that such services and facilities exist.

With regard to the services and facilities themselves, the Committee asked in its previous conclusion (Conclusion 2013), whether the supply of services to the elderly matches the demand for them. According to the report, the HSE National Service Plan sets out the type and volume of health service to be provided in a given year within the overall level of funding allocated by Ireland. The HSE monitors service delivery. Home support services are provided either directly by the HSE or through service agreements with private and voluntary sector providers. In addition to the mainstream Home Help Service, which offers up to five hours per week of personal care and help with domestic chores, enhanced home care is provided through the Home Care Package Scheme, including Intensive Home Care Packages for clients with complex needs. Other HSE-provided or HSE-funded services include day care, meals-on-wheels and respite care. The HSE also supports community initiatives and smaller local voluntary agencies. The report further indicates that there are 108 Day Care Centres across the country that offer similar types of services which include nursing, therapy supports, social activities and some personal care.

The Committee also asked how their quality is monitored and if there is a procedure for complaining about the standards of services. According to the report, registered providers of nursing home care provide a complaints procedure. The Office of the Ombudsman can examine complaints about the actions of a range of public bodies and, from 24 August 2015, complaints relating to the administrative actions of private nursing homes.

With regard to information on the existence of the services and facilities available, the report states that detailed information on services for elderly persons is available online at www.hse.ie, or via an info-line. The HSE also provides a range of leaflets and guidance documents on its services.

Housing

In its previous conclusion (Conclusions 2013), the Committee asked for information with regard to the eligibility for and costs of social housing. As the report provides no information in this regard, the Committee reiterates that request. The Committee also wishes to be updated on the Housing Adaptation Grant Schemes for Older People.

Health care

In its previous conclusion (Conclusions 2013), the Committee asked for information on mental health programmes and services specifically aimed at the elderly, in particular those carried out in relation to dementia and related illnesses, adequate palliative care services and special training for individuals caring for elderly persons. According to the report, Ireland launched the National Dementia Strategy (2014-2019). It aims to develop a national Alzheimer's and other dementias strategy to increase awareness, ensure early diagnosis and intervention and develop enhanced community-based services.

The report also refers to the launch of a national policy on Palliative Care: the HSE 5 year/Medium Term Framework for Palliative Care Services 2009-2013. The total number of specialist palliative care beds in 11 locations countrywide is 217. All HSE areas have Community Specialist Palliative Home Care Teams. The Committee wishes to know more about this programme in the next report.

Institutional care

In its previous conclusion (Conclusions 2013), the Committee asked, *inter alia*, whether the supply of institutional facilities for elderly persons is sufficient and whether an independent inspection system of public and private residential care services is ensured. According to the

report, the supply of such facilities meets demand, although in some areas there are waiting lists. The report states that the number of centers has increased from 565 (29 060 beds) in 2014 to 577 (30 106 beds) in 2015. There are also about 2 000 short stay public beds. The report states that €385 million in capital funding has been secured for a five-year national programme for the replacement and refurbishment of public nursing homes. In addition to the consolidation of the existing public stock, the programme is expected to provide 250 additional beds. With regard to private facilities, the report states that nursing home expansion works would henceforth be included in the Employment and Investment Incentive Scheme. The Committee asks to be informed of any new developments in this field.

The report adds that the Review of the Nursing Homes Support Scheme was published in July 2015 and the recommendations contained in the review are in the process of being implemented. The Committee asks the next report to provide further information in this regard.

With respect to registration and inspection, the report states that, all designated centres for elderly persons (nursing homes) whether public, private or voluntary are registered and inspected by the Health Information and Quality Authority (HIQA). The comprehensive framework is aimed at ensuring proper standards of care for nursing homes as well as promoting the rights of people and respecting their autonomy, privacy and dignity, and facilitating people to be as independent as possible. In this regard, an assessment of the personal and social care needs of a (future) tenant of designated centermust be completed and a care plan prepared based on this, at the latest, on his/her admission. Tenants must be provided with facilities for occupation and recreation. They may also be consulted about and participate in the organisation of the designated centerconcerned. A register of all nursing homes is available on the HIQA website: www.hiqa.ie. A total of 411 inspections were completed in 2015 in 343 registered centres. All inspection reports are published by HIQA.

Conclusion

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

Article 30 - Right to be protected against poverty and social exclusion

The Committee takes note of the information contained in the report submitted by Ireland. It also takes notes of the information contained in the comments by the Irish Human Rights and Equality Commission, transmitted on 13 April 2017.

Measuring poverty and social exclusion

The report states that Ireland bases itself on a human rights approach in using the following definition of poverty: "People are living in poverty if their income and resources (material, cultural and social) are so inadequate as to preclude them from having a standard of living which is regarded as acceptable by the Irish society. As a result of inadequate income and resources people may be excluded and marginalised from participating in activities which are considered the norm for other people in society."

Pursuant to this definition the following three national indicators of poverty are applied:

At-risk-of-poverty (also known as relative income poverty) with a threshold of 60% of median equivalised income. In the period 2011-2014, this indicator increased slightly from 16.0% to 16.3%.

Basic deprivation, defined as lack of 2 or more items from the 11 item index of needs such as food, clothing and heating. This indicator increased sharply from 24.5% to 29.0% during the same period.

Consistent poverty. People are in consistent poverty if their income is below 60% of the median income and are deprived of 2 or more of the 11 so-called basic deprivation items. This indicator increased from 6.9% to 8.0%.

In this respect, the Irish Human Rights and Equality Commission in its comments on the report states that all of the indicators used by the Government were worse in each of the four years of the reference period (2012-2015) than they were in the two years before the reference period and this was despite the fact that in 2012 the economy began to grow again after the crash of 2008 and the recession that followed that crash.

The Committee notes from Eurostat that in 2015 the at-risk-of-poverty rate (cut-off point: 60% of median equivalised income after social transfers) stood at 16.3% having decreased slightly compared to 2012 (16.6%) and after having reached 15.7% in 2013. The 2015 rate was close to the EU average of 17.2%. Still according to Eurostat, the at-risk-of-poverty rate before social transfers in 2015 stood at 36.2%, clearly above the EU-28 rate of 25.9%. The European Semester headline poverty indicator was 26% in 2015 compared to 30.3% in 2012.

The Committee further notes from the European Semester Country Report Ireland 2017 (SWD(2017 73 final) that the proportion of people living in households with very low work intensity remained almost double the EU average in 2015. This affects in particular women, the elderly, persons with low-level education, persons with disabilities and single adult households.

Finally, the Committee notes that overall at-risk-of-poverty rates have improved only marginally during the reference period, if at all, fluctuating around 16% (after social transfers). While the positive effect of social transfers is remarkable, the Committee also notes that the "basic deprivation" and "consistent poverty" indicators have increased significantly in a context of economic recovery.

Approach to combating poverty and social exclusion

The Committee notes from the report that a revised national poverty target was adopted by the Government in 2012. The overall aim of the target is to reduce consistent poverty to 4% by 2016 from a baseline of 6.9% in 2011.

The Committee also notes that national anti-poverty strategies have been developed since 1997 to provide a strategic framework within which to tackle poverty and social exclusion. The current strategy, the up-dated National Action Plan for Social Inclusion, identifies a wide range of targeted actions and interventions to achieve the overall objective of achieving the national social target for poverty reduction. The Plan adopts a life-cycle approach with goals set for each group: children; people of working age and older people and communities.

The existing plan covers the period 2015 to 2017 and reflects the current issues and interventions to tackle poverty and social exclusion. There is a greater focus on modernising the social protection system, improving effectiveness and efficiency of social transfers and strengthening active inclusion policies. The updated plan contains reformulated goals which include a focus on early childhood development, youth exclusion, and access to labour market including measures for people with disabilities, migrant integration, social housing and affordable energy.

The Committee observes that total Government expenditure on social protection as a share of GDP fell significantly during the reference period, from 14.3% in 2012 to 9.6% in 2015 which is only half the EU average of 19.2%. The Committee asks what steps are taken to ensure that economic growth is translated into an effective combat against poverty and social exclusion.

In its comments on the report the Irish Human Rights and Equality Commission expresses concern that the National Action Plan was drafted before the 2008 crash and was not updated before the recovery began. For the reference period the only change made to the plan originally adopted in 2007 was to revise the targets and no revision was made to the measures needed to reduce poverty and social exclusion until the end of the period.

In a similar vein, the Committee notes the assertion in the European Anti-Poverty Network (EAPN) Assessment of the Country Reports and Proposals for Country-Specific Recommendations 2017 (Country Fiche Ireland) that the National Action Plan is being implemented in a piece meal manner and not in an integrated way.

In the light of these comments the Committee asks that the next report explain how the National Action Plan ensures an overall and coordinated approach to combating poverty and social exclusion and more particularly how practical coordination of the various measures takes place, including at delivery level.

Finally, the Committee refers to its conclusions of non-conformity under other provisions of the Charter which are relevant to its assessment of compliance with Article 30 (see Conclusions 2013, Statement of interpretation on Article 30). It refers in particular to Article 12§1 and its conclusion that the minimum level of several social security benefits (sickness, work injury and diseases, unemployment) is inadequate (Conclusions 2017), to Article 12§3 and the Committee's conclusion of non-conformity on account of the restrictive evolution of the social security system during the reference period, and the maintenance of certain restrictions even after the economic situation had improved (Conclusions 2017). The Committee refers to Article 13§1 and its conclusion that the level of social assistance provided to a single person without resources is not adequate (Conclusions 2017) .

Taking into account all of the above, and in particular the absence of decisive progress in combating poverty and social exclusion in a context of economic growth and the comments of the Irish Human Rights and Equality Commission as well as of the EAPN indicating that the formulation and implementation of the National Action Plan for Social Inclusion are not adequate to the challenges posed by the current situation with respect to poverty and social exclusion, the Committee considers that the situation is not compatible with the requirements of Article 30.

Monitoring and evaluation

The Committee notes that in September 2015 the fifth biennial Social Inclusion Report covering 2013 and 2014 as part of the monitoring mechanisms was published. The report published under the national action plan outlines progress made by relevant Government Departments on the implementation of national policy commitments to tackle poverty and social exclusion during these years.

The report also refers to the Social Inclusion Monitor, which is published annually. It shows that poverty levels stabilised in 2014 for the first time since the financial and economic crisis. From 2013 to 2014, the at-risk-of-poverty threshold (60% of median income) increased from 201.82 € to 209.39 €. It is expected that with further increases in employment and the impact of new welfare measures, household incomes and living standards will continue to recover. The Committee asks for up-dated information in the next report.

The Committee notes that people experiencing poverty and social exclusion are involved in structures such as the Social Inclusion Forum, the Pre-budget Forum and other social inclusions initiatives. It asks whether other institutions are also involved in the evaluation of policies aimed at combating poverty and social exclusion.

According to the above-mentioned EAPN publication, while poverty impact assessment does exist in Ireland as part of regulatory impact assessment, but it is only implemented in a very limited and non-transparent way. The Committee asks what steps are being taken to improve the situation in this regard.

Conclusion

The Committee concludes that the situation in Ireland is not in conformity with Article 30 of the Charter on the ground that there is no adequate overall and coordinated approach to combating poverty and social exclusion.

January 2018

European Social Charter

European Committee of Social Rights

Conclusions 2017

ITALY

This text may be subject to editorial revision.

The following chapter concerns Italy, which ratified the Charter on 5 July 1999. The deadline for submitting the 16th report was 31 October 2016 and Italy submitted it on 7 March 2017.

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 "Health, social security and social protection":

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

Italy has accepted all provisions from the above-mentioned group.

The reference period was 1 January 2012 to 31 December 2015.

The conclusions relating to Italy concern 19 situations and are as follows:

– 7 conclusions of conformity: Articles 11§1, 11§2, 11§3, 12§2, 13§3, 13§4 and 14§2.

– 6 conclusions of non-conformity: Articles 3§4, 12§3, 12§4, 13§1, 23 and 30.

In respect of the 6 other situations related to Articles 3§1, 3§2, 3§3, 12§1, 13§2 and 14§1 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 Italy under the Charter. The Committee requests the authorities to remedy this situation by providing the information in the next report.

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The next report to be submitted by Italy will be a simplified report dealing with the follow up given to decisions on the merits of collective complaints in which the Committee found a violation.

The report should also contain information requested by the Committee in Conclusions 2016 in respect of its conclusions of non-conformity due to a repeated lack of information:

- the right to engage in a gainful occupation in the territory of other States Parties – applying existing regulations in a spirit of liberality (Article 18§1).

The deadline for submitting that report was 31 October 2017.

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Conclusions and reports are available at www.coe.int/socialcharter as well as in the HUDOC database.

Article 3 - Right to safe and healthy working conditions

Paragraph 1 - Health and safety and the working environment

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

General objective of the policy

The Committee previously found the situation not to be in conformity with the Charter on the grounds that there was no appropriate occupational health and safety policy. It observed that Legislative Decree No. 81/2008 established a unified administrative system to permit the formulation of an occupational health and safety policy, but no such policy was adopted during the reference period. It asked that the next report provide information on the policy's content and goal, in particular the extent to which it is consistent with the EU strategy on health and safety at work, 2007-2012 (Conclusions 2013).

The report states that the Advisory Commission on Occupational Health and Safety has drawn up and adopted in 2013 a series of activities to prevent accidents at work and occupational diseases, which according to the report can amount to a national strategy, it also refers to regional plans for the prevention of occupational accidents and diseases. The Committee requests the next report to provide further details of the national strategy in force during the reference period. It reserves in the meantime its position on this point.

A governmental source refers to a National Prevention Plan 2014-2018 (*Piano Nazionale della Prevenzione* 2014 – 2018) aimed at promoting human health and prevention, including as regards knowledge and prevention of work-related risks and diseases. This plan replaced the National Prevention Plan 2010-2012. The Committee asks for further information on the National Prevention Plans.

The report states that the policy and strategy in force are fully in line with the EU strategy. It refers to the decrease in the rate of occupational accidents as evidence that the policies and strategies are having positive effects.

The Committee recalls that new technology, organisational constraints and psychological demands favour the development of psychosocial factors of risk, leading to work-related stress, aggression, violence and harassment. Under the provisions of Article 3§1 of the Revised Charter the Committee accordingly includes work-related stress, aggression and violence when examining whether policies are regularly assessed or reviewed in the light of emerging risks. States parties have a duty to carry out activities in terms of research, knowledge and communication relating to psychosocial risks (Statement of Interpretation on Article 3§1 of the Charter, Conclusions 2013).

The report states that Italy is implementing the European framework agreement on work related stress of 8 October 2014, in addition INAIL in 2007 has created a working group on the prevention of psychosocial illnesses at work which undertakes research on the issue and issues guidelines. Awareness raising projects on work related stress have also been carried out at regional level.

Organisation of occupational risk prevention

The Committee previously concluded that there was no adequate system to organise occupational risk prevention (Conclusions 2013).

Article 28 of Legislative Decree No.81/2008 provides that all public and private companies must draft and update a formal Risks assessment document, which must outline the necessary prevention and protection measures as well as personal protective equipment. The risk assessment document must include a report detailing all the work-related risks to health and safety according to several risk factors (workplace; machinery; equipment; chemical, physical and biological risks; organisational and management issues, etc.) It should also indicate the criteria used to assess the risks and include a statement by the

employer on the prevention and protection measures implemented in order to eliminate the risks identified or to reduce them to an "acceptable level", if it is not possible to completely eliminate them.

The employer is responsible for drawing up a risk assessment and appointing the head of risk prevention. As part of a series of responsibilities in the area of health and safety, the employer and managers working on his or her behalf are required to consult with safety representatives, representing the employees.

The Committee seeks confirmation that all employers must carry out a risk assessment irrespective of the size of the undertaking. It further requests updated information on the Advisory Commission on Occupational Health and Safety, set up by Article 6 of Legislative Decree No. 81/2008, and its role in respect of risk assessment. It reserves in the meantime its position on this point.

Improvement of occupational safety and health

The Committee previously noted that there is a system aimed at improving occupational health and safety through research, development and training (Conclusions 2013). It asks that the next report contain updated information. It reserves in the meantime its position on this point.

Consultation with employers' and workers' organisations

The Committee previously noted that a system for consulting employers' and workers' organisations, conductive to fostering social dialogue, exists at the level of the national and regional authorities. It requested information on the consultation with bodies with responsibility for occupational health and safety issues at the undertaking level (Conclusions 2013).

In this connection, the Committee notes that, at local level, employee representation in the area of health and safety at work is primarily provided by company safety representatives (*rappresentante dei lavoratori per la sicurezza aziendale* – RLS). However, there are also area safety representatives (r*appresentante dei lavoratori per la sicurezza territoriale o di comparto* – RSLT), covering companies without a safety representative across a specific geographical area, and site safety representatives (r*appresentante dei lavoratori per la sicurezza di sito produttivo*), who have a coordinating role where several companies share a single site – such as construction sites, ports and transport hubs.

Conclusion

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

Article 3 - Right to safe and healthy working conditions
Paragraph 2 - Safety and health regulations

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

Content of the regulations on health and safety at work

The Committee previously found (Conclusions 2013) that the legislation and regulations met the general obligation under Article 3§2 of the Charter which requires that most of the risks listed in the general introduction to Conclusions XIV-2 (1998).

The report states that Directive 2000/54/EC of the European Parliament and the Council of 18 September 2000 on the protection of workers from risks related to exposure to biological agents at work, Directive 2009/127/EC of the European Parliament and of the Council of 21 October 2009 amending Directive 2006/42/EC with regard to machinery for pesticide application, Commission Directive 2009/161/EU of 17 December 2009 establishing a third list of indicative occupational exposure limit values in implementation of Council Directive 98/24/EC, and Directive 2010/35/EU of the European Parliament and of the Council of 16 June 2010 on transportable pressure equipment have all been transposed into domestic law. In addition Directive 2014/27/EU of the European Parliament and of the Council of 26 February 2014 amending Council Directives 92/58/EEC, 92/85/EEC, 94/33/EC, 98/24/EC and Directive 2004/37/EC of the European Parliament and of the Council, in order to align them to Regulation (EC) No 1272/2008 on classification, labelling and packaging of substances and mixtures has been transposed into domestic law and the transposition of Directive 2013/35/EU of the European Parliament and of the Council of 26 June 2013 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields) (20th individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) and repealing Directive 2004/40/EC is currently being prepared.

The Committee previously pointed out that under the terms of Article 3§2 of the Charter, regulations concerning health and safety at work must cover work-related stress, aggression and violence specific to work, and especially for workers under atypical working relationships (Statement of Interpretation on Article 3§2 of the Charter, Conclusions 2013). It requested information on this issue.

The report does not provide any information on this point. The Committee accordingly reiterates its request and reserves in the meantime its position on this point.

Levels of prevention and protection

The Committee considers the levels of prevention and protection that the legislation specifies for certain risks**.**

Establishment, alteration and upkeep of workplaces

The Committee previously considered that levels of prevention and protection in relation to the establishment, alteration and upkeep of workstations complied with Article 3§2 of the Charter (Conclusions 2013). It asked however for details on the requirement for employers to assess the occupational risks of workstations and the deadlines for compliance.

According to the report, Legislative Decree No.81/2008 provides in Article 28 that all public and private companies must draft and update a formal Risks assessment document which must outline the necessary prevention and protection measures as well as personal protective equipment (see conclusion under Article 3§1).

Protection against hazardous substances and agents

Protection of workers against asbestos

The Committee previously requested information on the measures taken to incorporate the exposure limit of 0.1 fibres per cm^3 introduced by Directive 2009/148/EC of the European Parliament and of the Council of 30 November 2009 on the protection of workers from the risks related to exposure to asbestos at work. It also asked for information about the Government's intentions concerning the ratification of ILO Convention No. 162 on Asbestos (1986), (Conclusions 2013).

The report states that in February 2015 draft legislation transposing Directive 2009/148/EC was presented to Parliament. The report further states that the Government intends to ratify ILO Convention No. 162 on Asbestos (1986). By 2015 regional plans on asbestos were under preparation in several regions, other regions were completing an inventory on buildings with asbestos. According to the report, work on elimination of asbestos is continuing. The Committee asks to be kept informed of all developments on this issue. It reserves in the meantime its position.

Protection of workers against ionising radiation

As regards protection of workers against ionising radiation the Committee previously found the situation to be in conformity with the Charter (Conclusions 2013).

The Committee seeks confirmation that workers are protected up to a level at least equivalent to that set in the Recommendations by the International Commission on Radiological Protection (ICRP Publication No. 103, 2007). It reserves in the meantime its position on this point.

Personal scope of the regulations

The Committee examines the scope of legislation and regulations with regard to workers in atypical employment.

Temporary workers and other types of workers

The Committee previously examined (Conclusions 2013) the protection of temporary workers, interim workers and workers on fixed-term contracts. It noted that the protection of occupational health and safety and the information and training provided by Legislative Decree No. 81/2008 cover all employees irrespective of their contractual status and concluded that the situation was in conformity with the Charter in this respect. It also noted that temporary workers, interim workers and workers on fixed-term contracts have access to medical supervision and representation in the workplace on the same terms as employees on permanent contracts, in accordance with the arrangements set out in Legislative Decree No. 81/2008. The report confirms that this is still the case.

The Committee previously examined (Conclusions 2013) the protection of self-employed workers, home workers and domestic staff. It concluded that the situation was in conformity with the Charter.

Although Legislative Decree No. 81/2008 does not apply to domestic workers, Act No. 339/1958 of 2 April 1958 protects the physical and psychological integrity of domestic staff. The Committee also notes National Collective Labour Agreement on the regulation of Domestic Work which provides that domestic workers have the right to a healthy and safe workplace. The Committee requests information on measures to ensure the occupational health and safety of domestic workers. It reserves in the meantime its position on this point.

Consultation with employers' and workers' organisations

The Committee previously concluded (Conclusions 2013) that the situation was in conformity with the Charter as regards the consultation of employers' and employees' organisations. It asked however for information on the consultation of the relevant bodies for the health and safety of temporary workers, interim workers and workers on fixed-term contracts within companies. As the report provides no information on this point, the Committee reiterates its request and reserves in the meantime its position.

Conclusion

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

Article 3 - Right to safe and healthy working conditions

Paragraph 3 - Enforcement of safety and health regulations

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

Accidents at work and occupational diseases

According to the report the rate of occupational accidents including fatal accidents decreased during the reference period; 663 000 accidents were declared in 2014 (of which 437 000 were confirmed as occupational accidents), a decrease of 4.6% from 2013 and a decrease of 24% from 2010. The number of fatal accidents in 2014 was 1 107. The report states that 18% of accidents took place outside the place of work, i.e. while travelling to and from work or involving transport; the corresponding figure for fatal accidents was 54%.

However the number of occupational diseases increased over the reference period; 57 000 illnesses were declared in 2014, an increase of 33% from 2010.

EUROSTAT figures for 2014 indicate that there were 313 312 non fatal accidents at work corresponding to the incidence rate observed in the EU 28 (1 642.09). The number of fatal accidents for the same period was 522, this corresponds to an incidence rate that is higher than the incidence rate observed in the EU 28.

The Committee previously requested explanations regarding the major discrepancies between the data in the report and those published by EUROSTAT, the report repeats that the discrepancies between the data in the report and those published by EUROSTAT stem from the fact that EUROSTAT excludes transport accidents.

It also reiterated its request regarding measures adopted to halt the sharp increase in work accidents suffered by workers in insecure employment and the impact of Legislative Decree No. 81/2008 on the number of work accidents suffered by immigrant workers. The report states that foreign workers are predominantly employed in domestic work, industry and construction. In 2013, 101 188 accident involving foreign-born persons were registered, which represents a decrease from 2012. Most accidents take place in the manufacturing industry and construction (according to the report changes to the labour inspection system will further decrease the number of accidents suffered by foreign workers).

The Committee asks that the next report provide information on the concept of occupational diseases, mechanisms for recognising, reviewing and revising of occupational diseases (or the list of occupational diseases), most frequent occupational diseases registered during the reference period, as well as the preventative measures taken or envisaged. It reserves in the meantime its position on this point.

Activities of the Labour Inspectorate

The report refers to the changes to labour inspection introduced as a result of the "Jobs Act". In particular, according to the report, Legislative Decree No.149/2015 simplifies the current system of labour inspection by creating a unique labour inspection authority (NLI) through the integration into a single structure of the inspection services of the Ministry of Labour and Social Policies, INPS, and INAIL, providing tools and forms of cooperation with the inspection services of Local Health Authorities (ASL) and Regional Agencies for Environmental Protection (ARPA).

The core function of the NLI is the overall coordination of inspection activities covering , inter alia health and safety at work. by planning inspection activities; defining inspection procedures and tools and developing guidelines and operational directives for all the personnel involved, proposing qualitative and quantitative targets, and monitoring their achievement, planning training activities for inspectors and coordinating with other relevant bodies.

The NLI is also in charge of analysing undeclared work and of developing the risk-mapping to be used when planning inspections that focus on this kind of employment. It is also in charge of raising awareness of undeclared work among relevant stakeholders and companies.

The Committee previously requested information on the number of workers covered by the inspection visits carried out. In order to gauge the efficacy of inspections and the deterrence of sanctions, it also requested information on the number of labour inspectors working in the Ministry of Labour and Social and Policy, the ASLs; the Ministry and ASL inspectors' powers to establish violations, make orders and impose sanctions; the existence of sectors of activity which also come under the Ministry's special jurisdiction; the categories of measures and sanctions actually ordered by labour inspectors in cases of violation of occupational health and safety regulations; the consequences of the criminal offences recorded; and the number of criminal sentences passed on cases referred to the public prosecutor's office.

The Committee notes that the report provides some information on these issues; such as the number of inspectors, their power of investigation, and sanctions they may impose. However in light of the newly restructured inspection services the Committee asks the next report to provide updated information on the above mentioned issues and reserves in the meantime its position.

The Committee notes (see Conclusion under Article 3§2) that domestic workers are not covered by occupational health safety legislation – Legislative Decree No 81/2008 – but by other legislation which protects their physical and psychological integrity and the National Collective Labour Agreement on the regulation of Domestic Work. It requests information in the next report on the measures taken to ensure the health and safety of domestic workers.

Conclusion

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

Article 3 - Right to safe and healthy working conditions

Paragraph 4 - Occupational health services

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

In its previous conclusion (Conclusions 2013), the Committee renewed its request for information on the proportion of undertakings equipped with medical services or sharing them in practice and asked that the next report provide information on the following aspects: the tasks of occupational health services; the proportion of in-house occupational health and services; the proportion of external occupational health and safety services; the number of listed occupational health physicians in relation to the labour force; any sanctions and supervision mechanisms to ensure that undertakings comply with legal obligations on the matter.

According to the report, occupational doctors are obliged to submit data on the workers they see to the relevant Local Health Authority (ASL), which enables it to have an overview of the situation: 3597 occupational doctors in 2012 and 5018 occupational doctors in 2013 submitted data to the ASL. Legislative Decree No.81/2008 provides for sanctions to be imposed on employers who fail to nominate an occupational doctor.

The Committee recalls that it previously stated that without information on the proportion of undertakings providing services it would be unable to establish whether the situation is in conformity with the Charter. The report states that not all undertakings are obliged to provide occupational health services, only those where there have been deemed to be risks. However, it states that it is not possible to provide information on the percentage of undertakings providing health services. The Committee accordingly reiterates its request for information which would demonstrate that occupational health services are being progressively provided to all workers. In the meantime, it concludes that the situation is not in conformity with the Charter on grounds that it has not been established that there is a strategy to progressively provide access to occupational health services for all workers in all sectors of the economy.

The Committee furthermore asks for information in the next report on existing strategies, in consultation with employers' and workers' organisations, to improve access to occupational health services for temporary workers, interim workers, self-employed workers, home and domestic workers.

Conclusion

The Committee concludes that the situation in Italy is not in conformity with Article 3§4 of the Charter on the ground that it has not been established that there is a strategy to progressively provide access to occupational health services for all workers in all sectors of the economy.

Article 11 - Right to protection of health

Paragraph 1 - Removal of the causes of ill-health

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

The Committee recalls that the assessment of the follow-up to collective complaints No. 87/2012 *International Planned Parenthood Federation – European Network (IPPF EN) v. Italy,* decision on the merits of 10 September 2013, and No. 91/2013 *Confederazione Generale Italiana del Lavoro* (CGIL) v. Italy, decision on the merits of 12 October 2015, on the right to protection of health in Italy, will be done in the framework of Conclusions 2018.

Measures to ensure the highest possible standard of health

The Committee notes from WHO data that life expectancy at birth (average for both sexes) was 82.7 years in 2015 (80.07 years in 2009; the average observed by Eurostat in 2015 in the 28 EU member States was 80.6 years).

The report indicates that the death rate (deaths per 1000 inhabitants) was 10.7 per 1000 inhabitants (9.78 in 2009). The report adds that 2015 was marked by a significant increase in deaths, primarily among the old (75-95 years).

The report also states that according to the survey entitled "*The main causes of death in Italy*", carried out by the National Institute of Statistics (ISTAT) in 2012 and published in 2014, the most frequent causes of death were ischemic heart disease (12% of the total), cerebrovascular disease (10% of the total) and other forms of heart disease (8%), followed by malignant tumours (those affecting the trachea, the bronchi and the lungs – 6% of the total) and hypertensive disease (5% of the total). The same source indicates that there has also been an increase in dementia and Alzheimer's disease, which constitute the sixth cause of death (4.3% of the annual total). The report mentions the measures taken to prevent cardio-vascular disease, cancer, diabetes, respiratory disease and dementia.

The Committee asks to be informed of the main causes of death and the measures taken to prevent them.

The Committee notes that the infant mortality has decreased since the last reference period. According to Eurostat, in 2015, the rate stood at 2.9 deaths per 1000 live births compared to 3.62 deaths per 1000 live births in 2009 (the EU 28 rate was 3.6 in 2015).

The Committee notes from World Bank data that the maternal mortality rate has remained stable since the last reference period: the rate was still 4 deaths per 100 000 live births in 2015, as was the case in 2009. The report states that according to a pilot project on monitoring maternal mortality, which was co-ordinated by the National Health Institute in six regions, there were differences between regions. For example, among the participating regions, the lowest ratio (4.6 per 100 000 live births) was noted in Tuscany while the highest (13.4 per 100 000 live births) was in Campania. The Committee asks that the next report contain updated figures on maternal mortality rate in all regions of Italy.

Access to health care

The Committee previously noted that the health care system is organised at three levels (national, regional and local) and provides universal coverage (Conclusions 2009).

This report lists the measures and programmes put in place by the 2010-2012 National Prevention Plan (NPP). The report also states that, in 2014, a 2014-2018 National Prevention Plan was approved. This new NPP, which will last five years, is aimed at defining a health promotion and prevention system that can support persons at all stages of their lives, in their living and working environments. The report lists 10 strategic goals of the new NPP, which will be pursued in all the regions. The Committee asks that the next report provide information on implementation of the new 2014-2018 National Prevention Plan's programmes and proposals.

The report mentions the fact that the fight against propagation of chronic diseases promoted by the World Health Organisation (WHO), including through the recent *Health 2020* programme, is especially important in countries such as Italy, which has one of the highest rates of ageing in Europe and the world. In 2015 the most common diseases and chronic conditions were high blood pressure (17.1%), osteoarthritis/arthritis (15.6%), allergic diseases (10.1%), osteoporosis (7.3%), chronic bronchitis and bronchial asthma (5.6%) and diabetes (5.4%).

With regard to waiting times, in its previous conclusion, the Committee took note of the National Waiting-List Plan for 2010-2012, forming part of the agreement between the state and the regions (Conclusions 2013). The report provides data reflecting the monitoring of waiting lists for admission, as provided for by the aforementioned plan, for 2010 (outside the reference period). The Committee asks for updated information on waiting lists and on the trend (downwards or upwards).

As concerns health spending, the Committee notes from OECD data that health spending in Italy (excluding spending on investment in the health sector), represented 8.8% of GDP in 2013 compared to an average of 8.9% for OECD countries. The report indicates that families' health spending represented 1.8% of national GDP. The share of the total covered by public funds was 79.4% and the remaining 20.6% was borne by the families concerned.

Regarding citizens' contribution to the cost of services, the Committee takes note of the measures taken concerning pharmaceutical services and specialised outpatient care, both nationwide and in the different regions. The report indicates that, in 2015, exemptions were provided for at national level in respect of certain conditions (certain chronic illnesses and rare diseases, pregnancy and disability), for some preventive activities (screening of certain types of cancer, HIV testing) or for certain categories of citizens identified on the basis of a combination of personal, social and income-related circumstances.

Concerning equitable access to health care, the Committee previously noted that, although universal coverage for a fairly comprehensive set of health services has been on offer for decades, there is still evidence of inequities associated with income (Conclusions 2013). The Committee asked for comments on this point (Conclusions 2013). The report states that Act No. 833 of 1978 created a National Health Service which made it possible to extend health protection to everyone, and no longer only to some categories (workers, pensioners, their families and particularly destitute persons with no compulsory insurance cover). The National Health Service has at its disposal accredited public and private health establishments to which citizens can turn, according to their needs and preferences. The Committee asks how this is insured in practice for everyone (including for patients from the most disadvantaged groups, or with low income) and in all regions of Italy.

The Committee asks that the next report provide updated information on the availability of mental health services and treatment, including information on the prevention of mental disorders and measures taken to ensure recovery.

The Committee also asks that the next report contain information on dental services and treatment (for example, who is entitled to free dental treatment, costs for the main types of treatment and the proportion of charges paid by patients).

Regarding the right to protection of health of transgender persons, the Committee previously received from the ILGA (International Lesbian and Gay Association) (European Region) a document in which it alleged that in Italy there is a requirement that transgender people undergo sterilisation as a condition of legal recognition of their gender identity. The Committee asked in its previous conclusion whether transgender persons have to undergo sterilisation to obtain legal recognition of their gender identity (Conclusions 2013).

The Committee takes note of the submissions made by Transgender Europe and ILGA (European Region) regarding the implementation of Article 11 of the Charter during the current monitoring cycle, which indicate that Italy is among those states which have

amended their legislation or practice since 18 March 2015 and which no longer require sterilisation. The Committee asks that the next report confirm this assertion. It moreover notes that this report indicates that the trend in the case law is towards rectifying gender identity in documents even without medical or surgical treatment.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Italy is in conformity with Article 11§1 of the Charter.

Article 11 - Right to protection of health

Paragraph 2 - Advisory and educational facilities

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

Education and awareness raising

The Committee previously requested updated information on all the activities carried out by the public health services or other bodies to promote good health and prevent disease (Conclusions 2013). The report provides detailed information on the campaigns carried out during the reference period, in particular with regard to obesity, smoking, alcohol abuse, AIDS, prevention of infections and influenza, etc.

Regarding health education in schools, the report indicates that the "Guidelines on nutrition education in Italian schools", which were promulgated in 2011, constitute a basic framework to which the "Ministry of Education, Universities and Research (MIUR) 2015 Guidelines for nutrition education" have been seamlessly added. These "MIUR 2015 Guidelines" set out the epistemological context in which nutrition education should be placed in the Italian education and training system, also in the light of the educational and cultural heritage of EXPO 2015.

The Committee wishes to point out that health education should be provided throughout schooling and that it should be part of school curricula. Health education should at least cover the following subjects: prevention of smoking and alcohol abuse, sexual and reproductive education, in particular with regard to prevention of sexually transmitted diseases and AIDS, road safety and promotion of healthy eating habits. It also recalls that sexual and reproductive health education is considered as a process aimed at developing the capacity of children and young people to understand their sexuality in its biological, psychological, socio-cultural and reproductive dimensions, which will enable them to make responsible decisions with regard to sexual and reproductive health behaviour (INTERIGHTS v. Croatia, Complaint No. 45/2007, Decision on the merits of 30 March 2009, §46). The Committee asks that the next report indicate whether the aforementioned subjects have been included in school curricula.

Counselling and screening

The Committee previously noted that responsibility for school health services, which includes prevention activities among pupils, teachers and other staff of public and private schools, lies with the regions. Each local health authority has to draw up activities and a monitoring plan for the schools and pupils in its area and intervene when parents or teachers draw their attention to specific illnesses, disorders or learning difficulties. The pre-school and school departments of local health authorities provide a variety of services (Conclusions 2009). The Committee had asked how often the maternity and paediatric departments of the local health units provided the different services for which provision is made in the context of the school health system (Conclusions 2009). The report states that no surveys have been carried out on the activities of these departments in the Italian regions and, therefore, it is impossible to submit the information requested.

The Committee previously requested up-to-date information on screening programmes available throughout the country (Conclusions 2013). The report indicates that, since 2001, cancer screening has been part of the essential assistance standards (LEAs) and that there is active screening of breast, cervical and colorectal cancer. The latest available data show a general increase in participation rates for the three screening programmes. Moreover, in 2012, over 300 000 women (8% of the population) were invited to take the test for HPV and 42% accepted the invitation.

The Committee also asked for confirmation that free and regular consultation and screening for pregnant women exists throughout the country (Conclusions 2013). The report indicates that couples wishing to have children and pregnant women are entitled to free provision of

certain specialised services and diagnoses, aimed at protecting their health and that of the baby. The report provides a list of services, which include diagnostic examinations for physiological screening during pregnancy, all the necessary and appropriate services for prenatal diagnosis during pregnancy, as prescribed by a specialist, and all the necessary and appropriate services generally prescribed by a specialist for the treatment of diseases (pre-existing or which occur during pregnancy) which pose a risk for the mother or the unborn child.

Conclusion

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

Article 11 - Right to protection of health

Paragraph 3 - Prevention of diseases and accidents

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

Healthy environment

The Committee takes note of the measures introduced by Italy during the reference period to reduce environmental risks, in particular in the fields of air quality, water management, soil pollution and food security. Concerning noise management, the report indicates that the legislative context has remained unchanged.

With regard to air quality, the report states that critical episodes were essentially attributable to PM_{10}, $PM_{2.5}$, NO_2 and O_3 and that the regions of Northern Italy were the most affected. The XI report on the quality of air in urban areas (2013) indicated that the concentration of B(a)P, a tracer of the HPA family selected for its carcinogenicity, exceeded the limit value in more than 20% of the urban areas taken into consideration during 2012. Following these findings, more than 70% of the urban areas covered by this study drew up an air quality plan aimed at keeping within the limits prescribed by the regulations. The measures set out in these plans were mainly intended to limit road traffic, to enhance the efficiency of systems for energy production, and, to a lesser extent, to reduce industrial emissions and the nitrogen loads in waste water from stock-farming.

The Committee moreover notes that, according to the 2015 report of the European Environment Agency (EEA), in 2012, air pollution caused 84 400 premature deaths in Italy, the highest level among EU states. The Committee asks that the next report provide information on the implementation of the measures taken and up-to-date information on the levels of air pollution and trends in this regard, as well as on cases of contamination of drinking water and food poisoning during the reference period. The Committee also asks to be informed of the measures taken regarding waste management. The Committee reserves its position on this point.

Tobacco, alcohol and drugs

The Committee takes note of the statistical data concerning smoking provided by ISTAT, which indicate that, in 2013, 20.9% of persons over the age of 14 were smokers (26.4% men and 15.7% women). According to Customs and Monopolies Agency data, in 2013 sales of tobacco products fell by 5.4% as compared with 2012, and cigarette sales in particular fell by 5.7% (approximately two packets less per month bought by each smoker).

The report mentions the following legislative measures taken during the reference period: Act No. 189 of 8 November 2012 implementing the legislative decree of 13 September 2012 introduced a ban on selling cigarettes to those under 18, raising the age limit of 16 years provided for by Article 25 of the 1934 royal decree; Act No. 128 of 8 November 2013 implementing legislative decree No. 104 of 12 September 2013 also extended the prohibition of smoking to areas outside schools. The same legislation also introduced a ban on using electronic cigarettes in closed spaces and in areas outside schools, as well as on advertising liquids and refills containing nicotine in places frequented by minors, on television between 4 and 7 p.m., in the press for young people and in cinemas. The report adds that the Carabinieri Command for the Protection of Health (NAS) carries out random checks in the whole country and provides data on these inspections.

As concerns alcoholism and drug addiction, the report provides detailed information on the trends relating to the consumption of alcohol and drugs, as well as on measures aimed at combating alcoholism and drug addiction. In this regard, the Committee notes the 2013-2020 Action plan for the prevention and control of non-communicable diseases, which aims for a 10% reduction in harmful consumption of alcohol over the coming years. The report adds that Italy recently achieved an important objective set by the new European action plan to

reduce the harmful consumption of alcohol 2012-2020, by introducing a ban on administering and selling alcoholic beverages to those under the age of 18 (Act No. 189/2012). The report further states that the binge drinking phenomenon is particularly alarming, with grave dangers to health and security not only for consumers, but also for society as a whole. The percentages of male and female binge drinkers have steadily increased among ten to twenty year olds and the highest rates are to be found among those aged between 18 and 24 (Men=21.0%, Women=7.6%).

Regarding drug addiction, the report mentions that under Act No. 79 of 2014, the Public Services for Drug Addiction were renamed the Public Services for Dependency. It is no longer a matter of helping drug addicts, who are mainly addicted to heroin, but of providing highly specialised services to persons suffering from different types of diseases linked to dependency on illegal and legal substances and dependency with no substances. The Public Services for Dependency ensure direct access to treatment, while guaranteeing anonymity and ensuring multidisciplinary integration. Each patient receives personalised treatment in accordance with the diagnostic evaluation made, through the creation of individual treatment plans established with their agreement. The treatment plan defined by the Public Services for Dependency can be administered in an outpatient context/at home or in a semi-residential or residential institution. The report adds that there are 581 Public Services for Dependency throughout the country.

The Committee asks that the next report contain information on the impact and the results of the measures taken against smoking, alcoholism (in particular binge drinking) and drug addiction, as well as data on trends regarding consumption.

Immunisation and epidemiological monitoring

The report indicates that, on 23 March 2011, the state and the regions approved the "*National plan to eliminate measles and congenital rubella (PNEMoRc) 2010-2015*", which postponed to 2015 the goals of eliminating measles and preventing rubella (< 1 case/100 000 live births) and set a target of eliminating rubella. The report adds that, in 2012, average immunisation coverage for the first dose of measles vaccination before the age of two was 90.0% while that for the first dose of vaccination against rubella was 89.2%. Only two regions (Umbria and the Marches) have attained a vaccination coverage of ≥ 95%.

The Committee takes note of the coverage rate for immunisation in Italy, by region and type of vaccination, for 2014. It wishes to be informed of any new facts on the coverage rate for vaccination.

Accidents

The report states that according to ISTAT data, in 2014, nearly 700 000 persons – 11.3 for every 1000 – reported that they had been involved in a home accident in the three months preceding the survey. Overall, there were 783 000 accidents in the three months, with an average of 1.1 accidents per affected person. Women, the elderly and children are the categories most at risk of being involved in a home accident. The report mentions the fact that the Ministry of Health has included the problem of home accidents among the main goals of the 2014-2018 National Prevention Plan. The measures to be taken include improving the safety of housing; improving health professionals', general practitioners' and health profession operators' knowledge of the phenomenon and of preventive actions; providing training and information to the population groups most at risk of incurring home accidents, to parents and family carers as well as improving their knowledge thereof; actions aimed at improving the health of the elderly population in order to enhance their balance and motor co-ordination. The Committee asks that the next report contain information on the implementation of these measures and their impact in reducing home accidents.

The report provides statistical data on road accidents: in 2014 there were 177 031 road accidents causing bodily injuries, which led to the death of 3 381 persons (within 30 days

after the accident) and wounded 251 147 persons. Compared with 2013, the number of accidents decreased by 2.5% and the number of wounded persons by 2.7%, while with regard to the number of deaths the decrease was less significant: -0.6%. The report also indicates that media campaigns were carried out during the reference period by the ANIA Foundation for road safety, which concentrated on the risks incurred by road users.

The Committee recalls that states parties must take measures to prevent accidents. The main categories of accidents covered are road accidents, home accidents, accidents at school and accidents during leisure time. The Committee asks that the next report contain information on the measures taken to prevent all types of accidents and on the overall trend in accidents.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Italy is in conformity with Article 11§3 of the Charter.

Article 12 - Right to social security

Paragraph 1 - Existence of a social security system

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

With regard to family and maternity benefits, the Committee refers, respectively, to its conclusions relating to articles 16 and 8§1 (Conclusions 2015).

The Committee recalls that the assessment of the follow-up to collective complaint *Associazione Nazionale Giudici di Pace v. Italy* complaint, No. 102/2013, decision on the merits of 5 July 2016, will be done in the framework of Conclusions 2018 (in this complaint, the Committee found that justices of the peace were discriminated against with regard to social security coverage compared to tenured judges and other categories of lay judges).

Risks covered, financing of benefits and personal coverage

The Committee refers to its previous conclusions for a description of the Italian social security system. The latter continues to cover all the traditional risks, namely those relating to health care, sickness, maternity, families, occupational accidents and diseases, old age, invalidity and survivors. It is still based on collective financing from employers' and employees' contributions and funding from the state.

According to official data from the national statistical office, ISTAT, the total population in 2015 was 60 795 612. According to the report, the active population at that time was 22 465 000.

The entire resident population is entitled to health care cover under the universal healthcare insurance scheme. In answer to the Committee, the report states that 47.3% of the active population in 2015, or 10 630 000 persons, were insured with the national social security organisation, the INPS, for the sickness branch, 65.7%, or 14 754 000 persons, for the unemployment branch and 96.6%, or 21 708 000 persons, for the old-age branch. It also states that in the case of sickness and maternity insurance, which is obligatory for employees, these figures refer solely to persons insured with the INPS, and not those insured by their employers with private schemes. Nor do they take account of employed persons registered with professional and other occupational bodies that have their own insurance schemes. The actual coverage rate is therefore higher than the above figures indicate. The Committee asks for the next report to provide, as far as possible, further information on this subject to enable it to assess overall personal coverage. It also asks whether old-age insurance continues to cover the invalidity and survivors' branches and, if not, for any relevant information.

The Committee notes that, according to CLEISS (the French Liaison Centre for European and International Social Security), the occupational accidents and diseases branch is managed not by the INPS but by another social security body, the INAIL. According to the MISSOC database, this is a compulsory form of insurance that covers employees, the self-employed, teachers and students and seafarers. Under certain circumstances, it also covers domestic accidents occurring outside a paid employment context. According to 2015 data published on the INAIL site, there were 15 979 357 persons insured by their employer, to which should be added 48 361 radiologists. The Committee notes that according to these figures the coverage rate was 71.3%.

It asks for full and up-to-date information in the next report on the number of insured persons in relation to the active population for each social security branch.

Adequacy of the benefits

According to Eurostat data, the median equivalised annual disposable income in 2015 was € 15 846, or € 1321 per month. The poverty level, if defined as 50% of median equivalised

annual disposable income, would have been € 7923, or € 660 per month. Forty percent of equivalised income would have been € 528 per month.

The Committee previously noted that **sickness** benefits were paid from the fourth day of sickness and up to 180 days per year, and that they corresponded to 50% of the relevant wage or salary for the first twenty days and 66.67% thereafter. Since it had no information on minimum wages by sector, the Committee considered that it had not been established that benefit levels were adequate (Conclusions 2013 and 2015). According to the report, there is no minimum level of benefit payable, but in view of the fact that, for the majority of employees, social security contributions cannot be based on daily taxable income below that specified in law, which was € 47.70 in 2015, the daily benefits payable that year on the basis of this minimum figure would have been € 23.80. It adds that in various sectors, collective agreements may provide for employers to make an additional payment. The Committee asks for the next report to specify whether the benefit is calculated on the basis of the number of days that the employee has worked, for example five days out of seven, or on every day of the week, other than the initial three-day non-eligibility period. As an example, it asks what benefit an employee paid the minimum daily rate would receive in the event of medical incapacity for work for one month. It also asks what proportion of employees are only eligible for the minimum daily rates of pay and which categories of employees could potentially be paid below these rates. Finally, it asks for the next report to state whether sickness benefit may be combined with other, additional, benefits. In the mean time, it reserves its position on this point.

Turning to **unemployment** benefits, the report refers to the introduction of new regulations in 2015 (legislative decree no. 22 of 4 March 2015), which established, as of 1 May 2015, a new social insurance employment benefit (NASpI) to replace two other previous benefits, namely the ASpI and Mini ASpI, though the former continues to apply to persons eligible for it before 1 May 2015. The NASpI is an allowance payable to employees who have become involuntarily unemployed, other than fixed-term employees of public authorities, agricultural workers, non-European seasonal workers and recipients of pensions. To qualify, those concerned must be registered as unemployed with the employment service, have been made unemployed involuntarily (though, exceptionally, giving notice for good reasons or terminating a contract by mutual agreement may be acceptable), have at least thirteen weeks' contributions in the previous four years, including at least thirty days' worked in the previous twelve months (a period that may be extended in certain cases, for example in the event of sickness, occupational accidents or parental leave) and have annual income from work below a certain level, which was € 8145 in 2015. The allowance is paid monthly, from the eighth day of unemployment, for a period corresponding to half the number of weeks in which contributions were made over the previous four years. It may therefore be awarded for periods ranging from six and a half weeks to up to two years. The Committee considers that, in principle, a minimum period of entitlement of six and a half weeks is too short. However, it notes from the INPS portal that since 2015 unemployed persons who have exhausted their entitlement to the NASpI allowance could be eligible for an unemployment benefit entitled ASDI, which may be received concurrently with certain other benefits, such as invalidity pensions. This benefit is payable for up to six months.

In answer to the Committee's question in Conclusions 2013, the report describes the circumstances in which the NASpI allowance may be suspended, for example in the case of temporary employment, or reduced by 80% of the income arising from employment if such income is insufficient to justify termination of the individual's unemployed status. Entitlement to the allowance may also be suspended or terminated if the persons concerned fail to take part in employment activation measures and retraining options offered by the relevant authorities. Depending on the case, benefits may be withdrawn after the second or third appointment missed, unless the occupational, training or retraining activities concerned are located more than 50 kilometres from the individual's place of residence or can only be reached by public transport with a journey time of more than 80 minutes. Benefits may also

be terminated in the event of refusal to accept a relevant offer of employment. The Committee asks for clarification in the next report of what is meant by “a relevant offer of employment”.

In the case of employee members of co-operatives and employed artistic personnel, the NASpI allowance is in proportion to the previous four years’ taxable income for social security purposes, divided by the total number of contribution weeks and multiplied by a coefficient of 4.33, with a maximum limit set at € 1300. The allowance for other categories of employees covered is set at 75% of their average gross monthly income over the last four years for salaries up to and including € 1195 per month. For earnings above this monthly reference level the allowance is increased by 25% of the additional income, but may not exceed a monthly total that is set annually: € 1300 gross in 2015. Moreover, the allowance is reduced by 3% per month from the fourth month. According to the report, the average income replacement rate of the NASpI allowance in 2015 was 65%. Although there is no legal minimum, the report states that for the majority of employees, social security contributions cannot be based on daily taxable earnings below those specified in law. On this basis, the minimum daily unemployment allowance in 2015 was € 35.80. The Committee considers that this is an adequate level of benefit.

The Committee notes from the INPS portal that certain specific categories of employees are eligible for other unemployment benefits (such as the DIS-Coll allowance for persons working on atypical contracts; the fixed unemployment allowance for agricultural employees; the social assistance allowance (ASU) for unemployed persons engaged in public interest activities; the mobility allowance; and the special earnings supplements (*Cassa Integrazione Guadagni*) relating to situations of partial unemployment). The Committee asks the next report to provide clear and comprehensive information on the different benefits applicable to unemployed persons during the reference period (conditions governing the payment, suspension and/or withdrawal of the benefit; period for which the benefit is payable and its amount, based on the situation of a recipient meeting the minimum eligibility criteria and specifying whether the benefit may be combined with other benefits; numbers of persons covered and of actual recipients). In the mean time, it reserves its position on this point.

As regards **old-age** pensions – the level of which was previously found to be inadequate (Conclusions 2009 and 2013) – the Committee refers to its assessment under Article 23, where it found that the level of contributory and non-contributory old-age pensions remains manifestly inadequate (Conclusions 2017).

The Committee refers to its Conclusions 2013, in which it noted that there was a contributory **disability** benefit, the disability pension, and asked for information on the lowest level of the overall disability benefit in the reference period. The report does not supply the requested information but refers only to the invalidity allowances, which form part of the non-contributory social assistance system. The Committee repeats its request for information on the contributory disability pension. It notes that, according to MISSOC, when the taxable annual income is below a certain level (€ 11 661.52 for a single person, € 17 492.28 for a married couple), the pension is supplemented up to the level of the minimum annual pension of € 6 531.07. However, this only applies to persons first insured before 1996, since according to available information, under the new scheme there is no minimum pension. The Committee notes that the amount payable to persons insured before 1996 is between 40 and 50% of the median equivalised income. It therefore asks what other benefits, if any, may be paid concurrently with it. Regarding the system applicable to more recently insured persons, given the absence of a legal minimum the Committee asks for information in the next report on the estimated amount payable to single persons with, respectively, 66 and 100% incapacity (unrelated to occupational accidents) and the minimum contributions record. In the mean time, it reserves its position on this point.

The report provides no information on the benefits available in the event of **occupational accidents and diseases**. The Committee asks for this information to be included in the next report, in particular the estimated minimum level of the benefit.

Conclusion

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

Article 12 - Right to social security

Paragraph 2 - Maintenance of a social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security

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

The Committee notes that Italy has ratified the European Code of Social Security on 20 January 1977 and has accepted parts V to VIII.

The Committee notes from Resolution CM/ResCSS(2016)10 of the Committee of Ministers on the application of the European Code of Social Security by Italy (period from 1 July 2014 to 30 June 2015) that the law and practice in Italy continue to give full effect to Parts VI, VII and VIII of the Code and that they also ensure the application of Part V, subject to re-establishing the right to a reduced pension after 15 years of contributions.

Conclusion

The Committee concludes that the situation in Italy is in conformity with Article 12§2 of the Charter.

Article 12 - Right to social security

Paragraph 3 - Development of the social security system

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

The Committee refers to its previous conclusions for a description of the Italian social security system. In the case of family and maternity benefits, the Committee refers to its conclusions relating to, respectively, articles 16 and 8§1.

With regard to the other social security branches, the Committee notes that the Italian report still provides no information in response to the finding that there was no evidence that measures had been taken to raise the system of social security to a higher level (Conclusions 2009, 2013, 2015).

The report does, admittedly, refer to various reforms during the reference period, particularly the introduction of new regulations on unemployment benefits (legislative decree no. 22 of 4 March 2015), and the implementation of the 2011 pensions reform (legislative decree no. 201 of 2011, subsequently Act 214/2011). However, it does not provide relevant information to enable the Committee to determine whether the new measures that were adopted or entered into force during the reference period have extended social security coverage or raised benefit levels, or alternatively whether they actually make the system more restrictive than was previously the case.

Article 12§3 requires states parties to improve their social security systems. This means that a situation in which progress has been made may be compatible with Article 12§3 even if the requirements of articles 12§1 and 12§2 have not been satisfied or if these provisions have not been accepted. Examples of progress include extended provision and facilities, protection against new risks or increased benefit levels. Changes that impose restrictions on the social security system do not automatically conflict with Article 12§3. The Committee's assessment of the situation depends on the nature of the changes introduced, such as to the system's coverage, the eligibility conditions for benefits or benefit levels; the reasons given for the changes and the social and economic policy of which they form part; the extent of these changes, in terms of the groups and numbers of persons concerned and benefit levels before and after; the need for reform; whether there are social assistance measures to help persons who might be adversely affected by the reforms (this information may be provided in connection with Article 13) and the results obtained from these changes. However, if the cumulative effect of the restrictions is to bring about a significant deterioration in the standard of living and living conditions of certain groups of the population, this could entail a violation of Article 12§3. Even if the restrictive measures, taken separately, are compatible with the Charter, their combined effect, taken in conjunction with the relevant implementing measures, may amount to a violation of the right to social protection. Measures to strengthen public finances may be deemed necessary to ensure the continued smooth running of the social security system. However, the reforms must not be to the detriment of citizens' protection against social and financial risks, and must not reduce the social security system to a mere social assistance scheme. In all cases, any changes to the social security arrangements must ensure the continued existence of a basic, and sufficiently comprehensive, social security system.

In the light of the foregoing, the Committee once more asks for information in the next report on any changes to the social security system during the reference period, specifying the impact of these changes on the personal scope of the system and the minimum level of income replacement benefits. This information must appear in every Article 12§3 report to enable the Committee to rule on the situation's compatibility with the Charter. The Committee recalls in this respect that the failure to provide the information requested (since 2009, see Conclusions 2009, 2013 and 2015) amounts to a breach of the reporting obligation entered into by the States Parties concerned under the Charter. Since the current report does not include sufficient information to assess the situation, the Committee still

concludes that it has not been established that measures have been taken to raise the social security system to a higher level.

Conclusion

The Committee concludes that the situation in Italy is not in conformity with Article 12§3 of the Charter on the grounds that it has not been established that measures have been taken to raise the social security system to a higher level.

Article 12 - Right to social security

Paragraph 4 - Social security of persons moving between States

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

Equality of treatment and retention of accrued benefits (Article 12§4)

Right to equal treatment

Equal treatment between nationals and nationals of other States Parties in respect of social security rights shall be ensured through the conclusion of bilateral or multilateral agreements or through unilateral measures.

The Committee recalls that, having regards to the EU legislation on the social coordination of social security systems of the EU Member States, governed by Regulations (EC) No. 883/2004 and (EC) No. 987/2009, as amended by Regulation (EU) No. 1231/2010, the EU Member States guarantee, as a matter of principle, equality of treatment between, on the one hand, their own nationals and, on the other, nationals of other Member States of the EU or the EEA, stateless persons, refugees residing in a Member State who are or have been subject to the social security legislation of one or more Member States, their family members and their survivors, and nationals of third countries, their family members and their survivors, provided that they are legally resident in a Member State and are in a situation which is not confined in all respects within a single Member State.

The Committee recalls that, in any event, under the Charter, EU/EEA Member States must guarantee nationals of other States Parties to the 1961 Charter and the Charter which are not members of the EU or do not belong to the EEA equal treatment in respect of social security rights when they are legally resident on their territory (Conclusions XVIII-1 (2006)). In order to do so, they have to either enter into bilateral agreements with them or take unilateral measures.

As regards bilateral agreements with State Parties which are not members of the EU or EEA, Italy has still not entered into any social security agreements with Albania, Andorra, Armenia, Azerbaijan, Georgia, the Republic of Moldova, the Russian Federation and Ukraine.

As regards unilateral measures taken by Italy, the report states that foreign workers who are legally resident in Italy have the same rights as Italian citizens, even where there are no social security agreements with the worker's country of origin. However, the Committee notes from the report that the social allowance which is guaranteed by Law No. 335/1995 requires, among other things, at least ten years' residence in the country. The Committee points out that with regard to non-contributory benefits, the relevant section of the Appendix (relating to Article 12§4) allows a residence period requirement to be imposed on foreign nationals, but it reserves the right to assess the proportionality of the required period of residence in the light of the aim that is pursued. It notes that although the social allowance is a non-contributory pension, it is a basic benefit for many elderly people. It therefore considers that the requirement of ten years' residency is excessive. The situation in Italy is therefore not in conformity with the Charter on the ground that the period required for payment of the social allowance is excessive.

In respect of payment of family benefits, the Committee considered that the requirement for the child to reside in the territory of the paying State is in conformity with Article 12§4 (Statement of Interpretation on Article 12§4, XVIII-1 (2006)). However, since not all countries apply such a system, States Parties applying the 'child residence requirement' are under the obligation, in order to secure equal treatment within the meaning of Article 12§4, to enter, within a reasonable period of time, into bilateral or multilateral agreements with those States which apply a different entitlement principle (Conclusions XVIII-1 (2006), Cyprus).

In its previous conclusion (Conclusions 2013), the Committee asked whether, in practice, nationals of States which apply a different principle can receive family benefits from Italy. The report states that Italy makes the payment of family benefits conditional upon the child residence requirement, except where the State from which the foreign national originates establishes reciprocal treatment for Italian nationals or where an international agreement on the matter has been entered into. The report further indicates that Law No. 153/1988 makes the payment of family benefits conditional upon the principle of reciprocity: family benefits are paid to nationals of these countries if these countries do likewise with Italian nationals**.** However, Albania, Armenia, Georgia and the Russian Federation do not, despite the absence of a bilateral social security agreement with Italy, seem to grant to Italian workers residing in these states the right to receive family benefits, even for children residing in Italy.

The Committee points out that Article 12§4 is not based on reciprocity and that this provision places on State Parties a direct obligation to implement its principles unilaterally (see Statement of Interpretation on Article 12§4 and Conclusions XIII-4 (1996)). To do so, they can either enter into bilateral agreements or take unilateral, legislative or administrative measures. The Committee asks whether it is planned to enter into such agreements with Albania, Andorra, Armenia and Georgia or take unilateral measures, and if so, within what time-frames. In the meantime it considers that the situation is not in conformity with Article 12§4 of the Charter on the grounds that equality of treatment in respect of access to family benefits is not guaranteed to nationals of all other States Parties.

Right to retain accrued benefits

The report states that old age, invalidity and survivors' benefits are paid to all Italian retirees and foreign nationals who have previously acquired this right, even abroad. In this regard, the National Institute of Social Security guarantees payment to approximately 380 000 retirees abroad, regardless of the beneficiary's nationality. However, the report states that non-contributory social assistance benefits such as the social allowance are not exportable except in the situations and conditions stipulated by national legislation. The supplement to the minimum pension is not exportable to countries where the aforementioned EU Regulations apply, but it can be to other countries, in certain circumstances. The exportability of the supplement to the minimum pension for insured persons who had completed the contribution period as at 31 December 1995 is subject to a minimum contribution period of ten years.

The Committee asks for the next report to provide more information about the criteria for the exportability of non-contributory social assistance benefits. In the meantime, it reserves its position on this point.

Right to maintenance of accruing rights (Article 12§4b)

In its previous conclusion (Conclusions 2013), the Committee considered the situation to be in conformity with the Charter with regard to the maintenance of accruing rights as Italy had implemented sufficient means in place to guarantee the principle. Given that the situation has not changed, the Committee reiterates its conclusion on this point.

Conclusion

The Committee concludes that the situation of Italy is not in conformity with Article 12§4 of the Charter on the grounds that:

- equality of treatment in respect of access to family benefits is not guaranteed to nationals of all other States Parties;
- the length of residence required to be entitled to social allowance (ten years), for foreign nationals who are not covered by the EU regulations or by an agreement entered into with Italy, is excessive.

Article 13 - Right to social and medical assistance

Paragraph 1 - Adequate assistance for every person in need

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

Types of benefits and eligibility criteria

In its previous conclusion (Conclusions 2013) the Committee found that the situation was not in conformity with the Charter as not all persons in need were entitled to social assistance.

The Committee notes from MISSOC that every municipality, acting in accordance with regional legislation and depending on the available budgetary resources, implements its own policies of social intervention. The law does not provide for general conditions or requirements for entitlement to municipal support. This support can be either in cash or in kind. The means-test regulations vary according to the regions and municipalities, but generally they are granted after submitting the ISEE (indicator of the equivalent economic situation) form. The State provides the welfare-based social allowance (*assegno sociale*) and some other non-contributory benefits, such as the social card (an income support measure).

The Committee notes from the report that the social welfare system in force was defined by Law No. 328/2000 ("Framework Law for the Development of an Integrated System of Social Interventions and Services"), aiming at promoting social, health and social interventions and assistance in order to guarantee concrete assistance to individuals and families in difficulty. The law identifies beneficiaries (Italian, European or third-country nationals lawfully residing in the territory of the State, as well as refugees or stateless persons to whom first aid measures are guaranteed), services provided and providers (State, regions and local authorities). The law has recognised the essential role played by the municipalities who manage and coordinate initiatives to create the local system of the social services network.

According to the report, after the approval of the Constitutional Law No. 3/2001, certain areas, including the social field, were entrusted exclusively to the regions. Consequently, the new constitutional rule has required a different distribution of functions as follows: the regions have exclusive competence in social policy and the State has been entrusted with the task of defining the essential levels of benefits. Driven by these two important regulatory developments, all regions have been involved in the field of social security policies, even though they have different time frames, modalities and content, taking into account the new powers conferred on them.

In its previous conclusion the Committee asked for information on how in theory and in practice each responsible local entity ensured that benefits were effectively provided to any person in need. It also asked for more detailed information on the eligibility criteria, functioning of the system and the amounts of benefits set by regions.

The Committee takes note of the information detailed in the report on expenditures on social services by regions and municipalities, including total spending, by municipality in relation to different groups (e.g. the disabled, children), as well as spending per user of these services. However, the report does not provide information regarding the amounts and the eligibility criteria for social assistance benefits as defined by each regional and local authority.

The Committee also notes from MISSOC that the State sets and provides the welfare-based social allowance (*assegno sociale*). In the absence of information regarding the levels of other benefits available at the regional and local levels, the Committee will only take *assegno sociale* into account in its assessment of the situation. The Committee notes in this connection from MISSOC that this benefit is granted if the annual taxable income is less than € 5818 for a single-person household.

The report provides information regarding family allowances, the main income assistance benefit, provided directly by the National Institute of Social Security to all rights holders. The

municipality of residence must certify that the families requesting the service meet the requirements. The Committee notes that this allowance is paid to families with at least three children. It recalls that Article 13 only concerns social assistance paid to a single person without resources. Therefore, this benefit is not taken into account.

The Committee asks the next report to explain how regions can guarantee that the right to social assistance is provided as a subjective right of any person without resources. In particular, the Committee asks whether in each region there is a precise legal threshold below which a person is considered in need and whether there is a common core of criteria underlying the granting of benefits. The Committee considers that if this information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter.

Level of benefits

To assess the situation during the reference period, the Committee takes account of the following information:

- Basic benefit: the Committee notes from MISSOC that the annual amount of the *assegno sociale* of up to € 5830 paid in 13 monthly instalments is granted if the annual taxable income is less than € 5818 for a single person household in 2015. The Committee asks the next report to indicate whether this amount is fixed and uniform for all regions or whether there are regional fluctuations. Moreover, the Committee asks the next report to provide information about the amounts of social assistance benefits paid by regions, in addition to the *assegno sociale*.
- Additional benefits: the Committee asks the next report to provide information regarding the amounts of additional benefits, such as housing and heating allowances that are paid to a single person without resources.
- Medical assistance: in its previous conclusion (Conclusions 2013 and 2015) the Committee found that it had not been established that medical assistance was provided for everyone in need. The Committee recalls in this connection that under Article 13§1 of the Charter everyone who lacks adequate resources must be able to obtain, free of charge, the care necessitated by his/her condition. This right to medical assistance should not be confined to emergency situations. In this connection, the Committee notes (Conclusion on Article 12§1) that the entire resident population is entitled to health care cover under the universal healthcare insurance scheme. The Committee asks the next report to confirm that medical assistance for persons without resources covers primary or specialised outpatient medical care, which such person might require. The Committee considers that if this information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter.
- Poverty threshold: according to the report, the incidence of absolute poverty is calculated on the basis of a threshold corresponding to the minimum monthly expenditure required for the basket of goods and services which is considered essential for the acceptable minimum standard of living.

The report provides information regarding the new expenditure survey, which also covers the expenditures incurred by families for particular goods and services, which were previously not taken into account in the total expenditure used to estimate absolute poverty. According to the report, an adult alone is considered to be absolutely poor if his/her spending are less than or equal to € 816.84 per month, if he/she resides in a Northern metropolitan area and to € 548,70 if he/she resides in a small town in the South.

- The poverty threshold that the Committee takes into account is defined as 50% of median equivalised income as calculated on the basis of the Eurostat at-risk-of-poverty threshold value: it was estimated at € 7920 per year (€ 660 per month) in 2015.

The Committee considers that the level of *assegno sociale* is not compatible with the poverty threshold and is therefore, not adequate.

Right of appeal and legal aid

The Committee asks the next report to provide updated information concerning the right to appeal against the decisions of regional and local authorities regarding the grant of benefits. In particular, the Committee wishes to know whether these decisions can be appealed before the administrative courts.

Personal scope

The Committee recalls that, under Article 13§1, States are under the obligation to provide adequate medical and social assistance to all persons in need, both their own nationals as well as nationals of States Parties lawfully resident within their territory, on an equal footing. In addition, with reference to its Statement of Interpretation of Articles 13§1 and 13§4 (Conclusions 2013) regarding the scope of Articles 13§1 and 13§4 in terms of persons covered, the Committee considers that persons in an irregular situation in the territory of the State concerned are also covered under Article 13§1, rather than under Article 13§4, which was previously its practice.

The Committee henceforth examines whether the States who have accepted Article 13§1 ensure the right to:

- adequate social and medical assistance for their own nationals and for nationals of other States Parties lawfully resident within their territory on an equal footing;
- emergency social and medical assistance to persons unlawfully present in their territory.

Nationals of States Parties lawfully resident in the territory

The Committee recalls that under Article 13§1 nationals of other States Parties who are lawfully resident in the territory and lack adequate resources must enjoy an individual right to appropriate assistance on an equal footing with nationals, i.e. beyond emergency assistance. The Charter does not regulate procedures for admitting foreigners to the territory of the State Party and the rules governing 'resident' status are left to national legislation. However, equality of treatment also implies that additional conditions such as the length of residence, or conditions which are harder for foreigners to meet, may not be imposed.

The Committee further recalls that under the Charter nationals of States Parties lawfully resident in the territory cannot be repatriated on the sole ground that they are in need of assistance. Once the validity of the residence and/or work permit has expired, the Parties have no further obligation towards foreigners covered by the Charter, even if they are in a state of need. However, this does not mean that the authorities can withdraw the residence permit solely on the grounds that the person concerned is without resources and unable to provide for the needs of his/her family.

In its previous conclusion the Committee noted that under Article 41 of the Immigration Law, foreign nationals can apply for social assistance on an equal footing with nationals if their residence permit is granted for at least one year. The Committee further notes from the report that Article 41 of the Immigration Law covers foreign nationals in possession of a residence permit of at least one year validity. The Committee understands that nationals of States Parties lawfully resident in Italy are equally treated with nationals as regards access to social assistance.

According to the report, in its Judgment No. 306/2008 the Constitutional Court stressed that the principle of equal rights between legally resident aliens and citizens must be reflected in the case where specific benefits relate to the exercise of fundamental rights, such as the right to health. The Committee asks the next report to confirm that nationals of States Parties

lawfully resident in the territory are entitled to medical assistance on an equal footing with nationals.

Foreigners unlawfully present in the territory

In its previous conclusion the Committee noted that medical assistance was available to all nationals of other States Parties lawfully or unlawfully present, upon presentation of a STP Code (temporary foreign resident code) that can be obtained from any local health centre. The STP code is used to ensure continuity of care. It is valid for a renewable period of 6 months and gives access not only to emergency care, but also to a broad range of preventive, primary and even secondary health services as well as maternal care, mental healthcare, immunisations and basic medicines (including HIV treatment).

As regards emergency social assistance, the Committee previously noted that all persons in distress can get emergency assistance not only in the Centres for temporary stay or assistance (CTSAs), but also in a number of temporary reception centres run by associations and other institutions acting either on their own initiative or in partnership with local authorities (regions, provinces and municipalities).

The Committee recalls that persons in an irregular situation must have a legally recognised right to the satisfaction of basic human material need (food, clothing, shelter) in situations of emergency to cope with an urgent and serious state of need. It likewise is for the States to ensure that this right is made effective also in practice (European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, §187).

The Committee cannot accept the necessity of halting the provision of such basic emergency assistance as shelter, guaranteed under Article 13 as a subjective right, to individuals in a highly precarious situation. The Committee has considered that even within the framework of the current migration policy, less onerous means, namely to provide for the necessary emergency assistance while maintaining the other restrictions with regard to the position of migrants in an irregular situation, remain available to the Government with regard to the emergency treatment provided to those individuals, who have overstayed their legal entitlement to remain in the country (Complaint No. 90/2013, Conference of European Churches (CEC) v. the Netherlands, decision on the merits of 1 July 2014, §123).

The Committee asks the next report to provide updated information on how these requirements are met in law and in practice.

Conclusion

The Committee concludes that the situation in Italy is not in conformity with Article 13§1 of the Charter on the ground that the level of social assistance is not adequate.

Article 13 - Right to social and medical assistance

Paragraph 2 - Non-discrimination in the exercise of social and political rights

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

The Committee notes that the report provides extensive information regarding the right of nationals of States Parties to vote and the right to stand in elections in Italy. This is not relevant to the obligations imposed by Article 13§2.

The Committee recalls that under Article 13§2 of the Charter any discrimination against persons receiving social and medical assistance that might result – directly or indirectly – from an express provision must be eradicated. Beneficiaries of social or medical assistance must enjoy an effective protection against discriminatory measures, particularly with regard to their access to employment and public services. The Committee asks whether the provisions enshrining the principle of equality and prohibiting discrimination in the exercise of political or social rights are interpreted in practice in such a way as to prevent discrimination on the basis of receipt of social or medical assistance.

The Committee considers that if this 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 defers its conclusion.

Article 13 - Right to social and medical assistance

Paragraph 3 - Prevention, abolition or alleviation of need

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

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

The Committee recalls that Article 13§3 concerns only social or medical assistance in the form of advice or personal help to persons without, or liable to be without, adequate resources. Accordingly, Article 13§3 is a special provision which is more specific than Article 14§1, which is concerned with the provision of social welfare services generally. The Committee considers it important to stress this distinction so that the national reports under Article 13§3 provide information concerning social and medical services related to advice or personal help for persons without, or liable to be without, adequate resources. These services must play a preventive, supportive and treatment role. Amongst other things, Article 13§3 requires states to provide advice and assistance so as to make those concerned fully aware of their entitlement to social and medical assistance and how they can exercise that entitlement.

In assessing national situations under this provision the Committee specifically examines whether there are mechanisms to ensure that those in need may receive help and personal advice services free of charge and whether such services and institutions are adequately distributed on a geographical basis.

The Committee asks the report to provide updated information regarding how these requirements are met in law and in practice.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Italy is in conformity with Article 13§3 of the Charter.

Article 13 - Right to social and medical assistance

Paragraph 4 - Specific emergency assistance for non-residents

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

The Committee refers to its conclusion under Article 13§1 (personal scope) and recalls that Article 13§4 from now on will cover emergency social and medical assistance for nationals of States Parties lawfully present (but not resident) in the territory.

The Committee recalls that States Parties are required to provide non-resident foreigners, without resources, with emergency social and medical assistance. Such assistance must cover accommodation, food, clothing and emergency medical assistance, to cope with an urgent and serious state of need (without interpreting too narrowly the 'urgency' and 'seriousness' criteria). No condition of length of presence can be set on the right to emergency assistance (Complaint No 86/2012, European Federation of national organisations working with the Homeless (FEANSA) v. the Netherlands, decision on the merits of 2 July 2014, §171). The Committee asks the next report to confirm that these requirements are met.

The Committee refers to its conclusion under Article 13§1 as regards unlawfully present foreigners and considers that the situation is in conformity with the Charter. It asks the next report to provide updated information as regards emergency medical and social assistance for nationals of States Parties lawfully present in Italy.

Conclusion

The Committee concludes that the situation in Italy is in conformity with Article 13§4 of the Charter.

Article 14 - Right to benefit from social welfare services

Paragraph 1 - Promotion or provision of social services

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

Organisation of the social services

In its previous conclusion (Conclusions 2013), the Committee asked for an up-to-date description of the general organisation of social services, including the legal texts governing this sector.

The report states that Legislative Decree No. 112/1998, implementing Law No. 59/1997, defines social services as: “activities relating to the setting-up and supply of services, whether free or subject to fees, or of financial benefits aimed at eliminating and overcoming situations of hardship and need that individuals may encounter in the course of their lives, with the exception of services and benefits which are provided in the framework of social security and sickness insurance”.

The report confirms the highly decentralised nature of the organisation of social services, involving the regions, the provinces and municipalities, which requires substantial co-operation with the State authorities, particularly the Ministry of Labour and Social Policies, to strike the best possible balance between each stakeholder’s prerogatives.

The report also refers to the Framework Act No. 328/2000 providing for an integrated system of social welfare measures and services, which establishes social assistance as a right and guarantees a certain basic level of assistance throughout the country. According to the report, this law strengthens the importance of the territorial level, by regulating and developing operating procedures for connecting services into networks between public and private entities, as part of an effort to integrate social security with health care. By focusing on decentralisation and enhancement of the specific local features, Law No. 328/2000 assigns a crucial role to municipalities. The latter are responsible for planning, designing and implementing the local system of social services (zoning plans) and identifying priorities and areas of innovation. Framework Act No. 328/2000 defines the services to be provided: information and counselling, home help, socio-educational services, residential and semi-residential services, and emergency intervention. These are supplemented by economic forms of assistance, with families being offered services such as counselling, home help, in particular when there are persons with disabilities in the family, financial benefits and fiscal incentives.

Effective and equal access

In its previous conclusion (Conclusions 2013), the Committee asked for more detailed information about the Charter of Social Services (provided by Article 13 of Law No. 328/2000), in particular whether there was a standard charter containing a common core of basic components which have to be set up and, if so, precisely what they were. If not, it asked on what basis charters were drawn up.

The Committee notes that the report does not provide this information.

The Committee notes from the publication on “personal care services in Europe”, by the European Observatory of Social Economy, that the Charter of Social Services provides information about the services available, the essential levels for social security payments, access arrangements and tariffs; it allows citizens to take part in measures for consulting and evaluating social services; it sets out the eligibility criteria for services, and the arrangements for granting and financing services and benefits; it specifies the levels of assistance available, the quality standards for services, how users’ rights are protected, the rules to be applied in the event of non-compliance with the charter and the procedures for lodging an appeal.

In its previous conclusion (Conclusions 2013), the Committee deduced that there was a risk of unequal treatment of social service users in Italy depending on the region in which they lived and asked what warranted this disparity and what measures were being taken or planned to reduce it.

The Committee notes that the report does not provide this information. It therefore reiterates its questions and reserves its position on this issue. It holds that if the information requested is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter on this point.

Quality of services

In its previous conclusion (Conclusions 2013), the Committee reiterated its request for information on the total number of persons employed by the social services and their qualifications.

The Committee takes note of the detailed information provided in the report concerning the non-profit/third sector, including statistical data from Istat as to the situation at 31 December 2011 (out of the reference period). It notes however that this information falls outside the reference period and does not cover the whole area of social services, but only refers to the third sector. It accordingly reiterates its request of information on the total number of persons employed by the social services and their qualifications, in the public and private sectors and reserves in the meantime its position on this issue. It holds that if the information requested is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter on this point.

Conclusion

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

Article 14 - Right to benefit from social welfare services

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

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

In its previous conclusion (Conclusions 2013), the Committee requested information on the practical and financial support (such as tax benefits) offered to voluntary organisations by the state.

The report states that third sector and voluntary sector organisations are financed on the basis of the relevant rules in force. The various third sector entities may submit applications in response to specific notices or calls for contributions – in accordance with public tender procedures regulated by central government or the local authorities – for example to present innovative and experimental voluntary projects or to purchase equipment and ambulances, along with goods to give to public health facilities. These proceedings are aimed exclusively at voluntary and non-profit organisations whose activities are of recognised benefit to society.

The Committee furthermore asked for details on the information system on non-profit organisations (SIONP), which was expected to collect data on such organisations, particularly as regards their areas of activity and their human resources. It also asked for an assessment of its benefits for social service users.

The report states that, since 2008, the ISFOL (Institute for the Professional Development of Workers) has been implementing an information system prototype for the Ministry of Work and Social Policy, which includes third sector associations registered on the official registers/orders/lists managed and held by national and local public authorities. Its structure aims at ensuring compliance with institutional attributions and the statistical quality of information. The system allows the creation of up-to-date “institutional archives” offering a detailed overview of the non-profit sector in Italy at different levels – national, regional, provincial and municipal – for different types of stakeholders. The SIONP collects, orders and systemises: personal data from the non-profit organisation registers; sectoral and thematic surveys carried out by ISFOL; regulatory and research documents on non-profit organisations and documents produced by the project. At the end of 2014, around 300 administrative archives covering 2007-2014 had been entered into the SIONP. In this respect, the Committee asks whether the introduction of the information system on non-profit organisations (SIONP) had an impact on the quality of the social services provided.

In its previous conclusion (Conclusions 2013), the Committee asked for information on participation by citizens or groups of citizens with specific requirements in the organisation of the social services system and the aid they provide for them.

The report states that Article 19 of Law No. 328/2000 provides for the development of zoning plans for social services. This is a regional programming document for a three-year period, with which municipalities and local health units (ULSS) in each regional area frame socio-medical policies for the population. The plan, which aims to construct an integrated system of interventions and services with the help of stakeholder co-operation, outlines the objectives, targeted actions and resources concerned, in co-ordination with the Regional Plan for Individual and Community Services. Private and public stakeholders are involved in the process.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Italy is in conformity with Article 14§2 of the Charter.

Article 23 - Right of the elderly to social protection

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

Legislative framework

The Committee points out that the main purpose of Article 23 of the Charter is to enable elderly persons to remain full members of society and, therefore, invites States Parties to introduce appropriate legal measures to combat age-related discrimination outside the employment field and establish a procedure for assisting elderly persons with decision making.

With regard to age-related discrimination, the Committee notes that Article 3 of the Italian Constitution prohibits all forms of "discrimination based on personal and social circumstances". Insofar as the wording of this Article is such that it can cover other grounds than those explicitly listed, including age, the Committee asks the next report whether there is a case-law on age discrimination outside employment which would protect elderly persons from such a form of discrimination. It also notes from the previous report that regions and municipalities have a wide measure of discretion in the social domain and asks what legal provisions or administrative measures have been taken to combat age-related discrimination.

With regard to assisting elderly persons with decision-making, the report states that there are various legal regimes for protecting elderly persons with no or limited decision-making capacity. First, judicial protection allows any person with limited legal capacity to be assisted, but not replaced, by a special representative appointed by a guardianship judge. The representative’s decisions are duly recorded by the judge and as far as possible must not limit the individual’s right to take his or her own decisions. Second, disqualification and incapacity apply when judicial protection is no longer appropriate. They entail the appointment of a guardian to replace in all respects an individual deemed legally incapable. In connection with health-care, the previous report stated that physical restraint measures are only applied in exceptional circumstances. Abuses, including failure by health professionals to report patient ill-treatment or deprivation to the relevant authorities, are offences under Article 571 of the Criminal Code.

Adequate resources

When assessing the adequacy of resources of elderly persons under Article 23, the Committee takes into account all social protection measures guaranteed to elderly persons and aimed at maintaining an income level allowing them to lead a decent life and participate actively in public, social and cultural life. In particular, the Committee examines pensions, contributory or non-contributory, and other complementary cash benefits available to elderly persons. These resources are then compared with median equivalised income. However, the Committee points out that its task is to assess not only the law, but also the compliance of practice with the obligations arising from the Charter. For this purpose, it also takes into consideration relevant indicators relating to at-risk-of-poverty rates for persons aged 65 and over.

The Committee notes that there is no statutory minimum pension for employed persons insured for the first time after 1 January 1996. This means that only pensions payable under the mandatory insurance scheme prior to 31 December 1995 can be raised to the level of the minimum pension (*pensione minima*), which in 2015 was €501.89 monthly for a single person when the annual taxable income of the individual or married couple was below certain thresholds (€6524.57 a year in 2015 for a single person or €26 098.28 or €19 573.71 for a married couple, depending on whether the pension was first paid before or after 1994).

Elderly persons who are not eligible for a contributory pension after reaching retirement age may be entitled to the social assistance allowance under Act No. 335/1995. This is paid to

persons aged 65 or over on low incomes who have lived in Italy for at least ten years. The maximum monthly amount payable to a single person in 2015 was €448.07. According to the report, elderly persons may be eligible for a purchasing card worth €40 a month, which is issued to persons aged 65 or over with a total annual income below €6 788.61 (€9 051.48 if the person concerned is aged over 70 and meets certain specific criteria).

Elderly persons aged 65 or over on low incomes could therefore receive up to €488.07 per month in 2015.

In its previous conclusion (Conclusions 2013), the Committee asked for further information on available supplements, and their number, eligibility conditions and rates. The report states that the Italian authorities pay a number of pensions, allowances and other benefits to elderly persons with disabilities. The amount depends on the disability level of the individual concerned. The Committee asks whether these constitute available supplements and whether the relevant pensions, allowances and other benefits are payable in addition to the social allowance.

The Committee considers the level of pensions and social assistance to be adequate when the monthly benefit – basic and/or additional – paid to single persons is not manifestly below the poverty level, set at 40 – 50% of median equivalised disposable income. If the poverty level were 50% of median equivalised disposable income as calculated on the basis of Eurostat's at-risk-of-poverty threshold for 2015, it would have amounted to €7 923 a year, or €660 a month. The Committee notes that the combined value of the social allowance and the purchasing card was less than 40% of the Eurostat median equivalised disposable income.

It also notes that, according to Eurostat data, in 2015, 3.4% of persons aged 65 or over had an income of less than 40% of the median equivalised disposable income, compared with 2.8% in 2012 and 2.9% in 2014; the European average was 2.9% in 2015. The Committee asks for information in the next report on the measures taken to improve the situation of those concerned.

For these reasons, the Committee considers that the minimum level of retirement pensions, whether contributory or non-contributory, paid to elderly persons is manifestly inadequate for a significant proportion of the elderly population, as it falls below the poverty level.

Prevention of elder abuse

In its previous conclusion (Conclusions 2013), the Committee asked for information on the measures taken to evaluate the extent of the problem and to raise awareness about the need to eradicate elder abuse and neglect. It also asked if any specific legislative or other measures were envisaged in this area. Since the report fails to answer any of the points raised, the Committee repeats these questions and points out that if such information is not provided in the next report, there will be nothing to establish that the situation in Italy is in conformity with the Charter on this point.

Services and facilities

The Committee points out that, although Article 23 only refers to information about services and facilities, it nevertheless presupposes that such services and facilities do in fact exist.

With regard to services and facilities as such, the Committee asked in its previous conclusion (Conclusions 2013) what kind of home support services were available. It also asked (Conclusions 2009 and 2013) whether the supply of services to elderly persons reflected demand, how their quality was assessed and if there was a complaints procedure concerning the quality of these services. The Committee notes that in 2015 the national social policies fund, allocated nearly €278 million to the regions to fund the provision of social services for families and individuals. Meanwhile, the National Dependency Fund, established to offer support to seriously disabled and dependent elderly persons**,** received

€400 million that were then redistributed to the regions in accordance with their dependent elderly populations and various social and economic indicators.

According to the report, many regions and local authorities have introduced protective measures to supplement the national measures. The report states that it is impossible to give a comprehensive picture of all the local and regional activities in this area and therefore confines itself to listing a series of specific measures to assist dependent elderly persons in the Lombardy region and some of its local authorities. The Committee asks the next report to provide information on services that are provided at national level. It also notes that the range of services on offer varies considerably from region to region and the South of the country is noticeably less well provided for than the North. It asks whether measures are planned to improve service provision in the Southern regions.

The previous report stated that domiciliary care was a local authority responsibility and that recipients were charged according to their incomes.

The Committee understands that local health authorities (ASL) are responsible for monitoring the standard of service provided by accredited organisations. It asks the next report to clarify whether this understanding is correct.

The report provides no information as to whether the provision of services reflects demand for them or whether there is a complaints procedure regarding the quality of these services. Therefore, the Committee reiterates its questions and points out that if such information is not provided in the next report, there will be nothing to establish that the situation in Italy is in conformity with the Charter on this point.

With regard to measures to inform people about the existence of services and facilities, the Committee notes from the previous report that individuals can contact one-stop shops (*Punti Unici di Accesso – PUA*) for information about health care supplied by local health authorities and social services provided by local authorities, or to report the need for health care and/or social assistance.

Housing

In its previous conclusion (Conclusions 2013), the Committee asked for further information on the implementation of the 2009 national housing plan, which was expected to enhance the supply of dwellings at affordable prices. The plan mainly concerned accommodation for low-income households, including disadvantaged elderly persons. It included two programmes, jointly financed by the local authorities, involving the provision of, respectively, 5 059 and 16 986 dwellings, some of which would be renovated and others new build. The report does not state whether the plan takes account of elderly persons' needs and does not indicate how far the supply of dwellings reflects demand. The Committee accordingly reiterates its request of information on these points. It also asks for information in the next report on the number of elderly persons who have benefitted from the plan, as well as which regions and local authorities are concerned.

The Committee has also asked, on two occasions (Conclusions 2009 and 2013), for information on the financial assistance granted to elderly persons to adapt their accommodation. The report still fails to answer this question. The Committee therefore repeats it and points out that if the next report does not contain the requested information there will be nothing to show that the situation is in conformity with the Charter.

Health care

The Committee notes from the previous report that there are three types of domiciliary support:

- programmed home care assistance (*Assistenza Domiciliare Programmata* – ADP);
- integrated home care assistance (*Assistenza Domiciliare Integrata* – ADI); and

- home hospitalisation.

The previous report stated that, on the one hand, these services are provided by the ASLs free of charge, apart from the social elements of integrated home care, and, on the other hand, they differ according to how the ASLs are organised locally. The Committee asks for more information on this subject in the next report, in particular whether the ASLs automatically provide all these care services or decide themselves which will be available. The previous report further stated that ASLs carry out random checks from time to time to monitor the standard of service provided by accredited organisations.

The previous report added that a concerted action plan (*Piano d'azione Coesione* – PAC) for 2013-2015 included a care of elderly persons section. The aim of this was to strengthen services for dependent persons aged 65 or over in Calabria, Campania, Puglia and Sicily, by reducing the current gap in provision between these regions and the rest of the country. The Committee asks for further information on this subject in the next report.

The Committee asks the next report to provide information on mental health programmes, palliative care and special training for carers. It also wishes to be informed of any measures taken to improve access to and the quality of geriatric and long-term care, and the co-ordination of health and social services for elderly persons.

Institutional care

In its previous conclusion (Conclusions 2013), the Committee requested up-to-date information on the effects of the social policies, which were designed to reduce the numbers of persons placed in institutions. It considers that the information in the report is still insufficient for it to assess the impact of recent policies to reduce the number of persons in institutional care, so that it reiterates its request for information.

It also asked whether the number and types of institutions available reflect the demands and particular needs of elderly persons, whether the rights of persons placed in such establishments are protected, including their rights to appropriate care and services, to respect for private life and dignity and to lodge complaints about their treatment and living conditions, and what requirements are set regarding the qualifications of care staff and the use of physical restraints. The previous report stated that elderly persons were admitted to and cared for in residential establishments after their needs had been assessed. The current report says that it is difficult to provide a classification of residential establishments at national level but distinguishes nevertheless two categories:

- residential establishments accommodate elderly persons who are autonomous but for various reasons no longer wish to live alone (Rest homes) or those who are partially or totally dependent and therefore require special medical care as well as structured medical assistance (Support and assistance establishments – RSA);
- semi-residential care, such as integrated day centres, is provided for partly autonomous elderly persons who live at home but require more assistance than can be met by purely domiciliary services. The aim is to avoid, or at least delay, institutional care. Semi-residential establishments are also used to relieve the families of elderly persons.

The cost of care is met by the national health service (SSN), or the ASLs in the case of semi-residential care; however, users pay for so-called "social" expenses. The report also states that certain municipalities grant additional accommodation allowances to cover, partially or in total, the cost of care in residential establishments offering social and/or medical support. The Committee asks for more information on this subject in the next report.

The previous report states that anti-fraud officials of the so-called Carabinieri NAS, or *Nucleo antisofisticazioni,* monitored and inspected establishments for elderly and disabled persons. As part of these inspections, the officials review establishments' accreditation and

compliance with the health and safety standards, and also monitor patients' living conditions, the storage of medicines and foodstuffs and the qualifications of the staff employed. The previous report stated that in 2013 the NAS inspected nearly 1200 establishments throughout the country, and reported 102 persons to the judicial authorities and 192 to the relevant health authority. Sixteen establishments were closed and two were the subject of seizures. One hundred and seventy-four criminal and 251 administrative offences were recorded and there were also seizures of expired medicines and food in poor condition. The Committee notes from the Auser report on the nursing homes in Italy that significant shortcomings and/or offences have been reported in retirement homes, including, most frequently, absence of accreditation, inadequate facilities, admission of more elderly persons than the authorised capacity, health and safety deficiencies and improper nursing care. The Committee asks whether measures have been taken or are planned to remedy this situation. It also asks whether there is provision for compulsory admission to residential care and how the rights to dignity and private life are protected in residential establishments.

Conclusion

The Committee concludes that the situation in Italy is not in conformity with Article 23 of the Charter on the ground that the level of contributory and non-contributory old-age pensions is manifestly inadequate.

Article 30 - Right to be protected against poverty and social exclusion

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

With respect to its previous conclusion that there is discriminatory treatment of migrant Roma and Sinti with regard to citizen's participation (Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010), the Committee refers to its Findings 2015 on follow-up to decisions in collective complaints, in which it held that the situation had not been brought into conformity with the Charter, as well as to its next examination of the follow-up to this decision, which will take place in 2018.

Measuring poverty and social exclusion

The Committee takes note of the statistical information provided in the report and deriving from ISTAT, the national institute of statistics. The report states that there was an improvement in the situation during the period 2012-2014 when assessed on the basis of a composite indicator referring to relative and absolute poverty, poverty incidence and poverty intensity. However, the statistics also show an increase in relative (3.2%) and absolute (2.1%) poverty in the Northern regions contrary to the tendency in the Central and Southern regions of Italy. Moreover, between 2012-2014 the poverty incidence for certain target groups increased, for example in respect of persons under 18 years of age (1.5%) and migrant families (1.1%).

According to Eurostat the at risk of poverty rate (after social transfers) for the total population increased from 19.3% in 2013 to 19.9% in 2015. The poverty rate before social transfers was 24.5% in 2012 and 25.4% in 2015. The Europe 2020 headline poverty indicator stood at 28.7% in 2015 down from 29.9% in 2012. The poverty rate (after social transfers) for the age group 18-24 years is still pronounced in comparison to the overall rate standing at 26.1% in 2015 (up from 25% in 2013).

According to the European Semester Country Report 2017 for Italy (SWD(2017) 77 final) the risk of poverty for children is growing faster for children than for the population in general; a third of Italian children are now at risk of poverty or social exclusion, which is among the highest rates in the EU. In addition, there is still a significant North-South divide with poverty rates in certain regions of the North being among the lowest in Europe compared to an extremely high rate (approaching 60%) in Sicily, for example.

Approach to combating poverty and social exclusion

The Committee takes note of the information provided in the report on the measures taken to combat poverty and exclusion. The report states inter alia that the Government introduced a first National Operational Programme (NOP) on social inclusion approved by the European Commission and is co-financed by the European Structural Funds. In addition, the report mentions the existence of the National Fund for Social Policy (FNPS) which is intended for the regions for the development of an integrated network of interventions and social services (as provided by Law No. 328/2000).

The Committee notes that the Stability Law 2015 provided for a budget of 250 million € part of which was devoted to starting the testing of a universal measure to fight against absolute poverty, Active Inclusion Assistance (SIA), in the 12 largest Italian cities. For the testing of the SIA in the Southern regions, resources amounting to 167 million € were allocated and later on an additional 120 million € were allocated for the national territory as a whole. By decree, the SIA will be deployed throughout the national territory during 2016 (out of the reference period).

The Stability Law 2016 provided for the creation within the Ministry of Labour and Social Policies of a fund called the "Fund for Combating Poverty and Social Exclusion ".

Moreover, the Interministerial Decree No. 206/2014 of the Minister of Labour and Social Policy jointly with the Minister of Economy and Finance entered into force in 2015 and provides for the implementation of a Register of Assistance which will allow for the creation of a kind of social file of citizens gathering information on social benefits.

Finally, the report states that the European Fund for Aid to the Most Deprived (FEAD) set up under the EU's cohesion policies for 2014-2020, to promote interventions for people exposed to serious material deprivation, brings together a total of almost 790 billion €, with Italy being allocated the largest share of the budget among the EU member states.

The Committee notes that these and various other measures are referred to only summarily in the report and without any particular indication of how they add up to an overall and coordinated approach to combating poverty and social exclusion. It therefore asks that information be provided in the next report on the existence of coordination mechanisms for these measures, including at delivery level (that is, how coordination is ensured in relation to the individual beneficiaries of assistance and services).The Committee also asks that the next report contain detailed data demonstrating that the budgetary resources allocated to combating poverty and social exclusion are sufficient in view of the scale of the problem at hand.

The Committee recalls that in its previous two conclusions it found the situation to be in breach of the Charter as it had not been established that there was an overall and coordinated approach to combating poverty and social exclusion (Conclusions 2013 and 2015, Italy, Article 30). The Committee observes that poverty rates in Italy remain very high and also rising if referring to the poverty rate after social transfers. In this respect it is noted that the impact of social transfers is less in Italy than in the EU on average (a poverty reducing effect of 21.7% in Italy compared to an EU average of 33.2%).

This situation calls for extraordinary measures, however as noted above the information provided in the report does not demonstrate the existence of an overall and coordinated approach which is adequate to the problem at hand. Moreover, although it notes that there has been a slight increase in overall government expenditure on social protection as a share of GDP during the reference period (from 20.5% of GDP in 2012 to 21.5% in 2015), it is not clear to the Committee on the basis of the information at its disposal that the budgetary resources allocated to combating poverty and exclusion are sufficient in view of the challenge as required by Article 30 (Conclusions 2003, France, Article 30).

The Committee further refers to its conclusions of non-conformity under other provisions of the Charter which are relevant to its assessment of compliance with Article 30 (see Conclusions 2013, Statement of interpretation on Article 30). It refers in particular to Article 1§1 and its conclusion that employment policy efforts have not been adequate in combating unemployment and promoting job creation (Conclusions 2016, Italy), to Article 13§1 and its conclusion that the level of social assistance is not adequate and to Article 23 and its conclusion that the level of contributory and non-contributory old-age pensions is manifestly inadequate (Conclusions 2017, Italy).

On the basis of all of the above, the Committee considers that the situation remains in breach of Article 30 as there is no adequate overall and coordinated approach to combating poverty and social exclusion.

Monitoring and evaluation

The report states that the Ministry of Labour and Social Policies in 2015 launched a roundtable with the economic and social partnership, as well as with the institutional partnership for the adoption of a National Plan to Combat Poverty and Exclusion.

The Committee asks for an explanation of the role, function and impact of the abovementioned roundtable and having noted that the SIA measure was evaluated by the

Ministry of Labour and Social Policy it also asks to be informed of the conclusions of this evaluation.

The Committee recalls that Article 30 of the Charter requires the existence of monitoring mechanisms for reviewing and adapting the efforts at all levels, national, regional, local, to combat poverty and social exclusion; mechanisms which should involve all relevant actors, including civil society and persons directly affected by poverty and exclusion (see Conclusions 2003, France, Article 30). It asks that the next report contain comprehensive information in this respect.

Conclusion

The Committee concludes that the situation in Italy is not in conformity with Article 30 of the Charter on the ground that there is no adequate overall and coordinated approach to combating poverty and social exclusion.

January 2018

European Social Charter

European Committee of Social Rights

Conclusions 2017

LATVIA

This text may be subject to editorial revision.

The following chapter concerns Latvia, which ratified the Charter on 26 March 2013. The deadline for submitting the 3rd report was 31 October 2016 and Latvia submitted it on 4 July 2017. The Committee received on 13 October 2017 observations from the Ombudsman's Office on the application of Articles 3, 11, 12, 13, 14 and 30. Observations from the Government on the comments from the Ombudsman's Office were registered on 4 December 2017.

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 "Health, social security and social protection":

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

Latvia has accepted all provisions from the above-mentioned group except Article 12§§3 and 4 and Article 23.

The reference period was 1 January 2012 to 31 December 2015.

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

– 5 conclusions of conformity: Articles 11§2, 11§3, 13§3, 13§4 and 14§2,

– 6 conclusions of non-conformity: Articles 3§3, 11§1, 12§1, 13§1, 14§1 and 30.

In respect of the 5 other situations related to Articles 3§1, 3§2, 3§4, 12§2 and 13§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 Latvia under the Charter. The Committee requests the authorities to remedy this situation by providing the information in the next report.

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

Article 13§1

Among the categories of residents who are defined in Regulation No. 1529 as exempted from a patient contribution are poor persons who have been recognised as such in accordance with the regulations regarding the procedures by which a family or a person living alone shall be recognised as poor.

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In addition, the report contains also information requested by the Committee in Conclusions 2015 in respect of its conclusions of non-conformity due to a repeated lack of information regarding the right of employed women to protection of maternity – illegality of dismissal during maternity leave (Article 8§2).

The Committee examined this information and adopted a conclusion of conformity relating to this Article.

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The next report will deal with the following provisions of the thematic group "Labour Rights":

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),

- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 21),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 22),
- the right to dignity at work (Article 26).
- the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28)
- the right to information and consultation in collective redundancy procedures (Article 29).

The deadline for submitting that report was 31 October 2017.

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Conclusions and reports are available at www.coe.int/socialcharter as well as in the HUDOC database.

CONCLUSIONS RELATING TO ARTICLES FROM THE THEMATIC GROUP

‘Health, social security and social protection”

Article 3 - Right to safe and healthy working conditions

Paragraph 1 - Health and safety and the working environment

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

This is the first time the Committee examines the national policy framework on occupational health and safety.

The report indicates that the leading government authority in the field of occupational health and safety at work is the Ministry of Welfare of the Republic of Latvia. The main function of the State Labour Inspectorate is the implementation of the State supervision and control in the field of employment relationships and labour protection (Article 3, Paragraph 1 of the State Labour Inspectorate Law).

The report indicates that social partners' organisation such as the Free Trade Union Confederation of Latvia and the Employers' Confederation of Latvia participate in elaboration of policy planning documents regarding occupational safety and health policy issues.

In addition, consultations between employees' and employers' organisations take place within the National Tripartite Cooperation Council and sub-council of the Tripartite Cooperation in Labour Affairs. The Sub-council is created to ensure and facilitate a social dialogue (a participation and cooperation of the state, the employers' organisations and their unions and employees' trade unions) in the issues of labour protection, regulation of employment relationships and ensuring equal opportunities in employment relationships.

The strategic framework of the policy of health and safety at work consists of the Strategy for the Development of the Labour Protection Field 2016-2020 and Strategic Action Plan 2016-2018. The report specifies that the Strategy is closely connected to some of the requirements of the EU Strategic Framework Health and Safety at Work 2014-2020. Since the Strategy and the Action Plan were introduced outside the reference period, the Committee will therefore examine them in its next report. However, the report notes that the previous National Strategy 2008-2013 has been ex-post evaluated with the aim to assess the fulfillment of the objectives and to set out next steps for improvement health and safety at work in the enterprises of Latvia. The Committee asks the next report to provide information on the activities implemented and results obtained by the National Strategy and the Action Plan.

In addition, the report states that the Occupational Health and Safety Prevention Measure Plan is developed annually. The Plan is confirmed by Information Council, which includes representatives from Ministry of Welfare, State Labour Inspectorate, the Free Trade Union Confederation of Latvia, the Employers' Confederation of Latvia and Institute for Occupational Safety and Environmental Health, which determine the necessary activities. The Committee asks the next report to provide information on the results obtained by the Occupational Health and Safety Prevention Measure Plans.

The Committee notes that, according to ILO database NORMLEX, ILO Convention No. 155 on Occupational Safety and Health (1981) is in force, but ILO Convention No. 187 on Promotional Framework for Occupational Safety and Health (2006) is not.

The report indicates that, in order to perform internal work environment supervision in enterprises, the competent specialist must possess the advanced level of knowledge (professional higher education) in labour protection in accordance with the second level professional higher education programme (Professional Standard "Senior Specialist in Labour Protection") accredited by the Ministry of Education and Science. A senior specialist in labour protection is certified to by a relevant document, is comparable to a competent specialist and shall be entitled to perform internal supervision of the work environment in undertakings for five years from the date of receipt of the document attesting the education. Upon expiration of the term of five years, the senior labour protection specialist in order to obtain the competent specialist certificate attesting to the person's competence in labour

protection issues shall turn to the personnel certification authority, which has been accredited by the State agency Latvian National Accreditation Bureau in accordance with the requirements of the Standard LVS EN ISO/IEC 17024:2005 “Competence Evaluation – General Requirements for Personnel Certification Authorities” and regarding which the Ministry of Economics has published a notification in the Official Gazette, and shall submit an application to the personnel certification authority. The applicant’s knowledge and practical skills in the certification examination shall be evaluated by the competent specialist certification commission. Before commencing practical activities, a competent specialist shall insure his/her civil liability in such an amount that would cover any losses incurred by the service recipient, that might be caused as a result of his/her professional actions, but not less than in the amount of €14 230. The civil liability of the competent specialist must be insured throughout all of his/her time of activity.

The report indicates that the competent authority, in order to evaluate its technical resources, shall prepare a work environment risk assessment report which shall include an overview regarding ensuring measurement of the work environment factors. This report shall be presented to the quality system certification authority during the certification process.

In performing the examination of the competent authority’s activities, the quality systems certification authority shall visit at least one undertaking, where the competent authority has performed internal work environment supervision (including risk assessment), paying special attention to the work performed by the competent authority in work environment risk assessment and to the preventative measures plan that has been developed. A competent authority shall employ at least a senior labour protection specialist and/or an occupational physician.

After receiving a quality system certificate, the competent authority should submit documents to the Ministry of Welfare which takes decision regarding recognition of the authority as a competent.

The Committee recalls that the scope of Article 3§1 requires States to provide information not only on the main characteristics of the country’s policy but also on the following questions:

- whether there are strategies for making occupational risk prevention an integral aspect of the public authorities’ activity at all levels;
- the State’s involvement in research and training with a view to improving occupational health and safety;
- the assessment of work-related risks and the introduction of preventive measures within individual firms, including the provision of information and training for employees.

The Committee points out that new technology, organisational constraints and psychological demands favour the development of psychosocial factors of risk, leading to work-related stress, aggression, violence and harassment. It would also point out that, with regard to Article 3§1 of the Charter, it takes account of stress, aggression, violence and harassment at work when examining whether policies are regularly evaluated or reviewed in the light of emerging risks. The States parties have a duty to carry out activities in terms of research, knowledge and communication relating to psychosocial risks (Statement of Interpretation on Article 3§1 of the Charter, Conclusions 2013).

The Committee therefore asks the next report to provide more comprehensive information on the content and implementation of the national policy on occupational health and safety. It then requests that the next report indicate whether policies and strategies are periodically reviewed and, if necessary, adapted in the light of changing risks. Pending receipt of the requested information, the Committee defers its conclusion.

Conclusion

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

Article 3 - Right to safe and healthy working conditions

Paragraph 2 - Safety and health regulations

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

This is the first time the Committee examines the extent of the risks specifically covered by the legislation and regulations on occupational health and safety.

Content of the regulations on health and safety at work

The report states that the legal framework in the area of health and safety at work in Latvia comprises the Labour Protection Law adopted on 20 June 2001 and more than 25 regulations of the Cabinet of Ministers based on this law: Regulation No. 660 adopted on 2 October 2007 on Procedures for the Performance of Internal Supervision of the Work Environment; Regulation No. 359 adopted on 28 April 2009 on Labour Protection Requirements in Workplaces; Regulation No. 950 adopted on 25 August 2009 on Procedures for Investigation and Registration of Accidents at Work; Regulation No. 219 adopted on 10 March 2009 on Procedures for Performance of Mandatory Health Examinations; Regulation No. 400 adopted on 3 September 2002 on Labour Protection Requirements for Use of Safety Signs; Regulation No. 749 adopted on 10 August 2010 regarding Training in Labour Protection Matters; and Regulation No. 99 adopted 8 February 2005 regarding the types of Commercial Activities in which an Employer shall Involve a Competent Authority.

According to the report, the majority of laws and regulations on health and safety at work are in line with *acquis* communautaire, all requirements of EU directives on health and safety at work were transposed into national legislation. In addition, these laws and regulations are constantly amended to reflect the results achieved over time, the results of research as well as to reduce the administrative burden.

The Labour Protection Law lays down the essential requirements for the protection of the safety and health of employees at work. Basically, the law requires that the employer has a duty to ensure the occupational safety and health of employees, safe working environment, as well as the duty to lay down the measures to be taken.

The Committee notes that, according to ILO database NORMLEX, ILO Convention No. 148 on Working Environment (Air Pollution, Noise and Vibration, 1977) is in force.

The Committee points out that under the terms of Article 3§2 of the Charter, regulations concerning health and safety at work must cover work-related stress, aggression and violence specific to work, and especially for workers under atypical working relationships (Statement of Interpretation on Article 3§2 of the Charter, Conclusions 2013). It requests the next report to contain this information.

Given the generality of this information, the Committee is not in a position to examine whether the legislation and regulations in force satisfies the general obligation under Article 3§2 of the Charter, which requires that most of the risks listed in the general introduction to Conclusions XIV-2 be specifically covered by legislation and regulations, in line with the level set by international reference standards. It asks that the next report provide full and detailed information on the legislation and regulations, including any amendments thereto adopted during the reference period, which specifically govern the risks listed in the general introduction to Conclusions XIV-2. It also asks for an explanation on the relevance of the respective legislation, regulations and standards within the legal system.

Levels of prevention and protection

Establishment, alteration and upkeep of workplaces

The report states that, pursuant to the Labour Protection Law and Regulation No. 660 on Procedures for the Performance of Internal Supervision of the Working Environment, the employer shall carry out the internal supervision of the working environment and assessment of risks, including chemical, biological, physical, psychosocial risks, etc. Risk assessment shall be carried out or reviewed not less than once a year in all enterprises. In addition, several regulations of the Cabinet of Minister were issued on the basis of the Labour Protection Law and determine the labour protection requirements for different risk factors at work, fields and different procedures as the investigation and registration of accidents at work and occupational diseases, mandatory health supervisions, etc.

The Committee notes that, according to ILO database NORMLEX, ILO Conventions No. 119 on Guarding of Machinery (1963) and No. 120 on Hygiene (Commerce and Offices, 1964) are in force.

Given the generality of this information, the Committee is not in a position to examine whether the legislation and regulations in force satisfies the obligation under Article 3§2 of the Charter, which requires that levels of prevention and protection required by the legislation and regulations in relation to the establishment, alteration and upkeep of workplaces be in line with the level set by international reference standards. It asks that the next report provide full and detailed information on the legislation and regulations, including any amendments thereto adopted during the reference period, which specifically relate to that subject. It asks for information on the Government's intent to ratify or implement ILO Conventions No. 167 on Safety and Health in Construction (1988); No. 176 on Safety and Health in Mines (1995); and No. 184 on Safety and Health in Agriculture (2001). It also asks for more detailed information on the implementation of preventive measures geared to the nature of risks, on the provision of information and training for workers, as well as on a schedule for compliance.

Protection against hazardous substances and agents

The report provides no information on the levels of prevention and protection in relation to asbestos and ionising radiation.

The Committee notes that, according to ILO database NORMLEX, ILO Convention No. 115 on Radiation Protection (1960) is in force, but ILO Conventions No. 139 on Occupational Cancer (1974) and No. 162 on Asbestos are not.

Given the generality of this information, the Committee is not in a position to examine whether the legislation and regulations in force satisfies the general obligation under Article 3§2 of the Charter, which requires that levels of prevention and protection required by the legislation and regulations in relation to asbestos and ionising radiation are at least equivalent to the level set by international reference standards. It asks that the next report provide detailed information on exposure limit values, on the ban of production and sale of asbestos and products containing it, and on the incorporation of the requirements of the International Commission on Radiological Protection Recommendation (No. 103, 2007). It also asks for information on whether ILO Recommendations No. 172 on Safety in the Use of Asbestos (1986) and No. 114 (1960) on Radiation Protection are taken into account. It asks whether the authorities have considered drawing up an inventory of all contaminated buildings and materials. Bearing in mind the importance of this question in the light of the right to health of the population (Article 11), the Committee asks the next report to provide specific information on steps taken to this effect.

The Committee also asks the next report to provide information on the specific provisions relating to protection against risks of exposure to benzene.

Personal scope of the regulations

The report provides information neither on the protection of workers in fixed-term employment, agency and temporary workers; nor on the protection of self-employed, home and domestic workers.

Recalling that all workers, all workplaces and all sectors of activity must be covered by the regulations on occupational health and safety, the Committee asks the next report to provide information on how the above categories of workers are protected effectively and without discrimination, including against risks related to successive periods of exposure to dangerous substances when working for different employers, and through the prohibition of the use of non-permanent and temporary workers for some particularly dangerous tasks, is implemented in the laws and regulations. It asks for details about the access of the above categories of workers to information and training regarding occupational safety and health, as well as to medical surveillance and representation at work.

Consultation with employers' and workers' organisations

The Committee recalls that regulations must be drawn up in consultation with employers' and workers' organisations. Article 3§2 requires consultation not only for tripartite co-operation between authorities, employers and workers to seek ways of improving their working conditions and working environment but also for the co-ordination of their activities and co-operation in the drafting of laws and regulations at all levels and in all sectors.

The report indicates that social partners' organisation such as the Free Trade Union Confederation of Latvia and the Employers' Confederation of Latvia participate in drafting of legal acts regarding occupational safety and health issues. They help to arrange and improve occupational safety and health policy. According to the report, involvement of social partners in policy making helps to reach the results/solutions that satisfy all interest groups, thereby also facilitating the implementation of legal acts in practice.

The Committee asks the next report to provide more detailed information on how employers' and workers' organisations are consulted in the preparation of regulations on safety and health at work.

Conclusion

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

Article 3 - Right to safe and healthy working conditions

Paragraph 3 - Enforcement of safety and health regulations

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

This is the first time the Committee examines the provisions for the enforcement of the legislation and regulations on occupational health and safety by means of supervision.

Accidents at work and occupational diseases

The report indicates that the total number of accidents at work was 1 510 in 2012, 1 748 in 2013, and 1 735 in 2015. The accident rate per 100 000 employees was 199.1 in 2012, 221.5 in 2013 and 220.6 in 2015. The number of fatal accidents at work was 34 in 2012, 31 in 2013, 41 in 2014 and 26 in 2015. The fatal accidents rate per 100 000 employees was 4.5 in 2012, 3.9 in 2013, 5.2 in 2014 and 3.3 in 2015. The Committee asks that the next report provide the most frequent causes of accidents at work and the preventive and enforcement activities undertaken to prevent them.

EUROSTAT data confirm the trend with regard to the number of accidents at work (more than three days' absence excluding commuting accidents) (from 1 506 in 2012 to 1 725 in 2014), the standardised incidence rate for such accidents (194.53 in 2012 and 222.78 in 2014), in relation to the average standardised incident rate in the EU-28 (1 717.15 in 2012 and 1 642.09 in 2014). EUROSTAT data also confirm the trend with regard to the number of fatal accidents at work (35 in 2012 to 41 in 2014) and to the standardised incidence rate for such accidents (5.25 in 2012 and 5.96 in 2014) which is significantly higher than the average rate in the EU-28 (2.42 in 2012 and 2.32 in 2014).

According to the report, there was an increase in the number of first-time confirmed patients suffering from occupational diseases until 2014 (647 cases in 2012, 832 in 2013, 954 in 2014 and 934 in 2015), the incidence rate per 100 000 employees confirms this trend (102.3 in 2012, 137.8 in 2013, 155.5 in 2014 and 147.25 in 2015). The Committee asks that the next report provide information on the legal definition of occupational diseases; the mechanism for recognising, reviewing and revising of occupational diseases (or the list of occupational diseases); the incidence rate and the number of recognised and reported occupational diseases during the reference period (broken down by sector of activity and year), including cases of fatal occupational diseases, and measures taken and/or envisaged to counter insufficiency in the declaration and recognition of cases of occupational diseases; the most frequent occupational diseases during the reference period, as well as the measures taken and envisaged to prevent them.

The Committee, on the basis of either source of statistic data, concludes that the standardised incidence rate of fatal accidents is too high for the right enshrined in Article 3§3 to be secured. It also notes that the incidence rate for accidents at work is very low in comparison with the situation in other States Parties to the Charter. It asks for information on the measures taken to reduce the number of fatal accidents. Furthermore, it asks for information on any sanctions applicable to employers in the event they fail to meet their reporting obligations. The Committee recalls that satisfactory application of the Charter cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised, and that the frequency of accidents at work and their evolution are key aspects of monitoring the effective observance of the right enshrined in Article 3§3 of the Charter. The Committee therefore concludes that the situation is not in conformity with the Charter on the ground that measures to reduce the number of fatal accidents at work are inadequate.

Activities of the Labour Inspectorate

The report indicates that according to Article 3, Paragraph 1, of the State Labour Inspectorate Law, the main function of the Labour Inspectorate is the implementation of the

supervision and control in the field of employment relationships and labour protection. In order to ensure the implementation of this function, the State Labour Inspectorate shall supervise and control observance of the requirements of the regulatory enactments regarding employment relationships and labour protection (Subparagraph 1, Paragraph 2, Article 3 of the State Labour Inspectorate Law). The procedure to be followed in this respect is regulated by State Labour Inspectorate Law, the Labour Protection Law, Regulations of the Cabinet of Minister and the Latvian Administrative Violations Code.

The Committee notes from the report that officials of the Labour Inspectorate have the right to issue warnings and orders to employers in order to ensure the observance of the requirements of the regulatory enactments regulating employment relationships and labour protection; as well as to impose administrative fines on employers, or on other persons for the examination of administrative violations in accordance with the prescribed procedures (Subparagraphs 6, 9, Paragraph 2, Article 5, State Labour Inspectorate Law). The Committee takes note of fines regulating health and safety at work in case of violation of regulatory enactments (Article 41, Paragraph 1 of the Latvian Administrative Violations Code) which concern cases of non-performance of a work environment risk assessment, mandatory health examinations, not using safety signs, personal means of protection and cases of failing to instruct employees.

According to the report, the State Labour Inspectorate also provides consultations free of charge to employers and employees regarding the requirements of regulatory enactments with respect to employment legal relationships and labour protection, examines received claims and provides replies on questions in person and by phone. The report contains references to the Annual reports of the State Labour Inspectorate, which provide the overall description of results of supervision of labours inspectors, including the statistical data of number of accidents at work and first-time confirmed occupational disease patients.

The Committee notes from the Annual Report of the Labour Inspectorate that the number of official positions in the Labour Inspectorate increased during the reference period, from 160, of which 112 were inspectors, in 2012 to 184 (180 full-time) official positions, of which 130 were inspectors, in 2015. The Committee asks for information on the number of staff of the labour inspection services dealing with occupational health and safety.

The report indicates that the number of companies under control of the Labour Inspectorate was 115 771 in 2013 and 119 022 in 2015. The number of employees in the companies under the Labour Inspectorate’s supervision in 2013 was 790 400, 782 400 in 2014 and 783 000 in 2015. The report specifies that inspection visits are not strictly divided into health and safety inspections and legal regulation inspections. The Labour Inspectorate inspected 8 082 companies in 2013, 7 704 in 2014 and 7 914 in 2015, and carried out 10 817 inspections in 2013, 10 317 in 2014 and 10 514 in 2015.

As regards the established violations and imposed sanctions, the report indicates that in 2015, labour inspectors issued to employers 3 105 orders (3 258 in 2014 and 3 562 in 2013) in violations of employment relationships and OSH legislative enactments. These orders recorded 16 998 violations (16 252 in 2014 and 13 658 in 2013) , of which 11 602 were related to occupational safety and health (10 815 in 2014 and 10 252 in 2013). In addition, labour inspection officials issued 273 warnings in 2015 and 419 in 2013; imposed 1 806 fines for an overall amount of €988 260 in 2015 (1 638 fines in 2014), out of which 196 violations of requirements in OHS for an overall amount of €69 725 (129 for an overall amount of €83 104 in 2014) and 653 cases of failure to comply with legal requirements of the labour inspection officials in due time for an overall amount of €206 014. The Committee requests that the next report provide more detailed information on the measures taken by Labour Inspectorate inspectors (reports ordering remedial measures; fines for minor, serious and very serious breaches; suspension of activity, referral to prosecution service for criminal proceedings).

The Committee recalls that under Article 3§3 of the Charter, States Parties must implement measures to focus labour inspection on small and medium-sized enterprises (Statement of Interpretation on Article 3§3, Conclusions 2013). The Committee requests that the next report contain this information. It also asks for detailed information on which authority has primary responsibility for supervising health and safety at work, how relevant departments are organised, and which economic sectors are covered by such supervision. If applicable, it requests clarification on the labour inspectorate responsible for the public sector, agriculture, forestry and fishery. The Committee also requests information concerning the proportion of workers covered by inspection visits actually made during the reference period, and the number of inspection visits made in the civil service.

Conclusion

The Committee concludes that the situation in Latvia is not in conformity with Article 3§3 of the Charter on the ground that measures to reduce the number of fatal accidents at work are inadequate.

Article 3 - Right to safe and healthy working conditions

Paragraph 4 - Occupational health services

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

This is the first time the Committee examines the Latvia's framework on occupational health services.

The Committee notes that under Article 3§4 States must promote, in consultation with employers' and workers' organisations, the progressive development of occupational health services for all workers with essentially preventive and advisory functions. These services may be run jointly by several companies. They must be efficient and should be able to identify, measure and prevent work-related stress, aggression and violence (see Statement of Interpretation on Article 3§4, Conclusions 2013; also Conclusions 2003, Bulgaria). It further notes that if occupational health services are not established for all enterprises, the authorities must develop a strategy, in consultation with employers' and employees' organisations, for that purpose. Thus, States "must take measures that allow it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources" (Conclusions 2003, Bulgaria, Conclusions 2009, Albania).

The Labour Protection Law stipulates to create the labour protection system where the enterprises have an opportunity, but in some cases an obligation, to involve competent experts and competent institutions in the labour protection field. The Appendix 1 of the Regulation of Cabinet of Ministers No. 99 of 8 February 2005 "Regulations regarding the Types of Commercial Activities in which an Employer shall involve a Competent Authority" sets out a list of branches where the enterprises are obliged to use the services of a competent institution.

The Regulation of Cabinet of Ministers No.723 of 8 September 2008 "Regulations regarding the Requirements for Competent Authorities and Competent Experts in Labour Protection Issues and the Procedures for Evaluating Competence" determines the basic requirements for external occupational health and safety (OSH) services and external OSH experts. They shall co-operate with the labour protection specialist or other employee and trusted person assigned by the employer, as well as with the employees of the undertaking. The main requirements for the external OSH services foresee that they must be officially announced using the Official Journal after they has fulfilled some minimum requirements. There are 70 competent institutions in Latvia, which are allowed to provide labour protection service in undertakings.

The report specifies that in providing labour protection services to an undertaking engaged in commercial activities in accordance with the regulatory enactments regarding the requirements for types of commercial activity, for which a competent authority shall be mandatorily involved, the internal work environment supervision (including work environment risk assessment) shall be performed by both competent authority specialists (senior labour protection specialist and an occupational physician), confirming with their signatures both the work environment risk assessment and the labour protection measures plan. The Committee asks the next report to provide detailed information on the minimum services that must be provided by the external OSH service.

According to the report, the enterprise should consider the mechanism of the operation of the competent institutions, competent experts and the services provided by them as an opportunity to improve its working environment and not as an additional burden. Enterprises that already have their own labour protection experts, who deal successfully with the issues of labour protection in the enterprise and who have created a well-functioning system of labour protection, do not have to use the services of competent institutions.

The report states that the administrative violations procedure is regulated in the Latvian Administrative Violations Code. In the case of violations of the regulatory enactments that

regulate labour protection non-performance of a work environment risk assessment and of mandatory health examinations, the non-development of a labour protection measures plan or the non-conformity thereof with the requirements of regulatory enactments regulating labour protection, a fine can be imposed on the employer or employment service provider.

In view of the generality of this information, the Committee is not in a position to examine the conformity of Latvia's framework on occupational health services under Article 3§4 of the Charter. It asks that the next report provide information on the framework on occupational health services (legislation, organisation, programmes, strategies, action plans), and number or percentage of workers under care with occupational health services.

Conclusion

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

Article 11 - Right to protection of health

Paragraph 1 - Removal of the causes of ill-health

The Committee takes note of the information contained in the report submitted by Latvia. It also takes note of the information contained in the comments by the Ombudsman of Latvia, registered on 13 October 2017 as well as of the addendum to the report submitted by Latvia in response to these comments on 1 December 2017.

Measures to ensure the highest possible standard of health

The Committee notes from OECD (Country statistical profile report) that life expectancy at birth in 2015 (average for both sexes) was 74.6 (according to Eurostat, the EU-28 average that same year was 80,6). The average life-expectancy rate in Latvia is still low relative to other European countries, around six years shorter than the European Union average.

The death rate (deaths/1 000 population) was 14 in 2015, which is high compared to other European countries.

Infant mortality decreased during the reference period, from a rate of 6.3 per 1,000 live births in 2012, to 4.1 in 2015. The Committee notes the decreasing trend in infant mortality, but it nevertheless remains above the rate in other European countries (the EU-28 rate in 2015 was 3.6 per 1,000).

As regards maternal mortality rate, the Committee notes that the rate was 18 per 100,000 live births in 2015. This remains above the rate in other European countries. Therefore, t**h**e Committee asks the next report to provide information on the measures taken to reduce maternal mortality rate.

The report indicates that the main public health policy planning document in Latvia is "The Public Health Strategy 2014-2020" whose priorities focus to remedy the main causes of death disease which are non-communicable diseases (including oncologic diseases, cardiovascular diseases and mental health disorders). During the reference period several concrete measures have been taken as follows:

- "The Cardiovascular Health Improvement Action Plan 2013-2015" has been approved in 2013 by the Cabinet of Ministers. It includes activities in the fields of health promotion, improving cardiovascular disease treatment and early diagnostics of congenital malformation of the heart.
- "The Maternal and Child Health Improvement Plan 2012 – 2014" has been elaborated and amendments have been adopted in the Regulation of the Cabinet of Ministers No.611 of 25 July 2006 “On the order of provision of postnatal care” that prescribes additional tests for pregnant woman in order to diagnose early the risk of pathology including hereditary pathology of foetus.
- "The Action plan of the framework policy document "Improvement of inhabitant’s mental health for years 2013 and 2014" was developed to define specific measures and actions to fulfill the tasks and achieve the objectives of Guidelines "Improvement of Inhabitant’s Mental Health for 2009-2014".

Despite the measures taken, the Committee notes that health indicators remain insufficient and in particular, life expectancy rate is among the lowest in the EU. It asks for information on the infant mortality rate and on the maternal mortality rate and the trends of these indicators.

Access to health care

The Committee notes in the Comments provided by the Ombudsman’s Office, that funding allocated by the government of Latvia for healthcare as a percentage of GDP has been among the lowest ones across Europe and fluctuates between 3.38% of GDP in 2012 and 3.16% of GDP in 2015 (or, on average, 9.8% of the budget of the government of Latvia (in 2013). The Ombudsman’s Office points out that direct payments of the patients are among

the highest ones in Europe. There are long waiting time and limited funding (so-called quotas) to receive state funded planned healthcare services (examination, surgery etc.). Major part of patients are not able to receive state funded healthcare services and are mostly bound to pay for these services due to exhaustion of the state guaranteed healthcare quotas, or excessive waiting time (for example, waiting time for consultation of an endocrinologist and cardiologist is up to 122 days, waiting time for consultation of an ergotherapist – up to 850 days, surgical services in ophthalmology – up to 1677 days).

In addition, the Committee notes in the European Commission Country Report 2016 that access to healthcare is hampered by low public financing and high out-of-pocket payments, leaving a high proportion of the population with unmet healthcare needs. Total health expenditure is well below the EU average and a high share of it is covered by private out-of-pocket payments. Public spending is controlled by quotas that drive up the waiting times and make it more difficult for such groups as children and needy persons to receive guaranteed free healthcare. This leads to delayed treatment and high private out-of-pocket payments, including payments to avoid long waiting times. Shortage of human resources can be observed in the area of healthcare. Number of nurses and medical practitioners is insufficient at state and municipal hospitals, as well as good quality primary healthcare, emergency care (especially at Emergency units), assistance at birth etc. cannot be provided.

The Committee also notes from the 2017 OECD Health Overview Report on Latvia, that out-of-pocket payments for health are among the highest in the OECD. In Latvia, the scope of publicly covered services is relatively limited. Patients must pay a substantial part of the costs across all health services. The contribution of out-of-pocket spending to total health care expenditure in Latvia is the second highest across OECD countries, at 39% in 2014. Accordingly, the Committee asks the next report to provide information on measures taken to reduce out-of-pocket spending to total health care expenditure.

Taking into account the above information, the Committee finds that insufficient measures have been taken to effectively guarantee the right of access to health care, specifically in terms of underfunding of the healthcare system.

The Committee recalls that arrangements for access to care must not lead to unnecessary delays in its provision. It underlines that it will pay particular attention to whether access to treatment is based on transparent criteria, agreed at the national level, taking into account the risk of deterioration, in clinical terms as well as in terms of quality of life (Conclusions XV-2 (2001), United Kingdom). In its previous conclusion (Conclusions XIX-2), the Committee asked for information about waiting list criteria and management methods. The report does not reply to this request. The Committee therefore repeats its question concerning waiting list criteria and management methods and asks, in addition, whether and to what extent waiting times are decreasing.

In addition, the Committee asks that the next report contain information on the availability of mental health care and treatment services, including information on the prevention of mental disorders and recovery measures.

The Committee also asks information on dental care services and treatments (such as who is entitled to free dental treatment, the costs for the main treatments and the proportion of out-of-pocket paid by the patients).

Conclusion

The Committee concludes that the situation in Latvia is not in conformity with Article 11§1 of the Charter on the ground that insufficient measures have been taken to effectively guarantee the right of access to health care.

Article 11 - Right to protection of health

Paragraph 2 - Advisory and educational facilities

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

Education and awareness raising

The report indicates that several public awareness campaigns for prevention of addictive substance took place during the reference period. In 2014 the campaign *"Free"* was implemented in order to decrease tobacco use among children and young people (grades 5–9). The campaign aimed at reduction of children's exposure to passive smoking was implemented in 2014; the campaign urged parents and the society as a whole to protect children from passive smoking and contact with cigarette smoke.

In 2015, a campaign was implemented to address alcohol use problems among children and adolescents *"Let's Make it Clear!"*, aiming to change society's attitude towards alcohol use among minors and make use by children/adolescents a socially unacceptable behavior.

Other educational activities for prevention of addictive substance use were implemented on matters of dependence prevention for pupils of grade 10–12 at general education institutions and 1st/2nd-year students at vocational education institutions to provide awareness of dependence on various substances (tobacco, nicotine, alcohol, drugs) and their negative effects on health. In 2014, the project "*Be Smart, Don't Get Hooked*" for adolescents in Latvian schools (grades 6–7) on prevention of dependence-inducing substances (types of dependence, negative impact of new so-called designer psychoactive substances on the body and psyche, reasons behind use etc.).

In 2015, educational activities were implemented for addressing issues regarding smoking, in order to reduce tobacco use among children and adolescents (grades 5–9). A "*Free*" thought-exchange afternoon was organised (with participation of a family doctor and dependence psychologists), the "*80 Days Off*" mobile app was presented for smoking cessation and a healthy lifestyle.

In 2013, a public awareness campaign "*Love Your Heart*" was launched and continued in 2014/2015 (3 stages) – covering cardiovascular disease risk factors that can be prevented with appropriate nutrition.

The revised national HIV/AIDS programme for 2009-2013 includes prevention measures such as public awareness-raising about how the virus is transmitted and how this can be prevented as well as providing increased access to HIV testing. In 2015 public awareness campaign was organised, aiming to change the public attitude to HIV as a "bad" illness, explain matters related to HIV prevention and the importance of HIV rapid testing for early detection.

The report indicates that overall the health education at schools is not a separate subject but it is integrated in various subjects in school curriculum such as biology, social studies, natural sciences, class education lessons, sports etc. The Ministry of Education and Science in cooperation with the Ministry of Health has worked to ensure that children received necessary knowledge on health related issues. In addition, to unite schools that prioritise making school a health-promoting environment, the *Network of health promoting schools* was established. Network schools can share experience and get new ideas on health promotion practice in schools, receive support for their health promotion activities, and encourage pupils and staff to stay healthy by integrating healthpromoting activities in curriculums and everyday life. In 2015, the infographic "*Network of health promoting schools*" was created. Implementation of Sports Policy Guidelines 2014–2020 is an indirect contribution to maintain the healthy lifestyle and well-being of the society. Certain measures are implemented every year in order to financially support sports activities.

The Committee recalls that sexual and reproductive health education is regarded as a process aimed at developing the capacity of children and young people to understand their sexuality in its biological, psychological, socio-cultural and reproductive dimensions which will enable them to make responsible decisions with regard to sexual and reproductive health behaviour. It is acknowledged that cultural norms and religion, social structures, school environments and economic factors vary across Europe and affect the content and delivery of sexual and reproductive health education. However, relying on the basic and widely accepted assumption that school-based education can be effective in reducing sexually risky behaviour, States Parties must ensure that sexual and reproductive health education forms part of the ordinary school curriculum; that the education provided is adequate in quantitative terms; that the form and substance of the education, including curricula and teaching methods, are relevant, culturally appropriate and of sufficient quality, in particular that it is objective, based on contemporary scientific evidence and does not involve censoring, withholding or intentionally misrepresenting information, for example as regards contraception and different means of maintaining sexual and reproductive health; and that a procedure is in place for monitoring and evaluating the education with a view to effectively meeting the above requirements (International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Croatia, Complaint No. 45/2007, Decision on the merits of 30 March 2009, §§46 – 47). The Committee asks the next report to provide information on the content of sexual and reproductive health education at schools.

Lastly, the Committee notes from the European Commission country report 2015 that there is a lack of sickness prevention and health promotion. It asks the next report to provide additionnal information on these observations.

Counselling and screening

As diseases of the circulatory system are the main cause of death in Latvia, various measures have been taken to improve heart health. In order to draw attention of public and to raise awareness in society about cardiovascular health issues the Ministry of Health announced 2013 as the Year of Heart Health. The public awareness campaign "Love Your Heart" was launched and continued in 2014/2015 (3 stages) was implemented with the aim to inform and educate society about cardiovascular disease risk factors and how to prevent them by changing of dietary habits (limitation of salt, sugar and trans-fatty acids in nutrition), reducing tobacco use, increasing of physical activities and early diagnosis of heart and cardiovascular diseases. The 2009-2015 National Cancer Control Programme includes education and training activities and activities to raise awareness about the dangers of smoking. Cancer is the second cause of death in Latvia and so more screening is being organised in an attempt to reduce mortality rates, particularly for ovarian, breast, prostate and colon cancer. Screening has been centralised since 1 January 2009 to increase efficiency and numbers.

In accordance with the Regulation of Cabinet of Ministers No. 1529 of 17 December 2013 “The Procedure of Organising and Funding Health Care” since 2009 cancer screening has been organised and introduced for breast, cervical and colorectal cancer in Latvia:

1) oncocytological screening for cervical cancer for women aged 25 – 70 every three years;

2) mammography screening for breast cancer for women aged 50 till 69 every two years;

3) occult blood screening for colorectal cancer for men and women from the age 50 – 74 once a year.

The report indicates that the coverage for the target group for breast and cervical cancer exceeds 95 per cent; however, the response (actual participation in screening) is not satisfactory – it is significantly lower than the internationally accepted minimum indicators (the coverage for the target group should reach 75 per cent at least).

National Health Service which involves patients in screening provides regularly data collection and evaluation. In 2015 participation in cervical cancer screening was 25 per cent; breast cancer screening – 35 per cent; bowel cancer screening – 11 per cent.

With regard to regular consultation and screening for pregnant women and children throughout the country, "The Maternal and Child Health Improvement Plan 2012 – 2014" has been elaborated and amendments have been adopted in the Regulation of Cabinet of Ministers No.611 of 25 July 2006 “On the order of provision of puerperal care” that prescribes additional tests for pregnant woman in order to diagnose early the risk of pathology including hereditary pathology of foetus.

Free medical checks must be carried out throughout the period of schooling. The report indicates that statistical data are not available, because there are no such statistics summarized, as it is gathered and available only locally. The Committee notes that the report does not respond to the repeated requests in previous conclusions (Conclusions XIX-2) for information on free and regular consultation and screening, particularly for pregnant women and children, school medical services, therefore it reiterates its request.

Conclusion

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

Article 11 - Right to protection of health

Paragraph 3 - Prevention of diseases and accidents

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

Healthy environment

The report indicates that the Environmental Policy Strategy 2014–2020, adopted in 2014 deals with different aspects associated to environment including air pollution, water pollution, noise pollution and soil pollution.

On air quality, according to monitoring results, Riga has local air quality problems. In order to solve air quality problems, the new Action Program on Improvement of Riga air quality is elaborated for 2016-2020. In general, the air quality problems are not present in other parts of Latvia.

On water quality, according to the audit monitoring results, 79-83 per cent of all population in Latvia (2012 – 79 per cent; 2013 – 81 per cent; 2014 – 83 per cent; 2015 – 81 per cent) received drinking water that complied with the legislation and quality standards. In 2015, amendments in the Regulation of Cabinet of Ministers No. 235 have been approved in order to specify requirements for monitoring of **radioactive substances in water** intended for human consumption according to the Directive 2013/51/EURATOM2. The Committee takes notes of the information provided in the report on water quality in bathing water. With respect to ionising radiation, the “umbrella” law – Law on radiation safety and nuclear safety was adopted by Parliament of Latvia in 2000 followed by a number of amendments up to 2014. Regulation of Cabinet of Ministers No.752 of 22 December 2015 “Procedures for licensing and registration activities with sources of ionising radiation” determines activities with sources of ionizing radiation which do not require a license or registration as human behavior cannot influence the actions or potential dose of ionizing radiation exposure and the exposure is negligible from the point of view of radiation safety.

The Committee wishes to receive updated information on the levels of air pollution, contamination of drinking water and food intoxication during the reference period, namely whether trends in such levels increased or decreased. It also asks information on the noise pollution, waste management, risks related to asbestos.

Tobacco, alcohol and drugs

As regard tobacco, in its previous conclusion, the Committee asked whether smoking is banned in all public places and to be informed of all trends in smoking. In reply, the report indicates that on 20 May 2016 (outside the reference period), the new Law on handling of tobacco products, herbal smoking products, electronic smoking devices and their liquids, entered into force. The law prohibits smoking in workplaces and areas of common use, with the exception of premises, which are specially designed for smoking. The report further indicates that according to a survey on Health Behaviour Among Latvian Adult Population, conducted in 2014, 51.8% of the male population and 21% of females aged 15-64 were daily smokers; 5.6% of males and 1.4% of females were exposed to tobacco at the workplace more than 5 hours per day.

As regard alcohol abuse, in 2012 the "Action plan for reduction of alcohol consumption and restriction of alcohol addiction for 2012–2014" was adopted (a comprehensive action plan for the reduction of alcohol consumption, including prevention activities and health care service improvement). The excise tax rates on different groups of alcoholic beverages were raised in 2013 (came in force in 2014) and 2015. Amendments in the Handling of Alcoholic Beverages Law were made, including: 1) Prohibiting outdoors advertising of alcoholic beverages; 2) Persons aged 18 to 25 years old are obliged to present an identity card with the purchase of any type of alcoholic beverage to the retailer, regardless of whether the retailer has requested it or not; 3) Alcoholic beverages are prohibited to be sold to persons if there is

doubt about their age and if the person is declining to show an identity conforming document; 4) Alcoholic beverage retail is prohibited by means of distance contracts. Alcoholic beverage retail is prohibited in State and local government premises, except cultural institutions and sports facilities with the local area.

In relation to illicit drug use, in 2014 the informative report "On Narcotic Drugs and Psychotropic Substances and their dependence on containment and control guidelines 2011- 2017 implementation from 2011 to 2013" was compiled. The report marks the most significant trends regarding drug use (till 2014), namely: the number of recent users in general population has somewhat decreased; the rising problem is use and trade of new psychoactive substances (hereinafter − NPS); use of marijuana is increasingly accepted by the general population. It has to be taken into account that currently the situation regarding NPS has improved – the use and trade of NPS have decreased since 2014, and the researches explain it as a success of amendments in legislation (temporary ban system and criminalization). However the situation regarding marijuana use can be linked to the global trend.

The Committee asks to be kept informed of all trends in tobacco, alcohol and illicit drug use.

Immunisation and epidemiological monitoring

The reports refers to the "Immunization Plan 2012-2014" as a continuation of previous National Immunization Programme with the aim to reduce the prevalence with vaccine preventable infectious diseases. In 2015 Regulation of Cabinet of Ministers No.330 ''Vaccination Regulations" has been amended in order to clarify vaccination calendar according to human papillomavirus vaccines including vaccination schedule. The Report mentions the adoption of **a** Strategy, which proposes immunization against 14 infectious diseases within the childhood vaccination schedule. Immunisation coverage rates for the mentioned vaccines were over 90 per cent during the reference period (2015) excepting of vaccination against varicella (85,6 per cent) and human papillomavirus infection (49,4 per cent).

The Committee also asks that the next report provide updated information on the coverage rate.

Accidents

The Committee notes from the report that 2014 was a very dramatic year for Latvia in terms of road traffic safety. There were 212 fatalities in road traffic accidents, which was the worst road safety record in EU that year. The situation did not improve in 2015 neither – there were 187 fatalities in road traffic accidents.

Targets for road safety policy are defined in Transport Development Guidelines 2014-2020 and Road Safety Plan 2014-2016. Targets for the road safety in Latvia are to reduce road fatalities and serious injuries at least by 50 per cent until 2020. In 2015 completely new road traffic regulations have been adopted. The new road traffic regulations lay down conditions, aimed at improving road safety, especially safety for vulnerable road users, including drivers of bicycle. The Committee asks the next report to provide information on the impact of the measures taken on road safety.

The Committee notes that states must take steps to prevent accidents. The main types of accidents covered are road accidents, domestic accidents, accidents at school and accidents during leisure time (Conclusions 2005, Republic of Moldova). The Committee asks to be provided with information on the other types of accidents, including domestic accidents, accidents at school and accidents during leisure time.

Conclusion

Pending receipt of the information required, the Committee concludes that the situation in Latvia is in conformity with Article 11§3 of the Charter.

Article 12 - Right to social security

Paragraph 1 - Existence of a social security system

The Committee takes note of the information contained in the report submitted by Latvia. It also takes note of the information contained in the comments by the Ombudsman of Latvia, registered on 13 October 2017, as well as of the addendum to the report submitted by Latvia in response to these comments on 1 December 2017.

With regard to family and maternity benefits, the Committee refers, respectively, to its conclusions relating to Articles 16 and 8§1 (Conclusions 2015).

Risks covered, financing of benefits and personal coverage

The report refers to Article 109 of the Constitution, which guarantees to everyone the right to social security in respect of old age, incapacity for work, unemployment and in other cases as prescribed by law. The general framework of the Latvian social security system is set in the Law on State Social Insurance of 1 January 1998, which defines the personal scope of compulsory insurance (employees and self-employed persons) as well as the conditions and contribution rate, which may vary for employees and self-employed workers, taking also into account the insured person's employed status, age and disability status (for example, employees over the pensionable age are not insured against unemployment and disability and disabled people are not eligible for unemployment benefits). The Committee takes note of the detailed information provided in this respect in the report. It also notes that the same conditions apply to nationals and foreigners, as regards the mandatory State social insurance contributions to be made and the types of insurance applicable.

The Committee notes that the Latvian social security system covers an adequate number of branches, namely: healthcare, sickness, maternity, work accidents and occupational diseases, old age, invalidity, survivors, unemployment and family benefits. The system rests on collective funding, it is financed by contributions (employees and employers) and by the State budget and covers both employees and self-employed workers, except as regards unemployment and work accidents/occupational diseases (self-employed persons are not covered for these risks).

According to official statistical data, as of end 2015, the population was 1 969 000 and the active population (age 15 to 74) was 998 100 (967 300 as regards population comprised between age 15 and 64). The entire resident population is entitled to health care cover under the universal healthcare insurance scheme.

The legislative framework governing the general system of cash benefits in case of sickness is the Law on State Social Insurance, Law on Maternity and Sickness Insurance as well as some Regulations (see the report for details). This social insurance scheme is compulsory for all employees and socially insured self-employed, as well as to spouses of self-employed persons who have joined the social insurance and provides earnings-related benefits. Sickness insurance also covers absences from work for taking care of a sick child below 14 years old. According to the report, in 2015, the number of cases involving payment of sickness benefits was 254 670.

Unemployment benefits are regulated by the Law on State Social Insurance of 1st October 1997, Law on Unemployment Insurance of 25th November 1999 and, as regards the legal framework in regard to employment, vocational guidance and training, The Support for Unemployed Persons and Persons Seeking Employment Law. The report indicates that the number of recipients of unemployment benefits increased from 80 219 in 2012 to 95 310 in 2015.

The main legislation concerning the general system of benefits in respect of accidents at work and occupational diseases is the Law on State Social Insurance of 1st October 1997 and Law on Compulsory Social Insurance against Accidents at Work and Occupational Diseases of 2 November 1995. The report also mentions further Regulations (listed in the

report) concerning the procedures for investigation and registration of occupational diseases and accidents at work, for issuing sick-leaves and for determining the payment of the benefits related to accidents at work and occupational diseases. According to the report, the number of recipients was 9205 in 2015.

The Committee refers to the report as regards the laws and regulations which constitute the main references concerning the general pension system, in particular the Law on State Social Insurance of 1 October 1997, the Law on State Pensions of 2 November 1995, the Law on State Funded Pensions of 17 February 2000, the Law on Private Pension Funds of 5 June 1997, the Law on State Social Benefits of 19 November 2002 and the relevant Regulations listed in the report. The report indicates that in 2015 there were 468 794 beneficiaries of old age pensions and 74 024 beneficiaries of invalidity pensions.

The Committee recalls that the social security system should cover a significant percentage of the active population as regards income-replacement benefits, such as sickness, maternity and unemployment benefits, pensions, and work accidents or occupational diseases benefits. As the report does not provide any information on the coverage of the different branches of social security, the Committee asks that updated information on the rate of coverage (percentage of persons insured out of the total active population) for all the branches be systematically provided in each report concerning Article 12 of the Charter. It reserves in the meantime its position on this issue.

Adequacy of the benefits

According to Eurostat data, the median equivalised annual income was €5828 in 2015, or €486 per month. The poverty level, defined as 50% of the median equivalised income, was €2914 per annum, or €243 per month. 40% of the median equivalised income corresponded to €194 monthly. The minimum wage was €360 per month.

In case of **sickness**, cash benefits apply as from the second day of incapacity of work: the employers will pay not less than 75% of the average earnings for the second and third day of sickness, and then not less than 80% from the 4th until the 10th day of incapacity. As from the 11th day, the benefit is paid by the State Social Insurance Agency and amounts to 80% of the average gross wages upon which contributions have been made during 12 months (this 12-month period ends two months before the month in which the incapacity occurred). The benefit is paid for a maximum of 26 weeks, but may be extended up to 52 weeks over a three year period if incapacity has been repetitive with interruptions. Due to the economic crisis, certain restrictions applied temporarily to the benefits granted between 2010 and end 2014 but were lifted in 2015. According to the report, the average daily amount of sickness benefits paid in 2015 was €16.80. The Committee notes that, on the basis of the minimum wage, the amount of minimum sickness benefits is in conformity with the Charter.

The report indicates that, in case of **unemployment**, a contributory benefit is paid to registered unemployed persons who have paid contributions for at least one year, of which 9 months in the 12 months before becoming unemployed (exceptions are made in favour of certain situations, for example persons recovering from disability or having taken care of a disabled child). On the other hand, persons receiving old-age pensions (including early retired), disabled, self-employed and detainees are not eligible for unemployment benefit. Unemployment benefits can be paid for up to 9 months within one year after they have been granted, irrespective of the length of service. The report also mentions that the unemployed person must also actively look for a job or undertake training in order to be granted the benefits. The Committee asks under what circumstances the payment of unemployment benefits might be suspended or cancelled for refusing a job or a training offer, whether the law defines the notion of "suitable job offer" and whether it provides for an initial period during which the person might refuse a job or a training offer not matching his/her previous skills without losing entitlement to the unemployment benefits.

The amount of benefits is calculated on the basis of the average insurance contribution wage (income from which State social insurance contributions are made) during a period of 12 months ending two calendar months prior to the month in which the person became unemployed. Due to the economic crisis, certain restrictions applied temporarily between 2010 and end 2014 but were lifted in 2015. The amount granted is proportional to the length and amount of contributions: 50% of the average insurance contribution wage is granted to persons who have been insured less than ten years; 55% of it is granted to persons who have been insured between 10 and 20 years; 60% is granted to persons who have been insured between 20 and 30 years and 65% is granted to persons with more than 30 years of contributions. During the first three months of unemployment, these amounts are paid at 100%, then they are progressively reduced (75% of the benefit is paid from 4-6 months of unemployment, and 50% from 7-9 months). Some preferential conditions, detailed in the report, apply to certain categories of unemployed (for example, persons who had been out of employment because of temporary incapacity of work or for raising a child). The report indicates that the average monthly amount of unemployment benefits was €221.98 in 2015, which falls between 40% and 50% of the median equivalised income. The Committee estimates that the minimum level of unemployment benefit for a person who would have been working full time at minimum wage, for less than ten years, would correspond to some €180 monthly for the first three months of unemployment, and even less afterwards. The Committee recalls that, to be in conformity with the Charter, the level of income-replacement benefits should be such as to stand in reasonable proportion to the previous income and should not fall below the poverty threshold defined as 50% of the median equivalised income, as calculated on the basis of the Eurostat at-risk-of-poverty threshold value. Where an income-replacement benefit stands between 40% and 50% of the median equivalised income, other benefits, where applicable, will also be taken into account. However, where the minimum level of an income-replacement benefit falls below 40% of the median equivalised income (or the poverty threshold indicator), it is not considered that its aggregation with other benefits can bring the situation into conformity. As the minimum level of unemployment benefits falls below 40% of the median equivalised income, the Committee considers that it's inadequate.

The Compulsory Social Insurance against **Accidents at Work and Occupational Diseases** provides for cash benefits in case of temporary or permanent incapacity for work, as well as in case of death, resulting from work injury or occupational disease. In case of death of an insured person, the beneficiaries of the indemnity are the family members who are incapable for work and who were dependent on the deceased person. The amount of the benefit depends on the average contribution wage, calculated over a period of 12 months ending two months before the event complained of occurred. The indemnity for temporary incapacity is paid from the first day of incapacity for a maximum of 26 weeks which can be extended up to 52 weeks over a three year period if the incapacity has been repetitive with interruptions. The amount granted corresponds to 80% of the average contribution wage. The compensation for the loss of work capacity is calculated depending on the degree (proportion) of incapacity determined by the competent institution and the average social insurance contribution wage. For example, a person with a 100% incapacity of work is entitled to 80% of the average monthly earnings, which can be increased by up to 50% if the person needs daily life assistance. In case of accumulation with service or old age pension, the difference between service or old age pension and accident at work benefit is paid, unless the amount of the pension equals to or exceeds the benefit for loss of capacity for work (in this case, the payment of the benefit for loss of capacity for work is terminated). No accumulation is possible with survivor's pension, invalidity pension and unemployment benefit. According to the report, the average amount of benefits paid in 2015 was €292.89 per month. On the basis of the minimum wage, the Committee considers that the amount of minimum benefit is in conformity with the Charter.

The report states that there is a three-pillar pension system in Latvia composed of a state obligatory non-funded pension scheme; a state obligatory funded pension scheme and a

private voluntary pension scheme. In all three levels, the amount of pension depends on the contributions paid (their level and length of payment) and the contributions are being accumulated (conditionally or directly) by earning the interest and forming pension capital. The 1st pillar scheme (State obligatory non-funded pension scheme) is based on social insurance contributions and functions according to the principle of generation solidarity (contributions made by socially insured persons are directed to pay of current pensions). The contributory State pension system guarantees old age pensions, survivor's pensions and disability pensions.

As regards in particular **old age** pension, the report explains that the first pillar of the state pension system which entered into force in 1996 also covers at present pensioners, whose pension was granted before that date and the transitional period will end when the generation which began to accumulate its pension capital under the 1996 regulations will retire. At present, social insurance contributions, earmarked for the old-age pensions (20% of wage) are recorded in notional (virtual) individual accounts, earning return until retirement and accumulating notional pension capital, while real contributions are used for financing current pension expenditure. At retirement, pensions are calculated by dividing the accumulated notional pension capital by the average number of years projected for the pension payouts at each specific age of retirement (i.e. number of years of projected life expectancy at the date of retirement, average for men and women). In order to ensure uninterrupted pension insurance record during the periods, when a person is economically inactive – being unemployed, disabled, on parental leave, serving in obligatory military service or in the event of the incapacity for work – social insurance contributions are made from the State budget. The retirement age is currently fixed at 62 years of age but is gradually increasing, as from 2014, till reaching 65 years in 2025. The minimum insurance length, which was 10 years, was also increased to 15 years in 2014 and will be 20 years as from 2025. The Committee takes note of the conditions, described in the report, concerning early retirement (five years before retirement age, in certain cases). The 2nd pillar of State pension system, which came into force on July 1, 2001, is administered by State Social Insurance Agency. The report states that the aim of this scheme is to increase pensions without increasing the rate of social insurance contributions by investing a part of these contributions into financial capital market. Upon reaching the statutory retirement age, the participants to this scheme can add accrued funded pension capital to the notional pension capital, registered at the first pillar pension scheme or acquire life assurance policy. The second pillar of pension system is compulsory to those born after 1 July 1971, but voluntary participation was possible for those in the age group from 30 to 49 (born from July 1951, to July 1971). No additional contributions are required to join the 2nd pillar, but the total amount of contributions for pension capital (20% of the income) is divided between the 1st and the 2nd pillar of pensions.The 3rd level of pension system (private voluntary pension scheme) is effective since July 1, 1998, and it's based on personal and voluntary contributions. Participants of a pension scheme can participate in pension plan both directly and through mediation of their employers and they can receive the accumulated capital already from 55 years of age, or continue the participation and receive capital in parts. The Committee also notes from the report that specific pension rules (Service pension) apply to certain categories of workers (military, artists, diplomats, judges and attorneys...). It takes furthermore note of the statutory indexing regime applying to pensions.

The level of the minimum pension depends on the length of the individual pension insurance record. According to the report, it corresponds to €70.43 per month for an insurance record of less than 20 years, €83.24 per month for an insurance record between 21 and 30 years, €96.04 per month for an insurance record between 31 and 40 years and €108.85 for an insurance record of at least 41 years; higher amounts apply to persons who are disabled since their childhood (respectively €117.39, €138.73, €160.07 and €181.42). According to the report, the average monthly old age pension amount was €288.61 in 2015. However, as the Committee assesses the conformity with the Charter on the basis of the minimum level of pension, it notes that the minimum pension awarded under the first pillar scheme falls

largely below the poverty level set at 40% of the median equivalised income, even when calculated on the basis of longer insurance records. It accordingly considers that the level of minimum old age pension is manifestly inadequate.

A person who has not reached retirement age and has been acknowledged as disabled (except in case of disability resulting from work, after 1997) is entitled to a **disability** pension if his/her insurance period (social contribution history) is of at least three years. The amount of the pension for groups I and II depends on the persons average insurance contribution wage, calculated for any 36 consecutive months during the last five years before the occurrence of the disability and the length of the insurance period (social security history). In the case of disability group III the pension is granted in the amount of the State social security benefit – €64,03. If the person was not insured during the five year period before the granting of a disability pension, the pension is granted in a minimum amount which corresponds to €102.45 for group I disability pension and €89.64 for group II disability group, (higher rates apply to the disabled since childhood, i.e. respectively €170.75 and €149.41). According to the report, the average monthly disability pension amount was €169.04 in 2015. The Committee notes that the minimum level of disability pension falls largely below the poverty level set at 40% of the median equivalised income, and that the same applies to the average monthly disability pension. It accordingly considers that the level of minimum disability pension is manifestly inadequate.

Conclusion

The Committee concludes that the situation in Latvia is not in conformity with Article 12§1 of the Charter on the grounds that

- the minimum level of unemployment benefits is inadequate;
- the minimum level of old age pension is inadequate;
- the minimum level of disability pension is inadequate.

Article 12 - Right to social security

Paragraph 2 - Maintenance of a social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security

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

The Committee recalls that Article 12§2 obliges states to establish and maintain a social security system which is at least equal to that required for ratification of the European Code of Social Security. The Code requires acceptance of a higher number of parts than ILO Convention No 102 relating to social security; six of the nine contingencies must be accepted although certain branches count for more than one part (medical care counts for two parts and old-age counts for three).

The Committee notes that Latvia has signed the European Code of Social Security on 28 November 2003 but has not ratified it. Therefore, the Committee cannot take into consideration other sources such as the resolutions of the Committee of Ministers on the compliance of the states bound by the Code and has to make its own assessment.

Moreover, the Committee notes that Latvia has not ratified any of the following conventions of the International Labour Organisation: Convention N° 102 (Social security, minimum standards), N° 121 (Employment Injury Benefits), N° 128 (Invalidity, Old-Age and Survivors' Benefits), N° 130 (Medical Care and Sickness Benefits) and N° 168 (Employment Promotion and Protection against Unemployment).

The Committee recalls that in order to assess whether the social security system is maintained at a level at least equal to that necessary for the ratification of the Code, it has to assess the information regarding the branches covered, the personal scope and the level of benefits.

The Committee refers to its Conclusion under Article 12§1 in which it notes that the social security system of Latvia covers an adequate number of branches, namely healthcare, sickness, maternity, work accidents and occupational diseases, old age, invalidity, survivors, unemployment and family benefits. With regard to assessment of the personal scope, the Committee refers to its request, under Article 12§1, that updated information on the rate of coverage (percentage of persons insured out of the total active population) for all the branches be systematically provided in each report concerning Article 12, and that it reserves its position on this issue.

The Committee refers to its assessment under Article 12§1 that the minimum level of unemployment benefit is inadequate and that the minimum levels of old age and disability pensions are manifestly inadequate. It also refers to its Conclusion 2015 under Article 16 that family benefits are not of an adequate level for a significant number of families.

The Committee takes into account its assessment under Article 12§1 that the amount of minimum levels for sickness benefits and accidents at work and occupational diseases are in conformity. It also refers to its Conclusion 2015 under Article 8§1 that the situation is in conformity pending receipt of the requested information with regard to maternity benefits.

The Committee asks the government to provide all the information requested, and in the meantime it reserves its position as to whether Latvia maintains a social security system at a satisfactory level at least equal to that necessary for ratification of the European Code of Social Security.

Conclusion

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

Article 13 - Right to social and medical assistance

Paragraph 1 - Adequate assistance for every person in need

The Committee takes note of the information contained in the report submitted by Latvia. It also takes note of the information contained in the comments by the Ombudsman of Latvia, registered on 13 October 2017 as well as of the addendum to the report submitted by Latvia in response to these comments on 1 December 2017.

Types of benefits and eligibility criteria

The Law on Social Services and Social Assistance defines social assistance as a benefit in cash or in kind, the granting of which is based on the evaluation of the material resources of persons (families or households) who lack the means to satisfy basic needs. Article 35 of this Law provides for two basic benefits: the Guaranteed Minimum Income (GMI) and the housing benefit. Besides, municipalities may grant a lump sum benefit in an emergency situation. Social assistance is granted to the persons recognised as needy (whose household income does not exceed €128 per person per month). The fundamental aim of the GMI is to ensure a minimum level of income for each member of household. The amount of benefit is calculated as a difference between the GMI level set by the Cabinet of Ministers or the municipality and the claimant's average monthly income over the last three months. The level of GMI is determined at € 49,80. It is defined in a centralised manner at national level. However the decision regarding the granting of the benefit and the calculation of its amount is adopted by each individual municipality, in particular, the municipal social service office.

As regards additional benefits, according to the report there are two main legal acts which regulate the housing benefit awarded by the municipalities. The Law on Assistance in Solving Apartment Matters makes local authorities responsible for providing housing benefit to ensure material support for families or single persons with low income (rent and public utilities). The Law on Social Services and Social Assistance makes the housing benefit the second mandatory benefit to be provided by the relevant local municipality to a person or a family. The income level at which the household is entitled to the housing benefit ranges from € 128 to € 356 per person.

The Committee takes note of the Order No 619 of the Cabinet of Ministers of 30 October 2014, supporting the concept paper on introducing the minimum income. The aim is to define methodologically justified minimum income level and at the same time encourage active involvement in the labour market. The Committee notes that the minimum income is proposed to be set at 40% of the median equivalised income and the minimum subsistence consumer basket of goods and services is also envisaged to be developed by 2019. The draft law on amendments to the Law on Social services and Social Assistance also envisages that the income up to the amount of the minimum wage will not be taken into account in the means test. Besides, the family benefit shall not be regarded as income for the purposes of the means test. The Committee notes that these amendments are planned to enter into force in 2017. The Committee asks the next report to provide information in this respect.

As regards medical assistance, according to Article 17 of the Medical Treatment Law the following categories of persons can receive healthcare paid from the State basic budget: Latvian citizens; Latvian non-citizens; citizens of Member States of the European Union, of the European Economic Area states and Swiss Confederation who reside in Latvia; third-country nationals who have a permanent residence permit in Latvia; refugees and persons who have been granted alternative status.

The Committee notes that among the categories of residents who are defined in Regulation No. 1529 as exempted from a patient contribution are persons without resources who have been recognised as such in accordance with the regulations regarding the procedures by which a family or a person living alone shall be recognised as needy.

The Committee notes from the comments by the Ombudsman's Office on the 3rd national report of Latvia that the fact that municipalities are able to provide also a healthcare benefit for their inhabitants should be assessed positively. Besides, persons, who have been recognised as needy, children, persons with group I disability, as well as other persons are exempted from patient co-payments. Taking into account the fact that co-payments for healthcare in Latvia are high, needy and low-income persons, as well as pensioners are in high risk of facing financial difficulties in case of deterioration of their health condition, unless they are exempted from co-payments. However, according to the Ombudsman, even in cases when a person has been exempted from co-payment for a healthcare service, he/she is still obliged to pay for medicines.

In this connection, the Committee recalls that under Article 13§1 of the Charter everyone who lacks adequate resources must be able to obtain, free of charge, the care necessitated by his/her condition. This right to medical assistance should not be confined to emergency situations. The Committee asks the next report to provide comments to the Ombudsman's observations and asks in particular whether persons without resources have access to medicines as necessitated by their medical condition.

Level of benefits

- Basic benefit: the Committee notes from MISSOC that the guaranteed minimum income benefit *(Pabalsts garantētā minimālā ienākuma līmeņa nodrošināšanai)* is calculated as the difference between the amount set by the Cabinet of Ministers (€49.80 = GMI level) and the person's or the household's income. The municipality can establish a higher GMI level (but not higher than €128.06) for various social groups. The Committee notes from the report that in 2015 34,218 persons received social assistance benefit and the average amount per person stood at € 35,76.
- Additional benefits: according to the report the number of people who received housing benefit has declined from 185,146 in 2012 to 113,018 in 2015. The Committee asks the next report to explain this decline. The Committee also notes that the average amount of this benefit per person stood at € 13,56 per month in 2015.
- Poverty threshold (defied as 50% of the median equivalised income and calculated on the basis of the Eurostat at-risk-of-poverty threshold value): it amounted to € 194 per month.

In its previous conclusion the Committee found that the level of social assistance benefit was manifestly inadequate. It notes that during the reference period the amount of the benefit in question has not changed. In this connection, the Committee also notes from the comments by the Ombudsman's Office on the 3rd national report of Latvia that the amount of income taken into account to recognise a person (family) as needy has not changed since January 2011. Initially, this income level was equalised to 50% of the minimum wage (of 2010). The the level of income below which a person in recognised as needy and thus eligible for social assistance and additional benefits, varies among municipalities. It depends on the financial possibilities and readiness of a municipality to provide assistance.

The Committee considers that the level of social assistance, paid to a single person without resources, including the basic benefit and housing allowance is not adequate on the basis that the total assistance that may be obtained is not compatible with the poverty threshold. Therefore, the situation is not in conformity with the Charter.

Right of appeal and legal aid

According to the report, the decision of the social service of the local Government may be contested by the family or individual person in the local Government council. The decision taken by the local Government council may be appealed in a court in accordance with the

procedures specified in the Administrative Procedure Law. According to the State Ensured Legal Aid Law, persons who have obtained the status of a low-income or needy person have a right to legal aid. The administrative statements issued or actual actions of institutions as providers of social services, financed from State budget may be contested in the Ministry of Welfare, and the decisions thereof may be appealed in a court.

The Committee takes note of the number of resolutions of the Riga Social Service disputed at the Riga Municipality and appealed against at the court. It notes that the total number of received applications has declined and so has the number of administrative acts disputed with the municipality. There were 12 appeals against administrative acts adopted by the municipality in 2015, of which one was satisfied and eight are in active litigation. The Committee asks whether the review body has the power to judge the case on its merits, not merely on points of law.

Personal scope

The Committee recalls that, under Article 13§1, States are under the obligation to provide adequate medical and social assistance to all persons in need, both their own nationals as well as nationals of States Parties lawfully resident within their territory, on an equal footing. In addition, with reference to its Statement of Interpretation of Articles 13§1 and 13§4 (Conclusions 2013) regarding the scope of Articles 13§1 and 13§4 in terms of persons covered, the Committee considers that persons in an irregular situation in the territory of the State concerned are also covered under Article 13§1, rather than under Article 13§4, which was previously its practice.

The Committee henceforth examines whether the States who have accepted Article 13§1 ensure the right to:

- adequate social and medical assistance for their own nationals and for nationals of other States Parties lawfully resident within their territory on an equal footing;
- emergency social and medical assistance to persons unlawfully present in their territory.

Nationals of States Parties lawfully resident in the territory

In its previous conclusion the Committee found that the situation was not in conformity with the Charter on the ground that nationals of States Parties were subject to a length of residence requirement for entitlement to social assistance.

It notes from the report in this respect that in 2014 the Ministry of Welfare of the Republic of Latvia elaborated the amendments to the Law on Social Services and Social Assistance regarding persons entitled to receive social services and social assistance, which were adopted by the Parliament on 26 November 2015. These amendments establish the principle that social services and municipal social assistance are accessible to all persons who have lawful rights to reside and who are lawfully residing in Latvia, if they meet certain requirements in order to receive respective assistance or social service.

However, the Committee considers that there is nothing in the information provided by the Government that would indicate that the situation of nationals of States Parties lawfully resident in Latvia as regards eligibility to social assistance has changed. The requirement of permanent residence for third-country nationals is still in force, which in turn requires five years of residence. Therefore, the situation is not in conformity with the Charter.

Foreign nationals unlawfully present in the territory

In its previous conclusion on Article 13§4 (Conclusions 2013) the Committee found that the situation was in conformity with the Charter as regards emergency social and medical assistance to foreign nationals unlawfully present in the territory. The Committee asked whether unlawfully present foreigners, who are not staying in such accommodation centres

are entitled to receive emergency social and medical assistance in situations of immediate and urgent need. It also asked whether a clear legal basis exists in law for the provision of this form of assistance

As regards emergency medical assistance, the Committee notes from the report that emergency medical service is a unified direct administration institution subordinated to the Minister of Health, which provides emergency medical assistance at the pre-hospital stage to patients in the condition which is critical to life and health.

The Committee recalls that persons in an irregular situation must have a legally recognised right to the satisfaction of basic human material need (food, clothing, shelter) in situations of emergency to cope with an urgent and serious state of need. It likewise is for the States to ensure that this right is made effective also in practice (European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, §187).

The Committee cannot accept the necessity of halting the provision of such basic emergency assistance as shelter, guaranteed under Article 13 as a subjective right, to individuals in a highly precarious situation. The Committee has considered that even within the framework of the current migration policy, less onerous means, namely to provide for the necessary emergency assistance while maintaining the other restrictions with regard to the position of migrants in an irregular situation, remain available to the Government with regard to the emergency treatment provided to those individuals, who have overstayed their legal entitlement to remain in the country (Complaint No. 90/2013, Conference of European Churches (CEC) v. the Netherlands, decision on the merits of 1 July 2014, §123).

The Committee asks the next report to confirm that the legislation and practice comply with these requirements. In the meantime it reserves its position on this issue.

Conclusion

The Committee concludes that the situation in Latvia is not in conformity with Article 13§1 of the Charter on the grounds that:

- the level of social assistance paid to a single person without resources is not adequate;
- non-EEA nationals, lawfully resident in Latvia are subject to a length of residence requirement of five years to be entitled to social assistance.

Article 13 - Right to social and medical assistance

Paragraph 2 - Non-discrimination in the exercise of social and political rights

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

The Committee recalls that under Article 13§2 of the Charter any discrimination against persons receiving social and medical assistance that might result – directly or indirectly – from an express provision must be eradicated. Beneficiaries of social or medical assistance must enjoy an effective protection against discriminatory measures, particularly with regard to their access to employment and public services. The Committee asks for updated information on whether the provisions that provide for social rights prohibit discrimination on the basis of receipt of social and medical assistance. It also asks whether the provisions enshrining the principle of equality and prohibiting discrimination in the exercise of political or social rights are interpreted in practice in such a way as to prevent discrimination on the basis of receipt of social or medical assistance.

Conclusion

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

Article 13 - Right to social and medical assistance

Paragraph 3 - Prevention, abolition or alleviation of need

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

The Committee notes that Article 6 of the Law on Social Services and Social Assistance guarantees the right to obtain information free of charge from a social service and social assistance provider regarding the possibilities of receiving social services and social assistance as well as the conditions and procedures for the receipt thereof.

The Committee recalls that Article 13§3 concerns free of charge services offering advice and personal assistance specifically addressed to persons without adequate resources or at risk of becoming so. The social services covered by Article 13§3 must play a preventive, supportive and treatment role. This means offering advice and assistance to make those concerned fully aware of their entitlement to social and medical assistance and how they can exercise those rights. In assessing national situations under this provision the Committee specifically examines whether there are mechanisms to ensure that those in need may receive help and personal advice services free of charge and whether such services and institutions are adequately distributed on a geographical basis. The Committee asks the next report to provide updated information on how these requirements are met in legislation and practice.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Latvia is in conformity with Article 13§3 of the Charter.

Article 13 - Right to social and medical assistance

Paragraph 4 - Specific emergency assistance for non-residents

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

The Committee refers to its conclusion under Article 13§1 (personal scope) and recalls that Article 13§4 from now on will cover emergency social and medical assistance for nationals of States Parties lawfully present (but not resident) in the territory.

The Committee recalls that States Parties are required to provide non-resident foreigners without resources emergency social and medical assistance (accommodation, food, emergency care and clothing, to cope with an urgent and serious state of need (without interpreting too narrowly the 'urgency' and 'seriousness' criteria). No condition of length of presence can be set on the right to emergency assistance (Complaint No 86/2012, European Federation of national organisations working with the Homeless (FEANSA) v. the Netherlands, decision on the merits of 2 July 2014, §171).

The Committee notes that the Action Plan for movement and acceptance in Latvia of persons in need of international protection, approved by Cabinet Order No.759 of 2 December 2015 includes measures for asylum seekers, such as provision of food, hygiene items and items of the first necessity; provision of emergency medical treatment, as well as the primary, secondary and ambulatory health care; assignment of a social worker (during a period of asylum seeking of 3 months) and a social mentor. A social mentor provides support to a person during the transition period. Social mentors provide support in solving daily situations.

According to the report, it is possible to accommodate 150 persons in the Asylum Seekers Accommodation Centre Mucenieki. The main task of the Centre is to provide accommodation for asylum seekers during the time while their cases are being reviewed and the resolution is adopted on the asylum case. Every asylum seeker receives a daily allowance for acquisition of food, hygiene items and items of the first necessity.

As regards medical assistance, in order to facilitate access of asylum seekers and beneficiaries of international protection to affordable and quality health care services, in accordance with the organisation of the health care system in Latvia, several amendments in national legislation where made. On 30 August 2016, the Cabinet of Ministers adopted the amendments to Regulation No.1529, which set forth that the following health care services for asylum seekers shall be paid for from the national budget funds: emergency medical assistance, childbirth assistance, dental assistance in acute cases, medical care for children, health care provided by general practitioners, reimbursable medical products and medical devices for treatment provided in outpatient treatment, psychiatric assistance, prenatal care and other secondary ambulatory health care which require urgent assistance.

The Committee asks whether foreign nationals lawfully present in Latvia, other than asylum seekers also receive emergency social and medical assistance.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Latvia is in conformity with Article 13§4 of the Charter.

Article 14 - Right to benefit from social welfare services

Paragraph 1 - Promotion or provision of social services

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

Organisation of the social services

The Law On Social Services and Social Assistance (2002) was amended in 2010. The purpose of this Law is to establish principles for the provision and receipt of social services, caritative social work, social care, social rehabilitation, the range of persons who have the right to receive these services and assistance, as well as the modalities of payment and financing of social care, social rehabilitation and vocational rehabilitation services. Pursuant to this Law social services shall be provided only on the basis of an evaluation of the individual needs and resources of a person carried out by a social work specialist.

The report indicates that the responsibility for social services is split between the State and local governments. The Ministry of Welfare is responsible for supervision of implementation of the Law on Social Services and Social Assistance, control over compliance with the regulatory enactments governing provision of social services, as well as the quality of social services on compliance of providers of social services with requirements of regulatory enactments and for administrative penalties of providers of social services for committed breaches. The task of the local government social service is to assess the quality of the social services and social assistance administered by the social service and funded by the local government.

The report indicates that in Latvia the majority of social services are provided by local Governments, a certain part by the State authorities and 34% of the social services by registered NGOs, including religious organisations and private individuals.

Effective and equal access

In its previous conclusions (XX-2 (2013)) the Committee asked examples of fees requested for various social services.

The report indicates that, as provided in Article 6 of the Law On Social Services and Social Assistance (as amended as of 1 July 2009), beneficiaries can obtain information free of charge from a social service and a provider regarding the possibilities of receiving social services and social assistance as well as on the conditions and procedures for the receipt thereof; receive a consultation free of charge from a social work specialist regarding the resolution of social problems; request and receive the social services or social assistance referred to in this Law; receive a substantiated written refusal in case a decision has been taken not to provide a social service; participate in the decision-taking process related to the receipt of a social service; in accordance with the procedures specified by law, to appeal against a decision on the provision of social services; submit a complaint regarding the unsatisfactory quality of the social services provided and the infringement of the rights of the beneficiary.

The Committee notes, however, that the report does not provide all relevant information on fees requested for various social services. Therefore, the Committee reiterates its question in this respect. Should the next report not provide the information requested, there will be nothing to establish that the situation is in conformity with Article 14§1.

In its previous conclusion (XX-2 (2013)) the Committee concluded that the situation was not in conformity with Article 14.1 of the Charter on the ground that access to social services by nationals of other States Parties is subject to an excessive length of residence requirement.

The report under Article 13§1 indicates that according to the Law on Social Services and Social Assistance (Article 3; in force from 2 December 2015) the right to receive social services shall be enjoyed by:- citizens and non-citizens; – third-country nationals who have

been issued a permanent residence permit or granted the status of a permanent resident of the Republic of Latvia; – the Member States of the European Union, the countries of the European Economic Area and nationals of the Swiss Confederation, which: (a) acquire the right of permanent residence, (b) shall be entitled to reside in the Republic of Latvia and have been resident for at least three months, (c) the presence in the Republic of Latvia for at least six months, if the aim of residence is to establish legal employment relationships in the Republic of Latvia, and there is evidence that they are continuing their search for work, which certifies the registration of the State Employment Agency; – refugees and persons who have been granted alternative (subsidiary protection) status as well as their family members. However, the Committee considers that there is nothing in the information provided that would indicate that the situation of nationals of other State Parties lawfully resident in Latvia as regards eligibility to social services has changed. The requirement of permanent residence is still in force, which in turn requires five years of residence. Therefore, the situation is not in conformity with the Charter.

Quality of services

The report underlines that in compliance with the Law on Social Services and Social Assistance, in the cases referred to in the Law, social services may only be provided by the provider of social services compliant with the requirements set by the Cabinet of Ministers and registered with the Register of Providers of Social Services. All the registered providers of social services are subject to control and supervision. The report indicates that during the period from January 2012 to October 2016 8 providers of social services have been administratively punished for provision of a low quality service and non-compliance with the requirements of regulatory enactments and four legal entities have been punished for provision of an unregistered service.

The report indicates also that, if a local government administers or purchases social services, it also ensures the quality assessment of the provided service by means of obtaining the beneficiary's opinion on the service provided to him/her and by assessing performance of the contract obligations by the provider of the social service.

In its previous conclusion (XX-2 (2013)) the Committee asked more precise information on the ratio of social workers to inhabitants.

The report under Article 13§2 indicates that according to Article 10 of the Law on Social Services and Social Assistance each local government shall establish a social service office. In order to ensure the professional assessment of inhabitants' needs and the qualitative provision of social services, each local government shall have at least one social work specialist per every thousand inhabitants. Moreover, according to Regulations of the Cabinet of Ministers No.291 "Requirements for Social Service Providers" of 3 June 2003, social worker specialists working in a local government social service should be not less than three, regardless of population in the municipality. Since 2013, when the rate came into force, the local government has increased the number of staff, in order to comply with the legal Act. The report provides a table with the number of social work specialists in social services of local governments. The report provides also tables with local government expenditures on social services and number of persons receiving such a services in the reference period.

In its previous conclusion (XX-2 (2013)) the Committee asked whether there is a legislation on data protection in respect of social services.

The report indicates that according to Article 6 of the Personal Data Protection Law, every natural person has the right to protection of his/her personal data. Pursuant to Article 11 point 7, the processing of sensitive personal data is prohibited, except in cases where processing of personal data is necessary for the provision of social assistance and it is performed by the provider of social assistance services.

Conclusion

The Committee concludes that the situation in Latvia is not in conformity with Article 14§1 of the Charter on the ground that access to social services by nationals of other States Parties is subject to a length of residence requirement.

Article 14 - Right to benefit from social welfare services

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

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

The report indicates that according to Article 9 para.4 of the Law on Social Services and Social Assistance, local governments which have not established the necessary social service providers shall enter into agreements with other social service providers (for example NGO) in their territory or with other local Governments regarding provision of the referred to social services and payment. These social services shall be fully or partially financed from the local Government budget. Moreover, according to Article 17 Paragraph 1 – social services may be provided only by such a social service provider who meets the requirements determined by the Cabinet of Ministers and is registered in the register of social service providers.

In its previous conclusion (Conclusions XX-2 (2013)) the Committee asked whether and how the Government ensures that services managed by the private sector are effective and are accessible on an equal footing to all, without discrimination at least on grounds of race, ethnic origin, religion, disability, age, sexual orientation and political opinion.

The report indicates that Article 21 para.1 of the Law on Social Services and Social Assistance states that discrimination (differential treatment) based on a person's race,skin colour, gender, age, disability, state of health, religious, political or other persuasion, national or social origin, property or marital status or other circumstances shall be prohibited. Differential treatment shall include the direct or indirect discrimination of a person, infringement of a person or an implication to discriminate thereof.

In its previous conclusion (Conclusions XX-2 (2013)) the Committee asked the next report to provide statistical data on subsidies paid by the central government and local authorities to voluntary organisations which provide social services. It also requests that the next report describe any other types of support that may exist for voluntary organisations, such as, for example, tax incentives.

The report indicates that in Latvia the majority of social services are provided by local Governments, a certain part by the State authorities and 34 per cent of the social services registered with the Register by NGOs, including religious organizations and private individuals. The report indicates, also, data on the number and categories of social services provided by local Governments and Registered non-governmental organisations, including the number of beneficiaries in 2015. According to the information provided by the Tax Authority of the State Revenue Service on 29 August 2016 there were 2592 public benefit organisations with a valid status in Latvia, and they enjoyed tax benefits during the period from 2012 to 2015.

The report indicates also the Public Benefit Organisation Law, that has the purpose to promote public benefit activities of associations and foundations, as well as religious organisations and the institutions thereof. In particular if these activities are especially directed towards charitable activities, protection of civil rights and human rights and raising the social welfare of society, especially for low-income and socially disadvantaged person groups.

The report indicates that non profit organisations may become providers of social care and social rehabilitation services by participating in project tenders for developing new types of services. The report underlines that during the time period from 2012 to 2015 support for development of social care and social rehabilitation services was provided within the framework of the EU Social Funds. Support to the non-governmental sector was provided both as the beneficiary of financing (implementers of projects) and as cooperation partners, as well as providers of a social service. The report also lists a number of EU Funds activities that were carried out for implementing social care and social rehabilitation servicesfor socially disadvantaged people during the reference period.

In its previous conclusion (Conclusions XX-2 (2013)) the Committee asked if and how the dialogue with civil society in respect of social welfare services is ensured.

The report indicates that particular attention is given to ensure the development of social dialogue with civil society, the Ministry is open to cooperation with non-governmental organizations, various institutions and groups of society, inviting them to participate in discussions, consultations and working groups for development of planning and cooperation activities.

Conclusion

The Committee concludes that the situation in Latvia is in conformity with Article 14§2 of the Charter.

Article 30 - Right to be protected against poverty and social exclusion

The Committee takes note of the information contained in the report submitted by Latvia. It also takes note of the information contained in the comments by the Ombudsman of Latvia, registered on 13 October 2017, as well as of the addendum to the report submitted by Latvia in response to these comments on 1 December 2017.

Measuring poverty and social exclusion

The main indicator used by the Committee to measure poverty is the relative poverty rate. This corresponds to the percentage of people living under the poverty threshold, which is set at 60% of the equivalised median income.

The Committee notes that in 2015, the at-risk-of-poverty rate (cut-off point: 60% of median equivalised income after social transfers) stood at 22.5% having risen from 19.0% in 2011. Before social transfers the poverty rate was 30.7% having decreased from 40.1% in 2011. It would thus appear that the positive effect of social transfers has actually decreased since 2011. The European Semester headline poverty indicator stood at 30.9% in 2015 down from 36.2% in 2012.

The Committee further notes from another source (European Semester Country Report Latvia 2017, SWD(2017) 79 final) that the elderly represent the age group most exposed to poverty with the at-risk-of-poverty rate standing at 42%. The incomes of the elderly have increased at a slower pace than for the general population. Moreover, pension adequacy indicators demonstrate that pensions in Latvia replace a lower proportion of income than in most other EU countries. In this respect, the Committee refers to its conclusion under Article 12§1.

Finally, the Committee notes that poverty rates in Latvia remain among the highest in Europe, although as indicated certain progress has been made in recent years, including during the reference period (2012-2015).

Approach to combating poverty and social exclusion

With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, Article 30 requires States Parties to adopt an overall and coordinated approach, which should consist of an analytical framework, a set of priorities and measures to prevent and remove obstacles to access fundamental social rights. The overall and coordinated approach must link and integrate policies in a consistent way, moving beyond a purely sectoral or target group approach and coordinating mechanisms, including at the level of delivery of assistance and services to those living in or at risk of poverty, should exist.

The report refers to the Constitution which contains provisions regulating rights associated with prevention of risks for people living in situations of poverty or social exclusion, such as the right to minimum remuneration (Article 107), social security with respect to old age, disability, unemployment and other contingencies (Article 109), basic medical assistance (Article 111) and free primary and secondary education (Article 112).

Detailed information is provided in the report on the multitude of acts and regulations adopted within the constitutional framework: minimum wage regulation, unemployment support and insurance, state social benefits, social services and assistance, guaranteed income, housing benefit, services for the disabled, tax laws (abatement for deprived taxpayers, etc.), education laws, medical treatment laws, strategies for Roma integration, etc.

The report further states that Latvia’s goals for poverty reduction and counteracting social exclusion are outlined in the National Development Plan 2014-2020 and the National Reform Programme. To reduce inequality and poverty the State supports entrepreneurial development, employment and increased work productivity and quality and citizens at risk

are the main beneficiaries. One of the goals is to reduce the share of unemployed at risk to 5% in 2020 (down from 9.5% in 2010) and this goal is pursued inter alia through vocational training activities, job profiling and job search support and other activities within the framework of the Guidelines on Inclusive Employment 2015-2020 as well as through the Youth Guarantee Implementation Plan 2014-2018.

As regards housing, the Committee notes the information on the partial State support for housing stock development (which however ended in 2008) and the residential housing guarantee programme aimed at families with insufficient means for mortgage down payments.

With respect to health, the Committee notes that the Guidelines for Public Health 2014-2020 aim to maintain, improve and restore health especially for those exposed to poverty and social exclusion. The report states in particular that the State covers patient contribution payments for low-income persons and that this target group is entitled to GP home visits free of charge and benefits from 100% reimbursement by the State of required medicines (if included on the list of reimbursable medicines).

The report also states that pension indexation for smaller pensions was re-introduced following a freeze in the period 2009-2012 due to economic crisis. Moreover, a food and basic material assistance programme approved by the European Commission has been set in operation for the period 2014-2020 inter alia with the aim of reducing deprivation and exclusion of households with children. In 2015, 285,362 food packages and 49,920 basic material assistance were distributed under this programme.

In order to reduce income inequality, the minimum monthly wage was increased from €360 to €370 as of 1 January 2016, the personal income tax allowance for dependants was increased from €165 to €175, a differentiated non-taxable minimum (€75 per month) and a solidarity tax was introduced. According to the report, the latter is a new progressive element in the labour taxation system being imposed only on workers earning above a certain threshold.

The Committee notes the view expressed in comments submitted by the the Ombudsman of Latvia that the increase of benefits and pensions during the reference period should be assessed as insignificant and that indeed a large part of the amounts of benefits and minimum pensions have not been revised for years, and with no positive improvements expected in the nearest future. In its response, the Government rejects this view stating that the increases are substantial for the groups targeted. It adds that the at-risk-of poverty rate for large families in 2015 were the lowest during the last 12 years and that while there are groups which still face a high risk of poverty, there are policy measures implemented and planned, targeted directly at these groups.

Finally, the Committee notes various measures and activities implemented to improve the situation of Roma and overseen by the Council supervising the implementation of Roma integration policy measures.

While noting the detailed the information on these and various other measures the Committe does not see clear evidence or indication of how they add up to an overall and coordinated approach to combating poverty and social exclusion. It therefore asks that information be provided in the next report on the existence of coordination mechanisms for these measures, including at delivery level (that is, how coordination is ensured in relation to the individual beneficiaries of assistance and services).

As noted above, poverty rates in Latvia remain among the highest in Europe. The Committee considers that this situation calls for extraordinary measures and in this respect, it notes, however, that expenditure on social protection as a share of GDP is comparatively low and has stagnated remaining virtually unchanged during the reference period at about 11.5% of GDP. The Committee asks that the next report contain detailed data demonstrating

that the budgetary resources allocated to combating poverty and social exclusion are sufficient in view of the scale of the problem at hand.

From the abovementioned European Semester Country Report Latvia 2017, the Committee notes the Commission's assessment that the social assistance system is weak and does not provide effective protection against poverty with less than a third of people in need receiving Guaranteed Minimum Income (GMI) or housing benefit and the level of the GMI has not been changed since 2009. The plans adopted in 2014 to reform social assistance has been put on hold and no budgetary allocation has been made to ensure implementation in the near future.

From the same Country Report, the Committee also notes that poverty rates for persons with disabilities is among the worst in Europe and that spending on disability-related benefits amounts to only 1.2% of GDP compared to an EU average of 2%. Moreover, poor people in particular struggle to get access to adequate housing; many poor families/households live in overcrowded, poor quality housing (27.3% compared to an EU average of 12.4% in 2015).

The Committee further refers to its conclusions of non-conformity under other provisions of the Charter which are relevant to its assessment of compliance with Article 30 (see Conclusions 2013, Statement of interpretation on Article 30). It refers in particular to Article 12§1 and its conclusion that the minimum levels of unemployment benefits, of old age pension and of disability pension is manifestly inadequate, to Article 13§1 and its conclusion that the level of social assistance, paid to a single person without resources, including the basic benefit and housing allowance, falls manifestly below the poverty threshold and to Article 16 and its conclusion that family benefits are not of an adequate level for a significant number of families (Conclusions 2015, Article 16)

Taking into account all of the above, the Committee considers that the situation is in breach of Article 30 as there is no overall and coordinated approach to combating poverty and social exclusion, which is adequate in view of the nature and extent of the problem at hand.

Monitoring and evaluation

The Committee notes the information on the abovementioned Council supervising the implementation of Roma integration policy measures as well as on a network of regional experts on Roma integration issues set up by the Ministry of Culture in 2014. The report also states that since 2012 the Ministry of Culture regularly monitors the situation and elaborates an Annual Informative Report on the implementation of Roma integration policy at national level.

However, the Committee recalls that Article 30 of the Charter requires the existence of monitoring mechanisms for reviewing and adapting the efforts in all areas and sectors, at all levels, national, regional, local, to combat poverty and social exclusion; mechanisms which should involve all relevant actors, including civil society and persons directly affected by poverty and exclusion (see Conclusions 2003, France, Article 30). It therefore asks that the next report contain comprehensive information on such mechanisms covering all sectors and areas of the combat against poverty and social exclusion.

Conclusion

The Committee concludes that the situation in Latvia is not in conformity with Article 30 of the Charter on the ground that there is no adequate overall and coordinated approach to combating poverty and social exclusion.

CONCLUSIONS RELATING TO CONCLUSIONS OF NON-CONFORMITY DUE TO A REPEATED LACK OF INFORMATION IN CONCLUSIONS 2015

Article 8 - Right of employed women to protection of maternity

Paragraph 2 - Illegality of dismissal during maternity leave

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the information submitted by Latvia in response to the conclusion that it had not been established that there is adequate protection against unlawful dismissals during pregnancy or maternity leave.

The Committee recalls in this connection that Article 8§2 of the Charter allows, as an exception, dismissal of pregnant women and women on maternity leave in certain cases such as misconduct which justifies breaking off the employment relationship, if the undertaking ceases to operate of if the period prescribed in the employment contract expires. Exceptions are however strictly interpreted by the Committee.

In its previous conclusion (Conclusions 2015) the Committee has reiterated its request for clarifications on how the domestic courts interpret and apply the exceptions to dismissal set by the law (for example: what is considered to be a "significant violation of the employment contract or of the specified working procedures" or "an action contrary to moral principles incompatible with the continuation of the employment relationship", whether any illegal action, irrespective of their seriousness, can be considered to breach the employer's trust, whether a pregnancy-related long-term absence can lead to a dismissal under Article 101.11).

In response to these questions, the report states that the legal basis of dismissal set out in Labour Law is not to be interpreted broadly, as proven by the case-law. In particular, the report states that the Senate of the Supreme Court of Latvia has clearly indicated that the dismissal on the basis of Article 101§1, Clause 1 of Labour law is considered to be legal only if the employee has without justified cause significantly violated the employment contract or the specified working procedures and this violation is substantial, not formal. Furthermore, the report recalls that, under Article 101§2 of the Labour law, an employer who intends to give a notice of termination of an employment contract on the basis of the provisions of Paragraph 1, Clause 1, 2, 3, 4 or 5 of this Article, has a duty to request from the employee an explanation in writing and has a duty to evaluate the seriousness of the violation committed, the circumstances in which it has been committed, as well as the personal characteristics of the employee and his/her previous work. According to the report, these requirements ensure that the decision on dismissal is not taken lightmindedly but taking into account different subject matters. The report also clarifies, in response to the Committee's question, that the same regime applies to all employees, in the private as in the public sector, irrespective of the term of the employment contract.

The Committee takes note of the statistical data provided in the report concerning the claims on reinstatement and their length, in particular as regards the claims for reinstatement in connection with dismissal during pregnancy or maternity leave in 2014-2015. The Committee asks the next report to provide updated information in this respect, in particular as regards any relevant case-law concerning claims of reinstatement following dismissal of women during pregnancy or maternity leave under Article 101§1 of the Labour Code. In the meantime, in the light of the information provided, it considers that the situation is in conformity with Article 8§2 of the Charter.

Conclusion

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

January 2018

European Social Charter

European Committee of Social Rights

Conclusions 2017

LITHUANIA

This text may be subject to editorial revision.

The following chapter concerns Lithuania, which ratified the Charter on 29 June 2001. The deadline for submitting the 14th report was 31 October 2016 and Lithuania submitted it on 13 December 2016.

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 "Health, social security and social protection":

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

Lithuania has accepted all provisions from the above-mentioned group except Articles 12§2, 13§4, 23 and 30.

The reference period was 1 January 2012 to 31 December 2015.

The conclusions relating to Lithuania concern 15 situations and are as follows:

– 8 conclusions of conformity: Articles 3§1, 3§2, 11§2, 12§3, 13§2, 13§3, 14§1 and 14§2,

– 5 conclusions of non-conformity: Articles 3§3, 3§4, 11§1, 12§1 and 13§1.

In respect of the 2 other situations related to Articles 11§3 and 12§4 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 Lithuania under the Charter. The Committee requests the authorities to remedy this situation by providing the information in the next report.

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

Article 3§1

- The General Regulations for Assessing Occupation Risks were amended and entered into force as of 1st November 2013. The Regulations contain revised concepts and provisions relating to the organisation and performance of risk assessment and set out that the assessment of a risk at the workplace is followed by the filling in of a document in the form chosen by the enterprise. Enterprises having conducted a self-assessment of occupational risks in accordance with the Regulations review and revise the assessment of or reassess occupational risks according to Paragraph 5 of the General Regulations for Assessing Occupational Risks;
- The Online Interactive Risk Assessment ("OiRA") tools are being developed seeking to help small and medium size enterprises to assess the risks on their entities.

Article 12§3

- From 1 January 2012, payment of old age, work incapacity (disability) and survivors' pensions (widow's/widower's and orphan's pensions), which had been temporarily reduced in 2010–2011 (see Conclusions 2013), was restored to the full amount. As a result, in 2012, the average amount of old-age pension increased by around 9% compared to 2011;
- As of 1 January 2015, sickness allowances paid from the State Social Insurance Fund budget resources were increased by approximately one third, following the amendment of the Law on Sickness and Maternity Social Insurance. As a result, the sickness allowance was brought to 80% of the beneficiary's compensatory

salary for the whole length of the sick leave, while until end 2014 only 40% of it was paid from the third to seventh day of sick leave.;

- Sickness and maternity/paternity insurance was extended in 2015 to students and graduates under the age of 26, exempting them from the qualifying period requirements, provided that they start working within 6 months (as regards sickness insurance) or 12 months (as regards maternity/paternity insurance) from the completion of their studies. Until the end of 2014, young people starting work after completing their studies were only exempted from the qualifying period requirement if they started working within 3 months from the graduation.;
- A Law on Compensation of State Social Insurance Old-Age and Lost Capacity for Work (Disability) Pensions, entered into force on 22 May 2014. The law provided for the payment of compensatory benefits to those who received reduced old-age and disability pensions in 2010–2011, because of the economic crisis, as well as to their heirs, if the beneficiaries has died after the entry into force of the law. The compensatory amounts were paid in instalments, between end 2014 and 2016, to around 500 000 persons, for a global cost of around €99 000 000. Another law (Law on Compensation of State Social Insurance Old-Age Pensions and State Pensions Reduced by Taking into Account Available Insured Income), adopted on 30 June 2015, provides for further compensatory amounts to be paid in instalments between 2016 and 2018 to some 84 400 beneficiaries of Old-age pensions which were reduced in 2010-2011 (the global amount involved is expected to be around €120 600 000).

Article 12§4

Amendments to the Law on Pension which remove the length of residence requirement for old age pension, widows and survivor's benefits have been adopted, so that social security benefits are henceforth only based on the social insurance record. The amendments entered into force in 2014 provide for the payment of state social insurance pensions to any person, whether he or she is a Lithuanian national or a national of third country, who paid the compulsory contributions to the State Social Insurance Fund budget, irrespective of his or her presence in Lithuania.

Article 13§1

The amendments to the Law on Cash Social Assistance for Poor Residents established a legal basis for cash social assistance for persons in need. Municipalities provide cash social assistance for poor residents under equal conditions (both social benefits and compensations) as of 1 January 2015 by fulfilling their independent municipal function.

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In addition, the report contains also information requested by the Committee in Conclusions 2015 in respect of its conclusions of non-conformity due to a repeated lack of information regarding the right to housing – reduction of homelessness (Article 31§2).

The Committee examined this information and adopted a conclusion of non-conformity relating to this Article.

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The next report will deal with the following provisions of the thematic group "Labour Rights":

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),

- the right to information and consultation (Article 21),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 22),
- the right to dignity at work (Article 26).
- the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28)
- the right to information and consultation in collective redundancy procedures (Article 29).

The deadline for submitting that report was 31 October 2017. The report was registered on 16 November 2017. Conclusions on the Articles concerned will be published in January 2019.

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Conclusions and reports are available at www.coe.int/socialcharter as well as in the HUDOC database.

CONCLUSIONS RELATING TO ARTICLES FROM THE THEMATIC GROUP

‘Health, social security and social protection”

Article 3 - Right to safe and healthy working conditions

Paragraph 1 - Health and safety and the working environment

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

General objective of the policy

In its previous conclusion (Conclusions 2013), the Committee confirmed the existence of a policy whose aim was to pursue and preserve a culture of prevention as regards safety and health at work, and asked for information on the way in which the policy was regularly reviewed in the light of changing risks. In response, the report states that national legislation is revised according to the new EU legislation and taking into account of practice of implementation of the legislation.

The Committee points out that new technology, organisational constraints and psychological demands favour the development of psychosocial factors of risk, leading to work-related stress, aggression, violence and harassment. It would also point out that, with regard to Article 3§1 of the Charter, it takes account of stress, aggression, violence and harassment at work when examining whether policies are regularly evaluated or reviewed in the light of emerging risks. The States parties have a duty to carry out activities in terms of research, knowledge and communication relating to psychosocial risks (Statement of Interpretation on Article 3§1 of the Charter, Conclusions 2013). The report does not provide any information on this point. The Committee notes that, according to the joint report from the European Foundation for the Improvement of Living and Working Conditions and the European Agency for Safety and Health at Work (2014), Lithuanian regulation mentions the obligation to take psychosocial risks into account, gives a definition of what is meant by psychosocial risks or stress and what has to be included in a risk assessment on order to ensure proper prevention of poor mental health. The Committee invites the authorities to comment on this observation in the next report.

In reply to the Committee's question concerning strategy, the report indicates that the Strategy on Health and Safety at Work for 2009-2012 and the Action Plan for Implementation of the Strategy on Health at Work for 2009-2012 are closely linked with the aims and objectives set in the 2007-2012 Community Strategy on Health and Safety at Work. The Committee notes that, according to the information provided by OSHWiki, the Strategy has not been renewed since 2012. The Committee invites the authorities to comment on this observation in the next report.

The Committee maintains its previous finding of conformity in this respect. It points out that the report must provide full, up-to-date information on changes in the legislation and regulations during the reference period.

Organisation of occupational risk prevention

In response to the Committee's question concerning measures of prevention, risk evaluation and awareness-raising taken by the public authorities, the report indicates that in 2012, risks assessment procedures were revised in order to define them clearly and allow employers to prepare documents on risk assessment in their own way, and particularly the General Regulations for Assessing Occupation Risks were amended and entered into force as of 1st November 2013. The Regulations contain revised concepts and provisions relating to the organisation and performance of risk assessment and set out that the assessment of a risk at the workplace is followed by the filling in of a document in the form chosen by the enterprise. Enterprises having conducted a self-assessment of occupational risks in accordance with the Regulations review and revise the assessment of or reassess occupational risks according to Paragraph 5 of the General Regulations for Assessing Occupational Risks.

The report also indicates that the Online Interactive Risk Assessment ("OiRA") tools are being developed seeking to help small and medium size enterprises to assess the risks on their entities. According to the report, State Labour Inspectorate in cooperation with EU-OHSA takes part in the projects developing OiRA tools: in 2013 OiRA tool for Car repair was published, in 2014 OiRA tool for working in offices and for woodworking sector, in 2015 OiRA tool for wholesale and retail sales of non-food products.

In reply to other Committee's questions, the report states that in 2015, State Labour Inspectorate has carried-out an activity oriented towards providing help to entities by giving out consultations and informing them on the questions of labour law and the safety and health of the employees. Special attention has been given to the activity of small, medium and first year acting entities. The report indicates an increase of State Labour Inspectorate (SLI) seminars and consultations on the safety and health of the employees and labour law (371 various consultation-educational events in 2014 and 520 in 2015). The report indicates that after the inspections of micro and small entities, the recommendations are prepared and handed-over to the employers regarding the elimination of established discrepancies in the safety and health of the employees and statutes of labour law requirements. In those recommendations, attention is emphasised to the formation of the safety and health of the employees and labour law policy in the company, the complex tackling of these questions, rational use of human and financial resources at hand. Means of impact (demands to eliminate the discrepancies and administrative penalties) are applied only in extreme cases when it is not possible to achieve the purposes of the entities supervision with other measures (by consulting or educating the entity).

The Committee notes that at national and at company level, there is a system for the assessment of occupational risks; preventive measures geared to the nature of the risks involved, and information and training measures for workers. It also notes that the SLI participates in developing an occupational health and safety culture among employers and employees and in sharing knowledge of occupational hazards and prevention acquired during inspection activities.

Improvement of occupational safety and health

In its previous conclusion (Conclusions 2013), the Committee found that the public authorities were involved in scientific and applied research and training on safety and health at work, and asked for updated information on the research work and training undertaken during the reference period.

As regards research work, the report indicates that the Institute of Labour and Social Research under the Ministry of Social Security and Labour was reorganised into Lithuanian Centre of Social Research under the Ministry of Education and Science in 2009. In addition, the Institute of Hygiene (budgetary institution of the Ministry of Health) investigates the effects of the working environment on health and assesses occupational healthcare technologies. This Institute consists of three specialised centres, one of which is Occupational Health Centre, which develops research on the effects of the working environment on health as well as the assessment of occupational healthcare technologies, while also preparing and testing innovative interventions in the occupational healthcare practice. The report adds that this centre had a number of researches and provided many recommendations concerning preparation of specialists in the professional health care.

The Committee notes from the report, examples of studies commissioned by the Ministry of Social Security and Labour with a view to improving working conditions and creating quality jobs.

Training on safety and health at work is carried according to the programmes approved by the Minister of Social Security and Labour or prepared by training institutions. The Minister of Social Security and Labour has adopted the mandatory programmes on OSH for specialists on safety and health at work, for employers fulfilling the duties of health and safety services

at their enterprises, and for persons designated by employers to fulfil duties of health and safety services at the enterprises. It has also adopted a program for employers, according to which the latter have to be attested before starting their activities. Training institutions provide programmes on OSH and training according to those programmes for employees according to the needs of enterprises.

The report also indicates that the Description of the Procedure for Drawing up and Legitimation of the Programmes of Training on Occupational Safety and Health was amended. The programme of training on occupational safety and health approved till 12 January 2013 could be used till 31 December 2013 and the training programmes for foremen of maintenance of potentially dangerous equipment, managers of the work with potentially dangerous equipment and workers working with such equipment – till 31 December 2014. In 2012, 19 training programmes for foremen of maintenance of potentially dangerous equipment, managers of the work with potentially dangerous equipment and workers working with such equipment were updated.

The Committee notes that there is a system aimed to improving occupational health and safety through research, development and training.

Consultation with employers' and workers' organisations

In its previous conclusion (Conclusions 2013), the Committee found that the employers' and employees' organisations were consulted on safety and health at work, at both official and enterprise level, and asked for information on relations between the health and safety committees and the health and safety services in enterprises. In reply, the report provides information on organisation of occupational safety and health committee in different undertakings according to Law on Safety and Health at Work. The Safety and Health at Work Service in an enterprise provides the Safety and Health at Work Committee with information about safety and health situation in the enterprise. Moreover, Safety and health at work specialists participate in the activities of Safety and Health at Work Committee.

In reply to the Committee's question regarding the work done by the enterprise-level committee in practice, the report indicates, that, according to Article 13 of the Law on Safety and Health at Work, the employer's representative or persons authorised by the employer must inform workers and consult with them on all issues concerning the state of occupational safety and health, the planning of its improvement, organisation, implementation and control of the measures. To that end, safety and health at work committees shall be set up, and workers' representatives with specific responsibility for the safety and health of workers shall be appointed. The employer's representative or heads of units shall create conditions for workers and workers' representatives with specific responsibility for the safety and health of workers to take part in discussions concerning safety and health matters.

The Committee maintains its previous finding of conformity in this respect.

Conclusion

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

Article 3 - Right to safe and healthy working conditions

Paragraph 2 - Safety and health regulations

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

Content of the regulations on health and safety at work

The report gives a list of the health and safety legislation amended during the reference period. These changes concern, *inter alia*, the protection of workers from the risks related to exposure to noise, risk from explosive atmospheres, exposure to vibration, working time and list of prohibited work and health hazards, work with asbestos, and risks related to exposure to electromagnetic fields.

The Committee points out that under the terms of Article 3§2 of the Charter, regulations concerning health and safety at work must cover work-related stress, aggression and violence specific to work, and especially for workers under atypical working relationships (Statement of Interpretation on Article 3§2 of the Charter, Conclusions 2013). The report does not provide any information on this point. The Committee accordingly reiterates its request. The Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Lithuania is in conformity with Article 3§2 of the Charter.

Levels of prevention and protection

The Committee examines the levels of prevention and protection provided for by the legislation and the regulations in relation to certain risks.

Establishment, alteration and upkeep of workplaces

In its previous conclusion (Conclusions 2013), the Committee asked for information on the transposition of Directive 2009/104/EC of the European Parliament and of the Council of 16 September 2009 concerning the minimum safety and health requirements for the use of work equipment by workers at work. The report indicates that Directive 2009/104/EEC is transposed by Order No. 102 of the Minister for Social Security and Labour of the Republic of Lithuania of 22 December 1999 “On approving the General Regulations for the Use of Work Equipment” as last amended by Order No. A1-271 of 17 September 2005 “On Amendment of the Order No. 102 of the Minister for Social Security and Labour of the Republic of Lithuania of 22 December 1999 “On approving the General Regulations for the Use of Work Equipment”.

As regards assessments of the occupational risks of workstations, the report states that, irrespective of the activities performed, each enterprise must access risks at the workplace. According to Article 260 of the Labour Code, the employer must ensure the safety and health of workers. Implementing this duty of the employer and having regard to Article 25(2) of the Law on Safety and Health at Work, the person representing the employer organises (or delegates) an assessment of risks at the workplace. The report states, that this is used as the grounds for establishing the safety and health situation of workers in enterprises and branches and at individual workplaces. The Committee notes from the report that the assessment of risks at the workplace is organised and performed and its outcomes are registered in accordance with the procedure laid down in the General Regulations on Assessment of Occupational Risk.

In the light of this information, the Committee considers that levels of prevention and protection in relation to the establishment, alteration and upkeep of workstations comply with Article 3§2 of the Charter.

Protection against hazardous substances and agents

The report indicates that, in implementing Directive 2014/27/EU of the European Parliament and of the Council, the following regulations were revised: Regulations of the Use of Signs of Safety and Health at Work, Regulations on Protection of Employees from Risks Related to Exposure to Chemical Agents at Work and Regulations on Protection of Employees from Risks Related to Exposure to Carcinogens and Mutagens at Work and the List of Hazardous Working Conditions and Hazards to Pregnancy, those who have Recently Given Birth and Breastfeeding Women. The adopted legal acts have come into effect as of 1st June 2015, i.e. from the date of application of Regulation (EC) No. 1272/2008 of the European Parliament and of the Council to mixtures.

Protection of workers against asbestos

In its previous conclusion (Conclusions 2013), the Committee asked for information on the measures adopted to incorporate into domestic law the exposure limit of 0.1 fibres/cm^3 introduced by Directive 2009/148/EC of the European Parliament and of the Council of 30 November 2009 on the protection of workers from the risks related to exposure to asbestos at work. The report states that Directive 2009/148/EC is transposed into the Regulations of Work with Asbestos approved by the Order No. A1-184/V-546 of the Minister of Social Security and Labour and of the Minister of Health of 16 July 2004 and last amended by Order No. A1-323/V-716 of 8 June 2015. The Committee notes that, according to Paragraph 11 of this Regulations, the employer has to ensure that no worker is exposed to an airborne concentration of asbestos in excess of 0.1 fibres/cm3 as an 8-hour time-weighted average.

The Committee previously asked (Conclusions 2013) whether the authorities have considered drawing up an inventory of all contaminated buildings and materials. Bearing in mind the importance of this question in the light of the right to health of the population (Article 11), it asks for the next report to provide specific information on steps taken to this effect.

The report also indicates that during trainings and counselling seminars, the State Labour Inspectorate disseminates its leaflets and flyers on safe work with materials containing asbestos and about asbestos-related risks. In addition, information on safety and health requirements to various types of work is published on the website of the Labour Inspectorate in a section entitled “Careful! Asbestos” (“*Atsargiai asbestas!”*). This section lists the legislation regulating work with asbestos, its summary versions and commentaries as well as other publications. Moreover, there was a separate publication of a practical handbook “Prevention or mitigation of asbestos hazards at work involving (or potentially involving) asbestos. For employers, employees and labour inspectors”.

Protection of workers against ionising radiation

The report specifies that the Radiation Protection Centre established on 1st January 1997 by Order of the Minister of Health, is the institution which co-ordinates the activities of executive and other bodies of public administration and local government in the field of radiation protection, exercises state supervision and controls of radiation protection, monitoring and expert examination of public exposure. The aim of occupational exposure monitoring is the assessment of the internal and external exposure doses of radiation workers. According to these assessments safe working conditions are created and it is determined whether used radiation protection measures are effective. If the licensee cannot by himself assess the exposure of their workers and perform workplace monitoring, such investigations can perform the laboratory, which should be approved by the order of Ministry of Health Care. The Radiation Protection Centre performs investigation and assessment of internal and external exposure of the workers.

According to the report, ILO Convention concerning the Protection of Workers against Ionising Radiations No. 115 (1960) has been ratified on 11 December 2012 and entered into force on 27 May 2014.

The Committee concludes that prevention and protection levels for asbestos and ionising radiation are in conformity with Article 3§2 of the Charter. It asks whether workers are protected up to a level at least equivalent to that set in the Recommendations by the International Commission on Radiological Protection (ICRP Publication No. 103, 2007).

Personal scope of the regulations

The Committee examines the personal scope of legislation and regulations with regard to workers in atypical employment.

Temporary workers

In its previous conclusion (Conclusions 2013), the Committee asked for information on the protection provided for workers employed on a temporary or fixed-term basis other than through a temporary work agency. In reply, the report states that safe and healthy working conditions shall be ensured for every worker regardless of the nature of business of an undertaking, the type of employment contract, number of workers, profitability of the undertaking, workstation, working environment, work type, the duration of the working day (shift), the worker's citizenship, race, nationality, sex, sexual orientation, age, social background, political views or religious beliefs. According to Article 3.1 of Law on Safety and Health at Work, the guarantees of safety and health at work, provided by the law, shall also apply to public servants of State and municipal institutions and agencies. The Committee notes from the report that all provisions of Law on Safety and Health at Work and other legislation on safety and health at work are applied to workers employed on a temporary or fixed-term basis.

In reply to the Committee's question, the report states that, according to Article 270(1) of the Labour Code, the employer may not demand that a worker starts work in the enterprise if the worker is not instructed in matters of work safety, irrespective of the economic activity performed by the enterprise. According to Article 264(2)(4) of the Labour Code, local regulatory legislation in the area of occupational safety and health in enterprises is drafted by the employer or the person representing the employer, and, according to Article 27(1) of the Law on Safety and Health at Work, the employer's representative shall establish the procedure for instructing and training of workers in an enterprise. The report indicates that, where a worker has insufficient professional skills or knowledge obtained during training to be able to work in safety and avoid harm to his health, the employer's representative or the person authorised by the employer shall organise the training of the worker at the workplace, in the enterprise or educational institutions providing training in accordance with the General Regulations for the training and attestation in the area of the safety and health of workers.

In addition, the report states that the Procedure for drafting occupational safety and health instructions and for instructing employees provisionally posted by employers' agreement from one enterprise to another was approved by Order No. V-240 of the Chief State Labour Inspector on 10 August 2012.

In view of this information, the Committee considers that temporary workers, interim workers on fixed-term contracts enjoy the same standard of protection than workers on permanent contracts.

Other types of workers

In its previous conclusion (Conclusions 2013), the Committee asked for examples of the way in which the protection granted by the legislation and regulations was implemented in practice with regard to self-employed workers, for example in the forestry sector. In

response, the report explains that provisions of the Labour Code and the Law on Occupational Safety and Occupational Health are applied to every employer (i.e. every undertaking, institution, organisation or other body). An employer can be any natural person. The Civil Code regulates active and passive capacity of an employer (a natural person). Employers (natural persons) can perform labour rights and duties themselves. The Committee takes note from the report the list of persons which are considered as self-employed: owners of sole proprietorships, general partners of general partnerships and general partners of limited partnerships, persons engaged in individual activities in the meaning defined by the Law on Income Tax. According to the report, self-employed persons perform their rights and duties themselves in line with the aforementioned laws and regulations.

The report indicates that the Labour Code or the Law on Safety and Health at Work do not single out or refer to self-employed persons. The concept of "self-employed person" is not used in these laws but is used in the General Regulations on Setting-up Workplaces in Construction Sites (approved by Order No. A1-22/D1-34 of the Minister of Social Security and Labour and the Minister of Environment of 15 January 2008) and the Provisions on the Prevention of Sharp Injuries in the Hospital and Healthcare Sector (approved by Order No. A1-157/V-210/V-501 of 16 March 2012 of the Minister of Social Security and Labour and the Minister of Health). According to the report, a self-employed person, in the course of his or her work, shall bear responsibilities of both an employer and a worker, and must comply with the Labour Code, the Law on Occupational Safety and Health and other regulations.

According to Article 5§2 of the Law on Safety and Health at Work, the Minister of Health shall establish safety and health requirements for separate activities or exposure of workers to separate factors. These requirements are mandatory to both legal and natural persons, irrespective of their status. Furthermore, the Rules on Occupational Safety and Health have been developed with regard to performance of specific work and use of working equipment. The Rules are also applied both to natural and legal persons, irrespective of their status.

The Committee asks for information in the next report on the measures making it possible to check and ascertain whether the protection provided by the regulations for self-employed workers, home workers and domestic staff is applied in practice.

Consultation with employers' and workers' organisations

The Committee examined the situation and found that employers' and employees' organisations were consulted on safety and health at work, both at official level and at company level. In response to the Committee's question (Conclusions 2013) regarding the relations between health and safety committees and health and safety services in companies, the report explains that Safety and Health at Work Committees has to be set up in an enterprise that employs 50 or more workers. If an enterprise employs less than 50 workers, the above mentioned committee may be set up on the initiative of the employer or the workers' representative, or at the proposal of more than half of the workers of the undertaking. Safety and Health at Work Service in an enterprise provide the Safety and Health at Work Committee with information about the safety and health situation in the enterprise. Safety and health at work specialists participate in the activities of Safety and health at work committee.

In its previous conclusion (Conclusions 2013), the Committee also asked for information on the activity of company committees in the implementation of legislation and regulations relating specifically to hazards, particularly in small and medium-sized enterprises. The report indicates that Safety and Health at Work Committee, among others, analyses causes and circumstances of accidents at work and occupational diseases and proposes preventive measures to employer; discusses health and safety situation in an enterprise; listens to the information presented by worker safety and health representative on the situation of keeping

to the legislative requirements in an enterprise or a ship and the control of this; and prepares proposals on how to improve safety and health at the working places.

The Committee maintains its previous finding of conformity in this respect.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in Lithuania is in conformity with Article 3§2 of the Charter.

Article 3 - Right to safe and healthy working conditions

Paragraph 3 - Enforcement of safety and health regulations

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

Accidents at work and occupational diseases

In its previous conclusion (Conclusions 2013), the Committee found that the situation in Lithuania was not in conformity with Article 3§3 on the ground that measures to reduce the excessive rate of fatal accidents were inadequate. It asked for information on the discrepancy between figures on fatal accidents given in the report and those published by EUROSTAT. The Committee takes note of the explanation given in the report.

The report indicates that the number of fatal accidents at work in 2008-2015 year period decreased significantly, from 82 in 2008 to 42 cases in 2015, and recognised that the incidence rate of fatal accidents at work is too high. According to the report, 2013-2014-year period could be qualified as a period of the stabilisation because the number of fatal accidents at work (59 in 2013 and 2014) and incidence rate indicators (5.0 in 2013 and 4.9 in 2014) stabilised. In 2015 the number and incidence rate of the fatal accidents at work (3.5) again showed a downward trend. The report also indicates that incidence rate of non-fatal accidents at work is permanently increasing (from 181.2 in 2009 to 293.2 in 2015).

The Committee states that, according to the Eurostat figures, the number of non-fatal accidents at work causing at least four calendar days of absence rose during the referenced period (from 2,808 in 2012 to 3,120 in 2014). The standardised rate of incidence of non-fatal accidents at work per 100,000 workers also rose from 280.19 in 2012 to 296.67 in 2014. The Committee notes that this rate is significantly lower than the average rate in the EU-28 (1,717.15 in 2012 and 1,642.09 in 2014). The number of fatal accidents at work fell slightly from 58 in 2012 to 55 in 2014. The standardised incidence rate of fatal accidents at work per 100,000 workers decreased from 6.26 in 2012 to 5.56 in 2014. The Committee notes that the standardised rate of incidence of fatal accidents is significantly higher than the average rate in the EU-28 (2.42 in 2012 and 2.32 in 2014).

In its previous conclusion (Conclusions 2013), with regard to the incidence rate for accidents at work, which is excessively low compared to the average rate observed in the EU-27, the Committee also asked for detailed information on obligations to declare accidents at work and the measures designed to combat the possible under-reporting of such accidents in practice. In response, the report indicates that in Lithuania non-fatal accidents at work are divided into severe and minor accidents at work. According to the Law on Safety and Health at Work, State Labour Inspectorate investigates all fatal and severe (those, which personal health care physician in accordance with procedures, approved by Health minister, assigned as a severe) accidents at work. Minor accidents at work are investigated by the employer confirmed bipartite commission composed from workers' representative with specific responsibility for the safety and health and the employer's representative. The legislation (the Law on Safety and Health at Work and Regulations on investigation and registration of accidents at work) obligates the employer to report to the State Labour Inspectorate on the accident at work. Social benefits for the days lost due to the accident at work to the employee are paid when the accident is investigated and the accident investigation documents are submitted to State Labour Inspectorate and the Social Insurance Fund Board local office.

According to the report, accidents usually occur in the enterprises of the construction, manufacturing, forestry and agricultural economic activities (about 80% of all fatal accidents at work), workers falling from height (about 30%). The report indicates that the State Labour Inspectorate is planning its activities in the light of the above mentioned statistics and focuses on reduction of the number of occupational safety and health violations.

In reply to the Committee's question for statistics data on fatal occupational diseases, the report indicates that it was one fatal occupational disease (malaria) in Lithuania registered to aircraft mechanic in 2015. The report also indicates that State Register of Occupational Diseases ("ROD") is established at the Occupational Medicine Centre at Institute of Hygiene. The main objectives of the ROD are collection of data on occupational diseases, analysis and dissemination of statistical information as well as research promotion in the field of occupational health. According to the ROD data, the number of reported cases of occupational diseases rose from 393 in 2012 to 437 in 2015; the incidence rate for such diseases also rose from 30.8 in 2012 to 32.7 in 2015. According to the report, the main diagnoses was noise induced hearing loss, diseases of the musculoskeletal system and diseases of the nervous system caused by whole body vibration, the handling of heavy loads and repetitive work in Manufacturing, Construction, Transport and Agriculture sectors.

In addition, the report also indicates that the State Labour Inspectorate takes part in the development of the National Occupational Safety and Health 2017-2020 Strategic Action Plan and has already submitted a whole series of proposals to introduce new measures of "soft" and "hard" enforcement, non-traditional ways of monitoring and to increase the effectiveness of the sanctions.

The Committee considers, on the basis of the provided data, that measures to reduce the number of fatal accidents at work are still insufficient. The Committee asks the next report to provide the most frequent causes of accidents at work and the preventive and enforcement activities undertaken to prevent them.

Activities of the Labour Inspectorate

The Committee notes that under Article 3§3 of the Charter, States Parties must implement measures to focus labour inspection on small and medium-sized enterprises (Statement of Interpretation on Article 3§3, Conclusions 2013). The Committee deferred its previous conclusion on this point and asked for information concerning the measures taken to increase monitoring visits to small and medium-size business enterprises, the manner in which less serious accidents at work are reported and investigated, the results of the policy of prevention, information and advice, and the number of criminal convictions as a result of criminal proceedings.

In reply, the report indicates that in 2015, State Labour Inspectorate has carried-out an activity oriented towards providing help to entities by giving out consultations and informing them on the questions of labour law and the safety and health of the employees. Special attention has been given to the activity of small, medium and first year acting entities. In 2015, the inspections of microenterprises (no more than 9 employees inclusively) consisted of 54% and small (no more than 49 employees) – 29.7% of all inspections carried-out by the State Labour Inspectorate. The report indicates that practically in more than half cases after the inspections of micro and small entities, the recommendations are prepared and handed-over to the employers regarding the elimination of established discrepancies in the safety and health of the employees and statutes of labour law requirements.

The report adds that for the consultation on the questions of the safety and health of the employees and labour law for the riskiest economic activities and the most dangerous work that entities take-up (including micro and small ones), the check-lists and methodical recommendations are prepared and published on the State Labour Inspectorate website.

In addition, in 2013, the State Labour Inspectorate with the Funds of the European Union implemented a project to create the Electronic Service System for Employers (ESSE). Its aim is to electronically fill-out and submit a declaration regarding the safety status of the employees and the workplace conformity to the requirements of the safety and health of the employees normative statutes of law. The report specifies that the purpose of the State Labour Inspectorate is not to apply the sanctions, but to monitor, help, consult and to strive

for a common result – the enhancement of the safety and health of the employees prevention culture, the lessening of accidents and occupational diseases.

In reply to the Committee's question regarding Radiation Protection Centre (RSC), the report indicates that this Centre co-ordinates the activities of executive and other bodies of public administration and local government in the field of radiation protection, exercises state supervision and control of radiation protection, monitors and experts examination of public exposure. According to the report, in 2015, 52 persons worked in this Centre. The aim of the inspection is to ensure that legal entities and natural person apply all necessary measures to protect people and the environment from the harmful effects of ionising radiation. The report specifies that inspections could be planned (407 in 2015) and unplanned (250 in 2015). According Regulations of State Radiation Protection Supervision, 657 inspections (644 entities) were performed in 2015. The report states that, despite all the measures applied to ensure implementation of radiation protection requirements, the number of objects where breaches were found is not decreasing (162 legal entities in 2015). Most of the breaches were eliminated during the inspection or within a specified period of time and did not cause a threat to others. However, 21 administrative sanctions were applied in 2015.

The report does not provide any pertinent figures on the number of health and safety inspection visits by the labour inspectorate and the proportion of workers and companies covered by the inspection or on the number of breaches to health and safety regulations and the nature and type of sanctions imposed. According to figures published by ILOSTAT, the Committee notes that in 2013, the number of labour inspectors was 193, the average number of labour inspectors per 10,000 employed persons was 1.5 and the number of labour inspection visits to workplaces was 10,069.

The Committee also notes that, according to the SLI reports, the number of employees engaged in tasks related to occupational health and safety decreased from 211 in 2012 to 197 in 2014; the number of inspection was 9,926 in 2012 and 10,582 in 2015. According to the SLI 2015 report, the number of OSH improvement notices issued was 798, the number of prohibitions was 38, the number of administrative fines concerning OSH proposed by Labour Inspectorate was 410, the number of cases concerning OSH presented to public prosecutor was 188 (in Lithuania only cases of fatal and non-fatal accidents at work are presented to the public prosecutor).

The Committee takes note of this information. However, this information is not sufficient to assess compliance with this part of Article 3§3 of the Charter. The Committee asks that the next report provide information on the following points: any change in the general framework for labour inspection activities during the reference period; the number, while distinguishing clearly between administrative staff and inspection staff, of inspectors assigned to supervising the application of the legislation and regulations on occupational health and safety; the number of general, thematic and unscheduled inspection visits assigned solely to the occupational health and safety legislation and regulations; the application of the legislation and the regulations on the labour inspectorate throughout the country in practice; details, by category, of administrative measures that labour inspectors are entitled to take and, for each category, the number of such measures actually taken; the outcome of cases referred to the prosecution authorities with a view to initiating criminal proceedings; and figures for each year of the reference period. In the meantime, the Committee concludes that the situation is not in conformity with the Charter on the ground that it has not been stablished that labour inspection, insofar as it concerns occupational health and safety, is effective.

Conclusion

The Committee concludes that the situation in Lithuania is not in conformity with Article 3§3 of the Charter on the grounds that:

- measures to reduce the number of fatal accidents at work are inadequate;
- it has not been established that labour inspection, insofar as it concerns occupational health and safety, is effective.

Article 3 - Right to safe and healthy working conditions

Paragraph 4 - Occupational health services

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

The Committee previously deferred its conclusion and asked for information on the following aspects: the actual content of occupational health services if these duties are carried out by the employer; the updating of information concerning the proportion of in-house occupational health and safety services; the proportion of external occupational health and safety services; the rate of coverage by occupational health doctors; the arrangements for giving independent, agency and temporary workers and workers on definite term contracts access to occupational health services; and the arrangements that allow the SLI to ensure that business enterprises comply with legal obligations, in particular the obligation deriving from Article 12 of Law No. IX-1672 to ensure that companies have health and safety services corresponding to the number of staff and the nature of hazards. It also asked for information concerning the existence of a strategy to improve access to occupational health services, in consultation with employers' and workers' organisations.

The report does not provide any requested information. The Committee notes from the OSHWiki, that in order to ensure OSH in an enterprise, the employer may appoint one or more OSH specialists or establish an OSH service. The employer may conclude contract with a natural or legal person concerning the performance of the OSH service functions or part of such functions. This person must meet one of the qualification requirements for the OSH professionals in accordance to the Description of Qualification Requirements for Occupational Safety and Health Professionals, approved by the Minister of Social Security and Labour on 15 July 2010. The duty of these persons is to prepare proposals with regard to preventive measures designates to protect workers against injuries and occupational diseases, to coordinate the implementation of these measures, to control the compliance of workplaces of an undertaking with the OSH requirements. These persons are directly answerable for their work to the employer's representative or to the person authorised by the employer. The procedure for the establishment of OSH services in undertakings, functions, rights and duties of the persons appointed by the employer are laid down by the Model Regulation of Occupational Safety and Health Services in Enterprises, approved by the Minister of Social Security and Labour and the Health Minister on 2 June 2011. The Regulations also determine number of the OSH specialists in an undertaking OSH service taking into account types of economic activity, number of employed workers and relevant occupational risks. The Committee invites the authorities to comment on this observation in the next report and to provide all relevant information in this respect.

As regards external OSH services, the Committee also notes from the OSHWiki, that in the absence of competent staff able to ensure all OSH service functions, in order to ensure the process the employer can hire external OSH services or persons providing the OSH functions, according to the Law on Safety and Health at Work, adopted on 1 July 2003. Natural persons performing functions of the occupational safety and health service or part of such functions must meet the same qualification requirements like specialists for the internal OSH services and possess adequate means necessary to perform these functions. The duty of these persons is to prepare proposals with regard to preventive measures designated to protect workers against injuries and occupational diseases, to coordinate the implementation of these measures and to control the compliance of workplaces of an undertaking with the OSH requirements, etc. Mutual obligations of the employer and a legal or natural person performing the functions of the OSH service or part of such functions shall be established in an agreement regarding the performance of the said functions. Where the number of the OSH specialists of the legal person and/or the number of the natural persons performing functions of the OSH service or part of such functions cannot be smaller than the number set in the Model Regulations of Occupational Safety and Health Services in Enterprises this number should be fixed by the aforementioned agreement. The Committee invites the

authorities to comment on this observation in the next report and to provide all relevant information in this respect.

The report refers to the study “Company employees’ safety and health service preventive efficiency assessment” for 2011-2012 which showed that Lithuanian company employee safety and health services lack human resources in order to run employee healthcare functions efficiently. In an aim to adopt the best practices, international organisations as well as countries in the Baltic Sea region and Scandinavia are cooperated with. Moreover, the report refers to two projects implemented in 2011-2012: “Enterprise occupational safety and health service preventive efficiency assessment” and “The assessment of periodic employee health examination and occupational disease determination”.

The Committee notes that under Article 3§4 States must promote, in consultation with employers’ and workers’ organisations, the progressive development of occupational health services for all workers with essentially preventive and advisory functions. These services may be run jointly by several companies. They must be efficient and should be able to identify, measure and prevent work-related stress, aggression and violence (see Statement of Interpretation on Article 3§4, Conclusions 2013; also Conclusions 2003, Bulgaria). It further notes that if occupational health services are not established for all enterprises, the authorities must develop a strategy, in consultation with employers’ and employees’ organisations, for that purpose. Thus, States “must take measures that allow it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources” (Conclusions 2003, Bulgaria, Conclusions 2009, Albania).

The Committee notes that the report does not provide the requested information on how the progressive development of occupational health services is promoted, and therefore, it considers that it has not been established that there is a strategy to institute access to occupational health services for all workers in all sectors of the economy. Recalling that the report must provide full, updated information on changes that have taken place in the relevant laws and regulations during the reference period, the Committee reiterates all its questions.

Conclusion

The Committee concludes that the situation in Lithuania is not in conformity with Article 3§4 of the Charter on the ground that it has not been established that there is a strategy to progressively institute access to occupational health services for all workers.

Article 11 - Right to protection of health

Paragraph 1 - Removal of the causes of ill-health

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

Measures to ensure the highest possible standard of health

The Committee notes from WHO that life expectancy at birth in 2015 (average for both sexes) was 73.6 (compared to 73.23 in 2009). The life-expectancy rate is still below that of other European countries, life expectancy at birth in the EU-28 was estimated at 80.6 years in 2015. The report states that life expectancy increased by 0.75 years for males and 0.18 years for females during the 2012-2015 reference period.

The report indicates that the death rate (deaths/1 000 population) fluctuated from 13.7 in 2012 to 14.4 in 2015 (the EU–28 average in 2015 was 10.3). The Committee asks for updated information in the next report on the main causes of death as well as on the measures/programmes aimed to reduce morbidity and mortality caused by such diseases.

The report indicates that the infant mortality rate (number of infant deaths per 1 000 live births) stood at 4.2 (3.9 in 2012). The EU–28 average in 2014 was 3.7 infant deaths per 1,000 live births.

As regards maternal mortality rate, the Committee noted previously that it decreased from 11 deaths per 100 000 live births in 2005 to 4.29 deaths per 100 000 live births in 2010 (Conclusions 2013). The report does not provide any updated information on this point. The Committee notes from World Bank data that the maternal mortality rate stood at 10 deaths per 100 000 live births between 2012-2015. The Committee asks updated information on the maternal mortality rate in the next report.

Access to health care

The Committee refers to its previous conclusions for a short description of the healthcare system, where it noted that everyone covered by compulsory health insurance is entitled to free health care (Conclusions 2009 and 2013).

It also took note of the measures taken to reduce the prices of medicines in order to reduce the financial burden of the patients (Conclusions 2013). The report indicates that during the reference period (2012-2015), 100 new medicines were introduced on the List of Reimbursed Medicines for patients suffering from severe diseases. In 2015, 11.5 million prescriptions of reimbursed medicines were prescribed (4.3% more than in 2010). Although the number of prescriptions increased, the costs for patients and the state decreased.

The Committee noted previously that informal payments, as a negative indicator of service accessibility, were prevalent in Lithuania where they were still used as a common patient practice and asked for comments on this matter (Conclusions 2013).

The Committee takes note from the report of the information on the measures taken during the reference period to reduce the informal payments such as: awareness raising campaigns, control procedures and surveys measuring the corruption level in the Compulsory Health Insurance System. The report outlines that measures to address informal payments are part of the National Anticorruption Plan, as well as Anticorruption Measures plans of the Ministry of Health and the National Health Insurance Fund. The Committee asks to be kept informed on the impact/outcomes of such measures to stop/reduce the informal payments to the doctors.

In its previous conclusion, the Committee asked whether any measures were being taken to improve the content and scope of public health care services provided, with a view to meeting the needs and expectations of the population (Conclusions 2013). The report describes the measures taken during the reference period in order to improve the healthcare care system such as: the creation of the Diagnosis-Related-Groups system for the payment

of acute in-patient services; measures to strengthen the primary healthcare (such as expanded competence of family doctors giving them the opportunity to prescribe and evaluate more laboratory tests; new incentive services); cost-effective services like new consultations as well as a larger spectrum of consultations which involve research and therapeutic actions; out-patient surgery and day-care services, updated list of conditions for day-surgery services; a national early diagnosis program for colon cancer from 1 July 2014; new types of new-born screening (screening for galactosaemia and congenital kidney hyperplasia).

The report further indicates that since 2014 in the event of emergency medical care the initial ambulatory personal health care services must be provided on the date when a patient has contacted a health care institution, and in the event of scheduled medical care – within 5 calendar days from the date when the patient has registered in the health care institution. The report adds that the primary healthcare providers have to ensure that care shall be provided during the same day in urgent case and within 5 calendar days in case of exacerbation of chronic disease. Concerning the management of waiting lists and waiting times, the report mentions that in 2014 the National Health Insurance Fund (NHIF) approved the order on registration and monitoring of healthcare waiting lists. The Committee takes note of the measures taken with regard to the management and monitoring of the waiting lists. It asks updated information in the next report on the actual/average waiting times for primary and specialist care as well as for non-acute operations.

The Committee notes from Health System Review Lithuania 2013 of the European Observatory on Health Systems and Policies that while Lithuania successfully used the economic crisis as a lever to reduce the prices of medicines, out-of-pocket payments remain high (in particular for pharmaceuticals) and could threaten health access for vulnerable groups. The Committee notes from Eurostat data that in 2014 the health expenditure represented 6.2% of the GDP and the household out-of-pocket payments represented 31.5%. The OECD average for health expenditure represented 8.9% of the GDP in 2013.

The Committee recalls that the right of access to care requires *inter alia* that the cost of health care should be borne, at least in part, by the community as a whole (Conclusions I (1969), Statement of Interpretation on Article 11) and the cost of health care must not represent an excessively heavy burden for the individual. Out-of-pocket payments should not be the main source of funding of the health system (Conclusions 2013, Georgia). Steps must be taken to reduce the financial burden on patients from the most disadvantaged sections of the community (Conclusions XVII-2 (2005), Portugal). The Committee asks to be kept informed on the measures taken to reduce the out-of-pocket payments, including the costs of medicines for the population at large, and in particular for vulnerable groups, and the outcome of such measures.

In view of the persisting problem of informal payments as well as high out-of-pocket payments, the Committee considers that it has not been established that sufficient measures were taken to guarantee the right of access to healthcare in practice.

In its previous conclusions (Conclusions 2009 and 2013), the Committee asked information on the availability of rehabilitation facilities for drug addicts, and the range of facilities and treatments. The report indicates that through its Order of 21 August 2012, the Minister of Health has approved the description of the procedure for providing psychosocial rehabilitation services for persons with mental disorders (including those with addiction illnesses). The Order came into effect on 1 January 2014 and since 1 July 2015, these services have been covered from the Compulsory Health Insurance Fund. The report adds that outpatient and inpatient psychosocial rehabilitation services are provided. The psychosocial rehabilitation services can be provided by the following institutions: mental health centres, inpatient mental health facilities, daytime inpatient facilities, day care centres, psychosocial rehabilitation centres.

The Committee asks that the next report contain information on dental care services and treatments (such as who is entitled to free dental treatment, the costs for the main treatments and the proportion of out-of-pocket paid by the patients).

As regards the right to protection of health of transgender persons, the Committee previously asked whether in Lithuania legal gender recognition for transgender persons requires (in law or in practice) that they undergo sterilisation or any other invasive medical treatment which could impair their health or physical integrity (Conclusions 2013). The report indicates that the Ministry of Justice in cooperation with the Ministry of Health and other specialists have prepared a bill to amend the provisions of the Civil Code establishing the right to a gender change registration. The bill has been submitted to the Government and discussions on this issue are on-going. The Committee takes note of the comments submitted by Transgender Europe and ILGA – Europe in the current cycle stating that in the absence of relevant legislation, transgender people are forced to litigate in the courts to obtain legal gender recognition. The Committee asks to be informed on any new developments regarding the adoption of the amendments to the Civil Code.

Conclusion

The Committee concludes that the situation in Lithuania is not in conformity with Article 11§1 of the Charter on the ground that it has not been established that sufficient measures have been taken to guarantee the right of access to healthcare in practice.

Article 11 - Right to protection of health

Paragraph 2 - Advisory and educational facilities

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

Education and awareness raising

The Committee takes note from the report of the specific programmes developed by the Ministry of Education in order to promote health and prevent diseases, such as the Health Education Framework Programme (2012), the Health and Sexual Education and Preparation for Family Framework Programme (2016), Learning to Swim Programme (through which more than 4200 pupils were taught to swim in 2016).

The Committee recalls that informing the public, particularly through awareness-raising campaigns, must be a public health priority. The precise extent of these activities may vary according to the nature of the public health problems in the countries concerned (Conclusions 2007, Albania). Measures should be introduced to prevent activities that are damaging to health, such as smoking, alcohol and drugs, and to develop a sense of individual responsibility, including such aspects as a healthy diet, sexuality and the environment (Conclusions XV-2, the Slovak Republic). The Committee asks for updated information in the next report on the specific measures and campaigns undertaken by public health services, or other bodies, to promote health and prevent diseases.

As regards health education at schools, the Committee took note previously of a procedure for the recognition of schools that promote health on the basis of a number of criteria. It asked what proportion of schools have obtained recognition as health promoting schools under such a procedure (Conclusions 2013). The report indicates that there were 403 health promoting schools in 2015 . The report adds that 14.2% of pupils are involved in non-formal education activities and the majority of them (33.8%) participate in activities related with sport.

The Committee recalls that States Parties must ensure that sexual and reproductive health education forms part of the ordinary school curriculum; that the education provided is adequate in quantitative terms; that the form and substance of the education, including curricula and teaching methods, are relevant, culturally appropriate and of sufficient quality, in particular that it is objective, based on contemporary scientific evidence and does not involve censoring, withholding or intentionally misrepresenting information, for example as regards contraception and different means of maintaining sexual and reproductive health; and that a procedure is in place for monitoring and evaluating the education with a view to effectively meeting the above requirements (International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Croatia, Complaint No. 45/2007, Decision on the merits of 30 March 2009, §§46 – 47). The Committee asks for information in the next report on whether and how sexual and reproductive education is provided in schools in Lithuania.

Counselling and screening

The Committee took note previously of the consultation and screening services available for pregnant women and children at school (Conclusions 2013). The Committee recalls that there must be free and regular consultation and screening for pregnant women and children throughout the country (Conclusions 2005, Moldova). It asks updated information on this point.

The report indicates that the Procedure for the Prevention and Control of Non-communicable Diseases (2000) has been modified in August 2015. The procedure establishes the amount and frequency of examinations (by carrying out objective visual examinations, instrumental and laboratory tests) of the health of different-age individuals (up to 18 years, 19–40 years, 41–65 years, over 65 years old) when carrying out the prevention and control of non-

communicable diseases. The examination is carried out by a family doctor and nurse, these services being covered from the Compulsory Health Insurance Fund.

In respect of counselling and screening for the population at large, in its Conclusions 2013 the Committee concluded that the situation was not in conformity with Article 11§2 of the Charter on the ground that it has not been established that prevention through screening is used as a contribution to the health of the population (Conclusions 2013).

The Committee re-examined the situation in 2015 and concluded that the situation was in conformity with Article 11§2 on this point (Conclusions 2015). The Committee took note that there were five national screening programmes in Lithuania: four cancer screening programmes (for cervical cancer, breast cancer, prostate cancer and colorectal cancer) and one programme for cardiovascular screening. The screening programmes are financed by the Compulsory Health Insurance Fund (Conclusions 2015).

The current report adds that a Preventive Programme for Fixing Kids' Molars with Sealant Substance began in 2005. The target group of this programme is children of 6–14 years old. The programme is funded from the Compulsory Health Insurance Fund as well.

The Committee asked for up-dated information on 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.) (Conclusions 2015). Since the report does not provide the requested information, the Committee reiterates its question.

Conclusion

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

Article 11 - Right to protection of health

Paragraph 3 - Prevention of diseases and accidents

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

Healthy environment

In its previous conclusion, the Committee took note of a number of projects and regulations taken for the reduction of environmental risks, in particular in the field of water and sewage management and environmental noise. It asked the next report to provide updated information on the implementation of environmental protection measures and policies (Conclusions 2013).

The report does not provide any information on this point. The Committee reiterates its request for information on the concrete measures taken, including environmemtal legislation and regulations on the prevention of avoidable risks, as well as on the levels and trends with regard to air pollution, waste management, water contamination and food safety during the reference period. The Committee outlines that if such information is not provided, there will be nothing to establish that the situation is in conformity with the Charter on this point.

Tobacco, alcohol and drugs

The Committee asked previously to be kept informed on measures taken to prevent drug addiction, as well as trends in drug consumption (Conclusions 2013).

The report provides information on the measures taken to prevent alcohol and drug addiction among pupils. A Preventive Action Coordination Group has been set up in most schools to this purpose. The report indicates that the prevalence of illegal drugs usage among pupils has decreased as well as alcohol consumption and tobacco usage among pupils. In 2015, 65% of pupils smoked at least once in a lifetime comparing with 79 percent in 2011.

The Committee asks for updated information in the next report on the legal framework and measures taken to reduce and prevent the consumption of tobacco, alcohol and drugs. It wishes to receive information on the figures and trends in consumption of alcohol, tobacco and drugs for the whole population, including young people.

Immunisation and epidemiological monitoring

The report indicates that the vaccination rate for the major communicable diseases was at least 93% in 2015.

The Committee asks for updated information and any new developments in the next report on the national imunisation programme, the trends in the coverage rate and measures taken with regard to prevention and control of communicable diseases.

Accidents

The Committee noted in its previous conclusion that the number of persons injured and dead in traffic accidents decreased (Conclusions 2013). It also took note of the participation of Lithuania in Child Safety Report Cards as part of the project Tools to Address Childhood Trauma, Injury and Children’s Safety (TACTICS) and asked to be kept informed on the assessments for Lithuania under this initiative.

The report does not provide any information on this point. The Committee recalls that States Parties must take steps to prevent accidents. The Committee asks for information on the measures taken and the trend in the number of road accidents as well as domestic accidents, accidents at school and accidents during leisure time.

Conclusion

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

Article 12 - Right to social security

Paragraph 1 - Existence of a social security system

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

In the case of **family** and **maternity benefits**, the Committee refers to its conclusions on, respectively, articles 16 and 8§1 (Conclusions 2015).

Risks covered, financing of benefits and personal coverage

The Committee refers to its previous conclusions for a description of the Lithuanian social security system, and notes that it continues to cover all the traditional risks (medical care, sickness, unemployment, old age, work accidents/occupational diseases, family, maternity, invalidity and survivors). The system also continues to rest on collective funding: it is funded by contributions (employers, employees) and by the State budget. According to the report, 96,13% of the total population was insured for healthcare in 2014; out of an active population of 1 468 900, the percentage of persons insured was 92% as regards unemployment, 88% as regards sickness, 95% as regards old-age and 88% as regards maternity (data of 2015). The Committee asks the next report to provide updated information on the number of persons insured for these risks, but also for invalidity as well as for work accidents and occupational diseases, out of the active population.

Adequacy of the benefits

According to Eurostat data, the median equivalised annual income was €5 180 in 2015, or €432 per month. The poverty level, defined as 50% of the median equivalised income, was €2 590 per annum, or €216 per month. 40% of the median equivalised income corresponded to €173 monthly. The minimum wage was €325 per month as of 1 July 2015.

In its previous conclusions (Conclusions 2013), the Committee found that the minimum levels of sickness benefit, old age benefit and unemployment benefit were inadequate.

The Committee notes from MISSOC that, for people who have been insured for at least 3 months during the last 12 months, or 6 months during the last 24 months, **Sickness benefits** correspond to 80% of the average monthly Compensatory Wage (*Kompensuojamasis uždarbis*), that is the average wage based on the insured person's income earned in the three consecutive months before the last month preceding the one in which the temporary incapacity occurred. The Committee notes that in the case of a person working full time at minimum wage level, the benefits level would be in conformity with the Charter's requirements. The report confirms that the minimum benefits amount cannot be lower than 25% of the insured income of the year, which was €339 in 2015. In this case, the minimum benefit would fall largely below the 40% of the median equivalised income, and would therefore be manifestly inadequate. In this respect, the report explains however that such minimum is only granted to employees who work part-time or have not been insured during the three consecutive months before the temporary incapacity occurred. While taking note of this explanation, the Committee recalls that the level of income-replacement benefits should be such as to stand in reasonable proportion to the previous income and should not fall below the poverty threshold defined as 50% of the median equivalised income, as calculated on the basis of the Eurostat at-risk-of-poverty threshold value. Where the minimum level of an income-replacement benefit falls below 40% of the median equivalised income (or the poverty threshold indicator), it is not considered that its aggregation with other benefits can bring the situation into conformity. Accordingly, the Committee considers that the situation is not in conformity in this respect.

Lithuanian social security system does not provide for a statutory minimum level of **old age** pensions. Under the compulsory social insurance scheme, the old-age pension consists of a basic flat-rate pension and a earnings-related pension, based on a formula comprising years of service, individual wages and average income. The authorities explain in the report that

the level of this component depends on the level of the person's average wage, the level of insured income and the record of pension insurance, which is calculated on the basis of the person's gained wage and the level of minimum wage. In order to receive a full pension, 30 contributory years are required, and the minimum qualifying period is 15 years. In practice, according to the report, for a person with 15 qualifying years, who received the minimum wage, the monthly pension (at 1st July 2015) would amount to €83.78. The pension of a person with 15 qualifying years but at the average wage, would be €112.96. For a person entitled to a full rate pension, with 30 qualifying years, the amounts would be respectively €168 for a person who received the minimum wage and €226 for a person with an average wage. The Committee notes that most of these amounts are inadequate, as they fall below 40% of the median equivalised income. As regards the non-contributory pension granted to persons who do not qualify for a social insurance pension, the Committee refers to its assessment under Article 13§1.

Are entitled to **unemployment benefits** persons who have been working for at least 18 months during the last 3 years preceding unemployment. In response to the Committee's question (Conclusions 2013), the report clarifies that the payment of the benefits is terminated if the person refuses a work offer corresponding to his/her professional skills and health condition. The suitability of the work offer in respect of the unemployed person's health condition is assessed by a medical commission. The report confirms that the decision not to grant or to terminate the payment of the unemployment insurance benefit can be appealed to the State Social Insurance Fund Board, which is a mandatory pre-litigation out of court authority, and the decisions of this authority can be appealed to a court. The Committee previously noted that unemployed benefits consist of a fixed amount and a variable component based on the person's real insured income. The variable component is paid in full during the first three months of unemployment, and it is paid at 50% for the remaining period. The duration of payment of the Unemployment Insurance Benefit depends on the length of the insurance record and varies between 6 months (for a person with less than 25 years of service) and 9 months (for a person with at least 35 years of service), which can be extended by two months in some cases (elderly persons within 5 years from pension age, municipalities with high unemployment rate). The Committee previously noted that the minimum amount of unemployment benefits corresponds to the fixed part of the benefit, which was €102 in 2015. The Committee holds that the level of this benefit is inadequate as it falls below 40% of the Eurostat median equivalised income.

As regards work injuries and occupational diseases benefits, as well as invalidity benefits, the Committee notes from MISSOC that:

- in case of **work accidents** or **occupational diseases**, the cash benefits correspond to 100% of average monthly Compensatory Wage, i.e. the average wage based on the insured person's income earned in the three consecutive months before the month preceding the one in which the temporary incapacity occurred. On the basis of the minimum wage in 2015 (€325), the Committee considers that the situation is in conformity in this respect.
- minimum **invalidity benefits**, for a person with 75-100% loss of capacity for work amounted in 2015 to 150% of the basic social insurance pension (which was €108 in 2015), that is €162. While noting that, according to the report, the average amount of state social insurance for disability was €213 in 2015, the Committee notes that the minimum level falls below 40% of the Eurostat median equivalised income. Accordingly, the situation is not in conformity in this respect.

Conclusion

The Committee concludes that the situation in Lithuania is not in conformity with Article 12§1 of the Charter on the grounds that:

- the minimum level of sickness benefits is inadequate;
- the minimum level of old-age benefits is inadequate;
- the minimum level of unemployment benefits is inadequate;
- the minimum level of invalidity benefits is inadequate;

Article 12 - Right to social security

Paragraph 3 - Development of the social security system

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

It refers to its previous conclusions for the description of the Lithuanian social security system. Since Lithuania has ratified Articles 8§1 and 16 of the Charter, the Committee will assess the scope and impact of developments with regard to maternity and family benefits when it will next examine compliance with this article.

As regards other branches of social security, the Committee takes note of the legislative developments during the reference period. In particular, the report recalls that the Constitutional Court had pointed out, in a series of decisions, that a temporary reduction of pensions, wages or legally established payments was justifiable on account of the fundamental deterioration of the state's economic and financial situation only on a temporary basis, while the state's economic and financial situation was grave. In accordance with these decisions, when the economy started recovering, during the reference period, a number of improvements were introduced:

- From 1 January 2012, payment of old age, work incapacity (disability) and survivors' pensions (widow's/widower's and orphan's pensions), which had been temporarily reduced in 2010–2011 (see Conclusions 2013), was restored to the full amount. As a result, in 2012, the average amount of old-age pension increased by around 9% compared to 2011. The state social insurance pensions were increased from 1 July 2015, from €105 to €108 as regards the basic pension and from €431 to €434 as regards the insured income of the current year. The average old-age pension, for a person with the obligatory record of pension insurance, was increased by around 2% and amounted to €256.8.
- As of 1 January 2015, sickness allowances paid from the State Social Insurance Fund budget resources were increased by approximately one third, following the amendment of the Law on Sickness and Maternity Social Insurance. As a result, the sickness allowance was brought to 80% of the beneficiary's compensatory salary for the whole length of the sick leave, while until end 2014 only 40% of it was paid from the third to seventh day of sick leave.
- Sickness and maternity/paternity insurance was extended in 2015 to students and graduates under the age of 26, exempting them from the qualifying period requirements, provided that they start working within 6 months (as regards sickness insurance) or 12 months (as regards maternity/paternity insurance) from the completion of their studies. Until the end of 2014, young people starting work after completing their studies were only exempted from the qualifying period requirement if they started working within 3 months from the graduation.
- A Law on Compensation of State Social Insurance Old-Age and Lost Capacity for Work (Disability) Pensions, entered into force on 22 May 2014. The law provided for the payment of compensatory benefits to those who received reduced old-age and disability pensions in 2010–2011, because of the economic crisis, as well as to their heirs, if the beneficiaries has died after the entry into force of the law. The compensatory amounts were paid in instalments, between end 2014 and 2016, to around 500 000 persons, for a global cost of around €99 000 000. Another law (Law on Compensation of State Social Insurance Old-Age Pensions and State Pensions Reduced by Taking into Account Available Insured Income), adopted on 30 June 2015, provides for further compensatory amounts to be paid in instalments between 2016 and 2018 to some 84 400 beneficiaries of Old-age pensions which were reduced in 2010-2011 (the global amount involved is expected to be around €120 600 000).

Other measures are mentioned in the report whose impact in terms of personal coverage and benefits' levels does not appear to be clear. The Committee notes in particular that some major changes were made in 2012-2015 concerning the contribution rate and funding

of the cumulative pension (second pension pillar) introduced in 2004. As the contribution rate (2.5% in 2013) was not sufficient to ensure an adequate level of future pensions, the new system provides that the cumulative pension contribution shall consist of a portion of the state social pension insurance contribution, a supplementary contribution paid by the participant, and an incentive contribution paid from the state budget. This new procedure applies since 2014 to all those who signed their pension accumulation agreements after 1 January 2013. The first two components are calculated on the basis of the participant's income, while the third one amounts to the percentage of the gross average monthly wage of workers in the country's economy for four quarters of the year before last year published by the Lithuanian Department of Statistics. Furthermore, as of 2012, the retirement age started increasing (in 2012, it was 60 years and 4 months for women and 62 years and 8 months for men, and it will be gradually increased until reaching 65 years for both in 2026). Further amendments to the Law on Pensions, which came into force in 2013, concern the calculation of pension amounts for new pensioners and for those who, after retiring, continued working and request a new pension on that account. The Committee asks for information in the next report on the changes made, specifying the effect of these changes on the personal scope of the system and the minimum level of income replacement benefits.

The report also mentions measures coming into force out of the reference period, concerning a reform of the Unemployment Social Insurance (extension of coverage through the reduction of the qualifying period, changes in the calculation of the benefit amount). The Committee asks the next report to provide information on their implementation and impact.

Conclusion

The Committee concludes that the situation in Lithuania is in conformity with Article 12§3 of the Charter.

Article 12 - Right to social security

Paragraph 4 - Social security of persons moving between States

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

Equality of treatment and retention of accrued benefits (Article 12§4)

Right to equal treatment

Equal treatment between nationals and nationals of other States Parties in respect of social security rights shall be ensured through the conclusion of bilateral or multilateral agreements or through unilateral measures.

The Committee recalls that, having regards to the EU legislation on the coordination of social security systems of the EU Member States, governed by Regulations (EC) No. 883/2004 and No. 987/2009, as amended by Regulation (EU) No. 1231/2010, the EU Member States are considered, in principle, to ensuring equal treatment between, on the one hand, their nationals and, on the other hand, nationals of other EU Member States or member of the EEA, stateless persons, refugees resident in the territory of a Member State who are or have been subject to the social security legislation of one or more Member States, their families and their survivors, as well as nationals of third countries, members of their families and their survivors, provided that they are legally resident in the territory of a Member State and are in a situation which is not confined in all respects within a single Member State.

The Committee recalls that, in any event, under the Charter, EU/EEA Member States are required to secure, to the nationals of other States Parties to the 1961 Charter and to the Charter not members of the EU, equal treatment with respect to social security rights provided they are lawfully resident in their territory (Conclusions XVIII-1 (2006)). In order to do so, they have either to conclude bilateral agreements with them or take unilateral measures.

The Committee previously asked (Conclusion 2013) how equal treatment between nationals and nationals of other States Parties was ensured in respect of social security rights for all security branches and, in particular, whether the Lithuanian Government planned to conclude agreements with States Parties with which there were no such agreements or unilateral measures and, if so, when.

As regards bilateral agreements concluded with other States Parties not members of the EU or the EEA, the report recalls that Lithuania has concluded such agreements with countries with which there are, on the one hand, a significant migration flow and, on the other hand, a mutual interest in concluding such an agreement. The report states that, during the reference period, Lithuania concluded an agreement with the Republic of Moldova on social security which came into force in October 2015. It also points out that Lithuania has opened negotiations with Georgia with a view to concluding such an agreement and plans to do so with Armenia in 2017.

As regards unilateral measures taken by Lithuania, the report states that amendments to the Law on Pension which remove the length of residence requirement for old age pension, widows and survivor's benefits have been adopted, so that social security benefits are henceforth only based on the social insurance record. The amendments entered into force in 2014 provide for the payment of state social insurance pensions to any person, whether he or she is a Lithuanian national or a national of third country, who paid the compulsory contributions to the State Social Insurance Fund budget, irrespective of his or her presence in Lithuania.

In respect of payment of family benefits, the Committee considered that the requirement for the child to reside in the territory of the paying State is in conformity with Article 12§4 (Statement of Interpretation on Article 12§4, XVIII-1 (2006)). However, since not all countries apply such a system, States Parties applying the 'child residence requirement' are under the

obligation, in order to secure equal treatment within the meaning of Article 12§4, to enter, within a reasonable period of time, into bilateral or multilateral agreements with those States which apply a different entitlement principle (Conclusion 2006, Cyprus).

The Committee notes from MISSOC that Lithuania applies the rule whereby the payment of family benefits is conditional on the claimant's children being resident in Lithuania.

The Committee previously asked (Conclusions 2009 and 2013) whether such agreements existed with the following countries: Albania, Armenia, Georgia, Serbia and the Russian Federation, or whether they were planned and on what timescale. The report states that such an agreement exists with the Russian Federation. It adds that Lithuania opened negotiations with Georgia and plans to do so with Armenia in 2017.

The Committee notes that the personal scope of the Law on Child Benefit was enlarged to include, *inter alia*, third-country nationals with temporary permit to reside and who have been authorised to work, those who are in employment or who have been employed for a minimum period of six months and who are registered as unemployed. The Committee asks the next report to clarify whether the Law also apply to nationals of other States Parties with which Lithuania did not conclude any bilateral agreement. Meanwhile, it reserves its position on this point.

Right to retain accrued benefits

The Committee previously considered (Conclusions 2009 and 2013) that the retention of accrued benefits related to work accidents, occupational disease, sickness or maternity for person moving to a State Party which is not covered by EU regulations or not bound by an agreement with Lithuania was not guaranteed. It notes that no new agreement has been adopted in Lithuania in this regard.

However, it notes in the report that Clause 107 and 111 of the Regulations on Social Insurance Benefits related to Accidents at Work and Occupation Diseases, and 61 of the Regulation for Sickness and Maternity Social Insurance Benefits have been amended by Resolutions No. 1346 of 23 December 2015 and No. 1548 of 19 December 2012 in such a way to allow retention of accrued benefits in those field for persons moving to State Party which is not covered by EU regulations or not bound by an agreement with Lithuania. In other words, accrued benefits related to work accidents and occupational diseases, sickness and maternity are paid to nationals of all other States Parties, irrespective of their location.

The Committee considers therefore Lithuania to be in conformity with the Charter on this point.

Right to maintenance of accruing rights (Article 12§4b)

There should be no disadvantage for persons who change their country of employment where they have not completed the period of employment or insurance necessary under national legislation to confer entitlement and determine the amount of certain benefits. This requires, where necessary, the aggregation of employment or insurance periods completed in another territory and, in the case of long-term benefits, a pro-rate approach to the conferral of entitlement, the calculation and payment of benefit (Conclusion XIV-1 (1998), Portugal).

States Parties may choose between the following means in order to ensure maintenance of accruing rights: Multilateral convention, bilateral agreement or, unilateral, legislative or administrative measures.

The principles of accumulation of insurance or employment periods applies to nationals of States Parties covered by the EU Regulations.

With respect to States not bound by the EU Regulations, the Committee notes from the report that insured persons who lose, either in full or in part, his/her capacity for work due to

an insured event will be paid from the social insurance funds allocated for accidents at work. There is no requirement for employee to have social insurance record for accidents at work and occupational diseases. Similarly, Lithuania requires no other condition than having a sickness social insurance record of at least 3 months over the past 12 months or at least 6 months over the past 24 months, prior to the onset of temporary incapacity for work, to be entitled for such a sickness benefit. The report also indicates that third-country nationals who are working and residing legally in Lithuania by virtue of a Single permit or EU Blue Card enjoy equal treatment as regards payment of unemployment benefit as long as their unemployment insurance record are not shorter than 18 months during the last 36 months, pursuant to Law on Unemployment Social Insurance of the Republic of Lithuania.

The Committee considers therefore that Lithuania ensures equal treatment between nationals and nationals of other States Parties in respect of maintaining accruing social insurance rights.

Conclusion

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

Article 13 - Right to social and medical assistance

Paragraph 1 - Adequate assistance for every person in need

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

Types of benefits and eligibility criteria

The Committee takes note of the legislative developments during the reference period. Namely, it notes that the amendments to the Law on Cash Social Assistance for Poor Residents came into force as of 1 January 2012, which established a legal basis for cash social assistance for persons in need. Pursuant to the Law, municipalities provide cash social assistance for poor residents under equal conditions (both social benefits and compensations) as of 1 January 2015 by fulfilling their independent municipal function.

The Committee also takes note of the measures implemented with regard to reorganisation of the cash social assistance system, such as introduction of the *principle of economies of scale* (in relation to the number of family members). For the first family member, as well as for single persons 100% of the difference between State Support Income and the person's income will be granted (up from 90% in the previous reference period). The amount of compensated norms of floor space as regards additional benefit for a single person has been increased from 38 to 50 square meters.

The Committee also notes that a single person will be additionally granted *social assistance benefit* even after they find an employment. This benefit is paid for 6 months.

Moreover, according to the report, discretion was granted to municipalities to allocate social benefits also in cases when a person's income exceeds the amount of state supported income. The limits of discretion of municipal administrations have been expanded in order to create conditions to receive assistance when a person is mostly in need of it. Administrations of municipalities following an assessment of individual living conditions have been conferred the right to grant social benefit and compensations for heating and drinking and hot water expenses on an exceptional basis. In 2015 3.4 thousand persons were granted cash social assistance on an exceptional basis. In 2015 expenditure on cash social assistance on an exceptional basis stood at € 1.5 million.

Municipal administrations have been granted even more rights in the process of providing cash social assistance for poor residents. Administrations of municipalities have been conferred the discretion to grant social assistance in other cases than those established in the Law (e.g. a lump-sum benefits is granted, repayment of the housing loan etc.). In 2015 160 thousand persons were granted social assistance in other cases and the expenditure on such social assistance amounted to € 2.16 million.

Level of benefits

In order to assess the situation during the reference period, the Committee takes account of the following information:

- Basic benefit: the Committee notes from MISSOC that the monthly benefit level is 100% of the State Supported Income. For single persons it stood at € 102.
- Additional benefits: according to MISSOC reimbursement of the cost of heating, hot water and drinking water is provided for the family based on a means test. A family should not have to pay more than 20% of the family income above the State Supported Income, 5% of the family income for basic standard hot water and 2% of the family income for basic standard of drinking water. The Committee notes that all these benefits together stand at around € 27 per month.
- Medical assistance: the Committee asks the next report to provide updated information regarding medical assistance to persons in need.

- Poverty threshold estimated at 50% of the median equivalised income and calculated on the basis of Eurostat at-risk-of-poverty threshold): it amounted to € 139 in 2015.

In the light of the above data, the Committee notes that the the combined level of basic and supplementary benefits available to a single person without resources is not adequate as the total amount that can be obtained falls below the poverty threshold. Therefore, the situation is not in conformity with the Charter.

Since Lithuania has not accepted Article 23, the Committee also examines the situation as regards the minimum level of pension benefit under Article 13. As regards social assistance to elderly persons (non-contributory), the Committee notes from its conclusion in Article 12§1 that its amount stood at, in July 2015, €97.2. The Committee previously noted (Conclusions 2013) that when the social insurance pension is lower than the social assistance pension, the difference is paid, and that the social assistance pension is paid to persons who do not qualify for a social insurance pension. The Committee notes that both the social assistance pension and the social insurance pension (calculated on the basis of the minimum wage), are inadequate, as the total amount of assistance that may be obtained falls below the poverty threshold. Therefore, the situation is not in conformity with the Charter.

Right of appeal and legal aid

The Committee takes note of the number of complaints for the decisions of municipal administration in 2012-2015.

Personal scope

The Committee recalls that, under Article 13§1, States are under the obligation to provide adequate medical and social assistance to all persons in need, both their own nationals as well as nationals of States Parties lawfully resident within their territory, on an equal footing. In addition, with reference to its Statement of Interpretation of Articles 13§1 and 13§4 (Conclusions 2013) regarding the scope of Articles 13§1 and 13§4 in terms of persons covered, the Committee considers that persons in an irregular situation in the territory of the State concerned are also covered under Article 13§1, rather than under Article 13§4, which was previously its practice.

The Committee henceforth examines whether the States who have accepted Article 13§1 ensure the right to:

- adequate social and medical assistance for their own nationals and for nationals of other States Parties lawfully resident within their territory on an equal footing;
- emergency social and medical assistance to persons unlawfully present in their territory.

Nationals of States Parties lawfully resident in the territory

In its previous conclusion the Committee found that the situation was not in conformity with the Charter on the ground that the granting of social assistance benefits to nationals of other States Parties was subject to a length of residence requirement.

The Committee notes from the report that according to the Law on Cash Social Assistance for Poor Residents (Official Gazette Valstybės žinios, 2011, No. 155-7353), cash social assistance shall be granted ensuring the *equality* of residents without resources, *irrespective of* gender, race, *nationality*, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion. According to the report, Nationals of other States Parties are treated equally with nationals as long as they meet the requirements stated by the Law.

The Law on Cash Social Assistance for Poor Residents (Official Gazette Valstybės žinios, 2011, No. 155-7353) is applied to permanent residents and covers the following categories of persons:

- citizens of the Republic of Lithuania;
- aliens holding a permit of a long-term residence in the Republic of Lithuania;
- EEA nationals;
- aliens who have been granted subsidiary protection or temporary protection in the Republic of Lithuania.

However, according to the report, in accordance with the existing legal regulation, persons who are temporarily residing in the Republic of Lithuania and do not have the right to cash social assistance, are not left without any support. Municipal administrations have the right to allocate cash social assistance from their budgetary resources to persons lawfully residing.

The Committee notes from MISSOC that permanent residence is one of the conditions for eligibility to social assistance. The Committee noted in its Conclusion 2006 that in pursuance of Article 22 of the law of 1998 on the Legal Status of Foreigners, one of the conditions for obtaining a permanent residence permit is the possession of a temporary residence permit for the previous five years. The Committee understands that there have been no changes to the situation which it has previously found not to be in conformity with the Charter. Therefore, it reiterates its previous finding of non-conformity on the ground that nationals of other States Parties are subject to a length of residence requirement to become eligible for social assistance.

Foreign nationals unlawfully present in the territory

The Committee recalls that persons in an irregular situation must have a legally recognised right to the satisfaction of basic human material need (food, clothing, shelter) in situations of emergency to cope with an urgent and serious state of need (including medical condition). It likewise is for the States to ensure that this right is made effective also in practice (European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, §187). The Committee asks the next report to confirm that the legislation and practice comply with these requirements.

Conclusion

The Committee concludes that the situation in Lithuania is not in conformity with Article 13§1 of the Charter on the grounds that:

- the levels of social assistance and of social assistance pension are not adequate;
- nationals of other States Parties are subject to a length of residence requirement of five years to become eligible for social assistance.

Article 13 - Right to social and medical assistance

Paragraph 2 - Non-discrimination in the exercise of social and political rights

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

The Committee recalls that under Article 13§2 of the Charter any discrimination against persons receiving social and medical assistance that might result – directly or indirectly – from an express provision must be eradicated. The Committee asks whether the provisions enshrining the principle of equality and prohibiting discrimination in the exercise of political or social rights are interpreted in practice in such a way as to prevent discrimination on the basis of receipt of social or medical assistance.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Lithuania is in conformity with Article 13§2 of the Charter.

Article 13 - Right to social and medical assistance

Paragraph 3 - Prevention, abolition or alleviation of need

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

The Committee recalls that Article 13§3 concerns free of charge services offering advice and personal assistance specifically addressed at persons without adequate resources or at risk of becoming so. The social services covered by Article 13§3 must play a preventive, supportive and treatment role. This means offering advice and assistance to make those concerned fully aware of their entitlement to social and medical assistance and how they can exercise those rights. In assessing national situations under this provision the Committee specifically examines whether there are mechanisms to ensure that those in need may receive help and personal advice services free of charge and whether such services and institutions are adequately distributed on a geographical basis. The Committee asks the next report to provide updated information on how these requirements are met in legislation and practice.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Lithuania is in conformity with Article 13§3 of the Charter.

Article 14 - Right to benefit from social welfare services

Paragraph 1 - Promotion or provision of social services

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

Organisation of the social services

In its previous conclusion (Conclusions 2013) the Committee asked to provide an up-to-date description of the organisation of social services.

The report indicates that according to the Law on Social Services (Official Gazette 2006, No.17-589) municipalities are in charge of ensuring provision of social services to residents of its territory by planning and organizing social services. In order to determine the scope of provision and types of social services in line with residents' needs, municipalities annually draw up and approve a plan of social services. Plans of social services are drawn up in compliance with the methodology of planning of social services as approved by the Government. The Ministry of Social Security and Labour analyses and assesses the condition of social services in the country and submits proposals to municipalities on the planning and organization of social services. The Ministry establishes social care establishments, as well as reorganizes them according to the needs and liquidates those social care establishments which are not needed any more.

The report indicates that, in order to ensure persons with mental disabilities right to community-based services according to their individual needs, in Lithuania the care system reform is carried out with a specific focus on de-institutionalization. The Action Plan of the Transition from Institutional Care to the Provision of Services in a Family and Community for the Disabled and Children Deprived of Parental Care 2014–2020 was adopted in 2014. In the period 2014–2020, the Action Plan aims to envisage consistent and coordinated actions that promote the creation of the system for transition from institutional social care to community-based services for disabled persons (including children and youth), with mental and/or psychic disability, children deprived of parental care, including babies, as well as families, and assistance to the family, guardians (foster parents). The Committee asks the next report to provide information on implementation of this Action Plan.

The report indicates that in 2012 the Minister of Social Security and Labour approved Integrated Assistance Development Program. The main goals of the Program are as follows: to ensure the accessibility (to expand social care services and include nurse care services) and variety of services of integrated help at home for elderly, disabled adults and children and for family members by consulting and involving informal carers (volunteers, neighbours and other) into process. From the middle of 2013, the pilot projects started in 21 municipalities. During the program implementation period (2013–2015), integral assistance was provided to over 1500 disabled and elderly people; consultations were provided to about 1400 family members. Funding for program (2013-2015) was about 5.8 million EUR. In this respect the Committee asks the next report to provide information on implementation of the Integrated Assistance Development Program also for other categories of vulnerable groups such as young people in difficulty and young offenders, minorities (migrants, Roma, refugees, etc.), the homeless, alcoholics and drug addicts, battered women and former detainees.

Effective and equal access

In its previous conclusion (Conclusions 2013), the Committee asked to provide an up-to-date description on the measures taken to ensure equal and effective access to social services.

The Committee moreover recalls that users of social services must have means of making complaints and referring urgent cases of discrimination and infringements of human dignity to an independent body. The Committee therefore asks which remedies are available for users in such cases.

Quality of services

In its previous conclusion (Conclusions 2013) the Committee asked to provide an up-to-date description on the quality of social services.

The report indicates that according to the Law on Social Services, the municipalities are responsible for the supervision of common social services and social attendance services. The Law also states that the Department of Supervision of Social Services under the Ministry of Social Security and Labour (hereinafter referred to as the "Department") assesses, monitors and controls the quality of social services (provides methodological assistance on the application of social care norms, provides methodological assistance regarding control of the quality of social services of general interest and social attendance, form a general practice of application of social care norms and the requirements set forth for social services of general interest and social attendance; assesses the quality of social care, issues licenses to provide social care, monitors and controls compliance with the conditions of licensing activities, controls the establishment of a person's (family's) need for the social services financed from special targeted subsidies of the state budget to municipal budgets, granting and provision thereof as well as assessment of the person's (family's) financial possibilities to pay for these services).

The report underlines that from 2015 onwards, only licensed establishments are entitled to provide social care. Licensing of social care institutions and assessing the quality of social care falls within the responsibility of the Department. The assessment of social care is made in compliance with the rules on the licensing of social care establishments (Official Gazette 2012, No.57-2864) and social care norms. Social care norms set out the specific requirements for social care quality. The main specific requirements for social care quality are: – quantitative: for personnel composition (description of what personnel is needed according group of clients, minimum requirement for number of personnel according to number of clients and etc.); accommodation adjustment (description of accommodation (size, number and etc.) based on client group and number of clients, hygiene requirements, other adjustment of accommodation (elevators, layout, adjustment for disabled and etc.); – qualitative: for allocating and planning services; making agreements with clients or their representatives; making and review individual social care plans; making emotionally safe, stresses and etc. environment; providing services which enable, motivate and encourage clients, keep their social relations and etc.The report stresses out that client privacy is one of most important issue in the social care norms and organizations are obliged to fulfil the right to privacy of a person. The Department is obliged to organize and implement supervisory procedures in place to ensure that mentioned conditions are complied with in practice.

The Ministry of Social Security and Labour in year 2011-2015 implemented the program "Development of Infrastructure of Institutional Services" of Priority 2 "Quality and Accessibility of Public Services: Health Care, Education and Social Infrastructure". The aim of this measure is to ensure safe environment and high quality of community-base services provided to elderly persons, the disabled, children and persons at social risk by modernizing current infrastructure and establishing new small care homes (group homes for disabled), day care centres, crises centres and etc. Funding for program was about 159 million EUR. During the period 2014-2020 Action Plan for Development and Modernization of Social Services infrastructure will be implemented. The main aim of the action plan is to achieve better access to services in all regions of the country. Funding for action plan is about 20 million EUR. In this respect the Committe asks that the next report provides information on development and implementation of the 2014-2020 Action Plan for Development and Modernization of Social Services infrastructure.

The report indicates that in 2012, the Minister of Social Security and Labour approved the Program of Competence Trainings for the Employees of Social Services Establishments. The Program enhanced the quality of employees providing services and their ability to adopt theoretical knowledge into daily work in social establishments, identify the need of trainings.

More that for 4 thousand employees of social services establishments participated in the trainings. The report indicates also, that according to the information of the Department of Statistics in Lithuania in 2015 social services were provided by almost 11 thousand workers. In this respect the Committee asks that the next report provides updated information on the developments of the Program of Competence Trainings for the Employees of Social Services Establishments.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Lithuania is in conformity with Article 14§1 of the Charter.

Article 14 - Right to benefit from social welfare services

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

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

In its previous conclusion (Conclusions 2013) the Committee asked for details on criteria used by the State to award grants to voluntary organisations including the amount of these grants.

The report indicates that the National Progress Programme 2014-2020 approved by Resolution No 1482 of the Government of the Republic of Lithuania of 28 November 2012 (Official Gazette No 144-7430, 2012) anticipates that in 2020 15% of all public services in municipalities should be provided by local communities and non-governmental organizations. Main services being provided through non-governmental organizations are: social rehabilitation for disabled, day care centres (from 2002), specialized assistance centres (provides assistance to victims of violence). Number of volunteers working for the social services increased from 3335 in 2011 to 4627 in 2015. In accordance with the Law on Volunteering, volunteering-related expenses are subject to reimbursement. State financial assistance is granted to youth voluntary organisations and the amount of these grants was equal to 270590 EUR for the period of 2013-2015. In this respect, the Committee asks that the next report provides updated information on implementation of the National Progress Programme 2014-2020.

In its previous conclusion (Conclusions 2013) the Committee noted that the report did not answer to its request for information on the involvement of civil society in areas of welfare policy which affect the social welfare services.

The report indicates that in 2014, while implementing the provisions of the Law on Development of Non-governmental Organizations, the Ministry of Social Security and Labour approved the Council of Non-governmental Organizations. The Council of Non-governmental Organizations is an advisory body seeking to ensure participation of the non-governmental organizations; it consists of representatives from 10 state institutions and 10 non-governmental organizations; the term of office of the members of the Council is 2 years. According to the Law on Social Services issues of the management, granting and provision of social services must be settled in co-operation with recipients of social services and/or representatives thereof and the organizations defending the interests and rights of social groups of people.

The report indicates that the Ministry of Social Security and Labour is constantly encouraging public participation of the civil society and the community into planning and providing help and services for those in need. For instance, in 2014, the Ministry approved the group of experts who monitor and evaluate the implementation of de-institutionalization process according to the Action Plan of the Transition from Institutional Care to the Provision of Services in a Family and Community for the Disabled and Children Deprived of Parental Care 2014–2020.

According to the report, delegated experts from non-governmental organizations constitute about 40 percent of all experts in the group. Furthermore, in the mentioned Integrated Assistance Development Program, one of the aims is to involve informal carers (volunteers, neighbours and other persons) into the process of providing integrated assistance. Volunteers, neighbours and other persons are responsible for informal help. The report indicates also that in 2011 the Minister of Social Security and Labour approved the Lithuanian Social Work Board, which has an advisory function on social work issues. The Lithuanian Social Work Board consists of municipalities' representatives, social workers, teachers from higher education schools for social work, social services institutions etc. Almost half of Board members are from public or non-governmental organizations.

The Committee recalls that States Parties must ensure that public and private services are properly coordinated, and that efficiency does not suffer because of the number of providers

involved. In order to control the quality of services and ensure the rights of the users as well as the respect of human dignity and basic freedoms, effective preventive and reparative supervisory system is required (Conclusions 2005, Bulgaria). In this respect asks to know what kind of supervisory quality control mechanisms are in place to ensure the quality of services.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Lithuania is in conformity with Article 14§2 of the Charter.

CONCLUSIONS RELATING TO CONCLUSIONS OF NON-CONFORMITY DUE TO A REPEATED LACK OF INFORMATION IN CONCLUSIONS 2015

Article 31 - Right to housing

Paragraph 2 - Reduction of homelessness

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31st October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the information submitted by Lithuania in response to the conclusion that:

- it had not been established that there were measures in place to prevent persons having lost their right to municipal subsidised housing from becoming homeless;
- it had not been established that there was legal protection for persons threatened by eviction; and
- it had not been established that the right to shelter was adequately guaranteed.

Preventing homelessness

The Committee recalls that preventing homelessness as enshrined by Article 31§2 implies for the States Parties to intervene at two levels: They must, on the one hand, reduce homelessness by providing, for example, immediate shelter and care for the homeless as well as helping such people overcome their difficulties and prevent a return to homelessness. On the other hand, they must prevent categories of vulnerable people from becoming homeless by establishing a housing policy for all disadvantaged groups of people to ensure access to social housing (Conclusion 2005).

The Committee noted in its previous conclusion (Conclusion 2011) that families and persons who are granted a state supported housing loan but subsequently lose their housing for specific reasons due to their faulty behaviour, are no longer entitled to municipal subsidised during 5 years. In this regard, the Committee asked twice (Conclusions 2011 and 2015) whether there were structures in place to avoid that during these five years these persons or families who were in precarious situation become homeless. In other words, it asked whether Lithuania helped these persons or families to find a new dwelling, like a social housing.

According to the report, several measures have been undertaken to remedy the situation of homelessness. In this connection, the new Law on housing benefits of October 2014 which entered into force on the 1st January 2015, provides, *inter alia*, financial assistance for individuals and families on low income to acquire or rent dwelling. The report adds that individuals and families who rent social housing but have been subsequently deprived of this right due to higher income may continue renting the same housing for market prices.

While taking note of this information, the Committee notes that these measures do not apply to individuals and families in need who are no longer entitled to municipal subsidised housing during five years because of their faulty behaviour. It understands that there is no measure or structure aiming to prevent these persons or families from becoming homeless during that period of time. It asks the next report to clarify this issue. It also asks whether it is envisaged to repeal this ban or to adopt measures which would prevent the persons or families concerned to become homeless. In the meantime, it considers that situation is not in conformity with the Charter on this point.

Forced eviction

The Committee points out that in order to comply with Article 31§2 of 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 adopt measures to re-house or financially assist the persons evicted in case of eviction justified by the public interest
- an obligation to fix a reasonable notice period before eviction;
- prohibition to carry out evictions at night or during winter;
- access to legal remedies;
- access to legal aid;
- compensation in the event of illegal eviction.

As regards the obligation to adopt measures to re-house or financially assist the persons evicted due to the public interest, the report indicates that there is no such an obligation under the Code of Civil Procedure; the persons threatened with eviction can, however, receive social assistance. The Committee asks the next report to provide further information on this social assistance, in particular its kind, whether it is, in practice, systematically offered and whether it leads to re-house the persons concerned. The Committee recalls that when evictions are justified by the general interest, the authorities must take steps to rehouse or financially assist the persons concerned (European Roma Right Centre (ERRC) v. Bulgaria, Complaint No. 31/2005, decision on the merits of 18 October 2006).

As to the obligation to consult the parties affected, the report contains no information on this matter. It merely indicates that the persons concerned shall be informed about eviction not later than 5 working days before (it was 5 days before the amendment of the Code of Civil Procedure in 2011). In case there is no alternative accommodation and there are children evicted, the State Institution of Child Rights Protection shall be informed not later than 30 days before eviction (previously it was 5 days). The Committee also note from the report that eviction shall be performed after a term of, at least 30 days following the court ruling and no later than 45 days (the period was 15 and 30 days, respectively). The Committee notes the efforts made by Lithuania but recalls however that a notice period is considered to be reasonable as from 2 months before eviction (European Federation of National Organisations Working with the Homeless [FEANTSA] v. France, Complaint No 39/2006, decision on the merits of 5 December 2007, §§ 86-87; International Movement ATD Fourth World v. France, Complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 78-79).

As regards the prohibition to carry out evictions at night or during winter, the report states that a bailiff shall perform execution actions on business days not earlier than from 6 a.m. and not later than until 10 p. m. However, it shall be allowed to enforce judgments during night time or on days off only in urgent cases when the failure to enforce the judgment immediately may make the enforcement thereof more difficult or completely impossible. The report points out that there is no prohibition to carry out evictions during winter. According to the Code of Civil Procedure, it is nevertheless allowed to request the eviction to be postpone or suspended if the person concerned is ill or due to other circumstances.

In respect of legal aid offered to those who are in need of seeking redress from the courts, the reports refers to paragraphs 1 and 2 of Article 11 of the Law on State-Guaranteed Legal Aid which list categories of people eligible for primary and secondary legal aid, respectively. The Committee notes that this Law which serves at transposing Directive 2002/8/EC, provides in principle for a solid basis for access to justice for those who cannot pay legal fees themselves.

As regards compensation for illegal evictions, the report indicates that such compensations exist without further explanation. The Committee asks the next report to provide further details on this issue, in the light of any relevant case-law. It also wishes to receive information on accessibility to legal remedies.

In the light of the above, the Committee considers that persons threatened with eviction are not provided with adequate legal protection.

Right to shelter

Since the report provides no information on this issue, the Committee reiterates its conclusion of non-conformity with the Charter on the ground that is not been established that the right to shelter is adequately guaranteed.

Conclusion

The Committee concludes that the situation in Lithuania is not in conformity with Article 31§2 of the Charter on the grounds that:

- measures in place to prevent persons having lost their right to municipal subsidised housing from becoming homeless are inadequate;
- the legal protection for persons threatened with eviction is not adequate;
- it has not been established that the right to shelter is adequately guaranteed.

January 2018

European Social Charter

European Committee of Social Rights

Conclusions 2017

MALTA

This text may be subject to editorial revision.

The following chapter concerns Malta, which ratified the Charter on 27 July 2005. The deadline for submitting the 10th report was 31 October 2016 and Malta submitted it on 10 November 2016.

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 "Health, social security and social protection":

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

Malta has accepted all provisions from the above-mentioned group, except Article 12§2 and Article 30.

The reference period was 1 January 2012 to 31 December 2015.

The conclusions relating to Malta concern 17 situations and are as follows:

– 8 conclusions of conformity: Articles 3§1, 3§2, 3§4, 11§1, 12§3, 13§2, 14§1 and 14§2,

– 5 conclusions of non-conformity: Articles 3§3, 12§1, 12§4, 13§1 and 23.

In respect of the 4 other situations related to Articles 11§2, 11§3, 13§3 and 13§4 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 Malta under the Charter. The Committee requests the authorities to remedy this situation by providing the information in the next report.

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

Article 3§1

The OHSA in collaboration with the EU-OHSA has developed a risk assessment tool (Online interactive Risk Assessment (OiRA)) which can be used for work in an office setting. The tool has been developed in the Maltese language and is based on Maltese occupational health and safety legislation.

Article 12§3

The report mentions certain positive measures taken in favour of pensioners (exemption from taxes when the pension rate is equal to the national minimum wage; lowering of the age requirement – from 80 years old to 78, and then to 75 – for the granting of a €300 yearly allowance for elderly who continue to live in their residence; award of full widow pensions even when the beneficiary is employed).

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In addition, the report contains also information requested by the Committee in Conclusions 2015 in respect of its conclusions of non-conformity due to a repeated lack of information:

- the right of children and young persons to protection – prohibition of night work (article 7§8),
- the right of the family to social, legal and economic protection (Article 16).

The Committee examined this information and adopted 1 conclusion of conformity relating to Article 16 and 1 conclusion of non-conformity relating to Article 7§8.

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The next report will deal with the following provisions of the thematic group "Labour Rights":

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 21),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 22),
- the right to dignity at work (Article 26),
- the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28),
- the right to information and consultation in collective redundancy procedures (Article 29).

The report should also contain information requested by the Committee in Conclusions 2016 in respect of its conclusions of non-conformity due to a repeated lack of information:

- the right to work – vocational guidance, training and rehabilitation (Article 1§4),
- the right to vocational training – vocational training and retraining of adult workers (Article 10§3),
- the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex (Article 20).

The deadline for submitting that report was 31 October 2017. The report was registered on 31 October 2017. Conclusions on the Articles concerned will be published in January 2019.

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Conclusions and reports are available at www.coe.int/socialcharter as well as in the HUDOC database.

CONCLUSIONS RELATING TO ARTICLES FROM THE THEMATIC GROUP

‘Health, social security and social protection”

Article 3 - Right to safe and healthy working conditions

Paragraph 1 - Health and safety and the working environment

The Committee takes note of the information contained in the report submitted by Malta, but highlights the significant gaps in information provided in relation to the specific requirements of Article 3§1 of the Charter.

General objective of the policy

In its previous conclusion (Conclusions 2015, in conformity with the decision adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on findings of non-conformity for repeated lack of information in Conclusions 2013), the Committee considered that the situation as regards a national occupational health and safety policy was in conformity with the Charter.

The report states that the Department of Industrial and Employment Relations amended some regulations, bringing them in line with occupational health and safety (OHS) legislation and removing unnecessary burdens on employers. These amendments concerning Organisation of Working Time Regulations, Young Persons (Employment) Regulations and Protection of Maternity Regulations, were published in 2012. The Occupational Health and Safety Authority (OHSA) also finalised amendments to simplify the frequency of fire drills organised in places of work (Legal Notice No. 44/2002, published in 2012) and simplified the workplace First Aid regulations.

The Committee points out that new technology, organisational constraints and psychological demands favour the development of psychosocial factors of risk, leading to work-related stress, aggression, violence and harassment. It would also point out that, with regard to Article 3§1 of the Charter, it takes account of stress, aggression, violence and harassment at work when examining whether policies are regularly evaluated or reviewed in the light of emerging risks. The States parties have a duty to carry out activities in terms of research, knowledge and communication relating to psychosocial risks (Statement of Interpretation on Article 3§1 of the Charter, Conclusions 2013). The report does not provide any information on this point. The Committee accordingly reiterates its request. However, it takes note from OHSA's Annual Report of Activities for 2015 that, in 2014 and in 2015, the theme chosen for the European Week for Safety and Health at Work organised by the European Agency for Safety and Health at Work (EU-OSHA) and its partners, was workplace stress. Activities held focused on raising awareness about the need to manage stress and psychosocial risks at work.

The report states that the European Strategy 2007-2012 was implemented through the publication of the 2007-2012 Strategic Plan for the Occupational Health and Safety Authority of Malta. This strategic plan outlines OHSA's vision for occupational health and safety in Malta as well as the national policy to be followed by all parties. It is based on fostering a prevention culture with the involvement of all stakeholders. It follows the pillars established in the EU Strategy 2007-2012, but has been modified to reflect national priorities (legislation and enforcement, seeking partnerships to change the prevailing culture and attitudes toward occupational health and safety, evaluation effectiveness of actions taken, etc.).

The Committee takes note from OHSA's Annual Report for 2015, that the OHSA launched the National Strategy 2014-2020 which replaced the National Strategy for OHS 2007-2012. The strategic Plan 2014-2020 includes provisions addressing the many stakeholders and duty holders who have a role in achieving adequate standards, including employers, workers and their representative bodies, the self-employed, professional bodies, and others. According to the OHSA's Strategic Plan for OHS 2014 – 2020, the key strategic objectives concern primarily: legislation, compliance and enforcement; capacity building; communicating the benefits of OHS; taking appropriate action against existing and emerging risks, and evaluating effectiveness of actions taken.

The Committee notes that there is a national policy which is intended to develop and preserve a culture of prevention on the occupational health and safety field.

Organisation of occupational risk prevention

In its previous conclusion (Conclusions 2015, in conformity with the decision adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on findings of non-conformity for repeated lack of information in Conclusions 2013), the Committee asked for more detailed information on the extent to which risk assessment is carried out at company-level, including in small and medium-sized enterprises, as well as examples of measures taken to gear the preventive effort to the nature of risks identified.

The report indicates that during workplace visits, the findings of the visits are always discussed with employer during the inspection, and relevant enforcement actions or observations made are sent to the employer for the necessary action in form of a written confirmation of any verbal orders issued during the visit. The report adds that even the various inspection campaigns organised by OHSA make reference to the findings by Officers (i.e. shortcomings observed), as well as areas where compliance by employers was noted.

According to the OHSA Report for 2015, employers and self-employed persons are required to carry out, or ensure that is carried out a suitable, sufficient and systematic assessment of all the occupational health and safety hazards which may be present at the workplace and the resultant risks involved concerning all aspects of the work activity (Regulation 10 of the General Provisions of the Health and Safety at Work Place Regulations). Small enterprises tend to give OHS activities low priority and to view the process of risk assessment as an administrative and financial burden.

The Committee takes note that, according to the same source, the OHSA in collaboration with the EU-OHSA has developed a risk assessment tool (Online interactive Risk Assessment (OiRA)) which can be used for work in an office setting. The tool has been developed in the Maltese language and is based on Maltese occupational health and safety legislation.

According to the OHSA Report for 2015, the OHSA organised training and awareness raising session for different beneficiaries (construction and road-building companies, manufacturing enterprises, hotel and catering establishments, ITC sector, primary health and mental care, probation officers, etc.) on Workers' Health and Safety, First Aid and Safety at Work, Introduction to OHS, Fundamentals of Ionising Radiation Protection, Workplace Health and Well-being, and Principles of Risk Assessment.

The Committee notes the existence, at enterprise level, of measures for the prevention of occupational risks suited to the nature of the risks, together with measures of information and training for workers. It also considers that labour inspectors share the knowledge of risks and risk prevention in light of their inspection experience and as part of preventive activities.

Improvement of occupational safety and health

In its previous conclusion (Conclusions 2013), the Committee noted the involvement of public authorities in the improvement of occupational health and safety through awareness rising activities, publications, and seminars. It asked for information on the training of qualified professionals, on the design of training modules, and in existing certification schemes. The report indicates that the OHSA delivers training and lecturing in various faculties of the University of Malta (course for Architecture, Medicine, Engineering, etc.; the curriculum is agreed beforehand with OHSA and members of OHSA delivered the lecturing to students) and in Government Departments through Government's training centre. In addition, OHSA's members participate in the delivery of lectures on the University's undergraduate Diploma course on OHS and act as student supervisors and examiners. The

OHSA also participates in awareness initiatives organised by Social Partners through different seminars, workshop or conferences.

The Committee takes note that, according to the OHSA Report for 2015, the OHSA has significantly increased its interventions through media channels and, in 2015, it has been involved in different radio and tv programmes where various areas pertaining to health and safety have been promoted and discussed on a weekly basis. The OHSA has issued a number of press releases and guidelines covering distinct areas and has sent a number of letters to various local newspapers. Moreover, according to the same report, the OHSA has been actively involved in European initiatives and campaigns which are organised by the National Focal point for the European Agency for Safety and Health at Work. The Committee notes, that in 2015, the Focal Point has been involved in a two-year campaign "Healthy Workplaces – Manage Stress" which was focusing on stress and well-being at the workplace.

In its previous conclusion (Conclusions 2013), the Committee also asked for detailed information on the involvement of the University of Malta and other institutions in scientific research, applied research and technical knowledge on occupational health and safety issues. The report clarifies that the *Turu Micallef Institute* is an awareness raising centre within the set-up of the General Workers Union (GWU) which is involved in raising awareness among GWU members. In such cases, the OHSA deals with parent organisation (GWU) and not with the individual Institute.

The Committee notes that there is a system aimed at improving occupational health and safety through research, development and training.

Consultation with employers' and workers' organisations

In its previous conclusion (Conclusions 2013, 2009 and XVIII-2 (2007)), the Committee reiterated its request for information on what is considered to be a sufficient number of workers under the obligation set out in Section 6§4 of Act XXVII/2000 to elect, choose or designate workers' health representatives in the private sector, and whether alternative means of workers' representation are envisaged for small undertakings which do not come under that obligation. It also asked for examples on how consultation on occupational health and safety issues is conducted in practice at company level.

The report states that by policy OHSA is requesting Safety Representatives to be appointed where ten or more workers are employed. Where fewer workers are employees, employers may choose not to appoint such representatives but may apt for direct communication and participation with the workers. Where a Workers' Health and Safety Representative has been appointed, an employer is duty bound to ensure their consultation on all matters of OHS. During visits by OHSA, OHS Officers request the presence of such Representatives, and where no Representatives have been appointed, enforcement action is taken ordering employers to rectify this matter.

The Committee notes that there is genuine co-operation between the authorities and the social partners, both at national and at company level.

Conclusion

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

Article 3 - Right to safe and healthy working conditions

Paragraph 2 - Safety and health regulations

The Committee takes note of the information contained in the report submitted by Malta, but highlights the significant gaps in information provided in relation to the specific requirements of Article 3§2 of the Charter.

Content of the regulations on health and safety at work

In its previous conclusion (Conclusions 2013), the Committee noted that, according to ILO database NORMLEX, the number of ILO Conventions ratified by Malta was particularly low in the important shipping, fishing and docking sectors, and asked for information on the Government's intent to improve the situation in this regard. The report does not contain any information on this point. The Committee reiterates its question. It underlines that, if the requested information is not provided in the next report, there will be nothing to establish that the situation is in conformity with Article 3§2 of the Charter on this point.

The report states that the Control of Major Accident Hazards Regulations were repealed during 2015 and a new set of regulations were published to include all amendments to the relevant EU Directive. The report adds that local OHS regulations fully transpose the EU Directives on the subject. The Committee requests the next report to provide further details about these regulations.

The Committee notes from the OHSA Reports a list of OHS legislation in force in Malta, which includes different regulations on work places, dock safety, building, requirements for work equipment, risks of back injury at work places, personal protective equipment, risks related to exposure to carcinogens or mutagens, asbestos, chemical and biological agents, and others.

The Committee points out that under the terms of Article 3§2 of the Charter, regulations concerning health and safety at work must cover work-related stress, aggression and violence specific to work, and especially for workers under atypical working relationships (Statement of Interpretation on Article 3§2 of the Charter, Conclusions 2013). The report does not provide any information on this point. The Committee accordingly reiterates its request. It considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Malta is in conformity with Article 3§2 of the Charter.

Levels of prevention and protection

The Committee examines the levels of occupational prevention and protection provided for by the legislation and the regulations in relation to certain risks.

Establishment, alteration and upkeep of workplaces

In its previous conclusion (Conclusions 2013), the Committee asked for information on the transposition of Directive 2009/104/EC of the European Parliament and of the Council of 16 September 2009 concerning the minimum safety and health requirements for the use of work equipment by workers at work. It also asked for details on the requirement for employers to assess the occupational risks of workstations and on any schedule for compliance. The report states that Directive 2009/104/EC refers to a consolidation of various amendments and its consolidated version was fully transposed into domestic law by Malta's Legal Notice 282 of 2004.

The Committee notes, according to the report, that Maltese legislations place the legal obligation to ensure occupational health and safety on employers, which action taken shall be based on a number of principles of prevention (as listed in Act CCVII of 2000): carrying out risk assessments; training, information and instruction of workers; supervision of workers; appointment of competent persons to advise that employer on OHS matters; taking

actions as required by law or good practice, and consultation, participation and involvement of workers.

The Committee points out that the report must provide full, up-to-date information on changes in the legislation and regulations during the reference period.

Protection against hazardous substances and agents

As regards regular revision of exposure limits, the Committee notes that, according to the information from the comments raised by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) published in 2016 (106nd ILC session) on the Benzene Convention 136 (1971), national legislation LN 227/2003 ensures that concentrations of benzene in premises of work do not exceed a prescribed maximum concentration over a specified period. The Committee asks the next report to provide information on whether the competent authority has issued directions on how to carry out measurements of the concentration of benzene within the workplace.

Protection of workers against asbestos

In its previous conclusion (Conclusions 2013), the Committee found that the level of prevention and protection against asbestos was in conformity with Article 3§2 of the Charter and asked for information on any measures adopted to incorporate the exposure limit of 0.1 fibres per cm^3 introduced by Directive 2009/148/EC of the European Parliament and of the Council of 30 November 2009 on the protection of workers from the risks related to exposure to asbestos at work.

The report states that Directive 2003/18/EC of the European Parliament and of the Council of 27 March 2003 amending Council Directive 83/477/EEC on the protection of workers from risks related to exposure to asbestos at work was transposed locally by LN 323 of 2006. The Committee notes that, according to the report, LN 323 of 2006 on Protection of Workers from the Risks related to Exposure to Asbestos at Work regulations fully transposes EU Directive on Asbestos protection of workers, including fibre thresholds and duties of employers (e.g. duty to draw plan of work, assessments, notifications, etc.). The Committee notes that, according to Article 8 of LN 323 of 2006, the currently valid concentration level for asbestos is 0.1 fibres/cm^3 (this limit applies to chrysolite and amphibole asbestos, specifically actinolite, amosite, anthophylliten crocidolite and tremolite).

Protection of workers against ionising radiation

The report states that EU Directives on the existence of an inventory of all contaminated building and materials and on levels of exposure to ionising radiation in the workplace in accordance with Council Directive 96/29/Euratom of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation were transposed locally by Legal Notice No. 44 of 2003.

The Committee notes that, according to information from OHSA website, some regulations were adopted and amended on the Radiation Protection during the reference period, namely Legal Notice 187 of 2013 on Nuclear Safety and Radiation Protection (Amendment) Regulations, LN 186 of 2013 on Management of Radioactive Waste Regulations (L.S.365.45.) and LN 353 of 2012 on medical Exposure (Ionising Radiation) Regulations.

The Committee takes note that, according to the OHSA Report for 2015, the OHS Authority is the lead entity in the inter-ministerial Radiation Protection Board (RPD), providing administrative support and coordination the activities of the constituent entities through the work of its Radiation protection Section. In 2015, senior international nuclear safety and radiation protection experts carried out an Integrated Regulatory Review Service (IRRS) mission for the International Atomic Energy Agency to review Mata's regulatory framework

for radiation safety. The IRRS team made recommendations and suggestions to the Maltese Government and the RPD to help strengthen the effectiveness of Malta's regulatory framework and functions in line with EU Directives and the IAEA Safety Standards. According to the OHSA 2015 report, the team found that Malta needs to have an independent regulatory body with sufficient competence and resources and needs to develop a national policy and strategy for safety that takes into account risks associated with radiation facilities and activities, and establish a dedicated nuclear and radiation safety Act. The Committee invites the authorities to comment on this information in the next report.

The Committee asks whether workers are protected up to a level at least equivalent to that set in the Recommendations by the International Commission on Radiological Protection (ICRP Publication No. 103, 2007).

The Committee concludes that prevention and protection levels for asbestos and ionising radiation are in conformity with Article 3§2 of the Charter.

Personal scope of the regulations

The Committee examines the personal scope of legislation and regulations with regard to workers in atypical employment.

Temporary workers

In its previous conclusion (Conclusions 2013), the Committee found that Section 18 of Regulation No. 36/2003 provides a framework whereby temporary workers, interim and workers on fixed-term contracts are covered, and whereby account is taken of the temporary nature of the employment. It asked for the next report to include examples on the way in which the temporary nature of the employment of these categories of workers is taken into account when rehired or assigned to new tasks. It also asked how the right to representation at work is implemented for these categories of workers.

The report indicates that the level of protection of workers established by OHS legislation fully applies to temporary workers (e.g. being covered by a risk assessment, provision of training, supervision, provision of personal protective equipment, etc.). The temporary workers are also entitled to access to safety representatives and shall be also consulted on OHS matters.

The Committee takes note of this information. Since the information in the report only partially answers its queries, the Committee reiterates all the specific requests.

Other types of workers

In response to the Committee's question, the report confirms that self-employed workers, home workers and domestic staff fall under the definition of "worker' in terms of Act No. XXVII/2000 and as such enjoy the protection of the law.

In its previous conclusion (Conclusions 2013), the Committee also asked for information on the occupational health and safety legislation and regulations applicable to persons employed on vessels registered in Malta, which excluded from the legal definition of worker (Section 2 of Act No. XXVII/2000). Since it cannot find an answer to its question in the report with regard to this point, the Committee requests the next report to contain this information. The Committee underlines that, if the requested information is not provided in the next report, there will be nothing to establish that the situation is in conformity with Article 3§2 of the Charter on this point.

Consultation with employers' and workers' organisations

In its previous conclusion (Conclusions 2013), the Committee found that the situation was in conformity with Article 3§2 of the Charter on this point. It refers to its examination under

Article 3§1 (Conclusions 2017) and considers that the situation is still in conformity on this point.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in Malta is in conformity with Article 3§2 of the Charter.

Article 3 - Right to safe and healthy working conditions

Paragraph 3 - Enforcement of safety and health regulations

The Committee takes note of the information contained in the report submitted by Malta, but highlights the significant gaps in information provided in relation to the specific requirements of Article 3§3 of the Charter.

Accidents at work and occupational diseases

The Committee recalls that States Parties have a duty to provide precise information on developments in respect of accidents at work and that, in assessing respect for the right enshrined in Article 3§3 of the Charter, the number and frequency of accidents at work and their trends are a decisive factor. It asks that the next report contain figures on accidents at work and fatal accidents at work, standardised incident rates per 100,000 workers, statistics by sector of activity; and figures on cases of occupational diseases.

The Committee notes, according to the OHSA reports, that, the number of accidents at work increased from 3,057 in 2012 to 3,195 in 2014. The incidence rate per 100,000 workers remained stable overall (1,796 in 2012 and 1,782 in 2014). The number of fatal accidents at work decreased from 6 in 2012 to 4 in 2014. The incidence rate of these accidents per 100,000 workers decreased from 4 in 2012 to 2 in 2014. The Committee also notes that, in 2013, OHSA received 541 notifications from employers concerning injuries which result in a worker being incapacitated for work for more than three consecutive days or which resulted in the injured workers being hospitalised for more than 24 hours beyond the period for observation, and 745 in 2015.

The Committee finds that, according to the Eurostat figures, the number of non-fatal accidents at work causing at least four calendar days of absence rose during the reference period from 2,529 in 2012 to 2,632 in 2014. The standardised rate of incidence of non-fatal accidents at work per 100,000 workers was 2,008.73 in 2012 and 1,863.74 in 2014. The Committee notes that this rate is significantly higher than the average rate in the EU-28 (1,717.15 in 2012 and 1,642.09 in 2014). The number of fatal accidents at work decreased from 7 in 2012 to 4 in 2014. The standardised incidence rate of fatal accidents at work per 100,000 workers decreased from 7.6 in 2012 to 4.63 in 2014. The Committee notes that the standardised rate of incidence of fatal accidents is significantly higher than the average rate in the EU-28 (2.42 in 2012 and 2.32 in 2014).

In its previous conclusion (Conclusions 2013), the Committee noted that incidence rates of accidents at work and fatal accidents had continued to decrease in overall terms and asked to indicate any measures taken to reduce the high number of accidents at work and to lower the particular exposure of foreign workers in that regard. In reply, the report lists the measures taken by the Occupational Health and Safety Authority (OHSA) to reduce occupational injuries, ill-health and fatalities. On the one hand, there are enforcement measures: visits at places of work by OHS Officers to ensure compliance with law; taking action according to management of risk observed, namely orders, cessation of work, legal action through Courts, issue of fines; prosecution of OHS cases on behalf of the Police; provision of advice or information to duty holders to better place them in a position to comply with the law. On the other hand, it concerns raising awareness among duty holders: participation in seminars, conference, radio and TV to try to get the message to the widest audience possible; publication and dissemination of OHS related leaflets; media interventions; participation by OHSA in various forums to ensure duty holders appreciate their obligations.

In its previous conclusion (Conclusions 2013), the Committee noted the excessively low number of recorded cases of occupational disease and asked for information on the results of the measures already taken, and on any further steps taken to counter inadequate reporting or recognition of cases of occupational disease in practice. In reply, the report lists activities carried out by OHSA (occupational physician, participation in EU Working Group on

Occupational Diseases, online occupational diseases report form, form to file a claim for a benefit, workplace inspection to investigate cases of work related diseases, etc.). However, the report does not provide any figures on cases of occupational diseases. The Committee therefore asks that the next report provide information on the concept of occupational diseases; the mechanism for recognising, reviewing and revising of occupational diseases (or the list of occupational diseases); the incidence rate and the number of recognised and reported occupational diseases during the reference period (broken down by sector of activity and year), including cases of fatal occupational diseases, and the measures taken and/or envisaged to counter insufficiency in the declaration and recognition of cases of occupational diseases; the most frequent occupational diseases during the reference period, as well as the preventive measures taken or envisaged.

The Committee, on the basis of either source of statistical data, notes that even though the total number of fatal accidents decreased during the reference period, the standardised incidence rates of fatal and non-fatal accidents remain too high in comparison to the EU-28 average. The Committee concludes that the situation is not in conformity with Article 3§3 in this respect.

Activities of the Labour Inspectorate

The Committee notes that under Article 3§3 of the Charter, States Parties must implement measures to focus labour inspection on small and medium-sized enterprises (Statement of Interpretation on Article 3§3, Conclusions 2013). Since it cannot find an answer to its question (Conclusions 2013) in the report with regard to this point, the Committee requests that the next report contain this information. The Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Malta is in conformity with Article 3§3 of the Charter.

The Committee notes that, according to the OHSA Reports, the number of workplaces inspected by the OHSA was 2,100 in 2012, 2,696 in 2013 and 2014 and 2,139 in 2015. The OHSA staff was 16 in 2012, 15 in 2013, 28 in 2014 and 31 in 2015. The Committee notes that even though the total number of staff increased during the reference period, the number of inspection visits decreased.

The Committee notes that, according to the OHSA Report for 2015, the construction sector is associated with the highest injury rate when compared with other industrial sectors and OHS officials carry out a number of inspection in this sector, either in a proactive manner, or as a result of a complain. All inspections are followed up by further inspections to ensure compliance with the law and with the Orders that may have been issued. In addition, OHS officials hold meeting with the stakeholders in order to outline the shortcomings noted and seek remedial measures to be taken.

In its previous conclusion (Conclusions 2013), the Committee asked for information on any other bodies vested with labour inspection authority besides the OHSA, in particular for the shipping, fishing and docking sectors, given that Section 2 of Act No. XXVII/2000 excludes persons employed on vessels registered in Malta from the legal definition of worker. The report does not provide any information. The Committee reiterates its question. It also notes that, according to the information from the comments raised by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) published in 2016 (106nd ILC session) on the Maritime Labour Convention (MLC, 2006), occupational accidents, injuries and diseases concerning seafarers are reported to the national Maritime Safety Investigation Unit.

In its previous conclusion (Conclusions 2013), the Committee also asked for information on any changes on the follow-up given to the draft regulation on fines for contraventions, and on data collection about the number of workers covered by inspection visits through the OHSA IT management system. The report indicates that the imposition of administrative fines by OHSA has been brought in force through the publication of Legal Notice 36 of 2012 on the

Occupational Health and Safety (Payment of Penalties) Regulations: in the case of an admission of guilt and payment of the fine, no judicial proceedings can be initiated by the Authority. The report does not provide any statistical data for reference period and adds that data about number of workers covered by inspections conducted by OHSA is not collected.

The Committee notes that, according to the OHSA Report for 2015, 187 letters of intimation were issued by OHSA with a total value of €129,505 being imposed, out of which €104,753 have been collected to date. Where payments are not effected, the regulations require judicial action. During 2015, three Court sittings were held, as opposed to just one from the previous year. Cases of persons who receive notice of payment and who opt to contest the fine are referred to the Courts.

In its previous conclusion (Conclusions 2013), the Committee asked for figures on complaints and non-fatal accidents at work investigated, and information on the average amount of fines imposed, given that Section 38§3 of Act No. XXVII/2000 provides for a range between 465.87 € and 11 646.87 €. The Committee notes that, according to the report, an average fine cannot be worked out because a number of guilty sentences handed down by the Law Courts do not involve the imposition of a fine but may include a reprimand, a suspended sentence or incarceration (suspended or otherwise), none of which involve a fine. The Act provides for a penalty, pecuniary or no pecuniary to be imposed for every contravention for which an accused is found guilty. The Committee requests that the next report provide data on the measures taken by OHSA inspectors (reports ordering remedial measures; fines for minor, serious and very serious breaches; suspension of activity, referral to prosecution service for criminal proceedings).

The Committee takes note of this information. However, this information is not sufficient to assess compliance with this part of Article 3§3 of the Charter. The Committee needs to know the proportion of workers covered by inspections compared with the total workforce. Given that this is the third consecutive report in which this information is missing, the Committee considers that it has not been established that the labour inspection system, is effective. It asks the next report to provide updated and detailed information on activities and resources of the labour inspectorate during the reference period (including number of inspections made), on measures against employers with insufficient knowledge of safety rules and inadequate training and employers who not ensured the respective training for employees.

Conclusion

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

- measures taken to reduce the number of accidents at work are insufficient;
- it has not been established that the labour inspection system is effective.

Article 3 - Right to safe and healthy working conditions

Paragraph 4 - Occupational health services

The Committee takes note of the information contained in the report submitted by Malta, but highlights the significant gaps in information provided in relation to the specific requirements of Article 3§4 of the Charter.

In its previous conclusion (Conclusions 2015, in conformity with the decision adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on findings of non-conformity for repeated lack of information in Conclusions 2013), the Committee found that the situation as regards national occupational health services was in conformity with the Charter and asked for more precise information on the proportion of enterprises that provide occupational health services either through own services, government services or family doctors and on whether the risk assessments employers are required to make in practice lead to the result that certain enterprises or branches do not provide services at all. If the latter is the case, the Committee asked what measures the Government is taking to ensure that occupational health services are progressively introduced for all workers across all sectors of the economy. It also asked for details on the nature of the services that are provided, whether they are limited to medical examinations or also include advice and counselling, adaptation of work and workplace, etc., and on whether workers' representatives are involved in risk assessment and in the organisation of occupational health services.

The report indicates that employers and workers have a vast range of medical expertise they can rely on as needed, including general medicine, specialised occupational physicians, family doctors, specialisation according to individual cases (ENT; radiology, pulmonary specialists, gastroenterologist, etc.). The report also explains that, in general, employers and workers have adequate access to such medical specialisations on Malta.

Since the report only partially answers its questions, the Committee reiterates all the specific questions concerning occupational health services (Conclusions 2015). The Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Malta is in conformity with Article 3§4 of the Charter.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in Malta is in conformity with Article 3§4 of the Charter.

Article 11 - Right to protection of health

Paragraph 1 - Removal of the causes of ill-health

The Committee takes note of the information contained in the report submitted by Malta. However, there are significant gaps in information provided in relation to the specific requirements of article 11§1 of the Charter.

Measures to ensure the highest possible standard of health

The Committee notes from WHO data that life expectancy at birth (average for women and men together) was 81.7 years in 2015 (compared to 80.46 years in 2009). The Committee notes from Eurostat that life expectancy at birth in the EU-28 was estimated at 80.6 years in 2015.

The Committee asks up-to-date information on the mortality rate (number of deaths per 1000 inhabitants), the main causes of premature death and on the measures taken to address these causes.

The Committee notes from Eurostat that the infant mortality rate was one of the highest in Europe 5.8 per 1 000 live births in 2015 (the EU 28 average was 3.6 per 1 000 in 2015).The Committee noted previously that the main causes of death were either conditions originating in the perinatal period or congenital malformations, deformations and chromosomal abnormalities (Conclusions 2013). It asks information on the measures that have been implemented to combat this phenomenon.

The Committee noted previously that there were fluctuations of the maternal mortality rate (for example 24.89 per 100 000 live births in 2010, falling again to 0 in 2011). It asked for an explanation for the fluctuations of the maternal mortality rate, and in particular whether it illustrates a sharp increase in the number of deaths in 2010 or rather reflects a statistical calculation related to the low number of births in Malta (Conclusions 2013). The report indicates that the fluctuations are more related to the latter reason. Since Malta gets around 4000 births per year, a single maternal death would result in a 25 deaths per 100,000 live births outcome. Thus, the maternal mortality rate varies by increments of around 25 because of the small denominator. The report outlines that no maternal deaths have occurred from 2011 until 2015.

Access to health care

The Committee refers to its previous conclusion for a general description of the Maltese health care system (Conclusions 2013).

With regard to measures to reduce waiting times, the Committee previously noted that Mater Dei Hospital had a Centralised Waiting List Management System (CWLMS) that included orthopaedics, ophthalmology, and cardiology elective data (Conclusions 2013). The report indicates that the Centralised Waiting List Management System (CWLMS) (renamed Central Theatre Management System (CTMS)) now includes data of all specialities. Furthermore, the report mentions that a concerted strategy aimed at reducing waiting lists for surgical interventions and medical imaging has been implemented in 2016 (outside the reference period). The strategy involved various forms of outsourcing, as well as initiatives to use theatre facilities during week-ends and evenings. These concerted actions have had the result that the collective waiting list has dropped from 22,465 cases in March 2016 to 14,218 cases in October 2016. This drop in pending cases has been achieved despite the fact that a drive is underway to ensure that all elective surgery cases are captured on the CTMS. The Committee asks for updated information in the next report on the implementation of this new strategy.

The Committee recalls that out-of-pocket payments should not be the main source of funding of the health system (Conclusions 2013, Georgia). It asks for information in the next report

on the out-of-pockets payments paid directly by patients (as a percentage of the total health spending).

The Committee notes from the Report Health Systems in Transition Malta 2017 of the European Observatory on Health Systems and Policies that obesity is a serious public health problem, with 25% of the adult population and 27% of children (aged 11–15 years) being obese, which is the highest rate in the EU. Diabetes and HIV also have a relatively high prevalence compared to other European countries. The Committee asks for information on the measures taken to address these issues.

In its previous examinations (Conclusions 2009 and 2013), the Committee asked information on the availability of rehabilitation facilities for drug addicts, and the range of facilities and treatments. As the report does not address this issue, the Committee requests that information be included in the next report.

The Committee asks that the next report contain information on the availability of mental health care and treatment services, including information on the prevention of mental disorders and recovery measures.

The Committee asks that the next report contain information on dental care services and treatments (such as who is entitled to free dental treatment, the costs for the main treatments and the proportion of out-of-pocket paid by the patients).

As regards the right to protection of health of transgender persons, the Committee previously received submissions from the International Lesbian and Gay Association (European Region) (ILGA) stating that "in Malta there is a requirement that transgender people undergo sterilisation as a condition of legal gender recognition". In this respect, the Committee asked whether in Malta legal gender recognition for transgender persons requires (in law or in practice) that they undergo sterilisation or any other invasive medical treatment which could impair their health or physical integrity (Conclusions 2013). The Committee takes note of the comments submitted by Transgender Europe and ILGA- Europe on the implementation of Article 11 of the Charter in the current cycle stating that Malta is one of the states that have amended their laws since 18 March 2015, and no longer require sterilisation.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Malta is in conformity with Article 11§1 of the Charter.

Article 11 - Right to protection of health

Paragraph 2 - Advisory and educational facilities

The Committee takes note of the information contained in the report submitted by Malta. However, there are significant gaps in information provided in relation to the specific requirements of article 11§2 of the Charter.

Education and awareness raising

The Committee noted previously that the Health Promotion and Disease Prevention Directorate creates and collates information aimed at the general public covering all aspects of health well-being and the prevention of illness. It asked for specific examples of health promotion campaigns (Conclusions 2013). The report does not provide the requested information. The Committee recalls that informing the public, particularly through awareness-raising campaigns, must be a public health priority. The precise extent of these activities may vary according to the nature of the public health problems in the countries concerned (Conclusions 2007, Albania). Measures should be introduced to prevent activities that are damaging to health, such as smoking, alcohol and drugs, and to develop a sense of individual responsibility, including such aspects as a healthy diet, sexuality and the environment (Conclusions XV-2, the Slovak Republic). Thus, the Committee reiterates its request for information on concrete activities, such as educational or awareness-raising campaigns/initiatives, undertaken by public health services, or other bodies, to promote health and prevent diseases. It outlines 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 on this point.

With regard to health education activities in schools, the Committee noted previously that a Health Education Committee was established in 2009 with the aim of identifying issues common to both the Ministries of Education and Health in promoting the health of schoolchildren. It asked to be kept informed of any initiatives undertaken in this context (Conclusions 2013). Since the report does not provide any information on this point, the Committee reiterates its request for updated information on health education in schools and which particular topics are covered (such as smoking, alcohol and drugs, healthy diet, sexuality, road safety or the environment).

Meanwhile, the Committee reserves its position on this point.

Counselling and screening

The Committee noted previously that beyond the age of 11 years, the Maltese School Health Service had introduced scoliosis screening for all 12-13 year olds in secondary schools and that universal vaccination against HPV for all girls born in 2000 and later on reaching their 12th birthday was planned to be implemented (Conclusions 2013). The Committee asked to be kept informed of any additional health checks which might be introduced for children over the age of 11, and more generally, whether there were projects to extend medical checks for the whole period of schooling.

The report confirms that the above mentioned additional health checks have now been implemented. It also mentions that the DT & polio vaccine that used to be administered at age 16 years has been shifted to age 14 years and provided within school in order to improve uptake. Furthermore, the colorectal cancer screening programme for persons aged 60 to 64 years which was launched in late 2012 and a national screening programme for cervical cancer have also been implemented.

The Committee asks for updated information in the next report on the screening programmes and activities, in particular for the diseases that constitute the principal causes of premature death.

Conclusion

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

Article 11 - Right to protection of health

Paragraph 3 - Prevention of diseases and accidents

The Committee takes note of the information contained in the report submitted by Malta. However, there are significant gaps in information provided in relation to the specific requirements of article 11§3 of the Charter.

Healthy environment

The report does not provide any information on this important aspect of Article 11§3.

The Committee asks that the next report provide updated information on the measures taken as well as on the levels and trends with regard to air quality, water contamination and food safety during the reference period.

The Committee took note previously that there were five air monitoring stations in operation, and an air quality plan was underway. In 2011, the Malta Environment and Planning Authority (MEPA) published a draft Noise Action Plan, which aimed at identifying measures to reduce noise burden resulting from major road traffic (Conclusions 2013). The Committee asked to be kept informed on the implementation of the above-mentioned plans. Since no information is provided in the current report, the Committee repeats its question.

In its previous conclusion, the Committee also noted that the increased availability and lower prices of imported goods had increased household consumption, with impact on environmental issues such as waste generation, energy use and transport (Conclusions 2013). The Committee repeats its request to be kept informed on environmental monitoring related to those activities which have the potential to cause serious pollution.

Tobacco, alcohol and drugs

The report indicates that new legislation has been enacted to ban smoking in playgrounds or open spaces with playground equipment. The European Health Interview Survey (EHIS) of 2014 showed that between 2008 (25.2%) and 2014 (24%) there were no marked differences in the total number of smokers including those who smoke daily and those who smoke occasionally. The percentage of daily smokers in Malta (20.1%) is at the EU average.

As regards alcohol consumption, the aforementioned survey showed that 25% of respondents never had an alcoholic drink in the previous 12 months, with 61% drinking alcohol at least once a month. Data from ESPAD 2015 (the European School Survey Project on Alcohol and Other Drugs) show that 54% of 15 and 16 year olds reported consumption of alcohol at least once in the past 30 days which is slightly lower than the proportion of adults consuming alcohol at least once in the same time period. The report states again that an emerging trend is the increase in the rates of binge drinking. The Committee repeats its request for comments on this latter phenomenon, and asks whether any measures are being taken as regards consumption of alcohol by young persons. The Committee takes note from the report that the legal drinking age was raised from 16 to 17.

The Committee asks for information in the next report on drug consumption in Malta.

Immunisation and epidemiological monitoring

The report does not provide any information on this point. The Committee asks for updated information and figures in the next report on the vaccination coverage rates as well as on the arrangements for reporting and notifying communicable diseases.

Accidents

The Committee took note previously that campaigns to increase awareness to prevent accidents and promote a lifestyle that avoids the risks for accidents are organised by various agencies and organisations. These include several Ministries (responsible for Health, Police,

Transport, Education), the Occupational Health and Safety Authority (OHSA), the Medicines Authority, and a number of NGOs. The Committee asked to be kept informed on the initiatives undertaken by the latter (Conclusions 2013). No information is provided in the report on this point.

The Committee reiterates its request to be kept informed on the measures taken as well as on the trend in the number of road accidents, domestic accidents and accidents during leisure time.

Conclusion

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

Article 12 - Right to social security

Paragraph 1 - Existence of a social security system

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

In the case of **family** and **maternity benefits**, the Committee refers to its conclusions on, respectively, articles 16 and 8§1 (Conclusions 2015).

Risks covered, financing of benefits and personal coverage

The Committee refers to its previous conclusions for a description of the Maltese social security system, based on the Social Security Act (Cap. 318) of 1987, as amended, and notes that it continues to cover all the traditional risks (medical care, sickness, unemployment, old age, work accidents/occupational diseases, family, maternity, invalidity and survivors). The social security system provides for a Contributory Scheme and a means-tested Non-Contributory Scheme. Both schemes are based on collective financing, as they are funded by contributions (employers, employees and the state) and also by the State budget.

The report indicates that, as regards health care, a universal system applies. Accordingly, all permanent residents are entitled to free health care. As regards other social security branches, the Committee notes from other sources, including MISSOC, that all employed and self-employed persons, as well as the unemployed, may be insured. In particular, all employees and self-occupied persons are covered by a compulsory social insurance scheme as regards sickness, invalidity, old age, survivors', work accidents and occupational diseases schemes. All employees are covered by a compulsory insurance scheme as regards unemployment risk. Voluntary affiliation is furthermore possible for single inactive persons as regards invalidity, old age, work accidents and occupational diseases. In the light of this information, the Committee considers that the system continues to cover a significant percentage of the active population, as required by the Charter. It reiterates nevertheless its request to provide, in the next report, information on the percentage of insured persons, out of the total active population, for each branch of income-replacement benefits (sickness, unemployment benefits, pensions, and work accidents or occupational diseases).

Adequacy of the benefits

According to Eurostat data, the median equivalised annual income was €13 493 in 2015, or €1124 per month. The poverty level, defined as 50% of the median equivalised income, was €6746.5 per annum, or €562 per month. 40% of the median equivalised income corresponded to €450 monthly.

In its previous conclusions (Conclusions 2013), the Committee found that the amounts of sickness benefits for a single person, of unemployment benefit as well as of special unemployment benefit for a single person were inadequate. It furthermore considered that the duration for which unemployment benefit was payable was too short.

The report explains, as regards **sickness** benefits, that the person is entitled to the payment of his/her full salary for the first 24 days of sick leave, and to half the salary for the next 24 days. After this initial period, for a remaining period of 70 weeks, cash benefits are paid by the state, depending on the number of days worked in a week (up to six) on the basis of a flat rate of €18.88 (single parent or married) or €12.86 (any other category) a day. The report points out that, where the benefit is insufficient, it is supplemented by means tested social assistance. The Committee recalls that where the minimum level of an income-replacement benefit falls below 40% of the median equivalised income, it is not considered that its aggregation with other benefits can bring the situation into conformity. As the level of sickness benefit for single persons (based on a monthly payment of 24 days) remains lower than 40% of the median equivalised income, the situation remains therefore not in conformity with the Charter.

As regards **old-age** pension, the Committee refers to its assessment under Article 23.

Unemployment benefits were, in 2015, €7.89 per day for single persons (i.e. €189 monthly) and €12.05 per day for married persons (i.e. €289 monthly), according to MISSOC. As these amounts fall largely below the threshold of 40% of the median equivalised income, the Committee does not consider that the aggregation with other benefits can bring the situation into conformity. Accordingly, the situation remains not in conformity with the Charter.

The Committee previously found (Conclusions XVIII-1 (2006), 2009 and 2013) that the maximum length of unemployment benefits, namely 156 working days, was too short. In this respect, the authorities pointed out (Governmental Committee Report concerning Conclusions 2013) that these benefits are paid on a six day per week basis, and therefore the maximum duration of 156 benefit days (156/6 = 26 weeks) is equal to six months. Furthermore, they clarify that once this period expires, the beneficiary may be entitled to special unemployment assistance (*Beneficcju specjali ghal dizimpjieg*), which is a non-contributory means tested benefit for persons registering for employment. The Committee asks the next report to clarify whether the special unemployment assistance is subject to any maximum length of payment. It reserves in the meantime its position on this issue.

As regards the Committee's request for information as to whether the legislation provides for a reasonable initial period during which the unemployed may refuse an unsuitable employment offer without losing his/her entitlement to unemployment benefits, the report indicates that a person regularly registered with the Public Employment Service (Jobs plus) for more than three months, cannot refuse a job offer even if it's different from his/her stated job preferences, provided that the pay offered corresponds at least to the minimum wage.

Invalidity benefits, according to data from the Maltese social security office, are granted in case of incapacity of a permanent nature (stemming from a serious disease, bodily injury or mental impairment) preventing the exercise of suitable full-time or regular part-time employment. The minimum (non-contributory) national pension in 2015 was €95.10 per week for a single person (i.e. €380 per month) and €100.57 per week for a married person (i.e. €402 per month). The contributory pension for a single person ranged from a minimum of €67.56 per week (€270 per month) to a maximum of €105.13 per week (€421 per month). As these amounts are lower than 40% of the median equivalised income, the Committee considers that they are inadequate.

Victims of **work accidents or occupational diseases** are entitled to the payment of their full salary up to one year. The Committee considers that the situation is in conformity in this respect.

Conclusion

The Committee concludes that the situation in Malta is not in conformity with Article 12§1 of the Charter on the grounds that:

- the minimum level of sickness benefits is inadequate;
- the minimum level of unemployment benefits is inadequate;
- the minimum level of invalidity benefits is inadequate.

Article 12 - Right to social security

Paragraph 3 - Development of the social security system

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

In the case of **family** and **maternity benefits**, the Committee refers to its conclusions on, respectively, articles 16 and 8§1.

As regards other branches of social security, the Committee takes note of the legislative developments during the reference period. In particular, the report mentions certain positive measures taken in favour of pensioners (exemption from taxes when the pension rate is equal to the national minimum wage; lowering of the age requirement – from 80 years old to 78, and then to 75 – for the granting of a €300 yearly allowance for elderly who continue to live in their residence; award of full widow pensions even when the beneficiary is employed).

According to the report, several social assistance allowances have also been increased during the reference period (supplementary allowance, children allowance, in-work benefit, gas price allowance, disability child allowance) and, as from 2014, beneficiaries of social and unemployment assistance who find a suitable employment can continue to perceive social assistance, although at a progressively reduced rate, over a period of three years. The Committee notes that these measures do not appear to be relevant to Article 12, as they concern social assistance, rather than social security. The Committee recalls in this respect that Article 12§3 requires States Parties to improve their social security system, for example by expanding schemes, protecting against new risks or increasing the level of benefits.The notion of a social security system implies that a significant proportion of the population is covered and in essence based on collective funding and that the social risks which are considered essential must be covered by the system.(Statement of Interpretation on Article 12, Conclusions 2002). The improvements should lead to a gradual raising of the social security system of the country in question above the level required by International Labour Convention No. 102 (Statement of Interpretation on Article 12§3, Conclusions III (1973)).

In light of the information available, the Committee considers that certain improvements have taken place and that there is no evidence of a reduction in benefits. It asks the next report to provide updated information on any measures taken to improve the social security system (such as the expansion of schemes, protection against new risks or increase in the level of benefits) and their impact on the number of people covered and/or level of income-replacement benefits (unemployment, sickness, old-age).

Conclusion

The Committee concludes that the situation in Malta is in conformity with Article 12§3 of the Charter.

Article 12 - Right to social security

Paragraph 4 - Social security of persons moving between States

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

Equality of treatment and retention of accrued benefits (Article 12§4)

Right to equal treatment

Equal treatment between nationals and nationals of other States Parties in respect of social security rights shall be ensured through the conclusion of bilateral or multilateral agreements or through unilateral measures.

The Committee recalls that, having regards to the EU legislation on the coordination of social security systems of the EU Member States, governed by Regulations (EC) No. 883/2004 and No. 987/2009, as amended by Regulation (EU) No. 1231/2010, the EU Member States are committed, in principle, to ensuring equal treatment between, on the one hand, their nationals and, on the other hand, nationals of other EU Member States or member of the EEA, stateless persons, refugees resident in the territory of a Member State who are or have been subject to the social security legislation of one or more Member States, their families and their survivors, as well as nationals of third countries, members of their families and their survivors, provided that they are legally resident in the territory of a Member State and are in a situation which is not confined in all respects within a single Member State.

The Committee recalls that, in any event, under the Charter, EU/EEA Member States are required to secure, to the nationals of other States Parties to the 1961 Charter and to the Charter not members of the EU or EEA, equal treatment with respect to social security rights provided they are lawfully resident in their territory (Conclusions XVIII-1 (2006)). In order to do so, they have either to conclude bilateral agreements with them or take unilateral measures.

As regards bilateral agreements concluded with the other States Parties not members of the EU or the EEA, the Committee asked in its previous conclusions (Conclusions 2009 and 2013) whether the eligibility of nationals of States Parties which are not EU Member States or member the EEA for social security benefits is subject to any length of residence or employment conditions. Since the report still does not provide the information requested, the Committee considers that has not been established that the situation is in conformity with Article 12§4 of the Charter in this respect.

As regards unilateral measures undertaken by Malta, the Committee wishes to know whether the new Legal Notice whereby equal treatment is ensured to all nationals of States Parties to the Charter has been published and is currently in force.

In respect of payment of family benefits, the Committee considered that the requirement for the child to reside in the territory of the paying State is in conformity with Article 12§4 (Statement of Interpretation on Article 12§4, XVIII-1 (2006)). However, since not all countries apply such a system, States Parties applying the ‘child residence requirement’ are under the obligation, in order to secure equal treatment within the meaning of Article 12§4, to enter, within a reasonable period of time, into bilateral or multilateral agreements with those States which apply a different entitlement principle (Conclusion 2006, Cyprus).

The Committee notes from MISSOC that Malta applies the rules whereby the payment of family benefits is conditional on the claimant’s children being resident in Malta**.**

The Committee also asked in its previous conclusions (Conclusions 2009 and 2013) whether agreements regulating, *inter alia*, access to family benefits to nationals of all States Parties of the Charter have been concluded with Albania, Armenia, the Russian Federation, Georgia, Serbia and Turkey, and if not whether they are planned, and within what timescale.

The report states that, during the reference period, Malta did not concluded any agreements with any of those countries and is not planning to do so.

The Committee recalls that States Parties can comply with their obligations not only through bilateral or multilateral agreements, but also through unilateral measures. It concludes that it has not been established that equal treatment with regard to access to family allowances is guaranteed to nationals of all other States Parties.

Right to retain accrued benefits

The Committee asked in its previous conclusions (Conclusions 2009 and 2013) whether the social security legislation provides for the retention of accrued benefits for all types of social benefits and whether these benefits are exportable for nationals of all States Parties. The report confirms that all benefits falling within the scope of the social insurance scheme are exportable irrespective of the nationality.

The Committee also asked how benefits are accrued according to type of benefit. The report provides no information on this point. The Committee recalls the "retention of benefits arising out of social security legislation, whatever movements the persons protected may undertake between the territories of the Contracting Parties" enshrined by Article 12§4 is a basic requirement of all international co-ordination in the social security field. The purpose is to avoid the loss of rights accrued under the social security legislation of one state simply because the beneficiary moves to another state. The Committee asks whether Malta can provide a concrete example or proof illustrating, for example, that the Maltese legislation guarantees in an effective way the retention of accrued benefits relating to employment, family, sickness, old-age, invalidity, survivor and occupational accident.

The Committee reiterates its last question and request the next report to provide concrete proofs of exportability of benefits to States Parties which are not member of the EU or the EEA irrespective of the nationality of the recipient.

The Committee considers that it has not been established that the retention of accrued benefits is guaranteed for nationals of all other States Parties.

Conclusion

The Committee concludes that the situation in Malta is not in conformity with Article 12§4 of the Charter on the grounds that:

- it has not been established that equal treatment with regard to social security is guaranteed to nationals of all other States Parties;
- it has not been established that equal treatment with regard to access to family allowances is guaranteed to nationals of all other States Parties;
- it has not been established that the right to maintenance of accruing rights is guaranteed to nationals of all other States Parties.

Article 13 - Right to social and medical assistance

Paragraph 1 - Adequate assistance for every person in need

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

Types of benefits and eligibility criteria

In its previous conclusion (Conclusions 2015) the Committee asked for details regarding the financial means-test applied to determine eligibility for social assistance and whether and to what extent assistance was withdrawn in case of a refusal employment offered.

According to the report, all non-contributory benefits are paid provided that a financial means test on the whole of the household is carried out and proves that the income of the household falls below a certain level. The means test is the basis on which entitlement to non-contributory benefits, pensions and assistance is established.

Persons who are made redundant and start registering for employment and who satisfy the contribution test are awarded unemployed benefits for a maximum duration of six months. In cases where the six month period is exhausted, the person undergoes a capital resources test and if claimant satisfies it, a non-contributory unemployment assistance is awarded. According to the report, in essence this assistance is equal to a social assistance, as regards both the applicable rates and also the applicable means testing mechanism.

As regards the notion of 'suitable work', according to the report, registration for work implies that registrants are actively seeking employment. During this time, Jobsplus does its utmost to assist registrants in finding suitable employment. If registrants refuse active measures such as job offers, training, and schemes, and do not actively seek employment or participate in training, this will show that they are no longer interested in seeking employment and consequently Jobsplus will remove their name from the unemployment register. Moreover, with regards to refusing employment, it is to be noted that if a person has been registering with Jobsplus for more than three months, then s/he cannot refuse a job offer that is different than client's stated job preferences and/or if the pay offered is at least the minimum wage. The Committee asks whether in case the person concerned refuses a job offer after three months he/she will lose his/her social assistance in its entirety.

The Committee further notes that with effect from January 2015 persons who are on social assistance or unemployment assistance who return to the work force are eligible to continue receiving a reduced rate of social/unemployment assistance.

Level of benefits

The Committee notes that the report does not provide any information regarding the level of social assistance benefits.

To assess the situation during the reference period, the Committee takes account of the following information:

- Basic benefit: according to MISSOC the monthly social assistance benefit in 2015 amounted to €438.28 for a single person.
- Additional benefits: the Committee notes that the report does not provide any information on other benefits paid to a single person without resources, who are in receipt of social assistance. It notes from MISSOC that recipients of social assistance *(Ghajnuna Socjali)* who pay rent for their place of residence are entitled to a rent allowance of €1.16 per week. A subsidy on telephone bill of €0.84 per week is also paid to persons over 60 years of age. The Committee also notes that an energy benefit *(Beneficcju ta' l-Energija)* to alleviate water and electricity bills is paid to the head of household who is in receipt of any social assistance. The Committee asks the next report what is the average amount of the energy benefit paid as an additional benefit, to a single person in receipt of social assistance.

The poverty threshold, defined as 50% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value was € 562 in 2015.

The Committee considers that the level of social assistance is not adequate on the basis that the total assistance that can be granted falls below the poverty threshold.

Right of appeal and legal aid

The Committee asks the next report to provide updated information as regards the right of appeal and legal aid.

Personal scope

The Committee recalls that, under Article 13§1, States are under the obligation to provide adequate medical and social assistance to all persons in need, both their own nationals as well as nationals of States Parties lawfully resident within their territory, on an equal footing. In addition, with reference to its Statement of Interpretation of Articles 13§1 and 13§4 (Conclusions 2013) regarding the scope of Articles 13§1 and 13§4 in terms of persons covered, the Committee considers that persons in an irregular situation in the territory of the State concerned are also covered under Article 13§1, rather than under Article 13§4, which was previously its practice.

The Committee henceforth examines whether the States who have accepted Article 13§1 ensure the right to:

- adequate social and medical assistance for their own nationals and for nationals of other States Parties lawfully resident within their territory on an equal footing;
- emergency social and medical assistance to persons unlawfully present in their territory.

Nationals of States Parties lawfully resident in the territory

In its previous conclusion (Conclusions 2013) the Committee asked whether a residence permit could be withdrawn, before its legal expiry, on the sole ground that the person concerned was in need. The report states in reply that the third country nationals who come to Malta by way of a working permit return to their country once it expires. Other third country nationals who come to Malta due to family ties and who may also have their work permit expired are under extenuating circumstances, mostly humanitarian, allowed to remain in Malta and social assistance is duly issued if it is warranted. According to the report, the length of residence on its own is not used as a means to refuse the award of social assistance.

The Committee notes that the report does not reply to its question whether residence permits can be withdrawn before their legal expiry on the basis that the person concerned is in need. Therefore, the Committee considers that the situation is not in conformity with the Charter as it has not been established that residence permits cannot be withdrawn on the sole ground that the person concerned is in need.

Foreign nationals unlawfully present in the territory

In its conclusion on Article 13§4 of the Charter (2013) the Committee found that it has not been established that all foreign nationals, whether legally present or in an irregular situation, are entitled to emergency medical and social assistance in Malta. In its conclusion 2015 the Committee reiterated its request for information on emergency medical and social assistance for other foreign nationals lawfully present, but not resident, in the territory as well as for foreigners present in the territory in an irregular manner and reiterated its previous finding of non-conformity.

The Committee notes that the report, again, only provides information about asylum seekers.

The Committee recalls that persons in an irregular situation must have a legally recognised right to the satisfaction of basic human material need (food, clothing, shelter) in situations of emergency to cope with an urgent and serious state of need. It likewise is for the States to ensure that this right is made effective also in practice (European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, §187).

The Committee cannot accept the necessity of halting the provision of such basic emergency assistance as shelter, guaranteed under Article 13 as a subjective right, to individuals in a highly precarious situation. The Committee has considered that even within the framework of the current migration policy, less onerous means, namely to provide for the necessary emergency assistance while maintaining the other restrictions with regard to the position of migrants in an irregular situation, remain available to the Government with regard to the emergency treatment provided to those individuals, who have overstayed their legal entitlement to remain in the country (Complaint No. 90/2013, Conference of European Churches (CEC) v. the Netherlands, decision on the merits of 1 July 2014, §123).

The Committee asks whether the legislation and practice comply with these standards. In the meantime, the Committee reserves its position on this issue.

Conclusion

The Committee concludes that the situation in Malta is not in conformity with Article 13§1 of the Charter on the grounds that:

- the level of social assistance paid to a single person without resources is not adequate;
- it has not been established that residence permits cannot be withdrawn before their legal expiry on the sole ground that the person concerned is in need.

Article 13 - Right to social and medical assistance

Paragraph 2 - Non-discrimination in the exercise of social and political rights

The Committee takes note of the information contained in the report submitted by Malta but highlights the significant gaps in information provided in relation to the specific requirements of Article 13§2.

The Committee asks the next report to provide updated information as regards prohibition of discrimination against persons receiving social or medical assistance in the exercise of their political or social rights.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Malta is in conformity with Article 13§2 of the Charter.

Article 13 - Right to social and medical assistance

Paragraph 3 - Prevention, abolition or alleviation of need

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

The Committee further recalls that Article 13§3 concerns free of charge services offering advice and personal assistance specifically addressed at persons without adequate resources or at risk of becoming so. The social services covered by Article 13§3 must play a preventive, supportive and treatment role. This means offering advice and assistance to make those concerned fully aware of their entitlement to social and medical assistance and how they can exercise those rights. In assessing national situations under this provision the Committee specifically examines whether there are mechanisms to ensure that those in need may receive help and personal advice services free of charge and whether such services and institutions are adequately distributed on a geographical basis.

In its conclusion 2013 the Committee noted that no information was available on the services covered by Article 13§3, i.e. specific services offering advice and personal assistance to persons without adequate resources or at risk of becoming so.

In its Conclusion 2015 the Committee concluded that the situation was in conformity with the Charter. The Committee understood that the various types of services mentioned in the report are in principle available free of charge to persons in receipt of social assistance/unemployment assistance and it asked that the next report confirm this understanding as well as provide up-dated information on services such as advice and personal help, including on the number of beneficiaries. The Committee emphasised that this information was necessary to fully assess the situation. The Committee considers that if this 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 defers its conclusion.

Article 13 - Right to social and medical assistance

Paragraph 4 - Specific emergency assistance for non-residents

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

The Committee refers to its conclusion under Article 13§1 (personal scope) and recalls that Article 13§4 from now on will cover emergency social and medical assistance for nationals of States Parties lawfully present (but not resident) in the territory.

The Committee recalls that States Parties are required to provide non-resident foreigners, without resources, with emergency social and medical assistance. Such assistance must cover accommodation, food, clothing and emergency medical assistance, to cope with an urgent and serious state of need (without interpreting too narrowly the 'urgency' and 'seriousness' criteria). No condition of length of presence can be set on the right to emergency assistance (Complaint No 86/2012, European Federation of national organisations working with the Homeless (FEANSA) v. the Netherlands, decision on the merits of 2 July 2014, §171).

The Committee further recalls that emergency social assistance should be supported by a right to appeal to an independent body. As regards provision of emergency shelter, there must be an effective appeal mechanism before an independent judicial body in order to determine the proper administration of shelter distribution. This right must also be effective in practice (Conference of European Churches (CEC) v. the Netherlands, Complaint No 90/2013, decision on the merits of 1 July 2014 §106).

The Committee refers to its conclusion under Article 13§1 where it reserved its position as regards emergency social assistance for unlawfully present foreign nationals. The Committee asks the next report to provide information regarding lawfully present foreign nationals and in the meantime, it reserves its position.

Conclusion

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

Article 14 - Right to benefit from social welfare services

Paragraph 1 - Promotion or provision of social services

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

Organisation of the social services

Although the report gives some informations on the current organisation of social services, the Committee, given the time that has passed since the first description (Conclusions 2009) of the organisation and functioning of social services in Malta, asks that the next report provides a full description updating the information as necessary.

The report underlines that Agenzija APPOGG, (which is part of the Foundation for Social Welfare Services, FSWS), does not only concern persons with insufficient income, but also works with families and children who need support services. These include: intake and support services, domestic violence services, child protection services, looked after children services, fostering services, adoption services, health support services, services for human trafficking victims , courts and supervised access visits services, youth support services and services within the community. It is to be also noted that Agenzija SAPPORT has now become independent from the Foundation for Social Welfare Services (FSWS) and that services for elderly persons and disabled people are provided by the Department for the Elderly and not by FSWS. In this respect the Committee asks to know what is the impact on social services and what are the results following these changes in the organisation of social services.

The report indicates that Agenzija SEQDA within the Foundation for Social Welfare Services provides services to persons facing substance misuse (alcohol and drugs) and compulsive gambling besides prevention services and parental skills courses.

Effective and equal access

In reply to a request of the Committee in its previous conclusions (2013), the report indicates also the full number of staff working in the different sectors of social services.

The report indicates that community social services have been developed, during the reference period, in different regions of Malta with specific projects to support families in need , like young lone mothers in Cottonera started in 2013. Moreover the report indicates that social services specific for youth have been developed, like the project Embark for Life, to support young people in finding employment which started in 2013, and the adolescent Day Programme, which started in 2015 aiming at helping young people with challenging behaviour or with drugs and alcool addiction to get integrated into the society. The report also indicates that in 2012-2013 there have been important developments in the Mental Health Service structure with the adoption of the Mental Health Act and the new set up and strategy of the Community Service and the Child Mental adolescent service. New health services have also been opened in indifferent regions between 2014-2016 including the sexual assault response team to help victims of sexual assault.

The Committee recalls that users of social services must have means of making complaints and referring urgent cases of discrimination and infringements of human dignity to an independent body. The Committee therefore asks which remedies are available for users in such cases.

Quality of services

The report indicates that the budget devoted to social services had increased during the reference period (2012-2015) in the two agencies Appogg (from 3.372.000 in 2012 to 5.000.000 euro in 2015) and Sapport (from 7.713.000 in 2012 to 10.550.000 in 2015).

The Committee recalls that under Article 14§1 the Committee reviews rules governing the eligibility conditions to benefit from the right to social welfare services (effective and equal access) and the quality and supervision of the social services ...(Conclusions 2005, Bulgaria). Persons applying for social welfare services should receive any necessary advice and counselling enabling them to benefit from the available services in accordance with their needs (Conclusions 2009, Statement of interpretation on Article 14§1). The Committee asks that the next report provides information on what kind of mechanisms exist for supervising the adequacy of services, public as well as private.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Malta is in conformity with Article 14§1 of the Charter.

Article 14 - Right to benefit from social welfare services

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

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

The Committee recalls that Article 14§2 requires States Parties to provide support for voluntary associations seeking to establish social welfare services (Conclusions 2005, Statement of interpretation).

In its previous conclusion (Conclusions 2013) the Committee asked to know how much funding is provided by the state (Voluntary Organisations Act 2007) and whether the fund offers training for voluntary organisations.

The report provides detailed information and states that the established Malta Council for the Voluntary Sector (MCVS) is financially supported by the Government with an annual allocation of 480.000 euro, devoted to support voluntary organisations small projects as well as training and capacity building of the sector. Moreover the Malta Council for the Voluntary Sector manages two main funding lines which are the 'Small Initiatives Support Scheme' (SIS)(an annual sum of 100.000 euro) and the 'Voluntary Organisations Projects Scheme' (VOPS).(an annual sum of 700.000 euro). These two funding lines aim to finance specific projects to stimulate cooperation and networking between voluntary organisations, to promote and encourage a culture of volunteering and the participation in volunteer activities among people, especially children and youths, as an aspect of personal and social development , to foster co-operation in the volunteer sector with local and international bodies, entities or other persons for the encouragement and promotion of the development of volunteering programmes, initiatives and activities mainly focusing on Poverty and social inclusion, education; arts, culture, sports and specific research in the field.

The report underlines that one of the priorities of the Malta Council for the Voluntary Sector is to encourage Voluntary Organisations to invest in training and capacity building, of their members, volunteers and administrators focusing on strengthening the capability of Voluntary Organisations as part of the process of building the potential of voluntary organisations to respond to the needs of the community they serve. For the past three years MCVS had set up an annual training program with an annual budget of 50.000 euro allocated. The report indicates that there are a number of other small national funds dedicated to support voluntary organisations projects in different fields. In this respect the Committee asks to know if there are specific projects developed in the field of social welfare services to encourage individuals to play a part in maintaining services , for example by taking action to strengthen the dialogue with civil society in areas of welfare policy which affect the social welfare services. This includes action to promote representation of specific user–groups in bodies where the public authorities are also represented, and action to promote consultation of users on questions concerning organisation of the various social services and the aid they provide (Conclusions 2005, Bulgaria).

The Committee in its previous conclusion (Conclusions 2013) asked to know whether and how the Government ensures that services managed by the private sector are effective and are accessible on an equal footing to all, without discrimination in particular on grounds of race, ethnic origin, religion, disability, age, sexual orientation and political opinion.

The report indicates that any persons who feel discriminated on the grounds of gender as well as race or ethnic origin in the access to and supply of goods and services can lodge a complaint to the National Commission for the Promotion of Equality. Ex officio investigations can also be initiated by the National Commissioner on any matters involving acts or omissions that are allegedly unlawful. To date there have been no complaints filed. In this respect, the Committee asks if , besides the discrimination on the grounds of gender, race and ethnicity, also other grounds of discrimination are considered by the National Commission for the Promotion of Equality in a case of discrimination in the access to and

supply of goods and services, and what kind of remedies are foreseen for the victims of discrimination.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Malta is in conformity with Article 14§2 of the Charter.

Article 23 - Right of the elderly to social protection

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

Legislative framework

The Committee points out that the main aim of Article 23 of the Charter is to enable elderly persons to remain full members of society and consequently invites the States Parties to make sure that they have appropriate legislation to, firstly, combat age discriminations outside employment and, secondly, provide for a procedure of assisted decision making.

With regard to age-based discriminations, the Committee has previously and repeatedly asked (Conclusions 2009 and 2013), whether there was legislation (or an equivalent legal framework) designed to protect the elderly against discrimination outside employment. It takes note of the information provided in the report but observes that Law No. X establishing the Commissioner for Older Persons (hereafter 'the Commissioner for Older Persons Act') entered into force outside the reference period. Consequently, the Committee considers that the situation was not in conformity with the Charter on this point during the reference period. It asks the next report to contain information on this new Law as well as its implementation in practice.

With regard to the assisted decision making for the elderly, the report again refers to the Commissioner for Older Persons Act. The Committee asks the next report to provide further information on this Act.

Adequate resources

When assessing adequacy of the resources of elderly persons under Article 23, the Committee takes into account all social protection measures guaranteed to elderly persons and aimed at maintaining an income level allowing them to lead a decent life and participate actively in public, social and cultural life. In particular, the Committee examines pensions, contributory or non-contributory, and other complementary cash benefits available to elderly persons. These resources will then compared with median equivalised income. However, the Committee recalls that its task is to assess not only the law, but also the compliance of practice with the obligations arising from the Charter. For this purpose, the Committee will also take into consideration relevant indicators relating to at-risk-of-poverty rates for persons aged 65 and over.

The Committee notes from MISSOC that the minimum pension amounted, in 2015, to €118.69 per week for a single person and to €138.03 for a married couple (corresponding respectively to approximately €475 and €552 per month).

Malta also grants a non-contributory pension to insured persons aged 60 and over who do not satisfy the contribution conditions. According to the report, in 2016 (out of the reference period) this non-contributory pension amounted to €106.70 per week. The weekly amount of the supplementary allowance (hereinafter, "SPA") in cash and energy benefit (hereinafter "EB") in the form of vouchers at the highest rate were, in the same year, €8.32 and €10.50, respectively.

The Committee notes from MISSOC that all pensioners are entitled to a State Bonus of €135.30 in June and December and an additional bonus of €3.12 per week. Pensioners are also entitled to a weekly cost of living between €9.12 and €0.39 depending on when they first received a pension as well as a one-time payment of €35 to compensate for the cost of living increase. Additional payments ranging from €100 to €200 per annum are furthermore granted/awarded to persons aged between 62 to 74 years who contributed in the Maltese scheme for at least one year but did not totalise the minimum eligibility requirements for a pension in their own right. Persons aged 75 years and over who live in their own home or with relatives receive instead a yearly payment of €300 known as Senior Citizen Grant. The report also states that, in addition to the above payments, Malta provides a number of

services to elderly persons with low income free of charge, in particular free healthcare services (including dental care), domestic help (someone to clean their house), provision of free medicine, two meals a day, and a number of food products.

The poverty threshold, defined as 50% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value, was estimated at €6 746.50 per annum (or €562 per month) in 2015. In the light of the above, the Committee considers that the minimum level of old-age benefit is adequate**.**

In its previous conclusions (Conclusions 2013), the Committee asked why the group of persons aged 65 and over receiving income below 40% of the median equivalised income did not qualify for the minimum guarantees, i.e. the SPA and EB . The Committee also asked for further information on the specific measures to be taken to redress the situation. According to the report, persons over the age of 65 who are not eligible for a contributory retirement pension but satisfy the means test for a non-contributory pension are eligible to all statutory bonuses and allowance available for the elderly persons as well as the SPA and EB at the highest rates. The Committee takes note of those information but notes that the report does not answer the other question, so that it reiterates its question.

Prevention of elder abuse

In its previous conclusion (Conclusion 2013), the Committee asked for more information on the policies and other strategies adopted by Malta in this field, as well as the results obtained. The report states first and foremost that the concept of elder abuse is tackled in depth in Malta's National Strategic Policy for Active Ageing (2014-2020), which aims at raising awareness of elder abuse and neglect through research, public education, and training, empowering elderly to report abuse, and ensuring a better legal protection. This policy led to various policy measures that co-ordinate training sessions for caregivers, professionals, and paraprofessionals working in relevant fields pertaining to the identification, prevention and treatment of elder abuse.

The report also states that the Parliamentary Secretariat for the Rights of Persons with Disability and Active Ageing is working, firstly, on new forms of measures to protect the elderly, their interests and their families, which will be incorporated into the Maltese Criminal Code, which so far had been defined in a very broad manner, and secondly on draft legislation which would ensure that persons convicted of crimes where older persons are victims are automatically liable for damages upon sentencing.

Services and facilities

In its previous conclusions (Conclusions 2009 and 2013), the Committee asked *inter alia* whether the supply of services to the elderly matched the demand. According to the report, the Department for Active Aging and Community Care consolidated existing services and developed new ones to meet this demand. In this respect, the report indicates that significant improvements have been made, in particular to the services "Home Aid", "Telecare +" and "HandyMan". A "Be Active" program has been set up in Gozo to enable elderly persons to engage in physical, social and wellness activities. The report also states that there is no waiting list for the aforementioned services.

The Committee also asked for more information on the arrangements for monitoring these services. The report states that standards major community based services are assessed on a regular basis by department professional or supervisory staff which carry out reviews and scheduled/surprise visits. According to the report, all service users are free to forward feedback, suggestions or complaints directly to the department or through more centralised systems. All complaints are thoroughly investigated and action is taken as appropriate. The Committee wishes to receive more information on the complaint procedures and remedies in the next report.

Housing

In its previous conclusions (Conclusions 2009 and 2013), the Committee first of all asked what type of housing elderly persons have access. According to the report, in Malta there are accessible private and public retirement homes, catering for elderly persons who can no longer remain at home for health reasons. The report also states that public retirement homes also provide medical services.

Secondly, the Committee asked to whether elderly persons were treated on an equal footing as regards access to social housing, and whether there were any compensation mechanisms for the elderly to meet the costs of private rental housing. It also asked whether the needs of elderly persons are taken into account in national or local housing policies. The report states that when it comes to allocating small apartments at ground floor level, the Housing Authority gives priority to elderly persons. It also gives them grants to have their houses adapted to their needs. The Housing Authority undertakes that any new apartments that are built in the near future will have small sized apartments accessible by lifts.

Thirdly, the Committee asked to what extent dwellings occupied by elderly persons complied with standards concerning safety, adequate living conditions and basic amenities. The report provides no information in this regard, so that the Committee reiterates its request.

Fourthly, the Committee asked whether supply met demand. The report confirms that supply meets the demand for social housing for the elderly without, however, providing detailed information or national statistical data in support of this claim. The Committee, therefore, considers that it is not possible, in the light of the information provided in the report, to determine whether the supply of housing meets the demand. Consequently, it reiterates its request and points out 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 on this point.

Health care

The Committee asked in its previous conclusion (Conclusions 2013) whether there were any guidelines on health care for elderly persons. The Committee notes that the National Minimum Standards for Care Homes for Older People are based upon the principles of person-centred care, dignity, privacy, physical and mental wellbeing, self-fulfillment, autonomy, equality, and the right to complain and legal recourse.

According to the report, Malta improved care services, including nursing home care and transformed "Day Centers" into "Life Long Learning Hubs". Continuous nursing care (24 hours a day) has been introduced in the government homes or in residents where long term beds are procured. Respite and night shelters were strengthened in Malta and created in Gozo. The report also states that a dementia intervention team (or senility) and a specialized day-center for the treatment of this disease (Gozo) have been set up.

The report further states that Malta is endeavouring to ensure that all primary care, healthcare services and access to medicine are easily available to elderly persons in the community, especially those who are more vulnerable. To do so, Malta encourages and develops both formal and informal local care and limits the length of time that elderly persons are kept in hospital. Malta is also endeavouring to improve the way in which chronic illnesses are treated and the range of services for cancer patients by facilitating early diagnosis and early access to treatments.

Institutional care

In its previous conclusion (Conclusions 2013), the Committee asked for more information on the content of the national standards for retirement homes. The report states that the Parliamentary Secretariat for the Rights of Persons with Disability and Active Aging adopted National Minimum Standards for Care Homes in September 2015. The standards ensure, among other things, that retirement and care homes promote a “culture” of active aging while

providing care for the elderly. All the standards set out minimum requirements for the establishment of a care home and the knowledge, skills and competencies needed by management and staff. To guarantee their implementation, it is proposed that they be supported by a legislative instrument. An independent authority responsible for the implementation of the said standards and the licensing of care homes for older persons is to be established. The Committee wishes to be informed of the progress made in this field. It asks that further information be provided on this new supervisory authority in the next report. The report points out that these standards are monitored by a departmental quality care team. This team carries out regular audits in care homes. The Committee asks the next report to provide further information on the impact of the implementation of such controls on Com-Care and Home Help.

The report also states that a multidisciplinary assessment process has been established to streamline admissions into long term care facilities. All applications are acknowledged within three working days and assessment is performed within two months. Priority is given to high dependency and urgent cases, with urgency being determined by clinical and social factors. Additionally, a series of measures aimed at increasing efficiency in bed utilisation have been implemented. A cap on the number of refusals has been set up. The Committee wishes to know more about the cap on the number of refusals.

The Committee notes that the report provide no information concerning the privacy of elderly persons in residential facilities. It asks the next report to clarify how the rights of elderly are safeguarded in residential facilities – in particular, the right to appropriate care and services, the right to privacy, the right to personal dignity, the right to maintain personal contacts and the right to participate in decisions concerning living conditions in their institution. It also asked what are the requirements regarding the staff qualifications, training and wage levels and, what are the guidelines on the social and cultural amenities to be provided in institutions.

Conclusion

The Committee concludes that the situation in Malta is not in conformity with Article 23 of the Charter on the ground that there was no adequate legal framework prohibiting discrimination on grounds of age during the reference period.

CONCLUSIONS RELATING TO CONCLUSIONS OF NON-CONFORMITY DUE TO A REPEATED LACK OF INFORMATION IN CONCLUSIONS 2015

Article 7 - Right of children and young persons to protection

Paragraph 8 - Prohibition of night work

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the information submitted by Malta in response to the conclusion that it had not been established that the exceptions to the prohibition of night work in some economic sectors are necessary for the proper functioning of these sectors and that the number of young workers concerned is not high.

The Committee notes that the report submitted by contains no new information in response to these conclusions of non-conformity. In the absence of the requested information, the Committee reiterates its findings of non-conformity.

Conclusion

The Committee concludes that the situation in Malta is not in conformity with Article 7§8 of the Charter on the grounds that it has not been established that the exceptions to the prohibition of night work in some economic sectors are necessary for the proper functioning of these sectors and that the number of young workers concerned is not high.

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

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31st October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the information submitted by Malta in response to the conclusion that it had not been established that associations representing families were consulted when family policies are drawn up.

The Committee recalls that to ensure that families' views are catered for when family policies are framed, the authorities must consult associations representing families.

According to the report, Malta endeavors to promote public consultation, involving the general public, including NGOs, whenever policies are being framed or laws are being amended, several times at different stage of the policies development, within a reasonable period of time, by, *inter alia*, organising public meetings in relevant localities, distributing questionnaire and/or disseminating surveys, seminar involving NGOs working in the social field, establishing communicating tools, *i.e.* facebook pages, webstes, e-mail addresses, telephone lines, etc. in parallel of interministerial committee work. The report indicates that such consultations were carried out prior to the adoption of the Policy Strategy against Poverty and Social Exclusion in 2013 and, more recenlty for the proposal of the National Children Policy in September 2016.

The Committee observes that families and NGOs are effectively consulted when family policies are drawn up.

Conclusion

The Committee concludes that the situation in Malta is in conformity with Article 16 of the Charter.

January 2018

European Social Charter

European Committee of Social Rights

Conclusions 2017

REPUBLIC OF MOLDOVA

This text may be subject to editorial revision.

The following chapter concerns the Republic of Moldova, which ratified the Charter on 8 November 2001. The deadline for submitting the 13th report was 31 October 2016 and the Republic of Moldova submitted it on 29 March 2017. On 1 August 2017, a request for additional information regarding Articles 11§1, 12§2, 12§3, 13§2 and 13§3 was sent to the Government which did not submit a reply.

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 "Health, social security and social protection":

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

The Republic of Moldova has accepted all provisions from the above-mentioned group except Article 3§4, Article 13§4, Article 23 and Article 30.

The reference period was 1 January 2012 to 31 December 2015.

The conclusions relating to the Republic of Moldova concern 13 situations and are as follows:

– 10 conclusions of non-conformity: Articles 3§2, 3§3, 11§1, 11§2, 11§3, 12§1, 12§2, 12§3, 12§4 and 13§1.

In respect of the 3 other situations related to Articles 3§1, 13§2 and 13§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 Republic of Moldova under the Charter. The Committee requests the authorities to remedy this situation by providing the information in the next report.

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

Article 12§4

During the reference period, the Republic of Moldova concluded social security agreements with Belgium, Poland, Hungary and Lithuania.

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In addition, the report contains also information requested by the Committee in Conclusions 2015 in respect of its conclusions of non-conformity due to a repeated lack of information:

- the right of children and young persons to protection – prohibition of employment of children subject to compulsory education (Article 7§3),
- the right of employed women to protection of maternity – maternity leave (Article 8§1),
- the right of the family to social, legal and economic protection (Article 16).

The Committee examined this information and adopted 1 conclusion of conformity relating to Article 8§1 and 2 conclusions of non-conformity relating to Articles 7§3 and 16.

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The next report will deal with the following provisions of the thematic group "Labour Rights":

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),

- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 21),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 22),
- the right to dignity at work (Article 26).
- the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28)
- the right to information and consultation in collective redundancy procedures (Article 29).

The report should also contain information requested by the Committee in Conclusions 2016 in respect of its conclusions of non-conformity due to a repeated lack of information:

- the right to work – vocational guidance, training and rehabilitation (Article 1§4),
- the right to vocational guidance (Article 9),
- the right of persons with disabilities to independence, social integration and participation in the life of the community – employment of persons with disabilities (Article 15§2).

The deadline for submitting that report was 31 October 2017.

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Conclusions and reports are available at www.coe.int/socialcharter as well as in the HUDOC database.

CONCLUSIONS RELATING TO ARTICLES FROM THE THEMATIC GROUP

‘Health, social security and social protection”

Article 3 - Right to safe and healthy working conditions

Paragraph 1 - Health and safety and the working environment

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

General objective of the policy

The Committee previously noted (Conclusions 2013) that Act No. 186-XVI of 2008 and the implementing regulations established an occupational health and safety system designed to foster and preserve a culture of prevention in this area, but that the act had not reached the stage of implementation and had not been fully incorporated into the existing legislation and regulations. The same applied to the National Programme.

In its previous conclusion (Conclusions 2013), the Committee requested information on the authorities in charge of implementing Act No. 186-XVI and the National Programme; details of implementing and harmonising measures relating to Act No. 186-XVI; and examples of the implementation of Act No. 186-XVI and the National Programme in practice. It also asked whether Act No. 186-XVI and the National Programme fully covered the national territory. In addition, it asked whether the new occupational safety and health unit in the Ministry of Labour, Social Protection and the Family, which was responsible for developing, promoting and regularly examining national policy in this area, re-assessed existing policies in the light of changing risks. As the report does not include any information concerning the National Programme, the Committee concludes that the programme was not adopted during the reference period.

The report indicates that the government's occupational health and safety policy is drawn up and reviewed in consultation with employers and trade unions, taking account of the changes in relevant international regulations and of technical progress.

The Ministry of Labour, Social Protection and the Family co-ordinates occupational health and safety, drafts relevant legislation and, after consulting the social partners, submits it to the government for approval; monitors the implementation of occupational health and safety legislation; arranges drafting of framework occupational health and safety instructions for certain occupations and for certain complex activities; issues opinions on draft framework occupational health and safety instructions; publishes annual reports on the measures taken to implement the government's policy on occupational health and safety and on employment injuries and occupational diseases; liaises with the information network on occupational health and safety; and represents the government in international relations in this area.

According to the report, the National Labour Inspectorate is responsible for implementing Act No. 186-XVI of 10 July 2008 on occupational safety and health, in accordance with Act No. 140-XV of 10 May 2001 on the National Labour Inspectorate. Under Article 3 of Act No. 186-XVI, the provisions of the act apply in all areas of activity, both public and private. Nevertheless, the report indicates that the act is not applicable when certain characteristics inherent in certain activities specific to the armed forces, the police and the civil defence forces conflict with its provisions. In such cases, workers' health and safety are safeguarded while taking the maximum account possible of the provisions of the act. The Committee again requests details of implementing and harmonising measures relating to Act No. 186-XVI and examples of its implementation in practice.

The Committee points out that new technology, organisational constraints and psychological demands favour the development of psychosocial factors of risk, leading to work-related stress, aggression, violence and harassment. It would also point out that, with regard to Article 3§1 of the Charter, it takes account of stress, aggression, violence and harassment at work when examining whether policies are regularly evaluated or reviewed in the light of emerging risks. The States parties have a duty to carry out activities in terms of research, knowledge and communication relating to psychosocial risks (Statement of Interpretation on

Article 3§1 of the Charter, Conclusions 2013). The report does not provide any information on this point. The Committee accordingly reiterates its request.

Organisation of occupational risk prevention

In its previous conclusion (Conclusions 2013), the Committee noted the organisation of occupational risk prevention at public authority and undertaking levels and asked for examples of the practical application of risk-assessment measures, preventive measures geared to the nature of risks and training and information measures for agricultural sector workers. It asked for details on how many committees on occupational health and safety had been set up in practice, how often external protection and prevention services were used and the conditions in which employers themselves performed the tasks of the protection and prevention services. It also reiterated its request concerning the number of employers who drew up annual safety plans in practice.

The report lists public awareness-raising activities conducted during the reference period by the National Labour Inspectorate concerning occupational health and safety and the outcomes achieved. The Labour Inspectorate also informs the mass media about the provisions of the relevant legislation as well as compliance and the implementation arrangements.

Apart from the legislation and measures described in the previous conclusions (Conclusions 2013), the Committee notes from the report that, under Act No. 186-XVI, employers are responsible for ensuring workers' occupational health and safety and organising protection and prevention activities. According to the report, the number of protection and prevention modules or activities conducted by employers, designated persons, internal bodies and outside bodies increased during the reference period. In addition, 287 occupational health and safety committees were set up in 2012, 357 in 2013 and 280 in 2015. The number of units where occupational risks were assessed or annual protection and prevention plans were drawn up also increased significantly, from 556 in 2012 to 738 in 2013 and 1 285 in 2015.

The Committee considers that measures for occupational risk prevention, awareness-raising and assessment of work-related risks and information and training for workers are provided.

Improvement of occupational safety and health

In its previous conclusion (Conclusions 2013), the Committee found that the situation in the Republic of Moldova was not in conformity with Article 3§1 of the Charter on the ground that the public authorities' involvement in research relating to occupational health and safety as well as in the training of qualified professionals was inefficient. It asked for details about the involvement of the public authorities in the analysis of sector-specific risks; the development of recommendations; and the design of training modules and certification systems.

The report states that occupational health and safety training was provided for specialists and workplace managers (5 000 persons a year during the reference period).

Consultation with employers' and workers' organisations

In its previous conclusion (Conclusions 2013), the Committee noted that there was a system for consulting employers' and workers' organisations at the level of the public authorities, specifically with regard to defining, implementing and reviewing occupational health and safety policy. It asked for details of the arrangements for consultation when occupational health and safety committees did not exist. As the report does not provide the information requested, the Committee repeats its request.

The report states that, for the purpose of consulting employers' and workers' organisations, the National Labour Inspectorate provides information to the National Confederation of Employers and the National Confederation of Trade Unions concerning occupational health

and safety in units covered by inspection visits. In the context of the inspections conducted by the inspectorate, trade union representatives from the unit concerned and branch trade union representatives also take part in certain cases (enquiries concerning work accidents, consideration of petitions and referrals).

In the light of this information, the Committee notes the existence of effective social dialogue in the formulation, implementation and periodic review of policy.

Conclusion

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

Article 3 - Right to safe and healthy working conditions

Paragraph 2 - Safety and health regulations

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

Content of the regulations on safety and health at work

In its previous conclusion (Conclusions 2013), the Committee noted that, during the reference period, Act No. 186-XVI had not been fully incorporated into national law and the Government's draft decisions aimed at specifically regulating exposure to certain occupational risks and incorporating relevant Community acquis were not in force. It also noted that only few relevant ILO conventions had been ratified. It asked for information on the adoption of the texts being drawn up and their implementation in practice.

In response, the report provides a list of relevant Government decisions adopted during the reference period: Government Decision No. 80 of 9 February 2012 establishing minimum occupational health and safety standards for temporary or mobile construction sites; Government Decision No. 244 of 8 April 2013 approving minimum standards for the protection of workers from the risks related to exposure to asbestos at work; Government Decision No. 324 of 30 May 2013 approving the health regulations on minimum health and safety standards for the protection of workers against risks related to the presence of chemical agents at work; Government Decision No. 918 of 18 November 2013 on minimum standards for health and safety signs at work; and Government Decision No. 362 of 27 May 2014 approving minimum standards for the protection of workers against health and safety risks caused or potentially caused by noise, in particular risks to their hearing.

The Committee points out that under the terms of Article 3§2 of the Charter, regulations concerning health and safety at work must cover work-related stress, aggression and violence specific to work, and especially for workers under atypical working relationships (Statement of Interpretation on Article 3§2 of the Charter, Conclusions 2013). The report does not provide any information on this point. The Committee accordingly reiterates its request. It considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Moldova is in conformity with Article 3§2 of the Charter.

Levels of prevention and protection

The Committee examines the levels of occupational prevention and protection provided for by the legislation and the regulations in relation to certain risks.

Establishment, alteration and upkeep of workplaces

In its previous conclusion (Conclusions 2013), the Committee noted that some workplaces and some situations were excluded from the scope of Government Decision No. 353 and requested that the next report specify these workplaces and situations and include details of the regulations on prevention and protection that applied to them. It also asked for information regarding the incorporation of recent Community acquis on transportable pressure equipment and machines, as well as employers' obligation to assess occupational risks in the workplace. In addition, in order to determine whether the level set by international reference standards had been reached, it asked for details about the implementation of the above Government decisions in practice.

Given that the report does not provide any information in this connection, the Committee is not in a position to examine whether the legislation and regulations in force meet the obligation under Article 3§2 of the Charter, which requires that levels of prevention and protection required by the legislation and regulations in relation to the establishment,

alteration and upkeep of workplaces be in line with the levels set by international reference standards.

Protection against hazardous substances and agents

The Committee wishes the next report to provide details on the specific provisions relating to protection against risks of exposure to benzene.

Protection of workers against asbestos

In its previous conclusion (Conclusions 2013), the Committee considered that the level of protection against asbestos was not in line with the benchmark international standards. It also noted that although there was no proper inventory of buildings and materials contaminated by asbestos, the study by the working group drawing up a programme of action to restrict or prohibit the use of building materials containing asbestos showed that the population and workers were exposed to asbestos in excessive proportions in practice. It asked whether measures were planned to incorporate the exposure limit value of 0.1 fibres/cm^3 introduced by Directive 2009/148/EC.

In reply, the report indicates that Government Decision No. 244 approving minimum standards for the protection of workers from the risks related to exposure to asbestos at work was adopted on 8 April 2013. The Committee refers to its previous conclusion (Conclusions 2013) for a description of the draft decision (Conclusions 2013). The Committee notes from NATLEX that the minimum standards include an appendix with practical recommendations for medical supervision of workers exposed to dust from asbestos or from materials containing it. They also provide for the Ministry of Health to draw up by 31 December 2013 practical guidelines for defining occasional low-intensity exposure to asbestos.

The Committee concludes that the legislation and regulations in force offer a level of prevention and protection which is at least equivalent to that provided for by the international reference standards. It asks whether the authorities have considered drawing up an inventory of all contaminated buildings and materials. Bearing in mind the importance of this question in the light of the right to protection of health (Article 11), the Committee asks for the next report to provide specific information on steps taken to this effect.

Protection of workers against ionising radiation

In its previous conclusion (Conclusions 2013), the Committee considered that, during the reference period, the level of protection against ionising radiation was not in line with the benchmark international standards. It asked for information about the implementation of the texts adopted during the reference period.

The Committee refers to its previous conclusion (Conclusions 2013) concerning the basic radiation protection standards (NFRP-2000) adopted on 27 February 2012 by the Ministry of Health. These standards lay down exposure limit values, accident prevention measures and monitoring procedures. The Committee notes from NATLEX that the standards are applicable to all types of activities in the case of exposure to ionising radiation, in particular at work, and include provisions on exposure conditions (working conditions, alternative employment, young workers' working conditions, classification of work zones and individual protection measures).

The Committee asks whether workers are protected up to a level at least equivalent to that set in the Recommendations by the International Commission on Radiological Protection (ICRP Publication No. 103, 2007).

Personal scope of the regulations

The Committee examines the personal scope of legislation and regulations with regard to workers in atypical employment.

Temporary workers

In its previous conclusion (Conclusions 2013), the Committee noted that non-permanent and temporary workers were covered by the legislation governing occupational safety and health and asked whether this also applied to agency workers. It also asked how this obligation was implemented in the legislation and in any implementing regulations. In particular, it asked for details about access by non-permanent, temporary and agency workers, in accordance with their contractual status, to information and training regarding occupational safety and health, as well as to medical surveillance and representation at work.

In reply, the report states that under Section 3 of Act No. 186-XVI on occupational health and safety, the provisions of the act apply in all areas of activity, both public and private, to employers; workers; workers' representatives; jobseekers performing tasks for a company with the employer's authorisation pending verification of their professional skills; persons undertaking unpaid work for the community or voluntary work; persons without individual written employment contracts but for whom proof can be provided by other means that they have provided certain services and should have been covered by contractual clauses; unemployed persons during vocational training, etc. The Committee also notes that under Section 1 of the act, workers are any persons employed by employers in accordance with the law, including trainees and apprentices. The Committee therefore notes that agency workers are not explicitly excluded from the definition of workers and are accordingly protected by the legislative framework applicable to occupational health and safety.

Other types of workers

The Committee previously concluded that self-employed workers were not adequately protected under Article 3§2 of the Charter. In view of the lack of information in the report, it reiterates its conclusion of non-conformity on the grounds that self-employed workers are not adequately protected.

In its previous conclusions, the Committee asked for information about the level of protection applicable to domestic workers (Conclusions 2013 and 2009) and about the arrangements for protecting the safety and health of home workers (Conclusions 2013).

The Committee notes that domestic workers are not explicitly excluded from the definition of workers under Section 1 of Act No. 186-XVI and are therefore covered by the legislation on occupational health and safety. The Committee nevertheless requests that the next report confirm this.

Consultation with employers' and workers' organisations

In its previous conclusion (Conclusions 2013), the Committee noted that there was a system for consulting employers' and workers' organisations, specifically with regard to defining, implementing and reviewing occupational health and safety policy. It asked whether the social partners were also involved in drawing up the regulations on the scope of the risks covered and the levels of prevention and protection and whether they were involved in the draft Government decisions.

The report provides no information on this point. The Committee reiterates all its previous questions and requests that the next report give updated information on how employers' and workers' organisations are consulted in the preparation of regulations on health and safety at work.

The Committee points out that the regulations must be drawn up in consultation with employers' and workers' organisations. Consultation within the meaning of Article 3§2 of the Charter involves not only tripartite co-operation between the public authorities, employer's organisations and workers' organisations to seek ways of improving working conditions and the working environment but also the co-ordination of their activities and co-operation in drafting laws and regulations at all levels and in all economic sectors.

Conclusion

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 3§2 of the Charter on the grounds that:

- it has not been established that levels of prevention and protection required by the legislation and regulations in relation to the establishment, alteration and upkeep of workplaces are in line with the level set by international reference standards;
- self-employed workers are not covered by occupational health and safety legislation.

Article 3 - Right to safe and healthy working conditions

Paragraph 3 - Enforcement of safety and health regulations

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

Accidents at work and occupational diseases

The Committee previously concluded (Conclusions 2013) that, because it entrusted employers with the investigation of most accidents at work, the accidents at work reporting system might favour concealment of such accidents in practice, and was not efficient with regard to Article 3§3 of the Charter.

The report indicates that there were 425 accidents at work in 2012, 599 in 2013, 525 in 2014 and 441 in 2015. The frequency of accidents at work increased at the start of the reference period (0.79 in 2012 and 1.03 in 2013), but fell at the end (0.91 in 2014 and 0.76 in 2015). The number of fatal accidents also increased (20 in 2012, 36 in 2013 and 33 in 2015). ILOSTAT data confirm the trend with regard to the number of fatal accidents and indicate the corresponding incidence rate (per 100 000 workers), which, however, shows a downward trend (6.2 in 2013, 5.9 in 2014 and 5.7 in 2015).

In its previous conclusion (Conclusions 2013), the Committee also noted that the Government had not taken sufficient measures to reduce the excessive rate of fatal accidents and asked for information on the measures taken to reduce the number of fatal accidents and to counter potential under-reporting of accidents at work in practice. According to the report, the sectors where the largest numbers of fatal accidents were reported were the processing industry, the building industry, transport and agriculture and forestry. The report also states that the accidents were mostly caused by the persons concerned (between 54% and 82% of cases). The Committee requests that the next report provide information on coercive measures taken to prevent accidents at work.

The report states that labour inspectors investigate some 150 accidents at work every year. The labour inspectors' investigation files concerning serious and fatal accidents are submitted to the police for examination from the criminal-law angle. The prosecuting authorities initiated criminal proceedings concerning 32 files submitted to the judicial authorities for examination; the proceedings were discontinued in seven cases.

The Committee notes that incidence rates of accidents at work and fatal accidents have continued to decrease in overall terms since 2013. It nevertheless requests that the next report indicate the measures taken to reduce the high number of accidents at work.

The report provides no figures on cases of occupational diseases. The Committee asks that the next report provide information on the legal definition of occupational diseases; the mechanism for recognising, reviewing and revising of occupational diseases (or the list of occupational diseases); the incidence rate and the number of recognised and reported occupational diseases during the reference period (broken down by sector of activity and year), including cases of fatal occupational diseases, and the measures taken and/or envisaged to counter insufficiency in the declaration and recognition of cases of occupational diseases; the most frequent occupational diseases during the reference period, as well as the preventive measures taken or envisaged. The Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Moldova is in conformity with Article 3§3 of the Charter.

Activities of the Labour Inspectorate

In its previous conclusion (Conclusions 2013), the Committee concluded that due to the low level of material and human resources in the labour inspectorate, the fact that the law entrusted the investigation of most occupational accidents to employers and the low level of administrative fines, the labour inspection system was not efficient with regard to Article 3§3

of the Charter. It asked for information on the following: any change in the general framework for labour inspection activities during the reference period; the number (while distinguishing clearly between administrative staff and inspection staff) of inspectors assigned to supervising the application of the legislation and regulations on occupational health and safety; the number of general, thematic and unscheduled inspection visits assigned solely to the occupational health and safety legislation and regulations; the application of the legislation and the regulations on the labour inspectorate throughout the country in practice; details, by category, of administrative measures that labour inspectors are entitled to take and, for each category, the number of such measures actually taken; the outcome of cases referred to the prosecution authorities with a view to initiating criminal proceedings; figures for each year of the reference period. In its previous conclusion (Conclusions 2013), the Committee noted the continuing decrease in the number of inspection visits. It therefore asked for information on the measures taken to increase the number of inspection visits and on inspection visits outside construction sites.

The report indicates that labour inspectorate inspections were conducted in accordance with Act No. 131 of 8 June 2012 on state supervision of businesses. In cases of non-compliance by employers with the provisions of labour and occupational health and safety legislation, the labour inspectors file reports with the judicial authorities (2 614 in 2014).

The report also indicates that the legal standards on occupational health and safety in the building sector (NCM A.08.02:2014) and on the methodology for developing construction-installation work projects (CP A.08.05:2014) were based on the EU Directive on Safety and Health at Work (Directive 89/391/EEC).

According to the report, 109 inspectors work in the Labour Inspectorate. It is divided into a central office (22 posts, including seven engineers and six lawyers) and ten local offices (87 posts, including 33 engineers and 37 lawyers). The total number of inspections carried out by the labour inspectorate has increased: 6 510 (4 026 scheduled and 2 484 unscheduled inspections) in 2012, 6 209 (4 003 scheduled and 2 206 unscheduled inspections) in 2013 and 6 933 (4 883 scheduled and 2 050 unscheduled inspections) in 2015. The number of inspections relating to occupational health and safety was 3 419 in 2012, 3 087 in 2013, 2 971 in 2014 and 3 130 in 2015. Inspection visits, only half of which related to occupational health and safety, covered about 217 000 workers in 2012 and in 2013, 209 100 in 2014 and 234 700 in 2015.

In addition, the report states that the labour inspectorate filed 891 reports on offences with the courts in 2012, 514 in 2013, 434 in 2014 and 657 in 2015. The Committee notes a sharp reduction in the number of reports of offences filed with the courts in 2013 and 2014 and therefore invites the Government to comment on this point. It also asks for information on the outcomes of the reports filed with the courts (decisions, fines or other penalties imposed). In addition, the Committee takes note of the most frequent shortcomings and the cases of non-compliance with the legal provisions on occupational health and safety.

The report further states that the labour inspectorate co-operates with the National Confederation of Employers of the Republic of Moldova and the National Confederation of Trade Unions of the Republic of Moldova and other relevant institutions in order to ensure compliance with occupational health and safety standards. The Committee asks for information on the outcomes of this co-operation in respect of occupational health and safety.

The Committee notes that the number of inspections conducted by the labour inspectorate, including scheduled visits, and the number of workers covered by the inspections increased during the reference period. The Committee also notes an increase in the number of offences referred to the courts, following the decrease in 2013. Nevertheless, given that the law entrusts the investigation of most accidents at work to employers, the labour inspection system is not efficient with regard to Article 3§3 of the Charter.

Conclusion

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 3§3 of the Charter on the ground that the labour inspection system is inefficient.

Article 7 - Right of children and young persons to protection

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

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the information submitted by the Republic of Moldova in response to the conclusion that it had not been established that children subject to compulsory education are guaranteed two consecutive weeks of rest during the summer holiday.

The Committee notes that the report submitted by Moldova contains no new information in response to this conclusion of non-conformity. In the absence of the requested information, the Committee reiterates its finding of non-conformity.

Conclusion

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 7§3 of the Charter on the ground that it has not been established that children who are still subject to compulsory education are guaranteed at least two consecutive weeks of rest during summer holiday.

Article 8 - Right of employed women to protection of maternity

Paragraph 1 - Maternity leave

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the information submitted by the Republic of Moldova in response to the conclusion that it had not been established that interruptions in the employment record were included in the calculation of the qualifying period for maternity benefits.

In this regard, the report reiterates that under Law No. 289 of 22 July 2004 on temporary disability benefits and other benefits of social insurance, insured women, employees' dependent spouses and women claiming unemployment benefit affiliated to the health institutions are entitled to maternity leave (prenatal and postnatal) as well as maternity benefits equivalent to 100% of the calculation basis established in accordance with the law, i.e. the monthly average insured income during the 12 months preceding the occurrence of the insured risk. In response to the Committee's finding, the report states that, under the terms of Article 6, paragraph 6 of the above-mentioned Law, insured women (married or not) have a right to maternity benefit independently of the length of their contribution.

The Committee understands from this information that it is no longer necessary for claimants to prove that they have paid six months of contributions to the social security system in order to qualify for maternity benefits. It therefore considers that the situation is in conformity with the Charter on this point.

The Committee recalls that the situation concerning other aspects covered by Article 8§1 will be examined in the framework of the regular reporting cycle (Conclusions 2019) and asks that relevant and updated information be provided in that context.

Conclusion

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

Article 11 - Right to protection of health

Paragraph 1 - Removal of the causes of ill-health

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

Measures to ensure the highest possible standard of health

The Committee notes from WHO data that life expectancy at birth in 2015 was 72.1 (compared with 69.44 years in 2009). The life-expectancy rate is still low, therefore, relative to other European countries (for example, the EU-28 average that same year was 80.6).

The death rate (deaths/1 000 population) was 11.51 in 2012 and 11.42 in 2015 (compared with 11.03 in 2011), this indicator having fluctuated only marginally during the reference period.

The Committee previously noted that coronary heart disease and cancer were the main causes of death and that of these deaths, many could be attributed to very heavy alcohol and tobacco consumption. Tuberculosis (TB), and in particular the increasing number of patients with multidrug-resistant TB, was also a very significant public health issue in the country (Conclusions 2013). The Committee asked on several occasions what measures had been taken to combat these causes of mortality (Conclusions 2009 and Conclusions 2013). The report provides information on the measures taken to combat smoking and alcohol abuse.

Infant mortality decreased slightly since the previous reference period. In 2015, the rate was 13.9 per 1 000 live births, down from 14.4 in 2012 (according to the World Bank). The Committee notes this decline, but considers that the rate is still high relative to other European countries (for example, the EU-28 rate in 2015 was 3.6 per 1 000).

As regards the maternal mortality rate, the Committee notes that, according to the World Bank, it stood at 26 deaths per 100 000 live births in 2012, 24 in 2013 and 2014 and 23 in 2015. This rate is also considerably above the average in other European countries.

In its previous conclusion the Committee found that the situation was not in conformity with Article 11§1 on the ground that insufficient efforts had been made to reduce the persistently high infant and maternal mortality rates (Conclusions 2013). The report provides no information on the measures taken to tackle the high infant and maternal mortality rates. The Committee asks that the next report provide information on such measures. In the meantime, given that the mortality rates are still high and life expectancy at birth remains low, the Committee finds that insufficient efforts have been made in this area and reiterates its previous finding of non-conformity on this ground.

Access to health care

The Committee refers to its previous conclusion for a description of the health system (Conclusions 2013).

The Committee previously took note of the Ministerial Orders designed to develop medical services and asked to be kept informed on their implementation and, more generally, on any health care reforms pursued (Conclusions 2013). The Committee also asked that the next report provide information on the measures being taken to increase the number of doctors, particularly in rural areas (Conclusions 2013). The report provides no information on these subjects. The Committee reiterates its questions. It points out that if this information is not provided, there will be nothing to establish that the situation is in conformity with the Charter in this respect.

The Committee points out that the right of access to care requires inter alia that the cost of health care should be borne, at least in part, by the community as a whole (Conclusions I (1969), Statement of Interpretation on Article 11) and the cost of health care must not

represent an excessively heavy burden for the individual. Out-of-pocket payments should not be the main source of funding of the health system (Conclusions 2013, Georgia). Steps must therefore be taken to reduce the financial burden on patients, in particular those from the most disadvantaged sections of the community (Conclusions XVII-2 (2005), Portugal). The Committee requests information on total expenditure on health care, as a proportion of GDP. It further requests that the next report provide information on the proportion of health expenditure payable by patients, including on payments for pharmaceuticals. The Committee also asks that the next report provide information on the proportion of direct expenditure attributable to informal payments, the frequency of informal payments and whether informal payments are a common practice in the Republic of Moldova.

The Committee notes that arrangements for access to care must not lead to unnecessary delays in its provision. It underlines that it will pay particular attention to whether access to treatment is based on transparent criteria, agreed at the national level, taking into account the risk of deterioration, in clinical terms as well as in terms of quality of life (Conclusions XV-2 (2001), United Kingdom). The Committee requests information about the rules that apply to the management of waiting lists and statistics on average waiting times for inpatient/outpatient care, primary care, specialised care and surgical operations.

The Committee has twice asked for information on the availability of rehabilitation facilities for drug addicts, and the range of facilities and treatments (Conclusions 2009 and Conclusions 2013). As the report fails to answer this question, the Committee reiterates its request.

The Committee requests that the next report contain information on the availability of mental health care and treatment services, including information on the prevention of mental disorders and recovery measures.

The Committee also requests information on dental care services and treatments (such as who is entitled to free dental treatment, the costs for the main treatments and the proportion of costs payable by the patient).

As regards the right to protection of health of transgender persons, the Committee previously received submissions from the International Lesbian and Gay Association (European Region) (ILGA) stating that "in Moldova there is an uncertain situation regarding whether or not medical treatment is required as a condition of legal gender recognition". In this respect, the Committee asked whether the legal recognition of gender required in law or in practice sterilisation or any other invasive medical treatment that could impair the health or physical integrity of transgender persons (Conclusions 2013, General Introduction). The report contains no information on this subject. The Committee reiterates its question.

Conclusion

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 11§1 of the Charter on the ground that the measures taken to reduce infant and maternal mortality rates have been insufficient.

Article 11 - Right to protection of health

Paragraph 2 - Advisory and educational facilities

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

Education and awareness raising

The Committee recalls that pursuant to this provision, States Parties are required to develop policies on health education aimed at the general population as well as for groups affected by specific problems, notably through awareness-raising campaigns. Health education should also be provided in school, must continue throughout school life and form part of school curricula.

In its previous conclusion, the Committee asked that the next report include updated information on the whole range of activities undertaken by public health services, or other bodies, to promote health and prevent diseases (Conclusions 2013). The report provides information about the health communication and promotion campaigns and activities conducted during the reference period.

As regards health education in school, the report states that promoting healthy lifestyles is a compulsory part of the “Class management” programme in grades I-XII, where pupils study the subject for one hour per week; healthy living is also promoted through compulsory physical education (30 hours per year) and in the context of “civic education” via a module entitled “Life and health – personal and social values” (between 4 and 6 hours for grades V-XII). The process of instilling healthy habits continues in general secondary education through the elective subject “Health education” in lower secondary school and “Education for family life” in upper secondary school. Pupils also attend information sessions and talks given by members of the school’s own medical staff and health professionals, in medical institutions and youth centres, etc. on various subjects such as preventing STDs and AIDS, sexuality and adolescence, health assessment, smoking, the risks of alcohol consumption, etc.

The Committee notes that States Parties must ensure that sexual and reproductive health education forms part of the ordinary school curriculum, that the education provided is adequate in quantitative terms, that the form and substance of the education, including curricula and teaching methods, are relevant, culturally appropriate and of sufficient quality, in particular that it is objective, based on contemporary scientific evidence and does not involve censoring, withholding or intentionally misrepresenting information, for example as regards contraception and different means of maintaining sexual and reproductive health – and that a procedure is in place for monitoring and evaluating the education with a view to effectively meeting the above requirements (International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Croatia – Complaint No. 45/2007, decision on the merits of 30 March 2009, paragraphs 46-47). The Committee asks that the next report indicate whether sexual and reproductive health education is available in schools in the Republic of Moldova and, if so, in what form.

Counselling and screening

The Committee notes that pursuant to this provision there should be screening, preferably systematic, for the diseases which constitute the principal causes of death. Preventive screening must play an effective role in improving the population’s state of health. Moreover, there must be free and regular consultation and screening for pregnant women and children throughout the country.

The Committee previously found that the situation was not in conformity with Article 11§2, on the ground that it had not been established that screening for diseases responsible for high levels of mortality was available or that free medical supervision was provided throughout

the period of schooling (Conclusions 2013). In its Conclusions 2015, the Committee took note of the information provided by the Republic of Moldova in response to its Conclusions 2013.

As regards screening, the Committee noted that the existing mandatory preventive medical examinations, including for cancer, could not be treated as screening programmes as they were not based on clear criteria for enrolment of target groups presenting no clinical signs (Conclusions 2015). The Committee maintained its non-compliance finding with regard to screening. It requested information on the implementation, progress and results achieved within the framework of the national prevention programmes (cardiovascular diseases and tuberculosis). The report does not contain any information on this subject. In view of the lack of information, the Committee reiterates its finding of non-conformity on this point.

With respect to free medical supervision during schooling, the Committee previously took note of the regulatory framework that existed for medical checks in schools. It noted from another source that most schools and kindergartens had medical offices, usually staffed by a nurse responsible for the provision of first aid, health promotion and disease prevention (including vaccinations) (Conclusions 2015). The Committee asked that the next report provide detailed information on medical checks during schooling (such as the frequency of medical checks, their objectives, the proportion of pupils concerned and the level of staffing), including on the activities of the School Health Service. In the meantime, it reserved its position on whether free medical supervision was provided throughout the period of schooling (Conclusions 2015). The report does not provide the information requested. Therefore, the Committee concludes that it has not been established that there is free medical supervision during schooling.

Conclusion

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 11§2 of the Charter on the grounds that:

- it has not been established that screening for diseases responsible for high levels of mortality is available to the population as a whole.
- it has not been established that there is free medical supervision during schooling.

Article 11 - Right to protection of health

Paragraph 3 - Prevention of diseases and accidents

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

Healthy environment

The Committee previously asked that the next report provide information on the adoption and implementation of the legislation on environmental protection. It also asked for information on the levels of air pollution, contamination of drinking water and food intoxication during the reference period, namely whether trends in such levels increased or decreased (Conclusions 2013).

As regards air quality, the report refers to several scientific surveys indicating a deterioration in air quality/increase in the concentration of pollutants in the atmosphere.

The report states that soil quality is monitored in contaminated areas or, at the very least, in high-risk areas. Scientific surveys indicate rising levels of pollution over the period 2010-2015.

According to the report, drinking water derived from groundwater or distribution systems is highly polluted. Poor hygiene and failure to comply with water source protection standards are the main causes of the decline in the quality of water derived from wells, which are used by 75% of the rural population. The report explains that a draft law on the quality of drinking water and a government decision approving the Regulation on air quality in indoor spaces are currently being prepared. The Committee asks to be informed about this draft legislation in the next report.

In view of the deterioration in the situation during the reference period, the Committee asks that the next report contain information on the measures taken in the above areas, together with information on the levels of air pollution, contamination of drinking water and food intoxication. In the meantime, it reserves its position on this issue.

As regards risks arising from asbestos, the Committee previously concluded that the situation in the Republic of Moldova was not in conformity with Article 11§3 of the Charter on the ground that it had not been established that there were adequate measures protecting the population from the risks of asbestos (Conclusions 2013). In its Conclusions 2015, the Committee noted that the government had adopted Decision No. 244/2013 on minimum requirements for the protection of workers against risks linked to exposure to asbestos at work. The Ministry of Health had issued Order No. 1334/2013 setting out an action plan with a view to implementing the Government Decision. The Committee asked that the next report contain more details on the standards contained in the aforementioned regulations and on measures taken to search for and remove asbestos in public buildings and residential property. In addition, it requested clarification as to whether the use of asbestos in construction materials was prohibited or regulated. Finally, it also wished to be informed of the results achieved in reducing the exposure of the population to asbestos. In the meantime, it reserved its position on this point (Conclusions 2015). The report once again mentions Government Decision No. 244/2013 on minimum requirements for the protection of workers against risks linked to exposure to asbestos at work (among the information relating to Article 3 of the Charter), without answering the Committee's questions.

The Committee notes that Article 11 entails a policy that bans the use, production and sale of asbestos and products containing it (Conclusions XVII-2 (2005), Portugal). There must also be legislation requiring the owners of residential property and public buildings to search for any asbestos and where appropriate remove it, and placing obligations on enterprises concerning waste disposal (Conclusions XVII-2 (2005), Latvia). The Committee concludes that the situation is not in conformity with Article 11 of the Charter on the ground that adequate measures protecting the population from the risks of asbestos are not in place.

Tobacco, alcohol and drugs

In its previous conclusion, the Committee noted that under the National Programme on Tobacco Control 2012-2016 adopted by Government Decision No. 100/12012 a national monitoring system on tobacco control was being set up and a National Council on Tobacco Control had been created. Among more specific measures undertaken were a prohibition of tobacco advertising, prohibition of the sale of tobacco in the vicinity of educational institutions and increased tax on tobacco products (Conclusions 2015). The Committee asked that the next report contain detailed information on the implementation of the above-mentioned national programme, including statistics on the impact on the prevalence of smoking (Conclusions 2015).

The report lists the measures taken during the reference period such as the setting-up of the National Co-ordinating Council on Tobacco Control, national anti-smoking campaigns, activities to raise awareness of and prevent smoking, national anti-smoking day (21 November). The report states that national campaigns to reduce smoking have been conducted, a free hotline introduced and measures taken to treat patients who are addicted to nicotine, using specific methods. The report adds that the Ministry of Health has begun developing a second National Programme on Tobacco Control for the period 2017-2020. The Committee asks to be informed about the implementation of this programme.

The Committee previously requested clarification as to whether smoking was prohibited in public places (Conclusions 2015). The report lists the environments where it is prohibited to smoke from 31 May 2016 (outside the reference period) as follows: (i) all enclosed and semi-enclosed public spaces, including common areas and workplaces, regardless of the type of ownership and means of access; (ii) parks and children's playgrounds; (iii) stadiums, arenas, markets and other open spaces for the duration of the public events/entertainment in question; (iv) under the roof of public transport stations; (v) in public transport and in private transport if persons under 18 years of age are present. The Committee requests clarification concerning the ban on smoking in public transport.

The Committee notes from the WHO Report on the Global Tobacco Epidemic (2017) that indoor offices and workplaces, restaurants, cafés, pubs and bars are not subject to the anti-smoking legislation.

With respect to smoking, the Committee notes that anti-smoking measures are particularly relevant for compliance with Article 11 since smoking is a major cause of avoidable death in developed countries. To be effective, any prevention policy must restrict the supply of tobacco through controls on production, distribution, advertising and pricing (Conclusions XVII-2 (2005), Malta). In particular, the sale of tobacco to young persons must be banned (Conclusions XV-2 (2001), Portugal) as must smoking in public places (Conclusions 2012, Andorra) including transport, and advertising on posters and in the press (Conclusions XV-2 (2001), Greece). The Committee assesses the effectiveness of such policies on the basis of statistics on tobacco consumption.

The Committee notes from the Tobacco Control Fact Sheet published by the WHO that smoking prevalence among adults was 25.3% in 2013 (men: 43.6%; women: 5.6%). It asks that the next report provide updated information on trends with regard to the use of tobacco products (among adults and young people). In the meantime, the Committee concludes that the situation is not in conformity with Article 11§3 of the Charter on the ground that insufficient measures have been taken to ensure smoke-free environments in public places.

As regards alcohol abuse, the report provides statistical data on patients suffering from chronic alcoholism. The report states that in the context of primary medicine, family doctors screen patients for alcohol abuse and, where appropriate, provide counselling. One in three people who consult their family doctor requires assistance of this kind and short courses of treatment. In this way, problems can be detected early and patients referred to an addiction specialist. The report adds that 34% of those registered as suffering from chronic alcoholism

are in stable remission having undergone treatment followed by participation in a psychosocial recovery programme. It also indicates that 9 809 people have received outpatient treatment from specialist addiction services.

The Committees asks that the next report provide information on trends in alcohol and illicit drug use.

Immunisation and epidemiological monitoring

In its previous conclusion (Conclusions 2015), the Committee noted that by Government Decision No. 1192/2010, a National Immunisation Programme for the period 2011-2015 had been adopted (PNI IV), under which the population was offered vaccinations free of charge against twelve different transmissible diseases. In addition, persons at risk could be offered a flu vaccine. Also, certain vaccinations were provided for a fee, such as vaccinations against Hepatitis A and Human Papillomavirus. The Committee previously asked that the next report contain updated information on coverage rates for the various immunisation programmes (Conclusions 2015). The Committee notes from the report that the vaccination rates during the reference period are more than 90% in the case of TB, hepatitis B, polio, diphtheria and tetanus, 88% in the case of measles and infection with Haemophilus influenzae type b, and 70% in the case of rotavirus infection (vaccination has been available since 2012) and pneumococcal infection (vaccination has been available since 2013).

The report states that in 2015, the 5th National Immunisation Programme covering the period 2016-2020 was developed and approved by Government Decision No. 1113 of 6 October 2016 (outside the reference period). The report explains the specific aims of the programme. The Committee asks to be informed about the implementation and results in the next report. The Committee also asks that the next report provide updated information on the coverage rates for the various immunisation programmes.

Accidents

In its previous conclusion, the Committee concluded that the situation in the Republic of Moldova was not in conformity with Article 11§3 of the Charter on the ground that it had not been established that there were adequate measures in force for the prevention of accidents (Conclusions 2015). The Committee asked that the next report contain detailed information on measures taken to prevent accidents backed up by statistics on the various types of accidents and their number, especially road accidents (fatality rates) and accidents in the home (Conclusions 2015).

The report provides statistical data on road accidents during the reference period. For example, in 2015, 141 accidents occurred because of drunk driving, resulting in 24 deaths and 187 injuries. The report states that, following approval of the National Programme on Alcohol Control for the period 2012-2020, the legal limit for alcohol in the blood whilst driving was reduced to 0.3 g/litre. Among the measures taken to prevent accidents, the report mentions awareness campaigns on the harmful effects of alcohol on health, and on preventing and reducing alcohol use.

The Committee takes note of the information provided by the representative of the Republic of Moldova to the Governmental Committee (Report concerning Conclusions 2013) to the effect that TV programmes have been broadcast to inform families about the risks of accidents in the home involving children and to provide useful advice on how to reduce these risks. The same report also mentions Phase II of the National Awareness Campaign “A safe home for your child!” (2011-2013) under the Moldovan-Swiss project “Regionalisation of the Paediatric Emergency and Intensive Care Medical Services System in the Republic of Moldova”.

The Committee notes that states must take steps to prevent accidents. The main types of accidents covered are road accidents, domestic accidents, accidents at school and

accidents during leisure time (Conclusions 2005, Republic of Moldova). The Committee asks to be provided with information on the other types of accidents, including domestic accidents, accidents at school and accidents during leisure time.

Conclusion

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 11§3 of the Charter on the grounds that:

- adequate measures protecting the population from the risks of asbestos are not in force;
- the measures taken to ensure smoke-free environments in public places are insufficient.

Article 12 - Right to social security

Paragraph 1 - Existence of a social security system

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

With regard to **family benefits** and **maternity benefits**, the Committee refers to its conclusions concerning Articles 16 and 8§1 respectively (Conclusions 2015).

Risks covered, financing of benefits and personal coverage

The Committee refers to its previous conclusions for a description of the Moldovan social security system and notes that it continues to cover the traditional risks (medical care, sickness, unemployment, old age, employment injury/disease, family, maternity, invalidity and survivors). The system continues to rest on collective funding: it is funded by contributions (employers, employees) and by the state budget.

According to the official statistics (National Bureau of Statistics), the total population of Moldova in 2015 was 3 555 159, and the report puts the active population at 1 265 600.

The Committee previously noted that the **healthcare** system aimed to ensure universal access and that certain types of care (primary care, pre-hospital emergency care, TB, AIDS and cancer treatment) were provided free of charge regardless of whether the person concerned was insured or not. It noted that compulsory insurance covered salaried and self-employed workers, on the basis of their contributions, and certain other categories of persons, who were covered automatically (children, students, women during pregnancy and following childbirth and mothers of four or more children, persons with disabilities, retired persons, persons formally registered as unemployed, family carers and social assistance recipients). It also noted that uninsured persons could take out voluntary insurance. However, the report does not indicate the number of persons or the percentage of the total population covered by the health system.

The report states that 279 330 persons received **sickness** benefits and 679 877 received **old-age** pensions in 2015. However, the report does not provide any of the information previously requested concerning the personal coverage rate in relation to the active population (Conclusions 2006, 2009 and 2013) for these branches or the others.

The Committee points out that, to be in conformity with Article 12§1 of the Charter, the social security system must both cover a significant proportion of the population in respect of health insurance (health cover should extend beyond employment relationships) and of family benefits and also a significant proportion of the active population as regards sickness benefits, maternity and unemployment benefits, pensions and employment injury and occupational disease benefits. The Committee requests that relevant figures concerning the coverage rate (percentage of persons insured out of the total active population) of income-substituting benefits be given in all future reports. Given the repeated absence of this information, the Committee considers in the meantime that it has not been established that the existing social security schemes cover a significant percentage of the population.

Adequacy of the benefits

The Committee points out that, under Article 12§1, the level of income-replacement benefits should be fixed such as to stand in reasonable proportion to previous income and it should never fall below the poverty threshold defined as 50% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value. In the absence of the Eurostat median equivalised income indicator, the Committee notes from official statistics that at the end of 2015 average disposable income was MDL 1 999 (€91.50 at the rate of 31 December 2015) and that the subsistence level was MDL 1 734 (€79). The Committee also notes that the average wage was MDL 4 538 (€208) in 2015. According to MISSCEO, the minimum wage was MDL 1 800 (€82), while according to another source

(www.minimum-wage.org), since 1 May 2015, it has been MDL 1 900 (€87) for private-sector workers and MDL 1 000 (€46) for public-sector workers. The Committee requests that information on the levels of the poverty threshold and the minimum wage during the reference period be included systematically in all reports concerning Article 12§1.

The Committee previously concluded that the minimum levels of unemployment benefits (Conclusions 2015) and of old-age benefits (Conclusions 2013) were manifestly inadequate.

The report does not provide any information on **unemployment** benefit. The Committee refers to its previous conclusions (Conclusions 2013 and 2015) concerning entitlement to the benefit (nine months' contributions during the 24 months preceding registration of unemployment), the circumstances in which the benefit may be cancelled (in particular, refusal of a reasonable job offer without legitimate grounds) and the length of payment (from six months to one year). It noted that the level of the benefit was based on the national average gross wage for the previous year and amounted to 30%, 40% or 50% respectively of the latter depending on the cause of unemployment (voluntary termination, expiry of contract or dismissal by employer). It also noted that the amount of benefit was reduced by 15% every three months and asked for confirmation that it could not fall below the minimum wage in any circumstances. In the absence of any new information, the Committee maintains its finding of non-conformity.

In the case of **old-age** pensions, the Committee notes from the report that the minimum was MDL 767 (€35) for farmers and MDL 862 (€39) for other beneficiaries. The report states that, under Law No. 147 of 17 July 2014, the state provides monthly flat-rate support to persons whose pensions do not exceed MDL 1 500. This amounts to MDL 180 for recipients of full old-age pensions and MDL 100 for those in receipt of partial old-age pensions. On the basis of this information, the Committee understands that the minimum level of old-age pensions, supplemented by this amount, is between MDL 867 (€40) and MDL 1 042 (€48) and remains below the subsistence level. It therefore holds that the minimum level of old-age benefit remains manifestly inadequate.

In the case of **sickness** benefits, the Committee previously noted (Conclusions 2013) that the level of sickness benefits depended on the insured person's contribution period. The report indicates that it is paid as a percentage of monthly average earnings for the 12 months immediately before incapacity. For persons with less than 5 years' contributions, it is paid at 60% of basic earnings, for those with 5 to 8 years' contributions at 70% of basic earnings and for those with more than 8 years' contributions at 90% of basic earnings. According to the report, the average monthly amount of the allowance for temporary incapacity for work was MDL 1 142 (€52) in 2015. The report does not, however, answer the Committee's question concerning the minimum level of sickness benefit. The Committee notes that if the minimum average wage is only MDL 1 900, the level of benefits paid to a person who has paid contributions for less than five years is below the subsistence level. The same applies if the average level indicated in the report is taken into account. The Committee therefore holds that the minimum sickness benefit is manifestly inadequate.

The report does not provide any information on benefits paid in the event of **employment injuries** or **diseases** or on **invalidity pensions**. The Committee requests that relevant information on these points be included in the next report and in the meantime reserves its position on the conformity of these benefits with Article 12§1 of the Charter.

The Committee points out that in order to assess the situation, it must be provided with comprehensive up-to-date information for the reference period concerning the national poverty threshold, the minimum wage and the minimum level of income-replacement benefits (sickness, employment injury and disease, unemployment, old-age pension and invalidity). It therefore requests that this information be included systematically in all reports concerning Article 12§1. It considers that if this information is not included in the next report, there will be nothing to show that the situation is in conformity with the Charter.

Conclusion

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 12§1 of the Charter on the grounds that

- it has not been established that the existing social security schemes cover a significant percentage of the population;
- the minimum unemployment benefit is inadequate;
- the minimum old-age pension is inadequate;
- the minimum sickness benefit is inadequate.

Article 12 - Right to social security

Paragraph 2 - Maintenance of a social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security

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

The Committee recalls that Article 12§2 obliges states to establish and maintain a social security system which is at least equal to that required for ratification of the European Code of Social Security. The Code requires acceptance of a higher number of parts than ILO Convention No 102 relating to social security; six of the nine contingencies must be accepted although certain branches count for more than one part (medical care counts for two parts and old-age counts for three).

The Committee notes that the Republic of Moldova has signed the European Code of Social Security on 16 September 2003 but has not ratified it. Therefore, the Committee cannot take into consideration other sources such as the resolutions of the Committee of Ministers on the compliance of the states bound by the Code and has to make its own assessment.

Moreover, the Republic of Moldova has not ratified any of the following conventions of the International Labour Organisation: Conventions No. 102 (Social security, minimum standards, 1952), No. 121 (Employment Injury Benefits, 1964), No. 128 (Invalidity, Old-Age and Survivors' Benefits, 1967), No. 130 (Medical Care and Sickness Benefits, 1969) and No. 168 (Employment Promotion and Protection against Unemployment, 1988).

The Committee recalls that in order to assess whether the social security system is maintained at a level at least equal to that necessary for ratification of the Code, it has to assess the information regarding the branches covered, the personal scope and the level of benefits.

The Committee refers to its Conclusion under Article 12§1 that the social security system continues to cover the traditional risks (medical care, sickness, unemployment, old age, employment injury/disease, family, maternity, invalidity and survivors). The Committee refers to its request, under Article 12§1, that relevant figures concerning the coverage rate (percentage of persons insured out of the total active population) of income-substituting benefits be provided in future reports, and given the repeated absence of this information, it considers in the meantime that it has not been established that the existing social schemes cover a significant percentage of the population.

The Committee refers to its Conclusion under Article 12§1 that the minimum unemployment benefit, the minimum old-age pension and the minimum sickness benefit are manifestly inadequate. It also refers to its assessment (Conclusion 2015) under Article 8.1 that the situation is not in conformity.

Conclusion

The Committee concludes that the situation is not in conformity with Article 12§2 of the Charter on the ground that it has not been established that the Republic of Moldova maintains a social security system at a level at least equal to that necessary for the ratification of the European Code of Social Security.

Article 12 - Right to social security

Paragraph 3 - Development of the social security system

The report submitted by the Republic of Moldova does not contain information concerning Article 12§3.

The Committee previously found (Conclusions 2013) that the situation was not in conformity with Article 12§3 of the Charter on the ground that efforts made to progressively raise the system of social security to a higher level were inadequate.

The Committee recalls that Article 12§3 requires States Parties to improve their social security system. A situation of progress may consequently be in conformity with Article 12§3 even if the requirements of Articles 12§1 and 2 have not been met or if these provisions have not been accepted. The expansion of schemes, protection against new risks or increase in the level of benefits, are examples of improvement. A restrictive evolution in the social security system is not automatically in violation of Article 12§3. The assessment of the situation depends on the nature of the changes (field of application, conditions for granting allowances, amounts of allowance, etc.); the reasons given for the changes and the framework of social and economic policy in which they arise; the extent of the changes introduced (categories and numbers of people concerned, levels of allowances before and after alteration); the necessity of the reform; the existence of measures of social assistance for those who find themselves in a situation of need as a result of the changes made (this information can be submitted under Article 13); the results obtained by such changes. However, where the cumulative effect of the restrictions can bring about a significant degradation of the standard of living and the living conditions of some groups of population, the situation may amount to the violation of Article 12§3 of the Charter. Even if individual restrictive measures are in conformity with the Charter, their cumulative effect, with the procedures adopted to put them into place, could be in violation with the right to social protection. Measures taken in order to consolidate public finances may be considered as a necessary means to ensure the maintenance and sustainability of the social security system. However, any modifications should not undermine the effective social protection of all members of society against social and economic risks and should not transform the social security system into a basic social assistance system. Therefore any changes to a social security system must ensure the maintenance of a basic compulsory social security system which is sufficiently extensive.

In the light thereof, the Committee asks for information in the next report on any relevant changes made during the reference period to the social security system, specifying the effect of these changes on the personal scope of the system and the minimum level of income replacement benefits. Such information must be provided in each report concerning Article 12§3, in order to assess compliance of the situation with the Charter. As the current report does not contain elements to assess the situation, the Committee maintains its finding of non-conformity with Article 12§3 of the Charter.

Conclusion

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 12§3 of the Charter on the ground that efforts made to progressively raise the system of social security to a higher level are inadequate.

Article 12 - Right to social security

Paragraph 4 - Social security of persons moving between States

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

Equality of treatment and retention of accrued benefits (Article 12§4)

Right to equal treatment

Equal treatment between nationals and nationals of other States Parties in respect of social security rights must be ensured through the conclusion of bilateral or multilateral agreements, or at the very least, through unilateral measures.

As regards bilateral agreements concluded with other States Parties, the report states that during the reference period, the Republic of Moldova concluded social security agreements based on the model standard agreement adopted on 29 October 2007 (Decision no. 1170) with Belgium, Poland, Hungary and Lithuania. All of these agreements have entered into force. The report adds that the Republic of Moldova is also conducting negotiations with Germany, Latvia and Turkey.

As regards the unilateral measures undertaken by the Republic of Moldova, the report states that in accordance with current domestic law, foreign nationals who have a right of residence, whether permanent or temporary, stateless persons, refugees and persons who are receiving humanitarian protection have the same rights and obligations in the field of compulsory medical insurance as Moldovan citizens.

The Committee asked in its previous conclusion (Conclusions 2013) whether and how equal treatment was guaranteed for nationals of States Parties not covered by bilateral agreements who were legally residing or working in the the territory of the Republic of Moldova. The Committee understands that the principle is guaranteed by current domestic law and requests confirmation in the next report. In the meantime, it reserves its position on this point.

In respect of payment to family benefits, the Committee considered that the requirement for the child to reside in the territory of the paying State is in conformity with Article 12§4 (Statement of Interpretation on Article 12§4, Conclusions XVIII-1 (2006)). However, since not all countries apply such a system, States Parties applying the ‘child residence requirement’ are under the obligation, in order to secure equal treatment within the meaning of Article 12§4, to enter, within a reasonable period of time, into bilateral or multilateral agreements with those States which apply a different entitlement principle (Conclusions 2006, Cyprus).

The Committee notes from MISSCEO that the Republic of Moldova makes the payment of family benefits conditional upon the requirement that the child must reside in its territory.

In its previous conclusions (Conclusions 2009 and 2013), the Committee asked whether such agreements existed with Albania, Armenia, Georgia, Turkey, Serbia and the Russian Federation, or whether they were planned and if so, on what time-scale. The report states in this regard that the Republic of Moldova is conducting negotiations with Turkey and intends to initiate such negotiations with the Russian Federation. The report also states that, currently, the Republic of Moldova has no intention of concluding a social security agreement with Albania, Armenia or Georgia given the low level of immigration to these States. It points out that certain agreements do not include any provisions on family benefits due to the limited financial capacities of the Republic of Moldova. The Committee asks the next report to precise which agreements do not include any provisions on family benefits.

The Committee recalls that equal treatment can also be achieved through unilateral, legislative or administrative measures. Nevertheless, as there is no indication in the report

that such measures have been taken or are planned, the Committee considers that the situation is not in conformity with the Charter in this respect.

Right to retain accrued benefits

The Committee asked in its previous conclusion (Conclusions 2013) whether and how the right to retain entitlements accrued in the Republic of Moldova by nationals of State Parties not bound by a bilateral agreement with the Republic of Moldova was secured. It also asked what justified the fact that there were no agreements with certain States Parties, whether agreements were planned, and if so, when they might be signed. The report states that the principle of the retention of accrued benefits in the Republic of Moldova is secured only by means of bilateral agreements. The report states in this regard that the Republic of Moldova does not intend to amend its legislation or adopt any measures to maintain the accrued benefits of persons who settle abroad, given the country's difficult economic situation. It adds, however, that the Republic of Moldova is willing to amend its legislation when the situation has changed in a positive way.

The Committee notes that the Republic of Moldova has concluded social security agreements which secure the principle with Azerbaijan, Austria, Belgium, Bulgaria, the Czech Republic, Estonia, Hungary, Lithuania, Luxembourg, Poland, Portugal and Romania. It asks the next report to clarify whether the agreements concluded with the Russian Federation and Ukraine also secure this principle.

According to the report, the Republic of Moldova has attempted to initiate dialogue with Italy, Greece and France with a view to conclude a bilateral social security agreement, but those countries did not respond to its request. The Republic of Moldova intends to continue its efforts with all States with which it may have a mutual interest.

The Committee notes there are no agreements with Albania, Andorra, Armenia, Austria, Bosnia and Herzegovina, Croatia, Cyprus, Denmark, Finland, Georgia, Greece, Iceland, Ireland, Italy, Latvia, Malta, Montenegro, the Netherlands, Norway, Serbia, the Slovak Republic, Slovenia, "the former Yugoslav Republic of Macedonia" or the United Kingdom. It therefore considers that the situation in the Republic of Moldova is not in conformity with the Charter on this point.

Right to maintenance of accruing rights (Article 12§4b)

There should be no disadvantage for persons who change their country of employment where they have not completed the period of employment or insurance necessary under national legislation to confer entitlement and determine the amount of certain benefits. This requires, where necessary, the aggregation of employment or insurance periods completed in another territory and, in the case of long-term benefits, a pro-rata approach to the conferral of entitlement, the calculation and payment of benefit (Conclusions XIV-1 (1998), Portugal).

States Parties may choose between the following means in order to ensure maintenance of accruing rights: multilateral convention, bilateral agreement or, unilateral, legislative or administrative measures.

The report states that the aggregation of periods of insurance or employment is secured only through bilateral agreements or multilateral agreements. In this regard, the Committee notes from the report that the Republic of Moldova has concluded bilateral social security agreements which secure this principle with Austria, Belgium, Bulgaria, the Czech Republic, Estonia, Hungary, Lithuania, Luxembourg, Poland, Portugal and Romania, and intends to do so with Germany, Latvia and Turkey. It notes that there are no agreements with Albania, Andorra, Armenia, Austria, Bosnia and Herzegovina, Croatia, Cyprus, Denmark, Finland, Georgia, Greece, Iceland, Ireland, Italy, Latvia, Malta, Montenegro, the Netherlands, Norway, Serbia, the Slovak Republic, Slovenia, "the former Yugoslav Republic of

Macedonia" or the United Kingdom. It asks the next report to clarify whether the agreements concluded with the Russian Federation and Ukraine also secure this principle.

The Committee considers that the situation is not in conformity with the Charter on this point.

Conclusion

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 12§4 of the Charter on the grounds that:

- equal treatment with regard to access to family allowances is not guaranteed to nationals of all other States Parties;
- the right to retain accrued benefits is not guaranteed to nationals of all other States Parties;
- the right to maintenance of accruing rights is not guaranteed to nationals of all other States Parties.

Article 13 - Right to social and medical assistance

Paragraph 1 - Adequate assistance for every person in need

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

Types of benefits and eligibility criteria

According to the report, social assistance is mostly granted to families with children and to families with disabled persons, with a view to improving their access to food, medical services and education. The Committee notes that according to the Report on Poverty prepared by the Ministry of Economy in 2013 social assistance benefits have had a significant impact on the reduction of poverty. According to the report, these benefits have reduced poverty by around 2.3%. In 2013 about 80% of beneficiaries of social assistance came from rural areas. According to the report, social assistance is the most efficient means for targeting the resources to the most vulnerable population groups. Approximately 82% of the allocated resources have reached the poorest families.

The Committee notes that in April 2015 the level of Monthly Minimum Income (RMMG) was raised to lei 765 (€ 35) and was further raised to lei 900 (€ 41) in November 2015. At the same time, the Government Decision No. 838 of 1 November 2015, raised the amount of aid for the cold period from lei 250 to lei 315 (€ 14,5).

The Committee further notes that by the Government Decision No.821 the monthly wage income which is exempted from the means test was raised from lei 120 to lei 200 in 2014. Moreover, certain household items were also excluded from the list of indicators used in the means-test, such as a colour TV, fridge, washing machine and a vacuum cleaner. As a result of these changes, there has been a significant increase in the number of disadvantaged families integrated into the social assistance system. More than 85,000 families received social assistance in 2015 and the average amount of the benefit was about lei 720 (€ 33). In the first five months of 2016 more than 66,000 families received assistance and the average amount of the benefit paid was lei 900 lei (€ 41).

The Committee notes from the report that out of the total number of families receiving social assistance over the period 2009 – 2015 more than 50% had at least one child. The report states that the amount of social assistance is closely related to the number of family members and the reported income of the family. At the same time, of the total number of applications in 2015 more than 55% of families had at least one elderly person and more than 26% of applicants were elderly persons. About 84% of beneficiaries were from rural areas and approximately 43% of families had at least one disabled member. The Committee notes from the report that lei 256 (€11,6) was granted on average to single person families.

As regards additional benefits, assistance for the cold period is granted in the fixed amount, to families who have an overall income below lei 1440 (€ 66). In 2015 more than 182 thousand families received this allowance.

Level of benefits

- Basic benefit: The Committee notes that the level of RMMG stood at lei 900 (€ 41) in 2015.
- Additional benefits: the winter-time monthly allowance amounted to lei 315 (€ 14,5).
- Medical assistance: in its previous conclusion (Conclusions 2015) the Committee reserved its position as regards medical assistance for persons in need. In particular, the Committee requested clarification as to the categories of persons not insured under health insurance scheme, their number and the actual content of 'pre-hospital care' and 'primary care' (the nature of medical assistance provided in the framework of these forms of care). The Committee notes that the report does not provide any information as regards this issue. The Committee

notes from WHO (Highlights on health and well-being) that of particular concern is the very high share (44.6%) of out-of-pocket expenditure on health by private households. This represents a challenge for equitable access to health care, especially for the poorest people in the community. In order to ensure universal health coverage, it may be necessary not only to continue to raise overall levels of investment but also to ensure that everyone, particularly vulnerable people, has prompt access to affordable, efficient, effective and high-quality health care. The Committee recalls in this connection that under Article 13§1 of the Charter everyone who lacks adequate resources must be able to obtain, free of charge, the care necessitated by his/her condition. This right to medical assistance should not be confined to emergency situations. The Committee considers that the right to medical assistance is not guaranteed to all persons without resources in the meaning of this provision.

- Poverty threshold: the Committee notes from the National Bureau of Statistics that in 2016, the size of the subsistence minimum constituted on average 1799,2 lei per month, increasing 3,8% compared to previous year. The Committee thus notes that the subsistence level amounted to 1 734 (€79) in 2015.

Given that the Republic of Moldova has not accepted Article 23 of the Charter (the right of elderly people to social protection), the Committee assesses the level of non-contributory pensions paid to a single elderly person without resources under this provision. In this respect, it refers to its conclusion under Article 12§1, where it considered that the minimum level of old age pension is not adequate as it falls below the poverty threshold.

In its previous conclusion (Conclusions 2015) the Committee found that the situation was not in conformity with the Charter on the ground that the level of social assistance and the level of social assistance for elderly persons without resources were manifestly inadequate. The Committee now notes that despite the fact that the level of social assistance has been raised on several occasions and the amendments to the means test have allowed more families to receive assistance, the level of the basic benefit remains low and the total assistance that may be obtained is not compatible with the poverty threshold. Therefore, the situation is not in conformity with the Charter.

Right of appeal and legal aid

The Committee asks the next report to provide updated information as regards the right of appeal and legal aid.

Personal scope

The Committee recalls that, under Article 13§1, States are under the obligation to provide adequate medical and social assistance to all persons in need, both their own nationals as well as nationals of States Parties lawfully resident within their territory, on an equal footing. In addition, with reference to its Statement of Interpretation of Articles 13§1 and 13§4 (Conclusions 2013) regarding the scope of Articles 13§1 and 13§4 in terms of persons covered, the Committee considers that persons in an irregular situation in the territory of the State concerned are also covered under Article 13§1, rather than under Article 13§4, which was previously its practice.

The Committee henceforth examines whether the States who have accepted Article 13§1 ensure the right to:

- adequate social and medical assistance for their own nationals and for nationals of other States Parties lawfully resident within their territory on an equal footing;
- emergency social and medical assistance to persons unlawfully present in their territory.

Nationals of States Parties lawfully resident in the territory

The Committee asks the next report to provide updated information regarding equal treatment of nationals of States Parties lawfully resident in Moldova as regards entitlement to social and medical assistance.

Foreign nationals unlawfully present in the territory

The Committee recalls that persons in an irregular situation must have a legally recognised right to the satisfaction of basic human material need (food, clothing, shelter) in situations of emergency to cope with an urgent and serious state of need (including medical condition). It likewise is for the States to ensure that this right is made effective also in practice (European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, §187). The Committee asks the next report to confirm that the legislation and practice comply with these requirements.

Conclusion

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 13§1 of the Charter on the grounds that:

- the level of social assistance paid to a single person without resources,including elderly persons is not adequate.
- the right to medical assistance is not guaranteed to all persons without resources.

Article 13 - Right to social and medical assistance

Paragraph 2 - Non-discrimination in the exercise of social and political rights

The Committee takes note of the information contained in the report submitted by the Republic of Moldova. The Committtee notes that the report contains no information on Article 13§2.

In its previous conclusion (Conclusions 2013) the Committee noted that under Article 54 of the Constitution no law that would remove or restrict fundamental human and citizens' rights or freedoms may be adopted and that the exercise of rights and freedoms may only be restricted within limits prescribed by the law, in accordance with generally accepted international legal standards and what is necessary to protect national security, territorial integrity, the country's economic welfare or public order. The Committee asked the next report to confirm that also in practice no restrictions apply to the social and political rights of beneficiaries of social assistance.

The Committee recalls that under Article 13§2 of the Charter any discrimination in terms of their enjoyment of social and political rights against persons receiving social and medical assistance that might result – directly or indirectly – from an express legal provision must be eradicated. The Committee asks whether the provisions enshrining the principle of equality and prohibiting discrimination in the exercise of political or social rights prohibit discrimination in relation to the enjoyment of those rights on the basis of receipt of social and medical assistance. It also asks whether the provisions enshrining the principle of equality and prohibiting discrimination in the exercise of political or social rights are interpreted in practice in such a way as to prevent discrimination on the basis of receipt of social or medical assistance. The Committee considers that if this 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 defers its conclusion.

Article 13 - Right to social and medical assistance

Paragraph 3 - Prevention, abolition or alleviation of need

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

In its previous conclusion the Committee The Committee took note of the reorganisation of the social services network and asked the next report to provide further information on the actual functioning of the services aimed at people without resources in the meaning of Article 13§3 of the Charter.

The Committee takes note of the detailed information concerning social workers, primary social services, homecare services, social canteens. It also takes note of the activities of specialised services for families in difficulty, social centres for refugees and asylum seekers and of integrated services for elderly persons. It also takes note of the setting up of social assistance database. It notes that these services are not covered under Article 13§3 but rather fall under Article 14 which the Republic of Moldova has not accepted.

The Committee recalls that Article 13§3 concerns only social or medical assistance in the form of advice or personal help to persons without, or liable to be without, adequate resources. Accordingly, Article 13§3 is a special provision which is more specific than Article 14§1, which is concerned with the provision of social welfare services generally. The Committee considers it important to stress this distinction so that the national reports under Article 13§3 provide information concerning social and medical services related to advice or personal help for persons without, or liable to be without, adequate resources. These services must play a preventive, supportive and treatment role. Amongst other things, Article 13§3 requires states to provide advice and assistance so as to make those concerned aware of their entitlement to social and medical assistance and how they can exercise that entitlement.

In assessing national situations under this provision the Committee specifically examines whether there are mechanisms to ensure that those in need may receive help and personal advice services free of charge and whether such services and institutions are adequately distributed on a geographical basis.

The Committee asks the next report to provide more precise information in the light of these clarifications.

Conclusion

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

CONCLUSIONS RELATING TO CONCLUSIONS OF NON-CONFORMITY DUE TO A REPEATED LACK OF INFORMATION IN CONCLUSIONS 2015

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

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2 and 3 April 2014, states were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the information submitted by the Moldovan authorities in response to the conclusion that it had not been established that there was, on the one hand, appropriate protection for women victims of domestic violence and, on the other hand, that foreign nationals enjoyed equal treatment regarding family allowances.

With regard to domestic violence against women, the Committee notes from the report that the Ministries of the Interior, Health and Employment, Social Protection and Family approved a series of orders, focusing mainly on the organisation and co-ordination of the authorities and institutions involved in preventing and combating violence in the family. The Committee also notes that a bill is currently being drafted, whose aims include the implementation of the recommendations made in 2013 by the Committee on the Elimination of Discrimination against Women (CEDAW) as well as the rights and principles laid down in the Council of Europe Convention on preventing and combating violence against women and domestic violence. The Committee takes note of the abovementioned information but considers nevertheless that the situation is still not in conformity with the Charter on the ground that it has not been established that there is an appropriate protection for women victims of domestic violence.

With regard to equal treatment of foreign nationals and stateless persons regarding family allowances, the Committee notes from the report that, in accordance with the domestic law in force, foreign nationals holding a residence permit, whether it be permanent or temporary, as well as stateless persons, refugees and persons enjoying humanitarian protection have the same rights and obligations in the field of compulsory insurance as citizens of the Republic of Moldova. However, the Committee notes that family allowances are only granted to nationals of States Parties bound to the Republic of Moldova by a bilateral agreement. In this regard, the Committee refers to its conclusion on Article 12§4 (Conclusion 2017, Article 12§4) in which it considers that the situation is not in conformity. This is because equal treatment with regard to access to family allowances is not guaranteed with respect to all nationals of the other States Parties to the Charter. Therefore, the Committee considers that the situation in this respect is not in conformity with the Charter.

Conclusion

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

- it has not been established that there is an appropriate protection for women victims of domestic violence;
- equal treatment with regard to access to family allowances is not guaranteed with respect to nationals of all the other States Parties.

January 2018

European Social Charter

European Committee of Social Rights

Conclusions 2017

MONTENEGRO

This text may be subject to editorial revision.

The following chapter concerns Montenegro, which ratified the Charter on 3 March 2010. The deadline for submitting the 6th report was 31 October 2016 and Montenegro submitted it on 1 February 2017.

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 "Health, social security and social protection":

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

Montenegro has accepted all provisions from the above-mentioned group except Article 30.

The reference period was 1 January 2012 to 31 December 2015.

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

– 6 conclusions of conformity: Articles 3§1, 3§4, 13§2, 13§3, 14§1 and 14§2,

– 8 conclusions of non-conformity: Articles 3§2, 3§3, 11§1, 11§3, 12§1, 12§3, 13§1 and 23.

In respect of the 4 other situations related to Articles 11§2, 12§2, 12§4 and 13§4 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 Montenegro under the Charter. The Committee requests the authorities to remedy this situation by providing the information in the next report.

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

Article 3§2

On 25 July 2014, the Parliament of Montenegro adopted the Law on Safety and Health at Work (Official Gazette No. 34/14), which replaces the former Law on Safety and Health at Work (Official Gazette No. 79/04 and 26/10). According to the new law, the employer is obliged to provide measures of safety and health at work to all employees, by preventing, eliminating and controlling risks at work, informing and training employees, and with proper organisation and the necessary means. In addition, the employer is obliged to provide special safety and health at work to women during pregnancy, persons under 18 years of age, and persons with disabilities.

Article 12§4

During the reference period, Montenegro concluded bilateral social security agreements with Romania and the Slovak Republic.

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The next report will deal with the following provisions of the thematic group "Labour Rights":

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 21),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 22),
- the right to dignity at work (Article 26),

- the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28),
- the right to information and consultation in collective redundancy procedures (Article 29).

The report should also contain information requested by the Committee in Conclusions 2016 in respect of its conclusions of non-conformity due to a repeated lack of information:

- the right to work – policy of full employment (Article 1§1),
- the right to work – vocational guidance, training and rehabilitation (Article 1§4),
- the right to vocational guidance (Article 9),
- the right to vocational training – apprenticeship (Article 10§2),
- the right to vocational training – vocational training and retraining of adult workers (Article 10§3),
- the right of persons with disabilities to independence, social integration and participation in the life of the community – vocational training for persons with disabilities (Article 15§1),
- the right of persons with disabilities to independence, social integration and participation in the life of the community – employment of persons with disabilities (Article 15§2),
- the right of persons with disabilities to independence, social integration and participation in the life of the community – integration and participation of persons with disabilities in the life of the community (Article 15§3),
- the right to protection in case of dismissal (Article 24).

The deadline for submitting that report was 31 October 2017. The report was registered on 26 December 2017. Conclusions relating to the Articles concerned will be published in January 2019.

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Conclusions and reports are available at www.coe.int/socialcharter as well as in the HUDOC database.

Article 3 - Right to safe and healthy working conditions

Paragraph 1 - Health and safety and the working environment

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

General objective of the policy

The Committee previously deferred its conclusion (Conclusions 2013) and requested information on the content of applicable laws, policies, strategies, and programmes, as well as the competencies of relevant public institutions. It also asked whether the objective of the policy was to foster and preserve a culture of occupational risk prevention, and whether policies, strategies and programmes were regularly assessed and reviewed in light of changing risks.

In reply, the report indicates that the Strategy for Improvement of Health of Employees and Safety at Work in Montenegro was adopted for the period 2010-2014. The overall objective of the Strategy is to improve the health of employees and working conditions in order to prevent accidents at work, occupational diseases and their reduction to the lowest possible level, or elimination of occupational hazards. The Committee asks the next report to provide more comprehensive information on the manner in which the Strategy for Improving Health and Safety at Work is reviewed in light of changing risks, in consultation with the social partners. It further asks for information on the activities implemented and results obtained by the National Strategy.

The Committee notes from the report that, on 25 July 2014, the Parliament of Montenegro adopted the Law on Safety and Health at Work (Official Gazette No. 34/14), which replaces the former Law on Safety and Health at Work (Official Gazette No. 79/04 and 26/10). The new law acts preventively at all levels of activity. In addition, the report states that the safety at work is a constitutional principle under Article 64§3 and §4 of the Constitution of Montenegro. The report also lists the existing legal framework in this field.

According to the report, unde'r the Directorate of Labour (an organisational unit of the Ministry of Labour and Social Welfare of Montenegro) a Department for Safety at Work was created in 2013. This Department, among others, performs activities related to monitoring, studying and encouraging the development of occupational safety and health (OSH); preparing regulations in the field of OSH; monitoring and implementing ratified conventions and EU directives in the field; giving opinions regarding the implementation of regulations in the field of OSH; collection and analysis of data on accidents at work and occupational diseases; encouraging education and developing a culture of work in the field of occupational safety, training of employees, employers, professionals dealing with safety at work, inspectors and others. The Committee takes note of the list of other institutions and organisations that undertake activities in the fields of health and safety, detailed in the report.

Moreover, in the second quarter of 2015, the Parliament of Montenegro adopted the Law on Ratification of the Convention of the International Labour Organisation on the Promotional Framework for Occupational Safety and Health at Work No. 187, whereby it accepted obligations imposed by the ratification of the said Convention. ILO Convention No. 187 has been ratified on 18 September 2015.

The Committee points out that new technology, organisational constraints and psychological demands favour the development of psychosocial factors of risk, leading to work-related stress, aggression, violence and harassment. It would also point out that, with regard to Article 3§1 of the Charter, it takes into account the stress, aggression, violence and harassment at work when examining whether policies are regularly evaluated or reviewed in the light of emerging risks. The States parties have a duty to carry out activities in terms of research, knowledge and communication relating to psychosocial risks (Statement of

Interpretation on Article 3§1 of the Charter, Conclusions 2013). The report does not provide any information on this point. The Committee accordingly reiterates its request.

Organisation of occupational risk prevention

The Committee previously deferred its conclusion (Conclusions 2013) and requested information on organisation of occupational risk prevention, notably framework of rights, duties and structures for occupational risk prevention at national level; measures for occupational risk prevention at company level: assessment of work-related risks, adoption of preventive measures geared to the nature of risks, and information and training for workers; and whether the labour inspectorate has a duty to share the knowledge about occupational hazards and risk prevention acquired during inspection and investigation, as part of preventive activities (information, education, prevention).

In response, the report indicates that from 1st June 2012, the Department of Labour Inspection is organisationally shifted from the Ministry of Labour and Social Affairs into the Administration for Inspection Affairs. As part of the Department of Labour Inspection, an occupational safety and health (OSH) Group is in charge of the supervision of the implementation of the Law on Safety and Health at Work, secondary legislation thereof, technical and other measures relating to the protection of health and safety carried out by the labour inspectors in the field of safety and health at work, unless the Law stipulates that oversight in the implementation of these regulations in certain activities is carried out by other authorities.

As regards the risk assessment in relation to the work, the report indicates that an employer is obliged to issue an Act on Risk Assessment for all workplaces, determine the manner and measures to eliminate risk and ensure their implementation. The employer will specify in the Act on the Risk Assessment the jobs with increased risk, the health requirements for certain work to be met by employees in the work process, or for the use of certain funds for work on the basis of expert assessment of the authorised institution for health care of employees. The Act of Risk Assessment determines the identification and/or detection of danger; which jobs are exposed to the identified risks; the likelihood of accidents at work and occupational diseases; whether the risk is acceptable; and the introduction of measures to reduce unacceptable risks. The employer is also obliged to familiarise employees with the Act on Risk Assessment.

The Committee asks for information about the way in which employers, particularly small and medium-sized enterprises discharge their obligations in terms of initial assessment of the risks specific to workstations and the adoption of targeted preventive measures in practice. It asks the next report to indicate the manner in which the Government ensures that safety and health laws and regulations are adopted and maintained in force on the basis of an assessment of occupational risks.

According to the report, the employer is obliged to ensure protective measures by preventing, removing and controlling the risk at work, informing and training employees, along with appropriate organisation and the necessary resources, to implement safety measures and select such working and production methods that will improve or increase the level of OSH protection. The employer is also obliged to provide training for the safe operation for the employee at the beginning of his employment, i.e. reassignment to other jobs, when introducing a new technology or new work instruments or alteration of work equipment, as well as in case of alteration of the work process that may cause change of safe work and occupational health measures or after absence that lasted for more than a year.

In addition, the employer has to inform the employee or the employees' representative in writing on the risks to safety and health at work, as well as on the protective measures and activities to each type of workplace and/or job. Also, he is obliged to inform a representative of the employees about the rights and obligations relating to the occupational health and

safety and thus allow him access to risk assessment and measures to protect health and safety, including those risks faced by the groups of employees exposed to particular risks; decisions on measures to protect health and safety, which need to be taken, and if necessary, on the means and equipment for personal protection at work, which is used; records and reports on occupational injuries that have resulted in the absence of the employee from work for more than three working days.

The Committee notes that risk prevention measures exist at the level of undertakings. However, no information was provided as regards the labour inspectorate. The Committee underlines that there is a duty for inspectors to share the knowledge of risks and risk prevention they have acquired during their inspections and investigations conducted as part of their prevention activities (e.g. information, education). It reiterates its request, and considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Montenegro is in conformity with Article 3§1 of the Charter in this respect.

Improvement of occupational safety and health

The Committee previously deferred its conclusion (Conclusions 2013) and requested information on improvement of occupational health and safety, notably whether public authorities were involved in research (scientific and technical knowledge) on occupational health and safety, and in activities (analysis of sectoral risks, elaboration of standards, issue guidelines, publications, seminars, training); and whether public authorities were involved in training (qualified professionals), in the design of training modules, of training (how to work, how to minimise risks for oneself or others) and certification schemes.

In response, the report indicates that the national authorities are involved in research activities and occupational safety through the strategic policy objectives among which is awareness raising about the importance of the gradual introduction of health and safety at work in the educational system of Montenegro. It is also planned to raise awareness about the importance of OSH of pupils in primary and secondary education through the elective lessons on the topic of occupational safety and health.

According to the report, the Institute for the Development and Research in Safety at Work has been established for the purpose of research, study and design of appropriate methods in the field of occupation safety and health. This Institute is a public institution and has a capacity of legal entity. The Committee takes note of the activities of the Institute, detailed in the report.

The Ministry of Labour and Social Welfare implements the professional examination for persons engaged in the business of safety at work. Conditions, program and manner of taking such examination has been determined by the competent ministry. The Ministry of Labour and Social Welfare then delivers an authorisation to a legal entity or entrepreneur (i.e. authorised organisation that can carry out certain tasks of safety and health at work). The decision is issued for a period of three years and may be renewed under the same conditions.

In addition, the new Department for Safety at Work performs activities related to organising and taking professional examinations for acquiring professional title for the performance of safety at work; material processing and preparation of the operating license for authorised organisations for safety at work which carry out their activities with the approval of the Ministry; keeping registers of authorised organisations in the field of safety at work carrying out activities with the approval of the Ministry and supervise their work; and keeping of registers of persons who have passed the professional exam for acquiring professional title in the organisation of this Ministry.

Moreover, the report indicates that the involvement of state authorities in training of civil servants in the field of occupational safety and health within the Human Resources

Management Authority, in accordance with the aspirations and trends of approaching Montenegro to the European Union, primarily in the area of institution building system.

The Committee notes that there is a system aimed at improving occupational health and safety through research, development and training. It asks that the next report contain updated information, supported by concrete examples on the research work (analysis of sectoral risks; norms defined; recommendations made; publications) and training (certification schemes; training of qualified professionals; training schemes) undertaken during the reference period.

Consultation with employers' and workers' organisations

The Committee previously deferred its conclusion (Conclusions 2013) and requested information on consultation with employers' and workers' organisations, notably framework for consultation between public authorities and social partners (bodies; competencies; participants; frequency; issues) in the area of occupational health and safety; and consultation mechanisms at company level (bodies; competencies; participants; frequency; issues) in the area of occupational health and safety.

According to the report, the social partners as well as non-governmental organisations are involved in all phases of preparing and drafting of regulations relevant for the area of occupation safety and health. The report stresses that the employer, employee, representative of employees and trade unions shall cooperate in determining their rights, obligations and responsibilities pertaining to the safety and health at work, particularly in relation to data on the risks assessment and protective measures, decisions on protective measures to be taken, including the personal protective equipment, records and reports on accidents at work, planning and organising training and verification of capacities of the safety and health at work, etc.

The Committee asks that the next report provide concrete examples of the involvement of employers' and workers' organisations in shaping occupational health and safety policy in practice.

Conclusion

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

Article 3 - Right to safe and healthy working conditions

Paragraph 2 - Safety and health regulations

The Committee takes note of the information contained in the report submitted by Montenegro, but highlights the significant gaps in information provided in relation to the specific requirements of Article 3§2 of the Charter.

Content of the regulations on health and safety at work

The Committee recalls that states' first obligation under Article 3 of the Charter is to ensure the right to occupational safety and health rules of the highest possible standard. Paragraph 2 of this Article requires them to issue health and safety regulations providing for preventive and protective measures against most of the risks recognised by the scientific community and laid down in Community and international regulations and standards. These regulations have to be specific in that they must set out rules in sufficient detail for them to be applied properly and efficiently. They must also cover a majority of the risks listed in Conclusions XIV-2.

The Committee previously deferred its conclusion (Conclusions 2013) and requested for information on the following points: whether the legislation and regulations on occupational health and safety cover the majority of the risks listed in General Introduction to Conclusions XIV-2; and whether such coverage is specific in that the rules are set out in sufficient detail for them to be applied properly and efficiently.

The report gives a list of the existing legal framework in the field of health and safety: Law on Safety and Health at Work (Official Gazette (OG) No. 34/14); Labour Law (OG No. 49/08, 59/11, 66/12 and 31/14); Law on Pension and disability insurance (OG No. 66/12, 38/13, 61/13, 60/14, 10/15 and 44/15, etc.); Law on Labour Inspection (OG No. 79/08); Law on the Armed Forces (OG No. 88/09, 75/10 and 32/14); Decision on Montenegrin standards and related documents (OG No. 58/15); Law on Safety of Navigation (OG No. 62/13, 6/14 and 47/15); Law on Ionizing Radiation Protection and Radiation Safety (OG No. 56/09 and 58/09); Mining Law (OG No. 65/08 and 74/10); and Law on Social Council (OG No.16/07, 20/11 and 61/13).

The report states that, on 25 July 2014, the Parliament of Montenegro adopted the Law on Safety and Health at Work (Official Gazette No. 34/14), which replaces the former Law on Safety and Health at Work (Official Gazette No. 79/04 and 26/10). According to the new law, the employer is obliged to provide measures of safety and health at work to all employees, by preventing, eliminating and controlling risks at work, informing and training employees, and with proper organisation and the necessary means. In addition, the employer is obliged to provide special safety and health at work to women during pregnancy, persons under 18 years of age, and persons with disabilities. However the Committee needs further information on the content of the legislation, in particular which risks are covered by the Law on Safety and Health at Work. It asks that the next report explain the specific occupational risk protection system established under the Law on Safety and Health at Work.

The Committee points out that under the terms of Article 3§2 of the Charter, regulations concerning health and safety at work must cover work-related stress, aggression and violence specific to work, and especially for workers under atypical working relationships (Statement of Interpretation on Article 3§2 of the Charter, Conclusions 2013). The report does not provide any information on this point. The Committee accordingly reiterates its request.

The Committee observes that there has been general framework legislation on occupational safety and health since the Law on Safety and Health at Work (Official Gazette (OG) No. 34/14) came into force. It notes, however, that existing regulations only cover a small proportion of the risks identified in Conclusions XIV-2, and fail to offer protection against significant risks such as heavy loads, asbestos, air pollution, noise and vibration, and

chemical, physical and biological agents, or exposed sectors such as dock labour and agriculture.

Levels of prevention and protection

The Committee considers the levels of prevention and protection that the legislation specifies for certain risks.

Establishment, alteration and upkeep of workplaces

The Committee previously deferred its conclusion (Conclusions 2013) and requested whether workplace risk assessment is mandatory and a schedule to remedy the identified risks exists. In reply, the report indicates that the employer is obliged to issue an Act on Risk Assessment for all workplaces, determine the manner and measures to eliminate risks and ensure their implementation (see also examination under Article 3§1, Conclusions 2017). However, the report does not contain any information on the installation, modification and upkeep of workstations.

The Committee notes that, according to ILO database NORMLEX, ILO Conventions No. 119 on the Guarding of Machinery (1963) and No. 148 on the Protection of Workers against Occupational Hazards in the Working Environment Due to Air Pollution, Noise and Vibration (1979) are in force. ILO Conventions No. 120 on Hygiene in Commerce and Offices (1964) and No. 127 on Maximum Weight (1967) are not.

Given the generality of the information provided, the Committee is not in a position to examine whether the legislation and regulations in force satisfy the obligation under Article 3§2 of the Charter, which requires that levels of prevention and protection required by the legislation and regulations in relation to the establishment, alteration and upkeep of workplaces be in line with the level set by international reference standards. It asks for information in the next report on the legislative or regulatory measures establishing the levels of prevention and protection against occupational hazards specifically related to the establishment of, alteration to, and upkeep of workplaces. It also asks for more detailed information on the implementation of preventive measures geared to the nature of risks, on the provision of information and training for workers, as well as on a schedule for compliance.

Protection against hazardous substances and agents

The Committee asks the next report to provide information on the specific provisions relating to protection against risks of exposure to benzene.

Protection of workers against asbestos

The Committee previously deferred its conclusion (Conclusions 2013) and requested whether exposure limits were aligned with those adopted in the international reference standards and, where applicable, in the Community *acquis*. With regard to asbestos, it requested whether workers are protected up to a level at least equivalent to that set by Council Directive 83/477/EEC of 19 September 1983 on the protection of workers from the risks related to exposure to asbestos at work, as amended by Directive 2003/18/EC of the European Parliament and of the Council of 27 March 2003, and ILO Convention No. 162 on Asbestos (1986), and whether the use at the workplace of asbestos in its most harmful forms (amphiboles) is prohibited.

The report provides no information on the levels of prevention and protection in relation to asbestos.

In view of the lack of information in the report, the Committee is not in a position to examine whether the legislation and regulations in force satisfy the obligation under Article 3§2 of the

Charter, which requires that level of prevention and protection required by the legislation and regulations in relation to asbestos are at least equivalent to the level set by international reference standards. It asks that the next report provide information on the legislation and regulations on level of prevention and protection from asbestos, and on the application of this legislation and regulations in practice. It asks in particular for information on exposure limit values, on the ban of production and sale of asbestos and products containing it. It also asks for specific measures taken to make an inventory of all building and materials contaminated by asbestos.

Protection of workers against ionising radiation

The Committee previously deferred its conclusion (Conclusions 2013) and requested, with regard to ionizing radiation, whether workers are protected up to a level at least equivalent to that set in the Recommendations (1990) by the International Commission on Radiological Protection (ICRP Publication No. 60) or, where applicable, to Council Directive 96/29/EURATOM of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation.

The report indicates that workers are protected in accordance with the regulations in the field of ionizing radiation and notes that the Law on Ionizing Radiation Protection and Radiation Safety (OG No. 56/09 and 58/09)) was adopted. According to the report, about 80% of out-dated Directive 96/29/EURATOM were transposed into national legislation.

The Committee takes note of this information. Given the generality of this information, the Committee is not in a position to examine whether the legislation and regulations in force satisfie the general obligation under Article 3§2 of the Charter, which requires that level of prevention and protection required by the legislation and regulations in relation to ionising radiation are at least equivalent to the level set by international reference standards. It asks that the next report provide more comprehensive information on the legislation and regulations on the level of prevention and protection from ionising radiation, and on the application of this legislation and regulations in practice. It asks whether workers are protected up to a level at least equivalent to that set in the Recommendations by the International Commission on Radiological Protection (ICRP Publication No. 103, 2007).

Personal scope of the regulations

The Committee previously deferred its conclusion (Conclusions 2013) and requested whether all workers (including temporary workers, agency workers and workers on fixed-term contracts), all workplaces (including home, domestic and independent workers) and all sectors of activity (without regard to risk intensity or numbers of employees) are covered by occupational health and safety regulations.

According to the report, an “employee” is a person who has been employed by, or has concluded an employment contract with the employer, a person who has underwent training work with the employer, as well as a person who performs work for the employer under any legal basis. The provisions of the Law on Safety and Health at Work shall apply to all persons involved in the working process of the employer under any legal ground.

The report states that the provisions of the Law on Safety and Health at Work apply to all persons employed in the territory of Montenegro with legal entities and entrepreneurs in all sectors of activity, government bodies, bodies of state administration and local self-government units, employees who were sent to work abroad if the regulations of the receiving State provide less favourable measures of safety and health at work than those provided for in this Law, unless otherwise regulated by a special law.

The Committee notes from the report that the provisions of the Law on Safety and Health at Work shall not apply to persons for whom the employer has organised work at home under

the law, and/or with whom it contracted the housework employment. The Committee therefore concludes that the situation is not in conformity with the Charter on the ground that domestic workers are not protected by occupational health and safety regulations.

Recalling that States Party undertook to have all workers, all workplaces and all sectors of activity covered by occupational health and safety legislation and regulations, the Committee asks that the next report include concrete examples on the way in which temporary workers, interim workers and workers on fixed-term contracts are provided information on hazards, training on safe working methods, medical examination when rehired or reassigned new tasks. It also asks for concrete examples on how these workers are provided access to representation at work. It also asks for information on any existing limitations on the basis of the number of employees, and on existing measures to monitor the implementation of such legislation and regulations in practice.

Consultation with employers' and workers' organisations

The Committee previously deferred its conclusion (Conclusions 2013) and requested for information on consultation with employers' and workers' organisations, notably framework for consultation between public authorities and social partners (bodies; competencies; participants; frequency; issues) in the area of occupational health and safety; and consultation mechanisms at company level (bodies; competencies; participants; frequency; issues) in the area of occupational health and safety.

The report notes that, when planning and introducing new technologies, the employer is obliged to consult with employees or their OSH representatives about issues regarding the working tools, working conditions, working environment and their consequences for the OSH. In assigning an employee to a position with special working conditions or with increased risk, the employer must take into account employee‘s abilities, which may affect the protection and health of the employee. The implementation of protection measures is reflected in the implementation of safety measures with respect to the following principles: avoiding risks; providing risk assessment; eliminating risks at source; adapting work and workplace to an employee, especially in terms of designing the workplace, the choice of working tools, the choice of working and production methods with particular emphasis on avoiding monotonous work and work at a more certain speed and reduce their effect on health; adapting to technical progress; substitution of dangerous with harmless or less harmful circumstances; development of a comprehensive policy to protect health and safety, which includes technology, work organisation, working conditions, interpersonal relations and working environment factors; giving advantages to collective protective measures over individual protective measures; giving appropriate instructions and information (see also examination under Article 3§1, Conclusions 2017).

The Committee confirms that there is co-operation between the public authorities and the social partners at company level.

Conclusion

The Committee concludes that the situation in Montenegro is not in conformity with Article 3§2 of the Charter on the grounds that:

- it has not been established that levels of prevention and protection required by the legislation and regulations in relation to the establishment, alteration and upkeep of workplaces are in line with the level set by international reference standards,
- it has not been established that levels of protection against asbestos and ionising radiation are adequate;
- domestic workers are not protected by occupational health and safety regulations.

Article 3 - Right to safe and healthy working conditions

Paragraph 3 - Enforcement of safety and health regulations

The Committee takes note of the information contained in the report submitted by Montenegro, but highlights the significant gaps in information provided in relation to the specific requirements of Article 3§3 of the Charter.

Accidents at work and occupational diseases

The Committee previously deferred its conclusion (Conclusions 2013) and requested statistical data on the number of accidents at work; the average incidence rate per 100 000 workers for accidents at work; the number of fatal accidents; the average incidence rate per 100 000 workers for fatal accidents; statistical data on the number of cases of occupational diseases; the average incidence rate per 100 000 workers for cases of occupational disease; the number of fatal cases of occupational disease; and for the average incidence rate per 100 000 workers for fatal cases of occupational disease.

The report indicates that, according to information provided by the Health Insurance Fund, the number of accidents at work was 907 in 2012, 815 in 2013, and 897 in 2014. The report indicates that the expansion in construction activity has led to an increase in the number of fatal accidents at work. The Committee observes that the standardised incidence rates of accidents at work and fatal accidents at work were not provided in the report. It therefore asks that the next report provide this information.

According to the report, the most common causes of accidents at work were non-application of measures to protect health and safety which caused the slipping, fall from a height or to a depth, struck/squeeze by a timber, etc. The hiring of persons who are not trained for safe work at jobs they do, and whom were not examined their medical fitness, deterioration of resources for the work, and the use thereof without prior inspection and testing, and without provision of expert findings of authorised organisations for environmental protection and occupational health.

The Committee notes that the report does not provide pertinent figures or statistics on the number of occupational diseases. It therefore considers that during the reference period occupational diseases were not adequately monitored. The Committee asks that the next report provide information on the legal definition of occupational diseases; the mechanism for recognising, reviewing and revising of occupational diseases (or the list of occupational diseases); the incidence rate and the number of recognised and reported occupational diseases during the reference period (broken down by sector of activity and year), including cases of fatal occupational diseases, and the measures taken and/or envisaged to counter insufficiency in the declaration and recognition of cases of occupational diseases; the most frequent occupational diseases during the reference period, as well as the preventive measures taken or envisaged.

The Committee considers that the figures provided do not establish that accidents at work and occupational diseases are monitored efficiently. The Committee recalls that satisfactory application of the Charter cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised, and that the frequency of accidents at work and their evolution are key aspects of monitoring the effective observance of the right enshrined in Article 3§3 of the Charter. In the meantime, the Committee concludes that the situation is not in conformity with Article 3§3 of the Charter on the ground that it has not been established that accidents at work and occupational diseases are monitored efficiently.

Activities of the Labour Inspectorate

The Committee notes that under Article 3§3 of the Charter, States Parties must implement measures to focus labour inspection on small and medium-sized enterprises (Statement of Interpretation on Article 3§3, Conclusions 2013). Since it cannot find an answer to its

question in the report with regard to this point (Conclusions 2013), the Committee requests that the next report contain this information.

The Committee previously deferred its conclusion (Conclusions 2013) and requested information on the framework and functioning of the Labour Inspectorate (relevant bodies, competence, means of investigation, enforcement powers); activities of the Labour Inspectorate (number of labour inspectors, frequency of inspection visits, proportion of workers covered by inspection related to the labour force); and measures taken and sanctions adopted by the Labour Inspectorate (number of infringements, types of notices and measures, number and volume of fines, number of suspension of activity, number of cases prosecuted).

The report indicates that the number of systematised working posts for labour inspectors is 39, of which 12 focus on safety and health at work. Out of potentially positions only 34 inspectors is employed, of which 9 are in the field of safety and health at work.

According to the report, supervision of the implementation of the Law on Health and Safety at Work, the application of regulations adopted based on this law, and technical and other measures relating to the safety and health at work is carried out by the Labour Inspection through the labour inspector for safety and health at work. That is unless the law stipulates that the control of the implementation of these regulations in certain activities is carried out by other authorities.

A labour inspector for safety and health at work, in addition to the duties and powers established by law, has the obligation and authority to carry out investigation of serious, collective and fatal accidents at work. According to data provided by the Administration for Inspection Affairs, the total number of completed site investigations by labour inspectors in the field of safety and health at work as regards accidents at work decreased from 49 in 2012, of which 7 accidents were fatal, to 36 in 2015, including 9 fatal accidents.

The report indicates that the Labour Inspection carried out 2 656 inspections in the field of health and safety during the reference period, and 2 622 irregularities were established. In order to eliminate identified irregularities, 169 decisions have been issued and 583 conclusions were drawn. Due to established irregularities, 859 misdemeanour warrants have been issued, resulting in the imposition a total of €265 870 of fines (the failure to take measures to protect employees, according to the report). There were 4 requests for initiation of misdemeanour procedures in the field of safety and health.

The Committee takes note of the information provided. However, this information is not sufficient to enable the Committee to assess compliance with Article 3§3 of the Charter. The Committee therefore repeats its previous requests concerning the proportion of workers who are covered by inspections and the percentage of companies which underwent a health and safety inspection in the years covered by the reference period. In the meantime, the Committee reserves its position on this point.

Conclusion

The Committee concludes that the situation in Montenegro is not in conformity with Article 3§3 of the Charter on the grounds that it has not been established that accidents at work and occupational diseases are monitored efficiently.

Article 3 - Right to safe and healthy working conditions

Paragraph 4 - Occupational health services

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

The Committee recalls that under Article 3§4 States must promote, in consultation with employers' and workers' organisations, the progressive development of occupational health services for all workers with essentially preventive and advisory functions. These services may be run jointly by several companies. They must be efficient and should be able to identify, measure and prevent work-related stress, aggression and violence (see Statement of Interpretation on Article 3§4, Conclusions 2013; also Conclusions 2003, Bulgaria). It further notes that if occupational health services are not established for all enterprises, the authorities must develop a strategy, in consultation with employers' and employees' organisations, for that purpose. Thus, States "must take measures that allow it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources" (Conclusions 2003, Bulgaria, Conclusions 2009, Albania).

The Committee previously deferred its conclusion and requested for more detailed information on framework on occupational health services (legislation, mission, organisation, programmes, strategies, action plans); whether, if not all undertakings provide occupational health services, a strategy is set up, in consultation with the social partners, to provide access to occupational health services; what, if access to occupational health services is not mandatory, are the consequences whenever employers choose not to provide such access; number of workers under care with occupational health services; and proportion of undertakings which provide or share occupational health services with other undertakings.

In reply, the report indicates that the Law on Safety and Health at Work (Official Gazette No. 34-14) prescribes that the employer shall promote the safety and health at work. Article 11 of this law prescribes the obligation to conduct previous and periodic medical checks of employees. The Rulebook on the Scope of Measures of Specific Health Care of Employed (Official Gazette No. 44/06) stipulates the mandatory specific medical checks of employees. In addition, the report indicates that the Law on Health Care (Official Gazette No. 3/16 and 39/16, outside of the reference period) stipulates that the employers shall, in planning and carrying out business activities, develop and use appropriate technologies that are health/environment friendly, introduce and implement measures for specific health care of employees. The Rulebook on Detailed Conditions to be Met by a Legal Entity to Perform the Health Care of the Employed (Official Gazette No. 60/16, outside of the reference period) specifies conditions for legal entities to be eligible to conduct specific medical checks of employees.

The report indicates that occupational health services provide healthcare institutions. In order to ensure protection of health and safety at work, immediate checks on primary health care level are ensured (private health institutions, health centres and private health facilities) as well as periodic or early reviews of staff in occupational medicine. The access to occupational health services is mandatory for all employees, but, if the employer does not provide the employee access to health care, the competent inspection services will take measures to sanction those employers.

Moreover, the report indicates that the principle of safety at work has been promoted by the Strategy for the Improvement of Occupational Medicine in Montenegro for the period 2015-2020 with the Action Plan. This strategy promotes a new concept of providing services in occupational medicine for all employees regardless of sector, type of employment, the size and profile of the employer or geographical location, includes access to services that are relevant, accessible, acceptable, affordable and of good quality. In order to meet all the needs of the employee with regard to health in line with the reform process of the health system, the Study on the Establishment of the Institute of Occupational Medicine is in

preparation as a single reference medical institution to promote working capacity and health of employees. The Committee asks the next report to provide information about the impact of this strategy on the development of health services in small and medium-sized enterprises.

The Committee observes that the Law on Safety and Health at Work require employers to provide medical examination to employees. In view of the progressive nature of the obligation in Article 3§4 of the Charter, the Committee repeats its request for information regarding the percentage of employees covered by occupational health services be provided in the next report.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in Montenegro is in conformity with Article 3§4 of the Charter.

Article 11 - Right to protection of health

Paragraph 1 - Removal of the causes of ill-health

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

Measures to ensure the highest possible standard of health

The Committee notes from the WHO that life expectancy at birth in 2015 (average for both sexes) was 76.1 (compared to 75.6 in 2009). The life-expectancy rate is below than that of other European countries. For instance, life expectancy at birth in the EU-28 was estimated at 80.6 years in 2015.

The death rate (deaths/1 000 population) was 10 in 2015 according to the World Bank (compared to 9.29 in 2011).

The Committee noted previously that the main causes of disease, disability and premature death (before the age of 65) are chronic non-communicable diseases. Ischemic heart disease, cerebrovascular disease, lung cancer, affective disorders (unipolar depression) and diabetes cause almost two-thirds of the total disease burden. The Committee asked to be kept informed of the measures taken to combat these causes of mortality (Conclusions 2013). The report indicates that the new "Health Care System Development Master Plan for the period 2015-2020" has as main strategic objectives to avoid premature mortality, to reduce the morbidity of the leading chronic diseases, to improve the quality of life and to avoid the consequent disability. An Action Plan 2016-2017 was adopted by the Government to implement the strategy for the prevention and control of chronic non-communicable diseases. Measures and activities which are directly or indirectly related to the control and prevention of chronic non-communicable diseases are contained in other national strategic documents and the accompanying action plans (e.g. the Action Plan for Nutrition, the Action Plan for the Promotion of Mental Health, the Action Plan for Health Care of Persons with Diabetes, the Action Plan to Reduce the Harmful Use of Alcohol, etc.). The Committee asks for information in the next report on the implementation and impact of these plans and initiatives on combating the main causes of death.

The Committee notes from Eurostat that the infant mortality rate decreased from 5.7 deaths per 1,000 live births in 2009 (previous reference period) to 4.4 in 2011 and even to 2.2 in 2015 (during the reference period), while the EU-28 average rate in 2015 was 3.6 per 1 000 live births.

As regards the maternal mortality rate, the Committee notes from WHO data that in 2015 the rate was 7 deaths per 100 000 live births.

The Committee asks for updated figures in the next report on the death rate and the main causes of death, as well as on infant and maternal mortality rates.

Access to health care

The Committee took note previously of the regulatory and legal texts related to health and asked for information on the administrative structures responsible for the proper implementation of the regulatory framework (Conclusions 2013). The report indicates that the Ministry of Health and health institutions at all levels of health care are responsible for the functioning of the health system in accordance with the Health Care System Development Master Plan for the period 2015-2020.

The Committee notes from the EU Commission Report 2016 that the 2015-2020 master plan for health development and the law on healthcare, which is partly aligned with the EU *acquis,* were adopted in late 2015. Fiscal austerity and sustainability continued to detract from the work of public health bodies, and programmes and interventions were further impacted by overuse of medicines. Amendments to the maximum sale prices criteria for

medicines were adopted regarding the alignment of prices, once the maximum price is determined. The Ministry of Health issued a guidebook for regular analyses in monitoring the prescription of drugs. The Committee asks that the next report contain information on the out-of-pocket payments supported by patients (as a percentage of the total health spending).

In its previous conclusion, the Committee wished to be kept informed on any reforms of the health system pursued (Conclusions 2013). The report indicates that the strategic document “The Plan of Structural Reforms in the Healthcare System of Montenegro with 2015 Action Plan”, established priority measures to reform the health system, which should be implemented from 2016 to 2017 (outside the reference period). These measures include the continuing education of medical personnel, reducing the number of hospital beds and reducing unnecessary referral of patients to tertiary level of health care. The structural reform envisages a measure of redistribution of working hours, greater number and competences of doctors at primary health care level, which will result in the relief of the secondary and tertiary levels of care. The Committee wishes to be kept informed on the implementation of these reforms and on any other health care reforms undertaken.

In its previous conclusion, the Committee noted that WHO Framework Strategy "Health for All" sets out core values for the preparation of health policies. These should be based on the principle of equality, allowing equal access to health services for the population, paying special attention to the poor and other marginal/vulnerable groups. The Committee asked the next report to indicate how this strategy translates into practice, namely whether disadvantaged groups (the unemployed, persons living below the poverty line, etc.) qualify for medical assistance, and the range of public health services provided (Conclusions 2013).

The report indicates that as regards the vulnerable groups (unemployed, persons living below the poverty line, etc.), the normative framework in the health care system is in line with the strategic objectives that all citizens, health service users enjoy the same rights. Article 5 of the Law on Health Care ("Official Gazette of Montenegro", No. 16/03 and 39/16) provides that in the exercise of the right to health care, all citizens are equal, regardless of their nationality, race, sex, gender identity, sexual orientation, age, disability, language, religion, education, social origin, property or other personal characteristics, in accordance with the law. However, the Committee notes from the EU Commission Report 2016 that access to health protection must be improved for people with disabilities, people living with HIV, children and adults who use drugs, prisoners, women in prostitution, LGBTI people, internally displaced persons and Roma. The Committee wishes to receive the Government’s comments on this point.

The Committee recalls that the right of access to health care also requires that arrangements for access to care must not lead to unnecessary delays in its provision. It therefore previously asked for information on the rules that apply to the management of waiting lists, as well as statistics on average waiting times in health care (Conclusions 2013). The report indicates that according to Article 50 of the Law on Health Insurance ("Official Gazette of Montenegro", No. 16/06) medical institutions provide timely health care, depending on the type of health services and the urgency of the case. For certain services in the field of diagnosis and treatment, which are not urgent, a waiting list can be made. Providing health care is done in order of the waiting list. The insured person is put on a waiting list, only if a health service to be provided is the best way or the only way to treat the insured person. The Committee asks for information and concrete examples of the actual average waiting times for primary and specialist care as well as for surgical interventions.

The Committee noted in its previous conclusion that there was an insufficiency of healthcare professionals in Montenegro, especially in the number of doctors. It asked whether any measures are being taken in this respect**,** and whether the actual needs for health workers are being assessed/ monitored (Conclusions 2013). The report indicates that the “Plan of human resources in the health sector from 2013 to 2022” establishes the uniform distribution

of health personnel (with a share of 25% of staff in the northern and southern regions, and 50% in the central region). After 2017 (outside the reference period), the staff requirements will be reviewed at primary health care level, given the growing health problems and the need for promotion, prevention and health improvement. The Plan of Human Resources is based on the assumption to reach the number of 260 doctors per 100,000 inhabitants by 2022, which is for Montenegro a demanding task, but also a realistic assessment. The report mentions in this context the adoption in June 2015 of the document of Structural Reforms in the Healthcare System of Montenegro with Action Plan for its implementation from 2015 to 2017.

The Committee takes note that according to Euro Health Consumer Index (EHCI) which assesses the performance of national healthcare systems in 35 European countries according to 48 indicators, including patients' rights, accessibility, prevention and outcomes, Montenegro scored the last country in this comparison with only 484 points (as opposed to the Netherlands which was on the first place with 916 points).

Furthermore, the Committee notes from World Bank data that the public health expenditure as a share of GDP in Montenegro dropped from 5.2 in 1995 to 3.7 in 2014, which is well below other European countries and the OECD average of 8.9% in 2013.

The Committee asks that the next report provide comprehensive information on the implementation of the Structural Reforms mentioned in the report and on their concrete impact on the health care system. Meanwhile, noting that the main reforms of the health system should be implemented from 2016 to 2017 (outside the reference period), the Committee considers that the situation is not in conformity with Article 11§1 of the Charter on the ground that adequate measures had not been taken to effectively guarantee the right of access to health care.

The Committee previously asked for information on the availability of rehabilitation facilities for drug addicts, and the range of facilities and treatments (Conclusions 2013). The report indicates that under Article 12 of the Law on the Prevention of Drug Abuse ("Official Gazette of Montenegro", No. 28/11) the drugs addicts, who have already been treated, are to be provided rehabilitation and re-socialization in special institutions. Services for drug and other psychoactive substances users are provided in a specialised hospital in Kotor, Department of Psychiatry, Clinical Centre of Montenegro and rehabilitation centre "Kakaricka Montenegro" – Podgorica. The Committee takes note of the information in the EU Commission Report 2016 on drug abuse prevention that efforts are needed to develop and expand prevention, rehabilitation and social reintegration programmes for addicts. The same source indicates that the Commission for drugs was created in May 2016, which is composed of four psychiatrists, one representative of the civil society organisations and two representatives from the Ministry of Health. The Committee wishes to be kept informed on the progress made in this field in the next report.

The Committee asks that the next report contain information on the availability of mental health care and treatment services, including information on the prevention of mental disorders and recovery measures.

The Committee asks that the next report contain information on dental care services and treatments (such as who is entitled to free dental treatment, the costs for the main treatments and the proportion of out-of-pocket paid by the patients).

As regards the right to protection of health of transgender persons, the Committee received submission by Transgender Europe and the International Lesbian and Gay Association (European Region) (ILGA) stating that Montenegro is among the states which require sterilisation as a condition for legal gender recognition. The Committee asks for information on this matter in the next report, in particular whether legal gender recognition for transgender persons requires (in law or in practice) that they undergo sterilization or any other invasive medical treatment which could impair their health or physical integrity.

Conclusion

The Committee concludes that the situation in Montenegro is not in conformity with Article 11§1 of the Charter on the ground that adequate measures have not been taken to effectively guarantee the right of access to health care.

Article 11 - Right to protection of health

Paragraph 2 - Advisory and educational facilities

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

Education and awareness raising

The Committee recalled previously that under Article 11§2, States Parties must demonstrate through concrete measures that they implement a public health education policy in favour of the general population and population groups affected by specific problems. Thus, the Committee asked for information on the whole range of activities undertaken by public health services, or other bodies, to promote health and prevent diseases (Conclusions 2013). The report indicates that the Institute for Public Health of Montenegro – Centre for Health Promotion monitors the socio-economic, cultural, environmental, political and other characteristics of the community, as well as attitudes, beliefs and behaviours that directly or indirectly affect the health of the population. The Centre is responsible for the preparation and implementation of national public health programs and strategies for promotion, prevention and protection of public health. The activities of the Centre focus primarily on educating citizens, as well as informing of the harmful factors of living and working environment, which can have negative consequences on health. The Centre develops also national programs to protect vulnerable groups and monitors their implementation.

The Committee recalls that informing the public, particularly through awareness-raising campaigns, must be a public health priority. Measures should be taken to prevent activities that are damaging to health (smoking, alcohol, drugs) and to promote a sense of individual responsibility (healthy eating, sex education, environment). The Committee asks that the next report provide information on concrete campaigns undertaken on the above mentioned topics in the media, in schools and in public institutions etc.

In its previous conclusion the Committee recalled that health education should be provided throughout school life and form part of school curricula and asked the next report to indicate whether providing health education at schools is a statutory obligation, how it is included in school curricula (as a separate subject or integrated into other subjects), and the content of health education (Conclusions 2013). The report indicates that for pupils of primary and secondary schools, subjects related to health education are dealt with under topics such as biology, civic education, healthy lifestyles, civic pedagogy and ‘the individual within the group’. Moreover, the subject “Healthy Lifestyles” which was introduced in the curriculum of primary and secondary education contains topics like: mental and emotional health, defence (immune) system, infectious diseases and HIV/AIDS, reproductive health with sex education and prevention of sexually transmitted diseases, prevention of physical and psychological violence, the impact of psychoactive substances on human health (the latter includes the prevention of alcoholism). The report adds that the National Institute for Education has approved the introduction of elective subjects in secondary schools “Healthy Lifestyles”. A research was carried out on the “Impact of elective subject Healthy Lifestyles on knowledge, values and life skills of pupils of elementary schools”, the findings of which were used for the development of the subject “Healthy Lifestyles for High School Pupils”. The Committee asks whether the latter subject was introduced in the curriculum of high schools.

Counselling and screening

The Committee recalled previously that under Article 11§2, States Parties should provide free and regular consultation and screening for pregnant women and children throughout the country. It asked that information on these matters be provided in the next report, including on the frequency of school medical examinations, their objectives, the proportion of pupils concerned and the level of staffing (Conclusions 2013). As regards the medical examinations of children in schools, the report indicates that regular medical check-ups are

carried out. This systematic review includes a complete health examination of children and checks are carried out in the second, fourth, sixth, eighth grade, and in the first and third year of high school. In the eighth grade, a physical examination is performed and vaccination against polio, diphtheria and tetanus are carried out; in the fourth and final year of high school, medical check-ups and vaccination against diphtheria and tetanus are carried out.

The report does not provide any information on the consultation and screening programs available for pregnant women. The Committee asks that the next report include information on this matter. Pending receipt of the information provided, it reserves its position on this point.

In its previous conclusion, the Committee recalled that pursuant to this provision there should be screening, preferably systematic, for the diseases which constitute the principal cause of death, and asked for information on mass screening programmes available in the country, their frequency and accessibility (Conclusions 2013). The report indicates that in 2011 Montenegro adopted a National Plan for Cancer Control, the National Programme for Early Detection of Breast Cancer, the National Programme for Early Detection of Cervical Cancer and the National Programme for Early Detection of Colon Cancer. Montenegro adopted also the Strategy for the Prevention and Control of Chronic Non-communicable Diseases (2008). The Committee wishes to be informed on the impact /outcome of these programmes in practice. The development of the program of screening for early detection of colon cancer is on-going. The report adds that the relevant European Guidelines for screening programs are being used and media campaigns have also been conducted.

The Committee notes from the EU Commission Report 2016 that the WHO European Childhood Obesity Surveillance Initiative was carried out in May and June 2016, though no official results are available yet. It asks for information on this matter in the next report.

Conclusion

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

Article 11 - Right to protection of health

Paragraph 3 - Prevention of diseases and accidents

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

Healthy environment

In its previous conclusion, the Committee asked for information on the laws, regulations and measures taken for the reduction of environmental risks, in particular in the field of air quality, water management, waste management, environmental noise, ionising radiation, asbestos and food safety, as well as on the institutional structures for the proper implementation of environmental legislation. It also wished to receive information on the levels of air pollution, contamination of drinking water and food intoxication during the reference period, namely whether trends in such levels increased or decreased (Conclusions 2013).

The Committee takes note from the report of the regulations and measures taken with regard to food safety and air quality assessment. The report provides detailed information on the main air pollutants and it states that the air, assessed in terms of global indicators of sulphur (IV) oxide (SO2) is of good quality, except in the urban part of Pljevlja, where deviations from the required air quality standards were registered during the reference period. Increased concentrations of PM10 and PM2.5 dust particles in the air had the biggest impact on poorer air quality. High concentrations were recorded on a daily basis in Pljevlja, Nikšić and Podgorica. The Committee asks to be kept informed on the measures taken to reduce the air pollution in the problematic areas.

The Committee reiterates its request for information on contamination of drinking water and water management, waste management, environmental noise, ionising radiation and asbestos. The Committee points out that in the absence of such information in the next report, there will be nothing to show that the situation is in conformity with the Charter on this point.

Tobacco, alcohol and drugs

In its previous conclusion, the Committee noted that smoke-free legislation existed in respect of certain public places such as, health care institutions, educational facilities, universities and government facilities. However, no such legislation existed as regards bars, restaurants, pubs, public transport, or indoor offices. The Committee asked the next report to provide updated information on the state of laws on smoke-free environments, health warnings on tobacco packages, as well as tobacco advertising, promotion and sponsorship (Conclusions 2013).

The report indicates that through the Law on Limiting Use of Tobacco Products measures were introduced with regard to labels and warnings on packaging, the prohibition of sale of tobacco products to persons under the age of 18, rules on advertising, promotion and sponsorship of tobacco products. The Committee notes from WHO Report on the Global Tobacco Epidemic (2017) that smoke-free legislation still does not exist with respect to indoor offices and workplaces, restaurants, cafés, pubs and bars, and public transport.

The Committee recalls that anti-smoking measures are particularly relevant for the compliance with Article 11 since smoking is a major cause of avoidable death in developed countries. To be effective, any prevention policy must restrict the supply of tobacco through controls on production, distribution, advertising and pricing (Conclusions XVII-2 (2005), Malta). In particular, the sale of tobacco to young persons must be banned (Conclusions XV-2 (2001), Portugal) as must smoking in public places (Conclusions 2013, Andorra) including transport, and advertising on posters and in the press (Conclusions XV-2 (2001), Greece).

The Committee assesses the effectiveness of such policies on the basis of statistics on tobacco consumption.

The Committee notes from WHO Europe – Tobacco Control Factsheet that the prevalence of current adult smokers (20 years and older) was 31.0% in 2012 (men: 35.0%; women: 27.0%). It asks for updated information in the next report on trends in the consumption of tobacco (adults and youth). Meanwhile, the Committee considers that the situation is not in conformity with Article 11§3 of the Charter on the ground that the measures taken to ensure smoke-free environments in public places have been insufficient.

The Committee previously asked for information on the policy regarding alcohol consumption (including the minimum age at which the sale of alcoholic beverages is permitted) and drug consumption (Conclusions 2013). The report indicates that selling alcohol to minors is prohibited by the Law on Tourism "Official Gazette of Montenegro," No. 61/10), Article 104, which stipulates that "*the company, legal person or entrepreneur in the restaurant cannot serve alcoholic beverages to persons under 18 years, and it is required that a written notice is displayed in a visible place*". The report indicates that according to the WHO estimates, the total alcohol consumption per capita in Montenegro amounted to 13.02 litres, with a share of unregistered or informally produced alcohol of 4.7 litres. The Committee takes note from the report of the data on the use of alcohol among young people as reflected by the 2015 ESPAD survey of the Institute for Public Health. A National Strategy to Prevent Harmful Use of Alcohol and Alcohol related Disorders 2013-2020 was adopted, which defines the objectives of the fight against alcoholism. The Action Plan for implementation of the Strategy for the period 2015-2016 set out the activities relating to the establishment and regular work of the National Coordinating Council for the alcohol that will include representatives of relevant government organisations. The Committee asks the next report to provide information on the impact of the strategy and action plan on the consumption of alcohol, especially among young people.

The report further indicates that drugs for substance abuse may be issued only by prescription in accordance with the Law on Medicines. Montenegro has adopted a strategic document on the rational use of drugs. The Committee asks that the next report provide updated information on the measures taken to reduce consumption of alcohol and drugs and trends in such consumption.

Immunisation and epidemiological monitoring

The Committee previously asked for updated information on vaccination coverage rates (Conclusions 2013). The report indicates that the coverage of mandatory vaccination of children against infectious diseases in 2015 ranged from 64.0% (MMR1) to 88.4% (BCG), with revaccination performed with coverage of 70.6% (polio in the second year) to 95.6% (DT and polio before entering the first grade of primary school). Other systematic primary immunisation coverage rates were: DTaP, Hib and Polio 3: 89.2% and Hepatitis B: 81.6%. The report further indicates that the incidence rate of tuberculosis in 2015 was 12.1 per 100 000 population (compared to 19.1 per 100 000 population in 2009) and the incidence of newly diagnosed HIV/AIDS infections was 3.06 per 100 000 inhabitants.

The Committee asks for updated figures on the vaccination coverage in the next report.

Accidents

The Committee previously asked for information on any measures or initiatives taken to prevent accidents, as well as on trends in the matter (Conclusions 2013). The report indicates that a Strategy to Improve Road Safety for the period 2010-2019 was adopted which establishes measures and activities in order to carry out actions and campaigns of a preventive effect on traffic safety, raising the level of awareness and reducing the number of traffic accidents.

The Committee recalls that under Article 11§3, States Parties must take steps to prevent accidents. The main accidents covered are road accidents, domestic accidents, accidents at school, and accidents during leisure time. The Committee asks for information on the implementation and impact of the above mentioned strategies on reducing the number of accidents and trends in this field.

Conclusion

The Committee concludes that the situation in Montenegro is not in conformity with Article 11§3 of the Charter on the ground that the measures taken to ensure smoke-free environments in public places have been insufficient.

Article 12 - Right to social security

Paragraph 1 - Existence of a social security system

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

In the case of **family** and **maternity benefits**, the Committee refers to its conclusions on, respectively, articles 16 and 8§1 (Conclusions 2015).

Risks covered, financing of benefits and personal coverage

The Committee refers to its previous conclusions for a description of the social security system in Montenegro, and notes that it continues to cover the traditional risks (medical care, sickness, unemployment, old age, work accidents/occupational diseases, family, maternity, invalidity and survivors). The system also continues to rest on collective funding: it is funded by contributions (employers, employees) and by the State budget.

The Committee recalls that Article 12§1 guarantees the right to social security to workers and their dependents including the self-employed and that States Parties must ensure this right through the existence of a social security system established by law and functioning in practice. In particular, health insurance should extend beyond employment relationship and must cover a significant percentage of the population. The social security system should furthermore cover a significant percentage of the active population as regards income-replacement benefits, such as sickness, maternity and unemployment benefits, pensions, and work accidents or occupational diseases benefits.

The Committee previously noted that **healthcare** insurance was mandatory and covered all employed, self-employed, farmers, beneficiaries of social protection rights, beneficiaries of pensions according to regulations on pension and disability insurance, priests and church employees, registered unemployed persons, prisoners and their family members. In response to the Committee's question (Conclusions 2013), the report indicates that the insured participate in the costs of obtaining health care services in the amount of 20%. According to the report, the costs of participation in obtaining health services are minimal and relate entirely to the administrative costs of the services provided. The Committee notes that healthcare compulsory insurance extend beyond the employment relationship and also covers dependant family members of the insured who are not capable of independent life and work and understands from the available information that a significant part of the population is presumably covered by healthcare insurance. As the report does not provide however the information requested, it asks again that the next report provide details concerning the percentage of persons insured out of the total population.

In order to assess the coverage of social security, the Committee previously asked, for each branch, updated figures concerning the percentage of persons insured out of the total active population and indicated that, should this information not be provided, there would be nothing to establish the situation's conformity with the Charter. In this respect, the Committee notes that, according to the statistical office of Montenegro, at the end of 2015 the active population was 267 600 (including 219 800 employees and 47 800 unemployed), while the total population was estimated to be 622 218. The report indicates that as of July 2016 (out of the reference period) the number of persons insured against **sickness** was 185 659, that is 69.3% of the active population. According to Missceo, sickness insurance covers employees; civil servants; civilians in military service, military units, and military institutions; elected or appointed persons; entrepreneurs and self-employed persons. Sickness insurance also covers short-term incapacity for work resulting from **work accidents and occupational diseases**, in respect of employed, self-employed and farmers as well as other persons involved in training, compulsory work or rescue /defense operations. Long-term incapacity (with at least 75% loss of working capacity) is on the other hand covered by the (**old age**) Pension and **Disability** insurance, regardless of the cause of incapacity. **Survivors**' benefits are also granted under the same insurance. The report indicates that, as

of July 2016 (out of the reference period), 124 487 persons were beneficiaries of old age and disability pensions, but does not provide information on the number of persons covered by the insurance. Employed and self-employed persons are covered by a compulsory insurance against **unemployment** and, according to the report, 6 521 persons received unemployment benefits at the end of 2015. In the absence however of the requested data concerning the percentage of the active population covered, the Committee is not in a position to assess whether the coverage of the population is adequate. The Committee asks that the next report provide update data concerning the total population, the active population, the number of persons covered respectively in respect of healthcare; sickness; work accidents and occupational diseases; old age, disability and death as well as unemployment. In the meantime, it considers that it has not been established that the existing social security schemes cover a significant percentage of the population.

Adequacy of the benefits

In the absence of the Eurostat median equivalised income indicator, the Committee notes from official statistics that, in 2013 the national absolute poverty line was set at €186.45 per month. The report indicates that, under the Labour Law , the minimum wage cannot be lower than 30% of the average wage in the previous six months. In 2013, the minimum wage was set at €193. In 2015, according to the report, the average net wage was €489. On the basis of the information provided, the Committee understands that the minimum wage could not be lower than €342, but no information is available as regards the poverty line at that time.

As regards **sickness** benefits, the Committee previously noted that the amount of benefit is determined at 70% of the calculation basis (average earnings of the employee over the last three months prior to the month when temporary incapability for work occurred) and 100% in case of **work accidents or professional diseases**. According to Missceo, these benefits are payable for a maximum of ten months in case of continuous incapacity for work and for 12 months if there were interruptions. On the basis of the information available concerning the poverty line and minimum wage in 2013, the Committee considers that the level of benefits in case of work accidents or professional diseases was adequate, but the level of sickness benefits, calculated on the basis of 70% of the minimum wage, fell largely below the poverty line and was therefore inadequate.

The Committee notes from Missceo that **unemployment** benefits are available to persons between the age of 15 and 67, who are registered as unemployed, are capable to work and are actively seeking for work and have been insured for at least 12 months in the previous 18 months. The report confirms that the entitlement to cash benefits shall cease if an unemployed person refuses to take part to activation measures or refuses a suitable employment offer in his/her place of residence. Under the Law on Employment, an employment offer is deemed to be appropriate if it corresponds to the person’s type and level of education and/or his/her previous occupation. The Committee asks the next report to indicate what are the legal remedies available to challenge a decision to suspend entitlement to unemployment benefits. The Committee previously held that the duration of unemployment benefits was too short and their level was inadequate. It notes that there have been no changes in this respect: a person insured for less than ten years can only get unemployment benefits for 3 or 4 months, up to a maximum of 12 months in case of insurance service over 25 years (with further extensions possible in some cases). The level of benefits is set at 40% of the minimum wage, and was therefore €77 on a net basis and €96 in gross amount, according to the report, except in the case of disabled workers, whose unemployment benefits, as from 2014, are calculated on the basis of the lowest pension and disability amount (€121.92 in 2016, out of the reference period). As the situation has not changed as regards the level and duration of unemployment benefits, the Committee reiterates its conclusion that the level is manifestly below the poverty line and the duration of payment, for a person with an insurance period lower than ten years, is too short.

As regards **old-age** pensions – the level of which was previously found to be inadequate (Conclusions 2013) – the Committee refers to its assessment under Article 23, where it found that the level remained inadequate.

As regards **disability** pensions, the Committee notes from the report that, in case of full loss of working capacity, the minimum pension in 2012, 2013, 2014 and 2015 amounted to €100.40. As this amount falls below the poverty line, the Committee maintains that the minimum level of disability pension is inadequate.

The Committee asks the next report to provide comprehensive and updated information concerning the national absolute poverty line, the minimum wage and the minimum levels of income-replacement benefits (sickness, work accidents and occupational diseases, unemployment, old age and disability). The statistical information required should concern the reference period taken into account in the next assessment.

Conclusion

The Committee concludes that the situation in Montenegro is not in conformity with Article 12§1 of the Charter on the grounds that:

- it has not been established that the existing social security schemes cover a significant percentage of the population;
- the level of sickness benefits is inadequate;
- the level of unemployment benefits is inadequate;
- the duration of payment of unemployment benefits to persons with an insurance period of less than ten years is too short;
- the minimum level of disability pensions is inadequate.

Article 12 - Right to social security

Paragraph 2 - Maintenance of a social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security

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

The Committee notes that Montenegro has not ratified the European Code of Social Security. Therefore the Committee cannot take into consideration other sources such as the resolutions of the Committee of Ministers on application of the Code and has to make its own assessment based on the information received in the report.

The Committee recalls that Article 12§2 obliges states to establish and maintain a social security system which is at least equal to that required for ratification of the European Code of Social Security. The Code requires acceptance of a higher number of parts than ILO Convention n° 102 on Social Security (Minimum Standards), as six of the nine contingencies must be accepted although certain branches count for more than one part (medical care counts as two and old-age counts as three).

The Committee notes that Montenegro has ratified ILO Convention N° 102 on Social Security (Minimum Standards) and has accepted parts II to VI, VIII and X which concern respectively medical care, sickness, unemployment, old-age, employment injury, maternity and survivors' benefits. Part VI is no longer applicable as a result of ratification by Montenegro of ILO Convention 121 on Employment Injury Benefits.

The Committee recalls that in order to assess whether the social security system is maintained at a level at least equal to that necessary for the ratification of the Code, it has to assess the information regarding the branches covered, the personal scope and the level of benefits.

The Committee recalls its assessment under Article 12§1 which indicates that the social security system of Montenegro continues to cover the traditional risks (medical care, sickness, unemployment, old-age, work accidents/occupational diseases, family, maternity, invalidity and survivors). It refers to its conclusion of non-conformity under Article 12§1 that it has not been established that the existing social security schemes cover a significant percentage of the population, and its request under Article 12§1 that the next report provides updated data in this respect.

The Committee also recalls its assessment under Article 12§1 that the level of sickness and unemployment benefits as well as the minimum level of disability pensions are inadequate, and it refers to its request under Article 12§1 that the next report provides comprehensive and updated information concerning the national absolutely poverty line, the minimum wage and the minimum levels of income-replacement benefits. As regards old-age pensions – the level of which was previously found to be inadequate (Conclusions 2013) – the Committee refers to its assessment under Article 23 where it finds that the level remains inadequate.

The Committee notes the information provided to the ILO Committee of Experts on the application of conventions and recommendations (CEACR) concerning the application of ILO Convention 102, and the reply to the CEACR's Direct request published in 2013. It notes from this information that the calculation of the old-age pension shows the replacement rate as 40.75% which would appear to comply with the Code and it looks forward to receiving confirmation regarding these figures, as well as updated data in the next report. The Committee notes that the 2017 Report of the CEACR does not refer to any observation or direct request to the Government with regard to ILO Conventions n^{os} 102 and 121.

Conclusion

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

Article 12 - Right to social security

Paragraph 3 - Development of the social security system

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

The Committee refers to its previous conclusions for a description of the social security system in Montenegro. In the case of family and maternity benefits, the Committee refers to its conclusions on, respectively, articles 16 and 8§1. As regards other branches of social security, the report does not provide information on improvements achieved during the reference period.

On the contrary, the report indicates that the adjustment of (old age and invalidity) pensions was suspended during the whole reference period, and was only resumed in 2016, out of the reference period. The Committee recalls that a restrictive evolution in the social security system is not automatically in violation of Article 12§3, depending on the nature of the changes, the reasons given for them in the framework of the social and economic policy in which they arise, their extent, the existence of measures of social assistance for those who find themselves in a situation of need because of the changes made, and the results obtained by such changes. Even when individual restrictive measures are in conformity with the Charter, their cumulative effect can bring about a significant degradation of the standard of living and the living conditions of some groups of population, which would be not in conformity with Article 12§3 of the Charter. In particular, measures taken in order to consolidate public finances may be considered as a necessary means to ensure the maintenance and sustainability of the social security system. However, any modifications should not undermine the effective social protection of all members of society against social and economic risks and should not transform the social security system into a basic social assistance system (Federation of employed pensioners of Greece ((IKA –ETAM) v. Greece, Complaint No. 76/2012, decision on the merits of 7 December 2012).

While taking note of the fact that, according to the report, the suspension of (old age and invalidity) pensions' adjustment was needed because of the negative economic conjuncture, the Committee notes that the report does not clarify what concrete steps were taken to prevent a significant degradation of the standard of living and the living conditions of some groups of the population and what was the impact of such measures. In particular, the report does not explain whether and to what extent the adoption in 2013 of a new Law on Social and Child support, concerning social assistance to vulnerable categories of persons, contributed to alleviate the impact of the frozen (old age and invalidity) pensions' level. On the basis of the criteria mentioned above as regards restrictions carried out to the right to social security, the Committee considers that the situation is not in conformity with Article 12 §3 on the ground that, during the reference period, no steps were taken to raise the social security system to a higher level. In this connection, the Committee also notes from the Concluding Observations 2014, concerning the UN Covenant on Economic, Social and Cultural Rights, that the UN Committee expressed "*concern at the lack of capacity of State Institutions to implement the law* [on Social and Child Support] *effectively*". It also noted "*with concern that social assistance benefits, including for unemployed persons, older persons and persons with disabilities, are insufficient to ensure an adequate standard of living for the persons concerned and their families*" and that "*an increasing percentage of the population lives under the national absolute poverty level"*.

Other measures are mentioned in the report whose impact in terms of personal coverage and benefits' levels does not appear to be clear. The Committee notes in particular the adoption, in June 2015, of Structural Reforms in the Healthcare System of Montenegro with an Action Plan for its implementation from 2015 to 2017. It asks for information in the next report on the changes made with respect to the social security system, specifying the effect of these changes on the personal scope of the system and the minimum level of income replacement benefits. Such information must be provided automatically under the heading of

changes introduced during the reference period, in order to assess compliance of the situation with Article 12§3. The Committee recalls in this respect that Article 12§3 requires States Parties to improve their social security system, for example by expanding schemes, protecting against new risks or increasing the level of benefits. The improvements should lead to a gradual raising of the social security system of the country in question above the level required by International Labour Convention No. 102 (Statement of Interpretation on Article 12§3, Conclusions III (1973)).

The report furthermore mentions measures coming into force out of the reference period, such as the new Law on Health Care ("Official Gazette of Montenegro", No. 3/16 and 39/16) and the Law on Health Insurance ("Official Gazette of Montenegro" No. 6/16). The Committee asks the next report to provide information on their implementation and impact.

Conclusion

The Committee concludes that the situation in Montenegro is not in conformity with Article 12§3 of the Charter on the ground that, during the reference period, no steps were taken to raise the social security system to a higher level.

Article 12 - Right to social security

Paragraph 4 - Social security of persons moving between States

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

Equality of treatment and retention of accrued benefits (Article 12§4)

Right to equal treatment

Equal treatment between nationals and the nationals of the other States Parties in respect of social security rights shall be ensured through the conclusion of bilateral or multilateral agreements or through unilateral measures.

As regards bilateral agreements concluded with other States Parties, the report provides no information.

As regards unilateral measures undertaken by Montenegro, the Committee observes that, according to section 9 of the Law on Pension and Disability Insurance, foreign citizens and stateless persons have access to pension and disability insurance under the same conditions as the citizens of Montenegro. The Committee notes from the report that foreign nationals legally residing in the territory of Montenegro, whether they hold a permanent or temporary residence permit, are entitled to the rights covered by the Law on Social and Child Protection under the same condition as the citizens of Montenegro, pursuant to Article 5 of the said Law. The Committee notes from the 2016 report of the European network of legal experts in gender equality and non-discrimination on Montenegro that the new Foreigners Law adopted by Montenegro in 2014 created the prerequisites for, *inter alia*, foreign nationals with temporary or permanent residence permit, refugees and stateless persons to enjoy equal rights with nationals of Montenegro, excluding the right to vote. The Committee wishes to know more about the impact of the new law in the next report.

However, the Committee notes from MISSCEO that the payment of unemployment benefits are only granted to nationals of Montenegro. The Committee asks the next report to clarify whether the payment of unemployment benefits is conditional upon a citizenship requirement.

In respect of payment to family benefits, the Committee considered that the requirement for the child to reside in the territory of the paying State is in conformity with Article 12§4 (Statement of Interpretation on Article 12§4, Conclusions XVIII-1 (2006)). However, since not all countries apply such a system, States Parties applying the ‘child residence requirement’ are under the obligation, in order to secure equal treatment within the meaning of Article 12§4, to enter, within a reasonable period of time, into bilateral or multilateral agreements with those States which apply a different entitlement principle (Conclusion 2006, Cyprus).

The Committee asked in its previous conclusion (Conclusions 2013) whether a "child residence requirement" exists, and, if so, whether bilateral or multilateral agreements have been concluded with States which apply a different requirements. The report indicates that Montenegro applies a "child residence requirement". It further precises that bilateral agreements concluded on social insurance cover, among other things, access to child benefits. However, the report provides no detailed information concerning the existence of such agreements with States which apply a different requirement, therefore the Committee reiterates its questions.

Right to retain accrued benefits

The Committee recalls that invalidity benefit, old age benefit, survivor’s benefit and occupational accident or disease benefit acquired under the legislation of one State Party according to the eligibility criteria laid down under that legislation are maintained irrespective of whether the beneficiary moves to another State Party. With respect to the retention of

benefits (exportability), the obligations entered into by States Parties must be fulfilled irrespective of any other multilateral social security agreement that might be applicable. In order to ensure the exportability of benefits, States Parties may choose between bilateral agreements or any other means such as unilateral, legislative or administrative measures.

The Committee asked in its previous conclusion (Conclusions 2013) whether the right to retain benefits accrued in Montenegro by nationals of States Parties not bound by a bilateral agreement with Montenegro is secured and if so, how. It also asked why there are no agreements with certain States Parties, and to provide information on the planned agreements and when these might be signed.

According to the report, Montenegro is bound by bilateral social security agreements with 23 States Parties to the Charter. The report adds that, during the reference period, it concluded such agreements with Romania and the Slovak Republic and opened negotiations with Albania, Greece and Ukraine.

Since the report does not answer the questions asked by the Committee, it reiterates its questions. It also wishes the next report to provide further information on States Parties which concluded social security bilateral agreements with Montenegro as well as the principles enshrined in those agreements.

Right to maintenance of accruing rights (Article 12§4b)

The Committee recalls that there should be no disadvantage for a person who changes his/her country of employment, where he/she has not completed the period of employment or insurance necessary under the national legislation to be entitled to certain benefits. This requires, where necessary, the aggregation of the employment or insurance periods completed in another territory and, in case of long-term benefits, a *pro-rata* approach to the conferral of entitlement, the calculation and payment of benefits.

States Parties may choose between the following means in order to ensure the maintenance of accruing rights: multilateral conventions, bilateral agreements or, unilateral, legislative or administrative measures. States Parties that have ratified the European Convention on Social Security are presumed to have made sufficient efforts to guarantee the retention of accruing rights.

The Committee asked in its previous conclusion (Conclusions 2013) if and how the right to accumulate insurance and employment periods is secured for nationals of States Parties not bound by a bilateral agreement with Montenegro. It also asked why there are no agreements with certain States Parties, and provide information on the planned agreements and when these might be signed. The report states that the right to the accrued insurance and periods of employment is ensured by the application of bilateral social security agreements. The Committee assumes therefore that such a right is not secured for nationals of States Parties not bound by such agreements. In this regard, it asks the next report to clarify whether this understanding is correct.

Conclusion

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

Article 13 - Right to social and medical assistance

Paragraph 1 - Adequate assistance for every person in need

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

Types of benefits and eligibility criteria

The Committee takes note of the reforms implemented after the entry into force of the new Law on Social and Child Protection in June 2013, which gave the basis for the decentralisation of social and child protection**.**

According to the report the Law on Social and Child Protection covers all categories of persons in need of assistance, whether children, disabled persons or the elderly. The Committee notes in this respect from MISSCEO that the right to benefits can be exercised by a family, or a family member, if he/she is:

- incapable of work;
- a parent maintaining a child, or a parent exercising prolonged parental right, in accordance with the law regulating family relations;
- a person who has completed education according to the educational programmer with adapted delivery and additional expert assistance or special educational programmer;
- a person who has turned 18, if he/she is attending regular secondary school education, until the end of the time limit prescribed for that education.

In its previous conclusion (Conclusions 2013) the Committee asked for clarifications regarding the categories of persons eligible for social assistance under the Law on Social and Child Welfare. In particular, it asked whether any assistance would be available to persons who do not fall within the above mentioned categories.

The Committee recalls that under Article 13 the system of assistance must be universal in the sense that benefits must be payable to 'any person' on the sole ground that he/she is in need. The text of Article 13§1 clearly establishes that this right to social assistance takes the form of an individual right of access to social assistance in circumstances where the basic condition of eligibility is satisfied, which occurs when no other means of reaching a minimum income level consistent with human dignity are available to that person. This does not mean that specific benefits cannot be provided for the vulnerable population categories, as long as persons who do not fall into these categories are also entitled to appropriate assistance insofar as they are in need. The Committee considers that social assistance is not provided, as a subjective right of any single person, whether or not capable of working and whether or not belonging to a vulnerable category, on the sole ground that he/she is without resources and is unable to obtain adequate resources by any other means. Therefore, the situation is not in conformity with the Charter.

In its previous conclusion the Committee asked whether the unjustified refusal of an employment or training offer could lead to a situation where the person would be entirely deprived of his/her means of subsistence. According to the report, unjustified refusal of employment or training has an impact on the termination of rights. According to MISSCEO entitlement to family cash benefit will belong to a person who did not refuse offered employment or vocational training, re-training or additional training, pursuant to the law**.** The Committee reiterates its request whether withdrawal of social assistance in response to a refusal of a job offer will leave the person concerned fully deprived of his/her means of subsistence.

The Committee takes note of the declining number of beneficiaries of financial support. It notes that in 2016 8077 families exercised their right to social assistance, for which € 751,915 were allocated, compared with 14,747 families and € 1,34 million in 2013. The Committee asks the next report to explain the reasons for such a decline.

The Committee notes from MISSCEO that entitlement to health care is provided to a beneficiary of cash benefit (social assistance benefit).

Level of benefits

In its previous conclusion the Committee found that the level of social assistance paid to a single person without resources was manifestly inadequate. The Committee notes from the report in this regard that the amount of compensation for an individual as well as for families with more members is not determined in relation to their needs but in relation to the possibilities of the state budget. The increase of compensation for an individual would affect the increase of the compensation to families with more members. The report states that the salaries both in the public or private sector are not paid in accordance with the needs of the individual but in accordance with the income of the employer.

The Committee recalls that Article 13 breaks with the traditional concept of assistance, which was bound up with the moral duty of charity. The Contracting Parties are not merely empowered to grant assistance as they think fit. They are under an obligation which they may be called on in court to honour.

To assess the situation during the reference period the Committee takes account of the following information:

- Basic benefit: the Committee notes from MISSCEO that the amount of cash benefit on a monthly basis for a single-member family stood at € 63,50 in 2013.
- Additional benefits: in its previous conclusion the Committee asked the next report to specify the level of the supplementary benefits available to persons without resources. The report states that the beneficiaries of social assistance may also be eligible for other types of benefits, such as one-time financial support, care and assistance due to health status, privileges in transport, subsidies for electricity, housing and other benefits. According to the report, beneficiaries can receive additional benefits based on their status from the state, local self-governments, companies, non-governmental sector, religious organisations and others. The Committee asks the next report to provide information regarding the average amount of additional benefits paid to a single person in receipt of social assistance.
- Poverty threshold (defined as 50% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value): in the absence of this indicator, the Committee takes the national poverty threshold into account. It notes from an official statistical source that the national poverty line stood at € 186,45 in 2013.

In its previous conclusion the Committee found that the level of social assistance was manifestly inadequate. The Committee notes that the report, again, does not indicate the average monetary value of all additional benefits that would be paid to a single person without resources, in addition to the social assistance benefit.

The Committee considers that the level of social assistance is manifestly inadequate on the basis that the total assistance that can be obtained (€ 63,50) is not compatible with the poverty threshold.

Right of appeal and legal aid

In the previous conclusion the Committee asked the next report to confirm that legal aid is available to people without resources contesting decisions concerning their right to social and medical assistance.

According to the report, in the system of social and child protection, fees are not charged for lodging an appeal in the second instance procedure. Advisory service within the competence

of social welfare centres is free to persons without resources. Also, according to the Law on Free Legal Aid beneficiaries of financial support are provided with legal aid by the court.

Personal scope

The Committee recalls that, under Article 13§1, States are under the obligation to provide adequate medical and social assistance to all persons in need, both their own nationals as well as nationals of States Parties lawfully resident within their territory, on an equal footing. In addition, with reference to its Statement of Interpretation of Articles 13§1 and 13§4 (Conclusions 2013) regarding the scope of Articles 13§1 and 13§4 in terms of persons covered, the Committee considers that persons in an irregular situation in the territory of the State concerned are also covered under Article 13§1, rather than under Article 13§4, which was previously its practice.

The Committee henceforth examines whether the States who have accepted Article 13§1 ensure the right to:

- adequate social and medical assistance for their own nationals and for nationals of other States Parties lawfully resident within their territory on an equal footing;
- emergency social and medical assistance to persons unlawfully present in their territory.

Nationals of States Parties lawfully resident in the territory

In its previous conclusion the Committee asked the next report to clarify what forms of social and medical assistance applied, and to what extent, to foreign nationals, in particular as regards nationals from States Parties, with a residence status in Montenegro. It asked whether such persons had access to medical assistance, beyond emergency assistance, on an equal footing with nationals.

In reply the Committee notes from the report that the provisions of the Law on Social and Child Protection provide that a foreigner with regulated permanent or temporary residence in Montenegro shall have the same rights as the nationals of Montenegro.

The report further states that the Law on Health Insurance provides that among the insured for health care are foreigners working for national legal or private entities in Montenegro on the basis of specific contracts and agreements on international technical assistance, as well as foreigners employed by international organisations and institutions and other foreign legal and private entities.

The Committee understands that both social and medical assistance are provided to nationals of States Parties lawfully resident or regularly working in Montenegro on an equal footing with nationals. The Committee asks the next report to confirm this understanding.

Foreign nationals unlawfully present in the territory

As regards emergency medical assistance, in its previous conclusion under Article 13§4 (Conclusions 2015) the Committee considered that the situation met the requirements of Article 13§4 as regards emergency medical assistance. The Committee now notes from the report that the Law on Health Care in Article 12 provides that a foreigner has the right to health care in accordance with this Law and international agreements. Health institutions and health workers are obliged to provide a foreigner with urgent medical assistance. An alien shall bear the costs provided for emergency medical assistance or other types of health care, according to the price list of a medical institution. The Committee asks whether these costs will be waived in case the person concerned is without resources.

As regards emergency social assistance, in its previous conclusion (Conclusions 2015) the Committee took note of the legal framework applicable to foreigners who are unlawfully present. The Foreigners Act No. 56/2014 governs the situation of foreigners who are unlawfully present and under an obligation to leave the territory and provides that pending

deportation unlawfully present foreigners shall be placed in a "shelter for foreign persons" until deportation can take place or up to a maximum of 90 days (with exceptions possible; Sections 104 and 106). The authorities may seek to recuperate costs incurred in this respect (Section 115).

According to the report, as regards emergency social assistance concerning the persons who are unlawfully present in the territory of Montenegro, although the law does not explicitly recognise this category of persons in terms of the exercise of the right to social protection, the centres for social work can provide them with advisory services and financial assistance. Also, an assistance can be provided in relation to the protection of minors, the disabled or the elderly. In order to provide assistance to these persons, the centres for social work established communication with other competent authorities in the field of health, interior, police and, if necessary, other bodies.

In this connection, the Committee recalls that persons in an irregular situation must have a legally recognised right to the satisfaction of basic human material need (food, clothing, shelter) in situations of emergency to cope with an urgent and serious state of need. It likewise is for the States to ensure that this right is made effective also in practice (European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, §187).

The Committee cannot accept the necessity of halting the provision of such basic emergency assistance as shelter, guaranteed under Article 13 as a subjective right, to individuals in a highly precarious situation. The Committee has considered that even within the framework of the current migration policy, less onerous means, namely to provide for the necessary emergency assistance while maintaining the other restrictions with regard to the position of migrants in an irregular situation, remain available to the Government with regard to the emergency treatment provided to those individuals, who have overstayed their legal entitlement to remain in the country (Complaint No. 90/2013, Conference of European Churches (CEC) v. the Netherlands, decision on the merits of 1 July 2014, §123).

The Committee asks the next report to confirm that the legislation and practice comply with these requirements. In the meantime, it reserves its position on this issue.

Conclusion

The Committee concludes that the situation in Montenegro is not in conformity with Article 13§1 of the Charter on the grounds that:

- the right to social assistance is not guaranteed as a subjective right of any single person without resources;
- the level of social assistance is manifestly inadequate.

Article 13 - Right to social and medical assistance

Paragraph 2 - Non-discrimination in the exercise of social and political rights

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

In its previous conclusion (Conclusions 2013) the Committee asked the next report to confirm that users of social and medical assistance did not suffer from any restriction of their political or social rights.

In reply the report states that all citizens exercise their social and civil rights under equal conditions regardless of gender identity, political affiliation, race, colour, disability or any other status.

Article 7 of the new Law on Social and Child Protection prohibits discrimination of beneficiaries on the basis of race, gender, age, social origin, sexual orientation, religion, political, trade union or other belonging, property owned, culture, language, disability, belonging to particular social group or other status.

The Committee asks whether the provisions enshrining the principle of equality and prohibiting discrimination in the exercise of political or social rights are interpreted in practice in such a way as to prevent discrimination on the basis of receipt of social or medical assistance.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Montenegro is in conformity with Article 13§2 of the Charter.

Article 13 - Right to social and medical assistance

Paragraph 3 - Prevention, abolition or alleviation of need

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

In its previous conclusion (Conclusions 2013) the Committee asked the next report to provide comprehensive information on the services that offer advice and personal assistance to people with no income, in order to prevent, eliminate or reduce personal or family need.

According to the report, advisory services within the competence of centres for social work provide free counselling for persons in need as regards their rights. Advisory services are provided to foreign nationals without resources who have a temporary or permanent resident status.

The Committee recalls that Article 13§3 concerns only social services providing advice or help to persons without or liable to be without adequate resources. Accordingly, Article 13§3 is a special provision which is more precise than Article 14§1, which is concerned with social welfare services in general.

The Committee further recalls that Article 13§3 concerns free of charge services offering advice and personal assistance specifically addressed at persons without adequate resources or at risk of becoming so. The social services covered by Article 13§3 must play a preventive, supportive and treatment role. This means offering advice and assistance to make those concerned fully aware of their entitlement to social and medical assistance and how they can exercise those rights. In assessing national situations under this provision the Committee specifically examines whether there are mechanisms to ensure that those in need may receive help and personal advice services free of charge and whether such services and institutions are adequately distributed on a geographical basis. The Committee asks the next report to provide updated information on how these requirements are met in legislation and practice.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Montenegro is in conformity with Article 13§3 of the Charter.

Article 13 - Right to social and medical assistance

Paragraph 4 - Specific emergency assistance for non-residents

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

The Committee refers to its conclusion under Article 13§1 (personal scope) and recalls that Article 13§4 from now on will cover emergency social and medical assistance for nationals of States Parties lawfully present (but not resident) in the territory.

In its Conclusion 2015 regarding Article 13§4 the Committee considered that it had not been established that emergency social assistance was guaranteed to all non-resident foreign nationals. It now notes from the report that as regards the categories of persons who are lawfully in the territory (e.g. tourists and those in transit), even though the law explicitly does not recognise this category of persons in the exercise of the right to social protection, the centres for social work may provide advice as well as one-time financial assistance in case of need. The Committee asks whether the provision of emergency social and medical assistance is left to the discretion of centres for social work.

The Committee recalls that States Parties are required to provide non-resident foreigners, without resources, with emergency social and medical assistance. Such assistance must cover accommodation, food, clothing and emergency medical assistance, to cope with an urgent and serious state of need (without interpreting too narrowly the 'urgency' and 'seriousness' criteria). No condition of length of presence can be set on the right to emergency assistance (Complaint No 86/2012, European Federation of national organisations working with the Homeless (FEANSA) v. the Netherlands, decision on the merits of 2 July 2014, §171). The Committee asks the next report to confirm that these requirements are met.

The Committee refers to its conclusion under Article 13§1 where it reserved its position as regards emergency social assistance for unlawfully present foreign nationals. The Committee asks the next report to provide information regarding lawfully present foreign nationals and in the meantime, it reserves its position.

Conclusion

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

Article 14 - Right to benefit from social welfare services

Paragraph 1 - Promotion or provision of social services

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

Organisation of the social services

The Committee notes that the report does not provide any information on the overall organisation of social services.

The Committee, therefore, asks that the next report provides a detailed description of the organisation of social services and activities implemented by the social services, public or private institutions, or other types of organisations.

Effective and equal access

In its previous conclusion (Conclusions 2013), the Committee asked whether nationals of other States Parties legally residing or working regularly in Montenegro have the same rights in terms of access to social services as the citizens of Montenegro and, if not, which restrictions apply.

The report states that Article 5 of the Law stipulates that these rights, in accordance with this Law, can be exercised by a Montenegrin citizen with a permanent place of residence in the territory of the State. The rights to social and child protection determined in accordance with this Law and international agreement can be exercised by a person who has the status of a foreigner with granted temporary or permanent stay in the state, in accordance with a special law i.e. the Law on Foreigners. In order to exercise the rights to social and child protection, foreigners must fulfil the same requirements as the citizens of Montenegro (personal status, earnings, income, etc.) and in this regard no limitations are set. Advisory services provided by the centre for social work are free of charge and relates to any person requesting such a service from the centre. Activities for services provided by the Centres for Social services are free of charge.

Quality of services

In its previous conclusion (Conclusions 2013) the Committee asked to have details on numbers of staff and their qualification, on users involvement in decision-making and supervisory mechanisms to control adequacy of public and private services.

The report in reply to its question indicates that the new Law on Social and Child Protection, articles 122 and 123 prescribe that professional tasks of service providers shall be carried out by professional workers and professional associates. Professional worker is a social worker, psychologist, pedagogue, adult-education specialist, special pedagogue, lawyer, sociologist, special education teacher, special educator, rehabilitator and doctor of medicine, and professional associates are persons with higher education. Professional social workers shall pass a vocational ability exam, and a professional worker must also have an operating licence. Also, a service provider shall have an operating licence. The access to rights in the area of social and child protection is provided on the whole territory of the country. In all municipalities, the Government of Montenegro organised centres for social work either as an independent organisational unit or regional units. For persons who are not able to independently protect the rights and interests, care is provided ex officio by the centres for social work. Provisions of articles 162 to 166 of the new Law on Social and Child Protection relate to the supervision of the implementation of the Law. It is stipulated that supervision over the professional work of service providers is conducted by the Ministry of Labour and Social Welfare (the control over the application of the prescribed technical procedures i.e. assessment, planning, review of the effects of implemented activities, etc.). It also stipulates that inspection control is carried out by the inspection for social and child protection which is

organised within the Administration for Inspection Affairs. In this respect, the Committee asks that the next report provides information on the ratio staff users of social services and data on the geographical distribution of social services. The Committee asks also to provide information on what kind of mechanisms are in place to protect people's right to privacy, including protection of personal data.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Montenegro is in conformity with Article 14§1 of the Charter.

Article 14 - Right to benefit from social welfare services

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

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

In its previous conclusion (Conclusions 2013) the Committee asked that the next report provided statistical data on subsidies paid by the central government and the local authorities to voluntary organisations providing social services. It also requested that the next report describe any other types of support that may exist for voluntary organisations such as, for example, tax incentives.

In reply to this question, the report states that non-governmental organisations (NGOs) have been established in accordance with the Law on NGOs. The regulation did not foresee the financing of their activities by the state. Funding for their projects and programs from the state is organised through a public tender. The report underlines that calls for tender are announced once a year and the funds are distributed according to the areas for which they were called, among other things, for social and child protection. This is significant state support to the NGO sector, which is, as regards the social and child protection, primarily engaged in the implementation of services, particularly relating to children, the disabled, the elderly, victims of violence and others. If non-governmental organisations provide funds for the realisation of projects on the basis of international agreements, in accordance with the provisions of these contracts, they are exempt from taxes and custom’s duties for products or services that are the subject of the contract. The report indicates an example of public tender, outside the reference period, in the field of "Meeting the needs of persons with disabilities", that devoted €1,214,237.18 to specific plans and programs.

In its previous conclusion (Conclusions 2013), the Committee asked to know whether and how the Government ensures that the services of the private sector are efficiently and equally available to all, without discrimination, on the basis of race, ethnic origin, religion, disability, age, sexual orientation and political opinions.

Besides, the Committee recalls that States Parties must ensure that public and private services are properly coordinated, and that efficiency does not suffer because of the number of providers involved. In order to control the quality of services and ensure the rights of the users as well as the respect of human dignity and basic freedoms, effective preventive and reparative supervisory system is required. In its previous conclusion, the Committee asked to clarify the situation in this respect.

The report indicates that Provisions of articles 162 to 166 of the Law on Social and Child Protection relates to the supervision of implementation of the Law. It is stipulated that supervision over the professional work of service providers is conducted by the Ministry of Labour and Social Welfare (the control over the application of the prescribed technical procedures i.e. assessment, planning, review of the effects of implemented activities, etc.). It also stipulates that inspection control is carried out by the inspection for social and child protection which is organised within the Administration for Inspection Affairs. Social inspections carries out inspection-control over the work of institutions that have been organised by the state or local government as well as those which are part of the private sector.

The report underlines that appropriate secondary legislation has been brought in accordance with the new Law on Social and Child Protection in relation to the licensing and accreditation of training programs for service providers. The procedures of obtaining licenses will commence during 2017 and so far there have not been registered service provider yet, and in this respect, there is no legal basis for determining compliance with the prescribed procedures in the provision of services, as well as performing by persons with adequate qualifications. Private service providers can register their activities under other regulations or without permission to work-license. However, despite the interest shown, the license will be

provided, as stated, during 2017. The Committee notes that the above-described activities fall outside the reference period. The Committee, therefore, asks that the next report provides information on the implementation of the new Law on Social and Child Protection, in relation to the licensing and accreditation of training programs for private service providers and if this applies to all social services.

The report indicates that the control mechanism has been established in accordance with the Law on Social and Child Protection, as provided in previous answers, stating that issues in the area of social services can also be dealt by the Protector of Human Rights and Freedoms of Montenegro. Besides, the individuals, voluntary and other organizations are given the opportunity, as regards the institutions established by the state, to get acquainted with the manner of work, to make suggestions and proposals for improving the work, raise any objections in all cases where they consider that there has been a violation of the procedures for the provision of services or violation of the rights of users and similar.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Montenegro is in conformity with Article 14§2 of the Charter.

Article 23 - Right of the elderly to social protection

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

Legislative framework

The Committee points out that the main aim of Article 23 of the Charter is to enable elderly persons to remain full members of society and consequently it invites the States Parties to make sure that they have appropriate legislation, firstly, to combat age discrimination outside employment and, secondly, to provide for a procedure of assisted decision making.

With regard to age-based discrimination, the Committee previously asked (Conclusions 2013) whether there was an anti-discrimination legislation (or an equivalent legal framework) designed to protect the elderly against discrimination outside employment, or whether such a legislation was envisaged. The Committee notes that Article 7§2 of the new Law on Social and Child Protection, which came into force in 2013, states that this law is based on various principles including the prohibition of age discrimination. It also notes from the Montenegro report of the European network of legal experts on gender equality and non-discrimination that the Law on the Prohibition of Discrimination of 2010, as amended in 2014, prohibits discrimination on the grounds explicitly listed in its Article 2, which include age, in various areas. Furthermore, Article 4 of the Law on Healthcare refers to age as a possible ground of prohibited discrimination.

The Committee notes, however, from the same report that despite this legislative framework, discrimination on the ground of age is still very widespread, and that it is encountered mostly in the employment field, but is not limited in this field. It asks what practical measures Montenegro is taking to counter this type of discrimination outside the employment field.

With regard to assisted decision making for the elderly, the Committee asked previously if such a procedure had been set up. The report states that elderly people may be represented by a third party provided that they have previously agreed to this by means of an authorisation procedure. Social work centres are required to inform the elderly persons concerned in detail about their rights in this regard. Elderly persons who can no longer attend to their own interests may also be placed under partial guardianship by a court decision. In this connection, the report points out that in principle the guardian should be a family member chosen by the social work centre on the order of a court. Guardians have a duty to inform social work centres of their activities. They may not transfer any of the assets of persons in their care, decide that they should be placed in an institution or take any other action on their behalf without the prior consent of the centre. The Committee asks for more information on the authorisation procedure and guardianship. It also asks if representatives in fact or in law are regularly supervised or inspected by social work centres and, in this context, what measures they may take against a representative who has not satisfied his or her obligations or taken advantage of the elderly person in his or her care in any manner. Finally, it asks whether social work centres are entitled to appoint a third party guardian in place of a family member and what obligations are placed on guardians.

Adequate resources

When examining the adequacy of resources of elderly persons under Article 23, the Committee takes into account all social protection measures provided for elderly persons, aimed at maintaining an income level allowing them to lead a decent life and participate actively in public, social and cultural life. In particular, the Committee examines pensions, contributory or non-contributory, and other complementary cash benefits available to elderly persons. These resources will then be compared with median equivalised income. However, the Committee points out that its task is to assess not only the law, but also the compliance of practice with the obligations arising from the Charter. For this purpose, the Committee will

also take into consideration relevant indicators relating to at-risk-of-poverty rates for persons aged 65 and over.

In its previous conclusion (Conclusions 2013), the Committee asked for updated information in the next report on the conditions of entitlement to the old-age pension. The report states in this respect that in 2015, full pensions were paid to persons who had reached the age of 67 (men and women) and accrued 15 years of contributions, reached the age of 65 years and 4 months (men) or 60 years and 6 months (women) and accrued 15 years of contributions or accrued 40 years of contributions regardless of age (men and women).

The Committee also asked whether minimum contributory and non-contributory pensions combined with any cash benefits and supplements available ensured that the recipient's income was above the poverty threshold. According to the report, the average old age pension was €249 in 2015, and the minimum pension was €100.40 in 2012, 2013, 2014 and 2015.

The report does not provide any information on the amount of the special additional benefit. It indicates however that people over the age of 67 are entitled to a subsidy for their electricity bill. The Committee asks for more information on these points in the next report. It also reiterates its request for information on the at-risk-of-poverty rate for persons aged 65 and over.

In the absence of information on the at-risk-of-poverty threshold, defined as 50% of the median equivalised income, the Committee refers to the national absolute poverty threshold, which stood at €186.45 monthly in 2013 according to MONSTAT, the Statistical Office of Montenegro. As the amount of minimum old age pension falls below this threshold, the Committee concludes that it is inadequate.

Prevention of elder abuse

In its previous conclusion (Conclusions 2013), the Committee asked what the public authorities were doing to evaluate the extent of the problem and to raise awareness about the need to eradicate elder abuse and neglect. The report states that Article 8 of the new Law on Social and Child Protection prohibits all forms of violence or abuse of any sort against old people carried out in an institution or by a service provider or by their employees.

The Committee takes note of this information but notes that nothing in the report indicates whether the public authorities evaluate the extent of the problem or try to raise public awareness about it.

Services and facilities

The Committee points out that, although Article 23 makes reference only to information about services and facilities, it presupposes that such services and facilities exist.

With regard to the services and facilities themselves, the Committee firstly asked in its previous conclusions (Conclusions 2013) for more information on the implementation of home help and day care services for the elderly. The report states that a pilot project has led to the establishment of a "Home Care Services" project. The Committee notes that this project started outside the reference period.

Secondly, the Committee asked whether in general the supply of home help services for the elderly matched the demand, how their quality was monitored, and if it was possible to lodge a formal complaint about services. The report states that home help for the elderly, which is provided partly by NGOs do not meet demand, particularly in rural areas. In this regard, the report points out that social work centres carry out periodic visits in order to provide appropriate assistance. The report also states that the types of services provided, the procedures for the licensing of social workers and service providers and the accredited training programmes are laid down in the new Law on Social Protection and the Protection of

Children, which is fleshed out by regulations. Article 164 of this law assigns the inspector for child and social protection, an independent body, the task of assessing the work performed by social service providers. The report points out that all beneficiaries are entitled, if they consider their rights to have been violated, to turn to the inspectorate, for their complaint and/or claim to be examined.

The Committee's third question was whether the extent of provision differed from one municipality to another, and whether there was a charge for any of these services. The report does not provide any information on this subject so the Committee repeats its question.

Fourth, the Committee asked for information on services and facilities which could be used by families caring for elderly persons, particularly highly dependent persons, along with any services specially designed for dementia or Alzheimer's sufferers. The report states that it is possible to place highly dependent persons with foster families but, given the major care they require, few actually are. They are mostly placed in social protection institutions. An institution specialising in the accommodation and treatment of persons with mental disabilities, including the elderly, has been opened in Podgorica.

In its fifth question, the Committee asked what cultural, leisure and educational facilities were available to the elderly. The report states that numerous activities have been undertaken to improve pensioners' daily lives.

With regard to information relating to services and facilities, the Committee asks the next report to provide information in this regard.

Housing

The report states that housing problems for the elderly are dealt with by pensioners' associations (NGOs) and local authorities. These associations finance the construction of homes and provide facilities in co-operation with local authorities. Flats are offered at a much lower cost than the market price and payment conditions are adjusted to pensioners' circumstances. Local authorities adopt annual housing plans for the most vulnerable in accordance with social housing legislation. The Committee asks for more information on this subject in the next report.

Health care

In its previous conclusion (Conclusions 2013), the Committee asked for information on services and programmes specifically aimed at the elderly. The report states that the 2008-2012 Strategy for the development of social protection for the elderly in Montenegro has resulted in, *inter alia*, the opening of four care centres for the elderly in the municipalities of Niksic and Danilovgrad.

The Committee also asked for information on any measures to improve the accessibility and quality of geriatric and long-term care and the co-ordination of social and healthcare services for the elderly. The Committee notes from the report that the Montenegro's new strategy to improve the situation of elderly people includes a section given over to health care. The Committee asks the next report to provide more information on the subject. It wishes to know, in particular, if and how this part of the strategy improves the accessibility and quality of geriatric and long-term care and the co-ordination of social and healthcare services for the elderly.

Institutional care

In its previous conclusion (Conclusions 2013), the Committee asked whether institutional care were licensed and whether they were inspected and, if so, what authority or body was responsible for the inspection of retirement homes and residences for the elderly and, whether provision had been made to complain about the standard of care and services and

possible ill-treatment. The report states that establishments, service providers and training programmes have all been subject to a licensing or accreditation procedure since the adoption of the new Law on Social Protection and the Protection of Children. Licensing and accreditation procedures will begin in 2017. The report points out that service providers, as mentioned above, are inspected by the general inspectorate services. The same rules apply to all service providers, whether they are care institutions or not.

Therefore, the Committee notes that during the reference period there was no procedure in force and, hence that there was no legal means of verifying the compliance of services provided with quality standards or of ensuring that staff had appropriate qualifications. Consequently, it considers the situation not to be in conformity with the Charter on this point.

The Committee also asked whether places available in institutions matched demand. The report states that existing institutional housing for the elderly does not have the capacity to meet demand. As a result, Montenegro has begun construction of two additional facilities and other projects are being discussed. The Committee asks to be informed in the next report of any developments in this area.

Conclusion

The Committee concludes that the situation in Montenegro is not in conformity with Article 23 of the Charter on the grounds that:

- the level of old-age pensions is manifestly inadequate;
- accommodation facilities for the elderly are neither subject to any accreditation or licensing procedure nor inspected by an independent body.

January 2018

European Social Charter

European Committee of Social Rights

Conclusions 2017

NETHERLANDS

This text may be subject to editorial revision.

The following chapter concerns the Netherlands, which ratified the Charter on 3 May 2006. The deadline for submitting the 10th report was 31 October 2016 and the Netherlands submitted it on 31 October 2016.

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 was a simplified one and concerned only the follow-up to decisions on the merits in collective complaints. The Committee's findings in this respect are available at www.coe.int/socialcharter as well as in the HUDOC database.

In addition, the report contains also information requested by the Committee in Conclusions 2015 in respect of its conclusions of non-conformity due to a repeated lack of information regarding the right of children and young persons to protection – regular medical examination (Article 7§9).

The Committee examined this information and adopted a conclusion of non-conformity relating to this Article.

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The next report will deal with the following provisions of the thematic group "Labour Rights":

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 21),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 22),
- the right to dignity at work (Article 26),
- the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28),
- the right to information and consultation in collective redundancy procedures (Article 29).

The deadline for submitting that report was 31 October 2017.

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Conclusions and reports are available at www.coe.int/socialcharter as well as in the HUDOC database.

Article 7 - Right of children and young persons to protection

Paragraph 9 - Regular medical examination

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the information submitted by the Netherlands in response to the conclusion that it had not been established that regular medical examination of young workers is guaranteed in practice.

In Conclusions 2015 the Committee recalled that, in application of Article 7§9, the law must provide for a compulsory full medical examination on recruitment and regular check-ups thereafter (Conclusions XIII-1 (1993), Sweden). The intervals between check-ups must not be too long. In this regard, an interval of two years has been considered to be too long by the Committee (Conclusions 2011, Estonia). Given that there were no data were available on the use made by young workers of the opportunity to undergo medical examinations, nor on the intervals between medical check-ups, the Committee maintained its conclusion that the situation is not in conformity with Article 7§9 of the Charter on the ground that it has not been established that regular medical examination of young workers is guaranteed in practice.

The Committee now notes from the report that as regards young workers of 16 and 17 years of age, theoretically, they may be involved in potentially dangerous or unhealthy work. In practice however, this is not the case. The vast majority of this group consists of school-going youngsters, for whom a paid job is just a part-time job-on-the-side or for whom the work is part of their vocational training (in a week theoretical lessons are alternated with practical work). Whatever the content of the job, it is as a rule part-time work, performed during a limited number of hours per week.

According to the report, the Working Conditions Decree (*Arbobesluit*) forbids several kinds of work to be performed by working youth under the age of 18 years, like working with toxic compounds. In other cases it demands that the work may only be executed under supervision. In addition to that, when young workers of 16 and 17 years of age are employed, the employer is obliged to perform an extra risk assessment, focused on the risks specifically connected with this age group, like risks following from lack of experience or knowledge. If this assessment reveals this kind of risks, Arbobesluit requires that supervision by older and more experienced colleagues is organised in such a way that any danger is prevented. If that is not possible, the work may not be performed. And, finally, according to the report, if the work is performed under sufficient supervision, the employer is obliged to offer adequate medical check-ups. In addition, according to the report, over a long period of time there has not been any signal that the health or safety of youngsters under the age of 18 years is being jeopardised as a result of occupational activities.

However, the Committee notes that the report provides no information regarding the use made by young workers of the opportunity to undergo medical examinations, nor on the intervals between medical check-ups. Therefore, the Committee considers that there is nothing in the information at its disposal that would establish that in practice medical examination of young workers takes place at regular intervals. The Committee reiterates its previous finding of non-conformity.

Conclusion

The Committee concludes that the situation in Netherlands is not in conformity with Article 7§9 of the Charter on the ground that it has not been established that regular medical examination of young workers is guaranteed in practice.

January 2018

European Social Charter

European Committee of Social Rights

Conclusions 2017

PORTUGAL

This text may be subject to editorial revision.

The following chapter concerns Portugal, which ratified the Charter on 30 May 2002. The deadline for submitting the 12th report was 31 October 2016 and Portugal submitted it on 16 January 2017.

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 "Health, social security and social protection":

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

Portugal has accepted all provisions from the above-mentioned group.

The reference period was 1 January 2012 to 31 December 2015.

The conclusions relating to Portugal concern 19 situations and are as follows:

– 9 conclusions of conformity: Articles 3§1, 3§2, 3§4, 11§2, 12§2, 12§3, 13§2, 13§3 and 30.

– 5 conclusions of non-conformity: Articles 3§3, 12§1, 12§4, 13§1 and 14§1.

In respect of the 5 other situations related to Articles 11§1, 11§3, 13§4, 14§2 and 23 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 Portugal under the Charter. The Committee requests the authorities to remedy this situation by providing the information in the next report.

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

Article 3§2

The Ministerial Order No. 40/2014 of 17 February 2014 laid down the norms governing the correct removal of materials containing asbestos and the packaging, transport and management of the construction and demolition waste generated, with a view to protect the environment and human health.

Article 3§4

The law No. 42/2012, which amended the Law No. 102/2009, approved the regimes governing access to and pursuit of the professions of senior occupational safety specialists and occupational safety specialist, and repealed Article 100 of Law No. 102/2009, under which employers could commit a serious administrative offence of they hired a specialist who did not fulfill the requisites laid down in Article 100(1)

Article 12§3

- As regards unemployment benefits, the qualifying period was shortened from 450 to 360 days of registered work during the previous 24 months and new rules were introduced, which extend the coverage of unemployment benefits to certain self-employed persons (Executive Law no. 65/2012 of 15 March 2012, Executive Law no. 12/2013 of 25 January 2013);
- As regards sickness benefits, the coverage was extended as a result of a modification in the way the reference pay is calculated, i.e. by taking into account the whole period from the beginning of the reference period till the day before the occurrence of the incapacity for work (Executive Law no. 133/2012 of 27 June 2012);
- Entitlement to invalidity pensions was extended as a result of the adoption of new rules (Executive Law no. 246/2015 of 20 October 2015) which take account

of the person's objective permanent incapacity for work, regardless of the causes (before the adoption of this law, only invalidity resulting from a specific list of diseases was recognised as such);
- The 5-years time limit for claiming survivors' pensions was cancelled.

Article 12§4

The Social Security Agreement with Ukraine entered into force in 2012.

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The next report to be submitted by Portugal will be a simplified report dealing with the follow up given to decisions on the merits of collective complaints in which the Committee found a violation.

The report should also contain information requested by the Committee in Conclusions 2016 in respect of its conclusions of non-conformity due to a repeated lack of information:
- the right to vocational training – long term unemployed persons (Article 10§4),
- the right to vocational training – full use of facilities available (Article 10§5),
- the right to engage in a gainful occupation in the territory of other States Parties – applying existing regulations in a spirit of liberality (Article 18§1),

The deadline for submitting that report was 31 October 2017.

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Conclusions and reports are available at www.coe.int/socialcharter as well as in the HUDOC database.

Article 3 - Right to safe and healthy working conditions

Paragraph 1 - Health and safety and the working environment

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

General objective of the policy

In its previous conclusion (Conclusions 2013), the Committee asked whether the policy implemented is reviewed regularly in the light of changes in the risks. In reply, the report indicates that the National Strategy for Safety and Health at Work 2015-2020 (ENOSH 2015-2020) entitled “For safe, healthy and productive work”, was approved by Council of Ministers Resolutions No. 77/2015 of 18 September 2015. It follows the National Strategy on Health and Safety at Work 2008-2012. The new Strategy configures the overall policy framework for the prevention of occupational risks and the promotion of well-being at work. It defines three strategic objectives: (1) to promote quality of working life and the competitiveness of companies, special focus is put on promotion of, among others, a culture for prevention (2) to reduce both the absolute number and the rate of incidence of work-related accidents by 30%, and (3) to reduce the risk factors associated with occupational diseases. The Committee asks for information in the next report on the activities implemented and the results obtained by the National Strategy.

As regards the public authority responsible for occupational health and safety in the autonomous regions of the Azores and Madeira (Conclusions 2013), the report does not provide any requested information. The Committee however notes from the OSHWiki, that the Regional Directorate of Labour in the Autonomous Region of Madeira has the mission to contribute to the improvement of working conditions and to the agreement on labour relations within the Autonomous Region. It has expertise in the areas of, among others, labour legislation, safety and health at work, and assessment of working conditions. The Regional Inspectorate of Employment from the Regional Government of Azores has the mission to develop advisory methods and action and to perform inspections in companies and other organisations, with the aim of improving working conditions.

The Committee points out that new technology, organisational constraints and psychological demands favour the development of psychosocial factors of risk, leading to work-related stress, aggression, violence and harassment. It would also point out that, with regard to Article 3§1 of the Charter, it takes into account stress, aggression, violence and harassment at work when examining whether policies are regularly evaluated or reviewed in the light of emerging risks. The States parties have a duty to carry out activities in terms of research, knowledge and communication relating to psychosocial risks (Statement of Interpretation on Article 3§1 of the Charter, Conclusions 2013). The report indicates that the Working Conditions Authority (ACT) and social partners carry out awareness-raising and information actions in area of psychosocial risks during the reference period. The Committee asks that the next report provide more detailed information on research, awareness and communication activities on psychosocial risks.

The Committee notes that there is a national policy which is intended to develop and preserve a culture of prevention on the occupational health and safety field.

Organisation of occupational risk prevention

In its previous conclusion (Conclusions 2013), the Committee asked for information on the national system for occupational risk prevention. It also asked for information on how enterprises put their obligations regarding risk prevention, workplace risk-assessment, preventive measures geared to the nature of the risks identified, and information and training for workers into practice. The report indicates that, according to Article 15 (2)(c) of the Law No. 102/2009, the employer must ensure a suitable assessment of the risks to the health and safety of workers, and a prevention plan as a coherent system that covers technology developments, work organisation, working conditions, social relationships and the influence

of environmental factors. This includes the identification of foreseeable risk in all activities of the enterprise, establishment or service, in the design or construction of facilities, locations and work processes, as well as in the selection of equipment, substances and products.

The report indicates that the Working Conditions Authority (ACT) was created by Regulatory Decree No. 47/2012 of 31 July 2012. It is a central state department that operates under the aegis of the Ministry of Labour, Solidarity and Social Security. Its mission is to promote improvements on working conditions by inspecting fulfilment of labour-related rules and controlling compliance with the legislation governing safety and health at work, as well as to promote occupational risk-prevention policies. The ACT provides workers, employers and their representatives with information and advice on the best way to comply with the legislation on working conditions. Each of ACT's decentralised offices across the mainland provides face-to-face information to visitors. The Committee takes note of a variety of projects in the risk prevention field in different sectors of activity, co-funded by ACT and presented by the social partners during the reference period (seminars, workshops, awareness-raising and information activities, training support manuals, publications, etc.).

In addition, the report indicates that in 2014 a single telephone information hotline was manned exclusively by ACT specialists and inspectors (5 days/week) in order to serve more users, despite the fact that the availability of the physical face-to-face service itself was reduced in 2015.

Employers are under a general obligation to organise their OSH services using the four possible formats provided for in Article 74 of Law No. 102/2009. Their activities include for example risk assessment, the adoption of preventive measures, worker training and information. The report indicates that ACT defined the minimum content of the training modules which serve as a reference for the design and implementation of training by training entities for occupational safety specialists and senior occupational safety specialists and the services provided by either the employer or a worker designated by the employer.

The Committee considers that measures for occupational risk prevention, awareness-raising and assessment of work-related risks and information and training for workers are provided. It also notes that the ACT participates in developing an occupational health and safety culture among employers and employees and in sharing knowledge of occupational hazards and prevention acquired during inspection activities.

Improvement of occupational safety and health

In its previous conclusion (Conclusions 2013), the Committee asked whether the National accreditation system includes the verification of occupational health and safety conditions. In reply, the report indicates that the regime governing the Pursuit of Industrial Activities approved by Executive Law No. 209/2008 of 29 October 2008 requires the ACT to play a part in industrial licencing processes. Its role in this respect is to issue a formal opinion when asked to do so by the applicable coordinating entity, and to form part of joint inspection teams with the licencing entity and any other participating entities. These teams visit industrial establishments before they begin operating, and after changes in the way in which the production process is configured, in order to ensure that occupational safety is taken into account during the design phase (integrated safety). The Committee takes note of the number of formal opinions issued and inspection visits made by ACT's labour inspectors during the reference period, detailed in the report.

In response to the Committee's question concerning the involvement of the authorities in scientific and technical research on occupational health and safety (Conclusions 2013), the report indicates that the National Accreditation System in the OSH field is regulated by the Portuguese Accreditation Institute. The System accredits certifying entities with responsibilities for implementing OSH management systems at enterprises, based on the OHSAS 18001 referential. This is a voluntary system, but if it is implemented, the control audit performed by these entities entails verifying safety and health conditions. In addition,

there is a mandatory regulation system for OSH activities undertaken for enterprises by external services. This system falls under the authority of the national regulatory entities in this field, and includes the verification of safety and health conditions by means of control and audit visits to both the service providers' own establishments and their clients.

According to the report, the ACT also represents the ILO's International Occupational Safety and Health Information Centre (CIS) and serves as the National CIS Centre in Portugal. Its main activity is the publication of bibliographic analyses of the documents on safety and health that are produced all around the world.

The Committee maintains its previous finding of conformity in this respect.

Consultation with employers' and workers' organisations

In its previous conclusion (Conclusions 2013), the Committee noted that there was a system to consult the social partners at the level of the public authorities. It also noted the small number of occupational safety committees and occupational health and safety delegates and therefore asked for information on the consultation of the bodies dealing with occupational health and safety issues within enterprises, particularly small and medium-sized enterprises, and/or those that do not have a staff committee, workers' representatives or health and safety delegates. Since it cannot find an answer to its questions in the report with regard to this point, the Committee requests the next report to contain this information.

The Committee takes note that, according to Section 470 of Labour Code and Section 8 of the Law No. 102/2009, employers' and workers' organisations must be consulted prior to the adoption of legislation and during the evaluation of measures relating to OSH policies.

According to the report, the employers and workers' organisations participated in the overall process of drawing up ENOSH 2015-2020, and approved the draft unanimously. However, the report also indicates that the National Council for Hygiene and Safety at Work, which was responsible for the evaluation of the National Occupational Safety and Health Strategy, was abolished by Executive Law No. 126-C/2011 of 29 December 2011, as amended by Executive Law No. 266/2012 of 28 December 2012. The Committee notes that, according to the information from the comments and direct request raised by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) published in 2015 (104th ILC session) on Occupational Safety and Health Convention No. 155 (1981), the Executive Law No. 126-C/2011 of 29 December 2011 established the National Council for Solidarity, Social Insurance, Family, Rehabilitation and Volunteering policies. The Committee invites the authorities to comment on this observation in the next report and to provide all relevant information in this respect.

Conclusion

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

Article 3 - Right to safe and healthy working conditions

Paragraph 2 - Safety and health regulations

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

Content of the regulations on health and safety at work

The Committee previously concluded (Conclusions 2013, 2009) that the scope of risks covered specifically by the legislation and regulations was in conformity with the Charter, and asked for information on the measures taken to transpose the more recent EU *acquis* into domestic law, particularly the following Directives: Directive 2000/54/EC of the European Parliament and the Council of 18 September 2000 on the protection of workers from risks related to exposure to biological agents at work; Directive 2008/46/EC of the European Parliament and of the Council of 23 April 2008 amending Directive 2004/40/EC on minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields); Commission Directive 2009/161/EU establishing a third list of indicative occupational exposure limit values in implementation of Council Directive 98/24/EC and amending Commission Directive 2000/39/EC; and Directive 2009/127/EC of the European Parliament and of the Council of 21 October 2009 amending Directive 2006/42/EC with regard to machinery for pesticide application. The Committee takes note from the report that all aforementioned directives were transposed into domestic law.

The Law No. 102/2009, which regulated the legal regime governing the promotion of occupational safety and health and the prevention of work-related accidents and occupational diseases was amended by Laws Nos. 42/2012 of 28 August 2012 and 3/2014 of 28 January 2014, Executive Law No. 88 of 28 May 2015 and Law No. 146/2015 of 9 September 2015. Law No. 3/2014 revised the legal regime provided for in Law No. 102/2009, and amended Articles 41 (Risks to genetic heritage), 53 (Chemical agents), 54 (Agents prohibited in the case of lactating workers), 59 (Chemical agents) and 64 (Chemical agents and substances and mixtures), which were then amended again by Executive Law no. 88/2015 of 28 May 2015. The latter amended, among others, Executive Law No. 141/95 of 14 June 1995, which laid down the minimum requirements for safety and health signs at work; Executive Law No. 24/2012 of 6 February 2012, which consolidated the minimum requirements regarding the protection of workers against risks to their safety and health due to exposure to chemical agents during transportation; and Executive Law No. 301/2000 of 18 November, which regulated the protection of workers against risks linked to exposure to carcinogenic or mutagenic agents at work.

In its previous conclusion (Conclusions 2013), the Committee also asked for information on the measures taken to remedy the failing found by the Court of Justice of the European Communities in the transposition into domestic law of Directive 2003/105/EC of the European Parliament and of the Council of 16 December 2003 amending Council Directive 96/82/EC on the control of major-accident hazards involving dangerous substances (Case C-375-06). The report indicates that the Directive was transposed into domestic law by Executive Law No. 254/2007 of 12 July 2007, as amended by Executive Law No. 42/2014 of 18 March 2014. These were then repealed by Executive Law No. 150/2015 of 5 August 2015, which established the regime governing the prevention of serious accidents involving dangerous substances and the limitation of their consequences for human health and the environment, transposing Directive 2012/18/EU on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC.

The Committee points out that under the terms of Article 3§2 of the Charter, regulations concerning health and safety at work must cover work-related stress, aggression and violence specific to work, and especially for workers under atypical working relationships (Statement of Interpretation on Article 3§2 of the Charter, Conclusions 2013). The

Committee notes that the Law No. 102/2009 refers to psychosocial risks, providing that the employer must ensure that exposure to psychosocial risks is limited and that the safety and health of workers is not at risk. In addition, some campaigns about psychosocial risks in the workplace have been implemented in Portugal. According to the report, work with exposure to potential threats and verbal aggression was the main risk factor in 2014, followed by work with exposure to potential physical threats and intense work rates.

In its previous conclusion (Conclusions 2013), the Committee also asked for clarification on the laws and regulations covering risks in the autonomous regions of the Azores and Madeira. Since it cannot find an answer to its questions in the report with regard to this point, the Committee requests the next report to contain this information.

The Committee notes that most of the relevant *acquis communautaire* has been transposed into domestic law. It considers therefore that current laws and regulations meet the general obligation under Article 3§2 of the Charter, which requires that most of the risks listed in the general introduction to Conclusions XIV-2 be specifically covered, in line with the level set by international reference standards.

Levels of prevention and protection

The Committee examines the levels of occupational prevention and protection provided for by the legislation and the regulations in relation to certain risks.

Establishment, alteration and upkeep of workplaces

In its previous conclusion (Conclusions 2013), the Committee asked for information on the laws and regulations governing the establishment of levels of prevention and protection against occupational hazards specifically related to the establishment of, alteration to and upkeep of workplaces. According to the report, the Ministerial Order No. 178/2015 of 15 June 2015 made the first amendment to Ministerial Order No. 1456-A/95 of 11 December, which regulated the minimum requirements for the placement and use of safety and health signs at work, and transposed Council Directive 92/58/EEC of 24 June 1992 on the minimum requirements for the provision of health and/or safety signs at work. This Directive was amended by Directive 2014/27/EU of the European Parliament and of the Council of 26 February 2014, such as to adapt it to Regulation (EC) No. 1272/2008 on the classification, labelling and packaging of substances and mixtures. It is this adaptation that in turn led to the amendment of the Ministerial Order.

In reply to another Committee's question, the report indicates that Executive Law No. 50/2005 of 25 February 2005 was adopted with a view to transposing Directive 2009/104/EC of the European Parliament and of the Council of 16 September 2009 concerning the minimum safety and health requirements for the use of work equipment by workers at work.

The Committee maintains its previous finding of conformity in this respect.

Protection against hazardous substances and agents

In its previous conclusion (Conclusions 2013), the Committee asked for information on the transposition into domestic law of Directive 2004/37/EC of the European Parliament and of the Council of 29 April 2004 on the protection of workers from the risks related to exposure to carcinogens or mutagens at work. In reply, the report indicates that the Executive Law No. 88/2015 of 28 May 2015 transposed Directive 2014/27/EU of the European Parliament and of the Council of 26 February 2014 amending Council Directives 92/58/EEC, 92/85/EEC, 94/33/EC, 98/24/EC and Directive 2004/37/EC of the European Parliament and of the Council, in order to align them to Regulation (EC) No. 1272/2008 on classification, labelling and packaging of substances and mixtures. This law entered into force on 1 June 2015.

Protection of workers against asbestos

In its previous conclusion (Conclusions 2013), the Committee asked for information about the measures taken to incorporate the exposure limit value of 0.1 fibres/cm^3 introduced by Directive 2009/148/EC of the European Parliament and of the Council of 30 November 2009 on the protection of workers from the risks related to exposure to asbestos at work. In response, the report indicates that the Ministerial Order No. 40/2014 of 17 February 2014 laid down the norms governing the correct removal of materials containing asbestos and the packaging, transport and management of the construction and demolition waste generated, with a view to protect the environment and human health. Executive Law No. 266/2007 of 24 July 2007 transposed Directive 2009/148/EC, and established that the exposure limit value of asbestos is 0.1 fibres/cm^3.

Protection of workers against ionising radiation

The report indicates that Directive 97/43/Euratom (revoked by Council Directive 2013/59/Euratom of 5 December 2013 with effect from 6 February 2018) was transposed by Executive Law No. 180/2002 of 8 August 2002, as amended by Executive Law No. 215/2008 of 10 November 2008, setting out the legal framework for the protection of people's health against the danger arising from ionising radiation in medical radiological exposures; Executive Law No. 279/2009 of 6 October 2009, setting out the legal framework for the opening, modification and functioning of private health units, and Executive Law no. 72/2001 of 16 June 2001.

The Committee concludes that prevention and protection levels for asbestos and ionising radiation are in conformity with Article 3§2 of the Charter.

Personal scope of the regulations

The Committee examines the personal scope of legislation and regulations with regard to workers in atypical employment.

Temporary workers

In its previous conclusion (Conclusions 2013), the Committee noted that the legislation provided for information, training and medical supervision geared to the status of temporary, agency and fixed-term workers, and asked for information on the application of the aforementioned provisions in practice. It also asked for details on the manner in which representation for these categories of workers is organised. The report does not provide any new information on this point. The data on the provision of information, training and health monitoring to/for temporary and fixed-term workers is not separated from that regarding workers in general. The Committee reiterates its request for information on whether temporary, agency and fixed-term workers are entitled to representation at work.

Other types of workers

The Committee previously concluded (Conclusions 2013, 2009 and XVI-2 (2003)) that the situation was in conformity with the Charter and asked for information on the application of provisions of Law No. 102/2009 to domestic workers. In reply, the report indicates that the principles of this law are applicable, whenever they are compatible, to domestic workers. According to Article 3(3), an employer shall take appropriate measures to protect the domestic workers from risks related to the workplace, instruments and methods of work. In addition, the report indicates that Article 26 of the Executive Law No. 235/92 of 24 October 1992 on domestic work (as amended) includes a special norm on the employer's obligations under a domestic labour contract. The report specifies that it does not exclude the norms contained in the legislative acts which transposed the EU Special Directives. In addition, ILO

Convention No. 189 on the Decent Work for Domestic Workers (2011) was ratified by Portugal on 17 July 2015.

The Committee maintains its previous finding of conformity on this point.

Consultation with employers' and workers' organisations

According to the report, the law requires that the process of drawing up labour legislation, the legislative acts that regulate the rights and obligations of workers, employers and their organisations (particularly the labour contract), collective labour law, occupational safety and health, work-related accidents and occupational diseases, vocational training and working processes be open to public consideration before they are discussed by the various law-making entities. This public evaluation process is conducted particularly by publication in the official journals such as the Journal of the Assembly of the Republic (*Diário da Assembleia da República*) and the Labour and Employment Bulletin (*Boletim do Trabalho e Emprego*). Its purpose is to generate active participation on the part of trade unions and employers' associations, economic agents and civil society in general. The legislator is required by law to take account of the positions that such entities express with regard to both draft and existing legislative acts.

The Committee maintains its previous finding of conformity on this point.

Conclusion

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

Article 3 - Right to safe and healthy working conditions

Paragraph 3 - Enforcement of safety and health regulations

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

Accidents at work and occupational diseases

It previously concluded (Conclusions 2013, 2009 and XVI-2 (2003) that the situation was not in conformity with the Charter on the ground that the number of fatal accidents was manifestly high. The report insists that the data arise from the context of an economic crisis in which there is mobility of workers engaged on activities carried out in economic sectors that are different to the ones they were used to. In addition, according to the report, the data are related to a possible reduction in business investment on occupational safety and health services due the current economic difficulties in the country.

The report indicates that labour inspectors are responsible for conducting inquiries into work-related accidents, in particular fatal, serious or frequent accidents. In addition, the Working Conditions Authority (ACT) can be asked to conduct an "urgent, summary inquiry" into a given work-related accident, which then serves to support the work of the Labour Courts in their role of guarantors of the congruence of the system for providing reparation for such accidents. The Committee takes note of the definition of concept of work-related accidents (work-related accidents, *en route* accidents, and exclusions), detailed in the report.

The report specifies that there are no data on non-fatal work-related accidents during the reference period, but ACT recorded the number of serious work-related accidents in 2014 and 2015 (308 and 417 respectively).

As regards fatal work-related accidents, the report indicates that ACT conducts an injury into every such accident which is communicated to it or of which it becomes aware in any other way. It employs every type of formal and informal source of information, including mandatory employers' incident reports, and police and media reports. The Committee notes that data presented in the report (by type of accident and by economic activity) refer to fatal work-related accidents that were the object of ACT inspection actions: 147 fatal work-related accidents in 2012 and 142 in 2015.

Eurostat data confirm the decline in fatal accidents during the reference period (from 169 in 2012 to 160 in 2014). The standardised incidence rate for such accidents declined as well (from 4.81 in 2012 to 4.72 in 2014), but remained at a level which is far above the average level observed in the EU-28 (2.42 in 2012 and 2.32 in 2014). The number of non-fatal accidents at work causing at least four calendar days of absence rose during the referenced period from 113 179 in 2012 to 130 153 in 2014. The standardised rate of incidence of non-fatal accidents at work per 100 000 workers was 3 563.47 in 2012 and 3 582.19 in 2014. The Committee notes that this rate is significantly higher than the average rate in the EU-28 (1 717.15 in 2012 and 1 642.09 in 2014).

In its previous conclusion (Conclusions 2013), the Committee noted the low number of certified cases of occupational disease, and asked for information on the results of the measures already taken, and on any further steps taken to counter inadequate reporting or recognition of cases of occupational disease in practice, including by clarifying Act No. 98/2009 of 4 September 2009 regulating the compensation scheme of accidents at work and occupational diseases, including the professional rehabilitation and reintegration under Article 284 of the Labour Code. It further asked for data on cases of fatal occupational disease. According to the report, the number of cases of occupational diseases certified by the National Centre for Protection against Occupational Risks (CNPRP) increased during the reference period (from 2 727 in 2012 to 3 659 in 2015). The report presents various Articles of Constitution, Labour Code and Law No. 102/2009, which specify the rights of workers to compensation for damage caused by an accident or occupational diseases, and the employers' duties in respect of such workers (suspension of the employment contract,

vocational training, job adaptation, reimbursement). The report does not provide any figures on cases of fatal occupational diseases. The Committee asks that the next report provide information on the legal definition of occupational diseases; the mechanism for recognising, reviewing and revising of occupational diseases (or the list of occupational diseases); the incidence rate and the number of recognised and reported occupational diseases during the reference period (broken down by sector of activity and year), including cases of fatal occupational diseases, and the measures taken and/or envisaged to counter insufficiency in the declaration and recognition of cases of occupational diseases; the most frequent occupational diseases during the reference period, as well as the preventive measures taken or envisaged.

In the light of the foregoing information, the Committee again draws the Portuguese Government's attention to the fact that in accepting Article 3 it has undertaken to guarantee individuals' right to physical and psychological integrity at work. The Committee recalls that the satisfactory application of the Charter "cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised" (Complaint No. 1/1998, International Commission of Jurists against Portugal, decision on the merits, 9 September 1999, §32). The Committee considers that in order to assess the effective respect of the right enshrined in Article 3§3, the number and frequency of fatal accidents and their trends are a decisive factor. In Portugal's case, it considers that even though the total number of fatal accidents decreased during the reference period, the standardised incidence rates of fatal and non-fatal accidents remain too high in comparison to the EU-28 average. The Committee concludes that the situation is not in conformity with Article 3§3 in this respect.

Activities of the Labour Inspectorate

The report confirms that the number of labour inspectors has decreased during the reference period (from 359 in 2012 to 307 in 2015). The number of establishments covered by inspection visits on occupational health and safety fell sharply during the reference period (from 15 446 in 2012 to 3 949 in 2015), as well as the number of workers covered by inspection visits (from 137 283 in 2012 to 44 814 in 2015). The Committee notes, according to figures published by ILOSTAT, that the average number of labour inspectors per 10 000 employed persons was 0.9 in 2012 and 0.7 in 2015, and the average of labour inspection visits per inspector decreased during the reference period from 140.5 in 2012 to 132.2 in 2015.

The Committee takes note of the inspection actions aimed at checking safety and health conditions at construction sites (6 577 visited enterprises in 2012 and 3 852 in 2015), in the mining and quarrying sector (182 establishments visited and 1 678 workers covered in 2012, and 81 and 1 832 respectively in 2015), in the agriculture sector (750 establishments visited and 3 949 workers covered in 2012, and 436 and 3 293 respectively in 2015) in the fisheries sector (51 vessels visited and 402 workers covered in 2012, and 120 and 605 respectively in 2015), in the road transport sector (369 notifications to take measures, 91 official warnings and 421 infractions in 2012, and 262, 83 and 199 respectively in 2015).

In its previous conclusion (Conclusions 2013), the Committee asked for comments on the implementation of Act No. 107/2009 in practice and on the any other bodies vested with inspection powers in certain sectors and/or in the autonomous regions of Madeira and the Azores. Since it cannot find an answer to its questions in the report with regard to this point, the Committee requests the next report to contain this information.

In its previous conclusion (Conclusions 2013), the Committee asked for data on investigations into non-fatal accidents at work; orders to suspend work; orders to prohibit activity; orders to deprive of the right to participate in public tenders; filings for criminal prosecution; single and overall amounts of fines imposed; and sentences passed on cases referred to the public prosecutor's office.

The report explains that when ACT's labour inspectors go to workplaces they make use of a whole range of instruments: notifications to take measures (18 386 in 2012, and 12 449 in 2014); orders to suspend work in case of immediate danger; fines (888 in 2012, and 656 in 2015). Within the overall strategy the inspectors employ in their approaches, these instruments possess a preventive nature. According to the report, the use of these instruments combines with the inspectors' significant powers to try to bring about improvements in working conditions, thereby also contributing to a reduction in the number of work-related accidents. The actual application of sanctions has a dual purpose – on the one hand, to also help prevent accidents at work and occupational diseases, and on the other, to ensure fulfilment of the general principle that the law must be effectively complied with.

The report indicates that the number of suspended-work orders under the Directive regarding temporary and mobile construction sites decreased during the reference period from 312 in 2012 to 303 in 2015. However, ACT has no data on the possibility of imposing the accessory sanction of prohibition of engaging an economic activity and deprivation of the right to take part in public contracts or tenders.

The report also indicates the number of criminal charges and complains filed during the reference period: 124 in 2012, 160 in 2013, 530 in 2013 and 141 in 2015. However, ACT does not possess complete data on the court sentences imposed in appeals against administrative offense determined during inspection procedures.

The Committee points out that under the provisions of Article 3§3 of the Charter, States Parties must take measures to focus labour inspection more on small and medium-sized enterprises (Statement of Interpretation on Article 3§3, Conclusions 2013). The report indicates that one of the specific objectives of the National Strategy for Safety and Health at Work 2015-2020 is to support companies in the implementation of health and safety at work, particularly micro, small and medium-sized enterprises. The Committee asks the next report to provide the results of the activities implemented under that objective.

The Committee concludes that due to the low level of human resources in the inspectorate service responsible for monitoring compliance with occupational health and safety legislation, the labour inspection system cannot be considered efficient with regard to Article 3§3 of the Charter. Therefore, the situation is not in conformity with the Charter on the ground that the labour inspection system does not have sufficient human resources to adequately monitor compliance with occupational health and safety legislation. The Committee asks that the next report provide information on the measures taken to increase staffing levels in the labour inspectorate. It also requests the next report to indicate the proportion of workers who are covered by inspections and the percentage of companies which underwent a health and safety inspection in the years covered by the reference period.

Conclusion

The Committee concludes that the situation in Portugal is not in conformity with Article 3§3 of the Charter on the grounds that:

- measures taken to reduce the number of accidents at work are insufficient;
- the labour inspection system does not have sufficient human resources to adequately monitor compliance with occupational health and safety legislation.

Article 3 - Right to safe and healthy working conditions

Paragraph 4 - Occupational health services

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

In its previous conclusion (Conclusions 2013), the Committee asked for the percentage of enterprises and establishments which, in practice, provide access to external or joint safety, hygiene and health services. It also asked for information on the following aspects: the relevant laws and regulations applicable in the autonomous regions of Madeira and the Azores; the actual content of occupational safety, hygiene and health services provided by the employer or his designated representative; the occurrence and periodicity of medical examinations in law and practice; and the accreditation and supervision of external providers of occupational safety, hygiene and health services.

In reply, the report indicates that Law No. 42/2012, which amended the Law No. 102/2009, approved the regimes governing access to and pursuit of the professions of senior occupational safety specialists and occupational safety specialist, and repealed Article 100 of Law No. 102/2009, under which employers could commit a serious administrative offence of they hired a specialist who did not fulfil the requisites laid down in Article 100(1).

According to the report, employers are under a general obligation to organise their OSH services using the following formats (Article 74(1) of Law no. 102/2009): (1) Internal services: they are part of the company structure and depend on the employer; an internal service can be provided by a service company to other group companies since the companies are in a controlling group; (2) External services: when an employer does not have the in-house competencies needed to ensure the prevention of occupational risks and arrange for the monitoring of its workers' health, and on condition that it is not legally obliged to organise in-house services, it may contract external entities to provide OSH services; (3) Employer / nominated worker: in a company with up to 10 employees and whose activities are not of high risk, safety and health activities can be carried out directly by the employer or by one or more nominated employees who should be provided adequate training and necessary resources for this purpose, and (4) joint OSH services: they are established by agreement between several companies or establishments belonging to companies that are not in a group relationship and are not required to organise in-house services. Their activities include risk assessment, the adoption of preventive measures, worker training and information, and others.

In 2012, 35 448 enterprises had organised their safety and health services separately and 150 993 in a joint format. The number of different doctors and specialists engaged in these services increased: 10 888 safety and health specialists and 2 410 occupational health doctors in 2012, and 12 737 and 2 456 respectively in 2013.

OHS consist of qualified specialists – safety specialists and senior safety specialists – who must possess professional licences. ACT regulates access to the profession of such specialists by checking the conformity of their professional qualifications required by law (2 227 professional Occupational Safety Specialist licences and 10 715 professional Senior Occupational Safety Specialist licences were issued in 2011-2015).

At enterprises or set of establisments up to 50 km from the largest one, employing up to nine workers and which activity is not at high risk, OHS activities may be assumed directly by the employer or by one (or more) employee(s) designated by the employeer on some conditions (training, time, presence, resources, etc.). The proper operation of enterprises' in house-services is verified by inspection-type interventions. Fulfilment of an employer's OSH obligations can be monitored using the Single Report, which combines a set of information each employer must provide every year according to Article 32 of Law No. 105/2009 of 14 September 2009. This includes the activities of its OSH services, risk identification and assessment, health promotion, medical examinations, work-related accidents, occupational diseases, and others, according to Ministerial Order No. 55/2010 of 21 January 2010. The

report also indicates that the majority of enterprises continue to use the external service format. External services are regulated by the competent entities – ACT in the occupational safety are, and the Directorate-General for Employment and Labour in the occupational health domain. This regulation initially entails granting or denying authorisation to engage in this activity, and subsequently carrying out audits (96 in 2015) to access the quality of the services provided to client enterprise. In addition, the National Strategy for Safety and Health at Work 2015-2020 contains several measures concerning supervision and monitoring of the activities of external services in both the occupational safety and the occupational health field, the design and availability of kits intended to support new employers with regard to their primary obligations in the labour and OSH fields, the production and dissemination of documents adopted to different sectors and instruments designated to help with the implementation of OSH legislation.

The Committee reiterates its request for information on the relevant laws and regulations applicable in the autonomous regions of Madeira and the Azores, as well as the occurrence and periodicity of medical examinations in law and practice.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in Portugal is in conformity with Article 3§4 of the Charter.

Article 11 - Right to protection of health

Paragraph 1 - Removal of the causes of ill-health

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

Measures to ensure the highest possible standard of health

The Committee notes from WHO data that life expectancy at birth (average for women and men together) was 81.8 years in 2015 (compared to 79.61 years in 2009). The Committee notes from Eurostat that life expectancy at birth in the EU-28 was estimated at 80.6 years in 2015.

The Committee notes from the statistics available on Pordata that the mortality rate (number of deaths per 1 000 inhabitants) has increased since the previous reference period (10.5 deaths per 1,000 inhabitants in 2015 compared to 9.78 deaths per 1,000 inhabitants in 2011). The Committee previously asked what preventive measures were taken in respect of the eight priority areas identified under the National Health Plan (2011-2016), i.e., cardiovascular diseases, oncologic diseases, diabetes, respiratory diseases, mental health, HIV/AIDS, the promotion of a healthy diet and the prevention of smoking, as well as information on other main causes of mortality (Conclusions 2013).

The report provides information on the measures taken to prevent suicide, in particular the national programme for suicide prevention, as well as on measures taken for the prevention and control of smoking. The report also provides statistics on the number of persons who underwent surgical interventions, including patients with cancer, or benefited from outpatient consultations and emergency services. The report indicates that the median waiting time for patients with malignant neoplasms rose by 1 day in 2013, compared to 2012. Noting that the mortality rate has increased, the Committee asks that the next report provide information on the main causes of premature death in Portugal (including cancer) and on the measures taken to address these causes.

The Committee notes from Eurostat that the infant mortality has slightly decreased from 3.4 in 2012 to 2.9 in 2013 during the reference period and it remained stable for the last three years of the reference period (2.9 deaths per 1,000 live births in 2013, 2014 and 2015).

The Committee notes that the maternal mortality rate has increased since the last reference period (in 2015 it stood at 7 deaths per 100,000 live births compared to 5.2 deaths per 100 000 live births in 2011 according to Pordata). The Committee asks for information on the measures taken to reduce the maternal mortality rate.

Access to health care

The Committee noted previously that health care delivery through the National Health Service (NHS) is based on both public and private providers (Conclusions 2013). The Committee notes from Health Systems in Transition – Portugal 2017 (HiT Portugal) that the Portuguese health system is characterized by three co-existing and overlapping systems: the universal NHS; special health insurance schemes for particular professions or sectors (e.g. civil servants, employees at banks and insurance companies), called the health subsystems; and private voluntary health insurance (VHI). The same source indicates that the total health expenditure represented 9.5% of the country's GDP in 2014. Public expenditure on the NHS accounts for 66% of total health expenditure. A relatively large proportion of financing is private, around 35% of total health expenditure (compared to a European average of around 24%). Over 80% of this goes on out-of-pocket payments, mainly user charges in private outpatient care, medicines, dental care and user charges in the NHS (although exemptions cover much of the population).

The Committee noted previously that priority was given to promoting access to hospital care: access to surgery, to outpatient consultations, treatment of oncological diseases, ambulatory surgery and improving emergency services. It asked to be kept informed on the

implementation of the measures taken in these areas and on their results (Conclusions 2013). The report provides detailed statistical data indicating that in 2013 the lowest waiting time for surgical intervention has been achieved – 2.8 months (below 3 months for the first time); the highest rate of use of medical consultations at primary healthcare level in 2013; a significant growth in domiciliary medical consultations and in nursing consultations at home; an increase in surgical activity for patients with malign neoplasms with the largest number of patients ever operated. However, the report indicates that in 2013, the average response time for requests for hospital consultation was 120.5 days (122.9 days in 2012), and the median time until the completion of the first query was 80.8 days (81.5 days in 2012). The report adds that the waiting time for cancer surgeries increased (by 1 day in 2013, compared to 2012). The Committee asks to be kept informed on the real average waiting times for inpatient and outpatient care, including surgeries.

As regards pharmaceutical products, the Committee previously asked for information on the level of co-payments for pharmaceutical products (Conclusions 2013). The report provides information on the four categories of medicines which are reimbursed by the state, for example essential medicines for treating chronic diseases or life-saving pharmaceuticals such as cancer and diabetes (category A, reimbursement rate 90%) or essential medicines with therapeutic value for the treatment of serious illnesses such as anti-asthmatic, cardiovascular pharmaceuticals (category B, reimbursement rate 69%). For medicines included in the reference price system, the general reimbursement rate can only be applied up to the reference price (the price that the NHS reimburses the patient). If the patient buys a pharmaceutical that costs more than the reference, he/she will have to pay the difference between the reference price and the pharmacy's retail price. For pensioners with low incomes, the reimbursement rate is increased to 95% for medicines included in the reference price system, whatever the general reimbursement rate may be, but only if their pharmacy retail price is below the reference price.

The Committee takes note from HiT Portugal that out-of-pocket payments are an important source of financing for the Portuguese health system. The same source indicates that out-of-pocket payments (including cost sharing and direct payments for private sector services) accounted for approximately 26.8% of total health expenditure in 2014, and provisional data for 2015 indicate that out-of-pocket payments have increased to 27.6% of total health expenditure. Pharmacies (dispensing chemists), outpatient care centres and offices of physicians, hospitals, and nursing and residential care facilities represent approximately 90% of a household's out-of-pocket payments on health care. Most dental care is paid out-of-pocket, as are many specialist consultations in private ambulatory care. The Committee asks for updated information on the level of out-of-pocket payments in the next report.

The Committee asks that the next report contain information on dental care services and treatments (such as who is entitled to free dental treatment, the costs for the main treatments and the proportion of out-of-pocket paid by the patients).

The report indicates that the National Health Plan (PNS) 2020, which was revised in 2015, defines a number of major goals such as: reduce premature deaths (before the age of 70) by at least 20%; increase health life expectancy at the age of 65 by 30%; and reduce the risk factors associated with non-communicable diseases – namely tobacco consumption and exposure to its smoke, and child obesity. The Committee asks for information in the next report on the measures taken to achieve these goals and on their outcome/implementation.

The Committee notes that according to HiT Portugal, in 2014 there was a low ratio of nurses to physicians and during the reference period Portugal faced challenges regarding the distribution of health workers across the population as they are concentrated in the major urban centres and along the coast, leaving the inland underserved. The same source indicates that health inequalities remain one of the key problems for NHS which are determined by geography (people from the interior regions have more difficulties in accessing health services); income (individuals with low income face a greater challenge

when paying for pharmaceuticals and when accessing health services not covered by the NHS, such as oral health); and health literacy (access to the internet and, consequently to a lot of health-related information available online, is more difficult for the older populations and for those with a low educational level). The Committee asks for information on the measures taken to address these challenges in the next report.

In its previous conclusion, the Committee asked information on the availability of rehabilitation facilities for drug addicts, and the range of facilities and treatments (Conclusions 2013). The Committee takes note of the detailed information in the report concerning the types of treatment and facilities available for drug addicts.

The Committee asks that the next report contain information on the availability of mental health care and treatment services, including information on the prevention of mental disorders and recovery measures.

Conclusion

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

Article 11 - Right to protection of health

Paragraph 2 - Advisory and educational facilities

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

Education and awareness raising

In its previous conclusion, the Committee asked that the next report included updated information on specific public information campaigns implemented by public health services, or other bodies, to promote health and prevent diseases (Conclusions 2013).

The report mentions only some campaigns conducted in the field of prevention of smoking and a national programme for suicide prevention. Noting that child obesity is one of the key areas to be addressed by the National Health Plan (PNS) 2020, the Committee asks information on specific awareness raising campaigns and activities undertaken in this field.

The Committee recalls that informing the public, particularly through awareness-raising campaigns, must be a public health priority. The precise extent of these activities may vary according to the nature of the public health problems in the countries concerned (Conclusions 2007, Albania). Measures should be introduced to prevent activities that are damaging to health, such as smoking, alcohol and drugs, and to develop a sense of individual responsibility, including such aspects as a healthy diet, sexuality and the environment (Conclusions XV-2, the Slovak Republic). Thus, the Committee reiterates its request for information on concrete/specific activities, such as educational or awareness-raising campaigns, undertaken by public health services, or other bodies, to promote health and prevent diseases.

Counselling and screening

The Committee noted previously that the National Health Service carries out regular population-based screenings in the areas of cancer and diabetes. Population screening is organised on a regional basis under the responsibility of the five Regional Health Administrations. The Committee took note of the screening programmes available for cancer and diabetes (Conclusions 2015).

The report indicates that in 2015, three hospital speciality referral networks were established in areas that have a key influence in the oncological field: Medical Oncology, Radio-Oncology, and Clinical Hematology.

The implementation and operational details of the population-based oncological screenings for colorectal, cervical and breast cancer have been the object of standardised monitoring. The Committee takes note of the information on the geographical coverage of the various cancer screening programmes as well as on early detection efforts in respect of oral cancer.

The Committee recalls that there must be free and regular consultation and screening for pregnant women and children throughout the country (Conclusions 2005, Republic of Moldova). It asks updated information on this point.

Conclusion

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

Article 11 - Right to protection of health

Paragraph 3 - Prevention of diseases and accidents

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

Healthy environment

The Committee previously asked for updated information on the main regulations/legislation in the field of environmental protection, namely for the protection of air quality, water safety, noise, as well as in the areas of ionising radiation, asbestos and food safety. It also wishes to receive information on the levels of air pollution, as well as on cases of water and food intoxication during the reference period (Conclusions 2013).

The report provides information on the legal framework in the field of ionising radiation, asbestos and indoor air quality. The Committee reiterates its question that the next report provide updated information on the levels of air pollution, as well as on cases of water and food intoxication and the measures taken in these fields. The Committee points out that if such information is not provided, there will be nothing to establish that the situation is in conformity with the Charter on this point.

Tobacco, alcohol and drugs

The report provides information on the activities and campaigns undertaken under the National Programme for the Prevention and Control of Smoking (PNPCT) created in 2012, which is part of the National Health Plan (2012-2016). The main goals of the PNPCT are: to increase the healthy life expectancy of the Portuguese population, through the reduction of diseases and premature mortality associated with consumption and exposure to tobacco/smoke; to reduce the prevalence of smoking (daily or occasional) in the population aged 15 years or over by at least 2% by 2016; and to eliminate exposure to environmental tobacco smoke. The report adds that in order to monitor the problems, a report on the prevention and control of smoking in Portugal was published in 2014.

The Committee recalls that the effectiveness of the tobacco policies is assessed on the basis of statistics on tobacco consumption (Conclusions XVII-2 (2005), Malta). It therefore asks information in the next report on the impact/outcome of the measures taken in relation to tobacco consumption and data on the trends in consumption.

The report does not provide information on alcohol and drug consumption. The Committee recalls that the above mentioned approach applies *mutatis mutandis* to anti-alcoholism and drug addiction measures (Conclusions XVII-2 (2005), Malta). It asks the next report to provide information on the measures taken in the field of alcohol and drug addiction as well as on the trends in consumption.

Immunisation and epidemiological monitoring

The report does not provide any information on this point. The Committee requests that the next report provide updated information on the coverage rates for vaccinations under the National Vaccination Programme.

Accidents

The report indicates that projects on the safety of children and young people and on the prevention of home accidents involving elderly persons were developed during the reference period.

The Committee asks for updated information in the next report on the measures taken to prevent road accidents, home accidents, accidents during leisure time and accidents at school, as well as on the trend in the number of such accidents.

Conclusion

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

Article 12 - Right to social security

Paragraph 1 - Existence of a social security system

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

In the case of **family** and **maternity benefits**, the Committee refers to its conclusions on, respectively, articles 16 and 8§1 (Conclusions 2011).

The Committee notes the adoption of a number of legislative developments concerning the social security system during the reference period. Changes affecting the level of the benefits and consequently their adequacy will be assessed below. For other changes, the Committee refers to its assessment under Article 12§3.

Risks covered, financing of benefits and personal coverage

The Committee refers to its previous conclusions for a description of the Portuguese social security system, and notes that it continues to cover all the traditional risks (medical care, sickness, unemployment, old age, work accidents/occupational diseases, family, maternity, invalidity and survivors). The system also continues to rest on collective funding: it is funded by contributions (employers, employees) and by the State budget.

The Committee notes from Missoc that access to the National Health Service is granted to all residents, including illegal immigrants, EU citizens and non-European citizens. As regards the other social security risks, all employed and self-employed persons, including household workers, are covered in respect of sickness by a compulsory social insurance scheme (voluntary affiliation is possible for certain categories of persons not covered by any other compulsory contributory program). According to the report, in 2014, out of an active population of 5 195 200, the persons covered in respect of sickness were 4 652 961, i.e. almost 90%. A compulsory social insurance scheme also applies to all employees and self-employed in respect of disability, old-age and survivors' insurance, with the possibility of voluntary subscription for certain categories of people. In 2014, the number of persons covered in respect of old-age was 4 640 341, i.e. 89% of the active population. The Committee asks the next report to clarify whether the same coverage applies also in respect of invalidity and survivors' insurance. In respect of unemployment, a compulsory social insurance scheme applies to employees (and some groups of self-employed). In 2014, the number of persons covered in respect of unemployment was 4 358 058, i.e. 84% of the active population. A compulsory private insurance applies to all employees and self-employed in respect of accidents at work, while they are covered by a compulsory social insurance as regards occupational diseases. The Committee asks the next report to provide updated data concerning the number of persons protected against all the above-mentioned risks, including as regards accidents at work and occupational diseases, out of the total active population.

Adequacy of the benefits

According to Eurostat data, the median equivalised annual income was €8 435 in 2015, or €703 per month. The poverty level, defined as 50% of the median equivalised income, was €4 218 per annum, or €351 per month. 40% of the median equivalised income corresponded to €281 monthly. In 2015, the Guaranteed Minimum Monthly Wage (RMMG) was €505 per month and the indexing reference of social support (*indexante dos apoios sociais* – IAS*)* was €419.22.

In its previous conclusions (Conclusions 2013), the Committee found that the minimum level of **sickness** benefit was inadequate. It recalls that, in order to be entitled to sickness benefits, a persons must have been insured for 6 months with registered remuneration, of which 12 days of actual work during the 4 months prior to the occurrence of the sickness. It notes from the report that, following some amendments in 2012 (see also Conclusions on Article 12§3), the benefit now equals 55% of the normal wage for the first 30 days of

temporary incapacity; 60% of the wage for the following 60 days; 70% of the wage for the days 91 to 365 of sickness and 75% of the wage for the subsequent period, i.e. when the temporary incapacity continues for more than one year. These rates are increased by 5% each for beneficiaries whose reference wage is equal to or less than € 500/month; who have 3 or more dependent descendants aged up to 16 years, or 24 years if they receive the family allowance; or who have descendants who benefit from an increased rate due to disability. As regards the minimum amount of sickness benefits, the situation has however not changed, according to Missoc: the minimum amount still corresponds to 30% of the IAS, that is €126, or the average earning if it is lower than this percentage. The report explains in this respect that such a low amount is however granted only in the case of people doing part-time work (less than 50% of full-time working hours) and earning the minimum wage or when the insurance period is not long enough to make a full calculation of the benefit and this has to be done on the basis of aggregated insurance periods. In these cases, the contribution periods for the system are very short and earnings are low. According to the report, some amendments have been introduced in 2012 in order to minimize this situation and the number of cases where the sickness benefits were lower than €419 has been constantly decreasing, from 6557 in 2011, when they represented 1.3% of the beneficiaries, to 2993 in 2014, when they only represented 0.8% of the beneficiaries. While taking note of this explanation, the Committee recalls that the level of income-replacement benefits should be such as to stand in reasonable proportion to the previous income and should not fall below the poverty threshold defined as 50% of the median equivalised income, as calculated on the basis of the Eurostat at-risk-of-poverty threshold value. Where the minimum level of an income-replacement benefit falls below 40% of the median equivalised income (or the poverty threshold indicator), it is not considered that its aggregation with other benefits can bring the situation into conformity. Accordingly, the Committee considers that the situation is not in conformity in this respect.

The Committee takes note of the changes introduced, during the reference period, to the **Unemployment** benefits scheme (see also Conclusions on Article 12§3). It notes in particular that the qualifying period has been reduced from 450 to 360 days in the previous 24 months. The duration of the benefit has been on the other hand reduced and it ranges now between 150 and 540 days (instead of 270 and 900) depending on the age and length of contribution of the claimant. In response to the Committee's question (Conclusions 2013), the report indicates that recipients of the unemployment benefit can lose their entitlement to it if their registration with a job centre is cancelled, or they refuse an appropriate job, socially necessary work, vocational training, a personal employment plan or other current active employment measures. Recipients are entitled to refuse one of the above types of offer for a period of up to 30 days a year. The Committee asks the next report to clarify what remedies are available to contest decisions to suspend or withdraw unemployment benefits. The report indicates that the maximum amount of the benefit was reduced, as well as the amount of benefits after the first 6 months of unemployment. However, the minimum amount of benefits has remained unchanged and corresponds to the IAS, that is €419, or to the reference wage, if it is lower than the IAS. The report explains in this respect that the minimum reference wage (RMGG) has never been lower than the IAS and that, accordingly, the cases where contributory benefits can be lower than it are in general those where the beneficiary works part time. In the light of this explanation, the Committee considers that the situation is in conformity with the Charter.

As regards **old-age** pension, the Committee refers to its assessment under Article 23.

According to the report, the minimum amounts paid in respect of contributory **invalidity** pensions in 2015 amounted respectively to €261.95 for a contributory period of up to 15 years, €274.79 for a contributory period between 15 and 20 years, €303.23 for a contributory period of 21 to 30 years and €379.04 for a contributory period of over 31 years. In case of absolute invalidity, the minimum amount corresponds to the the minimum amount of a pension with a 40-year contribution history, which is in conformity with the Charter.

The Committee previously noted (Conclusions 2006) that the benefits payable under the **work accidents** and the **occupational diseases** schemes corresponded to 70% of the reference wage. It notes from ISSA and MISSOC that this situation has not changed: 70% of the reference earning is paid during the first 12 months of incapacity and 75% afterwards. Considering the level of minimum wage, the Committee finds that the level of these benefits was adequate in relation to the poverty threshold defined as 50% of the median equivalised income.

Conclusion

The Committee concludes that the situation in Portugal is not in conformity with Article 12§1 of the Charter on the ground that the minimum level of sickness benefit is inadequate.

Article 12 - Right to social security

Paragraph 2 - Maintenance of a social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security

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

The Committee notes that Portugal has ratified the European Code of Social Security and its Protocol on 15 May 1984 and has accepted its Parts II and VIII, as well as Parts III, IV, V, VII, IX and X, as modified by the Protocol.

The Committee notes from the Resolution CM/ResCSS(2016)14 of the Committee of Ministers on the application of the European Code of Social Security and its Protocol by Portugal (period 1 July 2014 to 30 June 2015) that the social security system of Portugal continues to give effect to the accepted Parts of the Code (II and VIII) and the Protocol (III, IV, V, VII, IX and X), but operates to a large extent below the poverty threshold being unable to prevent the spread of poverty among the majority of the persons protected.

The Committee also notes from the Resolution CM/ResCSS(2016)14 that the question of the adequacy of the social security benefits under accepted Parts of the Code will be examined on the basis of the comprehensive information provided by the government.

Conclusion

The Committee concludes that the situation in Portugal is in conformity with Article 12§2 of the Charter.

Article 12 - Right to social security

Paragraph 3 - Development of the social security system

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

It refers to its previous conclusions for a description of the Portuguese social security system. In the case of family and maternity benefits, the Committee refers to its conclusions on, respectively, articles 16 and 8§1. As regards other branches of social security, the Committee takes note of the legislative developments during the reference period. In particular, the report mentions the following improvements:

- as regards **unemployment benefits**, the qualifying period was shortened from 450 to 360 days of registered work during the previous 24 months; the amount was temporarily increased (Executive Law (DL) no. 64/2012 of 15 March 2012) in certain situations where the beneficiary had dependent children, as part of the Social Emergency Programme; an additional financial support was made available to persons accepting a job offer transmitted by job centres or achieving placement by themselves (Ministerial Order no. 26/2015 of 10 February 2015) and new rules were introduced, which extend the coverage of unemployment benefits to certain self-employed persons (Executive Law no. 65/2012 of 15 March 2012, Executive Law no. 12/2013 of 25 January 2013);
- as regards **sickness benefits**, the report indicates that the coverage was extended as a result of a modification in the way the reference pay is calculated, i.e. by taking into account the whole period from the beginning of the reference period till the day before the occurrence of the incapacity for work (Executive Law no. 133/2012 of 27 June 2012);
- the rates of pensions concerning incapacity to work resulting from **occupational diseases** and **work related accidents** were increased by +3.6% in 2012, by +2.9% in 2013, and by +0.4% in 2014;
- entitlement to **invalidity pensions** was extended as a result of the adoption of new rules (Executive Law no. 246/2015 of 20 October 2015) which take account of the person's objective permanent incapacity for work, regardless of the causes (before the adoption of this law, only invalidity resulting from a specific list of diseases was recognised as such);
- the 5-years time limit for claiming **survivors' pensions** was cancelled.

The report acknowledges however that major reductions in public spending and a variety of austerity measures were adopted between 2011 and 2014, in the framework of the Economic Adjustment Programme and, as a result, the budget of the social security system was reduced and re-targeted. According to the report, nevertheless, the authorities took care of guaranteeing that social protection would effectively be afforded to citizens who needed it most.

The Committee notes in particular the adoption of the following restrictive measures:

- the amount of **unemployment** benefit after six months was reduced by 10%; the maximum amount of unemployment benefit was also reduced (but not the minimum); the duration of payment of the benefit, which ranged between 270 and 900 days depending on the age and length of contribution of the claimant, was reduced to 150-540 days, however transitory measures were introduced so as to allow claimants who had already at 31 March 2012 a certain number of contributions to benefit from most favourable rules;
- the replacement rate of the **sickness** benefit was reduced for the first 90 days of sickness (from 65%, it is now 55% for the first 30 days and 60% for the following 60 days), a 5% increase is however applicable to certain claimants who are in a more vulnerable situation (Executive Law no. 133/2012 of 27 June 2012); as from 2013, in the public sector, the base daily pay is lost for the first three days of incapacity when the worker is repeatedly off work (for concurrent or interspersed

periods) due to illness (Law no. 66-B/2012 of 31 December 2012 – the State Budget for 2013, LOE 2013);

- the Social Support Index Value (IAS), which serves as a reference for several benefits, was not indexed during the reference period; as a result of this, the nominal value of **old age** pensions was frozen; however, the amounts of the minimum pensions payable under the General Social Security Regime for contribution histories of less than 15 years, the pensions due under the Special Regime for Agricultural Activities (RESSAA), the Non-contributory Regime and other equivalent regimes, and the pensions paid under transitional regimes applicable to agricultural workers were all exceptionally updated in the light of the principle of social equity and the need to protect pensioners with lower incomes; the possibility to take early retirement (for persons aged 55 or more with at least 30 years contributions) was suspended during the reference period and when it was reintroduced, in 2015, stricter conditions of entitlement were adopted (beneficiaries should be at least 60 years old and have at least 40 years contributions);
- the amount of the **survivors**' pension was limited in certain cases (ex-spouses, judicially separates spouses, persons whose marriage has been declared null and void or annulled) to the amount of the maintenance allowance receivable at the time of the beneficiary's death; the maximum amount of the allowance payable on death was limited to 6 times the IAS in 2012 and 3 times the IAS in 2013 (also in the public employment sector), the maximum amount of reimbursements of funeral expenses was also limited and a new rule was introduced whereby when a claim for a survivors' pension is made more than 6 months after the beneficiary's death, the pension will not be paid retroactively (Executive Law No. 133/2012; Executive Law No. 13/2013 of 25 January 2013).
- the annual re-evaluation of pensions due for permanent incapacity and death resulting from **work accidents/occupational diseases** was suspended in 2015.

The Committee further takes note of the measures taken to maintain the sustainability of the old age pensions system during the reference period, as detailed in the report concerning Article 23 of the Charter and asks the next report to provide further information on their implementation and effects.

The Committee recalls that the assessment of restrictive measures is based on the following criteria: the nature of the changes (field of application, conditions for granting allowances, amounts of allowance, etc.); the reasons given for the changes and the framework of social and economic policy in which they arise; the extent of the changes introduced (categories and numbers of people concerned, levels of allowances before and after alteration); the necessity of the reform; the existence of measures of social assistance for those who find themselves in a situation of need as a result of the changes made (this information can be submitted under Article 13); the results obtained by such changes (Conclusions XVI-1 (2002), Statement of Interpretation on Article12§3).

It notes from the report that, although the re-evaluation of certain benefits was suspended during the reference period, most of these measures were subsequently lifted and, in the meantime, complementary measures were taken to limit the impact of the restrictions on the more vulnerable categories of beneficiaries. Furthermore, the coverage of certain benefits was extended. In light of the information available, the Committee accordingly considers that the situation remains in conformity with Article 12§3 of the Charter.

Conclusion

The Committee concludes that the situation in Portugal is in conformity with Article 12§3 of the Charter.

Article 12 - Right to social security

Paragraph 4 - Social security of persons moving between States

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

Equality of treatment and retention of accrued benefits (Article 12§4a)

Right to equal treatment

Equal treatment between nationals and nationals of other States Parties in respect of social security rights shall be ensured through the conclusion of bilateral or multilateral agreements or through unilateral measures.

The Committee recalls that, having regards to the EU legislation on the coordination of social security systems of the EU Member States, governed by Regulations (EC) No. 883/2004 and (EC) No. 987/2009, as amended by Regulation (EU) No. 1231/2010, the EU Member States are considered, in principle, to ensuring equal treatment between, on the one hand, their nationals and, on the other hand, nationals of other EU Member States or member of the EEA, stateless persons, refugees resident in the territory of a Member State who are or have been subject to the social security legislation of one or more Member States, their families and their survivors, as well as nationals of third countries, members of their families and their survivors, provided that they are legally resident in the territory of a Member State and are in a situation which is not confined in all respects within a single Member State.

The Committee further recalls that, in any event, under the Charter, EU/EEA Member States are required to secure, to the nationals of other States Parties to the 1961 Charter and to the Charter not members of the EU or EEA, equal treatment with respect to social security rights provided they are lawfully resident in their territory (Conclusions XVIII-1 (2006)). In order to do so, they have either to conclude bilateral agreements with them or take unilateral measures.

As regards bilateral agreements concluded with other States Parties not members of the EU or EEA, the report states that the Convention on Social Security with Ukraine entered into force in 2012. It also states that Portugal opened negotiations with the Russian Federation and Turkey with a view to concluding bilateral agreements. Nevertheless, no agreement is foreseen with Albania, Armenia, Georgia and Serbia.

As regards unilateral measures taken by Portugal, the report indicates that the principle of equal treatment with regard to social security is guaranteed to both national and foreign citizens provided they are legally resident in Portugal. It states however that there are exceptions in relation to some non-contributory benefits, such as the social pension, the social integration income (RSI) and the solidarity supplement for the elderly (CSI). On the one hand, the payment of the social pension is made conditional upon the signature of bilateral social security agreements with Portugal. The Committee notes however that no such agreements exist with Albania, Andorra, Armenia, Azerbaijan, Bosnia and Herzegovina, Croatia, Georgia, Moldova, Serbia and "the former Yugoslav Republic of Macedonia", and . On the other hand, the RSI and CSI are subject to a residence requirement of one and six years, respectively, to both nationals and foreigners.

The Committee recalls that, where non-contributory benefits are concerned, the section of the Appendix relating to Article 12§4 allows a residence requirement to be imposed on foreign national provided that the length of residence required is proportional to the objective pursued (Conclusions XIII-4,(1996) Denmark).

The Committee considers a period of six years to be too long and, therefore, it is not in conformity with the Charter on this point.

In respect of payment to family benefits, the Committee considered that the requirement for the child to reside in the territory of the paying State is in conformity with Article 12§4

(Statement of Interpretation on Article 12§4, Conclusions XVIII-1 (2006)). However, since not all countries apply such a system, States Parties applying the 'child residence requirement' are under the obligation, in order to secure equal treatment within the meaning of Article 12§4, to enter, within a reasonable period of time, into bilateral or multilateral agreements with those States which apply a different entitlement principle (Conclusion 2006, Cyprus).

The Committee notes that, according to MISSOC Database, Portugal applies the rules whereby the payment of family benefits is conditional on the claimant's child being resident in Portugal or in a situation assimilated to that of resident in accordance with the legislation. The Committee asks the next report to provide more information on what is a situation assimilated to that of resident.

The report indicates that Portugal has signed an agreement on social security with Turkey covering, *inter alia*, family allowances. However, no such agreements were concluded with Albania, Armenia, Georgia and the Russian Federation during the reference period. Portugal considers however that the principle of equal treatment with regard to payment of family allowances is guaranteed to foreign citizens legally resident in the country.

For these reasons, the Committee considers that equal treatment is not guaranteed with regard to access to family allowances in respect of nationals of all other States Parties.

Right to retain accrued benefits

The Committee considered in its previous conclusion (Conclusions 2013) the situation to be in conformity with regard to the retention of accrued benefits by nationals of other States Parties by virtue of section 7 of the Social Security Act No. 4/2007 of 17 January 2007. Since the situation did not change during the reference period, the Committee reiterates its conclusion on this point.

Right to maintenance of accruing rights (Article 12§4b)

The Committee points out that in its previous conclusion (Conclusions 2013), it considered the situation to be in conformity as far as the right to the maintenance of accruing rights. Given that the situation has not changed, the Committee reiterates its conclusion of conformity on this point.

Conclusion

The Committee concludes that the situation in Portugal is not in conformity with Article 12§4 of the Charter on the grounds that:

- equal treatment with regard to social security rights is not guaranteed to nationals of all other States Parties;
- equal treatment with regard to access to family allowances is not guaranteed to nationals of all other States Parties.

Article 13 - Right to social and medical assistance

Paragraph 1 - Adequate assistance for every person in need

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

Types of benefits and eligibility criteria

The Committee takes note of legislative developments during the reference period.

The Committee notes from the report that persons and families in situations of serious economic hardship who need support in order to improve their social and occupational integration are entitled to the Social Integration Income (RSI), subject to certain conditions. In 2012-2015, both the reference figure for the RSI means test and the actual amount of the benefit for single individuals were reduced from €189,52 to €178,15 per month.

The Committee takes note of the Executive Law no. 133/2012 of 27 June 2012 which provides that the RSI reference value is now linked to the the Social Support Index (IAS) value rather than to the amount of social pension, which has led to the freezing of the RSI because the IAS was frozen.

As regards the conditions for entitlement to the RSI, according to the report, in 2015 the Constitutional Court declared the unconstitutionality with generally binding force of the part of the norm contained in Article 6(1)(a) of Law no. 13/2003 of 21 May 2003, with the text given to it by Executive Law no. 133/2012 of 27 June 2011, under which Portuguese nationals were required to have spent at least one year legally residing in Portugal before they could gain access to the benefit (Ruling of the Constitutional Court no. 141/2015 of 16 March 2015). According to the report, the changes derived from this finding of unconstitutionality mean that it is now possible to safeguard the social rights of Portuguese migrant workers who leave the country for occupational reasons and then come back early without the proper social cover. Before the Ruling, these Portuguese nationals could only gain access to the RSI a year after they returned to Portugal.

In its previous conclusion (Conclusions 2013) the Committee asked what forms of social assistance could be refused to people not complying with the integration schemes, whether the assistance was withdrawn in its entirety and whether the withdrawal of such assistance may amount to the deprivation of means of subsistence for the person concerned. In reply it notes from the report that the social action subsystem cash benefits continue to be available to people whose RSI has been suspended for not accepting a suitable employment offer. However, according to the report, the entitlement to these benefits is not a subjective right of the beneficiaries. The social action subsystem cash benefits are the last resort benefits and are granted under exceptional conditions, on the basis of an assessment carried out by a social welfare officer of the vulnerability situation of the individual or family.

In its previous conclusion the Committee noted that people in need were exempted from the national health service fees and asked whether this continued to apply when the RSI is withdrawn for failure to comply with the integration scheme.

In reply it notes from the report that the rules for the recognition of economic need for the exemption from payment of user fees are set by the Ministry of Health. The legal framework of the RSI does not make a connection between the right to exemption from user fees and the non-fulfilment of an integration contract. Therefore, former RSI beneficiaries can maintain the right to the respective exemption if their situation of need continues. The Committee also takes note in this regard of the creation of a Medicine Bank, which will give the most vulnerable population access to medicines under more favourable conditions. According to the report, the exemption from user fees has been extended to more than 5,5 million people.

Level of benefits

To assess the level of social assistance during the reference period, the Committee takes note of the following information:

- Basic benefit: according to MISSOC, Social Integration minimum Income (RSI), which is indexed to the indexing Reference of Social Support (IAS) corresponded to € 178, 15 in 2015.
- Additional benefits: according to MISSOC, there are no housing and heating allowances. The report does not provide any information regarding additional benefits.
- Poverty threshold, defined as 50% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value: estimated at € 351 in 2015.

According to the report, efforts have been made at the level of the social protection system in general and social assistance support in particular, in order to mitigate the effects of economic and financial crisis, such as, among others, the creation of social tariffs in the transport sector and for electricity and natural gas prices, social energy discounts, the development of the Social Rental Market – carried out within the scope of the partnership between the state, municipalities and banks.

The Committee notes from the report that as a general rule, social assistance is provided to persons who are not covered by a contributory scheme. These benefits are only paid to persons who are resident in Portugal and are in financial difficulties – i.e. whose income is below a certain level. The report indicates that under certain conditions, persons not entitled to contributory benefits may be entitled to a non-contributory pension. This may be provided as an invalidity or old-age social pension, widow(er)'s pension or orphan's pension (*pensão social de invalidez e de velhice, pensão de viuvez, pensão de orfandade*). Unemployed persons who are not entitled to unemployment benefit may be entitled to unemployment assistance (*subsídio social de desemprego),* provided they fulfil the conditions regarding income and movable assets. The Committee asks whether unemployment benefit is different from RSI as regards eligibility and the amount.

The Committee recalls that, according to Article 13§1, the assistance is appropriate when the monthly amount of assistance benefits – basic and additional – paid to a person living alone is not manifestly below the poverty threshold. In the light of the above data and in the absence of information on the monetary value of additional benefits paid to a single person without resources, the Committee concludes that the level of social assistance paid to a single person without resources is inadequate.

Right of appeal and legal aid

The Committee asks the next report to provide updated information concerning the right of appeal and legal aid.

Personal scope

The Committee recalls that, under Article 13§1, States are under the obligation to provide adequate medical and social assistance to all persons in need, both their own nationals as well as nationals of States Parties lawfully resident within their territory, on an equal footing. In addition, with reference to its Statement of Interpretation of Articles 13§1 and 13§4 (Conclusions 2013) regarding the scope of Articles 13§1 and 13§4 in terms of persons covered, the Committee considers that persons in an irregular situation in the territory of the State concerned are also covered under Article 13§1, rather than under Article 13§4, which was previously its practice.

The Committee henceforth examines whether the States who have accepted Article 13§1 ensure the right to:

- adequate social and medical assistance for their own nationals and for nationals of other States Parties lawfully resident within their territory on an equal footing;
- emergency social and medical assistance to persons unlawfully present in their territory.

Nationals of States Parties lawfully resident in the territory

In its previous conclusion the Committee found that the situation in Portugal was not in conformity with the Charter as the granting of social assistance benefits to non-EEA nationals was subject to an excessive length of residence requirement.

The Committee notes from the report that non-EEA nationals have benefited from the Constitutional Court Ruling (no. 296/2015 of 25 May 2015) which found the norm contained in Article 6(1)(b) and (4) of Law no. 13/2003 of 21 May 2003, with the text given to it by Article 5 of Executive Law no. 133/2012 of 27 June 2012, to be unconstitutional. This norm set out the conditions for foreign nationals residing in Portugal to be eligible for the Social Integration Income (RSI). The Constitutional Court considered that the required minimum of three years of legal residence before the non-EEA nationals gain access to social assistance – a social right derived from the conjugation of the principle of the dignity of the human person and the right to social security in situations of economic and social hardship – was too great a sacrifice and too burdensome compared to the public-interest advantage sought by this differentiation of the minimum residency requirements by nationality, and was therefore in breach of the principle of proportionality.

According to the report, EEA nationals themselves need to have resided legally in Portugal for one year in order to be entitled to the RSI. With the Constitutional Court Ruling Portugal now guarantees social protection in economic hardship situations to every foreign national who has been legally resident for at least one year, under equal circumstances, regardless of nationality.

The Committee recalls that under Article 13§1 of the Charter, in the light of the Appendix to the Charter, foreigners who are nationals of States Parties lawfully residing in the territory of another State Party and lacking adequate resources, must enjoy an individual right to appropriate assistance on an equal footing with nationals (Conclusions XIII-4, Statement of Interpretation on Article 13) and conditions such as length of residence, or conditions which are harder for foreigners to meet, may not be imposed on them. The Committee understands that even if all foreign nationals are now equally treated, they are all still subject to a one year length of residence requirement for entitlement to social assistance. Therefore, the Committee considers that the situation is not in conformity with the Charter.

Foreign nationals unlawfully present in the territory

In its previous conclusion under Article 13§4 the Committee asked the next report to provide information concerning emergency social and medical assistance to foreign nationals lawfully or unlawfully present in the territory. It notes from the report that emergency accommodation is provided regardless of whether these foreign nationals are lawfully in the territory.

In this connection, the Committee recalls that persons in an irregular situation must have a legally recognised right to the satisfaction of basic human material need (food, clothing, shelter) in situations of emergency to cope with an urgent and serious state of need. It likewise is for the States to ensure that this right is made effective also in practice (European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, §187).

The Committee cannot accept the necessity of halting the provision of such basic emergency assistance as shelter, guaranteed under Article 13 as a subjective right, to individuals in a highly precarious situation. The Committee has considered that even within

the framework of the current migration policy, less onerous means, namely to provide for the necessary emergency assistance while maintaining the other restrictions with regard to the position of migrants in an irregular situation, remain available to the Government with regard to the emergency treatment provided to those individuals, who have overstayed their legal entitlement to remain in the country (Complaint No. 90/2013, Conference of European Churches (CEC) v. the Netherlands, decision on the merits of 1 July 2014, §123).

The Committee asks whether the legislation and practice comply with these requirements.

Conclusion

The Committee concludes that the situation in Portugal is not in conformity with Article 13§1 of the Charter on the grounds that:

- the level of social assistance paid to a single person without resources is not inadequate;
- nationals of States Parties are subjected to a length of residence requirement of one year to be entitled to social assistance.

Article 13 - Right to social and medical assistance

Paragraph 2 - Non-discrimination in the exercise of social and political rights

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

In its previous conclusion (Conclusions 2013) the Committee asked the next report to confirm that no restrictions applied, in law or in practice, to the exercise of social and political rights on the part of social assistance beneficiaries.

The Committee notes from the report that the guiding principles of the operation rules of social action are the prevention and remediation of situations of socio-economic need and inequality, dependency, dysfunction, social exclusion or vulnerability, as well as community integration and promotion, and the development of people's capabilities in order to ensure the full enjoyment of basic rights. According to the report, there are no restrictive rules with regard to the enjoyment of political or social rights.

The Committee asks whether the provisions enshrining the principle of equality and prohibiting discrimination in the exercise of political or social rights are interpreted in practice in such a way as to prevent discrimination on the basis of receipt of social or medical assistance.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Portugal is in conformity with Article 13§2 of the Charter.

Article 13 - Right to social and medical assistance

Paragraph 3 - Prevention, abolition or alleviation of need

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

In its previous conclusion (Conclusions 2013) the Committee asked what means (in terms of staff and budget) are provided to social services dealing with persons without adequate resources or at risk of becoming so and whether such means are sufficient to give appropriate assistance as necessary.

According to the report, there is the National Social Emergency Hotline (LNES) – a free public telephone service that has operated on a 24/7/365 basis since September 2001. Its objectives are to guarantee an immediate response to situations that require emerging and urgent action in the social protection field, and to ensure the accessibility of a subsequent social follow-up and monitoring with a view to the user's integration and autonomy.

The Committee recalls that the social services covered by Article 13§3 must play a preventive, supportive and treatment role. This provision concerns only social services providing advice or help to persons without or liable to be without adequate resources. Accordingly Article 13§3 is a special provision which is more precise than Article 14§1, which is concerned with social welfare services in general.

The Committee recalls that Article 13§3 concerns free of charge services offering advice and personal assistance specifically addressed to persons without adequate resources or at risk of becoming so. The social services covered by Article 13§3 must play a preventive, supportive and treatment role. This means offering advice and assistance to make those concerned fully aware of their entitlement to social and medical assistance and how they can exercise those rights. In assessing national situations under this provision the Committee specifically examines whether there are mechanisms to ensure that those in need may receive help and personal advice services free of charge and whether such services and institutions are adequately distributed on a geographical basis. The Committee asks the next report to provide updated information on how these requirements are met in legislation and practice.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Portugal is in conformity with Article 13§3 of the Charter.

Article 13 - Right to social and medical assistance

Paragraph 4 - Specific emergency assistance for non-residents

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

The Committee refers to its conclusion under Article 13§1 (personal scope) and recalls that Article 13§4 from now on will cover emergency social and medical assistance for nationals of States Parties lawfully present (but not resident) in the territory.

The Committee recalls that States Parties are required to provide non-resident foreigners without resources emergency social and medical assistance (accommodation, food, emergency care and clothing), to cope with an urgent and serious state of need (without interpreting too narrowly the 'urgency' and 'seriousness' criteria). No condition of length of presence can be set on the right to emergency assistance (Complaint No 86/2012, European Federation of national organisations working with the Homeless (FEANSA) v. the Netherlands, decision on the merits of 2 July 2014, §171).

The Committee further recalls that emergency social assistance should be supported by a right to appeal to an independent body. As regards provision of emergency shelter, there must be an effective appeal mechanism before an independent judicial body in order to determine the proper administration of shelter distribution. This right must also be effective in practice (Conference of European Churches (CEC) v. the Netherlands, Complaint No 90/2013, decision on the merits of 1 July 2014 §106).

The Committee refers to its conclusion under Article 13§1 where it reserved its position as regards emergency social assistance for unlawfully present foreign nationals. The Committee asks the next report to provide information regarding lawfully present foreign nationals and in the meantime, it reserves its position.

Conclusion

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

Article 14 - Right to benefit from social welfare services

Paragraph 1 - Promotion or provision of social services

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

Organisation of the social services

The Committee refers to its previous conclusions for a general description of the organisation of social services.

The Committee refers to its previous conclusion (Conclusions 2013) where it stated that social services are divided into two groups: local services (including information and advice services with regard to social assistance within the meaning of Article 13§3 of the Charter, personal services such as educational support and pregnancy counselling, home help, day-care facilities and psychological support) and services provided by specialised establishments (children's homes and homes for the elderly).

Effective and equal access

The Committee notes from its previous conclusion that access to social services is conditioned by people's needs and special protection is provided for the most vulnerable groups. In this respect, the Committee asked whether access to some social services was free of charge and whether, in certain circumstances, fees for vulnerable groups may be reduced or even waived completely. The report states indeed that some social services do not require financial participation from users, namely those concerning the social advising/supervision services and the institutional accomodation of children and young people.

In its previous conclusion (Conclusions 2013), the Committee asked whether a right of appeal to an independent body in urgent cases of discrimination and violation against human dignity does exist.

The report indicates that citizens in this cases of discrimination have the right to appeal to the office of the Ombudsman, a National Human Rights Institution with the power to act on its own initiative, thus contributing to the best possible alignment of Portuguese law and practice with the international law on human rights, as well as the recommendations issued by international bodies that monitor respect for these rights.

Quality of services

The Committee takes note of the information submitted by Portugal in response to the conclusion (Conclusions 2015) that it had not been established that there is an adequate number of staff and that staff have sufficient qualifications.

The Committee recalls that under Article 14§1 the right to social services must be guaranteed in law and in practice. Social services must have resources matching their responsibilities and the changing needs of users. This implies that: – staff shall be qualified and in sufficient numbers; – decision–making shall be as close to users as possible; – there must be mechanisms for supervising the adequacy of services, public as well as private (Conclusions 2005, Bulgaria).

The report states that the number of human resources and their academic and training requirements are provided for in legislation and regulations in force. Each social service ("social response") has its own legislation which defines the categories and ratios of professionals necessary to meet the needs of a defined number of users. It is the responsibility of the Social Security Institute to ensure that the ratios established in the legislation are completely fulfilled, either through cooperation agreements concluded with solidarity sector institutions, or on the basis of operating licenses granted to profit-oriented private service providers. The regular evaluation of both the number of staff belonging to the

technical teams and the qualifications of hired staff is ensured by teams responsible for the technical monitoring of the profit-oriented institutions and facilities.

However, the report also states that the Social Security Institute does not have statistical data on staff numbers and their qualifications. It emphasises that the absence of data does not mean that the established conditions are not fulfilled. There is an IT platform that allows the registration of cooperation agreements and licensed establishments. The report indicates that it may be possible to make a description of the staff covered by each agreement or working in each licensed establishment, but it is not yet compulsory to do this because there are some constraints on the platform. In this respect, the Committee asks for a precise description of the staff covered by each agreement or working in each licensed establishment.

The Committee notes that the report does not provide the information requested and underlines that in order to make a proper assessment of the situation the information on staff numbers and their qualifications must be provided by the country's report. Meanwhile, the Committee reiterates its conclusion of non-conformity on this point.

In its previous conclusion (Conclusions 2013) the Committee asked whether there is a legislation on personal data protecting the right to privacy of users.

The report indicates that there is the Personal Data Protection Law (transposing Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data into the Portuguese legal system), whose general principle is that the processing of personal data shall be made in a transparent manner and with strict respect for private life as well as for fundamental human rights, freedoms and guarantees.

Conclusion

The Committee concludes that the situation in Portugal is not in conformity with Article 14§1 of the Charter on the ground that it has not been established that there is an adequate number of staff and that staff have sufficient qualifications.

Article 14 - Right to benefit from social welfare services

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

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

The Committee refers to its previous conclusions (Conclusions XVII-2 (2007) and (XV-2 (2001)) for a detailed description of the organisation and functioning of social services provided by non-public bodies.

The Committee notes from its previous conclusion (Conclusions 2013) that the quality control of social services is carried out by the Inspectorate General of the Ministry of Labour and Social Solidarity (MTSS), which conducts inspections and audits on public and private social services providers.

In its previous conclusion (Conclusions 2013) reiterated its request to indicate the total number of volunteers and their qualification.

The report indicates that the National Council for Volunteering Promotion is responsible for monitoring the implementation of the legal regulations focused on volunteering. It is also responsible for proposing appropriate measures for the improvement and development of volunteering activities. According to the applicable legislation and regulations in force,the social services can operate with the use of trained and qualified volunteers. Moreover, the report provides tables that show the variation in the number of cooperation agreements between the Social Security Institute (ISS, IP) and private charities (IPSSs), the number of users covered, and the amounts of the co-funding provided by the Social Security Service. Data are organised by target population and by type of social response for each one. Between 2012 and 2015, in overall terms there were increases in both the number of agreements (+2.3%) and the amount spent on them (+7%). The Committee notes that no answers to its questions are provided in the current report and requests the next report to provide the relevant information (approximate number of volunteers and their qualification and the role played by private sector in providing social services), in the meanwhile it reserves its position on this point.The Committee draws the State attention to the fact that unless this information is set out in the next report, it will lack the requisite information to establish whether the situation in Portugal is in conformity with Article 14§2 of the Charter.

In its previous conclusion (Conclusions 2013), the Committee asked whether and how the Government ensures that the services managed by the private sector are effective and accessible on an equal footing to all, without discrimination on grounds of race, ethnic origin, religion, disability, age, sexual orientation and political opinion.

The report indicates that access to social services within the scope of the solidarity area or of the profit-oriented sector is constrained by the discriminatory factors. These principles of non-discrimination and access on equal terms for all are enshrined in the Constitution of the Portuguese Republic and are provided for in the current legislation and regulations on social services. According to these rules, the drafting of internal regulations is essential for social services to be able to operate, and displaying these internal regulations in a visible place is mandatory. The internal regulations are analysed by the Social Security Institute to ensure that among other assumptions, they do not contain any discrimination on the grounds of race, ethnic origin, religion, disability, age, sexual orientation or political opinion.

Conclusion

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

Article 23 - Right of the elderly to social protection

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

Legislative framework

The Committee points out that the main aim of Article 23 of the Charter is to enable elderly persons to remain full members of society and, it consequently invites the States Parties to make sure that they have appropriate legislation, firstly, to combat age discrimination outside employment and, secondly, to provide for a procedure of assisted decision making.

As regards combating age discrimination, in its previous conclusions (Conclusions 2009 and 2013), the Committee asked whether there was legislation (or an equivalent legal framework) in this field or, otherwise whether Portugal planned to legislate in this area. The report states that Article 13 of the Constitution of the Portuguese Republic guarantees the principle of equal treatment. The report points out that the list of possible grounds for discrimination established by the article is purely illustrative and non-exhaustive and, consequently, it includes grounds for discrimination other than those explicitly listed, including age. In this regard, the Committee asks whether there is a case-law on age discrimination outside employment which would protect elderly persons from such form of discrimination.

With regard to assisted decision making for the elderly, the Committee asked previously whether such a procedure had been set up. In this connection, the report states that a person who is not able to safeguard his/her interests will only be declared incapable by a court decision. The report adds that residential structures for the elderly (ERPI) and other support facilities ensure compliance with the principle of participation and joint responsibility between residents, or their legal representative, and their families. The Committee takes note of the information provided in the report and asks, nevertheless, whether consideration has been given to introducing procedures related to assisted decision making for the elderly who are not placed in institutions.

Adequate resources

When assessing adequacy of the resources of elderly persons under Article 23, the Committee takes into consideration all of the social protection measures guaranteed to elderly persons and aimed at maintaining an income level allowing them to lead a decent life and participate actively in public, social and cultural life. In particular, the Committee examines pensions, contributory or non-contributory, and other complementary cash benefits available to elderly persons. These resources are then compared with median equivalised income. However, the Committee points out that its task is to assess not only the law, but also the compliance of practice with the obligations arising from the Charter. For this purpose, it also takes into consideration relevant indicators relating to at-risk-of-poverty rates for persons aged 65 and over.

The minimum old age pension under the general scheme varied between €261.95 per month in 2015 for pensioners who paid contributions for less than 15 years and €379.04 for those who paid in for at least 31 years. The non-contributory old age pension increased to €201.53 per month in 2015.

Elderly persons who receive an old age pension or a social pension and who face financial difficulties are granted, under certain conditions, a solidarity supplement for the elderly (CSI). In response to the Committee's question (Conclusions 2013), the report states that not all those receiving an old age social pension would automatically qualify for a CSI, or, at least, the maximum amount that allows them to reach the sum of €409 per month (or €715.90 for a couple) since it depends on the supplements granted. The report adds that social pensions may also be drawn together with the following benefits and/or allowances: additional solidarity supplement, long-term care supplement (or supplement for dependent persons),

social integration allowance, widow's/widower's pension and survivor's pension. The report points out that beneficiaries of the CSI now have an easier access to rights for reduced electricity and gas tariffs in addition to allowances that cover part of their medical costs (the part that is not co-funded by the state).

The poverty threshold, defined as 50% of median equivalised income and calculated on the basis of the Eurostat at-risk-of-poverty threshold value, was estimated at €4 217.50 per year in 2015 (or €351 per month). The Committee considers that the level of guaranteed resources, taken together with available supplements and health care coverage, is in conformity with the Charter.

Prevention of elder abuse

The Committee previously asked (Conclusions 2013) whether and how the extent of the problem is evaluated and if any legislative or other measures have been taken or were planned in this area. The report states that Portugal carried out a study on "Ageing and violence" aimed, in particular, at identifying the number of elderly persons aged 60 and over who have been victims of violence. It estimated that 12.3% of the population aged 60 and over has been a victim of at least one type of violent behaviour committed by a close friend or relative, or a professional. Only a third of victims reported such violent acts. Portugal also adopted a series of recommendations in this area.

Services and facilities

The Committee points out that, although Article 23 only makes reference to information about services and facilities, it presupposes that such services and facilities exist.

With regard to the services and facilities themselves, the Committee previously asked (Conclusions 2013) how the quality of services was monitored, and which channels existed for elderly persons to complain about services. The report points out that services and facilities are monitored and assessed by the State. Private providers of social services are accredited and overseen by a public entity: the Social Security Institute, IP (ISS IP).

The Committee understands that the quality of services is monitored through technical visits carried out by teams from the inspection department of the ISS IP, which are independent external entities, and, in this connection, asks the next report to clarify whether this understanding is correct. It also wishes to know more about these independent external entities. Lastly, it asks what action may be taken if a violation or abuse is observed.

The Committee notes from the report that Law No. 33/2014 amended the system governing the establishment, functioning and inspection of social welfare institutions managed by private entities (day and night care centres and residential facilities) and the sanctions that can be imposed on them. It requests further information on this law and, in particular, it wishes to know what differences there are between Law No. 83/2012 and Law No. 33/2014.

The Committee notes that the report does not provide information regarding the possibility for elderly persons to complain. It reiterates its request.

Moreover, the Committee asked whether, in general, the supply of home help services matches the demand for them and whether fees are charged for some of these services. The report states that these services and facilities supported by the State and implemented by private non-profit institutions (IPSS) have a reasonable coverage rate in the country: A total of 70 119 elderly persons were taken care of in 2 422 homes (public sector) and 7 832 others were spread across the 216 private-sector facilities in Portugal. The Committee asks for further information on this subject in the next report. The cost of the services and facilities provided by IPSSs is partly covered by the beneficiaries depending on the services received and their income. The Committee asks the next report to provide further information on this.

As regards the possible support services for families who look after elderly parents and services specially provided for patients with dementia or Alzheimer's, the report states that there is a programme within the National Network of Integrated Continuous Care (RNCCI) that makes it possible to temporarily admit elderly and/or dependent persons into care units. The report also notes that there are only a few ERPIs, day centres and homes specialised in taking care of people with Alzheimer's or dementia. The Committee asks for more information in the next report on the continuous mental health programme.

With regard to measures to inform people about the existence of services and facilities, the Committee asks the next report to provide information on this matter.

Housing

In its previous conclusion (Conclusion 2013), the Committee asked to be provided with extensive and accurate information on social housing and financial assistance to cover housing costs and the necessary work to adapt homes. The report states that the Comfort Housing Programme for the Elderly aims to renovate the homes of elderly dependent persons in order for them to delay or avoid institutionalisation. Elderly persons aged 65 and over whose monthly income was equal to or below €419.22 per month in 2015 (Social Support Index Value) were able, under certain conditions, to receive up to €3 500 from the ISS IP to fund the work and equipment considered essential for their mobility and comfort. The report states that 229 housing renovation and improvement projects were carried out in the 51 municipalities that offer the programme between 2011 and 2012.

The report also states that the new urban lease scheme allows the Institute for Housing and Urban Renovation to pay a housing allowance to tenants aged 65 and over with low incomes, whose rent has been raised. The report notes that 147 households had received this allowance by the end of 2014.

Health care

In its previous conclusion (Conclusion 2013), the Committee asked for information on the costs of health care for elderly persons. The report states that the costs of the RNCCI are shared between the health and social sectors and that the health sector spent €115 591 140.95 in 2013. The Committee takes note of the information provided in the report but reiterates its question.

Institutional care

In its previous conclusion (Conclusion 2013), the Committee asked which relevant authority or body was responsible for inspecting retirement homes and care homes for the elderly (public and private). The report states that ERPIs and other private entities involved in social assistance activities are inspected by teams from the ISS IP. The report states that the RNCCI respects the principles of dignity, private life, non-discrimination, physical and moral integrity, and citizenship.

The Committee recalls that, according to Article 23, States Parties are required to ensure that elderly persons living in care facilities enjoy:

- the right to appropriate care and services,
- the right to privacy,
- the right to personal dignity,
- the right to participate in decisions concerning the living conditions in the institution,
- the protection of property,
- the right to maintain personal contact with persons close to the elderly person and,
- the right to complain about treatment and care in institutions.

In this regard, the Committee asks whether measures have been taken or are envisaged to implement such rights. It also asks whether compulsory placement in such institution is allowed and, if so, under which conditions, whether there are guidelines on the use of physical restraints in institutions, what are the requirements of staff qualifications and training and wage levels, and what are the guidelines on the social and cultural amenities to be provided in institutions.

Conclusion

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

Article 30 - Right to be protected against poverty and social exclusion

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

Measuring poverty and social exclusion

The Committee notes from Eurostat that in 2015 the at-risk-of-poverty rate (cut-off point: 60% of median equivalised income after social transfers) stood at 19.5%, which was an increase compared to 2012 where the rate was 17.9%.

Still according to Eurostat, the at-risk-of-poverty rate before social transfers in 2015 stood at 26.4%, slightly above the EU-28 rate of 25.9%. The European Semester headline poverty indicator was 26.6% in 2015 compared to 25.3% in 2012 (EU average 23.8%).

The Committee notes from the European Semester Country Report Portugal 2017 (SWD(2017) 87 final) that there was a reduction of the severe material deprivation in the period 2014 to 2015 from 10.6% to 9.6% and also in the percentage of people living in low work intensity households (from 12.2% to 10.9%). According to the same source income inequality measured as the ratio of total income received by the 20% of the population with the highest income to that received by the 20% of the population with the lowest income is falling, but remains one of the highest in the EU.

Finally, the Committee observes from the 2015 Eurostat data with respect to Portugal that the main poverty indicators stood slightly above the EU average reflecting a difficult economic situation. It also notes, however, that there was no increase from 2014 to 2015 and that on some indicators, such as the severe material deprivation rate and the percentage of people in low work intensity households, the situation even improved towards the end of the reference period.

Approach to combating poverty and social exclusion

The report provides detailed information on the legal framework and its evolution between January 2012 and December 2015 with respect to the fight against poverty and social exclusion. For example, by law of 31 December 2015, the Guaranteed Minimum Monthly Wage increased from € 505 to € 530. Other similar measures put in place just outside the reference period include an increase in the monthly child benefits (2-3.5%), extra income given to lone parent families (20-35%), an increase in the elderly solidarity supplement (from € 4,909 in 2015 to € 5,084 in 2017) and the introduction of a new social benefit for unemployed persons who have lost entitlement to unemployment benefits or assistance.

The report also provides detailed information on the measures taken during the reference period in the fields of employment and vocational training, recruitment of young people, adults and other specific groups, solidarity and social security, housing, culture, and poverty reduction among children and persons with disabilities.

The Committee also takes note of the Government's anti-poverty strategy based around three axes:

- A national strategy for fighting poverty among children and young persons that will, in an integrated manner, recover the centrality of the family allowance as the reference form of public support for families;
- Restore the forms of support that ensure social minima for citizens in more vulnerable situations;
- New public sector support for people with low income, in such a way as to prevent working families with children from living in situations of poverty.

With respect to total government expenditure on social protection the situation was stable with expenditure as a share of GDP fluctuating around 18% throughout the reference period (18.2% in 2012 and 18.3% in 2015).

The Committee observes from the European Anti-Poverty Network Assessment of the Country Reports and Proposals for Country-Specific Recommendations 2017 (Country Fiche Portugal) the assessment that the target of the Europe 2020 strategy in respect of Portugal is far from being reached. It is also stated that it is not possible to fight poverty and social exclusion with an emergency programme structured on piece meal policies with no intrinsic coherence. It is therefore recommended to define and implement a national anti-poverty programme with particular attention to specific groups, such as the elderly, children, the homeless, ethic minorities and others.

The Committee asks that the next report explain how the legal framework, the strategic aims and the measures referred to add up to an overall and coordinated approach to combating poverty and social exclusion. It asks that information be provided in the next report on the existence of coordination mechanisms for these measures, including at delivery level (that is, how coordination is ensured in relation to the individual beneficiaries of assistance and services). It also asks that the next report contain detailed data demonstrating that the budgetary resources allocated to combating poverty and social exclusion are sufficient in view of the scale of the problem at hand.

The Committee further refers to its conclusions of non-conformity under other provisions of the Charter which are relevant to its assessment of compliance with Article 30 (see Conclusions 2013, Statement of interpretation on Article 30). It refers in particular to Article 12§1 and its conclusion that the minimum level of sickness benefit is manifestly inadequate (Conclusions 2017) and to Article 13§1 and its conclusion that the level of social assistance is manifestly inadequate (Conclusions 2017).

As for the decision in European Roma Rights Centre v. Portugal, Complaint No. 61/2010, decision on the merits of 30 June 2011, the Committee refers to its Findings 2015 under the simplified reporting procedure, where it found that the violation relating to the lack of an overall and coordinated approach in the field of housing programmes had still not been remedied. The Committee takes note of the information provided in the report in this respect, however it refers to it next examination of the follow-up to this decision, which will take place in 2018.

On the basis of all the information at its disposal and notably that poverty rates have increased only marginally despite the economic context and have even decreased for some towards the end of the reference period (a trend that has continued after the reference period), that significant income supporting measures have been adopted and that spending on social protection has been maintained at a level close to the EU average and while noting the critical assessments and recommendations of the European Anti-Poverty Network, the Committee considers that the situation remains compatible with Article 30.

Monitoring and evaluation

The Committee notes from the report that policies are monitored, evaluated and revised on a continuous basis in consultation with relevant actors. It notes in particular that since the launch of the Europe 2020 Strategy, the primary monitoring and evaluation instrument has been the National Reform Plan which sets as a national goal to reduce the number of people in a situation of poverty and social exclusion by 200,000 until the year 2020. The Committee asks to be informed of the outcome of the main evaluations carried out and of any measures taken to adapt anti-poverty measures on this basis.

As for the involvement of civil society, the Committee notes the ‘public-social partnership’ approach between the State and the organisations of the social economy which took on particular importance as both promoters of social interventions and wealth-generating economic agents.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Portugal is in conformity with Article 30 of the Charter.

January 2018

European Social Charter

European Committee of Social Rights

Conclusions 2017

ROMANIA

This text may be subject to editorial revision.

The following chapter concerns Romania, which ratified the Charter on 7 May 1999. The deadline for submitting the 16th report was 31 October 2016 and Romania submitted it on 17 May 2017.

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 "Health, social security and social protection":

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

Romania has accepted all provisions from the above-mentioned group except Article 3§4, Article 13§4, Article 23 and Article 30.

The reference period was 1 January 2012 to 31 December 2015.

The conclusions relating to Romania concern 13 situations and are as follows:

– 4 conclusions of conformity: Articles 3§1, 11§2, 12§2, 13§2.

– 7 conclusions of non-conformity: Articles 3§2, 3§3, 11§1, 12§1, 12§3, 12§4 and 13§1.

In respect of the 2 other situations related to Articles 11§3 and 13§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 Romania under the Charter. The Committee requests the authorities to remedy this situation by providing the information in the next report.

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In addition, the report contains also information requested by the Committee in Conclusions 2015 in respect of its conclusions of non-conformity due to a repeated lack of information:

- the right of children and young persons to protection – prohibition of employment under the age of 15 (Article 7§1),
- the right of children and young persons to protection – inclusion of time spent on vocational training in the normal working time (Article 7§6),
- the right of children and young persons to protection – paid annual holidays(Article 7§7),
- the right of employed women to protection of maternity – illegality of dismissal during maternity leave (Article 8§2),
- the right of the family to social, legal and economic protection (Article 16).

The Committee examined this information and adopted the following conclusions:

- 1 conclusion of conformity: Article 8§2,

- 1 conclusion of non-conformity: Article 16,

- 3 deferrals: Articles 7§1, 7§6 and 7§7.

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The next report will deal with the following provisions of the thematic group "Labour Rights":

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),

- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 21),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 22),
- the right to dignity at work (Article 26).
- the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28)
- the right to information and consultation in collective redundancy procedures (Article 29).

The report should also contain information requested by the Committee in Conclusions 2016 in respect of its conclusions of non-conformity due to a repeated lack of information:

- the right to work – free placement services (Article 1§3),
- the right to work – vocational guidance, training and rehabilitation (Article 1§4),
- the right of persons with disabilities to independence, social integration and participation in the life of the community – vocational training for persons with disabilities (Article 15§1).

The deadline for submitting that report was 31 October 2017. The report was registered on 10 January 2018. Conclusions on the Articles concerned will be published in January 2019.

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Conclusions and reports are available at www.coe.int/socialcharter as well as in the HUDOC database.

CONCLUSIONS RELATING TO ARTICLES FROM THE THEMATIC GROUP

‘Health, social security and social protection”

Article 3 - Right to safe and healthy working conditions

Paragraph 1 - Health and safety and the working environment

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

General objective of the policy

The Committee recalls that the Ministry of Labour, Family and Social Protection is the competent authority in the occupational health and safety (OSH) field. Its main responsibilities are drawing up the national policy and strategy, drafting legislation in order to implement the national strategy and monitoring the enforcement of legislation. The Labour Inspectorate monitors compliance with OSH legislation.The National Research and Development Institute for Labour Protection "*Alexandru Darabont*" carries out under the coordination of the Ministry of Labour, Family and Social Protection research and development work in order to improve health and safety at work.

The Committee previously noted the existence of a legislative framework and of a policy to promote health and safety at work (Conclusions 2013).

The Committee recalls that in 2008, the Ministry of Labour, Family and Social Protection elaborated the National strategy on health and safety at work 2008-2013. It set out the main priorities and objectives in the field of occupational safety and health for the short and medium term. The main objective of this strategy was to consistently and significantly reduce the number of work accidents and occupational diseases and continuously improve the level of occupational safety and health in Romania.

The report states that the Labour Inspectorate establishes an annual framework programme of activities, based on inter alia, the EU's occupational health and safety Strategic Framework 2014-2020, European campaigns coordinate by the European Agency for Safety and Health at Work and the Senior Labour Inspectors Committee, which are focused on topics resulting from surveys and questionnaires carried out by the Agency's Risk Observer. Also, the Labour Inspectorate organises activities on the issues proposed by the International Labour Organisation on the occasion of the World OSH days (April 28th).

The Committee notes that a National strategy on health and safety at work 2014-2020 for Romania was in course of elaboration by the Ministry of Labour, Family, Social Protection and Elderly (the former Ministry of Labour, Family and Social Protection), with a special focus on the future EU challenges e.g. occupational diseases, new and emerging risks, demographic changes (ageing workforce, migration), SMEs legal framework, and improved statistical tools. It asks the next report to provide details of this strategy.

The Committee points out that new technological, organisational constraints and psychological demands favour the development of psychosocial factors of risk, leading to work related stress, aggression, violence and harassment. It would also point out that, with regards to Article 31 of the Charter, it takes account of stress aggression, violence and harassment at work when examining whether policies are regularly evaluated or reviewed in the light of emerging risks. States parties have a duty to carry out activities in terms of research, knowledge and communication relating to psychosocial risks (Statement of Interpretation on Article 3 1 of the Charter, Conclusions 2013).

The report does not provide any information on this point. The Committee accordingly reiterates its request.

Organisation of occupational risk prevention

According to the report since 2014, the Labour Inspectorate has been developing and implementing activities, including the training of new labour inspectors on the new regulations, disseminating information and awareness raising of other stakeholders: workers, employers, trade unions, employers' associations etc.

The Committee previously requested information on the measures taken to assist employers – in particular, small and medium enterprises (SME's) – meet their obligations to assess and prevent occurrence of workplace risks, as well as on how these obligations are complied with in practice.

According to the report manuals were developed in the period 2012-2014: "Frequently asked questions on health and safety information, training and consultation with workers from micro and small enterprises" and "Ten frequently asked questions on risk assessment in micro and small enterprises."

The Labour Inspectorate has a web page dedicated to SME's, where it posts specific information materials developed in-house, or by international organisations.

Improvement of occupational safety and health

The Committee previously noted that Government Ordinance No. 1425/2006 approving methodological standards to implement Law No. 319/2006 on health and safety at work specifies standards for the occupational health and safety training required for workers' representatives in charge of prevention and protection activities and employers in charge of such activities in undertakings with up to nine employees. These persons must complete training on the legal framework; basic concepts; general risks; specific risks in the undertaking; and first aid. More advanced training courses include criteria for risk assessment, organisation of prevention and protection; emergency and evacuation management; and reporting. Occupational health and safety training programmes and courses are provided by educational institutions licensed under Government Ordinance No. 129/2000 on Adult Vocational Training. Training documents, technical information and external prevention and protection services are approved and licensed by the territorial labour inspectorates.

The current report provides information on the training activities of the Labour Inspectorate.

Consultation with employers' and workers' organisations

The Committee previously found the situation to be in conformity on this point but requested information on the consultation with bodies with occupational health and safety issues at company level.

The report provides information on a survey carried out by the Labour Inspectorate, in 2015, to assess whether companies believed that investment in OSH was profitable. Further it states that all draft legislation is made public in order to permit stakeholders to comment and make suggestions.

The Committee notes from other sources (OSHWi Ki) that at enterprise level social dialogue takes place within the OSH Committees that must be established in each company with at least 50 employees. These committees may be also constituted within undertakings with less than 50 employees, upon the labour inspector's request, whenever the activity undertaken in these enterprises and the related risks for workers' safety and health require such a measure.

The OSH Committees include the employer or the employer's legal representative(s), an occupational medicine physician and trade-union representative(s) or workers' representative(s) when trade union structures do not exist in the company. They participate in the workplace risk assessment and the elaboration of the preventive plan at company level.

Conclusion

Pending receipt of the information requested the Committee concludes that the situation in Romania is in conformity with Article 3§1 of the Charter.

Article 3 - Right to safe and healthy working conditions

Paragraph 2 - Safety and health regulations

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

Content of the regulations on health and safety at work

The Committee previously examined (Conclusions 2007, 2009 and 2013) the extent of the risks covered specifically by legislation and regulations on occupational health and safety. It concluded that the situation was in conformity with the Charter (Conclusions 2013).

The report describes the current legislative framework and provides a list of regulations which transpose the Community *acquis* on specific risk coverage, the report further states that it has transposed the most recent EU Directives on health and safety, including those on classification, labelling and packaging of substances and mixtures.

In addition it has adopted legislation recently, inter alia, on measures to ensure the safety of lone workers and minimal requirements for workplace ergonomics.

The Committee previously pointed out that under the terms of Article 3§2 of the Charter, regulations concerning health and safety at work must cover work-related stress, aggression and violence specific to work, and especially for workers under atypical working relationships (Statement of Interpretation on Article 3§2 of the Charter, Conclusions 2013). It requested information on this issue.

The report does not provide any information on this point. The Committee accordingly reiterates its request.

Levels of prevention and protection

The Committee considers the levels of prevention and protection that the legislation specifies for certain risks.

Establishment, alteration and upkeep of workplaces

The Committee previously considered that in light of the information that levels of prevention and protection in relation to the establishment, alteration and upkeep of workplaces comply with the requirements under Article 3§2 of the Charter. However it asked for information in the next report on the transposition of Directive 2009/104/EC of the European Parliament and of the Council of 16 September 2009 concerning the minimum safety and health requirements for the use of work equipment by workers at work. According to the report the above mentioned Directive was transposed by Government Decision No. 1146/2006 regarding the establishment of minimum safety and health requirements for the use of work equipment by workers at work.

Protection against hazardous substances and agents

The Committee wishes the next report to provide details on the provisions relating to the protection of risks of exposure to benzene.

Protection of workers against asbestos

The Committee previously requested that the next report provide information with regard to any measures adopted to incorporate the exposure limit of 0.1 fibres per cm^3 provided for by Directive 2009/148/EC, as well as with regard to the Government's intentions to ratify ILO Convention No. 162 on the use of asbestos (1986), (Conclusions 2013).

The Committee notes that the above mentioned Directive has been transposed into Romania law. The report states that provisions of Convention No.162/1986 were included in

GD No. 1875/2005 on the Protection of workers' against risks of exposure to asbestos, as subsequently amended and supplemented.

Protection of workers against ionising radiation

The Committee requested information in the next Report on the Government's intentions to ratify ILO Convention No. 115 on protection against radiations (1960).

According to the report the area covered by this instrument is within the scope of responsibility of the National Commission for Control of Nuclear Activities, according to Article 4 (1) of Law no.111/1996 on the Safe deployment, regulation, authorisation and control of nuclear activities, and which stipulates that the abovementioned Commission is the "competent national authority in the nuclear field, which has responsibilities of regulation, authorisation, and control". Based on the provisions of Law no. 111/1996, National Commission for Control of Nuclear Activities has developed Guides, Standards, and Regulations, within the scope of its responsibilities.

The Committee seeks confirmation that workers are protected up to a level at least equivalent to that set in the Recommendations by the International Commission on Radiological Protection (ICRP Publication No. 103, 2007).

Personal scope of the regulations

The Committee examines the scope of legislation and regulations with regard to workers in atypical employment.

Temporary workers

The Committee previously noted that temporary workers were covered by health and safety legislation (Conclusions 2013). The report confirms that temporary workers have access to medical surveillance with the exception of day workers.

Other types of workers

The report states that legislation on health and safety at work, Law no. 319/2006 on health and safety at work,applies to all sectors, both public and private, to all legally employed workers, including students during work experience, as well as apprentices and workers' representatives, persons present on the premises with the employers' permission with a view to employment; persons carrying out community or volunteer work, unemployed persons during their participation in vocational training, persons without a written employment contract, but for whom the contract terms and conditions and work carried out can be proven using any other means and methods.

The Committee previously examined (Conclusions 2007, 2009 and 2013) the protection of self-employed, home and domestic workers. It concluded that the situation was not in conformity with Article 3§2 of the Charter on the ground that domestic workers were not covered by occupational health and safety legislation (Conclusions 2007, 2009 and 2013).

The Committee notes that there has been no change to this situation and concludes that the situation is not in conformity with Article 3§2 of the Charter on this point.

Consultation with employers' and workers' organisations

The report refers to the information provided under Article 3§1 of the Charter in this respect.

Conclusion

The Committee concludes that the situation in Romania is not in conformity with Article 3§2 of the Charter on the ground that domestic workers are not covered by occupational health and safety regulations.

Article 3 - Right to safe and healthy working conditions

Paragraph 3 - Enforcement of safety and health regulations

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

Accidents at work and occupational diseases

The Committee previously concluded that the situation in Romania was not in conformity with Article 3§3 of the Charter on the ground that measures to reduce the excessive rate of fatal accidents were insufficient (Conclusions 2013).

It asked that the next report include statistics on fatal occupational diseases.

According to the report in 2012, 3,686 persons were injured at work, 215 fatally, this figure remained relatively stable during 2013 and 2014 but in 2015 the number of persons injured at work increased to 4,300 however the number of fatal accidents decreased to 183.

Data from EUROSTAT indicates that the number of fatal accidents for 2012, 2103 and 2014, was 276, 269 and 272 respectively, this corresponds to an incidence rate per 100,000 workers of 7,57; 6,9; and 7,13 (the UE -28 average being 2,42; 2,26; and 2,32). As the rate of fatal accidents remains high the Committee again considers that there are insufficient measures to reduce the rate of fatal accidents and concludes again that the situation is not in conformity with the Charter.

EUROSTAT data also indicates that the standardised rate of incidence of non fatal accidents at work per 100,000 workers was 4.8 well below the EU-28 average (1642,09). The Committee asks the next report to provide information on the reporting of non fatal accidents at work.

As regards occupational diseases the report states that in 2012 862 new cases of occupational diseases were declared and in 2014 854.

The Committee asks that the next report provide information on the concenpt of occupational diseases, mechanisms for recognizing, reviewing and revising of occupational diseases (or the list of occupational diseases, and the measures taken and/or envisaged to counter insufficiency in the recognition and declaration of cases of occupational diseases.

Activities of the Labour Inspectorate

The Labour Inspectorate controls the implementation of occupational health and safety regulations in all sectors/industries (including railway transport, mining, agriculture, building etc.), except certain sectors provided by law. The main sectors excluded from the control of the Labour Inspectorate are: military, nuclear, independent workers, domestic workers. However according to the report there are specific bodies which control/inspect the military and nuclear sector. The Committee asks again for information on the activities of the authority in charge of labour inspections in the civil nuclear sector.

Labour inspectors do not carry out inspections at private residences.

According to the report workplace accidents involving workers are subject to investigation by the territorial labour inspectorates. However, the investigation procedure is simplified, compared to that laid down in the Health and Safety at Work Law no. 319/2006. The Committee asks for further information on this.

As regards the number of inspections carried out during the reference period the Committee notes that between 2012 and 2015 the number of companies inspected declined although the number employees covered by the inspections remained stable.

The Committee asks the next report to provide information on the percentage of workers covered by inspections and on the number of inspectors.

As regards penalties the Committee notes a decline in the number of civil sanctions, fines, orders requiring cesssation of activities etc. imposed from 125,818 in 2012 to 79,017 in 2015. It also notes a decrease in the number of criminal prosecutions for breaches of health and safety. The Committee asks the next report to provide information on the reasons for this decline.

The Committee previously requested information on inspection in small and medium sized enterprises. The report states that a number of activities were carried out during the reference period in order to increase/focus inspections on small and medium sized enterprises, in 2015 63% of all inspections concerned small or medium sized enterprises.

Conclusion

The Committee concludes that the situation in Romania is not in conformity with Article 3§3 of the Charter on the ground that measures to reduce the excessive rate of fatal accidents are inadequate.

Article 11 - Right to protection of health

Paragraph 1 - Removal of the causes of ill-health

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

Measures to ensure the highest possible standard of health

The Committee notes from WHO that life expectancy at birth in 2015 (average for both sexes) was 75 years (compared to 73.61 years in 2009). The average life-expectancy rate in Romania is still low relative to other European countries. For example the EU-28 average life expectancy at birth was 80.6 years in 2015.

According to World Bank data, the death rate (deaths/1 000 population) was 13.2 in 2015 (as compared to 12.12 in 2010). This indicator slightly increased during the reference period from 12.7 in 2012 to 13.2 in 2015.

The Committee noted previously that the most important causes of premature death were cardiovascular diseases, cancer, digestive diseases, respiratory diseases, accidents, injuries and poisoning (Conclusions 2013). The Committee asked what measures were being taken to combat these causes of mortality (Conclusions 2013). The report indicates that one of the aims of the Strategic Area 1 – Public Health of the National Health Strategy 2014-2020 is to reduce the burden of non-communicable diseases such as cancer, cardiovascular diseases, diabetes, mental health and rare diseases. The report further indicates that the national health programmes are the main framework for the implementation of the Strategy activities, especially for the Strategic Area 1 – Public Health. The Committee asks for concrete information on the implementation of such programmes and their impact on reducing the number of premature deaths caused by these diseases.

The report indicates that the infant mortality decreased slightly since the last reference period, reaching 8.4 deaths per 1 000 live births in 2014 and 8 deaths per 1 000 live births in 2015 (compared to 9.79 deaths per 1 000 live births in 2010). The report indicates that the infant mortality rate was higher in rural areas than in urban areas. The Committee takes note of this decrease, but considers that the rate is still high relative to other European countries. For example, the EU-28 average infant mortality rate was 3.6 per 1 000 in 2015.

As regards the maternal mortality rate, the Committee noted previously that in 2010 the rate reached 24.03 deaths per 100 000 live births, with no improvement since the last reference period (the same rate was registered in 2005). The report indicates that the maternal mortality rate stood at 14.9 deaths per 100 000 live births in 2015. The Committee notes that according to World Bank data, this indicator stood at 30 deaths per 100 000 live births during the period 2009-2012 and it even increased to 31 deaths per 100 000 in 2013, 2014 and 2015. This rate is also considerably above the average in the European countries.

In its previous conclusion (Conclusion 2013), the Committee found that the situation was not in conformity with Article 11§1 on the ground that the measures taken to reduce infant and maternal mortality rates have been insufficient. The report describes some specific measures to reduce the infant mortality such as: measures to improve the nutrition of infants, measures to improve the quality of healthcare services for low-birth-weight infants and measures to improve prenatal diagnosis of vices and malformations. The report further mentions that the National Health Strategy 2014-2020 and the Action Plan for the implementation of the national strategy include the overall objective “To improve mother and child health and nutrition”, and a National Strategy on Sexual and Reproductive Health was developed. Among the specific measures taken to reduce the maternal mortality, the report mentions the package of prenatal, perinatal and postnatal healthcare services granted during the pregnancy and post-partum, the regionalisation of health care provided to pregnant women by three levels of competence, with level III regional units dedicated to severe pregnancy and post-partum pathologies, and the audit of maternal deaths and severe morbidity during pregnancy and post-partum.

The Committee takes note of the specific measures to reduce infant and maternal mortality described by the report. It asks for information in the next report on their implementation and their impact in practice. However, in view of the fact that infant and maternal mortality rates remain among the highest in Europe, the Committee finds that insufficient efforts have been undertaken in this field, and therefore reiterates its previous finding of non-conformity on this ground.

Access to health care

In its previous conclusion (Conclusions 2013), the Committee asked to be informed of health reforms and whether these are translating into a better health status of the population. The report provides detailed information on the National Health Strategy 2014-2020 and the Action Plan for the implementation of the National Strategy. The Strategy identifies three priority strategic areas where improvements are necessary: (i) public health which aims to improve mother and child health, to fight both communicable and non-comunicable diseases, to raise awareness and information on effective preventive solutions; (ii) strengthening the effectiveness of healthcare services; and (iii) horizontal measures to complete actions under the other two strategic areas. The Committee notes that according to the *Report on the Implementation of the National Health Strategy 2014 -2020* (for 2015), although the strategy was adopted at the end of 2014, most measures included in the strategy are under various implementation stages. However, no concrete results are provided by this latter report. The Committee asks therefore for a concrete assessment of the Strategy's implementation process in the next report.

The Committee notes that according to the World Bank data, the health care expenditure in Romania as a share of GDP has been decreasing steadily from 5.8% of GDP in 2010 to 5.6% in 2014. The Committee notes that according to WHO Global Health Expenditure data, in 2014 Romania had the lowest health expenditure as a share of GDP among the EU Member States. The out-of-pocket expenditure as a share of total health spending stood at 19% in 2014. The Committee notes from Health Systems in Transition Report on Romania 2016, that the share of informal payments is thought to be substantial, but the size is not known. It further notes from the EU Commission Report on Progress in Romania under the Co-operation and Verification Mechanism (Technical Report 2015) that "corruption in the health sector appears to be widespread. The practice of informal payments is still frequent, especially in smaller towns or villages, and therefore is difficult to eradicate. According to a survey performed by the Ministry of Health and the Association for Implementing Democracy in Romania in February 2014, more than two thirds (68%) consider that the level of corruption in the public health system is high and very high, and one fifth of people admitted giving informal payments. In the area of health, corruption is addressed on two levels: higher level corruption– in the field of public procurement – and petty corruption in the field of informal payments for medical services." The Committee asks for information on concrete measures and actions taken to tackle this phenomenon in the next report.

Concerning management of waiting lists and waiting times, the Committee noted previously that access to health services is immediate in Romania as concerns family physicians, specialised ambulatory or emergency services and waiting lists are drawn up only for diseases which need organ treatment, tissue transplant or where treatment is made under therapeutic protocols (Conclusions 2013). The Committee asked for specific information on the average waiting time in days for care in hospitals, as well as for a first consultation with a specialised caregiver (Conclusions 2013). The report reiterates that access to healthcare services is immediate at the level of family physicians, specialist outpatient and emergency services. It further states that the Ministry of Health does not have any records on the waiting list management and waiting times.

The Committee notes from Health Systems in Transition Report on Romania 2016, that there are inequities in access to health care with worse access in rural areas, for socioeconomic groups such as pensioners, the unemployed, self-employed and agricultural

workers, as well as the Roma population. Provision of health care services remains characterised by overprovision of highly specialised inpatient care and underutilisation of primary and community care. The same source indicates that there are no recent national studies on public satisfaction with the health system. Data from the 2013 Eurobarometer survey suggest that the Romanian population has relatively low levels of satisfaction with the overall quality of health care compared to the EU average (only 25% rating the overall quality of the health care system as good, compared to an EU average of 71%). This perception appears not to have changed over the years. The same source indicates that the poor level of satisfaction with the health system may further be related to the low level of health care financing and decreasing number of health care personnel, which translate into additional costs for patients and longer waiting times. The Committee asks for comments on the above mentioned aspects.

The Committee further notes from Health Systems in Transition Report on Romania 2016, that the numbers of physicians and nurses are relatively low in Romania compared to EU averages. The relatively low number of physicians and nurses has mainly been caused by high rates of external migration over the past decade. The most common reasons for leaving the country are: lower salaries compared to non-health professions; lack of performance recognition; limited career development opportunities; and wide discrepancies between the levels of required competencies and working conditions that do not enable the skills acquired to be applied in practice (for example, lack of equipment and supplies). One of the negative effects of this trend is a shortage of some medical specialties and skills at the hospital level, especially in deprived regions. The Committee asks for comments on this matter and whether measures are being taken to address the external migration of physicians and nurses.

The Committee takes note that according to Euro Health Consumer Index (EHCI) 2015, which assesses the performance of national healthcare systems in 35 European countries, “Romania does have severe problems with the management of its entire public sector and is suffering from an antiquated healthcare structure, with a high and costly ratio of in-patient care over out-patient care”. Thus according to this survey Romania stood on the 32nd place from a list of 35 countries.

The Committee notes from Health Systems in Transition Report on Romania 2016, that rehabilitation care is provided in ambulatory and inpatient settings, but access to such care is not adequate and there are long waiting lists. Access to long-term care (LTC) and palliative care is also poor, and Romania has one of the lowest residential LTC coverage rates in Europe, with only 7.9% of the needs for palliative care covered in 2014. The Committee asks that the next report provide information on the concrete measures taken in this field.

The Committee concluded previously that the situation was in breach of the Charter on the ground that the conditions in certain psychiatric hospitals were manifestly inadequate (Conclusions 2005 and Conclusions 2009). In its previous conclusion (Conclusions 2013), the Committee noted from the information submitted by the Romanian representative to the Governmental Committee (Report concerning Conclusions 2009) that the Ministry of Health had started reforms in the mental health system, including increased funds, the adoption of a National Strategy and Action Plan, and the setting up of a National Center for Mental Health. The Committee asked for specific information on the standards governing the conditions in psychiatric hospitals, and how the monitoring of such conditions takes place (Conclusions 2013). In the meantime, it reserved its position on this point (Conclusions 2013). The report provides information on the legal framework applicable to mental health and list the minimum healthcare services as well as minimum mandatory facilities that a psychiatric hospital should provide for. With regard to monitoring the conditions in the psychiatric hospitals/units, the report indicates that it is performed through the patient feedback mechanism (in force since April 2015, as a form which shall be filled in by the patient at the end of a medical procedure and will be examined by the Ethics Committees set up in every healthcare

facility); through cooperation with non-governmental organisations in the field of human rights and mental health promotion (there is an ongoing cooperation protocol with the Centre for Legal Resources since 2003, allowing the NGO representatives access to healthcare facilities to perform monitoring visits); and by controls/inspections performed by the authorised structures of the central public administration. The Committee asks for information on the concrete results of such monitoring in the next report.

In reply to the Committee's request for information on the availability of rehabilitation facilities for drug addicts (Conclusions 2009 and Conclusions 2013), the report provides detailed information on the facilities and treatments available for drug addicts.

The Committee asks that the next report contain information on dental care services and treatments (such as who is entitled to free dental treatment, the costs for the main treatments and the proportion of out-of-pocket paid by the patients).

As regards the right to protection of health of transgender persons the Committee previously received submissions from the International Lesbian and Gay Association (European Region) (ILGA) stating that "in Romania the practice requires transgender people to undergo sterilisation as a condition of legal gender recognition" (Conclusions 2013). The Committee asked whether legal gender recognition for transgender persons requires (in law or in practice) that they undergo sterilisation or any other invasive medical treatment which could impair their health or physical integrity (Conclusions 2013, General Introduction). Since the report does not provide any information on this matter, the Committee reiterates its question.

Conclusion

The Committee concludes that the situation in Romania is not in conformity with Article 11§1 of the Charter on the ground that the measures taken to reduce infant and maternal mortality rates have been insufficient.

Article 11 - Right to protection of health

Paragraph 2 - Advisory and educational facilities

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

Education and awareness raising

The Committee noted previously that programmes on health and women health existed. However, it asked information on the specific awareness raising activities for safe motherhood (Conclusions 2013).

The report indicates that under the National Programme on Women and Child Health, activities are carried out in order to promote breastfeeding, a healthy diet and to prevent child obesity. Activities include also training of staff in maternities both on prenatal education for couples and infant care, as well as on exclusive breastfeeding of infants. The report further mentions other actions to promote safe maternity such as specialised guides to assist healthcare professionals, medical practice protocols establishing iron supplements in the diet of pregnant women and children, additional iodine, training programmes for primary health personnel and for public education in order to promote breastfeeding and information materials, or the “Baby-Friendly Hospital” campaign on education of pregnant women and mothers especially on breastfeeding.

As regards general awareness-raising campaigns, the Committee took note previously that under the National Programme for Health Promotion and Education of the Ministry of Health (in cooperation with NGOs and other private and public bodies), a large number of activities were organised concerning the prevention of alcohol consumption, smoking and sexually transmitted diseases (Conclusions 2013). The present report indicates that the National Prevention Programme includes information, educational and communication campaigns in line with the public health issues identified at national and local levels, as well as other specific activities to promote health such as: the campaign for World Tuberculosis Day, the campaigns for World/National NO Tobacco Day, campaigns to promote a healthy lifestyle, education and information campaign on influenza and avian influenza pandemics. The Committee asks for updated information in the next report regarding the concrete awareness-raising campaigns and activities carried out during the reference period.

As to health education in schools, the Committee previously took note that the Ministry of Education organises health education through the subject of biology, as well as other topics according to the educational level and grade, focusing on issues such as hygiene, prevention of drinking, smoking and drug consumption. There are also extra-curricular programmes which aim at promoting a healthy lifestyle and active citizenship for children in disadvantaged communities, especially in rural areas (Conclusions 2013). The Committee asks updated information on this point in the next report.

The Committee recalls that States Parties must ensure that sexual and reproductive health education forms part of the ordinary school curriculum; that the education provided is adequate in quantitative terms; that the form and substance of the education, including curricula and teaching methods, are relevant, culturally appropriate and of sufficient quality, in particular that it is objective, based on contemporary scientific evidence and does not involve censoring, withholding or intentionally misrepresenting information, for example as regards contraception and different means of maintaining sexual and reproductive health; and that a procedure is in place for monitoring and evaluating the education with a view to effectively meeting the above requirements (International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Croatia, Complaint No. 45/2007, Decision on the merits of 30 March 2009, §§46 – 47). The Committee asks for information in the next report on whether and how sexual and reproductive education is provided in schools in Romania.

Counselling and screening

The Committee noted previously that counselling and screening for women and children were free, but requested further information on the types of screening and counselling that were carried out (Conclusions 2009). Given the lack of information in the previous national reports, the Committee repeatedly concluded the situation was not in conformity with the Charter on the ground that it had not been established that counselling and screening for pregnant women and children were frequent enough or that the proportion of mother and children covered was sufficient (Conclusions 2013 and Conclusions 2015). The present report provides detailed information on the periodic preventive consultations provided to children and women, as well as in general to insured persons older than 18 years old. With regard to children, the report indicates that consultations are performed as follows: upon discharge from maternity and after a month, at the child residence; at 2, 4, 6, 9, 12, 15, 18, 24 and 36 months; once a year for 4 to 18 year-olds. The consultations for pregnancy and post-partum monitoring consist in: monthly supervision from month 3 until month 7; supervision twice a month from month 7 until month 9 inclusive; post-partum monitoring after discharge from maternity, at home; post-partum monitoring 4 weeks after birth. Supervision will include promotion of exclusive breastfeeding until the infant is 6 months old and continued breastfeeding until the infant is 12 months old, HIV testing, hepatitis B and C virus testing, and pre and post HIV and syphilis testing.

In its previous conclusion (Conclusions 2013), the Committee recalled that free medical checks must be carried out through the period of schooling and asked that information be included in the next report, notably on the frequency of school medical examinations, their objectives, the proportion of pupils concerned and the level of staffing. The report indicates that examination and evaluation of health is provided throughout the school period, as follows: regular medical examinations once a year for all pre-school children; regular medical examinations once a year for students; milestone regular health check-ups provided for all students of 1st, 4th, 8th /9th, 12th /13th grade and for the last year of study in vocational schools. The report provides detailed information on the objectives of such examinations, the personnel involved and data related to health checks performed in 2015.

With regard to counselling and screening for the population at large, given the lack of information in the previous national reports, the Committee concluded that the situation was not in conformity with the Charter on the ground that it had not been established that prevention through screening was used as a contribution to the health of the population (Conclusions 2013 and Conclusions 2015). The report lists the major screening programmes available in Romania, namely: (i) National Screening Programme for early active tracing of cervical cancer consists from the testing of female population with the method of Babes-Papanicolaou cervical cytosmear; (ii) National New-born Screening Programme for phenylketonuria (PKU) and hypothyroidism (HTC); (iii) National Screening and Treatment Programme for retinopathy of prematurity. The report further mentions that preventive consultations for the assessment of individual risk for the asymptomatic adult are provided to adults aged 18 to 39 years and to adults over 40 years. These examinations consist in the assessment of behaviours with a global impact on health (lifestyle), the assessment of cardiovascular and oncologic risks, the assessment of risks related to mental health (problematic use of alcohol, screening of depression) and the identification of some significant risks related to reproductive health.

The Committee asks for information and statistics on the access to counselling and screening programmes in rural areas for women and children as well as for the population at large.

Conclusion

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

Article 11 - Right to protection of health

Paragraph 3 - Prevention of diseases and accidents

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

Healthy environment

The Committee takes note of the information provided in the report concerning the quality of drinking water and food poisoning. With regard to drinking water, the data show high levels of compliance with the requirements of Directive 98/83/EC on the quality of water, for the period 2011-2013. Concerning food poisoning, the report indicates that for example in 2013, 105 food poisoning cases were reported to the National Centre for the Surveillance and Control of Communicable Diseases.

The Committee wishes to receive updated information on the levels of air pollution, contamination of drinking water and food intoxication during the reference period, namely whether trends in such levels increased or decreased. It also asks information on the noise pollution, waste management, risks related to asbestos.

Tobacco, alcohol and drugs

In its previous conclusion (Conclusions 2013), the Committee asked for updated information on the state of laws on smoke-free environments, health warnings on tobacco packages, and tobacco advertising, promotion and sponsorship. In the meantime, it reserved its position on this point (Conclusions 2013). The report indicates that the Law no. 15/2016 amending and supplementing Law no. 349/2002 for preventing and combating the effects of the consumption of tobacco products, establishes measures to prevent and combat the consumption of tobacco products, through: banning smoking in all enclosed public spaces, including enclosed workspaces, public transport vehicles and children's playgrounds; introducing warning messages on tobacco product packaging, information and education campaigns for the public; informing the consumer on tobacco products they purchase, indicating the tar, nicotine and carbon monoxide content on final products, and also through concrete measures on the use of tobacco products ingredients. The report mentions the Law no. 457/2004 on the advertising and sponsorship for tobacco products, which establishes measures for the publicity of tobacco products, as well as their promotion in the media and other printed publications, TV and radio shows.

The report further mentions the "2035 – Romania's First Tobacco-Free Generation" Strategy, which was developed in accordance with the principles and objectives of the National Health Strategy 2014-2020 and presents in detail measures to combat tobacco consumption included in the Multi-annual integrated plan for health promotion and health education. The Committee asks to be informed of the implementation and impact of this strategy on combating tobacco consumption.

The Committee takes note of the detailed statistics provided in the report in respect of the consumption of alcohol, tobacco and drugs. It asks updated data in the next report and information on trends in consumption.

Immunisation and epidemiological monitoring

The report indicates that there is a dramatic decrease in the immunisation coverage at national level for the vaccines included in the National Immunisation Programme, which is under the 95% limit recommended by the World Health Organisation. For example, according to the National Institute of Public Health – National Centre for the Supervision and Control of Communicable Diseases (NCSCCD), the analysis of results of vaccine coverage of 18 months vaccination of children born in 2014 lead to the following conclusion: the immunisation coverage for HEP B 3, DTP 4, VPI 4, Hib 4, ROR 1 was below the 95% target for the urban as well as for the rural environment.

The reports adds that by means of the National Strategy for Health 2014-2020, the Ministry of Health has set objectives and strategic lines in order to increase the immunisation coverage such as: strengthening /developing the capacity to manage and/or implement the immunisation programme according to the national calendar in force at national, regional, county or local level; and improving the compliance with vaccination of the general population, but mostly of vulnerable and disadvantaged groups. The report mentions that the Ministry of Health initiated the development of a draft Law on vaccination.

The Committee notes from WHO, Regional Office for Europe, that the outbreak of measles in Romania has spread across the country since January 2016 (outside the reference period), affecting people of all ages and causing over 4800 cases, including 23 deaths as of 28 April 2017. The highest burden has fallen on children, including 888 infants too young to be vaccinated. Of all cases, 96.6% were not vaccinated. The same source indicates that Romania is facing critical vaccine shortages or delays, including of the measles, mumps and rubella (MMR) vaccine, along with a substantial drop in immunisation coverage.

The Committee recalls that States Parties must operate widely accessible immunisation programmes. They must maintain high coverage rates not only to reduce the incidence of these diseases, but also to neutralise the reservoir of the virus and thus achieve the goals set by WHO to eradicate several infectious diseases (Conclusions XV-2 (2001), Belgium). Countries must demonstrate their ability to cope with infectious diseases, such as arrangements for reporting and notifying diseases, special treatment for AIDS patients and emergency measures in case of epidemics (Conclusions XVII-2 (2005), Latvia).

The Committee asks for updated information on the coverage rates as well as on the impact of the measures taken to increase the immunisation coverage in the next report. Meanwhile it reserves its position on this point.

Accidents

The report provides detailed information on the preventive and educational activities implemented to decrease the number of road accidents. Awareness-raising projects such as: “Let someone else drive when you drink”, “The safety belt saves lives”, “There are motorcyclists on the roads”, or “Don’t cross over” were developed in 2015.

The Committee recalls that States Parties must take steps to prevent accidents. The main sorts of accidents covered are road accidents, domestic accidents, accidents at school and accidents during leisure time (Conclusions 2005, Republic of Moldova). The Committee asks for information on all types of accidents and the measures taken to prevent them.

Conclusion

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

Article 12 - Right to social security

Paragraph 1 - Existence of a social security system

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

With regard to **family** and **maternity** benefits, the Committee refers, respectively, to its conclusions relating to articles 16 and 8§1 (Conclusions 2015).

Risks covered, financing of benefits and personal coverage

The Committee refers to its previous conclusions (from Conclusions 2002 onward) for a description of the Romanian social security system, and notes that it continues to cover all the traditional risks (medical care, sickness, unemployment, old age, work accidents/occupational diseases, family, maternity, invalidity and survivors). During the reference period, the system continued to rest on collective funding: it was funded by contributions (employers, employees) and by the State budget.

However, an important reform of the social security funding system allegedly took place in 2017, out of the reference period, according to information brought to Committee's attention by the National Trade Unions Block. The Committee recalls in this connection that, to be in conformity with the Charter, the social security system must be collectively financed, which means funded by contributions of employers and employees and/or by the state budget. When the system is financed by taxation, its coverage in terms of persons protected should rest on the principle of non-discrimination, without prejudice to the conditions for entitlement (means-test, etc.). The principle of collective funding is a fundamental feature of a social security system as foreseen by Article 12 as it ensures that the burden of risks are spread among the members of the community, including employers, in an equitable and economically appropriate manner and contributes to avoiding discrimination of vulnerable categories of workers (Conclusions 2006, the Netherlands). The Committee asks the next report to provide all relevant information on any changes made in this respect during the next reference period.

According to national statistics (National Institute of Statistics, the Labour Force in Romania 2015), in 2015 the economically active population was of 9 159 000 persons, out of a total population of 22 242 738 persons (data presented in the report concerning compliance with the European Code of Social Security).

The Committee notes from Missoc that compulsory **healthcare** insurance covers all Romanian citizens resident in Romania; entitled EU citizens; other citizens who live temporarily or permanently in Romania and pay contributions to the insurance fund in accordance with the law, and children up to 18 years old. Access to Universal Healthcare is also guaranteed for the family members of insured persons and certain other categories of vulnerable persons (persons with disability, women during pregnancy...). According to the report concerning the compliance with the European Code of Social Security, as of 31 December 2015, 92% of the population was covered in respect of healthcare (17 191 563 insured persons and 3 349 056 uninsured persons who could nevertheless benefit from the minimum medical services package).

According to Missoc, employees, civil servants, unemployed and self-employed (upon condition of resources) are covered by a compulsory **old-age, invalidity and survivors'** insurance. The Committee understands from this information that a significant percentage of the active population is covered, and notes that according to the report the average number of insured persons for pensions was 5 699 697 in 2015 (i.e. 62% of the active population). The Committee asks the next report to clarify whether these data concern all three branches (old age, invalidity and survivors'). If not, it asks the next report to provide updated data concerning the number of persons covered by each of these branches, out of the active population. It reserves in the meantime its position on this point.

As regards the other branches, the Committee notes from the report that a compulsory **sickness** insurance covers all employees and self-employed, as well as beneficiaries of an unemployment allowance, persons holding elective functions or named in executive, legislative or judicial authority and some other categories of workers. According to the report concerning the compliance with the European Code of Social Security, as of 30 May 2015, the average number of active persons insured in respect of sickness benefits was 5 102 849, i.e. 56% of the active population.

Employees, civil servants, apprentices and pupils, students and unemployed persons during vocational training are covered by a compulsory insurance in respect of **work accidents and occupational diseases**, while voluntary insurance is available to the self-employed. The Committee understands from this information that a significant percentage of the active population is covered, but asks nevertheless the next report to provide information on the number of persons covered out of the total active population. It reserves in the meantime its position on this point.

A compulsory **unemployment** insurance covers all employees and civil servants, while voluntary affiliation is possible for self-employed persons, including their spouses contributing to the activity. The Committee notes from the report that, in 2015, out of a total of 436 242 registered unemployed persons, only 25% actually received unemployment benefits (they were 40% in 2011). In response to the Committee's question, the authorities explain in the report that this increasing rate of non-claiming unemployed persons consists of persons registered with the local employment agencies in order to find a job, but not qualifying for unemployment benefits (unskilled or poorly skilled workers, relying on social assistance) or having exhausted their entitlement. In view of the low rate of beneficiaries of unemployment benefits and in the absence of data on the rate of coverage, out of the total active population, despite the Committee's requests (Conclusions 2006, 2009, 2013), the Committee considers that it has not been established that a significant percentage of the active population is covered by unemployment insurance.

The Committee recalls that the social security system should cover a significant percentage of the active population as regards income-replacement benefits, such as sickness, maternity and unemployment benefits, pensions, and work accidents or occupational diseases benefits. It accordingly reiterates its request that information on the number of persons covered for all these branches, out of the active population, be systematically provided in each report concerning Article 12 of the Charter.

Adequacy of the benefits

According to Eurostat data, the median equivalised annual disposable income in 2015 was € 2315, or € 193 per month. The poverty level, if defined as 50% of median equivalised annual disposable income, would have been € 1158, or € 96 per month. Forty percent of equivalised income would have been € 77 per month. In 2015, the minimum wage was €217.5 per month.

The Committee previously considered that it had not been established that the minimum level of **sickness** benefits was adequate (Conclusions 2013, 2015). It notes from Missoc that at least one month of contributions is required to be entitled to sickness benefits, which are paid by the employer for the first five days and by social insurance afterwards, for up to 183 days in a year (with extensions possible in some cases). The report states that the benefits amount to 75% of the average insured gross earnings over the last 6 months (100% in some cases, such as cancer, AIDS, tuberculosis etc.) which would correspond to €163 monthly, if calculated on the basis of the minimum wage. On this basis, the Committee considers the amount to be adequate.

The report states that Law No. 76/2002, as subsequently amended and supplemented, makes **unemployment** entitlement conditional on the claimant having contributed to the unemployment fund for at least 12 of the past 24 months before submitting the claim with the

employment agency in whose area of jurisdiction the claimant resides. The benefit is paid for six months to persons who have contributed between one and five years, and up to 12 months for persons who have contributed for 10 years or more. As regards the circumstances in which unemployment benefit may be refused or withdrawn, the report reiterates, in response to the Committee's question (Conclusions 2015) that, although the applicable legislation does not provide for an initial period during which the claimant may turn down a job offer which would not match his/her competences and experiences, the employment agencies are specifically required by law to ensure that any job proposed to the unemployed corresponds to his/her qualifications and education. The Committee asks the next report to clarify how the law defines a "suitable job offer" and what are the situations where a job offer can be declined without losing entitlement to the benefits, in the light of any relevant case-law. It reserves in the meantime its position on this point.

As regards the minimum amount of unemployment benefits, the report clarifies that the amount which the Committee previously considered to be manifestly inadequate (Conclusions 2013) corresponds in fact to a special non-contributory unemployment allowance, which is granted to mainstream and special school leavers aged at least 16 who, within 60 days from leaving school, could not find a job matching their qualification. This allowance is paid for 6 months and amounts to 50% of the social reference indicator applicable at the time of determining the entitlement. As regards the contributory unemployment benefit, its minimum amount corresponds in fact to 75% of the social reference indicator applicable at the time of determining the entitlement and can be supplemented (by 3% to 10%) depending on the length of the contribution. The value of the social reference indicator was set in 2008 at RON 500 (€110, as of 31 December 2015) and has remained unchanged during the reference period. On the basis this information, the Committee notes that in 2015 the minimum amount of contributory unemployment benefit corresponded to €82.5, i.e. between 40% and 50% of the median equivalised income. The Committee recalls that, under Article 12§1, where an income-replacement benefit stands between 40% and 50% of the median equivalised income, other benefits, where applicable, will also be taken into account. It accordingly asks what other benefits, if any, can be aggregated for a person receiving the minimum amount of unemployment benefits. It reserves in the meantime its position on this point.

As regards **old-age** benefits, the Committee previously noted (Conclusions 2013) the existence of a compulsory and a voluntary regime and the introduction, as from 2009, of a minimum guaranteed social pension. It notes from Missoc that in 2015 the minimum qualifying period of contributions was 15 years, and that the full contribution period was 30 years for women (to be gradually increased) and 35 years for men. The pension amount is calculated by multiplying the pension point value (RON 830.20, i.e. €183 as of 31 December 2015) by the Annual average score (which takes into account the reference earnings, the national average monthly gross earnings and the contribution period). The report states that the average gross pension in 2015 was RON 839 (€185). The minimum level of pension corresponds to that of the (non contributory) guaranteed social pension, which was RON 400 (€88) in 2015. As this amount falls between 40% and 50% of the median equivalised income, the Committee reiterates its requests for information on the other benefits that might be aggregated with it and holds that if such information is not provided in the next report, there will be nothing to establish that the minimum level of old-age benefit is adequate.

The report does not provide information on the minimum levels of benefits payable in case of **work accidents/occupational diseases**, or in case of **invalidity**.

The Committee recalls that, to be compatible with the Charter, the social security benefits that are paid as income replacements must represent a reasonable proportion of the previous income and should never fall below the poverty threshold, defined as 50% of median equivalised income, as calculated on the basis of the Eurostat at-risk-of-poverty threshold. The Committee asks for relevant information on this subject, namely minimum level of benefits paid as replacement income during the reference period, to be regularly

supplied in each report on Article 12§1, to enable it to assess the situation. It also asks for information in the next report on any social assistance benefits that might be available when the minimum level of benefits paid as replacement income under the social security system falls between 40% and 50% of median equivalised income. Information on the minimum wage is also requested (Conclusions 2013, General Introduction).

Conclusion

The Committee concludes that the situation in Romania is not in conformity with Article 12§1 of the Charter on the ground that it has not been established that a significant percentage of the active population is covered by unemployment insurance.

Article 12 - Right to social security

Paragraph 2 - Maintenance of a social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security

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

The Committee notes that Romania has ratified the European Code of Social Security on 9 October 2009 and has accepted parts II (medical care), III (sickness benefit), V (old-age), VII (family) and VIII (maternity).

The Committee recalls that in order to comply with Article 12§2 of the Charter, the social security system of states party shall satisfy, at least, six risks (medical care counting for two parts and old-age counting for three under the Code).

The Committee notes from Resolution CM/ResCSS(2016)15 on the application of the European Code of Social Security by Romania (period from 1 July 2014 to 30 June 2015) that the Committee of Ministers reserves its conclusion, pending receipt of calculations demonstrating on the basis of the revised reference wage, that social security benefits attain the level prescribed by the Code and are able to maintain the majority of the persons protected above the poverty threshold.

The Committee also notes from Resolution CM/ResCSS(2017)15 of the Committee of Ministers on the application of the European Code of Social Security by Romania (period 1 July 2015 to 30 June 2016) that the Romanian social security system continues to give effect to the accepted Parts of the Code, subject to receiving the assessment by the national and ILO actuaries of its capacity to maintain the persons protected above the poverty threshold. The Committee of Ministers will consider other issues raised in its previous Resolution CM/ResCSS(2016)15, once it has at its disposal the clarifications requested. The Committee asks the next report to provide information on the results of the assessment.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Romania is in conformity with Article 12§2 of the Charter.

Article 12 - Right to social security

Paragraph 3 - Development of the social security system

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

It refers to its previous conclusions (Conclusions 2002, 2004, 2006, 2009, 2013) for a description of the Romanian social security system, in particular since the reforms enacted in 2002. As regards changes concerning family and maternity benefits, the Committee refers to its conclusions on, respectively, articles 16 and 8§1. As regards other branches of social security, the Committee takes note of the legislative developments during the reference period.

In particular, the report indicates that the the minimum guaranteed social pension was increased from RON 350 (€77) to RON 400 (€88) as from 1 January 2015.

The Committee notes however the adoption of certain negative developments such as:

- the significant decrease in the number of registered unemployed persons receiving unemployment benefits, which fell from 194 445 out of 493 775 (39%) in 2012 to 108 537 out of 436 242 (25%) (see, on this point, Conclusions 2017, Article 12§1);
- the fact that the value of the social reference indicator, which is used to determine the amount of unemployment benefits, has remained unchanged since 2008;
- the decrease in the replacement rate for old age pensions, from 35.09% in 2012 to 34.7% in 2015 (according to the data presented in the report concerning compliance with the European Code of Social Security).

Other restrictive measures have been brought to the Committee's attention by the National Trade Unions Block: the Committee notes in particular that a major reform of the funding system of social security will allegedly take effect in 2018, out of the reference period. It asks the next report to provide all relevant information about its impact (categories and numbers of people concerned, levels of contributions and allowances before and after the reform).

The Committee recalls that Article 12§3 requires States Parties to improve their social security system. A situation of progress may consequently be in conformity with Article 12§3 even if the requirements of Articles 12§1 and 2 have not been met or if these provisions have not been accepted. The expansion of schemes, protection against new risks or increase in the level of benefits, are examples of improvement. A restrictive evolution in the social security system is not automatically in violation of Article 12§3. The assessment of the situation depends on the nature of the changes (field of application, conditions for granting allowances, amounts of allowance, etc.); the reasons given for the changes and the framework of social and economic policy in which they arise; the extent of the changes introduced (categories and numbers of people concerned, levels of allowances before and after alteration); the necessity of the reform; the existence of measures of social assistance for those who find themselves in a situation of need as a result of the changes made (this information can be submitted under Article 13); the results obtained by such changes. However, where the cumulative effect of the restrictions can bring about a significant degradation of the standard of living and the living conditions of some groups of population, the situation may amount to the violation of Article 12§3 of the Charter. Even if individual restrictive measures are in conformity with the Charter, their cumulative effect, with the procedures adopted to put them into place, could be in violation with the right to social protection. Measures taken in order to consolidate public finances may be considered as a necessary means to ensure the maintenance and sustainability of the social security system. However, any modifications should not undermine the effective social protection of all members of society against social and economic risks and should not transform the social security system into a basic social assistance system. Therefore any changes to a social security system must ensure the maintenance of a basic compulsory social security system which is sufficiently extensive.

In the light thereof, the Committee reiterates its request for information in the next report on any relevant changes made during the reference period to the social security system, specifying the effect of these changes on the personal scope of the system and the minimum level of income replacement benefits. Such information must be provided in each report concerning Article 12§3, in order to assess compliance of the situation with the Charter.

In the light of the information available, which shows a relative deterioration of the situation, despite the increase in the amount of minimum guaranteed social pension, the Committee considers that efforts made to progressively raise the system of social security to a higher level are inadequate.

Conclusion

The Committee concludes that the situation in Romania is not in conformity with Article 12§3 of the Charter on the ground that efforts made to progressively raise the system of social security to a higher level are inadequate.

Article 12 - Right to social security

Paragraph 4 - Social security of persons moving between States

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

Equality of treatment and retention of accrued benefits (Article 12§4)

Right to equal treatment

Equal treatment between nationals and nationals of other States Parties in respect of social security rights shall be ensured through the conclusion of bilateral or multilateral agreements or through unilateral measures.

The Committee recalls that, having regards to the European Union (hereafter "EU") legislation on the coordination of social security systems of the EU Member States, governed by Regulations (EC) No. 883/2004 and (EC) No. 987/2009, as amended by Regulation (EU) No. 1231/2010, the EU Member States are considered, as a matter of principle, to ensure equal treatment between, on the one hand, their nationals and, on the other hand, nationals of other EU Member States or member of the European Economic Area (hereafter “EEA”), stateless persons, refugees resident in the territory of a Member State who are or have been subject to the social security legislation of one or more Member States, their families and their survivors, as well as nationals of third countries, members of their families and their survivors, provided that they are legally resident in the territory of a Member State and are in a situation which is not confined in all respects within a single Member State.

The Committee recalls that, in any event, under the Charter, EU/EEA member States are required to secure, to the nationals of other States Parties to the 1961 Charter and to the Revised Charter not members of the EU or EEA, equal treatment with respect to social security rights provided they are lawfully resident in their territory (Conclusions XVIII-1 (2006)). In order to do so, they have to either conclude bilateral agreements with them or take unilateral measures.

Firstly, as regards bilateral agreements concluded with other States Parties, the Committee asked in its previous conclusions (Conclusions 2013) whether such agreements with Serbia and Albania have been conclude. It also asked what Romania intends to do regarding Andorra, Azerbaijan, Bosnia and Herzegovina, Croatia and Georgia. According to the report, Romania concluded a new bilateral agreement guaranteeing the principles of equal treatment and exportability of benefits with Albania and carried out negotiations with Armenia and Montenegro. However, the Committee notes from the report that the agreement concluded with Albania is entered into force outside the reference period. It also notes that the report provides no information with regard to Andorra, Azerbaijan, Bosnia and Herzegovina and Georgia; so that it understands that no agreement was concluded or is foreseen with those States. It asks the next report to clarify whether this understanding is correct.

Secondly, as regards unilateral measures undertaken by Romania, the report provides no information on this matter.

In respect of payment to family allowances, the Committee previously considered (Conclusions XVIII-1 (2006)) that, under Article 12§4, any child resident in a country is entitled to those benefits on the same basis as the citizens of the country concerned. Whoever the beneficiary may be under the social security scheme – the worker or the child – the States Parties are obliged to guarantee, through unilateral measures, effective payment of family benefits to all children resident in their territory. In other words, the requirement for the child to reside in the territory of the State concerned is compatible with Article 12§4 and with its Appendix. However, as not all the countries apply such a system, the States which impose a child residence requirement are under an obligation, in order to secure equal

treatment within the meaning of Article 12§4, to conclude within a reasonable period of time bilateral or multilateral agreements with those States which apply a different entitlement principle.

The Committee notes from MISSOC that Romania applies the rules whereby the payment of family benefits is conditional on the claimant's children being resident in Romania.

The Committee asked in its previous conclusions (Conclusions 2009 and 2013) whether agreements covering family benefits exist with Albania, Georgia and Serbia, or whether they were planned and, if so, on what timescale. It also asked whether Romania plans to conclude agreements with States Parties with which there are no such agreements or adopt unilateral measures and, if so, when. The Committee notes from the report that family benefits are only covered by the bilateral agreement concluded with "the former Yugoslav Republic of Macedonia". Consequently, it considers the situation not to be in conformity with the Charter.

In its previous conclusions (Conclusions 2009 and 2013) Committee enquired whether the award of social security benefits to nationals of States Parties not member of the EU or EEA is subject to a condition regarding period of residence or employment. As there is still no reply in the report, the Committee considers that it has not been established that the principle of equal treatment is guaranteed for nationals of other States Parties.

Right to retain accrued benefits

The Committee recalls that invalidity benefit, old age benefit, survivor's benefit and occupational accident or disease benefit acquired under the legislation of one State Party according to the eligibility criteria laid down under that legislation are maintained irrespective of whether the beneficiary moves to another State Party. With respect to the retention of benefits (exportability), the obligations entered into by States Parties must be fulfilled irrespective of any other multilateral social security agreement that might be applicable. In order to ensure exportability of benefits, States Parties may choose between bilateral agreements or any other means such as unilateral, legislative or administrative measures.

In its previous conclusions (Conclusions 2009), the Committee noted that retention of accrued benefits is secured to nationals of States Parties covered by EU regulations or bound to Romania by a bilateral agreement. The Committee notes from the report that all bilateral social security agreements entered into by Romania include provisions on old-age benefits, occupational injury and disease benefits, sickness and maternity benefits, and survivor's pension; the agreements with the Republic of Moldova and "the former Yugoslav Republic of Macedonia" have a wider scope and include, respectively, unemployment benefits and family benefits. According to the report, there are some exceptions on the export of benefits. The Committee asks the next report to provide further information on this point, in particular the what are the exceptions allowed and under what conditions they apply. It also asks what are the branches covered by the agreements concluded with Armenia, the Russian Federation and Ukraine.

As there were still no agreements concluded with Andorra, Azerbaijan, Bosnia and Herzegovina, Georgia and Serbia during the reference period, the Committee considers the situation not in conformity with the Charter on this point.

Right to maintenance of accruing rights (Article 12§4b)

There should be no disadvantage for persons who change their country of employment where they have not completed the period of employment or insurance necessary under national legislation to confer entitlement and determine the amount of certain benefits. This requires, where necessary, the aggregation of employment or insurance periods completed in another territory and, in the case of long-term benefits, a pro–rata approach to the

conferral of entitlement, the calculation and payment of benefit (Conclusions XIV-1 (1998), Portugal; Conclusions XV-1 (2000), Italy).

States may choose between the following means in order to ensure maintenance of accruing rights: multilateral convention, bilateral agreement or, unilateral, legislative or administrative measures. The principle of accumulation of insurance or employment periods applies to nationals of States Parties covered by EU regulations.

In its last conclusions (Conclusions 2013), the Committee found that nationals of States Parties not covered by EU regulations or not bound to Romania by bilateral agreement did not have the possibility of accumulating insurance or employment periods completed in other countries. Since the situation has not changed during the reference period, the Committee reiterates of non-conformity on this point.

Conclusion

The Committee concludes that the situation in Romania is not in conformity with Article 12§4 of the Charter on the grounds that:

- it has not been established that equal treatment with regard to social security rights is guaranteed to nationals of all other States Parties;
- equal treatment with regard to access to family allowances is not guaranteed to nationals of all other States Parties;
- the retention of accrued benefits for persons moving to a State Party which is not covered by EU regulations or not bound by an agreement with Romania is not guaranteed;
- the right to maintenance of accruing rights is not guaranteed to nationals of all other States Parties.

Article 13 - Right to social and medical assistance

Paragraph 1 - Adequate assistance for every person in need

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

Types of benefits and eligibility criteria

Social assistance

The Committee takes note that the Government Decision No 383/2015 approving the National Strategy on social inclusion and poverty reduction for the period 2015 – 2020 and the Strategic Action Plan for the period 2015 – 2020. The Strategy aims at strengthening social inclusion of vulnerable groups and lifting 580,000 persons out of poverty, between 2008 and 2020, according to the target assumed by Romania with a view to achieving the objectives of the Europa 2020 Strategy.

In reply to the Committee's question in the previous conclusion (Conclusions 2013) the report states that the beneficiary of the social aid must perform community work, the duration of which corresponds to the amount of social aid received. In case of suspension of payment of social aid, the right to it is not terminated, but is merely suspended for a limited period of time, until the moment when the beneficiary is able to submit evidence, on the basis of which the rights will be resumed. According to the report, the suspension of social aid as a result of failure to comply with some provisions of the law does not affect the individual's right to benefit from other types of social care benefits, such as the financial allocation for family support, kindergarten tickets or social benefits for heating. The Committee understands that the temporary suspension of social aid does not deprive the person concerned of his/her means of subsistence. It asks the next report to confirm that this understanding is correct.

The Committee takes note of the Government Emergency Ordinance No 70/2011, as amended, regarding social protection measures during the cold season, to cover for a part of expenses related to household heating during the cold season. Such social protection measures are taken for single individuals or families whose net monthly average income per family member is under the threshold stipulated by the law. Households who use thermal energy for heating benefit from a monthly benefit provided that their the monthly average net income per family member is up to RON 768 (€ 168) for families and RON 1082 (€ 238) for single individuals. The Committee notes in particular that as regards families and single individuals, recipients of social benefits, the compensation is at 100%. Households that use natural gas or electric power benefit from a monthly aid for heating during the cold season at RON 20 and RON 48 respectively, if the monthly average net income per family member, is in the range of ROM 540- 615.

The Committee takes note of the Law No 196/2016 which established the Minimum Inclusion Income (MII), as a social assistance benefit provided to families and single persons in difficulty. This law guarantees the inclusion support (social support). Additionally, it covers payment of social health insurance contributions, payment of the mandatory house insurance policy and provision of emergency support in special situations that may lead to the risk of social exclusion.

The Committee further notes that the law sets a single minimum threshold of social assistance at RON 260, which represents the income of the poorest 10%, above the severe poverty and who are close to absolute poverty. At this level the programme will meet its objective to pull 10% of the population out of severe poverty as per the Europa 2020 Strategy. The level of social benefit, will go up from RON 142 to RON 260 and the housing and heating allowances will also be increased significantly. According to the report with this law a modern scheme will be introduced, correlating and aligning the existing programmes. The Committee asks the next report to provide detailed information about the implementation of this law, including the relevant statistics.

Medical assistance

In its previous conclusion (Conclusions 2015) the Committee found that the situation was not in conformity with the Charter as uninsured persons were not entitled to adequate medical assistance.

The Committee notes from the report in this regard that the single individual beneficiary of social aid, has the right to public social health insurance. The contribution to social health insurance for single persons benefiting from social aid is paid by the county agencies for payments and social inspection and is established by applying the quota stipulated by the law on the amount allocated as social aid. The county agencies have the duty to pay on a monthly basis the individual contribution for social health insurance to the local insurance houses and to submit the records of payment obligations to the budget of the National Single Fund for social health insurance. The funds required for the payment of social aid, as well as for the payment of the social health insurance contribution, are covered by the state budget. The Committee notes that Article 224 (1) of Law no. 95/2006 on healthcare reform as amended, lists the categories of persons are entitled to insurance, without paying the contribution, such as children and students, as well as victims of repressions.

The Committee considers that the report does not provide any new elements to the situation which it has previously considered not to be in conformity with the Charter. It notes in particular that apart from the categories of persons listed as entitled to payment of contributions under Law No 95/2006, there is no evidence that any person without resources, not belonging to these categories is entitled to medical assistance in the meaning of this provision. The Committee has considered that the right to medical assistance should not be confined to emergency situations and that a system not including primary or specialised outpatient medical care, which a person without resources might require, did not sufficiently ensure health care for poor or socially vulnerable persons who become sick (European Roma Rights Centre (ERRC) v. Bulgaria, complaint No 46/2007, Decision on the merits of 3 December 2008). The Committee therefore reiterates its previous finding of non-conformity.

As regards the elderly persons, the Committee takes note of the evolution of the level of social pensions for retired persons (Law no. 293/2011, Law No 5/2012, Law No 356/2013, Law No 186/2014) from RON 350 in 2011 to RON 400 in 2013. The retired persons, residing in Romania and registered in the public pension system can benefit from social pension, as long as the amount of their pension entitlement is below the level of the guaranteed minimum social pension. Those persons who do not fulfil the conditions required in order to receive a pension shall receive a social benefit. The Committee asks what is the level of social pension and whether persons receiving it are also entitled to additional benefits for housing and heating.

Level of benefits

To assess the situation during the reference period, the Committee takes account of the following information:

- Basic benefit: according to the report, a single person without income may be entitled to the Social Support (GMI) for single persons at RON 142, which, according to the report is approximately 18% of the average income per adult-equivalent, set at € 86, in 2013. The Committee takes note of the evolution of the monthly level of the guaranteed minimum income from RON 125 in 2012 to RON 142 in 2015, for a single individual.
- Additional benefits: as regards house heating support (AI) for the cold season, the beneficiaries of social support are entitled to ROM 58 for wood, coal and petroleum-based fuel heating. The beneficiaries of social support also qualify for the free services of the soup kitchen, as provided for by Law No 208/1997 on social canteens. Furthermore, any person that is temporarily without an income

is entitled to the services of a soup kitchen for up to 90 days per year. The social canteens are public social assistance entities, with or without legal personality, established, organised and managed by the local authorities and by private services providers. They prepare and serve two meals per day per person – lunch and dinner – within the limit of the food allowance provided for by law.

According to the Government Decision No 903/2014 regarding the establishment of the minimum daily allowance for food for collective consumption of public and private institutions and units of social care for adults, the daily food allowance for social canteens is RON 12, as from October 2014, which is paid for 30 days, amounting to RON 360 per month.

Therefore, according to the report, a single person without resources was granted RON 502 (€112), which is approximately 65% of the average income per adult-equivalent. During the cold season the person concerned was granted RON 502 + RON 58 = RON 560 (€124.5).

- Poverty threshold (defined as 50% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value): it was estimated at € 96 in 2015.

In its previous conclusion the Committee found that the level of social assistance was manifestly inadequate. The Committee now considers that with the information at its disposal, the total amount of assistance that can be obtained, including basic and additional benefits is compatible with the poverty threshold. The Committee asks the next report to provide information on basic and additional benefits granted under Law No 196/2016.

Right of appeal and legal aid

In its previous conclusion the Committee asked whether administrative courts have jurisdiction to rule on points of law as well as on the merits of the case. In reply the Committee notes from the report that the new Law on Social Assistance No 292/2011 lays down the new social assistance principles and dissolves the Social Mediation Commission. According to Article 143 of Law No 292/2011, the administrative acts issued by central and local authorities on the granting of social benefits and provision of social services may be challenged in administrative litigation, on the grounds of the Administrative Litigation Law No 554/2004, as amended.

Before addressing the administrative court of jurisdiction, the person that believes his/her rights or legitimate interests were violated by an individual administrative act should request the issuing public authority or its supervising body, if applicable, within 30 days from being notified accordingly, to cancel the act in part or in whole. If the beneficiary of the social service deems he/she was treated unfairly in the provision of the social services, as set forth in the social services contract, he/she may address the relevant court that has jurisdiction for settling social services litigations. The petitions to the administrative or to any other court of law requesting the settlement of litigations related to the right to or provision of social services are to be dealt with expeditiously.

Personal scope

The Committee recalls that, under Article 13§1, States are under the obligation to provide adequate medical and social assistance to all persons in need, both their own nationals as well as nationals of States Parties lawfully resident within their territory, on an equal footing. In addition, with reference to its Statement of Interpretation of Articles 13§1 and 13§4 (Conclusions 2013) regarding the scope of Articles 13§1 and 13§4 in terms of persons covered, the Committee considers that persons in an irregular situation in the territory of the State concerned are also covered under Article 13§1, rather than under Article 13§4, which was previously its practice.

The Committee henceforth examines whether the States who have accepted Article 13§1 ensure the right to:

- adequate social and medical assistance for their own nationals and for nationals of other States Parties lawfully resident within their territory on an equal footing;
- emergency social and medical assistance to persons unlawfully present in their territory.

Nationals of States Parties lawfully resident in the territory

In its previous conclusion the Committee asked whether any length of residence was required for nationals of States Parties lawfully resident in order to benefit from social and medical assistance.

According to Article 4 of Law No 292/2011, all Romanian citizens who are domiciled or resident in Romania and all citizens of European Union Member States, European Economic Area and the Swiss Confederation, as well as foreigners and stateless persons who are domiciled or resident in Romania are entitled to social assistance, as provided for by the Romanian laws, by the European Union Regulations and the agreements and treaties to which Romania is a party. The right to social assistance is granted ex-officio or on request, as the case may be, in compliance with the applicable regulations. The Romanian law does not require any specific time of residence in Romania, to qualify for social assistance. The Committee asks whether the same applies to medical assistance.

Foreign nationals unlawfully present in the territory

The Committee recalls that persons in an irregular situation must have a legally recognised right to the satisfaction of basic human material need (food, clothing, shelter) in situations of emergency to cope with an urgent and serious state of need (including medical condition). It likewise is for the States to ensure that this right is made effective also in practice (European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, §187). The Committee asks the next report to confirm that the legislation and practice comply with these requirements.

Conclusion

The Committee concludes that the situation in Romania is not in conformity with Article 13§1 of the Charter on the ground that uninsured persons without resources are not entitled to adequate medical assistance.

Article 13 - Right to social and medical assistance

Paragraph 2 - Non-discrimination in the exercise of social and political rights

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

In its previous conclusion (Conclusions 2013) the Committee noted that Ordinance No 137/2000 prevents and penalises all forms of discrimination in the exercise *inter alia* of political rights (Article 1§2.c). Such information was not provided in relation to social rights and the Committee asks that the next report provide information on this.

The Committee notes from the report that there have been no legislative developments during the reference period. The Committee asks the next report to provide updated information on whether the provisions enshrining the principle of equality and prohibiting discrimination in the exercise of political or social rights are interpreted in practice in such a way as to prevent discrimination on the basis of receipt of social or medical assistance.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Romania is in conformity with Article 13§2 of the Charter.

Article 13 - Right to social and medical assistance

Paragraph 3 - Prevention, abolition or alleviation of need

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

In its previous conclusion (Conclusions 2015) the Committee found that the situation in Romania was not in conformity with Article 13§3 of the Charter on the ground that persons without resources or at risk of becoming so did not have effective access to adequate services offering advice and personal assistance to prevent, remove or to alleviate personal or family want.

According to the report, Law No 116/2002 on the control and prevention of social exclusion, local councils, through their specialised units, are required to provide free counselling services to potential beneficiaries of this law, including families. In addition, the Law envisages the following measures aimed at supporting marginalised persons: career counselling, employment mediation and placement for young persons aged 16 to 25 through customised social support provided by specialists from the National Employment Agency. The Committee further notes that the main tool for the provision of personalised social support to young persons in difficulty and facing the risk of labour market exclusion is the solidarity agreements concluded between the young person who meets the requirements of Law No 116/2002 and the County and Bucharest agencies for employment.

The Committee notes that the information provided in the report concerning employment mediation and counselling, solidarity agreements, as well as the costs of services targeted at children are outside the material scope of this provision. These are covered by Article 14 of the Charter which Romania has not accepted.

The Committee recalls that Article 13§3 concerns only social or medical assistance in the form of advice or personal help to persons without, or liable to be without, adequate resources. Accordingly, Article 13§3 is a special provision that is more specific than Article 14§1, which is concerned with the provision of social welfare services generally. The Committee considers it important to stress this distinction so that the national reports under Article 13§3 provide information concerning social and medical services related to advice or personal help for persons without, or liable to be without, adequate resources. These services must play a preventive, supportive and treatment role. Amongst other things, Article 13§3 requires states to provide advice and assistance so as to make those concerned aware of their entitlement to social and medical assistance and how they can exercise that entitlement.

In assessing national situations under this provision the Committee specifically examines whether there are mechanisms to ensure that those in need may receive help and personal advice services free of charge and whether such services and institutions are adequately distributed on a geographical basis.

The Committee asks the next report to provide more precise information in the light of these clarifications. It asks in particular whether the National Agency for Payments and Social Inspection has the role of providing personal help and guidance to persons without resources wishing to apply for social assistance benefits. In the meantime the Committee reserves its position on this issue.

Conclusion

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

CONCLUSIONS RELATING TO CONCLUSIONS OF NON-CONFORMITY DUE TO A REPEATED LACK OF INFORMATION IN CONCLUSIONS 2015

Article 7 - Right of children and young persons to protection

Paragraph 1 - Prohibition of employment under the age of 15

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the information submitted by Romania in response to the conclusion that it had not been established that prohibition of employment under the age of 15 is effectively guaranteed.

In its previous conclusion (2015) the Committee recalled that the prohibition on the employment of children under the age of 15 applies to all economic sectors, including agriculture, and all places of work, including work within family enterprises and in private households, whether paid or not. The report did not provide information on the measures taken and sanctions imposed either by the Labour Inspectorate or by other bodies with regard to prohibition of employment under the age of 15. Given the lack of information on the situation in practice with regard to work performed by children under 15, the Committee concluded that the situation is not in conformity with the Charter on the ground that it had not been established that prohibition of employment under the age of 15 was effectively guaranteed.

The Committee requested the next report to provide information on the measures taken or envisaged to ensure that children who are not bound by an employment relationship, such as children performing unpaid work, work in the informal sector or work on a self-employed basis, benefit from the protection provided by Article 7§1 of the Charter. The Committee asked what were the measures taken by the authorities (e.g. labour inspection, social welfare and child protection, the police) to detect cases of children under the age of 15 working on their own account or in the informal economy, outside the scope of an employment contract.

The Committee now notes from the report that the Government Decision No 75/2015 regulates remunerated activities that may be carried out by a child over 14 years of age. According to Article 17 of this Decision the persons designated by the Director of the General Social Assistance and Child Protection Department from the County or Sector of the City of Bucharest are tasked with identifying irregularities and issuing sanctions and the Labour Inspectorate does not have jurisdiction to monitor the compliance with this act.

The Committee asks the next report to provide information regarding irregularities identified and sanctions issued by the Director of the General Social Assistance and Child Protection Department regarding employment of children under 15 years of age in light work. The Committee reiterates that these activities should be closely monitored in practice with a view to effectively implementing the provisions relating to the prohibition of employment under the age of 15.

Conclusion

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

Article 7 - Right of children and young persons to protection

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

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the information submitted by Romania in response to the conclusion that it had not been established that the right to have the time spent on vocational training included in the normal working time and remunerated as such is guaranteed in practice. In the absence of any information in the report indicating that the situation has changed, the Committee maintained its conclusion of non-conformity in 2015.

The Committee recalls that, in application of Article 7§6, time spent on vocational training by young people during normal working hours must be treated as part of the working day. Such training must, in principle, be done with the employer's consent and be related to the young person's work. Training time must thus be remunerated as normal working time, and there must be no obligation to make up for the time spent in training, which would effectively increase the total number of hours worked. This right also applies to training followed by young people with the consent of the employer and which is related to the work carried out, but which is not necessarily financed by the latter.

In its previous conclusion (2015) the Committee noted that the Labour Code of Romania contains extensive provisions regulating the conditions of vocational training both at the initiative of employers and employees (Sections 192-207 and 154-158 of the Labour Code). It also noted that the Government Ordinance No. 129/2000 on Adult Vocational Training was amended and republished in the Official Gazette No. 110 of 13 February 2014. The Committee asks for a detailed and up-to-date report on the legal framework regulating the time spent on vocational training by young workers and its remuneration in the case of (i) vocational training financed by the employer; (ii) vocational training with the consent of the employer, but not financed by the latter.

The Committee notes that Articles 194-200 of the Law No 53/2000 – the Labour Code, as amended, regulate general aspects of training, instating employers' obligation to provide training programmes for all employees. The Committee notes that the employer shall ensure the participation of every employee in vocational training at least once every two years and the expenses related to the vocational training shall be borne by the employer. According to Article 157 of the Labour Code, if the employer fails to fulfil its obligation to ensure on its account the participation of an employee in vocational training, the employee shall be entitled to a vocational training leave, paid by the employer of up to 10 working days or up to 80 hours.The Committee asks the next report to indicate what rules apply in case of apprenticies and young workers.

The Committee recalls that the situation in practice should be regularly monitored and asks that the next report provide information on the monitoring activities and findings of the Labour Inspectorate in relation to the inclusion of time spent on vocational training in the normal working time and its remuneration for young workers.

Conclusion

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

Article 7 - Right of children and young persons to protection

Paragraph 7 - Paid annual holidays

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the information submitted by Romania in response to the conclusion that it had not been established that the right to paid annual leave is guaranteed in practice. In its previous conclusion (2015) the Committee noted that the report did not provide any information on the implementation of the legal framework in practice (i.e. information on the monitoring activities of the Labour Inspectorate, its findings and sanctions imposed in cases of breach of the applicable regulations to paid annual holidays of young workers). In the absence of any information on the situation in practice, the Committee maintained its conclusion of non-conformity.

The Committee recalls that the satisfactory application of Article 7§7 cannot be ensured solely by the operation of legislation, if this is not effectively applied and rigorously supervised in practice.

The Committee now notes from the report that as part of the employment relations inspection mission, the Labour Inspectorate also verifies employers' compliance with the regulations on annual statutory leave entitlements, including in the case of young workers. The employment laws do not provide for any misdemeanor (civil) sanctions for failure to comply with the provisions on annual statutory leave. However, in order to correct the irregularities found, mandatory actions are ordered, with specific implementation deadlines. When the employer fails to implement the actions ordered by the inspectors, civil sanctions are applied, according to the provisions of Article 23 of the Law No 108/1999 on the establishment and organisation of the Labour Inspectorate, as amended. The Committee asks the next report to provide information on the findings and sanctions imposed by the labour inspectorate in cases of breach of the applicable regulations with regard to paid annual holiday of young workers.

Conclusion

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

Article 8 - Right of employed women to protection of maternity

Paragraph 2 - Illegality of dismissal during maternity leave

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the information submitted by Romania in response to the conclusion that it had not been established that adequate redress was provided for in cases of unlawful dismissal during pregnancy or maternity leave.

The Committee recalls in this connection that, under Article 8, paragraph 2 of the Charter, the reinstatement of employees unlawfully dismissed during pregnancy or maternity leave should be the rule and that, where this is not possible (e.g. if the enterprise has closed down or the employee concerned does not wish to be reinstated), adequate compensation must be available. Domestic law must not prevent courts from awarding a level of compensation that is sufficient both to deter the employer and fully compensate the victim of dismissal.

The report reiterates that dismissal of employees during pregnancy or maternity leave is forbidden under Article 60§1 c) and d) of the Labour Code, as amended, and that a dismissal decided in violation of the procedure provided for in the law would be null and void. Article 67 of the Labour Code, as amended, provides that employees dismissed for reasons not related to their person may enjoy compensations under the terms of the law and the applicable collective labour agreements.

In response to the Committee's question concerning the available remedies in case of unlawful dismissal for reasons connected to pregnancy or maternity in particular as regards the level of compensation awarded in addition to reinstatement, the report states that, pursuant to Article 80§1 of the Labour Code, as amended, if the court considers that the dismissal was groundless or illegal, it shall order it to be considered null and void and demand the employer to compensate the employee with an amount equal to the indexed, increased and updated wages and other rights the employee would have benefited from. Pursuant to Article 269§1 of the Labour Code, as amended, the courts established according to the Code of Civil Procedure are competent for the trial of the labour disputes. Thus, dismissed employees may file a lawsuit with the court of law of jurisdiction in the area where they reside. According to Article 268§1 a) of the Labour Code, requests to settle a labour dispute may be submitted within 30 calendar days from the notification of the unilateral decision of the employer regarding the cessation of the individual employment contract. The Committee asks the next report to clarify what compensation is granted – in particular, whether any ceiling applies – when the reinstatement of the employee is not possible.

As regards the regime applicable to women employed in the public sector, in particular those with temporary contracts, the report refers to Article 87§1 of the Labour Code, which provides that "As regards the employment and working conditions, the employees with an individual employment contract of limited duration shall not be treated less favourably than the similar permanent employees, just based on the duration of the individual employment contract, except for the cases where the differentiated treatment is justified on objective reasons". In the light of this provision, the report states that women employed in the public sector, both with indefinite and fixed-term individual employment contracts, may be entitled to compensation under the provisions of the law and the collective agreements, if and when they are dismissed.

In the light of the information provided, the Committee considers that the situation is in conformity with Article 8§2 of the Charter.

The Committee recalls that the situation concerning other aspects covered by Article 8§2 will be examined in the framework of the regular reporting cycle (Conclusions 2019) and asks that relevant and updated information be provided in that context.

Conclusion

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

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

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31st October 2016 on conclusions of non-conformity for repeated lack of information in conclusions 2015.

The Committee takes note of the information submitted by Romania in response to the conclusion that it had not been established that:

- there are adequate procedural safeguards against unlawful eviction for families;
- affordable and good quality childcare is ensured for families;
- adequate family counselling services are available.

Social protection of families

Housing for families

As to the 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 report states that the New Code of Civil Procedure (NCCP)(Law No. 134/2010, as subsequently amended) provides a new special procedure: Eviction from property occupied without title. The above-mentioned procedure may concern, on the one hand, the former tenant who used the property based on a title, and, on the other hand, the individual who occupies the property without title. The report adds that the enforcement of the eviction procedure falls under the full responsibility of the court bailiff.

The Committee recalls that a notice period is considered to be reasonable as from two months before eviction (European Federation of National Organisations Working with the Homeless [FEANTSA] v. France, Complaint No 39/2006, decision on the merits of 5 December 2007, §§ 86-87; International Movement ATD Fourth World v. France, Complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 78-79). It considers that the minimum notice period before eviction of 30 days for tenants and five days for occupiers are too short and, therefore, considers the situation not in conformity with the Charter. It also considers the possibility to carry out eviction during winter with respect to occupiers not in conformity with the Charter.

To give the persons in question the opportunity to evict the occupied property voluntarily, court ordered eviction is preceded by a prior procedure, whereby the former tenant or occupier is required to vacate and hand over the property within 30 and 5 days, respectively, from the date of the communication of the notice (see Articles 1.038 and 1.039 of the NCCP). The report points out that, as a matter of rule, eviction from December 1st to March 1st is prohibited. However, the Committee notes from the report that this ban does not apply *inter alia* to persons occupying a property without any title- occupiers.

In case of tenants, an eviction is carried out based on a court order, unless provided for otherwise by law (Article 1.831(1) of the NCC). The Committee asks the next report to clarify whether eviction of occupiers may be carried out without such a ruling. It further asks whether law prohibits enforcement of evictions at night. According to the report, it is possible to lodge an appeal against the eviction order (Article 1.042(5) NCCP) or challenge its

enforcement in court (Article 1.044 NCCP). The Committee notes from the NCCP that the request for a legal remedy has no suspensive effect on a court decision.

The report adds that parties may request the use of mediation before or during the proceedings. The judge may also attempt to conciliate the parties, providing them with guidance or invite the parties to an information meeting on the advantages of mediation. Mediation is not mandatory and, therefore, depends on the will of the parties.

With regard to the provision of legal support, Article 90 of the NCCP provides that persons in need may receive legal assistance. Such support may be provided any time during the proceedings, in whole or in part, and includes exemption, discounts, instalment payment or postponement of payment of legal fees; free legal defence and assistance by Bar-appointed lawyer and any other means provided for by law. The Committee notes from the report that evicted persons are also entitled to more protective measures depending on their legal status and, in this respect, asks the next report to provide further information on people concerned by those measures, the nature and scope of those measures as well as the conditions for applying such measures.

The Committee finds no information in the report on compensation in case of illegal eviction and, therefore, asks the next report to provide further information in this matter. It also asks whether evictions are carried out under conditions respecting the dignity of the person concerned, governed by rules sufficiently protective of the rights of the persons and accompanied by proposals for alternative accommodation when evictions do occur (See, European Roma and Travellers Forum [ERTF] v. Czech Republic, Complaint No. 104/2014, decision on the merits of 17 May 2016, §82, and European Roma Rights Centre [ERRC] v. Ireland, Complaint No. 100/2013, decision on the merits of 1st December 2015, § 137). Finally, it wishes to find in the next report comprehensive information on the common procedure of eviction.

Childcare facilities

With regard to childcare facilities, the report does not provide any information as regards the Committee's previous questions. Therefore, the Committee reiterates its conclusion of non-conformity on the ground that it has not been established that affordable and good quality childcare is ensured for families.

Families counselling services

The Committee recalls that families must be able to consult appropriate social services, particularly when they are in difficulty. States are required in particular to set up family counselling services and services providing psychological support for children's education.

According to the report, Law no.116/2002 on the prevention and fighting of social exclusion requires local Councils to provide free counselling services via their specialised units. The Committee asks the next report to provide further information on the above-mentioned law, in particular the kind of services provided, the places where such services are provided and statistical data on the number of families benefiting from such services. In the meantime, it reserves its position on this point.

Conclusion

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

- notice period before eviction is too short;
- occupiers are allowed to be evicted during winter;
- it has not been established that affordable and good quality childcare is ensured for families.

January 2018

European Social Charter

European Committee of Social Rights

Conclusions 2017

RUSSIAN FEDERATION

This text may be subject to editorial revision.

The following chapter concerns the Russian Federation, which ratified the Charter on 14 September 2000. The deadline for submitting the 6th report was 31 October 2016 and the Russian Federation submitted it on 16 January 2017.

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 "Health, social security and social protection":

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

The Russian Federation has accepted all provisions from the above-mentioned group except Articles 12§§2 to 4; Article 23 and Article 30.

The reference period was 1 January 2012 to 31 December 2015.

The conclusions relating to the Russian Federation concern 10 situations and are as follows:

– 4 conclusions of conformity: Articles 3§1, 3§2, 14§1 and 14§2,

– 4 conclusions of non-conformity: Articles 3§3, 3§4, 11§1 and 12§1.

In respect of the 2 other situations related to Articles 11§2 and 11§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 Russian Federation under the Charter. The Committee requests the authorities to remedy this situation by providing the information in the next report.

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The next report will deal with the following provisions of the thematic group "Labour Rights":

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 21),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 22),
- the right to dignity at work (Article 26).
- the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28)
- the right to information and consultation in collective redundancy procedures (Article 29).

The report should also contain information requested by the Committee in Conclusions 2016 in respect of its conclusions of non-conformity due to a repeated lack of information:

- the right to work – vocational guidance, training and rehabilitation (Article 1§4),
- the right to vocational guidance (Article 9),
- the right of persons with disabilities to independence, social integration and participation in the life of the community – employment of persons with disabilities (Article 15§2).

The deadline for submitting that report was 31 October 2017.

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Conclusions and reports are available at www.coe.int/socialcharter as well as in the HUDOC database.

Article 3 - Right to safe and healthy working conditions

Paragraph 1 - Health and safety and the working environment

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

General objective of the policy

The Committee previously noted the existence of a legislative framework and of a policy to promote health and safety at work (Conclusions 2013).

The Committee recalls that occupational health and safety policy is determined by the Address of the President to the Federal Assembly, the Demographic Policy until 2025 and the Action Plan for the Improvement of Occupational Safety in the Russian Federation for 2008-2010 (Action Plan). The Action Plan implements a major change from a compensation-based to a prevention-based approach to occupational health and safety, which involves workplace risk assessment and integrated risk management; quality risk assessment tools; improved insurance coverage and incentives for employers to implement new technologies and reduce harmful working conditions; use of new technologies in training; and a modern legal framework in line with international standards.

It previously requested the next report provide information on whether the Demographic Policy until 2025 and the Action Plan is regularly assessed or reviewed in the light of changing risks, and on any developments in the policy set out in the Action Plan during the phase scheduled for 2011-2015 (Conclusions 2013).

The report states that in accordance with the Demographic Policy 2025 a systematic review of regulations governing occupational safety to prevent accidents and to minimise risks was carried out.

In 2010-2014 the following state programmes were approved: Federal target program "Overcoming the consequences of radiation accidents for the period up to 2015", Federal Target Program "Fire safety in the Russian Federation for the period up to 2017", Model program for target inspection of physical protection of nuclear materials, nuclear plants and storage of nuclear materials, model program to improve working conditions and safety in the subject of the Russian Federation,

In 2016, the Ministry of Labour and Social Protection of the Russian Federation announced the beginning of the state program "Safe Work" for 2018-2025 under Demographic policy 2025 and in accordance the ILO’s program "SafeWork".

In the period 2010-2014 the Russian Federation ratified a number of ILO Conventions including Prevention of Major Industrial Accidents Convention (№ 174) , Safety and Health in Mines Convention (№176) and Promotional Framework for Occupational Safety and Health Convention (№ 187).

The report states that evaluation of the impact of the Action Plan 2011-2015 is provided for in paragraph 88 of the Action Plan and includes population sampling surveys and the collection of statistical data.

At the level of the regions of the Russian Federation the implementation of the Action Plan for 2010-2015 was carried out by state programs to improve working conditions and occupational, by long-term regional target programs to improve working conditions and occupational safety and programs to improve working conditions and occupational safety at the municipal level.

The Committee points out that new technological, organisational constraints and psychological demands favour the development of psychosocial factors of risk, leading to work related stress, aggression, violence and harassment. It would also point out that, with regards to Article 31 of the Charter, it takes account of stress aggression, violence and

harassment at work when examining whether policies are regularly evaluated or reviewed in the light of emerging risks. States parties have a duty to carry out activities in terms of research, knowledge and communication relating to psychosocial risks (Statement of Interpretation on Article 3 1 of the Charter, Conclusions 2013).

The report does not provide any information on this point. The Committee accordingly reiterates its request.

Organisation of occupational risk prevention

The Committee previously noted (Conclusions 2013) that Federal Act No. 238-FZ introduces a system for occupational risk prevention at company level. It asked that the next report provide information on the implementation of that system in practice.

Pursuant to Article 209 of the Labour Code, an Order of the Ministry of Labour № 438n dd 08.19.2016 approved Regulations on the adoption of an occupational safety and health management system. According to these an employer must establish and maintain an occupational safety and health management system by complying with state occupational safety regulations taking into account the specifics of its activities in light of the latest developments and best practices, guidelines and recommendations of the ILO.

The Committee recalls that under Section 212 of the Labour Code, employers shall conduct workplace risk assessment every five years, in accordance with Ministry of Health and Social Development Decree No. 569 of 31 August 2007 on approval of the certification on working conditions and with the standard GOST 12.0.230-2007 on occupational health and safety management systems. As a result of the workplace risk assessment, working conditions shall be classified into optimal, allowable, dangerous and extreme, following the criteria for classification and working conditions of Manual P 2.2.2006-05 for the hygienic assessment of factors of working environment and working process.

The employer must inform workers about the results of the risk assessment at their workplaces no later than 30 calendar days after the date of approval of the report of the commission.

According to Article 212 of the Labour Code occupational safety rules and regulations for workers are developed by the employer taking into account the views of the elected body of primary trade union organization or other authorised body of workers.

In order to assure compliance with the requirements and exert control over their implementation the employer has a duty to create the occupational safety service or establish a post of the occupational safety expert with appropriate training or work experience in this field in every organisation performing production activities with more than 50 employees. The Committee asks in this respect what sectors are covered.

Improvement of occupational safety and health

All employees, as well as employers, are required to undergo occupational safety training and testing of knowledge of health and safety requirements. There are five types of training: introductory, primary, secondary, unscheduled and targeted.

The Committee previously noted that the public authorities are involved in a system designed to improve health and safety protection through research, development and training. It asked that the next report provide concrete examples of the involvement of public authorities in disseminating information and knowledge with through publications, information technology, seminars, good practices or advice. It also asked for information on the involvement of public authorities in the design of training schemes (how to work, how to minimise risks for oneself or others) (Conclusions 2013).

According to the report during the reference period the Federal Labour and Employment Service (Rostrud) on informational and consulting sessions with employers and workers on

issues of compliance with labour law and other legal regulatory acts containing labour law standards were adopted The regulations define the responsibilities of Rostrud and its territorial bodies to inform and counsel employers and workers at the federal and, accordingly, at the regional levels. This information should be provided by Rostrud for free and take into account the needs of applicants. Information and reference materials (brochures, booklets) are placed in the office of Rostrud (territorial bodies of Rostrud) designed to inform and counsel applicants, and in other places of this public service, as well as posted in the facilities of other public authorities, public institutions (e.g. territorial bodies of federal executive authorities, territorial bodies of the Pension Fund, Social Insurance Fund of the Russian Federation, Federal Compulsory Medical Insurance Fund, Government agencies, Public employment service). Rostrud also maintains a comprehensive website.

The Federal Labour Inspectorate, inter alia, conducts information and consultation sessions with employers and workers on occupational health and safety issues, and provides information to the public.

Consultation with employers' and workers' organisations

The Committee previously noted that employers' and workers' organisations are involved in consultations at various levels and formats.

The report states that an employer has a duty to take into account the opinion of elected trade union body or other employees authorized bodies when elaborating and adopting occupational safety instructions for the undertaking. It recalls that consultations at company level are held within the occupational safety service, established in accordance with Section 217 of the Labour Code in every undertaking with more than 50 employees, or with an occupational safety expert of appropriate training and experience. In undertakings with less than 50 employees, the choice between creating an occupational safety service, hiring an external occupational health service, entrusting an employee or carrying out the functions personally, rests with the employer. Moreover, occupational safety commissions, which include employers' and workers' representatives, may be set up in accordance with Section 218 of the Labour Code by initiative of the employer or the workers. These commissions shall organise joint actions by the employer and the workers towards meeting health and safety requirements, conduct inspections on the working conditions, inform the workers of the results of these inspections, and collect proposals regarding the occupational safety section of the collective agreement.

The report also refers to the Russian Tripartite Commission for the Regulation of Social and Labour Relations which drives collective bargaining at federal level and prepares the General Agreement; promotes social dialogue at federal level; holds consultations on draft bills and regulations at federal level; examines international best-practices, etc. This Commission is replicated in each of the 90 regions by a Committee of Labour and Social Development with similar powers at regional level.

Conclusion

Pending receipt of the information, the Committee concludes that the situation in Russian Federation is in conformity with Article 3§1 of the Charter.

Article 3 - Right to safe and healthy working conditions

Paragraph 2 - Safety and health regulations

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

Content of the regulations on health and safety at work

The Committee previously found that it was not in a position to examine whether the legislation and regulations in force satisfied the general obligation under Article 3§2 of the Charter, which requires that most of the risks listed in the general introduction to Conclusions XIV-2 (1998) be specifically covered by legislation and regulations, in line with the level set by international reference standards. It asked that the next report provide full and detailed information on the legislation and regulations, including any amendments thereto adopted during the reference period, which specifically govern the risks listed in the general introduction to Conclusions XIV-2.

According to the report Russia has during the reference period ratified ILO Convention № 187 Promotional Framework for Occupational Safety and Health 2006, ILO Convention № 174 Prevention of Major Industrial Accidents in 2012, ILO Maritime Labor Convention 2006, ILO Convention № 176 Safety and Health in Mines 1995 and is preparing for the ratification of the ILO Convention № 167 Safety and Health in Construction.

Ratification of ILO Convention No. 184 on Safety and Health in Agriculture (2001) is not being considered as the report states it would be difficult for Russia to implement it.

In addition during the reference period various standard-setting bodies of the Russian Federation adopted more than 500 regulations in the field of occupational health and safety.

The Committee previously pointed out that under the terms of Article 3§2 of the Charter, regulations concerning health and safety at work must cover work-related stress, aggression and violence specific to work, and especially for workers under atypical working relationships (Statement of Interpretation on Article 3§2 of the Charter, Conclusions 2013). It requested information on this issue.

The report does not provide any information on this point. The Committee accordingly reiterates its request.

Levels of prevention and protection

The Committee considers the levels of prevention and protection that the legislation specifies for certain risks.

Establishment, alteration and upkeep of workplaces

The Committee notes the report contains no new information on this point, it asks for updated information in the next report.

Protection against hazardous substances and agents

Protection of workers against asbestos

The Russian Federation has ratified the ILO Convention № 162 on Asbestos. Further it has adopted a policy aimed at eliminating asbestos diseases . However the report suggest that not all types of asbestos are to be banned, its states that the production and use of chrysoltil asbestos will continue, although other forms of asbestos and asbestos containing products are banned. The Committee recalls that use in the workplace of asbestos in what are recognised as its most harmful forms (amphiboles) must be prohibited, it asks if this is the case. The Committee notes that exposure limit values exist. It asks whether measures to

incorporate the exposure limit of 0.1 fibres per cm^3 are being considered. It also asks whether the authorities have considered drawing up an inventory of all contaminated buildings and materials.

Protection of workers against ionising radiation

The Committee notes that the Russian Federation has ratified ILO Convention No. 115 on Ionising Radiation, and has a range of legislation regulating exposure to ionising radiation. According to the report the recommendations established by International Commission on Radiological Protection 1990 are reflected in a number of standards and guidance documents. However the Committee seeks confirmation that workers are protected up to a level at least equivalent to that set in the Recommendations by the International Commission on Radiological Protection in 2007 (ICRP Publication No. 103, 2007).

Personal scope of the regulations

The Committee examines the scope of legislation and regulations with regard to workers in atypical employment.

Temporary workers and other types of workers

The report confirms that temporary workers, interim workers and workers on fixed term contracts are covered by occupational safety and health legislation and have access to occupational health services on an equal basis with other workers.

The Committee previously asked that that the next report provide detailed information on whether occupational health and safety legislation and regulations also cover self-employed, home and domestic workers. According to the report legislation and regulations on occupational safety and health equally cover all workers regardless of nature of the contract between the parties (employment contract for workers or civil contract for so-called "independent workers", nature of work (domestic staff) or place of its execution (homeworkers). The Committee asks how the legislation and rules are monitored for these groups of workers.

Consultation with employers' and workers' organisations

The Committee previously noted that employers' and workers' organisations are involved in consultations at various levels and formats (Conclusions 2013).

The current report provides information on the Russian Tripartite Commission for the Regulation of Social and Labour Relations and refers to the information provided on health and safety bodies at the company level.

Conclusion

Pending receipt of the information, the Committee concludes that the situation in Russian Federation is in conformity with Article 3§2 of the Charter.

Article 3 - Right to safe and healthy working conditions

Paragraph 3 - Enforcement of safety and health regulations

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

Accidents at work and occupational diseases

The Committee previously concluded that the incidence rate of fatal accidents was too high for the right enshrined in Article 3§3 to be secured (Conclusions 2013).

The Committee recalls that data on fatal accidents is collected by ROSSTAT, the Federal Service for Labour and Employment and the Social Insurance Fund, which use different methods to collect data.

According to ROSSTAT the number of people injured in accidents at work resulting in one day or more absence from work was 44,000 in 2011 falling to 31,000 in 2014, an incidence rate of 2,1 and 1,4 per 1000 people employed respectively. These figures continue a previous downward trend. However (as noted previously) they are especially low in comparison to the average incidence rates in other States Parties, as illustrated by EUROSTAT data for the EU-28 (1,885,59 in 2008 and 1642,09 in 2010, per 100, 000 workers) and would suggest that underreporting of accidents is a problem. The Committee asks for the next report to comment on this.

The rate of fatal accidents for the same period was 1,824 and 1,456, respectively, with an incidence rate of 0,084 and 0,067 per 1000 workers. Although the downward trend continues this remains higher than in comparison to the average incidence rates in other States Parties, as illustrated by EUROSTAT data for the EU-28 (2,86 per 100, 000 workers in 2014). The Committee considers the incidence rate of fatal accidents is too high and therefore the measures taken to reduce the number of fatal accidents are inadequate.

According to the report the highest rate of fatal accidents is traditionally observed in organizations with such economic activities as construction, manufacturing, transport and communications, agriculture, hunting and forestry, mining.

The Committee notes the information on occupational diseases however it asks the next report to provide information on the concept of occupational diseases, mechanisms for recognizing, reviewing and revising of occupational diseases (or the list of occupational diseases , the incidence rate and the number of recognized and reported occupational diseases during the reference period, broken down by sector of activity and year), including cases of fatal occupational diseases and the measures taken and/or envisaged to counter insufficiency in the recognition and declaration of cases of occupational diseases, the most frequent occupational diseases during the reference period, as well as the preventative measures taken or envisaged.

Activities of the Labour Inspectorate

According to the report the number of labour inspections has been falling from 665,700 in 2010 to 404,300 in 2013 for labour protection inspections.

The report states that the number of federal labour inspectors has declined (3,100 federal inspectors in 2014) and that the service is understaffed, and is unable to perform its supervision activities. It suggests that based on current staffing levels routine inspections of an enterprise will only be possible once every 26 years. The Committee concludes it cannot be considered that the labour Inspectorate is efficient.

As regards labour inspectors' enforcement power, they have the power issue orders or notices, the power to impose financial penalties they can require the temporary cessation (until the consideration of the case by the court) of activities in exceptional cases where it is necessary to prevent an imminent threat to life or health. The Labour Inspectorate also has

the power to send relevant information, to federal executive authorities, local governments, law enforcement agencies and courts in order to initiate administrative or criminal prosecutions.

Conclusion

The Committee concludes that the situation in Russian Federation is not in conformity with Article 3§3 of the Charter on the grounds that:

- measures to reduce the excessive rate of fatal accidents are inadequate;
- the labour inspection is so understaffed it cannot be considered as efficient.

Article 3 - Right to safe and healthy working conditions

Paragraph 4 - Occupational health services

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

The Committee recalls that, when accepting Article 3§4 of the Charter, states undertook to give all workers in all branches of the economy and all undertakings access to occupational health services. It previously noted that preliminary and periodical medical examinations are mandatory only for workers employed in strenuous work and work under harmful and/or dangerous conditions and requested the next report provide statistic figures on the total number of workers who must undergo preliminary and periodical medical examination; the rate of occupational physicians to the total labour force; the rate of undertakings which, either in-house or through external suppliers, provide access to medical care in practice. It also asks for information on access to medical care for workers who are not exposed to strenuous work and work under harmful and/or dangerous conditions; and on any policy to increase, in consultation with social partners, the provision by undertakings of access to medical care in practice.

According to the report preliminary medical examinations are performed for the following categories of persons:

- persons who have not reached the age of 18 years;
- workers employed in jobs with harmful and (or) dangerous working conditions as well as work related to traffic;
- persons engaged to work in the Far North and other localities;
- persons employed for work on a rotational basis/shift work;
- workers in the food industry, trade, water pipeline structures, treatment, and children's institutions, as well as certain other employers;
- workers ensuring the movement of trains;
- workers engaged in underground work;
- some other category of workers in accordance with federal laws.

Periodic medical examinations are performed for the following categories of workers:

- workers employed in harsh work and work with harmful and (or) dangerous working conditions (including in subterranean work), as well as in work involving the movement of transportation.
- workers of organisations in the food industry, trade, water pipeline structures, treatment, and children's institutions, as well as certain other workers.

The Committee takes note that the report does not provide statistics on the total number of workers who must undergo preliminary and periodical medical examination; the rate of occupational physicians to the total labour force; the rate of undertakings which, either in-house or through external suppliers, provide access to medical care in practice. However the report provides data on specific groups of workers that have the obligation to undergo preliminary and periodical medical examination. Thus, 39.7% of workers are employed in hazardous working conditions and must undergo mandatory preliminary and periodic medical examinations. It also gives the number of workers working in the food industry etc. who must also undergo such examinations. The report further states that in 2013 and 2014 more than 700, 000 workers underwent a periodic medical examination.

The report also indicates that workers who are not exposed to strenuous work and work under harmful and/or dangerous conditions, and who are not identified in the categories of workers that must undergo medical examinations, can use the sanitary and medical care services provided by employers.

The Committee notes this information but finds that it is not sufficient to enable the Committee to assess the situation, and therefore, it concludes that it has not been established that there is a strategy to progressively institute access to occupational health

services for all workers in all sectors of the economy.The Committee needs to be provided with information that demonstrates that occupational health services are being progresively provided to all workers.

The Committee asks for information in the next report on existing strategies to improve access to occupational health services for temporary workers, interim workers, self employed workers, home and domestic workers.

Conclusion

The Committee concludes that the situation in Russian Federation is not in conformity with Article 3§4 of the Charter on the ground that it has not been established that there is a strategy to progressively provide access to occupational health services for all workers in all sectors of the economy.

Article 11 - Right to protection of health

Paragraph 1 - Removal of the causes of ill-health

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

Measures to ensure the highest possible standard of health

The Committee notes from WHO that life expectancy at birth (average for both sexes) slightly increased from 69.03 in 2010 to 70.5 in 2015. Despite this upward trend, the life-expectancy rate is still low relative to other European countries (for example, the EU-28 average in 2015 was 80.6).

The Committee notes from the World Bank data that the death rate (deaths/1,000 population) was 13 in 2015, which is high compared to other European countries.

The Committee previously asked for information on specific measures taken to tackle the main causes of death such as cardiovascular diseases, cancer, tuberculosis and road accidents (Conclusions 2013). The Committee takes note from the report of the measures taken within the state program "Health Development" 2013 – 2020 aimed at reducing mortality caused by cardiovascular diseases, tuberculosis, cancer and road accidents. Data provided in the report show: a decrease by 3.4% of mortality caused by diseases of circulatory system in 2015 as compared to 2014; a reduction of mortality rate from 10.1 deaths per 100.000 people to 9.0 deaths per 100.000 in 2015; a decrease of 18.9% of the number of fatalities in road accidents. The Committee asks to be informed on the measures taken to prevent mortality caused by the above mentioned diseases and the outcomes of such measures on the mortality rates.

The Committee notes from the World Bank data that the infant mortality rate (deaths/1,000 live births) was 8 in 2015. It previously noted that the infant mortality decreased slightly from 8.42 per 1,000 live births in 2008 to 7.61 per 1,000 live births in 2010 (Conclusions 2013). The report indicates that in 2015, the infant mortality rate in the Russian Federation dropped to 6.5 per 1 000 live births compared with the same period in 2014 when it was 7.4 per 1 000 live births (thus a reduction of 12.2%). The Committee takes note of the measures taken during the reference period to reduce the infant mortality rate described in the report. However, the Committee considers that the rate is still high compared to the rate of other European countries (for example, the EU-28 rate in 2015 was 3.6 per 1,000 live births).

As regards the maternal mortality rate, the Committee noted that during the previous reference period the rate decreased (from 20.95 deaths per 100,000 live births in 2008 to 16.92 deaths per 100,000 live births in 2010). However, the Committee noted that these rates are also considerably above the average in other European countries (Conclusions 2013). As the current report does not provide specific figures, the Committee notes from the WHO data that the maternal mortality rate in 2015 stood at 25 deaths per 100,000 live births which shows even an increase comparing to the previous reference period.

In its previous conclusion, the Committee concluded that the situation was not in conformity with Article 11§1 of the Charter on the ground that insufficient efforts have been undertaken to reduce the high infant and maternal mortality rates (Conclusions 2013). The Committee takes note from the report of the measures taken in area of maternal and newborn health, including measures aimed at reducing maternal and infant mortality. It asks to be kept informed on the implementation of such measures, their effect on reducing the maternal and infant mortality rate as well as updated data regarding the trends of the mortality rates. However, it notes that the situation has not improved substantially since the previous reference period. In view of the increasing rate of maternal mortality, the prevailing high infant mortality rate, as well as the very low life expectancy rate, the Committee finds that insufficient efforts have been undertaken in this field, and therefore reiterates its previous finding of non-conformity on this point.

Access to health care

The Committee noted previously that the right to healthcare is provided for by the Constitution of the Russian Federation and a state guaranteed medical benefits package is defined in the mandatory health insurance (MHI) and provided at federal and municipal health care facilities free of charge (Conclusions 2013).

The Committee takes note from the report of the main regulations adopted during the reference period related to the organisation and supervision of the health care sector. It notes in particular the measures taken through the state programme "Health Care Development 2013-2020" which is aimed at improving access and efficiency of health services. The Committee asks to be kept informed on the implementation of this programme and its impact on the main indicators of health (especially the rates of avoidable mortality).

The Committee notes from the OECD data that the total health spending accounted for 6.3% of GDP in the Russian Federation in 2012, significantly below the OECD average of 9.3%. The same source indicates that in the Russian Federation, 61% of health spending was funded by public sources in 2012, much lower than the average of 72% in OECD countries.

The report indicates that in 2013, the per capita quota of funding per 1 inhabitant amounted to 9032.5 rubles; in 2014 it rose to 10 294.4 rubles and in 2015 – 11 599.1 rubles. A single-channel financing mechanism was launched during the reference period which means that funding comes only from the compulsory health insurance. As for the federal budget, its spending on health care is decreasing gradually. The report adds that the sector of dental services, as a rule, more often involves paid services, since most of them are not included in the list of free services of MHI. The Committee asks that the next report on Article 11§1 contain information on dental care services and treatments (such as who is entitled to free dental treatment, the costs for the main treatments and the proportion of out-of-pocket paid by the patients).

The Committee recalls that the cost of health care must not represent an excessively heavy burden for the individual. Out-of-pockets payments should not be the main source of funding of the health system (Conclusions 2013, Georgia). Steps must be taken to reduce the financial burden on patients from the most disadvantaged sections of the community (Conclusions XVII-2 (2005), Portugal). The report does not provide information on out-of-pocket payments. The Committee asks for statistical data on the out-of-pockets payments paid by the population to access different health services and treatments, including on payments for outpatient prescription pharmaceuticals.

The Committee asked previously comments on the reported generalised informal payments (Conclusions 2013). The report indicates that there are no official statistics on informal payments but surveys performed in this area indicate a slight decrease in this practice. The Committee reiterates its request that the next report provide information on the share of out-of-pocket expenses attributable to informal payments, the frequency of informal payments and whether the informal payments represent a common practice in the Russian Federation.

The Committee noted previously that (i) accessibility of medical assistance for rural populations is much lower than it is for the urban populations, and wealthier people consume medical services more frequently than the poorer sections of the population even though the poorer people have worse health, and (ii) public opinion surveys generally show a lack of client satisfaction with the Russian health system. It invited the Government to comment on these matters (Conclusions 2013). The report indicates that surveys show that population with greater economic and social resources (inhabitants of large cities with high income, younger and more educated) provide in most cases a more favourable assessment of the situation.

The report further provides information on initiatives taken by the Ministry of Health to improve the organisation of primary care and its accessibility and quality, including for rural population. In order to provide primary medical care to residents of sparsely populated and

remote areas with less than 100 inhabitants, it is offered to use field forms of work including mobile medical complexes using cross-country transport and in some cases water and railway transport. The analysis of the health infrastructure of the Russian Federation aimed at determining the settlements with population of more than 100 people without medical institutions or their structural units is being performed as well as analysis of settlements with population of less than 100 people outside the service areas of medical institutions. The models of medical care to the inhabitants of these settlements are being under development. The statistical data presented by the report show a slight increase of the number of doctors in rural areas and medical doctors' availability.

The Committee notes from Health Systems in Transition Report Russian Federation 2011 that input data show that the Russian health system significantly favours inpatient care at the expense of primary care services. Resource usage indicators also point to reduced allocative efficiency; for example, the hospitalisation rate is much higher than the similar rate in other countries of the WHO European Region. The Committee asks whether the recent reforms and measures taken have strengthened primary care services or otherwise which is their impact on the primary health care, in particular in rural areas.

With regard to waiting times, the Committee asked information on the rules that apply to the management of waiting lists and the statistics on average waiting times in health care (Conclusions 2013). The report provides the required waiting times for different interventions which range between immediate appointment (in the case of emergency), to seven days for the routine medical care services of general practitioners, pediatricians, general practitioners (family doctors); fourteen days for planned specialist consultations and diagnostic tests in hospitals; one month for planned consultations in consulting and diagnostic centers; three months for medical care in day patient facility (including medical rehabilitation); four months – the duration of the magnetic resonance and positron emission tomography; six months for planned inpatient care (except for high-tech type of medical care and rehabilitation treatment). The report indicates that in 2015 the waiting period for surgical treatment of patients with hormone-active tumors of the hypothalamic-pituitary region was reduced from 6.4 months to 3.6 months due to the development of medical care and integration of high-tech neurosurgical care.

The report indicates that measures to reduce waiting times were taken during the reference period such as the e-record which is used by people mostly in metropolitan areas to make a doctor's appointment, a regional portal of public services, unified regional contact center, mobile applications, interactive kiosks, as well as a telemedicine subsystem of the unified state information system in the health sector through which it is planned to build a system of remote service delivery at all levels from medical and obstetric centers to medical institutions at the federal level. The Committee takes note of the required waiting times described in the report as well as the measures taken to monitor and reduce waiting times. It asks the next report to provide statistical data on the actual average waiting times for inpatient and outpatient care, including surgeries. It also asks whether the measures taken have had any impact on reducing the waiting times for primary and specialist care. Meanwhile, it reserves its position on this point.

In reply to a previous question addressed by the Committee, the report provides information on the treatment and rehabilitation facilities for drug addicts, as well as on the measures taken during the reference period to open new rehabilitation centers, to improve the material conditions and to train the professionals working in the drug treatment facilities.

The Committee notes from WHO statistics (Infographic – Depression in the Russian Federation), that according to recent data 5.5% of the population in the Russian Federation suffers from depression (5% being the regional average). The Committee asks that the next report contain information on the availability of mental health care and treatment services, including information on the prevention of mental disorders and recovery measures.

As regards the right to protection of health of transgender persons, the Committee previously received submissions from the International Lesbian and Gay Association (European Region) (ILGA) stating that "in the Russian Federation the practice requires transgender people to undergo medical treatment (sterilisation) as a condition of legal gender recognition". Moreover, ILGA claimed that "the authorities fail to provide adequate medical facilities for gender reassignment treatment (or the alternative of such treatment abroad), and to ensure that medical insurance covers, or contributes to the coverage of such medically necessary treatment, on a non-discriminatory basis". In this respect, the Committee asked whether in the Russian Federation legal gender recognition for transgender persons requires (in law or in practice) that they undergo sterilisation or any other invasive medical treatment which could impair their health or physical integrity (Conclusions 2013). The Committee takes note of the comments submitted by Transgender Europe and ILGA-Europe on the implementation of Article 11 of the Charter in the current cycle stating that the Russian Federation is one of the states that requires sterilisation as a condition for legal gender recognition.

The report indicates that medical services for gender reassignment are not included in the program of state guarantees of free medical care financed by compulsory medical insurance funds and, in most cases, almost all costs associated with the gender reassignment are paid by transgender persons independently. The report adds that medical sterilisation can only be performed upon a written request from a person over the age of thirty-five or a person with at least two children, and in case of medical indications and informed consent of the person regardless of age and children. Transgender persons are not mentioned in the list of medical indications for medical sterilisation. The Committee reiterates its question whether legal gender recognition for transgender persons requires (in law or in practice) that they undergo sterilization or any other invasive medical treatment which could impair their health or physical integrity.

Conclusion

The Committee concludes that the situation in the Russian Federation is not in conformity with Article 11§1 of the Charter on the ground that the measures taken to reduce infant and maternal mortality have been insufficient.

Article 11 - Right to protection of health

Paragraph 2 - Advisory and educational facilities

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

Education and awareness raising

The report describes the measures envisaged to promote a healthy lifestyle for children and adolescents through the "School of Health" for all, a healthy nutrition, information and communication strategy for alcohol and tobacco control, TV campaigns and multimedia internet portal as well as a telephone reference service line "Healthy Russia" providing free advice on centers of health, healthy nutrition, physical activities, alcohol, tobacco and drugs users.

The Committee previously asked information on health education at school (Conclusions 2013). The report indicates that the school curriculum for primary and secondary education includes subjects such as physical culture and health and safety. It further provides the content of such curriculum and information on conferences and competitions among schools promoting health and a healthy lifestyle which took place during the reference period.

The Committee recalls that health education in school shall cover the following subjects: prevention of smoking and alcohol abuse, sexual and reproductive education, in particular with regard to prevention of sexually transmitted diseases and AIDS, road safety and promotion of healthy eating habits. The Committee held that States Parties must ensure that sexual and reproductive health education forms part of the ordinary school curriculum; that the education provided is adequate in quantitative terms; that the form and substance of the education, including curricula and teaching methods, are relevant, culturally appropriate and of sufficient quality, in particular that it is objective, based on contemporary scientific evidence and does not involve censoring, withholding or intentionally misrepresenting information, for example as regards contraception and different means of maintaining sexual and reproductive health; and that a procedure is in place for monitoring and evaluating the education with a view to effectively meeting the above requirements (International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Croatia, Complaint No. 45/2007, Decision on the merits of 30 March 2009, §§46 – 47). The Committee asks for information in the next report on whether and how sexual and reproductive education is provided in schools in the Russian Federation.

Counselling and screening

In its previous conclusion, the Committee asked to be kept informed on the progress of the on-going projects in the area of maternal and newborn health (Conclusions 2013). The report describes the medical health services which are provided free of charge to pregnant women. It adds that integrated prenatal (antenatal) diagnosis of disorders of child development is aimed at early detection of hereditary and congenital diseases (developmental disability) before birth and that neonatal screening for 5 hereditary and congenital diseases was performed in all subjects of the Russian Federation in 2014. All children with congenital hereditary diseases registered and receive the necessary treatment. Modern medical equipment for intensive care unit for newborns and departments of pathology of newborn of the federal state budgetary institution allows the introduction of innovative technologies of nursing and rehabilitation for premature babies born with low and extremely low birth weight thereby reducing perinatal and infant morbidity and mortality including infants born with extremely low birth weight. The activities for the development of neonatal surgery equipping some of the federal state budget institutions were performed in 2014 in order to improve access to medical care of newborns with developmental disabilities and to improve medical care quality for children.

In 2014, the Russian Federation developed the regional programs for healthcare modernisation programs in terms of design, construction and commissioning of 32 perinatal centers in 30 subjects of the Russian Federation. Through these programs, training/retraining is provided to medical personnel who have started to work in perinatal centers.

As regards free medical checks for children, which under Article 11§2 must be carried out through the period of schooling, the Committee noted previously that regular preventive medical examinations are conducted annually for children. It asked who is responsible for undertaking these medical examinations, and the proportion of pupils covered by them (Conclusions 2013). The report indicates that from 2015 all children and adolescents have to attend an annual mandatory free medical examination, and adults have to attend once in three years. The report does not address the Committee's previous question. The Committee reiterates its question.

The Committee noted previously that preventive medical examinations for certain categories of the population using screening methods to detect socially significant diseases are available. The Committee recalled that pursuant to this provision there should be screening, preferably systematic, for diseases such as cancer, cardiovascular diseases or other major causes or mortality. Preventive screening must play an effective role in improving the population's state of health. It therefore asked which population groups are entitled to the above-mentioned preventive check-ups, the type of diseases which are screened and the frequency of such examinations (Conclusions 2013).

The report indicates that medical examinations primarily contribute to the identification of diseases among the population through preventive medical examination for early detection of pathological conditions, diseases and risk factors for their development. The Committee notes from the report that measures were taken to improve the early detection of cardiovascular diseases by clinical examination and preventive counseling, as well as the early detection of tuberculosis cases by improving the material and technical equipment of laboratories of medical institutions with TB profile. With regard to cancer, the action plan to reduce cancer mortality of the state programme "Health development in the Russian Federation" includes measures aimed at improving the efficiency of health care organisations for the early detection of cancer, including use of screening methods and forms of field work; replication of effective methods of diagnosis of malignant tumors (radiation diagnosis, immunophenotyping, molecular, cytogenetic studies, etc.), including on the basis of clinical guidelines (treatment protocols); implementation of high-radiological, chemotherapeutic and combined surgical methods of treatment using clinical protocols.

The Committee asks information on the implementation of all the preventive measures in practice and data on the frequency and number of screenings/preventive examinations in practice. It also asks whether these preventive examinations are geographically distributed throughout the entire territory of the Russian Federation.

Conclusion

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

Article 11 - Right to protection of health

Paragraph 3 - Prevention of diseases and accidents

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

Healthy environment

The Committee took note previously of the different pieces of legislation and regulations adopted by the Russian Federation for the reduction of environmental risks, in particular in the field of air quality, water safety, environmental noise, protection of the population against the risks from ionising radiation and asbestos, and measures in the area of food safety (Conclusions 2013). The Committee asked for information on the institutional structures for the proper implementation of the above-mentioned legislation. It also wished to receive updated information on the levels of air pollution, contamination of drinking water and food intoxication during the reference period, namely whether trends in such levels increased or decreased (Conclusions 2013).

The report does not provide any information on this important aspect of Article 11§3. The Committee repeats its questions and points out that if such information is not provided, there will be nothing to establish that the situation is in conformity with the Charter on this point.

Tobacco, alcohol and drugs

The Committee noted previously that report that the WHO Framework Convention on Tobacco Control was transposed by a Federal Law on 24 April 2008. A state policy to reduce tobacco consumption for the period 2010-2015 was subsequently adopted, and a draft law to protect persons from passive smoking, to prevent tobacco sale to and by minors and other measures was under preparation. The Committee asked to be kept informed on the implementation of these measures, including the state of laws on smoke-free environments in public places, health warnings on tobacco packages, and tobacco advertising, promotion and sponsorship (Conclusions 2013). The report only indicates that an important step towards the prevention of non-communicable diseases in the Russian Federation was the adoption of the Federal Law № 15-FZ dd February 23, 2013 "On protection of health of citizens from exposure of tobacco smoke and consequences of tobacco use." The Committee asks for information on the implementation and impact of this Law on the tobacco consumption and prevention.

As regards to alcohol consumption, the report indicates that within the period 2008 – 2014 it has been noted a gradual decline of average consumption of alcoholic beverages per capita in terms of absolute alcohol (in 2008, 16.2 liters per capita per year, 2013 – 11.87 liters/year, 2014 – 11.5 liters/year according to preliminary data).

The report indicates that the Ministry of Health of the Russian Federation approved the "information and communication strategy for alcohol and tobacco control, prevention and control of non-medical use of narcotic drugs and psychotropic substances till 2020". Other measures to prevent consumption of alcohol, tobacco and drugs are mentioned in the report such as the telephone service line “Healthy Russia”.

The Committee asks for updated information in the next report on the levels and trends with regard to tobacco, alcohol and drugs consumption, as well as the measures taken to reduce and prevent the consumption.

Immunisation and epidemiological monitoring

The Committee noted previously that under the Federal Law “On immunoprophylaxis of communicable diseases", in order to prevent, limit and eliminate the spread of infectious diseases, preventive vaccination measures are taken for the population against 11 diseases including hemophilic infection vaccination (Conclusions 2013).

The report indicates that in Russia there is a high level of immunisation coverage included in the National calendar of immunisation and timely coverage of children by vaccination against diphtheria, pertussis, tetanus, polio, measles and mumps in decreed periods: 97-98% and revaccination is 96-97%. The report adds that in 2015 has been noted a decrease of infections incidence controlled by means of specific immunisation by 2.8 times for rubella, by 5.7 times for measles and by 25.4% for mumps compared to 2014.

The Committee asks for updated figures on the coverage rates for the main vaccines in the next report.

Accidents

In its previous conclusion, the Committee asked information on any measures or initiatives taken to prevent accidents, as well as on trends in accidents (Conclusions 2013). The report indicates that since 2013, a system of injury care centers has been developed not only along the federal highways, but also along public roads of regional and inter-municipal nature. The system allows medical treatment of road accidents victims by qualified personnel at the place of the accident, during transport and in medical institutions. The number of injury care centers increased from 783 in 2013 to 1251 in 2014 and 1501 in 2015. The Regulations on the procedure of obtaining the driving license have been modified in 2015 and introduced more strict requirements in order to prevent road accidents.

The Committee recalls that States must take steps to prevent accidents. The main sorts of accident covered are road accidents, domestic accidents, accidents at school and accidents during leisure time (Conclusions 2005, Republic of Moldova). The Committee asks for updated information in the next report on the measures taken to prevent road accidents, domestic accidents, accidents at school and accidents during leisure time, as well as on the trends in the number of such accidents.

Conclusion

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

Article 12 - Right to social security

Paragraph 1 - Existence of a social security system

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

In the case of **family** and **maternity benefits**, the Committee refers to its conclusions on, respectively, articles 16 and 8§1 (Conclusions 2015).

Risks covered, financing of benefits and personal coverage

The Committee refers to its previous conclusions for a description of the Russian social security system, and notes that it continues to cover all the traditional risks (medical care, sickness, unemployment, old age, work accidents/occupational diseases, family, maternity, invalidity and survivors). The system also continues to rest on collective funding: it is funded by contributions (employers, employees) and by the State budget.

In its previous conclusion (Conclusions 2013), the Committee requested information on the percentage of persons insured for medical care, out of the total population. It furthermore requested information on the percentage of persons insured, out of the total active population, in respect of pensions, sickness, maternity and unemployment benefits and indicated that if this information would not be provided, there would be nothing to establish that the situation regarding the coverage of social security risks is in conformity with the Charter.

According to Missceo, all citizens of the Russian Federation, foreign citizens having permanent or temporary residence in the Russian Federation, as well as stateless persons are entitled to **healthcare**. In this respect, the report provides details of the type of medical care provided and confirms, in response to the Committee's question (Conclusions 2013), that the compulsory medical insurance covers not only employees, but also self-employed people, agriculture workers, unemployed people, students etc. and states that as of April 1, 2015, the number of persons insured under the compulsory medical insurance amounted to 146.5 million, including 61.5 million employed and 85 million unemployed people. The Committee considers that the situation is in conformity with the Charter on this point.

Under the Federal Law No 167-FZ dd 15 December 2001 "On Compulsory Pension Insurance in the Russian Federation", the persons covered by the compulsory pension insurance (**old age, disability, survivors**) are all residents, including foreigners and stateless persons. Up to 2015, the old age pension scheme consisted of two components, a compulsory social insurance covering all insured, and a contributory scheme applying to persons born in 1967 or after. The Committee notes however from the report, from Cleiss (*French Liaison Centre for European and International Social Security*) and from ISSA (International Social Security Association) that certain reforms took place during the reference period and affected in particular the pension system (Laws 243-FZ of 3 December 2012, 351-FZ of 4 December 2013, 400-FZ of 28 December 2013, 424-FZ of 28 December 2013). In particular, according to the report, the entire amounts of contributions was transferred in 2014 to the insurance component of the pension system and, from 2015, the contributions based component was transformed into an independent pension scheme. The amount of contributions paid by the insured did not change, but it is henceforth transferred to insurance pension in full or distributed between the insurance and the contributions-based pension (16% and 6% respectively). It asks the next report to provide further information on the new system applying as from 2015 to old-age, disability and survivors' pensions, in particular as regards any impact on the personal coverage for each of these branches. In the light of the information provided in the report on the categories of people covered by the pension scheme, the Committee considers that, in principle, an adequate percentage of the active population should be covered by the compulsory social insurance. It asks nevertheless the next report to provide information on the percentage of insured out of the total active population.

As regards **unemployment**, the report reiterates that only (earnings-related and flat-rate) non-contributory benefits, financed by the Federal budget, are granted to persons registered as unemployed and satisfying the qualifying conditions. The Committee asks the next report to clarify whether only Russian citizens are entitled to unemployment benefits or also foreign residents. It notes in this respect that, when the system is financed by taxation, its coverage in terms of persons protected should rest on the principle of non-discrimination, without prejudice to the conditions for entitlement (Statement of interpretation on Article 12, Conclusions 2002). As the report does not provide any information on the personal coverage, the Committee considers that it has not been established that the existing unemployment scheme covers an adequate percentage of the active population.

The report lists the categories of persons covered by the compulsory social insurance in case of temporary incapacity (**sickness**) and maternity, in accordance with the Federal Law No 255-FZ dd December 29, 2006 "On Compulsory Social Insurance in case of temporary disability and maternity". The Committee notes from the report that all employees are covered, including those working in the public sector, as well as some self-employed workers (lawyers, individual entrepreneurs, notaries, farmers...), the clergy and the working prisoners. According to the report, in 2016 (out of the reference period), on average there were 51 897 076 persons insured against temporary incapacity and maternity, out of an active population of 76 588 000 (ages from 15 to 72), i.e. almost 68%.

According to the report, compulsory social insurance against **industrial accidents and occupational diseases** (under the Federal Law No 125-FZ dd July 24, 1998) covers employees (including persons sentenced to imprisonment and involved in paid work) and in 2016 (out of the reference period) there were on average 51 627 551 persons insured out of an active population (aged 15 to 72 years) of 76 588 000, i.e. 67%.

Adequacy of the benefits

In the absence of the Eurostat median equivalised income indicator, the Committee notes from official statistics that, at the end of the reference period the minimum subsistence level was set at RUB 9452 (€118) per month. The minimum wage was RUB 5965 (€75).

The Committee previously noted (Conclusions 2013) that **sickness** benefits are paid by the employer for the first three days, and from the compulsory social insurance afterwards. In response to the Committee's question concerning the minimum level of sickness benefits, the report indicates that the amount of the benefit is calculated on the basis of the average earnings of the insured person during the two previous calendar years and taking into account the length of coverage (60% of the salary if the person has been insured for less than 5 years, 80% for an insurance period between 5 and 8 years, up to 100% for an insurance period of at least 8 years or if the person has three dependent children). If the insured person had no earnings during the previous two years or the average monthly salary is below the minimum wage, the average salary used as a basis to calculate the amount of benefit is the minimum wage. For a person whose qualifying period is less than 6 months, the temporary disability benefit is paid at a monthly rate not exceeding the minimum wage. The Committee notes that the minimum wage was set at a level lower than the minimum subsistence level and that only those with at least 8 years of insurance would get, as minimum benefit, an amount corresponding to 100% of the minimum wage. An even lower amount would be paid to workers with less than 8 years insurance. As the minimum level of benefit is therefore lower than the subsistence level, the Committee considers that it is manifestly inadequate.

According to the report, the same calculation of average earnings, and therefore of minimum level of benefits for people with an insurance period of less than 6 months, is also used in the calculation of **maternity** benefits and benefits granted in case of **industrial accidents and occupational diseases**. However, as regards maternity benefits, the report indicates that additional benefits are also granted, as well as means tested social assistance benefits.

The Committee asks that comprehensive and updated information on the maternity benefits scheme and the relevant additional benefits be provided in the next report concerning Article 8§1 of the Charter. As regards the benefits granted in cases of industrial accidents and occupational diseases, the Committee notes that they are paid for the whole period of temporary incapacity to work, in the amount of 100% of the average earnings. As the minimum earnings correspond to the minimum wage, and this is lower than the subsistence level, the Committee considers that the minimum level of the benefits is manifestly inadequate.

Unemployment benefits are paid to persons registered as unemployed. The Committee previously noted that those who have worked for at least 26 weeks in the previous 12 months are entitled to 75% of their average wage for 12 months, then to 60% of it for the following 4 months and to 45% in the following 5 months. Persons who do not qualify for these earnings-related employment benefits are entitled to a flat rate minimum amount for a period which, according to Missceo, cannot exceed 12 months in total, payable over a period of 18 calendar months. In response to the Committee's question, the report states that unemployment benefits may be suspended for up to three months inter alia if the claimant refuses two suitable work offers. The notion of "suitable" job offer includes interim work corresponding to the qualifications of the worker, his/her previous contract, state of health and transport accessibility of the workplace. On the other hand, a job can not be considered suitable if it implies a change of residence without the consent of the person; if the working conditions do not comply with the rules and regulations on labor protection or if the proposed salary is lower than the average wage the person had in the previous workplace, during his/her last three months of work. The Committee asks the next report to clarify what remedies are available to contest decisions to suspend or withdraw unemployment benefits.It reserves in the meantime its position on this issue. The Committee previously found (Conclusions 2013) that the minimum level of unemployment benefits was manifestly inadequate. The report does not provide any information on the level of benefits during the reference period. The Committee notes from other sources (Cleiss, Issa) that the minimum level of flat-rate benefits did not change and, at the end of 2015, was still set at RUB 850 (€11 at the end of 2015), largely below the minimum subsistence level. Accordingly, the Committee maintains its finding of non-conformity on this point.

The report indicates that **old-age pensions** depend on the insurance contributions to the Pension Fund paid by the employer for the worker after 2002, and the value of the pension rights acquired by that time. In particular, the report explains that, as a result of the reforms which entered into force during the reference period, as from January 2015, the amount of the contributions-based component of the pension is calculated on the basis of an individual pension coefficient (IPC) and the length of service. The insurance pension also includes a fixed component, indexed annually, the amount of which is set by law and depends on the type of pension, but not on the length of service or the level of earnings. The amount of this fixed component was RUB 4383.59 in 2015. Article 12.1 of the Federal Law No 178-FZ dd 17 July 1999, "On government social assistance" provides that the level of pensions may not be less than the minimum subsistence level. If the amount is lower, the person is entitled to federal and regional supplements, in order to reach the subsistence level. According to Missceo, as of April 2015, the minimum amount of the state old-age pension, paid to persons not entitled to a labour pension, was RUB 9538.18 (€119). As this amount corresponds to the minimum subsistence level, the Committee considers that the situation is in conformity on this point.

The Committee notes that the same scheme applying to old-age pensions also concerns **disability** pensions. According to the information available from Issa, Cleiss and Missceo, the pension is the sum of the insured's pension points multiplied by the value of a pension point in the year the pension is claimed, plus a basic flat-rate benefit. For a single pensioner with 100% disability (categories I and II) without dependants, the minimum basic monthly flat-rate amount was RUB 4559 (€57) under the Disability insurance pension (social

insurance) and of RUB 4769 (€60) under the state social disability pension (social assistance). According to Missceo, as of April 2015, the minimum amount of social disability retirement pension was RUB 4054 (€51). It notes that all these amounts are lower than the minimum subsistence level. It accordingly asks the next report to clarify whether disability pensions are also eligible to federal and regional supplements that would bring them to the level of the subsistence minimum. It reserves in the meantime its position on this point.

Conclusion

The Committee concludes that the situation in the Russian Federation is not in conformity with Article 12§1 of the Charter on the grounds that:

- it has not been established that the existing unemployment scheme covers an adequate percentage of the active population;
- the minimum level of sickness benefits is inadequate;
- the minimum level of industrial accidents and occupational diseases benefits is inadequate;
- the minimum level of unemployment benefits is inadequate.

Article 14 - Right to benefit from social welfare services

Paragraph 1 - Promotion or provision of social services

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

Organisation of the social services

In its previous conclusion (Conclusions 2013) the Committee asked that the next report confirmed that a bill "On the Basic Principles of Social Service of the Population in the Russian Federation" had been adopted and to provide details on its implementation.

The report indicates that the Federal Law № 442-FZ dd December 28, 2013 On the fundamentals of social services in the Russian Federation (the Federal Law № 442) came into force on January 1, 2015 aiming to develop and increase quality and efficiency of social services in the country.

The Federal law № 442 defines the basic principles of social services, clarifies the meaning of some basic concepts used in the sphere of social services, determines the forms of social services, types of social services and terms and principles of financial provision for social service institutions. The report indicates that social services are available to all categories of the population who are likely to need them and specify terms and conditions that apply to receive social services assistance and to provide care also on a voluntary basis. In this respect the Committee asks that the next report provide information on the impact of the reform on social services that came into force in January 2015.

The report indicates that the provision of social services to people with disabilities is also regulated by the Federal Law № 181-FZ dd November 24, 1995 "On social protection of disabled persons in the Russian Federation". This law defines the state policy in the sphere of social protection of disabled persons in the Russian Federation. Its purpose is to provide people with disabilities with equal possibilities to exercise their rights and freedoms. It establishes measures of social protection of disabled persons including in the sphere of social services which are still guaranteed and funded at the federal level.

The report also indicates other Federal Laws which establish specific provisions, social services, for families with children, orphans and children left without parental care including children in child care centres and veterans.

Effective and equal access

The report indicates that the Federal Law № 442 guarantees equal and free access of citizens to social services regardless of their sex, race, age, nationality, language, origin, place of residence, attitude to religion, convictions and membership in public associations. Moreover, the report underlines that social services are provided for free, for a fee or for partial fee. Every citizen can receive various services by entering into one or another social relation paying a certain cost. The difference between social services lies in the fact that they are provided to a certain category of people to meet their specific needs free of charge or with partial payment at the expense of the institution. Free social services in the public system of social services are provided to minor children, and persons who have suffered in emergency situations, armed ethnic (ethnic) conflict. Other categories of citizens can apply for free social services, if their per capita income is less than or equal to a certain threshold established by law. The threshold may not be less than three-quarter of the subsistence minimum established.

The report also indicates that the Federal Law № 442 provides the possibility of involvement of non-governmental sector in the provision of social services including the possibility of a state financial support for those organizations.

In its previous conclusion (Conclusions 2013) the Committee asked what criteria are used for those in need to access social services .

The report indicates that Article 15 of the Federal Law № 442 provides 8 specific circumstances that impair or may impair the citizens living condition: 1) total or partial loss of the ability or possibility of self-service, to move independently, to provide basic necessities of life due to illness, injury, age or disability; 2) presence of a person or persons with disabilities in the family including child or children with disabilities in need of permanent home care; 3) presence of a child or children (including under guardianship) with difficulties in social adaptation; 4) impossibility to provide care (including temporary) for a disabled person, child, children, and lack of care for them; 5) presence of intra-conflict including drug or alcohol addiction, persons with addiction to gambling, persons suffering from mental disorders, presence of domestic violence; 6) lack of defined residence including a person under the age of 23 and completed stay in the institutions for orphans and children left without parental care; 7) lack of job and livelihoods; 8) presence of other circumstances recognized as deteriorative or capable to deteriorate citizens' living conditions by the regulatory legal acts of the subjects of the Russian Federation. The law also regulates conditions under which a person is entitled to receive assistance for free or on a paid basis.

In its previous conclusion (Conclusions 2013), the Committee asked to specify the level of subsistence minimum, in order to have an opinion about the effectiveness of access to social services.

The report replies giving a table indicating the amount per capita and by categories of people and specifying that the amount may not be less than the amount set at the federal level.

In its previous conclusion (Conclusions 2013) the Committee asked whether the term "permanent citizens" means nationals of other States Parties to the Charter lawfully resident or regularly working in the State, and if not what restrictions are applied.

The report states that The Federal Law № 442 covers Russian citizens, foreign citizens, stateless persons permanently residing in the territory of the Russian Federation and refugees. A foreign citizen permanently residing in the Russian Federation is a person who received a residence permit (Article 4 of the Federal Law No 115-FZ dd July 25, 2002 "On the legal status of foreign citizens in the Russian Federation"). At the same time the law does not make social services dependent on gender, race, nationality, language, origin, attitude to religion, convictions, membership in public associations or other circumstances. The Committee asks the next report to provide information on conditions under which a permanent residence permit is issued (especially as regards the length requirement) and whether those who are temporary residents and/or regularly working in the State may use social welfare services as well and whether there are any restrictions.

In its previous conclusion (Conclusions 2013) the Committee asked what kind of remedies are available in terms of complaints and a right to appeal to an independent body in cases of discrimination and violation of human dignity.

The report indicates that in case of discrimination the applicant has the right to complain and to appeal to the court (part 3 of article 15 of the Federal Law № 442. The report lists a number of other authorities to which a case may be reported.

Quality of services

In its previous conclusion (Conclusions 2013) the Committee recalled that social services must have resources matching their responsibilities and changing needs of users. This implies that:

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

The Committee asked for details on each of those elements.

The report indicates that the new Federal law ensures, as one of the fundamental principles, the access to social services for all citizens. Article 4 of the Federal Law No 442 provides: equal and free access to social services; proximity of social services providers to the place of residence of recipients of social services; adequate number of social services providers for citizens in need of social services; adequate amount of financial, material, technical, human and information resources from social service providers. Social services at home are directly related to the number of social workers providing these services. With regard to the availability of social services in remote areas and in rural areas it is necessary to note a positive trend for an annual increase in the number of mobile teams providing such accessibility. According to the statistical data, 1074 mobile teams were organized to work in the countryside in 2011, about 10.000 in 2013 and 14.000 teams in 2014. In this respect the Committee notes the substantial increase during the reference period and asks the next report to give confirmation about this positive trend. The most common form of social services provided is homecare. Every year, this type of social services is received by about 1.2 mln people. In this respect the Committee asks to know in the next report more detailed and updated figures on the numbers of social workers and the geographical distribution in different areas of social services.

In its previous conclusion (Conclusions 2013), the Committee asked for a detailed description of the measures to implement projects to promote or provide social services agencies in the next report.

In reply to the question, the report provides the total budgets for the years 2014-2015 devoted to the provision of social services in Russian Federation. The total amount shows a decrease of financial support in 2015 due to a number of reasons: the reduction of tax and non-tax revenue; changes in funding established by the state programs; reduction in the cost of procurement of goods, works and services; reduction in the number of workers of social services institutions. The report indicates also that in the beginning of 2015, when the new law entered into force, social services were provided in the stationary form to 269.000 people, in semi-stationary form to more than 2.2 million people and at home to 1.2 million people. The Committee asks that the next report provides information on the impact of budgetary changes on the quality of social services.

In its previous conclusion (Conclusions 2013), the Committee asked whether there is any legislation on personal data protection.

The report indicates that protection of personal data of recipients, the paragraph 5 of Part 1 of Article 12 of the Federal Law No 442 imposes an obligation on social services providers to use information about the recipients in accordance with the requirements of protection of personal data stipulated by the Federal law No 152-FZ dd July 27, 2006 "On personal data". The federal law regulates the relations connected with the processing of personal data carried out by federal authorities, state authorities of the Russian Federation, other state bodies, local self-government, other municipal bodies, legal entities and individuals with the use of automation, in order to protect the rights and freedoms of man and citizen in the processing of personal data including protection of the rights to privacy, personal and family privacy

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Russian Federation is in conformity with Article 14§1 of the Charter.

Article 14 - Right to benefit from social welfare services

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

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

In its previous conclusion (Conclusions 2013), the Committee requested information on control mechanisms to monitor the quality of services provided by individuals and voluntary organisations and to guarantee the rights of users.

The report indicates that legal framework for an independent quality assessment of service delivery by organizations of the social sphere was formed in 2014-2015. It determines the procedure for an independent evaluation, duties of the executive authorities, functions of public councils, general criteria for quality assessment and performance indicators. Moreover, the report indicates that the Federal Law No 442-FZ dd December 28, 2013 "On the fundamentals of social services in the Russian Federation" (further cited as: the Federal Law No 442) contains rules for implementation of the control (supervision) in the sphere of social services. According to the report the supervision activity allows to prevent violations in the provision of social service as well as remove them in case of violation of rights of recipients. The provisions of the Federal Law N 294-FZ dd December 26, 2008 "On protection of rights of legal entities and individual entrepreneurs in the implementation of state control (supervision) and municipal control" apply to the relations arising from the implementation of state control (supervision) in the sphere of social services, organization and inspections of social service providers. Also, there is a regional state control in the sphere of social services performed by an authorized body according to the procedures established by the public authorities of the Russian Federation. The law also established public control in the sphere of social services performed by citizens, public and other institutions in accordance with the legislation of the Russian Federation on consumer protection. The state authorities provide assistance to citizens, public and other institutions in the implementation of public control in the sphere of social services. In this respect the Committee asks that the next report provides information on the impact of this reform on the quality of social services in the private sector.

In its previous conclusion (Cocnlusions 2013), the Committee requested information and statistical data on forms of support provided by the central government and local authorities to voluntary organizations which provide social services.

The report underlines that the Federal Law No 442, for the first time in the sphere of social services, introduced a framework for public financial support for socially oriented non-profit organizations . The legal mechanisms established by this Law enhanced the possibility of involving non-state sector in providing social services and created conditions allowing NGOs to operate in the market of social services: legal entities, irrespective of their legal form of organization and individual entrepreneurs may became social service providers and have a right to be included in the register of social services providers of the Russian Federation (registration is voluntary); there is a mechanism of financial support for provision of social services to non-governmental institutions and individual entrepreneurs operating in sphere the of social services. The above-mentioned federal law includes a favourable tax regime for institutions engaged in social services by analogy with medical and educational institutions . The law provides the possibility of applying a zero percent tax rate for income tax of institutions engaged in social services for citizens.

The Committee recalls that examines all forms of support and care mentioned under Article 14§1 as well as financial assistance or tax incentives for the same purpose. States Parties must ensure that private services are accessible on an equal footing to all and are effective, in conformity with the criteria mentioned in Article 14§1. Specifically, States Parties must ensure that public and private services are properly coordinated, and that efficiency does not suffer because of the number of providers involved. In order to control the quality of services and ensure the rights of the users as well as the respect of human dignity and basic

freedoms, effective preventive and reparative supervisory system is required. Article 14§2 also requires States Parties to encourage individuals and organisations to play a part in maintaining services, for example by taking action to strengthen the dialogue with civil society in areas of welfare policy which affect the social welfare services. This includes action to promote representation of specific user–groups in bodies where the public authorities are also represented, and action to promote consultation of users on questions concerning organisation of the various social services and the aid they provide (Conclusions 2005, Bulgaria).

The Committee notes that the information provided lack statistical data or are outside the reference period. Therefore, the Committee asks that the next report provides relevant updated statistical data on voluntary organizations operating in the field of social services.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in the Russian Federation is in conformity with Article 14§2 of the Charter.

January 2018

European Social Charter

European Committee of Social Rights

Conclusions 2017

SERBIA

This text may be subject to editorial revision.

The following chapter concerns Serbia which ratified the Charter on 14 September 2009. The deadline for submitting the 6th report was 31 October 2016 and Serbia submitted it on 13 March 2017.

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 "Health, social security and social protection":

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

Serbia has accepted all provisions from the above-mentioned group.

The reference period was 1 January 2012 to 31 December 2015.

The conclusions relating to Serbia concern 19 situations and are as follows:

– 6 conclusions of conformity: Articles 3§1, 3§3, 3§4, 12§2, 13§2 and 13§4,

– 6 conclusions of non-conformity: Articles 3§2, 12§1, 12§4, 13§1, 23 and 30.

In respect of the 7 other situations related to Articles 11§1, 11§2, 11§3, 12§3, 13§3, 14§1 and 14§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 Serbia under the Charter. The Committee requests the authorities to remedy this situation by providing the information in the next report.

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

Article 30

A new mechanism has been launched at national level for those municipalities and cities which do not have means to launch social care services: the so-called "earmarked transfer", which under the law regulating funding of local governments, can fund several social care services from the State budget

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The next report will deal with the following provisions of the thematic group "Labour Rights":

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 21),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 22),
- the right to dignity at work (Article 26),
- the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28),
- the right to information and consultation in collective redundancy procedures (Article 29).

The deadline for submitting that report was 31 October 2017.

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Conclusions and reports are available at www.coe.int/socialcharter as well as in the HUDOC database.

Article 3 - Right to safe and healthy working conditions

Paragraph 1 - Health and safety and the working environment

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

General objective of the policy

In its previous conclusion (Conclusions 2013), the Committee considered that there was a policy, the objective of which was to foster and preserve a culture of prevention in respect of occupational health and safety, and asked whether the policy was regularly assessed in light of the changing risks.

In response, the report indicates that the National policy on Occupational Health and Safety established in 2006 is regularly assessed and developed. The Strategy on Occupational Health and Safety for 2013-2017 (Official Gazette No. 100/13) was adopted on 14 November 2013, and the 2013-2017 Action Plan for its implementation (Official Gazette No.81/14) was adopted on 1 August 2014. The Strategy is based on principles of Decent Work Country Programme 2013-2017 for the Republic of Serbia, as well as on Seoul (2008) and Istanbul (2011) Declarations. The Strategy is based on social dialogue principles at all levels between employees', employers' and public interest representatives. According to the report, the new Strategy aims to reduce the number of accidents at work by 5% by 2017 and sets out a number of objectives, including: harmonising national laws with EU regulations; promoting occupational safety and health in primary and secondary schools; enhancing training of safety and health professionals; and introducing a single register of occupational injuries. The Committee asks the Government to provide information on the results obtained and on any progress achieved in the implementation of the Strategy on Occupational Health and Safety.

The report indicates that the 2013-2017 Action Plan for implementation of the Strategy on Occupational Health and Safety stipulates the competent state administration authorities, social partners and other participants in the occupational health and safety system. In particular, Action Plan includes activities of the Occupational Health and Safety Administration, Labour Inspectorate, other ministries, Social and Economic Council, representative trade unions, and representative employers' associations. The Committee takes note of activities carried out in the reference period according to individual objectives in implementation of the Strategy defined in the Action Plan.

In addition, the report indicates that on 3 November 2013, the National Assembly adopted the Law on Changes and Amendments to the Law on Occupational Health and Safety (Official Gazette No. 91/15), in which principles of prevention has been complemented with principle of "development of coherent overall prevention policy".

The Committee points out that new technology, organisational constraints and psychological demands favour the development of psychosocial factors of risk, leading to work-related stress, aggression, violence and harassment. It would also point out that, with regard to Article 3§1 of the Charter, it takes account of stress, aggression, violence and harassment at work when examining whether policies are regularly evaluated or reviewed in the light of emerging risks. The States parties have a duty to carry out activities in terms of research, knowledge and communication relating to psychosocial risks (Statement of Interpretation on Article 3§1 of the Charter, Conclusions 2013). The report does not provide any information on this point. The Committee accordingly reiterates its request.

Organisation of occupational risk prevention

In its previous conclusion (Conclusions 2013), the Committee considered that the labour inspectors participated, as part of preventive activities, in the development of a culture of occupational health and safety among employers and workers, and shared their knowledge about risks and risk prevention acquired during inspection activities.

According to the report, the enforcement of the Law on Occupation Health and Safety and other regulations related to this field shall be carried out by the Ministry of Labour through Labour Inspectors (Article 61).

In response to Committee's question on the preventive measures, which were prescribed at national level by the Ministry of Labour and Social Policy under section 7 of the Act of 14 November 2005, the report listed regulations adopted or amended during the reference period which concern preventive measures for safe and healthy work while using display screen equipment (Official Gazette No. 93/13), exposure to noise (OG No. 78/15), safety requirements regarding work equipment (OG No. 102/15), exposure to electromagnetic field (OG No. 111/15), exposure to asbestos (OG No. 108/15), as well as 8 sub-legal acts that have been adopted for the purpose of law implementation, but not on the basis of the Article 7.

In its previous conclusion (Conclusions 2013), the Committee asked for information on how the obligations to conduct workplace risk assessments, to provide information and training to workers under specific sections of the Act of 14 November 2005 were implemented in practice. In reply, the report indicates that, according to Article 13(1) of the Law on Occupational Health and Safety, an employer shall be liable to adopt Risk Assessment Act in written form for all workplaces in the working environment, and lay down the method and measures for risk elimination. Risk assessment aims at checking work organisation, work process, work equipment, raw materials and materials used in technological and work processes, personal protective equipment at the workplace and other elements that could cause risk from injuries at work or employee sickness. Risk assessment procedure is carried out at the employer's level and conducted for each working post. In addition, Risk Assessment Guidelines have been published by Occupational Health and Safety Administration on its internet page to support employers to conduct risk assessment procedure at workplace in cooperation with employees.

The Committee asks for information on the organisation of occupational risk prevention for workers employed by public authorities and in the agricultural and forestry sectors. It also requests information about the way in which employers, particularly small and medium-sized enterprises discharge their obligations in terms of initial assessment of the risks specific to workplaces and the adoption of targeted preventive measures in practice. The Committee requests the next report to indicate the manner in which it ensures that safety and health laws and regulations are adopted and maintained in force on the basis of an assessment of occupational risks.

Concerning training, the report indicates that, according to Article 27 of the Law on Occupational Health and Safety, an employer shall be liable to carry out training of employee for a safe and healthy work, at the beginning of his employment (i.e. reassignment to other jobs), when introducing a new technology or new work instruments or alteration of work equipment, as well as in case of alteration of the work process that may cause change of safe work and occupational health measures. Employer is also responsible for providing information during the training on all types of risks at jobs, and on concrete safe work and occupational health measures in accordance with Risk Assessment Act. Training for safe and healthy at work has to be conducted according to programme, which is updated and changed by employer. If an employer appoints an employee to perform jobs simultaneously at two or more workplaces, he/she have to provide health and safety training for each workplace.

The report specifies various preventive activities that were conducted by the Labour Inspectorate in cooperation with international and national services and institutions dealing with occupational safety and health and in collaboration with the social partners. In addition, various preventive materials (a risk assessment guide, training courses and manuals for the social partners, etc.) have been also developed during occupational safety and health seminars organised by the Labour Inspectorate.

The Committee notes that risk prevention measures and measures to raise employers' and employees' awareness exist at the level of undertakings. It also notes that the Labour Inspectorate is involved in the development of a health and safety culture among employers and employees in the workplace.

Improvement of occupational safety and health

In its previous conclusion (Conclusions 2013), the Committee asked for concrete examples on the involvement of the public authorities in the research on occupational health and safety; on institutions involved in that research; and on activities. In reply, the report gives a list of various workshops, seminars and conferences held during the reference period.

It also asked for more detailed information on the involvement of public authorities in the training of qualified professionals; in the design of training modules; and on any existing schemes for training and on certification. The report indicates that in line with amendments of the Law on Occupational Health and Safety, knowledge development programme and other matters concerning employees' knowledge development shall be prescribed by Minister of Labour, and it shall be adopted within two years from the date of entry into force of the law (i.e. by 13 November 2017).

The Committee asks for more detailed information on the involvement of public authorities in research relating to occupational health and safety, training of qualified professionals, design of training courses and certification of procedures.

Consultation with employers' and workers' organisations

In its previous conclusion (Conclusions 2013), the Committee asked for information on the regular consultation with employers' and workers' organisations in matters of occupational health and safety at the national, sectoral and company levels. In reply, the report indicates that at national and sectorial level, social dialogue between state representatives and representatives of associations of employers and employees, with regard to safety and health at work is conducted through the work of the Social and Economic Council and the Occupational Health and Safety Council.

The Social and Economic Council became operational in April 2005 (the Law on Social and Economic Council, Official Gazette No. 125/04). It is comprised of 18 members, of which six members are from Government representatives, six representatives of trade unions and six representatives of associations of employers, appointed for a period of four years. Four working bodies are established within the Council, including standing working body for occupational health and safety matters. The Council reviews and gives opinions concerning draft laws and proposals of other regulations of importance for the economic and social position of employees and employers, and of occupational health and safety.

The Occupational Health and Safety Council is a tripartite body involving, apart from representatives of the Ministry of Labour, Employment, Veteran and Social Affairs and social partners, representatives of other ministries, higher education institutions and non-governmental organisations (Official Gazette No. 40/05 and 71/07). It presents initiatives for adopting occupational health and safety regulations, for devising national program for developing occupational health and safety, and initiates preventative policy on all issues pertaining to health and safety at work.

The Committee asks for information regarding the effectiveness of these bodies in promoting social dialogue in the area of health and safety, notably by providing concrete examples illustrating their effectiveness.

In addition, the report indicates that the Occupational Health and Safety Administration is involved in procedure of concluding special Collective Agreements in the part of occupational health and safety, issuing opinions to Collective Agreements.

In its previous conclusion (Conclusions 2013), the Committee also asked for information on the activities of the health and safety representatives elected in accordance with Section 44 et Seq. of the Act of 14 November 2005 in practice. Since it cannot find an answer to its question in the report with regard to this point, the Committee requests that the next report contain this information.

Conclusion

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

Article 3 - Right to safe and healthy working conditions

Paragraph 2 - Safety and health regulations

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

Content of the regulations on health and safety at work

In its previous conclusions (Conclusions 2013), the Committee noted that efforts had been undertaken to incorporate international standards on exposure to occupational risks into specific national laws and regulations, and asked whether Serbia had undertaken to incorporate more of the Community *acquis* into national law. In reply, the report lists regulations, which incorporate the Community *acquis* on health and safety at work: Regulation on preventive measures for safe and healthy work during exploitation of minerals by drilling (Official Gazette (OG) No. 61/10) to incorporate Council Directive 92/91/EEC of 3 November 1992; Regulation on preventive measures for safe and healthy work during underground and surface extracting of minerals (OG No. 65/10) to incorporate Council Directive 92/104/EEC of 3 December 1992; Regulation on preventive measures for safe and healthy work while working on board fishing vessels (OG No. 70/10) to incorporate Council Directive 93/103/EEC of 23 November 1993; Rulebook on preventive measures for safe and healthy work during exposure to biological agents (OG No. 96/10) to incorporate Directive 2000/54/EC of 18 September 2000; Rulebook on preventive measures for safe and healthy work during exposure to artificial optical radiation (OG No. 120/12 and 29/13-corrigendum) to incorporate Directive 2006/25/EC of 5 April 2006; Regulation on preventive measures for safe and healthy work due to risks from explosive atmospheres (OG No. 101/12 and 12/13-corrigendum) to incorporate Directive 1999/92/EC of 16 December 1999 on minimum requirements for improving the safety and health protection of workers potentially at risk from explosive atmosphere; and Regulation on preventive measures for safe and healthy work to prevent exposure to electromagnetic field (OG No. 111/15) to incorporate Directive 2013/35/EU on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields).

The report also indicates that, some regulations have been adopted concerning preventive measures for safe and healthy work to prevent exposure to asbestos (OG No. 108/15); conditions and amount of costs for issuance of licences for conducting jobs in the area of occupational health and safety (OG No. 112/13, 57/14 and 102/15); programme, manner and amount of costs for passing vocational exam for performing occupational health and safety jobs and responsible person jobs (OG No. 11/13, 57/14, 126/14 and 111/15); manner and procedure for workplace and working environment risk assessment (OG No. 72/06, 84/06 – corrigendum, 30/10, and 102/15); content and manner of issuing report form on injury at work, occupational disease and work-related disease (OG No. 72/06, 84/06-corrigendum, and 04/16); procedure of examining and checking work equipment and examining working environment conditions (OG No. 94/06 and 108/06-corrigendum, 114/14 and 102/15); records in the area of occupational health and safety (OG No. 62/07 and 102/15); and contents of elaborate on construction site arrangement (OG No. 121/12 and 102/15).

According to the report, the Law on Changes and Amendments of the Law on Occupational Health and Safety (OG No. 91/15) adopted by National Parliament on 3 November 2013 shall apply to all employees at workplace or when involved in processes, as well as for all persons currently in working environment. However, the report stresses that this Law shall not apply during performance of a specific military service in the Serbian Army and during performance of police jobs and jobs of protection and rescue from the scope of competent state authority, as well as during performance of jobs of protection and rescue carried out by other entities in accordance with special law, in which occupational health and safety matters during performance of such service and those jobs is regulated by a special law and regulations based on that law. The exception is also made for the persons employed with an employer for carrying out duties of support staff at home. The Committee asks whether this

would mean that these categories of workers are left without any standard of protection or if other protective rules apply.

In addition, the Committee notes from the report that the Law defines persons (and their capacity) who have the right to enjoy occupational safety and health, as well as those categories of workers having special rights, obligations, and stipulates the OSH measures to be applied in case of young workers, women carrying out activities at high-risk workplaces, disabled persons and workers suffering from occupational diseases.

In its previous conclusions (Conclusions 2013), the Committee also asked, given the low level of ratification of the technical ILO Conventions, for information on the Government's intentions in that respect. Since it cannot find an answer to its question (Conclusions 2013) in the report with regard to this point, the Committee requests that the next report contain this information.

The Committee points out that under the terms of Article 3§2 of the Charter, regulations concerning health and safety at work must cover work-related stress, aggression and violence specific to work, and especially for workers under atypical working relationships (Statement of Interpretation on Article 3§2 of the Charter, Conclusions 2013). The report does not provide any information on this point. The Committee accordingly reiterates its request. The Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Serbia is in conformity with Article 3§2 of the Charter.

Levels of prevention and protection

The Committee examines the levels of prevention and protection provided for by the legislation and regulations in relation to certain risks.

Establishment, alteration and upkeep of workplaces

In its previous conclusions (Conclusions 2013), the Committee asked whether Serbia had undertaken to incorporate more of the Community *acquis* on the subject into national law. In response, the report lists various regulations, which were adopted during the reference period for the purpose of harmonisation of domestic legislation with EU-standards: the Rulebook on preventive measures for safe and healthy work when using means and personal protective equipment at the workplace (OG No. 92/08) to incorporate Council Directive 89/656/EEC of 30 November 1989, and the Rulebook on preventive measures for safe and healthy work when using work equipment (OG No. 23/09, 123/12 and 102/15) to incorporate Directive 2009/104/EC of 16 September 2009.

In reply to the Committee's question on the requirements set out in Regulations on the procedure for conducting risk-assessment in the workplace (OG No. 72/2006), and whether a schedule to remedy the identified risks was applicable, the report indicates that risk assessment is based on system recording and assessing of all factors in the work process – possible types of dangers and harms at workplace and in working environment that could cause injury at work, health damage or employee sickness. A risk assessment covers employer's general data; description of technological and work process, description of work equipment and their grouping and description of personal protective equipment at the workplace; looking into work organisation; recognising and determining the danger and harm at the workplace and in working environment; risk assessment comparing to danger and harm; identifying the method and measures for risk elimination, mitigation or prevention, etc. The Committee asks what kind of preventive measures are developed on the basis of such assessment, and whether a schedule is provided to tackle the identified risks.

The Committee asks whether the above regulations also refer to the manual handling of loads, hygiene (commerce and offices); maximum weight; safety and/or health signs at work.

Protection against hazardous substances and agents

The Committee asks the next report to provide information on the specific provisions relating to protection against risks of exposure to benzene.

Protection of workers against asbestos

In its previous conclusion (Conclusions 2013), the Committee asked for information on the exposure limit value of asbestos at work.

Apart from the regulations described in the previous conclusion (Conclusions 2013), the Committee notes from the report that the Rulebook on preventive measures for safe and healthy work during exposure to asbestos (OG No. 106/09, 6/10-cor. and 15/10-cor.) were replaced by Regulation on preventive measures for safe and healthy work during exposure to asbestos (OG No. 108/15) which transposes Directive 2009/148/EC of 30 November 2009 on protection of employees from the risks related to exposure to asbestos at workplace. According to Article 8 of this Regulation, the limit value for exposure to asbestos is 0.1 fibres/cm^3 as an 8 hour time weighted average.

The Committee asks whether the authorities have considered drawing up an inventory of all contaminated buildings and materials. Bearing in mind the importance of this question in the light of the right to health of the population (Article 11), the Committee asks the next report to provide specific information on steps taken to this effect. It also asks the next report to indicate measures ensuring that in all workplaces where workers are exposed to asbestos, employers take all appropriate measures to prevent, or control, the release of asbestos dust in the air, and that employers comply with the prescribed exposure limits. The Committee also asks the next report to confirm that all forms of asbestos is prohibited.

Protection of workers against ionising radiation

In its previous conclusions (Conclusions 2013), the Committee asked to indicate whether the Act of 2009 on protection from ionising radiation incorporates Recommendation (1990) of the International Commission on Radiological Protection (ICRP Publication No. 60) or Council Directive 96/29/EURATOM of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation. It also asked whether Serbia had undertaken to incorporate the Council Directive 97/43/EURATOM of 30 June 1997 on health protection of individuals against the dangers of ionising radiation in relation to medical exposure; Council Directive 2003/122/EURATOM of 22 December 2003 on the control of high-activity sealed radioactive sources and orphan sources; and Directive 2006/117/EURATOM of 20 November 2006 on the supervision and control of shipments of radioactive waste and spent fuel, into national law.

In view of the lack of information in the report, the Committee is not in a position to examine whether the legislation and regulations in force satisfy the obligation under Article 3§2 of the Charter, which requires that level of protection required by the legislation and regulations in relation to ionising radiation be in line with the level set by international reference standards. The Committee therefore concludes that it has not been established that level of protection against ionising radiation are adequate. It asks that the next report provide full and detailed information on the legislation and regulations, including any amendments thereto adopted during the reference period, which specifically relate to that subject. The Committee therefore reiterates its questions.

Personal scope of the regulations

The Committee examines the personal scope of legislation and regulations with regard to workers in atypical employment.

Temporary workers

In its previous conclusion (Conclusions 2013), the Committee asked for information on how workers in fixed-term employment, agency and temporary workers were protected effectively and without discrimination, including against risks related to successive periods of exposure to dangerous substances when working for different employers, and through the prohibition of the use of non-permanent and temporary workers for some particularly dangerous tasks, was implemented in the laws and regulations. It asked for details about the access of the above categories of workers to information and training regarding occupational safety and health, as well as to medical surveillance and representation at work.

The report indicates that the Law on Occupational Health and Safety shall be applied on all employees at workplace or when involved in work processes as well as for all persons currently in the working environment, regardless of the fact whether they are in employment relationship for indefinite or definite period of time, i.e. with full or part-time work, except for persons who carry out domestic assistance. The Committee notes from the report that the term “employee” under the Law on Occupational Health and Safety is broader in comparison to the same term under the Labour Code in order to ensure the health and safety of all persons who are hired by employer, on any grounds.

With regard to performance of works with increased risk (among other things due to exposure to dangerous agents), on the basis of Occupational Health Service evaluation and by the Risk Assessment Act, an employer shall be liable to identify special health requirements to be met by employees at the workplace with increased risk, to provide pre-employment medical examination to employee at workplace with increased risk, as well as periodic medical examination at workplace. If during periodic medical examination procedure is concluded that special health requirements for performance of tasks at workplace with increased risk are not met by employee, an employer shall be liable to reassign him to other workplace suitable to his health abilities. The employee, who is performing his duties at a workplace with increased risk, shall have the right and obligation to go to medical examination to which he has been sent by his employer. The employee shall be liable to perform his duties at workplace with increased risk, based on the occupational health service report, which concludes he is capable to work at that workplace.

According to the report, the employer shall be liable to carry out training of employee for a safe and healthy work, at the beginning of his employment, i.e. reassignment to other jobs, when introducing a new technology or new work instruments or alteration of work equipment, as well as in case of alteration of the work process that may cause change of safe work and occupational health measures.

With an aim to prevent injuries of person who finds himself in a working environment, in enterprise or construction site circle, on any grounds, employer has the responsibility to warn every person, who is in the working environment on any grounds, about the dangerous places or the harms to the health during technological process, to provide visible and noticeable safety and health signs aiming at informing employees on technological process risks, movement directions and others, as well as on measures for risk prevention or elimination.

The report specifies that apart from meeting health requirements for work at workplace with increased risk, there are no other restrictions prescribed concerning employment of employees for definite period of time. The Law regulating the work of employees through temporary employment agencies is being prepared.

The Committee observes that an employer is only obligated to hire the occupational health service for preliminary and periodic medical examinations of employees performing high-risk tasks. The Committee asks the next report to provide information on the definition of workplaces with increased risk. It also asks again for information on the right of temporary workers, interim workers and workers on fixed-term contracts to representation at work.

Moreover, it asks for concrete examples on how these workers are provided access to medical supervision and representation at work. The Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Serbia is in conformity with Article 3§2 of the Charter.

Other types of workers

In its previous conclusion (Conclusions 2013), the Committee asked for information on how self-employed, home and domestic workers are protected effectively and without discrimination, including against risks related to successive periods of exposure to dangerous substances when working for different employers. It also asked for details about the access of the above categories of workers to information and training regarding occupational safety and health, as well as to medical surveillance and representation at work.

According to the report, the Law on Occupational Health and Safety shall be applied on all employees at workplace or when involved in work processes as well as for all persons currently in the working environment, except for persons who carry out domestic assistance. The report specifies that, based on labour regulations, jobs with increased risks cannot be performed from home.

In addition, the report indicates that the Regulation on occupational health and safety for temporary or mobile constructions sites (Official Gazette No. 14/09 and 95/10) introduces a self-employee into the system of rights, liabilities and responsibilities who is defined as other person who is entrepreneur independently performing the duty without engagement of other persons, and/or who does not have characteristic of an employer in line with regulations in the area of occupational health and safety or any other natural person who does not have characteristic of an employee. The report indicates that mentioned provisions for temporary workers shall also cover self-employed in civil engineering activities.

The Committee observes that domestic workers are not covered by the occupational health and safety regulations. It also notes that only self-employed in civil engineering activities are covered by the occupational health and safety regulations. The Committee recalls that, as stated in Conclusions 2009, all workers in all workplaces, regardless of the sector of activity, must be covered by occupational health and safety regulations. It also underlines that health and safety regulations must apply at all workplaces without exception, including private homes. For the purposes of Article 3§2 of the Charter, all workers, including the self-employed, must be covered by health and safety at work regulations on the ground that employed and self-employed workers are normally exposed to the same risks. The Committee therefore concludes that the situation is not in conformity with the Charter as domestic workers are not covered by occupational health and safety regulations.

Consultation with employers' and workers' organisations

In its previous conclusion (Conclusions 2013), the Committee asked for information on the regular consultation with employers' and workers' organisations in matters of occupational health and safety at the national, sectoral and company levels. It also asked for information on the activities of health and safety representatives elected in accordance with Section 44 et Seq. of the Act of 14 November 2005 in practice. In reply, the report indicates that Occupational Safety and Health Administration, as an Administrative Body within the Ministry of Labour, Employment, Veteran and Social Affairs, in accordance with the National Policy and the Action Plan for implementation of the Strategy on Occupational Health and Safety in the Republic of Serbia, within the procedure of bringing the Law and sub-legal acts for transposition of Directives and EC regulations, actively collects opinions from state bodies and from representative trade unions representatives: Confederation of Autonomous Trade Unions and United Branch Trade Unions "Nezavisnost", Social and Economic Council of the Republic of Serbia and Employers' Association of Serbia.

The Committee reiterates its request on the activities of health and safety representatives elected in accordance with Section 44 et Seq. of the Act of 14 November 2005 in practice. The Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Serbia is in conformity with Article 3§2 of the Charter.

Conclusion

The Committee concludes that the situation in Serbia is not in conformity with Article 3§2 of the Charter on the grounds that:

- it has not been established that level of protection against ionising radiation is adequate;
- domestic workers are not covered by occupational health and safety regulations.

Article 3 - Right to safe and healthy working conditions

Paragraph 3 - Enforcement of safety and health regulations

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

Accidents at work and occupational diseases

In its previous conclusion (Conclusions 2013), the Committee asked figures on occurrences of accidents at work and occupational diseases; occurrences with a fatal issue; and corresponding rates of incidences per 100 000 workers. It also asked for information on the measures taken to counter potential concealment of accidents at work and cases of occupational disease, as well as sanctions applied to employers who fail to meet their reporting obligations.

The report indicates that the number of accidents at work decreased from 1 146 in 2013 to 947 in 2015. The number of fatal accidents at work was 21 in 2014, 24 in 2013 and in 2015. The Committee observes that the standardised incidence rates of accidents at work and fatal accidents at work were not provided in the report. It therefore asks that the next report provide this information.

In addition, the report indicates that in 2014, accidents at work mostly occur in civil engineering and industry activities (i.e. in high-risk activities on hard physical labour). The most frequent causes of fatal accidents at work are electrocution (24%), struck by falling object (23%), as well as fall of an object from height (24%), trapped underground (10%), and high fall (5%). The Committee takes note of the most common causes of accidents at work.

The Committee takes note of definition of workplace injury provided in the report (Article 22 of the Law on Pension and Disability Insurance). Employers are obliged to report to the competent labour inspection in case of serious, fatal or mass injury at workplace or injury which prevent employee to work longer than three consecutive working days. As soon as a labour inspector receives a report on accident at workplace, he must immediately check the conditions on the ground and take measures to eliminate the source or cause of the accident. According to the report, Labour Inspectorate conducts supervisions on the basis of all reported accidents at work, which occurred at workplace. Supervisions are not conducted only for those accidents at work that occurred on the way to and from home.

The report indicates that, according to Article 24 of the Law on Pension and Disability Insurance (Official Gazette No. 34/03, 64/04, 84/04, 85/05, 101/05, 63/06, 5/06, 107/09 and 101/10), occupational diseases are defined as specific diseases incurred on the course of insurance, and caused by long-term immediate effects of the working processes and the working conditions at specific working posts. Occupational diseases, working posts (i.e. activities in which the incidence of specific diseases is identified), and terms and conditions under which they are considered occupational diseases, shall be determined by the minister responsible for the pension and disability insurance. A Rulebook on Identifying Occupational Diseases (Official Gazette No. 105/2003), identifies occupational diseases, working posts (i.e. activities in which the incidence of these diseases are identified) and the terms under which they are considered occupational diseases. This is a “closed list” which sets out 56 different diseases and conditions. The report specifies that Occupational Health Specialists examine causes for occupational diseases and establish their existence. Verification of occupational diseases on the basis of valid medical documentation is performed by Commissions established by Health Insurance Fund. The report indicates that the total number of identified diseases, conditions and injuries at occupational health service in 2015 was 709 004. The Committee asks that the next report provide information on the incidence rate and the number of recognised and reported occupational diseases during the reference period (broken down by sector of activity and year), including cases of fatal occupational diseases, and measures taken and/or envisaged to counter insufficiency in the declaration and recognition of cases of occupational diseases; the most frequent occupational diseases during the reference period, as well as the preventive measures taken or envisaged.

Activities of the Labour Inspectorate

The Committee notes that under Article 3§3 of the Charter, States Parties must implement measures to focus labour inspection on small and medium-sized enterprises (Statement of Interpretation on Article 3§3, Conclusions 2013). Since it cannot find an answer to its question in the report with regard to this point (Conclusions 2013), the Committee requests that the next report contain this information.

In its previous conclusion (Conclusions 2013), the Committee noted that the Labour Inspectorate must investigate all severe accidents at work, and that the coverage of the labour force by inspection visits was relatively low. It asked for figures for each year of the reference period; for information on any other bodies than the Labour Inspectorate vested with inspection powers (competence, activities, number of staff, enforcement powers, and penalties imposed); on the outcome of criminal charges filed; and on the individual amount and overall volume of fines imposed.

The report indicates that the Labour Inspectorate has in total 25 units in the administrative districts including the City of Belgrade. It has one unit in the Labour Inspection Headquarters, dealing with second instance procedures in the field of employment relations and occupational safety and health. In 2015, 236 labour inspectors are employed in the Labour Inspectorate (lawyers and engineers of different technical background). Labour Inspectors are responsible for controlling the law enforcement in the area of labour with all registered legal entities and entrepreneurs. According to the report, 354 554 employers in total is registered in Serbia. Therefore, one inspector is responsible for control of 1 502 registered employers, as well as for control of all non-registered entities. Based on data from the National Statistical Office, the report indicates that total number of formally and informally employed individuals is about 2 574 200, so one labour inspector is responsible for 10 908 formally and informally employed individuals.

Pursuant to Article 61 of the Law on Occupational Health and Safety (Official Gazette No. 101/05 and 91/15), the Labour Inspectorate shall supervise the implementation of the Law, regulations adopted on the basis of this Law, and technical and other measures relating to occupational health and safety prescribed by General Employer's Act, Collective Contract or Employment Contract. The report indicates that, during the reference period, priority activities of the Labour Inspectorate were directed towards decrease of number of accidents at work, occupational diseases, and upon clients' requests and preventive actions. It paid special attention to occupational health and safety prevention and labour relations, in high-risk activities (civil engineering, industry, and agriculture).

In 2013, according to the report, the Labour Inspectorate conducted 16 108 inspection supervisions in the field of health and safety at work (16 640 in 2015), including 1 146 inspection supervisions due to reported accidents at work (947 in 2015). In 2015, Labour Inspectorate inspections covered 216 824 employees in the field of occupational health and safety and 396 015 employees in integrated supervisions (unified supervisions in the field of labour relations and occupational health and safety), as compared to 269 186 employees covered in 2013 and 277 530 in 2014. In 2013, 4 517 decisions on elimination of deficiencies were brought (3 725 in 2015), 452 decisions on prohibition of work at a workplace, due to danger to safety and health at work (412 in 2015), 26 criminal proceedings against responsible persons, due to reasonable doubt that they committed criminal act of causing danger due to lack of safety and health at work measures (42 in 2015), as well as 950 requests for instituting offence proceedings (1 234 in 2014 and 938 in 2015).

The total amount of fines imposed by magistrates in respect of the 560 prosecutions under the Law on Occupational Health and Safety amounted to 109 910 402 RSD (€916 764,50); 184 of these prosecutions were completed, 70 were recalled, 139 were suspended, 25 were interrupted and 8 were rejected. Labor inspectors have filed 32 appeals against decisions by the prosecuting authorities for action on issues of health and safety at work. In 2015, the

total amount of fines imposed by magistrates following 640 prosecutions under the Occupational Health and Safety Act amounted to 107,261,500 RSD (€ 894,604.36).

The report indicates that cooperation between the Labour Inspectorate and the Ministry of Justice and Magistrate Courts is very efficient, and, in case of need, joint meetings are organised. However, the amount of threatened penalties in the field of health and safety at work was high in 2013, so there were difficulties in imposing appropriate penalties. In addition, conditions were created for labour inspectors to follow all phases within request handling, as well the method of resolving the requests. Nonetheless, labour inspectors have to participate in almost every offence proceeding as witness, in frequent confrontations with offenders, etc. According to the report, this entails an additional burden and time consumption. Moreover, in the second half of 2013, a large number of business entities, entrepreneurs or legal entities was deleted from the Serbian Business Registers Agency registry (SBRA) to avoid settling liabilities towards employees, the STA and disability and health insurance funds, and to register again under other name.

The report also indicates that Labour Inspectorate representatives were involved in the work of the various working groups (working group for creation of the Law on Insurance against Accidents at Work and Occupational Diseases, Working group for creation of the Law on Inspection Supervision) and participated in the Occupational Health and Safety Council' meeting, when the Draft Law on Changes and Amendments of the Law on Occupational Health and Safety was discussed. Furthermore, Labour Inspectorate representatives were actively involved in all conferences, round tables, workshops and seminars organised by social partners.

The Committee notes the increase in the number of inspection visits, but observes that the proportion of workers covered by inspection visits is decreased.

Conclusion

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

Article 3 - Right to safe and healthy working conditions

Paragraph 4 - Occupational health services

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

The Committee notes that under Article 3§4 States must promote, in consultation with employers' and workers' organisations, the progressive development of occupational health services for all workers with essentially preventive and advisory functions. These services may be run jointly by several companies. They must be efficient and should be able to identify, measure and prevent work-related stress, aggression and violence (see Statement of Interpretation on Article 3§4, Conclusions 2013; also Conclusions 2003, Bulgaria). It further notes that if occupational health services are not established for all enterprises, the authorities must develop a strategy, in consultation with employers' and employees' organisations, for that purpose. Thus, States "must take measures that allow it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources" (Conclusions 2003, Bulgaria; Conclusions 2009, Albania).

The Committee previously deferred its conclusion and requested for more detailed information on the legal requirements to provide access to occupational health services (legislation, procedures, institutions); as well as on whether, if not all undertakings feature occupational health services, a strategy was set up to provide access to such services. In reply, the report indicates that, pursuant to Article 41 of the Law on Occupational Health and Safety, aiming to protect health of employees in the workplace, the employer must hire an Occupational Health Service to carry out a variety of functions including participating in risk assessments; informing employees about the health risks associated with their work; providing training to staff in first aid; determining and examining causes of occupational diseases; evaluating the required state of health for the performance of tasks with an increased risk; carrying out preliminary and periodic medical examinations of employees in workplaces with high risk; and providing advice to the employer. In addition, employers must, on the basis of the risk assessment and the evaluation from the occupational health service, determine the specific health conditions for the performance of particular operations at the workplace or use of particular equipment (Article 16), and provide pre-employment medical examination and periodic medical examination at workplace (Article 43). If during periodic medical examination procedure is concluded that special health requirements for performance of tasks are not met by an employee, the employer shall be liable to reassign him to other workplace suitable to his abilities. Failure to meet special health requirements at the workplace with increased risk cannot be a reason to cancel an employment contract. The Committee takes note of sub-legal acts which regulate conducting of health supervisions, listed in the report.

The Committee takes note of the organisation of occupational health services, according to the Law on Health Care (Official Gazette No. 107/05, 72/09, 88/10, 99/10, 57/11, 119/12 and 45/13) and Regulation on the Plan of Health Care Institutions Network on Serbia (Official Gazette No. 42/2006, 119/2007, 84/2008, 71/2009 and 85/2009).

In its previous conclusion (Conclusions 2013), the Committee also asked for statistics on the number of workers under care with occupational health services; on the proportion of undertakings, which provide or share an occupational health service with other undertakings; and on the number of occupational physicians in relation to the labour force. In reply, the report indicates that Occupational Health Service provides specific workers' health care and primary health care of working-age population. In 2015, health services in this Service were provided by 373 doctors, 255 (68%) of whom are health specialists, 98 general medical doctors (26%) and 20 specialised doctors (5%). Total number of services obtained (i.e. visit to doctors) is 1 653 882, and total number of identified diseases, conditions and injuries by occupational health service is 709 004.

The Committee observes that several functions of the occupational health services are limited to employees in workplaces with high risk. It asks that the next report provide existing strategies or incentives to foster access, especially for workers from small and medium-sized enterprises, to occupational health services.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in Serbia is in conformity with Article 3§4 of the Charter.

Article 11 - Right to protection of health

Paragraph 1 - Removal of the causes of ill-health

The Committee takes note of the information contained in the report submitted by Serbia. However, there are significant gaps in information provided in relation to the specific requirements of Article 11§1 of the Charter.

Measures to ensure the highest possible standard of health

The Committee notes from the WHO that life expectancy at birth in 2015 (average for both sexes) was 75.6. This stands below that of other European countries (for example, the EU-28 average for the same year was 80.6).

The report does not contain any information on health care indicators (death rate, infant mortality rate and maternal mortality rate). It only refers to a report published by the Institute of Public Health (in Serbian language). The Committee recalls that States Parties must ensure the best possible state of health for the population according to existing knowledge. Health systems must respond appropriately to avoidable health risks, i.e. ones that can be controlled by human action (Conclusions XV-2 (2001), Denmark). The main indicators are life expectancy and the principal causes of death. These indicators must show an improvement and not be too far behind the European average (Conclusions 2005, Lithuania).

The Committee also recalls that infant and maternal mortality are good indicators of how well a particular country's overall health system is operating (Conclusions 2003, Romania). These are avoidable risks and every step should be taken, particularly in highly developed health care systems, to reduce these rates to as close to zero as possible (Conclusions 2003, France). A recurring problem of non-conformity under this provision are the high infant and maternal mortality rates in several countries, which when examined together with other basic health indicators, point to weaknesses in the health system (Conclusions 2013, Ukraine).

The Committee asks that the next report contain information on the death rate (deaths per 1 000 population) and the main causes of death as well as on the measures taken to combat the causes of pre-mature mortality. It also asks information on the infant mortality rate (deaths per 1 000 live births) and on the maternal mortality rate (deaths per 100 000 live births) and the trends of these indicators. The Committee emphasises that, if this information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter on this point.

Access to health care

The report indicates that the Law on Health Care regulates the organisation of the health care services. Health care, in the sense of this Law, includes implementation of measures for preservation and improvement of the health of citizens, prevention, control, and early detection of diseases, injuries, other health disorders, as well as timely and efficient treatment and rehabilitation. The report mentions also the Health Insurance Act which lists the health care services to be provided to the insured persons. The report further indicates that the budget for health, which consists of the mandatory contributions in the National Health Insurance Fund, secures funds for health care through measures of prevention, early detection of diseases and rehabilitation. The Budget also secures funds for the realisation of the general interest in the health care, as well as the Ministry of Health programme budget funds intended for the network of public health institutes.

The Committee asks for information on the administrative structures responsible for the proper implementation of the regulatory framework and measures/programs carried out to ensure their implementation.

The Committee recalls that the right of access to care requires that the cost of health care should be borne, at least in part, by the community as a whole (Conclusions I (1969), Statement of Interpretation on Article 11). The cost of health care must not represent an excessively heavy burden for the individual. Out-of-pocket payments should not be the main source of funding of the health system (Conclusions 2013, Georgia). Steps must be taken to reduce the financial burden on patients from the most disadvantaged sections of the community (Conclusions XVII-2 (2005), Portugal). The Committee asks for information on the total expenditure on health as a percentage of GDP. The Committee asks also that the next report contain information on the proportion of out-of-pocket payments for health care.

The report indicates that according to the principle of equity of health care, health care is provided with no discrimination on grounds of race, sex, age, national affiliation, social origin, religious beliefs, political or other affiliations, income scale, culture, language, type of disease, mental or bodily disability. The Committee asks whether in practice adequate access to health care is ensured on an equitable basis throughout the country and for the most disadvantaged groups (such as ethnic groups, including Roma, LGBTI, etc).

The Committee notes that according to the EU Commission Report 2016 the health sector sustainability is endangered by the poor financial situation of the public health fund, which was aggravated by lowering the health insurance contribution in 2014. Shortages of medical staff in primary healthcare remain problematic. The Committee asks the Government's comments on these matters/information on the measures taken to address these matters.

The Committee recalls that arrangements for access to care must not lead to unnecessary delays in its provision. The Committee underlines that it will pay particular attention to whether access to treatment is based on transparent criteria, agreed at the national level, taking into account the risk of deterioration, in clinical terms as well as in terms of quality of life (Conclusions XV-2 (2001), United Kingdom). The Committee asks for information regarding the rules applicable to the management of waiting lists and waiting times as well as statistical data on the actual average waiting times for inpatient/outpatient care as well as for primary care, specialist care and surgeries.

The Committee also recalls that the number of health care professionals and equipment must be adequate. In the case of hospitals, the objective laid down by WHO for developing countries of 3 beds per thousand population should be strived at (Conclusions XV-2 (2001), Addendum, Turkey). A very low density of hospital beds, combined with waiting lists, could be an obstacle to access to health care for the largest possible number of people (Conclusions XV-2 (2001), Denmark). Conditions of stay in hospital, including psychiatric hospitals, must be satisfactory and compatible with human dignity (Conclusions 2005, Romania). The Committee asks that the next report contain statistical data on the number of health professionals and health facilities.

With regard to drug abuse prevention, the Committee notes from the European Commission Report 2016 that the monitoring centre for drugs and drug addiction was established in March 2016. It asks for information on the activities of this centre and their impact on drug addiction.

The Committee asks that the next report on Article 11§1 contain information on the availability of mental health care and treatment services, including information on the prevention of mental disorders and recovery measures.

The Committee asks that the next report on Article 11§1 contain information on dental care services and treatments (such as who is entitled to free dental treatment, the costs for the main treatments and the proportion of out-of-pocket paid by the patients).

As regards the right to protection of health of transgender persons, the Committee received submissions by Transgender Europe and the International Lesbian and Gay Association (European Region) (ILGA) stating that according to a letter by the President of the Commission for treating transgender disorders, "regulations prescribe that surgical transition

is performed in such a manner that all existing genitalia are removed, both internal and external, and new genitalia are reconstructed in keeping with the preferred sex. Those are standard procedures performed on our patients and patients in the region. [……]. After the surgical transition is finalised, a release letter is issued to the patient which contains a note that conditions for a name change and all other changes in keeping with the new sex have been fulfilled." The Committee asks that the next report confirm that in Serbia legal gender recognition for transgender persons does not require (in law or in practice) that they undergo sterilisation or any other invasive medical treatment which could impair their health or physical integrity.

Conclusion

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

Article 11 - Right to protection of health

Paragraph 2 - Advisory and educational facilities

The Committee takes note of the information contained in the report submitted by Serbia. However, there are significant gaps in information provided in relation to the specific requirements of Article 11§2 of the Charter.

Education and awareness raising

The Committee recalls that under Article 11§2 States Parties must demonstrate through concrete measures that they implement a public health education policy in favour of the general population and population groups affected by specific problems (Marangopoulos Foundation for Human Rights (MFHR) v. Greece, complaint No.30/2005, decision on the merits of 6 December 2006, §§ 216 and 219). Informing the public, particularly through awareness-raising campaigns, must be a public health priority. The precise extent of these activities may vary according to the nature of the public health problems in the countries concerned (Conclusions 2007, Albania). Measures should be introduced to prevent activities that are damaging to health, such as smoking, alcohol and drugs, and to develop a sense of individual responsibility, including such aspects as a healthy diet, sexuality and the environment (International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Croatia, complaint No. 45/2007, decision on the merits of 30 March 2009, §43).

The report does not contain any information on such activities of information and awareness-raising. Thus, the Committee asks for information on concrete/specific activities, such as educational or awareness-raising campaigns/programmes, undertaken by public health services, or other bodies, to promote health and prevent diseases. It emphasises 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 under this provision.

The Committee further recalls that health education must form part of school curricula. Health education in school must be provided throughout the entire period of schooling and that it covers the following subjects: prevention of smoking and alcohol abuse, sexual and reproductive health education, in particular with regard to prevention of sexually transmitted diseases and AIDS, road safety and promotion of healthy eating habits.

Sexual and reproductive health education is regarded as a process aimed at developing the capacity of children and young people to understand their sexuality in its biological, psychological, socio-cultural and reproductive dimensions which will enable them to make responsible decisions with regard to sexual and reproductive health behaviour. States Parties must ensure that sexual and reproductive health education forms part of the ordinary school curriculum; that the education provided is adequate in quantitative terms; that the form and substance of the education, including curricula and teaching methods, are relevant, culturally appropriate and of sufficient quality, in particular that it is objective, based on contemporary scientific evidence and does not involve censoring, withholding or intentionally misrepresenting information, for example as regards contraception and different means of maintaining sexual and reproductive health; and that a procedure is in place for monitoring and evaluating the education with a view to effectively meeting the above requirements (International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Croatia, Complaint No. 45/2007, Decision on the merits of 30 March 2009, §§46 – 47).

The Committee asks whether health education is part of the school curricula and which subjects are covered. The Committee asks in particular whether and how sexual and reproductive education is provided in schools in Serbia.

The report indicates that according to Health Insurance Act the following shall be provided: (i) health education consisting of special lectures or advisory sessions given by health professionals with regard to protection, preservation and improvement of health, preventing risk factors and gaining healthy lifestyle knowledge and habits; and (ii) health care education

with regard to family planning, pregnancy prevention, birth control and surgical sterilisation, pregnancy testing, testing and treatments of sexually transmitted diseases and HIV infections. The Committee asks that the next report contain information on the concrete measures taken to implement the public health policy and the legal framework (such as programmes, action plans or projects carried out on health education).

The Committee emphasises that, if this information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter on this point.

Counselling and screening

The Committee recalls that there must be free and regular consultation and screening for pregnant women and children throughout the country (Conclusions 2005, Republic of Moldova). It also recalls that free medical checks must be carried out throughout the period of schooling. The assessment of compliance takes into account the frequency of school medical examinations, their objectives, the proportion of pupils concerned and the level of staffing (Conclusions XV-2 (2001), France).

The report indicates that according to the Health Insurance Act, general and other medical examinations shall be performed to children, school children and students up to 26 years of age, to women with regard to pregnancy and to adults in accordance with the national programme related to prevention and early-diagnosis of diseases of major social and medical importance, i.e. screening programmes. The Committee asks that the next report contain information on concrete measures/activities carried out to implement the legislation, in particular on the types of consultation and screening available for pregnant women as well as on the medical examination performed on children at school, their frequency and the proportion of pupils covered.

The Committee recalls that there should be screening, preferably systematic, for all the diseases that constitute the principal causes of death (Conclusions 2005, Republic of Moldova). 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 mentions that the National Programme “Serbia Against Cancer” was adopted since 2008. The Committee takes note of the information available on the website of the National Cancer Screening Office according to which Serbia has started the gradual introduction of organised screening for cervical, colorectal and breast cancer since 2012. The National Cancer Screening Office, at the Institute of Public Health of Serbia “Dr Milan Jovanovic Batut”, coordinates, organises, monitors and evaluates the implementation of screening programmes and provides training and technical assistance to other participants in organised screening.

The Committee asks that the next report contain information on the implementation and the impact in practice of the screening programme (whether it has had an impact on reducing the mortality rate). It also asks information on available screening programmes/initiatives for other diseases which constitute principal causes of death (besides cancer).

The Committee emphasises that, if the requested information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter on this point.

Conclusion

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

Article 11 - Right to protection of health

Paragraph 3 - Prevention of diseases and accidents

The Committee takes note of the information contained in the report submitted by Serbia. However, there are significant gaps in information provided in relation to the specific requirements of Article 11§3 of the Charter.

Healthy environment

The report does not provide any information on this point.

The Committee asks that the next report provide information on the concrete measures taken, as well as on the levels and trends with regard to air pollution, water contamination, waste management, asbestos and food safety during the reference period. The Committee points out that if the requested information is not provided in the next report, there will be nothing to demonstrate that the situation is in conformity with the Charter.

Tobacco, alcohol and drugs

The report does not provide any information on this point.

The Committee recalls that anti-smoking measures are particularly relevant for the compliance with Article 11 since smoking is a major cause of avoidable death in developed countries. To be effective, any prevention policy must restrict the supply of tobacco through controls on production, distribution, advertising and pricing (Conclusions XVII-2 (2005), Malta). In particular, the sale of tobacco to young persons must be banned (Conclusions XV-2 (2001), Portugal), as must smoking in public places (Conclusions 2013, Andorra), including transport, and advertising on posters and in the press (Conclusions XV-2 (2001), Greece). The effectiveness of such policies on the basis of statistics on tobacco consumption is assessed (Conclusions XVII-2 (2005), Malta). This approach also applies *mutatis mutandis* to anti-alcoholism and drug addiction measures.

The Committee notes from the EU Commission Report 2016 that no progress has been made towards the preparation of a new strategy on tobacco control. The same source indicates that, on drug abuse prevention, the monitoring centre for drugs and drug addiction was established in March 2016.

The Committee asks for information in the next report on the levels and trends with regard to tobacco, alcohol and drugs consumption, as well as the measures taken to reduce and prevent the consumption.

The Committee emphasises that, if this information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter on this point.

Immunisation and epidemiological monitoring

The report indicates that under the Health Insurance Act “inoculation, immunoprophylaxis and chemoprohylaxis” are provided which are compulsory under the national programme on immunisation of the population against certain contagious diseases. Hygienic and epidemiological measures and procedures with regard to prevention, discovery and treatment of HIV infection and other contagious diseases are also provided.

The report indicates that a new Law on Protection of the Population from Communicable Diseases was adopted in 2016 (outside the reference period). The Committee asks that the next report contain information on concrete measures taken to implement this law in practice.

The Committee recalls that States Parties must operate widely accessible immunisation programmes. They must maintain high coverage rates not only to reduce the incidence of these diseases, but also to neutralise the reservoir of the virus and thus achieve the goals

set by WHO to eradicate several infectious diseases (Conclusions XV-2 (2001), Belgium). Countries must demonstrate their ability to cope with infectious diseases, such as arrangements for reporting and notifying diseases, special treatment for AIDS patients and emergency measures in case of epidemics (Conclusions XVII-2 (2005), Latvia).

The Committee asks information on concrete measures taken to ensure the surveillance and prevention on communicable diseases, including AIDS. It also asks that the next report contain figures on the vaccination coverage rates for the main vaccines.

The Committee emphasises that, if this information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter on this point.

Accidents

The report does not contain any information on this point.

The Committee recalls that States Parties must take steps to prevent accidents. The main sorts of accident covered are road accidents, domestic accidents, accidents at school and accidents during leisure time (Conclusions 2005, Republic of Moldova). The Committee asks for information on measures/policies taken to reduce and prevent the number of the above mentioned types of accidents and trends in this field (whether the number of accidents increased or decreased).

The Committee emphasises that, if this information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter on this point.

Conclusion

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

Article 12 - Right to social security

Paragraph 1 - Existence of a social security system

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

In the case of **family** and **maternity benefits**, the Committee refers to its conclusions on, respectively, articles 16 and 8§1 (Conclusions 2015).

Risks covered, financing of benefits and personal coverage

The Committee refers to its previous conclusions for a description of the social security system in Serbia, and notes that it continues to cover the traditional risks (medical care, sickness, unemployment, old age, work accidents/occupational diseases, family, maternity, invalidity and survivors). The system also continues to rest on collective funding: it is funded by contributions (employers, employees) and by the State budget.

According to official statistics (Statistical Yearbook 2016, covering data of 2015), Serbia population in 2015 was estimated to be 7 095 383 in total, and the economically active population was estimated to be 3 126 100.

In response to the Committee's question, the report indicates that 96% of the total population is covered by the compulsory **health** insurance (see Conclusions 2013 for details on the categories of persons covered). The report also indicates that the number of persons covered by the compulsory Pension and Disability insurance (which covers in fact **old-age**, **disability**, **survivors**, disability resulting from **work accidents and occupational diseases** and care giver's assistance) was 2 508 384 in 2015, i.e. 80% of the active population. The number of pension beneficiaries was 1 729 629 as of June 2016 (out of the reference period). The Committee considers that the coverage for these branches is adequate. As regards **sickness**, the Committee notes from Missceo that a compulsory insurance covers employees, entrepreneurs, priests and clergymen suffering from temporary working incapacity (farmers are not covered). In view of the large categories covered by compulsory insurance, the Committee considers that the coverage is adequate, but asks the next report to provide more detailed information on the number of persons covered. Employees (including temporarily employed persons) and self-employed persons are covered in respect of **unemployment**. The report does not provide however any data concerning the personal coverage in respect of this branch. The Committee recalls that the social security system should cover a significant percentage of the active population as regards income-replacement benefits, such as sickness, maternity and unemployment benefits, pensions, and work accidents or occupational diseases benefits. It accordingly reiterates its request for information on the number of persons covered by unemployment insurance, out of the active population, and asks that updated information on the rate of coverage (percentage of persons insured out of the total active population) for all the branches be systematically provided in each report concerning Article 12 of the Charter. It reserves in the meantime its position on this issue.

Adequacy of the benefits

According to Eurostat data, the median equivalised annual income was €2544 in 2015, or €212 per month. The poverty level, defined as 50% of the median equivalised income, was €1272 per year, or €106 per month. 40% of the median equivalised income corresponded to €85 monthly. The minimum wage was €235.

The Committee previously noted that the wage compensation for insured persons who are temporarily incapacitated for work due to **sickness** corresponds to 65% of their average salary of the last three months, and to 100% of that basis if the temporary incapacity results from **work accidents** or **occupational diseases**. On the basis of the minimum wage, the Committee considers that the level of these benefits is adequate.

As regards **old-age** pensions, the Committee refers to its assessment under Article 23.

Invalidity pensions are granted to persons who have lost completely and permanently their capacity to work, whether in relation to work (including military service) or not. The Committee notes from Missceo that in January 2015 the minimum pension amounted to RSD 13288 (€108) for retired employees, army officers and self-employed and RSD 10447 (€86) for retired farmers. The Committee recalls that, under Article 12§1, the level of income-replacement benefits should stand in reasonable proportion to the previous income and should not fall below the poverty threshold defined as 50% of the median equivalised income, as calculated on the basis of the Eurostat at-risk-of-poverty threshold value. However, where an income-replacement benefit stands between 40% and 50% of the median equivalised income, other benefits, where applicable, will also be taken into account. As the level of minimum pension for farmers is only slightly higher than the 40% threshold, the Committee asks the next report to clarify whether the persons concerned are entitled to additional benefits (including social assistance). It reserves in the meantime its position on this point.

In order to be entitled to **unemployment** benefits, a person must have been insured at least 12 months over a period of 18 months. As regards the conditions upon which the right to benefits might be suspended, in case of refusal of a job offer, the authorities explained (Governmental Committee report concerning Conclusions 2013) that a person registered as unemployed is allowed to refuse an adequate job offer or involvement in an active employment policy measure only in case of temporary incapacity to work. They clarified however that such refusal is unlikely, insofar as the definition of what constitutes an adequate job offer or an adequate activation measure is defined jointly with the person concerned, through an individual employment plan established within 90 days from his/her registration as unemployed. The Committee notes from Missceo that the amount of the benefits corresponds to 50% of the average wage earned in the six month period before registering as unemployed, but cannot be less than 80%, nor more than 160%, of the minimum wage. On this basis, the minimum level of unemployment benefit in 2015 corresponded therefore to €188, which is in conformity with Article 12§1 of the Charter.

In its previous conclusion (Conclusions 2013), the Committee found that the duration of payment of unemployment benefit was too short, at least as regards persons with up to five years' insurance, who are only entitled to 3 months of unemployment benefits (the maximum duration being 12 months for persons with more than 25 years' insurance, or 24 months in exceptional cases where the person is close to retirement age). As the situation has not changed in this respect, the Committee maintains its finding of non-conformity.

Conclusion

The Committee concludes that the situation in Serbia is not in conformity with Article 12§1 of the Charter on the ground that the duration of payment of unemployment benefits for people who have been insured up to five years is too short.

Article 12 - Right to social security

Paragraph 2 - Maintenance of a social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security

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

The Committee notes that Serbia has not ratified the European Code of Social Security. Therefore the Committee cannot take into consideration other sources such as the resolutions of the Committee of Ministers on application of the Code and has to make its own assessment based on the information received in the report.

The Committee recalls that Article 12§2 obliges states to establish and maintain a social security system which is at least equal to that required for ratification of the European Code of Social Security. The Code requires acceptance of a higher number of parts than ILO Convention 102 on Social Security (Minimum Standards), as six of the nine contingencies must be accepted although certain branches count for more than one part (medical care counts as two and old age counts as three).

The Committee notes that Serbia has ratified ILO Convention N° 102 and has accepted Parts II to VI, VIII and X. Part VI is no longer applicable as a result of the ratification of Convention No. 121 on Employment Injury Benefits.

The Committee recalls that in order to assess whether the social security system is maintained at a level at least equal to that necessary for the ratification of the Code, it has to assess the information regarding the branches covered, the personal scope and the level of benefits.

The Committee recalls its assessment under Article 12§1 which indicates that the social security system continues to cover the traditional risks (medical care, sickness, unemployment, old age, work accidents/occupational diseases, family, maternity, invalidity and survivors). It recalls its assessment under Article 12§1 that the coverage for the branches which concern health, old-age, disability, survivors, work accidents and occupational diseases is adequate, and it refers to its request under Article 12§1 for further information on the number of persons covered by sickness insurance and unemployment insurance, out of the active population.

The Committee also recalls its assessment under Article 12§1 that the level of benefits for sickness, work accidents or occupational diseases, unemployment and invalidity is adequate. However, as the level of minimum pension regarding invalidity for farmers is only slightly higher than the 40% poverty threshold, the Committee requests under Article 12§1 that the next report clarifies whether the persons concerned are entitled to additional benefits (including social assistance) and it reserves its position on this point. As regards old-age pensions, the Committee refers to its assessment under Article 23.

The Committee notes that the 2017 Report of the ILO Committee of Experts on Application of Conventions and Recommendations does not refer to any observation or direct request to the Government with regard to ILO Conventions 102 and 121.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Serbia is in conformity with Article 12§2 of the Charter.

Article 12 - Right to social security

Paragraph 3 - Development of the social security system

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

The Committee refers to its previous conclusions on Article 12§1 and 12§3 for a description of the social security system in Serbia. In the case of family and maternity benefits, the Committee refers to its conclusions on, respectively, articles 16 and 8§1.

As regards other branches of social security, the Committee had previously asked to be informed of any changes implemented during the reference period, as well as of their impact on the personal coverage and the minimum levels of the benefits in case of income-replacement benefits (Conclusions 2013). However, the report does not provide information on improvements achieved during the reference period, apart from the granting of additional one-off benefits to the recipients of minimum pensions in 2012 and 2013 and the entry into force, on 1 January 2014, of a Revised Health Insurance Law which brought to 100% (instead of 65%) the wage compensation for temporary incapacity related to pregnancy complications or pregnancy-related illness.

The Committee recalls that Article 12§3 requires States Parties to improve their social security system. A situation of progress may consequently be in conformity with Article 12§3 even if the requirements of Articles 12§1 and 2 have not been met or if these provisions have not been accepted. The expansion of schemes, protection against new risks or increase in the level of benefits, are examples of improvement. A restrictive evolution in the social security system is not automatically in violation of Article 12§3. The assessment of the situation depends on the nature of the changes (field of application, conditions for granting allowances, amounts of allowance, etc.); the reasons given for the changes and the framework of social and economic policy in which they arise; the extent of the changes introduced (categories and numbers of people concerned, levels of allowances before and after alteration); the necessity of the reform; the existence of measures of social assistance for those who find themselves in a situation of need as a result of the changes made (this information can be submitted under Article 13); the results obtained by such changes. However, where the cumulative effect of the restrictions can bring about a significant degradation of the standard of living and the living conditions of some groups of population, the situation may amount to the violation of Article 12§3 of the Charter. Even if individual restrictive measures are in conformity with the Charter, their cumulative effect, with the procedures adopted to put them into place, could be in violation with the right to social protection. Measures taken in order to consolidate public finances may be considered as a necessary means to ensure the maintenance and sustainability of the social security system. However, any modifications should not undermine the effective social protection of all members of society against social and economic risks and should not transform the social security system into a basic social assistance system. Therefore any changes to a social security system must ensure the maintenance of a basic compulsory social security system which is sufficiently extensive.

In the light thereof, the Committee reiterates its request for information in the next report on any relevant changes made during the reference period to the social security system, specifying the effect of these changes on the personal scope of the system and the minimum level of income replacement benefits. Such information must be provided in each report concerning Article 12§3, in order to assess compliance of the situation with the Charter. As the current report does not contain sufficient elements to assess the situation, the Committee reserves its position and holds that, should the information requested not be provided in the next report, there will be nothing to establish that the situation is in conformity with Article 12§3 of the Charter.

Conclusion

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

Article 12 - Right to social security

Paragraph 4 - Social security of persons moving between States

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

Equality of treatment and retention of accrued benefits (Article 12§4)

Right to equal treatment

Equal treatment between nationals and nationals of other States Parties in respect of social security rights shall be ensured through the conclusion of bilateral or multilateral agreements or through unilateral measures.

The Committee asked in its previous conclusion (Conclusions 2013) whether and how equal treatment for nationals of States Parties legally residing or working in Serbia not covered by bilateral agreements is secured by unilateral measures. It also asked if negotiations are underway with the States Parties concerned to conclude such agreements.

As regards bilateral agreements concluded with other States Parties, the Committee notes from the report that Serbia concluded a new agreement with Croatia, opened negotiations with Greece, the Russian Federation and Ukraine and, plans to do so with Azerbaijan and Spain. It notes however that there is still no agreement concluded or planned with Albania, Andorra, Armenia, Estonia, Finland, Georgia, Iceland, Ireland, Latvia, Lithuania, Malta, the Republic of Moldova and Portugal.

As regards unilateral measures undertaken by Serbia, the Committee notes from the previous report that the Serbian legislation treats, as a matter of principle, nationals of other States Parties legally working in Serbia on an equal footing with nationals. The Committee asks the next report to further indicates on whether a length of residence or employment requirement is imposed on nationals of other States Parties for receipt of social security benefits. Meanwhile, it considers the situation to be in conformity with the Charter on this point.

In respect of payment to family benefits, the Committee considered that the requirement for the child to reside in the territory of the paying State is in conformity with Article 12§4 (Statement of Interpretation on Article 12§4, Conclusions XVIII-1 (2006)). However, since not all countries apply such a system, States Parties applying the ‘child residence requirement’ are under the obligation, in order to secure equal treatment within the meaning of Article 12§4, to enter, within a reasonable period of time, into bilateral or multilateral agreements with those States which apply a different entitlement principle (Conclusions 2006, Cyprus).

The Committee previously considered (Conclusion 2013) the situation to be in conformity with the Charter on this point. However, it notes from the previous report that Parental allowance is granted to the mother (and in exceptional circumstances, to the father) of a child provided that she is a citizen of the Republic of Serbia residing in the Republic of Serbia in accordance with Article 14 of the Financial Support to Families with Children Act. Under Article 17 of the same Act, Child allowance is granted to one of the parents, custodian or foster parent provided that the child is a citizen of Serbia residing in Serbia as well as his/her parent, custodian or foster parent. The Committee observes that foreign nationals who legally work in the territory of the Republic of Serbia shall be entitled to child allowance if so prescribed by an international agreement, and asks the next report to provide more comprehensive information in this matter.

Given that there is still no agreement concluded or planned with Albania, Andorra, Armenia, Estonia, Finland, Georgia, Iceland, Ireland, Latvia, Lithuania, Malta, the Republic of Moldova and Portugal, the Committee considers the situation not to be in conformity with the Charter on this point.

Right to retain accrued benefits

The Committee recalls that invalidity benefit, old age benefit, survivor's benefit and occupational accident or disease benefit acquired under the legislation of one State Party according to the eligibility criteria laid down under that legislation are maintained irrespective of whether the beneficiary moves to another State Party. With respect to the retention of benefits (exportability), the obligations entered into by States Parties must be fulfilled irrespective of any other multilateral social security agreement that might be applicable. In order to ensure the exportability of benefits, States Parties may choose between bilateral agreements or any other means such as unilateral, legislative or administrative measures.

The Committee asked in its previous conclusion (Conclusions 2013), whether the right to retain the benefits accrued in Serbia by the nationals of States Parties not bound by a bilateral agreement is secured by unilateral measures and if so, how. It also asked why there are no agreements with some States Parties as well as information on the planned agreements and when these might be signed. The report states that beneficiaries are entitled to receive pension and disability benefits payments outside the territory of Serbia under conditions agreed in social security agreements. In this regard, the Committee asks whether the existing social security agreements concluded with the other States Parties ensure retention of accrued benefits. It also asks whether negotiations carried out with Greece, the Russian Federation and Ukraine plan to include provisions on this principle.

The Committee understands that unemployment benefits are only exportable to Bosnia and Herzegovina. It requests the next report to clarify whether this understanding is correct.

The Committee recalls that retention of accrued benefits may also be achieved on the basis of unilateral measures, legislative or administrative. In this regard, it asks the next report to provide information on unilateral measures planned or undertaken. Meanwhile, it reserves its position on this point.

Right to maintenance of accruing rights (Article 12§4b)

The Committee recalls that there should be no disadvantage for a person who changes his/her country of employment, where he/she has not completed the period of employment or insurance necessary under the national legislation to be entitled to certain benefits. This requires, where necessary, the aggregation of the employment or insurance periods completed in another territory and, in case of long-term benefits, a pro-rata approach to the conferral of entitlement, the calculation and payment of benefits.

States Parties may choose between the following means in order to ensure the maintenance of accruing rights: multilateral conventions, bilateral agreements or, unilateral, legislative or administrative measures.

The Committee asked in its previous conclusion (Conclusions 2013) whether and how the right to accumulate insurance and employment periods is secured for the nationals of the States Parties not bound by a bilateral agreement with Serbia. It also asked why there are no agreements with some States Parties as well as information on the planned agreements and when these might be signed. The Committee understands from the report that the principle of accumulation and maintenance of periods and benefits is ensured by bilateral agreements only. In this regard, the Committee notes from the report that Serbia concluded a new social security agreement with Croatia, opened negotiations with the Russian Federation, Greece and Ukraine and, plan to do so with Azerbaijan and Spain.

The report states that Serbia intend to extend the network of social security agreements to all the other States Parties. However, there has to be mutual interest between both sides in concluding such an agreement.

The Committee recalls that maintenance of accruing rights may also be achieved on the basis of unilateral measures, legislative or administrative. In this regard, it asks the next

report to provide information on unilateral measures planned or undertaken. Meanwhile, it reserves its position on this point.

Conclusion

The Committee concludes that the situation in Serbia is not in conformity with Article 12§4 of the Charter on the ground that equal treatment with regard to access to family benefits is not guaranteed to nationals of all other States Parties.

Article 13 - Right to social and medical assistance

Paragraph 1 - Adequate assistance for every person in need

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

Types of benefits and eligibility criteria

The Committee further notes from the report that the Government is planning to provide social welfare without any cuts in social benefits. However, to avoid accumulation of arrears, the policy of preservation and extension of social rights, maintenance of the achieved level of benefits and their accurate and punctual exercise is envisaged to continue.

In its previous conclusion (Conclusions 2013) the Committee took note of the Social Welfare Act which guarantees the right to social welfare services and financial assistance. Financial assistance includes cash social assistance, caregiver's benefit, one-off cash allowance, benefit in-kind and other types of financial assistance. There is an entitlement to cash social assistance for an individual and/or family. The right to cash social assistance can be exercised by unemployed individuals who are capable of work provided that they are registered as unemployed. According to the report, in 2015 there were 251,358 persons in receipt of social assistance. The Committee further takes note of the benefits covered under the Law on Financial Support for Families with Children. It notes however that under Article 13§1 it only examines the situation of a single person without resources.

In its previous conclusion the Committee asked what forms of social assistance could be reduced or withdrawn if the person does not accept an offer of employment or training and whether the withdrawal of such assistance could amount to the deprivation of all means of subsistence for the person concerned. In this connection, the Committee notes from MISSCEO that the beneficiary of social assistance must be registered as unemployed and cannot refuse an offer of employment, part-time working engagement, seasonal work, professional education or pre-qualification. The Committee notes from the report in this regard that under Section 80 of the Social Welfare Act, every person is responsible for meeting their own living needs and needs of their family, and an individual capable of work shall be entitled to take part in the activities enabling them to overcome their unfavourable social situation, and/or in the measures ensuring their social inclusion.

The Committee notes from the report that according to Section 83, cash social assistance may be granted to an able-bodied individual who has not declined an offered employment or hiring for temporary, casual or seasonal period, vocational training, re-training, additional training or elementary school education. As a result, any decline of an offered employment, hiring for temporary, casual or seasonal term, vocational training, re-training, additional training or elementary school education shall have for a consequence termination of eligibility to social cash assistance. The Committee reiterates its question whether in such cases the assistance is withdrawn in its entirety and may amount to the deprivation of all means of subsistence for the person concerned. 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 with the Charter on this point.

In its previous conclusion the Committee noted that those able to work are entitled to social assistance for the maximum period of nine months and asked whether social assistance was withdrawn in its entirety after the statutory period. The Committee notes from MISSCEO in this regard that the benefit is paid for as long as the claimant remains entitled to it. Families with a majority of members who are able to work, may only receive benefits for up to nine months per calender year. Rights are revised yearly. The Committee notes from the report in this regard that under Section 85, paragraph 3 of the Social Welfare Act any individual who is capable of work, and/or family with most members capable for work shall be granted social assistance for up to nine months in a calendar year, if they meet requirements under the law and thus as a result after nine months their entitlements shall cease. The Committee understands that for these persons the entitlement to the benefit will be renewed in the

following year if the person concerned continues to meet the eligibility criteria. The Committee asks the next report to confirm its understanding.

Level of benefits

To assess the level of the social assistance during the reference period, the Committee takes the following information into account:

- Basic benefit: the Committee notes from MISSCEO that the base of calculation of the financial assistance benefit is 20% of the net average wage. In January 2015 it stood at RSD 7,789 (€ 64). The Committee notes that for persons covered under Section 85, paragraph 3 of the Social Welfare Act the actual monthly level of benefit stood at € 48 (considering that the benefit is paid for nine months per year).
- Additional benefits: according to MISSCEO cash benefit beneficiaries, depending on the number of family members are entitled to reduced electricity, water and other utility bills. This reduction fall within the responsibility of the city-municipality Governments. The Committee asks the next report to indicate the average amount of assistance provided for a single person without resources, in receipt of the financial assistance. It also asks the next report to indicate the average amount of other additional benefits (i.e.one-off cash allowance, benefit-in-kind) that such person would be entitled to.

The poverty threshold, defined as 50% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value: estimated at € 106 in 2015.

In its previous conclusion the Committee found that the situation was not in conformity with the Charter as the level of social assistance was not adequate. In notes from the report of the Governmental Committee (GC (2014) 21) that in order to remedy the situation, important steps were planned to be taken and preparations were underway for an overall reform of the social system, including measure that would directly contribute to increasing the minimum level of social assistance. The strategic document, the Employment and Social Policy Reform Paper, was due to be adopted by the end of January 2015. This document foresees a more adequate coverage, an increased amount of benefits, especially for children, disabled people, elderly and people living alone. It also envisaged setting an income threshold at the level of the absolute poverty threshold. The Committee asks the next report to inform about the implementation of the strategic document and concrete results achieved.

The Committee considers that during the reference period, the level of assistance is still manifestly inadequate as the total assistance that could be obtained by a single person without resources falls below the poverty threshold. Therefore, the Committee reiterates its previous finding of non-conformity.

Right of appeal and legal aid

In reply to the Committee's question the report states that all the decisions related to the recognition or maintaining the entitlements and benefits under social care system are appealable, and reviewing authorities are vested with the powers to decide on the point of law in cases as provided for under Articles 232 and 233 of the Law on General Administrative Procedure.

In its previous conclusion the Committee asked whether the review bodies have the power to judge the cases on their merits. The Committee reiterates this question and holds that if this information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter.

Personal scope

The Committee recalls that, under Article 13§1, States are under the obligation to provide adequate medical and social assistance to all persons in need, both their own nationals as well as nationals of States Parties lawfully resident within their territory, on an equal footing. In addition, with reference to its Statement of Interpretation of Articles 13§1 and 13§4 (Conclusions 2013) regarding the scope of Articles 13§1 and 13§4 in terms of persons covered, the Committee considers that as regards emergency social and medical assistance, foreign nationals in an irregular situation in the territory of the State concerned are also covered under Article 13§1, rather than under Article 13§4, which was previously its practice.

The Committee henceforth examines whether the States who have accepted Article 13§1 ensure the right to:

- adequate social and medical assistance for their own nationals and for nationals of other States Parties lawfully resident within their territory on an equal footing;
- emergency social and medical assistance to foreign nationals unlawfully present in their territory.

Nationals of States Parties lawfully resident in the territory

The Committee recalls that under Article 13§1, foreigners who are nationals of the States Parties and are lawfully resident or working regularly in the territory of another States Party and lack adequate resources must enjoy an individual right to appropriate assistance on an equal footing with nationals. Equality of treatment means that entitlement to assistance benefits, including income guarantees, is not confined in law to nationals or to certain categories of foreigners and that the criteria applied in practice for the granting of benefits do not differ by reason of nationality. Equality of treatment also implies that additional conditions such as the length of residence, or conditions which are harder for foreigners to meet, may not be imposed.

The Committee further recalls that under the Charter nationals of States Parties lawfully resident in the territory cannot be repatriated on the sole ground that they are in need of assistance. Once the validity of the residence and/or work permit has expired, the Parties have no further obligation towards foreigners covered by the Charter, even if there are in a state of need. However, this does not mean that a country's authorities are authorised to withdraw a residence permit solely on the grounds that the person concerned is without resources and unable to provide for the needs of his/her family. The Committee asks whether the legislation and practice comply with these requirements.

The Committee notes from MISSCEO that foreigners and stateless persons may become beneficiaries in accordance with international agreements. The Committee asks the next report to clarify whether nationals of States Parties lawfully resident in the territory either with permanent or with temporary residence permits, are treated on an equal footing with nationals as regards access to social assistance, without any length of residence requirement. 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 with the Charter.

Foreign nationals unlawfully present in the territory

In its previous conclusion the Committee asked the next report to confirm that any foreign national in a situation of need is entitled, in law and in practice, to receive emergency medical care free of charge, as well as emergency social assistance (accommodation, food, clothing etc.).

In this connection, the Committee recalls that persons in an irregular situation must have a legally recognised right to the satisfaction of basic human material need (food, clothing, shelter) in situations of emergency to cope with an urgent and serious state of need. It

likewise is for the States to ensure that this right is made effective also in practice (European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, §187).

The Committee cannot accept the necessity of halting the provision of such basic emergency assistance as shelter, guaranteed under Article 13 as a subjective right, to individuals in a highly precarious situation. The Committee has considered that even within the framework of the current migration policy, less onerous means, namely to provide for the necessary emergency assistance while maintaining the other restrictions with regard to the position of migrants in an irregular situation, remain available to the Government with regard to the emergency treatment provided to those individuals, who have overstayed their legal entitlement to remain in the country (Complaint No. 90/2013, Conference of European Churches (CEC) v. the Netherlands, decision on the merits of 1 July 2014, §123).

The Committee asks the next report to confirm that the legislation and practice comply with these requirements.

Conclusion

The Committee concludes that the situation in Serbia is not in conformity with Article 13§1 of the Charter on the ground that the level of social assistance paid to a single person without resources in not adequate.

Article 13 - Right to social and medical assistance

Paragraph 2 - Non-discrimination in the exercise of social and political rights

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

Section 24 of the Social Welfare Act on Principles of the Respect for Beneficiaries' Integrity and Dignity provides that the beneficiary under the law shall be entitled to social care founded on social justice, responsibility and solidarity, and provided with respect for their physical and mental integrity, safety, and moral, cultural and religious beliefs in accordance with guaranteed human rights and liberties.

According to the report, persons in deprivation are not exposed, either in the context of law or practice, to any form of discrimination in exercising their political or social rights on the basis of the fact that they are beneficiaries of social assistance or allowance. They exercise their political or social rights as other citizens.

Conclusion

The Committee concludes that the situation in Serbia is in conformity with Article 13§2 of the Charter.

Article 13 - Right to social and medical assistance

Paragraph 3 - Prevention, abolition or alleviation of need

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

The Committee notes from the report that the Social Welfare Law has managed to a considerable extent to open the door for counselling services, therapy, social services and training under the social care system. These include counselling services, therapy, social services and training as intensive services offered to families in crisis; counselling and support for parents, foster parents, and adoptive parents; support to families taking care of their child or adult family member with a disability; maintaining family relations and family reunion; counselling and support in cases of violence; family therapy; mediation; help lines; activation; other counselling services, trainings, and activities. The Committee takes note of the statistical information provided by the Republic Institute for Social Care concerning the numbers of cases of counselling and guidance provided, including guidance for persons in social need. These services are mostly funded from local Government sources.

According to the report, municipalities that have such services developed, provide them free of charge. The Committee notes however that only a small number of municipalities have financial means to provide such services to an adequate extent and in line with the needs of the population.

The Committee further recalls that Article 13§3 concerns free of charge services offering advice and personal assistance specifically addressed at persons without adequate resources or at risk of becoming so. The social services covered by Article 13§3 must play a preventive, supportive and treatment role. This means offering advice and assistance to make those concerned fully aware of their entitlement to social and medical assistance and how they can exercise those rights. In assessing national situations under this provision the Committee specifically examines whether there are mechanisms to ensure that those in need may receive help and personal advice services free of charge and whether such services and institutions are adequately distributed on a geographical basis. The Committee asks the next report to provide updated information on how these requirements are met in legislation and practice.

Conclusion

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

Article 13 - Right to social and medical assistance

Paragraph 4 - Specific emergency assistance for non-residents

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

The Committee refers to its conclusion under Article 13§1 (personal scope) and recalls that Article 13§4 from now on will cover emergency social and medical assistance for nationals of States Parties lawfully present (but not resident) in the territory.

The Committee recalls that States Parties are required to provide non-resident foreigners without resources emergency social and medical assistance (accommodation, food, emergency care and clothing), to cope with an urgent and serious state of need (without interpreting too narrowly the 'urgency' and 'seriousness' criteria). No condition of length of presence can be set on the right to emergency assistance (Complaint No 86/2012, European Federation of national organisations working with the Homeless (FEANSA) v. the Netherlands, decision on the merits of 2 July 2014, §171).

The Committee notes from the report that social assistance is granted as monthly cash allowance. It may be granted to a person seeking asylum and/or a person with granted asylum under condition they are not placed in an asylum centre and members of their families do not have income or they are such as to be below a threshold as set under the Rules. Persons who reside in an asylum centre are not entitled to such assistance as they are entitled to all subsistence and survival conditions, placement and basic living items (clothing, footwear, cash assistance, etc.) at the centre itself, as provided for under Article 39 of the Asylum Law.

The threshold level has been taken from the social welfare system, i.e. minimum level of social security in effect in social care system for eligibility to financially jeopardised and vulnerable citizens. Thus, the same treatment of asylum seekers is ensured. The application for monthly cash social assistance is decided by a centre for social work in a municipality of application, i.e. where a person with duly granted asylum is staying.

According to the report, eligibility requirements for cash social assistance applicable to asylum seekers and persons with granted asylum are to be aligned further with the eligibility requirements applicable to nationals of Serbia as provided for under the Social Welfare Act.

The Committee notes from the report that every non-national in the situation of depravity shall be entitled under the law and in practice to emergency social care (shelter, food, clothing). The Committee notes that in 2015 1462 non-nationals/stateless persons in need of social care were registered by the social welfare centres.

The Committee asks the next report to provide information regarding medical assistance that is provided to lawfully present foreign nationals in need.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Serbia is in conformity with Article 13§4 of the Charter.

Article 14 - Right to benefit from social welfare services

Paragraph 1 - Promotion or provision of social services

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

Organisation of the social services

The report indicates that according to the Social Welfare Law (adopted in 2011) , social care services are grouped by relatedness, such as:1) services of assessment and planning, 2) community-based day care services, 3) services of support for independent living, 4) counselling services, therapies, social services and trainings, and 5) placement services. Services are provided temporarily, casually and/or continually, following the needs and best interest of beneficiaries. Social care services are organized as services for children, young persons, and family, and services for adults and elderly persons.

The report indicates that the Social Welfare Law has managed to introduce counselling services, therapy, social services and training under the social care system, including: 1. Counselling services, therapy, social services and training as intensive services offered to families in crisis; 2. Counselling and support for parents, foster parents, and adoptive parents; 3. Support to families taking care of their child or adult family member with disability; 4. Maintaining family relations and family reunion; 5. Counselling and support in cases of violence; 6. Family therapy; 7. Mediation; 8. Help lines; 9. Activation; 10. Other counselling services, trainings and activities.

Social services may be provided by public entities, natural or legal persons, associations, companies, as well as by other forms of organisations established by law. At the local level, the local governments are in charge of developing the social services and prioritising the objectives according to the needs of the citizens in the community.

Effective and equal access

The report indicates that the Social Welfare Law, provides that the payment of the services depends on the socio-economic status of the users: the user or his/her relatives may have to pay the fees entirely, partially or not at all (Article 72 of the Law).

The report underlines that there are 140 centres for social work within the system of social care which execute delegated public powers and ensure that all the citizens who find themselves in social need may exercise their rights, without discrimination, in accordance with the Rules on organisation, norms, and standards of operation of centers for social work. The territory of Serbia has social work centre equally distributed. In addition, there are also 75 public residential care institutions.

In its previous conclusion (Conclusions 2013), the Committee asked which legal remedies are available to users, such as a right to appeal to an independent body, in urgent cases of discrimination and violations against human dignity. As the report, once more, does not provide this information, the Committee reiterates its question and 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.

In its previous conclusion (Conclusions 2013) , the Committee asked information on whether nationals of other States Parties lawfully resident or regularly working in Serbia have the same entitlement of access to social services as citizens of Serbia, and if not, what restrictions are applied. The report does not provide any information. The Committee therefore reiterates its question and considers 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.

Quality of services

The Committee notes that the Social Protection Act introduced a quality system that consists of the defining of basic standards, their application, as well as of the introduction of a system of accreditation for the training and licensing of service providers, whether public or private. The licenses are issued by Social Care Chamber.

The report focuses on the description of the inspection of social care institutions' and social care service providers. conducted by inspectors of the ministry in charge of social care services. The inspectors are entitled to: 1) conduct immediate inspection of their work; 2) impose compulsory instructions for law enforcement and other legislation and to control compliance; 3) withdraw powers from an inspector who failed to conduct its tasks timely, professionally, legally and conscientiously, and to instruct establishment of accountability with a body with inspection powers delegated; 4) to organise joint actions with inspectors from authorities with delegated inspection powers; 5) to conduct an immediate inspection, if authorities with delegated powers fail to do so; 6) to demand reports, data and information on execution of delegated inspection powers.

In its previous conclusion (Conclusions 2013), the Committee asked for information on the total number of staff providing social services, as well as on whether this number is sufficient in relation to the number of users.

The report indicates that according to the data available with the Social Care Chambers and its Register of Licenses, there are 3278 licensed workers of which 2747 persons have license for basic social care and 226 for specialized social care activities, 329 are licensed for supervision of basic social care and 7 for specialized social care activities, 486 persons are licensed to conduct legal affairs in the context of social care.

The report underlines that regarding administrative capacities in social care institutions (centres for social work and residential care) there has still been insufficient staffing and constant need for knowledge and skill upgrade and trainings of current professional staff and the new coupled with insufficient means at their disposal. The report indicates that by the Government Decision (Official Gazette of RS 101 of 8 December 2015) a Law on setting a ceiling for number of the staff in public sector was passed and the ceiling was set in 2015 for a maximum number of 9226 fixed term employees in social care institutions, a decrease of 79 employees compare to 2014. In this respect the Committee asks if this situation of insufficient staffing in public services has had repercussion on the quality of services and if the Government envisages taking specific measures to improve the situation.

In its previous conclusion (Conclusions 2013), the Committee asked for information on the total amount of the public spending on the social protection services. As the report does not provide this information, the Committee reiterates its question and asks the next report to provide all relevant information.

In its previous conclusion (Conclusions 2013), the Committee asked whether there is any legislation on personal data protection.

The report indicates that in 2008 a Personal Data Protection Law was passed laying down provisions for collection and processing of personal data, rights of the persons concerned, and protection of the persons whose data are collected and processed.

Conclusion

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

Article 14 - Right to benefit from social welfare services

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

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

In its previous conclusion (Conclusions 2013) the Committee requested statistical data on any subsidies paid by the Government and the local authorities to voluntary organisations, which provide social services. It also requested information on any other types of support that may exist for the voluntary organisations, such as tax incentives.

As the report does not answer these questions, the Committee reiterates them and holds that if the information requested is not provided in the next report there will be nothing to establish that the situation is in conformity with the Charter.

In its previous conclusion (Conclusions 2013) the Committee recalled that States Parties shall encourage individuals and organisations to play a part in maintaining the services, for example by taking action to strengthen the dialogue with the civil society in the areas of welfare policy affecting the social welfare services, and asked if and how the dialogue with the civil society in respect of the social welfare services is ensured.

The Committee again notes that the report does not provide this information and 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.

In its previous conclusion (Conclusions 2013) the Committee asked, in the absence of information concerning the issue of discrimination, whether and how the Government ensures that the services managed by the private sector are effective and accessible on an equal footing to all, without discrimination at least on grounds of race, ethnic origin, religion, disability, age, sexual orientation and political opinion.

The Committee notes that the report does not provide this information. 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 defers its conclusion.

Article 23 - Right of the elderly to social protection

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

Legislative framework

The report states that the National Strategy on Ageing adopted in 2006 was completed at the end of 2015. The Committee notes that a report on the results of the implementation of the Strategy was published by the United Nations Population Fund (UNFPA). According to that report, in most cases the issues regarding ageing have been incorporated into local, municipal and national development plans, although in practice some measures have yet to be implemented. The Strategy should be renewed and limited to the goals set previously.

The report specifies that the co-ordination of the monitoring and implementation of policies regarding the ageing of the population was delegated to the Council for Old Age and Ageing, a specialised advisory body set up in 2011 to defend and promote the interests of older people.

The report also states that many older people, mostly from cities, are members of clubs or associations which, in addition to their relevance for integration in society, organise forums and round tables for advocating and impacting decision-making in municipalities and/or cities.

The Committee recalls that the main aim of Article 23 of the Charter is to enable elderly persons to remain full members of society and it consequently invites the States Parties to make sure that they have appropriate legislation, firstly, to combat age discrimination outside employment and, secondly, to provide for a procedure of assisted decision-making.

With regard to the fight against age discrimination, in its previous conclusion (Conclusion 2013), the Committee asked whether the Law 2009 prohibits age discrimination with respect to goods, services and facilities provided by private bodies. The report does not provide any information on this issue. However, the Committee notes from the European Network of legal experts in gender equality and non-discrimination report on Serbia that the abovementioned law prohibits explicitly all forms of discrimination based on age. According to the same source, Article 21§3 of the Serbian Constitution also prohibits age discrimination.

With regard to assisted decision-making for the elderly, the Committee previously asked whether such a procedure exists and, in particular, whether there are safeguards to prevent the arbitrary deprivation of autonomous decision-making. The Committee notes that the report does not provide any information on this subject, but merely states that, regarding social security, the beneficiary has the right to free and informed consent and to its corollary, the right to information, as well as the right to respect for their private life. The Committee reiterates its question.

Adequate resources

When assessing the adequacy of the resources of elderly persons under Article 23, the Committee takes into account all social protection measures guaranteed to elderly persons and aimed at maintaining an income level allowing them to lead a decent life and participate actively in public, social and cultural life. In particular, the Committee examines pensions, contributory or non-contributory, and other complementary cash benefits available to elderly persons. These resources are then compared with median equivalised income. However, the Committee points out that its task is to assess not only the law, but also the compliance of practice with the obligations arising from the Charter. For this purpose, the Committee will also take into consideration relevant indicators relating to at-risk-of-poverty rates for persons aged 65 and over.

The report does not provide any information on the minimum old age pension. However, the Committee notes from MISSCEO that this was equal to RSD 13 288 per month in 2015 (approximately €108) for retired employees, army officers and the self-employed, and RSD 10 447 per month (approximately €86) for farmers. The report does not provide any information on the amount of the allowance paid four times a year to pensioners, the amount of the cash social assistance or the amount of the long-term benefits available to those taking care of persons who are dependent. The Committee wishes to receive in the next report updated information on the amount of these benefits.

In response to the Committee's question (Conclusion 2013), the report indicates that, at present, there is no social pension.

As regards the benefits that people above 65 years living in poverty are entitled to, the report continues not to provide information on this subject. The Committee therefore reiterates its question. However, the Committee notes from the UNFPA report that local self-governments provide the families of elderly people with assistance in cash or kind.

The Committee, however, found that the situation was not in conformity with Article 13§1 of the Charter (Conclusion 2017, Article 13§1) due to the manifestly inadequate level of social assistance. It noted that the basic allowance was RSD 7,789 (approximately €64) per month for a single person and RSD 11,683 (approximately €102) for a couple.

The Committee points out that it considers pensions and social assistance levels to be appropriate where the monthly amount of benefits – basic and/or additional – paid to a person living alone is not manifestly below the poverty threshold (set between 40-50% of the median equivalised income). The poverty threshold, defined as 50% of median equivalised income and calculated on the basis of the Eurostat at-risk-of-poverty threshold value, was estimated at €106 per month in 2015 (the threshold defined on the basis of 40% of median equivalised income was €85). The Committee notes that the minimum pension is above 50% of median equivalised income (and that farmers' pensions are just above 40%), but it also notes that 19.7% of people aged 65 and over live on the at-risk-of-poverty threshold. It further notes from the Governmental Committee report concerning the 2013 Conclusions that 5% of the population aged 65 years and over have no pension**.**

For these reasons, the Committee considers that the level of social assistance is manifestly inadequate, given in particular the large number of elderly persons who must rely on it. It therefore concludes that adequate resources are not guaranteed**.**

Prevention of elder abuse

In its previous conclusion (Conclusion 2013), the Committee asked *inter alia* what the public authorities were doing, firstly, to evaluate the extent of the problem in Serbia and, secondly, to raise awareness on the need to eradicate elder abuse and neglect. The report states that social services take due account of cases of violence against the elderly by, on the one hand, recording all cases of violence against elderly persons and, on the other hand, providing assistance to victims. In particular, they removed 66 older people from their families, instituted 68 court proceedings, offered financial and legal assistance or counselling to 1 193 victims of violence, and placed 275 elderly victims in other suitable institutions**.**

The Committee notes that the National Strategy envisaged introducing measures to prevent neglect, discrimination and violence against the elderly and to protect them from abuse of this kind. The Committee wishes to be informed of the measures and projects implemented in this connection, as well as of their results.

Services and facilities

The Committee points out that, although Article 23 makes reference only to information about services and facilities, it presupposes that such services and facilities exist.

With regard to the services and facilities as such, the Committee firstly asked in its previous conclusion (Conclusion 2013) information on access to community-based services. The report states that a third of the municipalities have put in place day care services, meals in soup kitchens, particularly in the big cities, as well as discounts on the cost of medicine, transport, and even exemptions from some costs for the most disadvantaged elderly persons. 9 018 older people were provided with help at home in 2015 and 1 511 benefited from services provided by day care centres. The Committee observes, however, in the UNFPA report that many public services are not or are no longer available to the elderly living in rural areas.

Secondly, the Committee asked how the quality of the services was monitored, and if there was a possibility for elderly persons to complain about the services. The report states that the setting of standards and the establishment of monitoring mechanisms fall under the authority of the State and local self-governments. Service providers, whether public or private, must be registered. The monitoring of the quality of social services is managed by social care inspectors. The Committee asks the next report to provide further information on the number of licences delivered, the status of these inspectors, the number of their inspections as well as the measures they are entitled to take in cases of established breaches or abuse. It also wishes to find in the next report information on the organisation of the monitoring mechanisms at the national and municipal level, and particularly, the powers of each of them in this regard.

Thirdly, the Committee asked if some of these services were subject to fees and if so, how the fees were calculated. The report does not provide any information on this subject, so the Committee reiterates its question.

Fourthly, the Committee asked for information on any possible services or facilities which families caring for elderly persons, in particular highly dependent persons, could request, as well as on any particular services for those suffering from dementia or Alzheimer's disease. The report states that a number of local authorities provide benefits in cash or in kind and home assistance. Some local authorities also provide psychological support to the families of elderly persons. The Committee asks the next report to provide for more information on this subject, and in particular whether these services are provided across the entire country.

Fifthly, the Committee enquired about the cultural, leisure and educational facilities available to elderly persons. The report indicates that the elderly are very active in citizens' associations, charities and other non-governmental organisations working on the issue of the active ageing of the population.

With regard to measures to inform people about the existence of services and facilities, the report states that the Strategy has made it possible to set up a number of portals, such as the "Penzin" portal, aimed at informing elderly persons of their rights and the services available at national and local level. The Gerontological Centre in Belgrade also runs an information centre. The Committee further notes from the UNFPA report that elderly persons can turn to the social protection centres which are particularly active in providing them with information. The Committee notes, however, that elderly persons living in rural areas are less well informed of their rights than others, and asks in this regard, if any measures have been taken or are envisaged to remedy this situation.

Housing

In its previous conclusion (Conclusion 2013), the Committee asked whether the needs of the elderly were taken into account in national or local housing policies. The report provides no information in this regard. However, the Committee notes from the Replies to the Questionnaire of the Special Rapporteur on the Right to Adequate Housing, Ms Leilani Farha, that Serbia has passed a number of laws which take into consideration the requirements and needs of elderly persons**.**

Secondly, the Committee asked whether sheltered or supported housing was provided, and whether the supply of such housing was sufficient. The report indicates that under the Law on Social Welfare, local authorities have been given an opportunity to finance the provision of social housing in protected conditions. The Committee asks the next report to provide for more information on this subject, and in particular on the number of buildings constructed, the housing services offered to the elderly and whether there is financial assistance to adapt/renovate elderly persons' private dwellings. It also asks how many older people live in their own dwellings, if other types of alternative housing (social housing and housing in small communities) have been built, and if so, how many and in which regions. Moreover, the Committee notes from this other source that the Serbia intends developing a plan for the reconstruction of at least 90 buildings in the 30 least developed municipalities in the Republic of Serbia to make them more accessible. It asks the next report to provide further information on this.

The report also indicates that vulnerable persons living in social housing may be granted a discount on their electricity, gas and heating bills. The Committee asks if this assistance is systematically given to vulnerable elderly persons, whatever local community they reside in. It also wishes to receive more detailed information on the level of the costs of social housing and on what happens when the individuals concerned or their families are unable to meet the relevant costs..

In the meantime, the Committee reserves its position on this point.

Health care

In its previous conclusion (Conclusion 2013), the Committee asked for more information on the programmes and health care services for the elderly. It also asked for information on any new measures taken to improve the accessibility and quality of the geriatric and long-term care or the co-ordination of the social and healthcare services in respect of the elderly. The report states that a new facility was opened for the placement of the elderly in palliative care in the Gerontological Centre in Subotica outside the reference period.

The Committee notes from the UNFPA report that large numbers of elderly persons do not have access to primary health care. The capacity for long term health care is limited and often badly organised. The Committee wishes to know what are the measures envisaged/planned to remedy this situation.

Institutional care

According to the report, 14 059 elderly persons were accommodated in public and private residential care in 2015. The report further states that housing-type residential care has significantly improved. Conditions in the homes have also improved (increased comfort, upgraded and standardised services), rehabilitation services have been enhanced and many activities and programmes are currently proposed to the beneficiaries.

In its previous conclusion (Conclusion 2013), the Committee asked how the different facilities were licensed and inspected, and whether procedures existed for complaining about the standard of care and services or about possible ill-treatment. In this respect, the Committee notes that the Serbia has recently put in place an accreditation system for service providers – namely institutions and professionals in direct contact with the beneficiaries. The report states that the development of standards and monitoring mechanisms is a matter for national and municipal authorities. It moreover indicates that social work centres and residential care facilities are bound by law to report annually to the competent minister on their work. A beneficiary who is dissatisfied with a service or a service provider may file a complaint with the relevant authority. The Committee notes that a comprehensive database on service providers and care provided should be put in place. It asks the next report to indicate whether the establishment of such database is still planned and, if so, on what timescale.

The Committee also asked which authority or body was responsible for the inspection of homes and residential facilities (both public and private). The report states that quality control of services, including placement in institutions, is carried out by social welfare inspectors. It further states that the Social Care Inspectorate issued some 37 operating bans on retirement homes in the second half of 2014 and in 2015 (33 were illegal and four did not have the requisite permits).The Committee asks that the next report provide more information on this subject, in particular on whether these inspectors are part of an independent body.

Conclusion

The Committee concludes that the situation in Serbia is not in conformity with Article 23 of the Charter on the ground that adequate resources are not guaranteed.

Article 30 - Right to be protected against poverty and social exclusion

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

Measuring poverty and social exclusion

The Committee notes that the national indicator used to measure poverty is based on the concept of absolute poverty.

In 2014, according to the report, 8.9% of the population had expenditures that were below poverty line/threshold of poverty, i.e. RSD 11.340 = 94.99 EUR monthly per spending unit), and therefore was not in a position to satisfy basic living needs. The profile of poverty indicates that absolute rate of poverty is significantly higher in non-urban areas in which it reaches 12.2% in comparison to urban areas in which it is 6.2%.

Following European practice, the risk of poverty line/threshold is also the subject of tracking and reporting on the basis of the Survey on Income and Living Conditions (SILC). According to this relative indicator, the at-risk-of-poverty rates went from 42% in 2013 to 41.3% in 2015 (European Semester headline poverty indicator). For 2016, which is outside the reference period, the rate decreased to 38.7%.

The at-risk-of-poverty rate before social transfers went from 32.6% in 2014 to 37.2% in 2015, whereas the at-risk-of-poverty rates after social transfer stayed at the same level, namely 25.4% in 2014 and 2015. For household with zero or very low work intensity the rates went from 13.7% in 2013 to 15.6% in 2015. The rates for severe material deprivation went from 26.9% in 2013 to 24.0% in 2015.

The Committee notes from the report that child poverty is significantly above the average for the population both when measured in absolute and relative terms. Thus, in 2014 12.2% children less than 13 years of age, and 11.5% of children aged 14-18 were absolutely poor. In the same year, 29.9% children under 18 years of age were at the risk of poverty.

The Committee observes from the 2015 Eurostat data with respect to Serbia that the main poverty indicators (41.3%) are significantly above the EU-28 average (23.8%)

Approach to combating poverty and social exclusion

Section 4 of the Law on Social Welfare states that "every individual or family in need of social assistance and support for overcoming social and living difficulties and creating conditions of basic subsistence needs, shall be eligible to social welfare, in compliance with the Law". This right shall be ensured by providing the social welfare services and financial assistance, to which other provisions of the same Law are dedicated: social care beneficiaries should be nationals (Section 6), though non-national and stateless persons may also be beneficiaries under law and international agreements; income support is provided in the form of cash social assistance, caregiver’s benefit, vocational training benefit, in kind benefit and other types of financial income support.

According the the same Law, services for intensive support of family, which are community-based , should be developed and provided in the settings where the family lives (Section 40).

The Ministry of Labour, Employment, Veteran and Social Affairs also supports development of community-based services, not only as a coordinator of large-scale projects through which such services are funded, but with a concrete financial support for local governments and organisations of civil society whereby new community-based services are established or the sustainability of already established ones are supported. Local governments may ensure funds from different sources – from donations, municipal budget, State Budget, etc.

Beneficiaries are entitled to:

- information on all the data of relevance for identification of the social needs and on how such needs may be satisfied (Section 34)
- take part in the assessment of their situation and needs and in the decision-making; to timely receive all the information needed; to be briefed on alternative services which are available to them and be provided with all other information of relevance for service provision. No service shall be provided without the beneficiary's consent unless in cases provided for under law. (Section 35)
- free choice of services and service providers (Section 36)
- confidentiality of all private data (Section 37)
- respect of their privacy in provision of social care services (Section 38)
- file a complaint with a competent authority if not satisfied with a provided service,or a procedure or behaviour and conduct of service provider (Section 39)

The Committee notes that amendments of the Law on Social Welfare are underway, which should improve targeting of cash social assistance recipients, along with an increase of the related amount for children in family as well as undertaking of the measures for protecting long-term unemployed persons, older persons and persons with disability.

The Committee further notes from the report that the share of the expenses for social care in Serbia's GDP (below 25%) is lower than the EU28 average which is in the recent years around 29%.

The Regulation on policy of social inclusion for the cash social assistance recipients which was adopted in 2014 (Official Gazette of RS, 112/14) imposes measures aimed at overcoming of unfavourable social situation of social assistance recipients who are capable for work. An agreement is concluded among four ministries (Ministry of Labour, Employment, Veterans and Social Affairs, Ministry of Health, Ministry for Public Administration and Local Government, Ministry of Education, Science and Technological Development) with view to implementing the Regulation.

The process of licensing of all service providers is on-going. A database on local services is expected to be set up by the end of 2016.

A new mechanism has been launched at national level for those municipalities and cities which do not have means to launch social care services: the so-called "earmarked transfer", which under the law regulating funding of local governments, can fund several social care services from the State budget. Under the Regulation on Earmarked Transfers adopted in March 2016, a total annual amount of the appropriations for earmarked transfers set at 1.5% related to an adequate programme of social care as estimated under the budget line of the Ministry of Labour, Employment, Veteran and Social Affairs will be in application as of 1 January 2017.

The Committee notes that, though several measures were put in place – in particular in the framework of the process of accession to the European Union – a very high percentage of the population, in particular children, is still at-risk-of-poverty. In order to have further indication on the overall and coordinated approach to combating poverty and social exclusion, it asks that the next report contains information on the existence of coordination mechanisms for these measures, including at delivery level (i.e. on how the coordination is ensured in relation to the individual beneficiaries of assistance and services), the resources allocated to them and the number of beneficiaries for every year of the reference period.

The Committee further refers to its conclusions of non-conformity under other provisions of the Charter which are relevant to its assessment of compliance with Article 30 (see Conclusions 2013, Statement of interpretation on Article 30). It refers in particular to

- Article 1§1 and its conclusion that it has not been established that employment policy efforts have been adequate in combatting unemployment and promoting job creation (Conclusions 2016);

- Article 10§4 and its conclusion that it has not been established that special measures for the retraining and reintegration of the long-term unemployed have been effectively provided or promoted (Conclusions 2016);
- Article 12§1 and its conclusion that the duration of payment of unemployment benefits for people who have been ensured up to five years is too short (Conclusions 2017);
- Article 13§1 and its conclusion that the level of social assistance paid to a single person without resources is not adequate (Conclusions 2017);
- Article 15§2 and its conclusion that persons with disabilities are not guaranteed effective access to the open labour market and that it has not been established that the legal obligation to provide reasonable accommodation is respected (Conclusions 2016);
- Article 16 and its conclusion that equal treatment of nationals of other States Parties regarding the payment of family benefits is not ensured (Conclusions 2015).

On the basis of all the information at its disposal, the Committee notes that, though some modest positive results have been achieved (more significantly after the reference period), the risk of poverty or social exclusion is still very high, in particular for children, the share of expenses is low, and that there is no overall and coordinated approach to combating poverty and social exclusion. The Committee therefore considers that the situation is not compatible with the requirements of Article 30.

Monitoring and evaluation

According to the report, the Government regularly tracks and reports on social inclusion and activities targeted at poverty reduction. The source of the data is the statistical surveys undertaken regularly, as well as the analyses of administrative data on the recipients of benefits for the poor. More precise findings are contained in the papers such as the First and Second National Report on Social Inclusion and Poverty Reduction (adopted respectively in 2010 and in 2014), and the Employment and Social Policy Reform (ESPR) in the process of accession to the European Union defining measures and activities in the years to come and linking them to budget appropriations, with the aim of provision of better protection to vulnerable population. An *inter-ministerial working group*, set up on the basis of the Government decision tasked with development of the ESRP is in charge of the monitoring of its implementation. The Ministry of Labour, Employment Veterans and Social Affairs coordinated the overall process of design and development with the expert assistance of the Team for Social Inclusion and Poverty Reduction.

The Committee takes note of the fact that the Team for Social Inclusion and Poverty Reduction monitors and reports on social exclusion and poverty thus strengthens the Government capacities for development and implement social inclusion policies.

However, the Committee recalls that Article 30 of the Charter requires the existence of monitoring mechanisms for reviewing and adapting the efforts in all areas and sectors, at all levels, national, regional, local, to combat poverty and social exclusion; mechanisms which should involve all relevant actors, including civil society and persons directly affected by poverty and exclusion (see Conclusions 2003, France, Article 30). It therefore asks that the next report contain comprehensive information on such mechanisms covering all sectors and areas of the fight against poverty and social exclusion.

Conclusion

The Committee concludes that the situation in Serbia is not in conformity with Article 30 on the ground that there is no adequate overall and coordinated approach to combating poverty and social exclusion.

January 2018

European Social Charter

European Committee of Social Rights

Conclusions 2017

SLOVAK REPUBLIC

This text may be subject to editorial revision.

The following chapter concerns Slovak Republic, which ratified the Charter on 23 April 2009. The deadline for submitting the 7th report was 31 October 2016 and the Slovak Republic submitted it on 9 November 2016.

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 "Health, social security and social protection":

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

The Slovak Republic has accepted all provisions from the above-mentioned group, except Article 13§4.

The reference period was 1 January 2012 to 31 December 2015.

The conclusions relating to the Slovak Republic concern 18 situations and are as follows:

– 9 conclusions of conformity: Articles 3§3, 3§4, 11§2, 12§2, 12§3, 13§2, 13§3, 14§1 and 14§2,

– 9 conclusions of non-conformity: Articles 3§1, 3§2, 11§1, 11§3, 12§1, 12§4, 13§1, 23 and 30.

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In addition, the report contains also information requested by the Committee in Conclusions 2015 in respect of its conclusion of non-conformity due to a repeated lack of information regarding the right of the family to social, legal and economic protection (Article 16).

The Committee examined this information and adopted a conclusion of conformity relating to this Article.

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The next report will deal with the following provisions of the thematic group "Labour Rights":

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 21),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 22),
- the right to dignity at work (Article 26).
- the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28),
- the right to information and consultation in collective redundancy procedures (Article 29).

The report should also contain information requested by the Committee in Conclusions 2016 in respect of its conclusions of non-conformity due to a repeated lack of information:

- the right to work – vocational guidance, training and rehabilitation (Article 1§4),
- the right to vocational guidance (Article 9),

- the right to vocational training – technical and vocational training; access to higher technical and university education (Article 10§1),
- the right to vocational training – long term unemployed persons (Article 10§4),
- the right to engage in a gainful occupation in the territory of other States Parties – simplifying existing formalities and reducing dues and taxes (Article 18§2),
- the right to protection in case of dismissal (Article 24)

The deadline for submitting that report was 31 October 2017. The report was registered on 9 November 2017. Conclusions on the Articles concerned will be published in January 2019.

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Conclusions and reports are available at www.coe.int/socialcharter as well as in the HUDOC database.

CONCLUSIONS RELATING TO ARTICLES FROM THE THEMATIC GROUP

‘Health, social security and social protection”

Article 3 - Right to safe and healthy working conditions

Paragraph 1 - Health and safety and the working environment

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

General objective of the policy

In its previous conclusion (Conclusions 2013), the Committee examined the legislative and regulatory framework and noted that the legislative framework provided for an overall approach to occupational health and safety policy. It asked for further information on the changes made by Act No. 124/2006 on Health and Safety at Work (Conclusions 2013 and XIX-2 (2009)). The report does not provide any information in this respect.

In its previous conclusion, the Committee also asked to clarify which, of the public health authorities or the labour inspection authorities, are responsible for monitoring the application by employers of the protective obligations laid down by Act No. 124/2006. The report states that the Ministry of Labour, Social Affairs and Family is the central body for occupational health and safety and labour inspection. In this aspect, its role to ensure creation, coordination and execution of the state policy, to ensure creation of concept and program papers, and to prepare legal regulations and ensure their enforcement in practice. The National Labour Inspectorate (NLI) is part of the Ministry of Labour, Social Affairs and Family. It directs the work of individual regional labour inspectorates supervises and verifies labour protection requirements and enforces both safety and health issues as well as general working conditions. The Ministry of Health is the central body for occupational health in occupations directly related to e.g. chemical, carcinogenic and mutagenic factors, noise and vibrations. Under the direct coordination of the Ministry of Health, the Public Health Authority and its regional offices ensure in practise the execution of occupational health protection.

The Committee points out that new technology, organisational constraints and psychological demands favour the development of psychosocial factors of risk, leading to work-related stress, aggression, violence and harassment. It would also point out that, with regard to Article 3§1 of the Charter, it takes account of stress, aggression, violence and harassment at work when examining whether policies are regularly evaluated or reviewed in the light of emerging risks. The States parties have a duty to carry out activities in terms of research, knowledge and communication relating to psychosocial risks (Statement of Interpretation on Article 3§1 of the Charter, Conclusions 2013). The report does not provide any information on this point. The Committee accordingly reiterates its request.

The Committee further asked for information on the activities implemented and the results obtained by the 2008-2012 Conception for Occupational Health and Safety. The report indicates that it led to the adoption of the Strategy on the Occupational Health and Safety up to 2020 on 10 July 2013, which identifies and sets crucial goals in this matter. It adds that several amendments of the Act No. 124/2006 were made in order to ensure even higher protection of health on workers. The Committee asks that the next report provide more comprehensive information on the content, implementation and results of the national strategy on occupational health and safety. It asks whether the objective of the policy to foster and preserve a culture of occupational risk prevention. It then requests that the next report indicate whether policies and strategies are periodically reviewed and, if necessary, adapted in the light of changing risks.

The Committee concludes that it has not been established that there is an occupational health and safety policy the objective of which is to foster and preserve a culture of prevention.

Organisation of occupational risk prevention

In its previous conclusion (Conclusions 2013), the Committee considered that the labour inspection authorities participated in the development of a health and safety culture among employers and workers and shared the knowledge acquired during inspection activities.

In its previous conclusion (Conclusions 2013), the Committee asked to clarify the role of the different measures and bodies in the practical organisation of occupational risk assessment, the tailoring of prevention measures to the nature of the risks and the organisation of information and training for workers. It also asked for information on the involvement of the public authorities in the implementation of prevention measures (risk assessment, awareness-raising, protective measures) at national and company level. The report states that in the area of occupational health protection, the Public Health Authorities supervise employers' compliance with their duties to protect employees' health (Act No. 355/2007 Coll. and government regulations). They are also supervise on an on-going basis compliance with measures to prevent or limit occupational diseases, identify and define deficiencies in compliance with employers' obligations under legislation on the subject and impose penalties on employers within the scope of their competence. They coordinate the performance of the state health supervision relating to working conditions with the Labour Inspection Authorities, performing joint workplace inspections focussing on problems connected with the protection of occupational safety and health. The Public Health Authorities check the performance of the occupational health service and investigate occupational protection of health to prevent occupational diseases and work-related illnesses, and the Labour Inspection Authorities focus on occupational safety and the prevention of occupational accident.

The Committee asked for information on how employers, particularly small and medium-sized enterprises, discharge their obligations in terms of initial assessment of the risks specific to workstations and the adoption of targeted preventive measure in practice. No information was provided on occupational risk prevention at company level. The Committee recalls that, in addition to compliance with protective rules, the assessment of work-related risks and the adoption of preventive measures geared to the nature of risks as well information and training for workers. It therefore asks that information be provided on what is done at company level in terms of prevention.

The Committee concludes that it has not been established that occupational risk prevention is organised at company level, work-related risks are assessed, and preventive measures geared to the nature of risks are adopted.

Improvement of occupational safety and health

In its previous conclusion (Conclusions 2013), the Committee asked for information on the authorities' involvement in the training of occupational health and safety professionals, the development of training modules for employers and workers, and the development of certification systems in this sphere. In reply, the report states that the Ministry of Labour, Social Affairs, the Ministry of Health and the National Labour Inspectorate organise seminars for professionals in the field of occupational health and safety.

In its previous conclusion (Conclusions 2013), the Committee also asked for clarification about the institutions involved in research in occupational health and safety (sectoral risk analysis, preparation of rules of conduct and recommendations, training courses, etc.). No information was provided on this point. The Committee asks again whether public authorities are involved in research (scientific and technical knowledge) on occupational health and safety, and in activities (analysis of sectoral risks, elaborate standards, issue guidelines, publications, seminars, training); whether public authorities are involved in training (qualified professionals), in the design of training modules, of training (how to work, how to minimise risks for oneself or others) and certification schemes.

The Committee concludes that the situation is not in conformity with the Charter on the ground that it has not been established that the occupational health and safety policy includes training, information, quality assurance and research in a satisfactory manner.

Consultation with employers' and workers' organisations

In its previous conclusions (Conclusions XIX-2 (2009) and 2013), the Committee requested for information on the participation of workers' organisations in the Co-ordination Council on Occupational Safety and Health, and on the inspections carried out by KOZ SR (the Confederation of Unions of the Slovak Republic) inspectors. It also asked for information on the arrangements for consultation between employers and employees at company level. The Committee considered that if the requested information would not b provided, there would be nothing to establish the conformity of the situation in the Slovak Republic with Article 3§1 of the Charter in this respect.

The report states that the social partners are directly involved in creation of OSH policies and related documents, as well as legislation via the Economic and Social Council which has to approve all legislation and each strategy and program before the Government can approve them. If the social partners do not approve, the material has to be reworked.

As regards the consultation between employers and employees at company level, the report does not provide any information. The Committee refers to its conclusion under Article 22 of the Charter (Conclusions 2014) and considers that the situation is in conformity on this point.

The Committee notes that there is genuine co-operation between the authorities and the social partners, both at federal and at company level.

Conclusion

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 3§1 of the Charter on the grounds that:

- it has not been established that there is an adequate occupational health and safety policy;
- it has not been established that occupational risk prevention is organised at company level, work-related risks are assessed and preventive measures geared to the nature of risks are adopted;
- it has not been established that the national policy on health and safety includes training, information, quality assurance and research in a satisfactory manner.

Article 3 - Right to safe and healthy working conditions

Paragraph 2 - Safety and health regulations

The Committee takes note of the information contained in the report submitted by the Slovak Republic, but highlights the significant gaps in information provided in relation to the specific requirements of Article 3§2 of the Charter.

Content of the regulations on health and safety at work

The Committee points out that under the terms of Article 3§2 of the Charter, regulations concerning health and safety at work must cover work-related stress, aggression and violence specific to work, and especially for workers under atypical working relationships (Statement of Interpretation on Article 3§2 of the Charter, Conclusions 2013). The report does not provide any information on this point. The Committee accordingly reiterates its request.

The Committee previously (Conclusions 2013) requested comments on the analysis according to which the specific regulation of most risks is mainly governed by Act No. 355/2007 on protection, support and development of public health, while the health and safety prevention and protection system is governed by Act No. 124/2006. It asked also to explain the specific occupational risk protection system established under Act No. 124/2006 and, where applicable, Act No. 355/2007 (Conclusions 2013 and XIX-2 (2009)). The report does not provide any information on these points.

In view of the lack of information in the report, the Committee is not in a position to examine the conformity of the Slovak Republic's laws and regulations on occupational health and safety under Article 3§2 of the Charter during the reference period. It asks that the next report provide information on the following points:

- whether the legislation and regulations on occupational health and safety cover the majority of the risks listed in General Introduction to Conclusions XIV-2 (1998);
- whether such coverage is specific in that the rules are set out in sufficient detail for them to be applied properly and efficiently.

Levels of prevention and protection

The Committee examines the levels of prevention and protection at work provided for by the legislation and the regulations in relation to certain risks.

Establishment, alteration and upkeep of workplaces

The Committee previously considered (Conclusions 2013) that levels of prevention and protection in relation to the establishment, alteration and upkeep of workplaces was in conformity with Article 3§2 of the Charter and requested full, up-to-date information on changes in the legislation and regulations during the reference period, with regard to the levels of prevention and protection applicable to the establishment, alteration and upkeep of workplaces. It also asked for details on the requirement to conduct workplace risk assessments and the deadlines for compliance with this requirement. The report does not contain any information on the levels of prevention and protection in relation to the establishment, alteration and upkeep of workplaces.

In view of the lack of information in the report, the Committee is not in a position to examine whether the legislation and regulations in force satisfy the obligation under Article 3§2 of the Charter, which requires that levels of prevention and protection required by the legislation and regulations in relation to the establishment, alteration and upkeep of workplaces be in line with the level set by international reference standards. It asks that the next report provide full and detailed information on the legislation and regulations, including any

amendments thereto adopted during the reference period, which specifically relate to that subject.

Protection against hazardous substances and agents

The Committee asks the next report to provide information on the specific provisions relating to protection against risks of exposure to benzene.

Protection of workers against asbestos

The Committee previously concluded (Conclusions XVIII-2 (2007), XIX-2 (2009) and 2013), that the levels of prevention and protection in relation to asbestos were at least equivalent to those laid down in the benchmark international standards, and recalled that the report must provide information on changes in legislation and regulations during the reference period. It requested for information on the measures adopted to transpose the exposure limit value of 0.1 fibres per cm^3 introduced by Directive 2009/148/EC. The report does not provide any information thereon. The Committee asks the next report to provide full and updated information on this point. In the meantime, it concludes that it has not been established that protection the levels of protection against asbestos and ionising radiation are adequate.

Protection of workers against ionising radiation

The Committee previously concluded (Conclusions XVIII-2 (2007), XIX-2 (2009) and 2013), that the levels of prevention and protection in relation to ionising radiation were at least equivalent to those laid down in the benchmark international standards, and recalled that the report must provide information on changes in legislation and regulations during the reference period. The report does not provide any information. The Committee asks the next report to provide full and updated information on this point.

The Committee notes that, according to the recommendation No. 103 of the International Commission of Radiological Protection (2007), as regards radiation workers, an equivalent dose to the lens of the eye of 20 mSv per year, averaged over defined periods of five years, with no single year exceeding 50 mSv per year. The Committee also takes note that, according to the information from the comments and direct request raised by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) published in 2015 (105nd ILC session) on the Radiation Protection Convention 115 (1960), section 9(2) of Regulation No. 345/2006 of Slovak Republic, on basic safety requirements for protection of the health of workers and the general public against the effects of ionizing radiation, prescribes that the permissible dose to the lens of the eye is 50 mSv per year. The Committee asks for the next report to state whether there are any plans to revise Regulation No. 345/2006 laying down basic requirements for the protection of workers' and citizens' health against ionizing radiation in the light of the experience that has been gained and the current level of knowledge.

As regards regular revision of exposure limits, the Committee takes note that, according to the comments and direct request raised by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) published in 2014 (104nd ILC session) on the Working Environment (Air Pollution, Noise and Vibration) Convention 148 (1977), the Economic and Social Council of Slovak Republic (Section 10 of Act No. 103/2007 Coll. and Article 8 of its Standing Orders) establishes advisory bodies for the individual fields of its activities, comprised of experts appointed by representatives of the Government and the social partners. The criteria and the determination of the exposure limits are prepared by the Ministry of Economy. The Committee invites the authorities to comment on this observation in the next report and to provide all relevant information in this respect.

The Committee asks whether workers are protected up to a level at least equivalent to that set in the Recommendations by the International Commission on Radiological Protection (ICRP Publication No. 103, 2007).

In view of the lack of information in the report, the Committee is not in a position to examine whether the legislation and regulations in force satisfy the obligation under Article 3§2 of the Charter, which requires that levels of protection required by the legislation and regulations in relation to hazardous substances and agents be in line with the level set by international reference standards. The Committee therefore concludes that it has not been established that levels of protection against asbestos and ionising radiation are adequate. It asks that the next report provide full and detailed information on the legislation and regulations, including any amendments thereto adopted during the reference period, which specifically relate to that subject.

Personal scope of the regulations

Temporary workers

In its previous conclusion (Conclusions 2015), the Committee considered that the situation in the Slovak Republic was in conformity with Article 3§2 of the Charter as regards the equal treatment of agency and temporary workers and workers on fixed-term contracts. It asked whether any specific measures are taken to ensure protection of temporary workers against risks resulting from a succession of accumulated periods working for a variety of employers.

The report states that the same rules and principles apply to temporary workers as to other categories of workers, as is specified in Section 2 of Act No. 124/2006 Coll. on Occupational Safety and Protection of Health at Work (see also Conclusions 2015).

The Committee also asked for up-dated information on work accident rates for the categories of workers concerned. The report states that the authorities do not monitor accident rates depending on various employment contract and adds that the accident rate for 2015 stood at 0,35%.

The Committee maintains its previous finding of conformity on this point.

Other types of workers

The Committee previously asked (Conclusions 2013) whether domestic staff, self-employed workers and home workers are covered by the legislation and regulations currently in force, in particular Act No. 146/2006 and, where applicable, Act No. 355/2007. The Committee also stated that, if the information requested would not be provided, there would be nothing to show that the situation was in conformity with Article 3§2 of the Charter.

The report does not contain specific information on possible developments with respect to the legal framework relating to the protection of other types of workers.

In view of the lack of information in the report, the Committee is not in a position to examine whether the legislation and regulations in force satisfy the obligation under Article 3§2 of the Charter, which requires that all workers, including the self-employed, must be covered by health and safety at work regulations, be in line with the level set by international reference standards. The Committee therefore concludes that it has not been established that self-employed and domestic workers are protected by occupational health and safety regulations. It asks that the next report provide full and detailed information on the legislation and regulations, including any amendments thereto adopted during the reference period, which specifically relate to that subject.

Consultation with employers' and workers' organisations

The Committee previously requested information (Conclusions 2013) on the participation of workers' organisations in the Co-ordination Council on Occupational Safety and Health, in particular regarding the definition of the risks covered and the levels of prevention and protection. It also asked for information on any arrangements at company level for

consultation between employers and workers, in particular workers in atypical employment. The Committee also stated that, if the information requested would not appear in the next report, there would be nothing to show that the situation was in conformity with Article 3§2 of the Charter. The report does not provide any information on this point.

The Committee takes note that, according to the information from the comments and direct request raised by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) published in 2014 (104nd ILC session) on the Working Environment (Air Pollution, Noise and Vibration) Convention 148 (1977), the Economic and Social Council of Slovak Republic (Section 10 of Act No. 103/2007 Coll. and Article 8 of its Standing Orders) establishes advisory bodies for the individual fields of its activities, comprised of experts appointed by representatives of the Government and the social partners. The criteria and the determination of the exposure limits are prepared by the Ministry of Economy. The Committee invites the authorities to comment on this observation in the next report and to provide all relevant information in this respect.

In view of the lack of information in the report, the Committee is not in a position to examine whether the situation satisfies the obligation under Article 3§2 of the Charter. The Committee therefore concludes that it has not been established that consultation with employers' and workers' organisations is ensured. It asks that the next report provide full and detailed information on the legislation and regulations, including any amendments thereto adopted during the reference period, which specifically relate to that subject.

Conclusion

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 3§2 of the Charter on the grounds that:

- it has not been established that there is specific legislation on the main occupational risks;
- it has not been established that levels of prevention and protection required by the legislation and regulations in relation to the establishment, alteration and upkeep of workplaces are in line with the level set by international reference standards;
- it has not been established that levels of protection against asbestos and ionising radiation are adequate;
- it has not been established that self-employed and domestic workers are protected by occupational health and safety regulations;
- it has not been established that consultation with employers' and workers' organisations is ensured.

Article 3 - Right to safe and healthy working conditions

Paragraph 3 - Enforcement of safety and health regulations

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

Accidents at work and occupational diseases

In response to the Committee's request for information (Conclusions 2013) on the impact on occupational diseases of measures taken in the mining sector, the report indicates that, in 2015, there were 222 accidents at work, including one fatal accident and 3 serious accidents. In 2015, the number of employees in the mining sector amounted to 12 091 and the resulting accident rate in the mining sector stood at 1.84%.

In its previous conclusion (Conclusions 2013), the Committee also asked for explanation on the extremely low incidence rate for accidents at work, shown either by the report or EUROSTAT data, in comparison to the EU-27 average. The report does not provide any information. The Committee reiterates its question and asks that the next report provide detailed information on obligations to report accidents at work and on any measures taken to counter potential under-reporting in practice.

The Committee recalls that States Parties have a duty to provide precise information on developments in respect of accidents at work and that, in assessing respect for the right enshrined in Article 3§3, the number and frequency of accidents at work and their trends are a decisive factor. It therefore asks that reliable data be provided in the next report on the indicators being examined, in particular: data for each year of the reference period; data free of territorial or sectoral restrictions and not subject to the 20-employee limit.

The Committee finds that, according to the Eurostat figures, the number of non-fatal accidents at work causing at least four calendar days of absence has not changed during the referenced period (8 483 in 2012 and 8 552 in 2014). The standardised rate of incidence of non-fatal accidents at work per 100 000 workers was 421.22 in 2012 and 414.92 in 2014. The Committee notes that this rate is significantly lower than the average rate in the EU-28 (1 717.15 in 2012 and 1 642.09 in 2014). The number of fatal accidents decreased from 53 in 2012 to 40 in 2014. The standardised incidence rate of fatal accidents at work per 100 000 workers decreased from 3.14 in 2012 to 2.31 in 2014. The Committee notes that the standardised rate of incidence of fatal accidents is lower than the average rate in the EU-28 (2.42 in 2012 and 2.32 in 2014) at the end of the reference period.

The report does not provide any information on the occupational diseases. The Committee asks that the next report provide information on the legal definition of occupational diseases; the mechanism for recognising, reviewing and revising of occupational diseases (or the list of occupational diseases); the incidence rate and the number of recognised and reported occupational diseases during the reference period (broken down by sector of activity and year), including cases of fatal occupational diseases, and the measures taken and/or envisaged to counter insufficiency in the declaration and recognition of cases of occupational diseases; the most frequent occupational diseases during the reference period, as well as the preventive measures taken or envisaged. It also underlines that that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Slovak Republic is in conformity with Article 3§3 of the Charter.

The Committee notes from MISSOC that there is a list of 47 occupational diseases established by Act No. 461/2003 on Social Insurance (Annex I) in Slovak Republic. The Committee also note that, according to the information from the comments and direct request raised by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) published in 2014 (104nd ILC session) on the Working Environment (Air Pollution, Noise and Vibration) Convention 148 (1977), in 2013, 316

occupational diseases were recorded in Slovak republic and that the second highest cause of disease was working with vibrating work equipment.

In the meantime, the Committee reserves its position on this point.

Activities of the Labour Inspectorate

The Committee points out that under the provisions of Article 3§3 of the Charter, States Parties must take measures to focus labour inspection more on small and medium-sized enterprises (Statement of Interpretation on Article 3§3, Conclusions 2013). Since the report does not answer the Committee's question (Conclusions 2013) on this point, the Committee reiterates it. The Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Slovak Republic is in conformity with Article 3§3 of the Charter.

In its previous conclusion (Conclusions 2013), the Committee asked for information on the number of labour inspectors employed with the National Labour Inspectorate (NLI), the State Health Authority (SHS) and the Mining Bureau. The report indicates that in 2015, there were 318 labour inspectors at the National Labour Inspectorate and the regional inspectorate; 35 labour inspectors at the Main Mining Authority and its regional offices, and 1 993 inspectors in the State Health Authority and its regional offices. The Committee notes that, according to ILOSTAT, the number of labour inspectors was 298 in 2012 and 318 in 2015, and the average number of labour inspectors per 10 000 employed persons was 1.3 in 2012 and in 2015.

In its previous conclusion (Conclusions 2013), the Committee further asked for figures on the number of inspection visits, complaints and accident investigations conducted by the NLI, the SHS and the Mining Bureau for each year of the reference period.

The report indicates that within the competence of the NLI in 2015, there were 26 847 enterprises subject to labour inspection and the total number of inspections carried out in these enterprises amounted to 65 622 (compared to 54 421 in 2014). The number of violations amounted to 46 155 in 2015 (compared to 47 255 in 2014). In addition, there were 4 470 fines imposed (compared to 2 460 in 2014) amounting to €5 639 304 (compared to €4 964 355 in 2014) on organisations and 1 713 fines (compared to 1 683 in 2014) amounting to €100 179 (compared to €108 867 in 2014) on individuals. The Committee notes that the number of inspections increased during the reference period but lower than that of the previous reference period (compared to 78 916 in 2011). According to the report, the increased number of inspection during the reference period aims, among others, to ensure the low number of accidents at work.

The State Health Authority inspected 24 482 subjects and carried out 18 767 inspections in 2015. There were 232 fines imposed amounting to €120 060.

As regards the mining sectors, the report states that in 2015, there were 461 subjects inspected and the number of inspections amounted to 878 (compared to 896 in 2014). The number of violations discovered amounted to 522 (compared to 392 in 2014). In addition, there were 32 fines imposed (compared to 15 in 2014) amounting to €22 004 (compared to €30 650 in 2014) on organisations and 72 fines imposed (59 in 2014) amounting to €2 308 (€1 308 in 2014) on individuals.

In its previous conclusions (Conclusions 2013, XIX-2 (2009)), the Committee reiterated its requests with regard to the number of workers covered by inspection visits in relation to the labour force and with regard to the number of cases filed with public prosecution and those leading to a conviction. The Committee also stated that, if the information requested would not appear in the next report, there would be nothing to show that the situation was in conformity with Article 3§3 of the Charter.

The report states that the NLI does not collect information on the number of employees covered by inspection services, but only the number of controlled subjects according to the amount of employees they employ. In particular, in 2015, there were 7 706 self-employed persons subjected to labour inspection; 11 862 enterprises with between 1 and 9 employees; 4 412 enterprises with between 10 and 49 employees; 2 058 enterprises with between 50 and 249 employees and 809 enterprises with over 250 employees. The Committee reiterates its request with regard to the number of cases filed with public prosecution and those leading to a conviction.

In reply to Committee's question (Conclusions 2013) on the function, scope and consequences of inspections carried out by inspectors of the Confederation of Unions of the Slovak Republic (KOZ SR) under an agreement concluded with the NLI, the report states that these inspections are carried out in accordance with section 4 and 6 of the ILO Convention 155, the Constitution of the Slovak Republic, the Labour Code and the Act 124/2006 on Occupational Safety and Health (OSH). The Committee takes note that when carrying out the inspection, the Confederation of Trade Unions acts in an independent way, irrespective of the actions of the NLI and enforces their competences when carrying out these inspections. The execution of trade union inspections focusing on OSH are carried out by individual trade unions which are members of the Confederation of Trade Unions. The report adds that the system of inspections is built in accordance with the respective ILO instruments and Directives and Recommendations of the EU. The inspections are focused on prevention of accidents at work, professional advisory services, and provision of assistance to employers when dealing with OSH issues, and also on participation of individual inspections on workplaces. Trade unions delegate these inspections towards individual experts in respective trade branches. The Committee takes note of the competences of the trade union inspectors in matters of occupations health and safety.

The Committee considers, in the light of the number of inspection visits and the proportion of workers covered, that the labour inspectorate is efficient.

Conclusion

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

Article 3 - Right to safe and healthy working conditions

Paragraph 4 - Occupational health services

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

The Committee notes that under Article 3§4 States must promote, in consultation with employers' and workers' organisations, the progressive development of occupational health services for all workers with essentially preventive and advisory functions. These services may be run jointly by several companies. They must be efficient and should be able to identify, measure and prevent work-related stress, aggression and violence (see Statement of Interpretation on Article 3§4, Conclusions 2013; also Conclusions 2003, Bulgaria). It further notes that if occupational health services are not established for all enterprises, the authorities must develop a strategy, in consultation with employers' and employees' organisations, for that purpose. Thus, States "must take measures that allow it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources" (Conclusions 2003, Bulgaria, Conclusions 2009, Albania).

The Committee previously examined (Conclusions 2013) the gradual introduction of occupational health services. It noted that self-employed workers were provided access to occupational health services and asked for information on the situation of domestic and home workers, as well as temporary and agency workers in this regard. It also asked whether the preliminary health examination is carried out when rehiring the latter categories of workers and for information on any sectors, which might be excluded from the scope of such legislation. The report states that the same provisions apply to these categories of workers (temporary and agency workers, domestic and home workers) and adds that medical health examinations do not depend on the type of employment contract of the given worker, but on the type of work this worker carries out (see Conclusions 2013). In addition, the report states that no economy sectors are excluded from these provisions, however certain economic sectors have additional requirements in this regard on top of the general ones. Each physician is also responsible in medical examinations and issuing permits for hazardous work.

In its previous conclusion (Conclusions 2013), the Committee also requested figures on the number of occupational physicians in relation to the labour force. The report does not provide any information on this point. The Committee reiterates its question.

The Committee notes that, according to the information from the comments and direct request raised by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) published in 2014 (104nd ILC session) on the Occupational Health Services Convention 161 (1985), the occupational safety and health protection strategy in the Slovak Republic until 2020 does not appear to contain details about the national policy on occupational health services, including general principles governing their functions, organisation and operation. The Committee also notes, according to the same source, the limitation of the scope of primary health care and health surveillance which are mainly aimed at employees performing hazardous work, namely, section 21(2) of Act No. 124/2006, as amended by Act No. 479/2011 Coll., provides that the employer is not obliged to ensure occupational health services for employees carrying out work classified as including work with "no risk of health damage" and "work for which, after considering the risk, there is no presumption of any health damage". The Committee invites the authorities to comment on this observation in the next report and to provide all relevant information in this respect.

The Committee recalls that when accepting Article 3§4 of the Charter, States undertook to give all workers in all branches of the economy and all undertakings access to occupational health services whether or not they carry out work classified as in risk of health damage. In view of the progressive nature of the obligations set out in Article 3§4 of the Charter, the

Committee further asks that the next report contain information on any strategy to improve access to occupational safety, hygiene and health services in small and medium-sized enterprises, in consultation with employers' and workers' organisations.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in the Slovak Republic is in conformity with Article 3§4 of the Charter.

Article 11 - Right to protection of health

Paragraph 1 - Removal of the causes of ill-health

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

Measures to ensure the highest possible standard of health

The Committee notes from WHO that life expectancy at birth in the Slovak Republic in 2015 (average for both sexes) was 76.7 (compared to 75.6 years in 2010). Life expectancy rate remains lower than in other European countries. For instance, life expectancy at birth in the EU-28 was estimated at 80.6 years in 2015.

The death rate (deaths/1 000 population) was 9.9 in 2015 (compared to 9.84 in 2010, 9.70 in 2012, 9.60 in 2013 and 9.50 in 2014.

The report indicates that the infant mortality rate has decreased over the years and stood at 3.1 per 1 000 live births in 2015 (3.1 in 2014 and 2013, 3.4 at 2012). According to the Eurostat data, the infant mortality rate stood at 5.1 per 1 000 live births in 2015 (5.8 in 2014, 5.5 in 2013 and 5.8 in 2012).

The Committee noted previously that the situation deteriorated in respect of the maternal mortality. It therefore asked what the main causes of maternal mortality were and information on the measures taken to reduce the maternal mortality rate (Conclusions 2013). The report indicates the maternal mortality rate stood at 6.00 per 100 000 live births, the same number since 2011. The Committee notes that according to the World Bank data, the maternal mortality rate stood at 6 deaths per 100 000 live births during the reference period. The report further states that the main reason for the maternal mortality rate is the neglect of mothers to attend the prescribed regular medical check-ups during pregnancy. In order to lower the rate, the Act 461/2003 on Social Security was amended in the sense that if the future mother neglects the prescribed medical check, she will be unable to apply for maternity benefit. The Committee asks to be kept informed on the impact of such legislation and other measures taken to reduce the maternal mortality rate, particularly for vulnerable groups, in the next report.

The Committee noted previously that deaths as a result of ischemic heart disease were much more frequent in the Slovak Republic than in other European countries, as was the case with deaths from pneumonia (Conclusions XIX-2 (2009)) and asked information on measures taken to combat this problem (Conclusions 2013). The report does not provide any information with regard to measures taken to reduce the number of premature deaths. The Committee notes from the Health Systems in Transition: Report on Slovakia 2016 of the European Observatory on Health Systems and Policies that diseases of the circulatory system are the most frequent cause of deaths in Slovakia. Such diseases accounted for half of all deaths in 2014. The same source indicates that there is a rise in incidence of cancer, diabetes mellitus and mental disorders. The Committee further notes from OECD Health Statistics that in 2012 the Slovak Republic ranked the 1st among the OECD countries with regard to mortality rate from cardiovascular diseases and the 5th in respect of mortality rate from cancer. The Committee finds the level of these indicators worrisome. It reiterates its request that the next report provide information on the measures taken to address the diseases representing the main causes of premature death. Meanwhile, given the lack of information, the Committee concludes that the situation is not in conformity with the Charter on the ground that it has not been established that sufficient measures have been taken to reduce the number of premature deaths.

Access to health care

The Committee refers to its previous conclusion for a description of the health care system (Conclusions 2013).

The Committee noted previously that the Act on Health Insurance Companies established the obligation of each health insurance company to evaluate the quality of the healthcare providers and to rank them according to their level of success in meeting the criteria for the quality indicators elaborated by the Ministry of Health (Conclusions 2013). It also took note that the Health Care Surveillance Authority (HCSA) supervised the correct provision of health care and public health insurance, and asked to be kept informed on the results of the work carried out by the latter body. The report provides information on the main activities of the HCSA, its composition and mandate. It states that anyone can submit a complaint to the HCSA should they consider that they have been provided with inadequate health care.

The Committee notes from Health Systems in Transition: Report on Slovakia 2016 of the European Observatory on Health Systems and Policies that health system accountability is regarded as low, since there are very few outcomes that are measures. According to a 2015 FOCUS research group study, corruption is regarded as the third most important issue in Slovakia, with health care as the sector where corruption was seen as most prevalent. Centrally organised public procurement, i.e. for emergency services, is seen as highly inefficient and not based on actual health needs. The Committee wishes to receive the Government's comments on the above mentioned in the next report.

The Committee notes from OECD that the share of GDP allocated to health spending (excluding capital expenditure) in the Slovak Republic was 7.6% in 2013, compared with an OECD average of 8.9%. Health spending as a share of GDP was slightly down from 7.7% in 2012. The same source indicates that the out-of-pocket payments for health care represented 22.4% compared to an OECD average of 19% in 2012. The Committee notes from more recent data of the World Bank that in 2014 the out-of-pocket payments represented 22.6% of the total health expenditure. The Committee takes note from Health Systems in Transition, Report on Slovakia 2016 of the European Observatory on Health Systems and Policies, that private expenditure is primarily composed of out-of-pocket payments, mainly consisting of co-payments for prescribed pharmaceutical and medical durables; user fees for various health services, stomatology care; and direct payments for over-the-counter pharmaceuticals. It asks updated information in the next report on the share of out-of-pocket payments of the total health expenditure and measures taken to reduce them. The Committee wishes to receive information on the share of out-of-pocket expenses attributable to informal payments, the frequency of informal payments and whether the informal payments represent a common practice in the Slovak Republic.

The Committee noted previously that an edict of the Ministry of Health dealing with the question of "waiting lists" entered into effect on January 1, 2010. If insured persons have to wait for more than three months for planned health care after the recommendations of the provider, the health insurance company shall include the person on a waiting list corresponding to the selected illnesses listed in the annex to the edict (one for each healthcare provider). The Committee asked to be kept informed on the implementation of the waiting list system and notably whether it had been effective in ensuring that health care is provided within medically acceptable periods (Conclusions 2013). The report indicates that the introduction of these waiting lists helped patients better prepare for their upcoming operation in the sense that prior to the introduction of the waiting lists the patient did not exactly know when their operation would take place if there were a lot of other patients waiting for the same medical intervention. Now they see when exactly their operation will take place according to the waiting list created by their health insurance company. It should be stated that the waiting lists concern only 4% of all planned medical interventions, other interventions being carried out almost immediately, with priority given to emergency cases. The Committee asks for information regarding the rules applicable to the management of waiting lists and waiting times as well as statistical data on the actual average waiting times for inpatient/outpatient care as well as for primary care, specialist care and surgeries.

In reply to the Committee's question on the availability of rehabilitation facilities for drug addicts, the report indicates that treatment is delivered through five public specialised

Centres for the Treatment of Drug Dependencies, mental outpatient clinics, psychiatric hospitals, and psychiatric wards at university hospitals and general hospitals. Private providers also deliver drug treatment. Drug-free treatment can be divided into two stages: detoxification and relapse prevention. Detoxification treatment is available in outpatient and inpatient treatment centres, and as a rule is pharmacologically assisted. Motivational enhancement therapy, cognitive behavioural therapy and structured relapse prevention are the main elements of psychosocial interventions. Residential drug treatment is delivered both in inpatient departments at specialised dependency treatment departments of psychiatric hospitals, and in Centres for the Treatment of Drug Dependencies which are specialised psychiatric institutes. Aftercare and social reintegration services for people who are drug-dependent are provided by NGOs outside the healthcare sector. This occurs in residential facilities or through self-help groups.

The Committee asks that the next report contain information on the availability of mental health care and treatment services, including information on the prevention of mental disorders and recovery measures.

The Committee asks that the next report contain information on dental care services and treatments (such as who is entitled to free dental treatment, the costs for the main treatments and the proportion of out-of-pocket paid by the patients).

As regards the right to protection of health of transgender persons, the Committee asked in its previous conclusions whether in Slovak Republic legal gender recognition for transgender persons requires (in law or in practice) that they undergo sterilisation or any other invasive medical treatment which could impair their health or physical integrity (Conclusions 2013, General Introduction). The Committee takes note of the comments submitted by Transgender Europe and ILGA- Europe on the implementation of Article 11 of the Charter in the current cycle stating that the Slovak Republic is one of the states that require sterilisation as a condition for gender legal recognition. The report does not provide any information on this point. The Committee reiterates its question.

Conclusion

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 11§1 of the Charter on the ground that it has not been established that sufficient measures have been taken to reduce the number of premature deaths.

Article 11 - Right to protection of health

Paragraph 2 - Advisory and educational facilities

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

Education and awareness raising

The Committee took note previously of several programmes for the promotion of health and the prevention of damaging activities such as: the National Obesity Prevention Programme, a programme for the support of health of disadvantaged communities, as well as a National Anti-Drug Strategy 2009-2012, an Action Plan for alcohol related problems 2006-2010 and a programme for the reduction of smoking. It asked to be kept informed on the results/implementation of these programmes, and of any other health promotion initiatives such as awareness-raising campaigns through written materials or the media (Conclusions 2013). The report states that all the above mentioned programmes, whose aim is to reduce the incidence of negative aspects on the lives of the citizens, continue to be carried out up to 2025.

The Committee recalls that under Article 11§2 States Parties must demonstrate through concrete measures that they implement a public health education policy in favour of the general population and population groups affected by specific problems (Marangopoulos Foundation for Human Rights (MFHR) v. Greece, complaint No.30/2005, decision on the merits of 6 December 2006, §§ 216 and 219). Informing the public, particularly through awareness-raising campaigns, must be a public health priority. The precise extent of these activities may vary according to the nature of the public health problems in the countries concerned (Conclusions 2007, Albania). The Committee asks for information on concrete/specific activities, such as educational or awareness-raising campaigns/programmes, undertaken by public health services or other bodies, to promote health and prevent diseases (as part of the programmes mentioned in the report or other initiatives).

As regards health education in schools, the report indicates that there were important changes in the school curricula resulting in the introduction of new subjects dealing with healthy lifestyle, health protection, physical activities, health care promotion, and information sessions with experts on the negative aspects of smoking and drug abuse.

The Committee recalls that States Parties must ensure that sexual and reproductive health education forms part of the ordinary school curriculum; that the education provided is adequate in quantitative terms; that the form and substance of the education, including curricula and teaching methods, are relevant, culturally appropriate and of sufficient quality, in particular that it is objective, based on contemporary scientific evidence and does not involve censoring, withholding or intentionally misrepresenting information, for example as regards contraception and different means of maintaining sexual and reproductive health; and that a procedure is in place for monitoring and evaluating the education with a view to effectively meeting the above requirements (International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Croatia, Complaint No. 45/2007, Decision on the merits of 30 March 2009, §§46 – 47). The Committee asks for information in the next report on whether and how sexual and reproductive education is provided in schools in the Slovak Republic.

Counselling and screening

In its previous conclusion, the Committee recalled that free medical checks must be carried out through the period of schooling and asked for information on the frequency of school medical examinations, their objectives, the proportion of pupils concerned and the level of staffing (Conclusions 2013).

The report indicates that the legislation provides that during the first year of life of a child, there are 9 regular medical check-ups focused on various aspects of health of the child. The report further indicates that there is a general check-up at the ages of two and three. A pre-school medical check-up consisting of a complete pediatrician examination and psychological check-up, is conducted at the age of 5 to see whether the child is physically and mentally fit to enter the primary education process. The next medical examinations occur at the age of 7 (if the child did not start its primary education) and at the age of 9. After this age, the prescribed medical check-ups occur once every 2 years.

With regard to screening for diseases that constitute the principal causes of death, the Committee took note previously of the National Programme for the Prevention of Cardiovascular Diseases, aimed at reducing the overall mortality due to this cause, and asked whether there were also screening programmes for cancer, pneumonia and other major causes of mortality (Conclusions 2013). The report indicates that there are regular screenings focused on various types of cancer after a person reaches the age related to a higher incidence of such a disease. The report adds that there are also regular check-ups focused on other diseases related to internal medicine which have a high risk of death associated with them after a person reaches a certain age, similar with the cancer screening. The Committee asks confirmation that the screening for diseases that constitute the principal causes of premature death is free and carried out in a systematic manner, with concrete examples of such screenings.

Conclusion

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

Article 11 - Right to protection of health

Paragraph 3 - Prevention of diseases and accidents

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

Healthy environment

The Committee asked previously that the next report not merely list the environmental preventive/protective legislation, but that it should provide information on the implementation of such legislation. For example, by providing information on the levels and trends as regards air pollution, contamination of drinking water and food intoxication during the reference period (Conclusions 2013).

The report does not provide information on the measures taken in the field of environmental protection. It only lists the tasks and activities of the Slovak Hydrometeorological Institute which operates an integrated nation-wide monitoring system for all key aspects of the atmosphere and hydrosphere.

The Committee asks the next report to include updated information on the main legislation and measures taken in the field of environmental protection, namely for the protection of air quality, water safety, noise, as well as in the areas of ionising radiation, asbestos and food safety. It also wishes to receive information on the levels of air pollution, asbestos, as well as on cases of water and food intoxication during the reference period. Meanwhile, the Committee concludes that the situation is not in conformity with the Charter on the ground that it has not been established that appropriate measures have been taken to ensure a healthy environment.

Tobacco, alcohol and drugs

With regard to tobacco, the Committee asked in its previous conclusion for updated information on the state of laws on smoke-free environments and on health warnings on tobacco packages, tobacco advertising, promotion and sponsorship (Conclusions 2013). The report indicates that the Act 89/2016 Coll. on the production, labelling and sale of tobacco and related products was adopted and became effective from 20 May 2016. The act sets out: requirements for ingredients and emissions of tobacco products and the related information requirements including the maximum levels of tar, nicotine, and carbon monoxide in cigarettes; conditions for labelling and packaging of tobacco products including health warnings which have to be listed on tobacco products; ban on oral usage of tobacco; distant order-crossing sale of tobacco products; conditions for introducing new tobacco products on the market.

With regard to smoke-free environments, the report indicates that the Act 377/2004 Coll. on the protection of non-smokers sets up a ban on smoking in public areas such as: public transport and related areas (airports, bus/tram stops, bus/tram stations); healthcare facilities; primary schools, secondary schools and the related sports facilities; universities and students housing; social services providers and the related facilities; cultural institutions; public administration buildings; restaurants, bars and pubs if these premises do not have at least 50% of their surface separated by a firm wall creating a separate space dedicated for non-smokers where smoke would not be emitted. The report mentions that each town can introduce a ban on smoking in other public premises that are within the town´s jurisdiction. The Committee notes that, according to WHO Report on the Global Tobacco Epidemic, 2017: Country Profile Slovakia, the following are not completely smoke free environments: government facilities, cafés, pubs and bars, public transport. The Committee asks information on the measures taken to reduce smoking in such environments.

The report indicates that according to the information provided by the Government´s Council on the Anti-drug Policy, the consumption of drugs and alcohol has been steadily decreasing.

The Committee asks that the next report provide updated figures on the consumption of alcohol, tobacco and drugs as well as trends in such consumption.

Immunisation and epidemiological monitoring

The report does not provide any information on the developments concerning the immunisation and epidemiological surveillance during the reference period. The Committee asks for updated information on this point, including statistical data on the coverage rate of the immunisation.

The Committee emphasises that, if this information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter on this point.

Accidents

The report does not provide any information on the developments concerning accidents during the reference period.

The Committee recalls that under Article 11 States must take steps to prevent accidents. The main sorts of accidents covered are road accidents, domestic accidents, accidents at school, and accidents during leisure time (Conclusions 2005, Republic of Moldova). The Committee asks for information on accidents trends to be provided in the next report. It also asks for information on measures and campaigns carried out to prevent accidents.

Conclusion

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 11§3 of the Charter on the ground that it has not been established that appropriate measures have been taken to ensure a healthy environment.

Article 12 - Right to social security

Paragraph 1 - Existence of a social security system

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

In the case of **family** and **maternity benefits**, the Committee refers to its conclusions on, respectively, articles 16 and 8§1 (Conclusions 2015).

Risks covered, financing of benefits and personal coverage

The Committee previously noted that the Slovak social security system covers all the traditional risks (medical care, sickness, unemployment, old age, work accidents/occupational diseases, family, maternity, invalidity and survivors) and is based on collective financing, as it is funded by contributions (employers and employees and the state) and also by the State budget.

The report does not provide information concerning the percentage of population covered by the different branches of social security. According to MISSOC database, all residents are covered by the universal **health care** scheme, funded by compulsory insurance contributions and State subsidies. Are covered by compulsory **old age, invalidity and survivors** schemes all employed persons and self-employed persons whose annual income exceeds 50% of national average wage (i.e. €4944 in 2015); persons caring for a child up to the age of 6 years (or 18 if disabled); recipients of the Attendance Service Benefit (*Príspevok za opatrovanie*) or performing personal assistance for at least 140 hours per month. Voluntary membership is possible under certain conditions and special schemes apply to policemen, soldiers and customs officers. In its previous conclusions (Conclusions 2013), the Committee noted that in 2011 the personal coverage of old-age benefit stood at 81% and the replacement rate at 51.5%.

As regards **work accidents/occupational diseases** risk, the Committee notes from MISSOC that there is a compulsory insurance scheme financed by employers' contributions covering employees with earnings-related cash benefits, based on the principle of income maintenance (at least a level of 80%). The scheme covers all employees, and in certain circumstances also students and other persons, but not self-employed persons.

In response to the Committee's question, the report indicates that **sickness** insurance is compulsory for all economically active persons, employed and self-employed, therefore only certain categories of persons fall out of the scope of compulsory sickness insurance (e.g. students, or the unemployed). The Committee notes however from MISSOC that, as regards self-employed persons, they are covered by the compulsory insurance only if their annual income exceeds 50% of the national average wage, that voluntary membership is possible and that special schemes apply to policemen, soldiers and customs officers. In its previous conclusions (Conclusions 2013), the Committee noted that in 2011 the personal coverage of sickness benefit stood at 75% while the replacement rate was 63.4%.

As regards **unemployment** insurance, the report states that it is compulsory for all employees, as a subsystem of the social insurance, but not for the self-employed. In order to be entitled to unemployment benefit, the persons must have cumulated at least 2 years of unemployment insurance contributions during the last 3 years (4 years in case of temporary employment). In its previous conclusions (Conclusions 2013), the Committee noted that in 2011 the personal coverage of unemployment benefit stood at 58.9% with the replacement rate of 61.2%.

The Committee points out that, in order to assess whether the personal coverage is adequate, updated information must be regularly provided in all reports concerning the number or percentage of people covered by the health care scheme, out of the total population and the number or percentage of persons covered, out of the total active

population, as regards income-replacement benefits (unemployment, pension, sickness). It asks the next report to provide updated information in this respect.

Adequacy of the benefits

According to Eurostat data, the median equivalised annual income was €6 930 in 2015, or €577.5 per month. The poverty level, defined as 50% of the median equivalised income, was €3 465 per annum, or €288.75 per month.40% of the median equivalised income corresponded to €231 monthly. The minimum wage was €380 per month in 2015.

In its previous conclusion (Conclusions 2013), the Committee held that the situation in the Slovak Republic was not in conformity with Article 12§1 of the Charter on the ground that the minimum levels of unemployment benefit, sickness benefit and pension benefit were inadequate. It furthermore held that the ground on which sickness benefit could be reduced was discriminatory.

According to the report, the system of social insurance, from which all these benefits are provided, does not operate with defined minimums. The amounts are calculated instead of the basis of the daily assessment base and the level of income reached. As there are no defined minimum levels, a person earning the minimum wage could be considered as a beneficiary of the lowest amount of these benefits. The report does not provide however any information concerning the level of benefits available to a person earning the minimum wage, but insists on the fact that the number of persons earning the minimum wage is lower than 2% of the total population and therefore the number of people with “minimum” unemployment benefit or old age benefit, is very low. The authorities furthermore state in the report that the level of replacement rates in the Slovak Republic is in accordance with the requirements of the European Code on Social Security, even though the Slovak Republic has not ratified it. They refer to the replacement rates mentioned in the previous Conclusions and above, but do not provide any updated data in this respect. Lastly, according to the report, state social assistance (material need allowance, protection allowance, activation allowance, housing allowance, childcare allowance, childbirth allowance, parent allowance, childminding allowance and other benefits) is available to each person who meets the required criteria, notably in terms of income. According to the information provided under Article 13§1, the maximum amount of supplementary benefits for a single person is €243.54, but there is no indication of whether this concerns the reference period.

The Committee notes from MISSOC that:

- **unemployment benefits** are calculated with reference to the average assessment base (gross earnings) over the period of the last 2 years, with a ceiling corresponding to twice the national average monthly wage. They correspond to 50% of the assessment base and granted for a maximum of 6 months (4 months in case of employees on fixed-term labour contracts). After a period of 3 months, the beneficiary has the choice either to continue receiving benefit for up to 3 months maximum or to cancel the registration as jobseeker and obtain a bonus. Taking into account the minimum wage as an assessment base, the Committee notes that the minimum unemployment benefits would amount to €190 monthly in 2015, which corresponds barely to 33% of the median equivalised income, and is therefore inadequate. Furthermore, the report fails once more to clarify, as requested (Conclusions XVIII-1 (2006), XIX-2 (2009) and 2013) whether there is an initial period during which a jobseeker may refuse to take up an offer of a job on the ground that it does not meet his/her occupational requirements or experience without risking a suspension/end to his/her unemployment benefits. Accordingly, the Committee maintains that the situation is not in conformity with Article 12§1 of the Charter because the amount of the unemployment benefit is inadequate and because it has not been established that there is a reasonable initial period during which an unemployed person may refuse an unsuitable job offer without losing his/her unemployment benefit.

- **sickness benefits** are calculated with reference to the assessment base, which consists in the daily earnings calculated on the basis of the previous year, with a monthly ceiling corresponding to 1.5-times of the national average monthly wage. The benefits correspond to 25% of the assessment base for the first three days, and 55% of it thereafter for a maximum of 52 weeks. The Committee notes that the minimum sickness benefits for a person working full-time on minimum wage would amount to €209 monthly in 2015, which corresponds barely to 36% of the median equivalised income, and is therefore inadequate. Only 50% of the benefit is paid if the sickness has been a consequence of alcohol or drug abuse. No benefit is paid if the sickness has been a consequence of the insured person's voluntary malefaction. In case of non-compliance with the treatment, the entitlement is suspended for 30 calendar days. The Committee notes from the information provided to the Governmental Committee (Governmental Committee report concerning Conclusions 2013) that, pursuant to Article 111 paragraph 1 of the Act 461/2003 Coll on Social Insurance, the 50% reduction is applied in case of self-inflicted injury under the influence of alcohol or drugs, while a full sickness benefit is paid if the sickness has been a consequence of alcohol or drug abuse. The Committee asks the next report to clarify whether this means that the reduction concerns actually the work accidents insurance and not the sickness insurance, and to provide all relevant information and data in respect of both issues. It reserves in the meantime its position on this point.

As regards **old-age** benefits, the Committee refers to its assessment under Article 23.

The Committee asks the next report to provide all relevant and updated information concerning these benefits, as well as on those granted in respect of **invalidity**, **work accidents** and **occupational diseases**.

Conclusion

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 12§1 of the Charter on the grounds that:

- the minimum level of unemployment benefit is inadequate;
- it has not been established that there is a reasonable initial period during which an unemployed person may refuse an unsuitable job offer without losing his/her unemployment benefit;
- the minimum level of sickness benefit is inadequate.

Article 12 - Right to social security

Paragraph 2 - Maintenance of a social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security

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

The Committee notes that the Slovak Republic has not ratified the European Code of Social Security. Therefore the Committee cannot take into consideration other sources such as the resolutions of the Committee of Ministers on application of the European Code of Social Security and has to make its own assessment based on the information received in the report.

The Committee recalls that Article 12§2 obliges states to establish and maintain a social security system which is at least equal to that required for ratification of the European Code of Social Security. The Code requires acceptance of a higher number of parts that ILO Convention n° 102 on Social Security (Minimum Standards), as six of the nine contingencies must be accepted although certain branches count for more than one part (medical care counts as two and old-age counts as three).

The Committee notes that the Slovak Republic has ratified ILO Convention N° 102 on Social Security (Minimum Standards) and has accepted parts II, III, V, VII, VIII, IX and X which concern respectively medical care, sickness, old-age, family, maternity, invalidity and survivors' benefits. Part III is no longer applicable as a result of ratification of Convention 130 on Medical Care and Sickness Benefits. The Slovak Republic has also ratified ILO Convention N° 128 on Invalidity, Old-Age and Survivors' Benefits. The Committee notes that the 2017 Report of the ILO Committee of Experts on Application of Conventions and Recommendations does not refer to any observation or direct request to the Government with regard to ILO Conventions 102, 128 and 130.

The Committee also notes that the current report refers to the fact that the Slovak Republic has been found to be in conformity with ILO Convention 102 by the ILO Committee of Experts on the Application of Conventions and Recommendations.

The Committee recalls that in order to assess whether the social security system is maintained at a level at least equal to that necessary for the ratification of the Code, it has to assess the information regarding the branches covered, the personal scope and the level of benefits.

The Committee recalls its assessment under Article 12§1 which indicates that the Slovak social security system covers all the traditional risks (medical care, sickness, unemployment, old age, work accidents/occupational diseases, family, maternity, invalidity and survivors), and refers to its request under Article 12§1 for updated information in order to assess whether the personal coverage is adequate. It also refers to its assessment under Article 12§1 that the minimum levels of unemployment benefit and sickness benefit are inadequate, and it has not been established that there is a reasonable initial period during which an unemployed person may refuse an unsuitable job offer without losing his/her unemployment benefit. As regards old-age benefits, the Committee refers to its assessment under Article 23. The Committee takes into account that the level of benefits in the remaining branches appear to be at a satisfactory level, at least equal to that necessary for ratification of the European Code of Social Security.

Conclusion

The Committee concludes that the situation in the Slovak Republic is in conformity with Article 12§2 of the Charter.

Article 12 - Right to social security

Paragraph 3 - Development of the social security system

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

It notes from the report the introduction, as of 2015, of minimal pensions in order to ensure a decent standard of living for the elderly who would otherwise be in material need. The Committee notes from MISSOC that, as from 2015, the minimum old-age benefit (first pillar) corresponds to 136% of the subsistence minimum, when reaching at least 30 qualified years of insurance; increased by 2% for each additional year of insurance, and by 3% after 40 years of paid contributions.

The Committee furthermore notes from the European Trade Union Institute (Pensions reform in Slovakia, Background document) that since 1 January 2013 the principle of solidarity related to the mandatory scheme has been strengthened. The replacement rate has been increased for new pensioners who earned low wages during their working career and decreased for high-wage earners. The tax incentives for the voluntary supplementary pension saving scheme were suspended between 2011 and 2013. Since 2013, pension insurance contributions have been paid not only from the earnings coming from employment contracts and self-employment but also from agreements on work performed outside an employment relationship. As regards the private old-age pension funded scheme, the initial contribution rate was lowered in September 2012 from 9% to 4% of the gross wage. Its enrolment principle was furthermore reviewed several times: while the participation was on a voluntary basis until March 2012, it became mandatory for all new entrants to the workforce from April 2012, although they were able to opt out within the first 2 years of employment. Since 1 January 2013 new entrants to the social security system are automatically enrolled only in the first pillar, but up to the age of 35 might voluntarily apply for membership in the second pillar (OECD 2015; European Commission and Social Protection Committee 2015).The minimum contribution period for pension entitlements in the second pillar was reduced in April 2012 from 15 to 10 years, and since 1 January 2015 there has been no minimum contribution period (see European Commission and Social Protection Committee 2015; OECD 2015).

In the light of the information available from other sources, the Committee considers that the situation is in conformity with Article 12§3 of the Charter. It recalls however that, in all reports concerning Article 12§3, the States must provide relevant information on the measures taken with a view to raising progressively the system of social security to a higher level. The information requested must indicate the nature of the changes made, the reasons given for the changes and the framework of social and economic policy in which they arise, as well as the extent of the changes introduced and the results obtained by such changes. The Committee accordingly requests that such information be regularly provided in all next reports.

As regards the changes introduced during the reference period with regard to maternity and childcare benefits, the Committee will assess their scope and impact when it next examines compliance with Articles 8 and 16.

Conclusion

The Committee concludes that the situation in the Slovak Republic is in conformity with Article 12§3 of the Charter.

Article 12 - Right to social security

Paragraph 4 - Social security of persons moving between States

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

Equality of treatment and retention of accrued benefits (Article 12§4a)

Right to equal treatment.

The report provides no information on equality of treatment. However, the Committee, in its previous conclusion (Conclusions 2013), considered the situation to be in conformity with the Charter on this point having regard to the EU legislation on the coordination of social security systems of the EU Member States, governed by the Regulations (EC) No. 883/2004 and 987/2009, as amended by Regulation (EU) No. 1231/2010, and the Slovak legislation on this subject matter.

In respect of payment to family benefits, the Committee considered that the requirement for the child to reside in the territory of the paying State is in conformity with Article 12§4 (Statement of Interpretation on Article 12§4, Conclusions XVIII-1 (2006)). However, since not all countries apply such a system, States Parties applying the 'child residence requirement' are under the obligation, in order to secure equal treatment within the meaning of Article 12§4, to enter, within a reasonable period of time, into bilateral or multilateral agreements with those States which apply a different entitlement principle (Conclusion 2006, Cyprus).

Although the report provides no information on this point, the Committee notes from the previous report that no child residence condition is required for the payment of family benefits.

However, the Committee observes from MISSOC that the Slovak Republic makes the payment of family benefits conditional upon the legal residence, whether temporarily or permanently, of both the child and the claimant in the Slovak Republic. It asks the next report to clarify the situation and, meanwhile, reserves its position on this point.

The Committee asked in its previous conclusion (Conclusion 2013) whether agreements concluded with Montenegro, Serbia and the Russian Federation deal with the matter of payment of family benefits. It also asked whether it was planned to negotiate agreements with States which apply a different principle to that of a child residence requirement for entitlement to family benefits (Albania, Andorra, Armenia, Georgia and Turkey). The previous report states that payment of family benefits is not governed by bilateral agreements on social security, as family benefits are provided within the system of state social assistance, financed from the State budget and, therefore, anyone legally residing in the Slovak Republic can apply for these benefits, as long as they are entitled. The same report points out that foreign nationals are subject to the same conditions as Slovak nationals.

Right to retain accrued benefits

The report provides no information on the exportability of social benefits. However, the Committee found in its previous conclusion (Conclusions 2015) the situation in the Slovak Republic to be in conformity with the Charter on this point having regard to Section 116 § 3 of Act No. 461/2003 Coll. on Social Insurance. As the situation remained unchanged, the Committee reiterates its finding on this point.

Right to maintenance of accruing rights (Article 12§4b)

The Committee recalls that there should be no disadvantage for persons who change their country of employment where they have not completed the period of employment or

insurance necessary under national legislation to confer entitlement and determine the amount of certain benefits. This requires, where necessary, the aggregation of employment or insurance periods completed in another territory and, in the case of long-term benefits, a pro-rate approach to the conferral of entitlement, the calculation and payment of benefits (Conclusions XIV-1 (1998), Portugal). States may choose between the following means in order to ensure maintenance of accruing rights: multilateral conventions, bilateral agreement or unilateral, legislative or administrative measures.

The principle of accumulation of insurance or employment periods and pro-rate approach apply to nationals of States Parties members of the EU or members of the EEA. As regard nationals of States Parties not member of the EU or EEA, the report states that these principles are enshrined in bilateral agreements, which the Slovak Republic has so far concluded with the Russian Federation, Serbia, Ukraine, Turkey, Bosnia and Herzegovina, Montenegro and "the former Yugoslav Republic of Macedonia" (former bilateral agreements with the former Yugoslavia) and the countries of the former Soviet Union. The report also states that the Slovak Republic opened negotiations with "the former Yugoslav Republic of Macedonia", Montenegro and Russia. The Committee notes from the previous report that, with respect to "the former Yugoslav Republic of Macedonia", an agreement was signed in November 2014. It asks the next report provide clarification on this point.

The Committee also notes that the report provides no information on the content of these agreements and the extent to which they ensure and secure for nationals of those States Parties the maintenance of accruing rights. The Committee, therefore, asks that such information be included in the next report.

Finally, the Committee notes that there is no indication in the report about unilateral measures, whether legislative or administrative, undertaken or planned by the Slovak Republic to ensure the maintenance of accruing rights for nationals from other States Parties which are not members of the EU or EEA, so that it considers the situation not to be in conformity with the Charter on this point.

Conclusion

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 12§4 of the Charter on the ground that it has not been established that the right to maintenance of accruing rights is guaranteed to nationals of all other States Parties.

Article 13 - Right to social and medical assistance

Paragraph 1 - Adequate assistance for every person in need

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

Types of benefits and eligibility criteria

According to the report, the state social assistance is granted to each person who meets the required criteria, i.e. having insufficient income or insifficient means to secure adequate living conditions. Benefits such as the material need allowance, protection allowance, activation allowance etc are aimed at helping people who are unable to secure a decent living on their own.

The Committee further notes that these allowances are designed as e a temporary solution and they are not meant to constitute a person's income for a long period of time, although the benefits in question are provided as long as the unfavourable situation of the given individual lasts. In this connection, the Committee also notes from MISSOC that the Benefit in Material Need is paid for as long as the situation of material need lasts.

The report states that these benefits should not be evaluated as the main source of income as they constitute a supplement to the allowances paid from the system of social insurance, e.g. old age pension, disability pension, unemployment benefit, sickness benefit etc. In this connection the Committee recalls that the entitlement to social assistance arises when a person is unable to obtain resources either by his own efforts or from other sources, in particular by benefits under a social security scheme. It thus considers as social assistance benefits for which individual need is the main criterion for eligibility, without any requirement of affiliation to a social security scheme aimed to cover a particular risk, or any requirement of professional activity or payment of contributions. Moreover, under Article 13§1, assistance should be given when no social security benefit ensures that the person concerned has sufficient resources or the means to meet the cost of treatment necessary in his or her state of health (Conclusions XIII-4 (1996), Statement of Interpretation on Articles 12 and 13). The reference to social security does not prejudge the link between social security and social assistance which exists within each state, whether the assistance machinery has evolved on the fringe of social security or is an intrinsic part of the system of social protection (Complaint No 88/2012, Finnish Society of Social Rights v. Finland, Decision on the merits of 9 September 2014, §111). Therefore Article 13§1 provides for the right to benefits, for which individual need is the main criterion for eligibility and which are payable to any person on the sole ground that he or she is in need. Therefore, the Committee considers that in those situations when the purpose of social assistance is to top up an individual's income from social security to a decency threshold, such as, for example, the subsistence level, the Committee will take into account the total income of such individual earned from both systems, to check whether this income is compatible with the poverty threshold in the meaning of Article 13 of the Charter.

In its previous conclusion (Conclusions 2013) the Committee asked now the notion of 'suitable work offer' was interpreted in practice and whether a refusal to accept the offer could result in the full deprivation of the means of subsistence for the person concerned. It notes from the report that the work offered to the recipient of material need by an office of labour, social affairs and family has to take into account the skills and knowledge of the person. The office will then invite the person to discuss other work that would be offered them in order to better understand the qualification of the person. However, if the person keeps refusing the offered jobs for no objective reason, the material need benefit can be lowered (while making sure that the person is not left without adequate resources).

Level of benefit

To assess the situation during the reference period, the Committee takes note of the following information:

- Basic benefit: according to MISSOC the amount of Benefit in Material Need is calculated as the difference between the income of an individual and the theoretical amount of the Benefit in Material Need. Monthly maximum amount was € 61,60 in 2015.
- Additional benefits: activation allowance amounted to € 63,07 per month for persons who have an income at minimum wage level. Housing benefit stood at € 55,80 for single persons. One-off benefit is intended to partially cover the extraordinary expenses of the household receiving assistance in material need. Its amount corresponds to the actual expenditure but cannot exceed three times the Subsistence minimum (€ 198,09).
- The poverty threshold, defined as 50% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value: estimated at € 289 in 2015.

The Committee notes from the national report that the benefits are all paid from the system of state social assistance and are granted to persons who meet the required criteria. Benefits such as the material need allowance, protection allowance, activation allowance, housing allowance and other benefits through state social assistance are aimed at persons in need. According to the report, the correct calculation of the maximum amount of supplementary benefits for a single person was a total of € 243.54, made up of material need allowance (€ 61.60), activation allowance (€ 63.07), housing allowance (€ 55.80) and protective allowance (€ 63.07).

However, the Committee notes from MISSOC that protective allowance is only paid in specific situations, e.g. to persons having reached the pensionable age, persons who have been ill for a period of more than 30 days as well as pregnant women from the 4th month of pregnancy. Therefore, the Committee will not take this allowance into account in calculating the overall amount of social assistance. Hence the Committee considers that the Benefit in Material Need, together with housing benefit and activation allowance stood at € 180 per month, which is not compatible with the median equivalised income. The Committee thus concludes that the situation is not in conformity with the Charter. The Committee asks the next report what is the average amount of one-off assistance and under what conditions it is granted and whether it is cumulative with other social assistance benefits.

Right of appeal and legal aid

The Committee asks the next report to provide updated information as regards right of appeal and legal aid.

Personal scope

The Committee recalls that, under Article 13§1, States are under the obligation to provide adequate medical and social assistance to all persons in need, both their own nationals as well as nationals of States Parties lawfully resident within their territory, on an equal footing. In addition, with reference to its Statement of Interpretation of Articles 13§1 and 13§4 (Conclusions 2013) regarding the scope of Articles 13§1 and 13§4 in terms of persons covered, the Committee considers that persons in an irregular situation in the territory of the State concerned are also covered under Article 13§1, rather than under Article 13§4, which was previously its practice.

The Committee henceforth examines whether the States who have accepted Article 13§1 ensure the right to:

- adequate social and medical assistance for their own nationals and for nationals of other States Parties lawfully resident within their territory on an equal footing;

- emergency social and medical assistance to persons unlawfully present in their territory.

Nationals of States Parties lawfully resident in the territory

In reply to the Committee's question, the report states that no length of residence condition is imposed on lawfully resident foreign nationals to be eligible to the benefit in material need and supplementary social assistance allowances.

Foreign nationals unlawfully present in the territory

The Committee recalls that persons in an irregular situation must have a legally recognised right to the satisfaction of basic human material need (food, clothing, shelter) in situations of emergency to cope with an urgent and serious state of need (including medical condition). It likewise is for the States to ensure that this right is made effective also in practice (European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, §187). The Committee asks the next report to confirm that the legislation and practice comply with these requirements.

Conclusion

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 13§1 of the Charter on the ground that the level of social assistance paid to a single person without resources is not adequate.

Article 13 - Right to social and medical assistance

Paragraph 2 - Non-discrimination in the exercise of social and political rights

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

The Committee notes that there have been no changes to the situation which it has previously (Conclusions 2013) found to be in conformity with the Charter. The Committee asks the next report to provide updated information.

Conclusion

The Committee concludes that the situation in the Slovak Republic is in conformity with Article 13§2 of the Charter.

Article 13 - Right to social and medical assistance

Paragraph 3 - Prevention, abolition or alleviation of need

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

In its Conclusions 2013 the Committee found that the situation was not in conformity with the Charter as it had not been established that everyone might receive by the competent services such advice and personal help as may be required to prevent, to remove or to alleviate personal or family want.

In application of the reporting system adopted by the Committee of Ministers at the 1196th 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 2013.

In its Conclusions 2015 the Committee took note of the information submitted by the Slovak Republic.The Committee considered that the situation was in conformity with Article 13§3 and asked that the next report contain updated information as concerns advice and personal help services for persons without resources.

The Committee notes from the report that regarding the question on the distribution of providers of social services, the majority of these establishments are situated at least in a district city in order to ensure balanced geographical distribution. A number of these establishments are situated in cities that are not district cities but lie in between two district cities. As far as the number of employees in these establishments is concerned, as of December 31, there were 22 062 employees. This number constitutes an increase when compared with the previous year. The Government has, through the Ministry of Labour, Social Affairs and Family, supported the provision of social services in 2015 by providing the municipalities and self-governing regions with € 76 965 831.

The Committee further recalls that Article 13§3 concerns free of charge services offering advice and personal assistance specifically addressed at persons without adequate resources or at risk of becoming so. The social services covered by Article 13§3 must play a preventive, supportive and treatment role. This means offering advice and assistance to make those concerned fully aware of their entitlement to social and medical assistance and how they can exercise those rights. In assessing national situations under this provision the Committee specifically examines whether there are mechanisms to ensure that those in need may receive help and personal advice services free of charge and whether such services and institutions are adequately distributed on a geographical basis. The Committee asks the next report to provide updated information on how these requirements are met in legislation and practice.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in the Slovak Republic is in conformity with Article 13§3 of the Charter.

Article 14 - Right to benefit from social welfare services

Paragraph 1 - Promotion or provision of social services

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

Organisation of the social services

The Committee recalls that Article 14§1 guarantees the right to general social welfare services. The right to benefit from social welfare services must potentially apply to the whole population, which distinguishes the right guaranteed by Article 14 from "the various articles of the Charter which require States Parties to provide social welfare services with a narrowly specialised objective". The provision of social welfare services concerns everybody who find themselves in a situation of dependency, in particular the vulnerable groups and individuals who have a social problem. Social services must therefore be available to all categories of the population who are likely to need them. It has identified the following groups: children, the elderly, people with disabilities, young people in difficulty and young offenders, minorities (migrants, Roma, refugees, etc.), the homeless, alcoholics and drug addicts, battered women and former detainees.(...) (Conclusions 2009, Statement of interpretation on Article 14§1).

Given the time that has passed since the first description of the organisation and functioning of social services in Slovak Republic, the Committee asks the next report to provide full updated information in this respect.

In reply to the Committee's question on how much is spent on social services in total, the report indicates that in 2015 the resources spent on the provision of social services amounted to €340 787 046. The establishments providing social services employed 22 062 employees and 47 139 persons were provided with social services in 2015.

Effective and equal access

The Committee recalls that social services include in particular counselling, advice, rehabilitation and other forms of support from social workers, home help services (assistance in the running of the home, personal hygiene, social support, delivery of meals), residential care, and social emergency care (shelters).

In reply to the Committee's question, the report confirms that nationals of other States Parties to the Charter residing legally in the Slovak Republic have full access to social services.

The Committee moreover recalls that users must be entitled to make complaints and refer urgent cases of discrimination and infringements of human dignity to an independent body. The Committee therefore asks which remedies are available for users in such cases.

Quality of services

The Committee recalls that under Article 14§1 the Committee reviews rules governing the eligibility conditions to benefit from the right to social welfare services (effective and equal access) and the quality and supervision of the social services (...) Persons applying for social welfare services should receive any necessary advice and counselling enabling them to benefit from the available services in accordance with their needs (Conclusions 2009, Statement of interpretation on Article 14§1).

The Committee further recalls that social services must have resources matching their responsibilities and the changing needs of users. This implies that: staff shall be qualified and in sufficient numbers; decision–making shall be as close to users as possible; there must be mechanisms for supervising the adequacy of services, public as well as private. In

this regard the Committee asks to receive specific information on mechanisms put in place for monitoring and supervising the adequacy and quality of social services.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Slovak Republic is in conformity with Article 14§1 of the Charter.

Article 14 - Right to benefit from social welfare services

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

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

In reply to the Committee's question on what are the requirements for social services providers to be able to provide these services, the report indicates that the requirements are specified in sections 62 to 67 of the law on social services. In short, the future provider of social services has to apply to the municipality which will accept it or dismiss it. The provider must have adequate qualification for the provision of social services particularly with regard to full university education in the field of provision of social services. The application must contain all the required information, such as the name of the provider, business name, type of social service they wish to provide, target group for the social service provided, venue of the provision of the social service, information on available space if the social service is to be provided in an establishment.

The report indicates that the Ministry of Labour, Social Affairs and Family invites representatives of non-governmental organisation representing the recipients of social services to discussions on the future of the services provided and on the possible improvements of the social services provided.

The Committee recalls that it examines all forms of support and care mentioned under Article 14§1 as well as financial assistance or tax incentives for the same purpose. States Parties must ensure that private services are accessible on an equal footing to all and are effective, in conformity with the criteria mentioned in Article 14§1. Specifically, States Parties must ensure that public and private services are properly coordinated, and that efficiency does not suffer because of the number of providers involved. In order to control the quality of services and ensure the rights of the users as well as the respect of human dignity and basic freedoms, an effective preventive and reparative supervisory system is required (Conclusions 2005, Bulgaria). In this respect the Committee asks what kind of mechanisms are in place to ensure that private services are accessible on an equal footing to all and are effective and what kind of supervisory system exists to ensure quality of services.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in the Slovak Republic is in conformity with Article 14§2 of the Charter.

Article 23 - Right of the elderly to social protection

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

Legislative framework

The Committee points out that the main aim of Article 23 of the Charter is to enable elderly persons to remain full members of society and consequently invites the States Parties to make sure that they have appropriate legislation to, firstly, combat age discrimination outside employment and to, secondly, provide for a procedure of assisted decision making.

With regard to age-based discriminations, the Committee previously considered (Conclusions 2009) that the Slovak law of 2004 on equal treatment in certain areas and protection against discrimination, as amended in 2008, meets the requirements set out in Article 23 of the Charter.

With regard to the procedure of assisted decision making put in place for elderly persons, the report states that elderly persons cannot, under Slovak law, be arbitrarily deprived of their right to take decisions autonomously; an elderly person may only be considered legally incapable of taking decisions by a court ruling. The issue may only be brought before the courts after the person concerned and health professions (psychologists and psychiatrists) have consented to the procedure. The report does not provide any information with regard to the person responsible for assisting an elderly person who has been declared incapable by a court ruling, either on how that person is designated, what his or her duties are or whether he or she can be dismissed. The Committee therefore asks the next report to provide further information on this matter. It further asks whether consideration has been given to establishing a mechanism which would allow an elderly person to appoint a trusted third party of their own choice to assist with their decisions.

Adequate resources

When assessing the adequacy of the resources of elderly persons under Article 23, the Committee takes into account all social protection measures guaranteed to elderly persons and aimed at maintaining an income level allowing them to lead a decent life and participate actively in public, social and cultural life. In particular, the Committee examines pensions, contributory or non-contributory, and other complementary cash benefits available to elderly persons. These resources are then compared with median equivalised income. However, the Committee points out that its task is to assess not only the law, but also the compliance of practice with the obligations arising from the Charter. For this purpose, it also takes into consideration relevant indicators relating to at-risk-of-poverty rates for persons aged 65 and over.

According to MISSOC, the minimum old-age benefit (first pillar) corresponds to 136% of the subsistence minimum, when reaching at least 30 qualified years of insurance; increased by 2% for each additional year of insurance, and by 3% after 40 years of paid contributions. As the subsistence minimum for 2015 was €198.09, the Committee understands that the minimum old-age benefit was then around €269.40, i.e. almost 47% of the median equivalised income. It asks the next report to clarify whether this understanding is correct.

The Committee noted from its previous conclusion (Conclusions 2013) that the Slovak social security system also guarantees support for persons in situations of hardship. In addition to one hot meal per day, necessary clothing and shelter, the minimum means of subsistence includes a number of benefits and other cumulative lump sums subject to eligibility conditions: a material needs allowance (comprising two parts: a lump sum and a one-off payment), a basic (or single base) benefit, a health care allowance, a housing allowance and a protection allowance.

According to the report all the above-mentioned benefits and allowances are cumulative. The report also points out that they are regularly reviewed and increased to take account of the development of the national economy. The report also indicates that in addition to the assistance provided for persons suffering from hardship for which elderly persons are entitled to apply, they can apply for and are entitled to all allowances and benefits proposed under the Slovak social welfare system, provided that they meet the conditions fixed by law. The report further states that these allowances and benefits are also cumulative.

The Committee notes, nevertheless, that the report provides no information or updated data on the amount of these allowances and benefits, so that it is not possible to assess the minimum amount of resources available to the elderly. It asks that such information and data be provided to it in the next report.

In its previous conclusion (Conclusions 2013), the Committee asked clarification as regard the low rate of elderly persons living in poverty. The report provides no information on this matter, so that it reiterates its request.

Prevention of elder abuse

In its previous conclusion (Conclusions 2013), the Committee asked, *inter alia*, what was done to evaluate the extent of the problem, to raise awareness on the need to eradicate elder abuse and neglect. The report refers to a number of initiatives and programmes which are being carried out, for example the "National Programme of Active Ageing", which contains several measures to protect the rights of the elderly, support their independence, safeguard their participation in decisions concerning them and prevent illtreatment. The Programme establishes close co-operation between the Ministry of Labour, Social and Family Affairs and the municipalities and other organisations set up to assist the elderly. The Committee asks to be informed on the implementation of all these initiatives and their outcome, as well as on any legislative measures that may have been taken or are envisaged in this field. It also asks whether any legislative measures have been taken or are envisaged in this field.

Services and facilities

The Committee points out that, although Article 23 of the Charter makes reference only to information about services and facilities, it presupposes that such services and facilities exist.

With regard to services and facilities themselves, the Committee in its previous conclusions (Conclusions 2009 and 2013) firstly asked for information on the procedure for complaining about the standards of services. According to the report, the relevant municipality with whom a complaint is lodged, first examines the complaint and subsequently takes the appropriate measures to redress the situation. If the violation is serious, the municipality may decide to strike the service provider off its list. The Committee takes note of this information and asks the next report to provide comprehensive information on this subject, in particular, details of the main steps in the complaints procedure, the other penalties that may be applied to the providers of social services if they fail to fulfill their obligations or violate the legislation, and whether it is possible for a service user to dispute the authorities' decision before an impartial and independent court.

Secondly, the Committee asked for more information on the study entitled "National Priorities of Social Services Development for the period of 2009 – 2013", and the steps taken in response to this study. The report states that the aim of the study is to support and assist the autonomous individual regions and local authorities to improve the social services provided to users, their quality, the reconstruction of certain facilities, the installation of new amenities and the in-house training of staff. The study also proposes a system for the evaluation of the social services provided. For further information on the follow-up to be given to this study, the report refers to the study entitled "National Priorities of Social Services Development for

the period 2015-2020". The Committee asks the next report to provide comprehensive information on this new study.

Thirdly, the Committee asked whether the supply of services to the elderly matched the demand. The report still provides no information on this matter, so that the Committee reiterates its question and, emphasises that in the absence of a reply in the next report, there will be nothing to prove that the situation is in conformity on this point. It also asks whether any measures are envisaged to promote a variety of home care services or other services for the elderly and whether the NGOs play an important role in the modernisation of social services.

With regard to information on the existence of the services and facilities available, the Committee asks the next report to provide information on this matter.

Housing

According to the report, the Slovak Republic adopted a new housing strategy entitled "State Housing Policy Concept to 2020". This new strategy is designed to improve the quality of existing housing, among other things, by increasing their safety and their functionality, and by ensuring easier access at affordable prices. The Committee asks the next report to provide for further information on the outcome and the monitoring of this new strategy.

In its previous conclusion (Conclusions 2013), the Committee asked for more information on housing assistance, in particular whether the supply of adequate housing is sufficient. It also asked (Conclusions 2009) how safety construction, adequate living conditions and basic amenities are ensured for dwellings occupied by elderly persons and, whether the elderly are treated on equal footing as regards access to social housing. The report does not answer to any questions so the Committee reiterates its requests and points out that if the requested information is not provided in the next report, there will be nothing to prove that the situation is in conformity with the Charter on this point.

Health care

In its previous conclusions (Conclusions 2009 and 2013), the Committee asked for more information with regard to functioning and accessibility of specialised health care. According to the report, the geriatric health care provided in establishments specialising in this type of healthcare or by doctors specialised in geriatrics is funded by the public compulsory health insurance system and elderly persons do not therefore have to pay extra fees for these services. The Committee asks the next report to provide comprehensive information on mental health programmes for persons with dementia and related illnesses; palliative care services for the elderly; special training for individuals caring for elderly persons.

Institutional care

In its previous conclusion (Conclusions 2013), the Committee asked what is the composition of the relevant institutions and their hierarchical dependence, how the monitoring is being carried-out (regular inspections or only following a complaint) and whether there are any plans to establish an independent body with the authority to visit homes to monitor standards and check for signs of abuse and neglect. It also asked (Conclusions 2009 and 2013) whether the existing capacity in residential care matches the demand. The report states that the inspection services are independent of the bodies which manage the institutions. The Committee takes note of this information but notes that the report does not answer the questions, so that it reiterates them and considers, in the meantime, that it has not been established that the existing capacities in residential care are sufficient to match the demand of elderly people.

Conclusion

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 23 of the Charter on the grounds that it has not been established that the existing capacities in residential care are sufficient to match the demand of elderly people.

Article 30 - Right to be protected against poverty and social exclusion

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

Measuring poverty and social exclusion

The main indicator used by the Committee to measure poverty is the relative poverty rate. This corresponds to the percentage of people living under the poverty threshold, which is set at 60% of the equivalised median income.

According to Eurostat, the at risk of poverty rate (cut-off point: 60% of median equalized income after social transfers) decreased moderately during the reference period from 13.2% in 2012 to 12.7% in 2015. The at risk of poverty rate before social transfers was 20% in 2012 and 19% in 2015. The European Semester headline poverty indicator stood at 18.1% in 2015 down from 20.5% in 2012.

However, from the European Semester Country Report Slovakia 2017 (SWD(2017) 90 final), the Committee notes that the poverty gap (the difference between the median of people below the at-risk-of-poverty threshold and the at-risk-of-poverty threshold, expressed as a percentage of the at-risk-of-poverty threshold), is significant and after having increased steadily since 2012, it stagnated in 2015 and stood at 28.9% vs. an EU average of 24.9%.

In addition, the Committee notes from the same report that the poverty rate of Roma is exceptionally high, six times higher than that of the overall population.

The Committee notes that overall poverty rates are comparatively low falling well below the EU average, however it also notes that the intensity of poverty (the poverty gap) is considerable and above the EU average. Moreover, poverty among Roma is extremely high, six times higher than that of the overall population, and higher than in other States with a sizeable Roma population (Bulgaria, the Czech Republic, Hungary and Romania).

Approach to combating poverty and social exclusion

As regards the measures related to the Europe 2020 strategy, the report emphasizes that in order to meet the goals set up by this strategy, the Slovak Republic has updated the relevant strategy documents, e.g. national projects supported by the resources from the operational Programme Human Resources and also the National Social Situation report (prepared annually).

According to the website of the Central Office of Labour, Social Affairs and Family, the Sectoral Operational Programme Human Resources 2004-2006 (SOP HR) focused notably on areas of policy aimed at increasing employment and social development, as identified by the Government. It was designed in particular for those disadvantaged regions whose GDP was below 75% of the European Union average, namely for the Košice, Prešov, Žilina, Banská Bystrica, Nitra, Trenčín and Trnava regions. The priorities of SOP HR are to develop the active labour market policy, to strengthen social inclusion and equal opportunities in the labour market and to increase qualifications and adaptability of employees and new entrants to the labour market.

The Committee considers that the report provides extremely limited information as to the measures taken to combat poverty and social exclusion with respect to access to fundamental social rights, in particular employment, housing, training, education, culture and social and medical assistance. Except very general references to the Europe 2020 strategy there is no particular indication of how the Government pursues an overall and coordinated approach to combating poverty and social exclusion.

The Committee therefore asks that information be provided in the next report on the existence of coordination mechanisms for these measures, including at delivery level (that is,

how coordination is ensured in relation to the individual beneficiaries of assistance and services).

From Eurostat, the Committee notes that overall government expenditure on social protection as a share of GDP has been virtually unchanged during the reference period (14.9% in 2012 and 15% in 2015, i.e. well below the EU average of 19.2% in 2015), and it is not clear on the basis of the information at the Committee's disposal that the budgetary resources allocated to combating poverty and exclusion are sufficient in view of the challenge as required by Article 30 (Conclusions 2003, France, Article 30). The Committee asks that the next report contain detailed data demonstrating that the budgetary resources allocated to combating poverty and social exclusion are sufficient in view of the scale of the problem at hand.

Furthermore, from the above-mentioned Country Report Slovakia 2017, the Committee notes the assessment that there are shortcomings in the social safety net, notably with respect to minimum income support (falling number of recipients, eligibility being made conditional on participation in workfare and still no clear mechanism for establishing and reviewing the level of support), that the availability of social housing is scarce with serious overcrowding being a problem for many people affected by poverty (57.6% compared to an EU average of 29.7% in 2015), that educational inequalities remain very pronounced in a context where government expenditure on education is low leading to low educational outcomes, and that the implementation of measures for Roma inclusion is stagnating or being postponed.

Finally, the Committee refers to its conclusions of non-conformity under other provisions of the Charter which are relevant to its assessment of compliance with Article 30 (see Conclusions 2013, Statement of interpretation on Article 30). It refers in particular to

- Article 7§5 and its conclusion that young workers' wages are not fair (Conclusions 2015);
- Article 10§4 and its conclusion that it has not been established that special measures for the retraining and reintegration of the long-term unemployed have been effectively provided or promoted (Conclusions 2016);
- Article 12§1 and its conclusion that the minimum level of unemployment benefit and of sickness benefit is inadequate (Conclusions 2017);
- Article 13§1 and its conclusion that the level of social assistance paid to a single person without resources is not adequate (Conclusions 2017);
- Article 16 and its conclusion that the right to housing of Roma families is not effectively guaranteed and that the level of child benefits does not constitute an adequate income supplement (Conclusions 2015).

Taking into account all of the above and having regard to the paucity of the information in the report, the Committee considers that the situation is in breach of Article 30 as there is no adequate overall and coordinated approach to combating poverty and social exclusion.

Monitoring and evaluation

The report contains no specific information on how the measures to combat poverty and social exclusion are monitored and evaluated, but simply refers to the Open Method of Coordination set up at the EU level for unified co-ordination of social policies.

The Committee recalls that Article 30 of the Charter requires the existence of monitoring mechanisms for reviewing and adapting the efforts in all areas and sectors, at all levels, national, regional, local, to combat poverty and social exclusion; mechanisms which should involve all relevant actors, including civil society and persons directly affected by poverty and exclusion (see Conclusions 2003, France, Article 30). It therefore asks that the next report contain comprehensive information on such mechanisms covering all sectors and areas of the combat against poverty and social exclusion.

Conclusion

The Committee concludes that the situation in Slovak Republic is not in conformity with Article 30 of the Charter on the ground that there is no adequate overall and coordinated approach to combat poverty and social exclusion.

CONCLUSIONS RELATING TO CONCLUSIONS OF NON-CONFORMITY DUE TO A REPEATED LACK OF INFORMATION IN CONCLUSIONS 2015

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

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31st October 2016 on conclusions of non-conformity for repeated lack of information in conclusions 2015.

The Committee takes note of the information submitted by the Slovak Republic in response to the conclusion that it had not been established that, on the one hand, associations representing families were consulted when family policies are drawn up and, on the other hand, mediation services existed.

Social protection of families

Participation of associations representing families

The Committee recalls that to ensure that families' views are catered for when family policies are framed, the authorities must consult associations representing families.

In this regard, the report indicates that associations representing families may participate, under certain circumstances, in the family policy-making process by either presenting their positions on legislative proposals through the Economic and Social Council or by sending their proposals to the social partners. The report also further indicates that the said Council and social partners need to approve the proposal before any further approbation by the Government.

In view of this information, the Committee considers that the situation is in conformity with the Charter on this point.

Legal protection of families

Mediation services

As regards mediation services, the Committee recalls that, pursuant to Article 16 of the Charter, the legal protection of the family includes the provision of mediation services whose object should be to avoid further deterioration of family conflicts. To be in compliance 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 report indicates that mediation services are ensured on the basis of Act No. 420/2004 Coll. on Mediation which provides the general framework for mediation, and Act No 305/2005 Coll. on Social and Legal Protection of Children and Social Guardianship for the mediation which focuses in particular to family issues. Section 11 of Act No 305/2005 Coll. entrusts the Offices of Labour, Social Affairs and Family – authorities for the social and legal protection of children and social guardianship – with mediation services for families. The report also indicates that such services are provided in the Slovak Republic free of charge on the entire territory of the country: the Offices of Labour, Social Affairs and Family are located in each district city within the Slovak territory.

The Committee asks for the next report to provide more detailed information on the legislative framework of family mediation, range of matters covered by this mediation, functioning of the said services and relevant figures to show its effectiveness.

In view of the information available, the Committee considers that the situation is in conformity with the Charter in this respect.

The Committee furthermore recalls that the situation concerning other aspects covered by Article 16 will be examined in the framework of the regular reporting cycle (Conclusions 2019) and asks that relevant and updated information be provided in that context.

Conclusion

The Committee concludes that the situation in the Slovak Republic is in conformity with Article 16 of the Charter.

January 2018

European Social Charter

European Committee of Social Rights

Conclusions 2017

SLOVENIA

This text may be subject to editorial revision.

The following chapter concerns Slovenia, which ratified the Charter on 7 May 1999. The deadline for submitting the 16th report was 31 October 2016 and Slovenia submitted it on 22 March 2017.

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 was a simplified one and concerned only the follow-up to decisions on the merits in collective complaints. The Committee's findings in this respect are available under www.coe.int/socialcharter as well as in the HUDOC database.

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In addition, the report contains also information requested by the Committee in Conclusions 2015 in respect of its conclusions of non-conformity due to a repeated lack of information:

- the right of migrant workers and their families to protection and assistance – departure, journey and reception (Article 19§2),
- the right of migrant workers and their families to protection and assistance – equality regarding employment, right to organise and accommodation (Article 19§4),
- the right to housing – adequate housing (Article 31§1),
- the right to housing – reduction of homelessness (Article 31§2).

The Committee examined this information and adopted the following conclusions:

- 2 conclusions of conformity: Articles 19§2 and 19§4,

- 1 conclusion of non-conformity: Article 31§2,

- 1 deferral: Article 31§1.

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The next report will deal with the following provisions of the thematic group "Labour Rights":

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 21),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 22),
- the right to dignity at work (Article 26).
- the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28)
- the right to information and consultation in collective redundancy procedures (Article 29).

The deadline for submitting that report was 31 October 2017.

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

Article 19 - Right of migrant workers and their families to protection and assistance
Paragraph 2 - Departure, journey and reception

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

The Committee takes note of the information submitted by Slovenia in response to the conclusion that it had not been established that appropriate health and social assistance measures were taken to facilitate the reception of migrant workers.

In response to the Committee's requests for details concerning the implementation of the integration programme, its cost, conditions of access and measures taken to ensure access for migrants and their families, the report indicates that the relevant legislation (Aliens Act) was amended in 2014 and that its implementation falls within the competence of the Ministry of Interior, but also the ministries of education, culture and public administration. According to the report, the revised Act provides for a broader inter-ministerial cooperation between these ministries, national and international professional organisations, foreign authorities, and other service providers. As regards in particular the specific language and culture programmes aimed at the integration of non-EU nationals, under the revised Act the Ministry of Interior must provide foreigners with information necessary for their integration into Slovenian society through press publications, via the Internet or by replying to their specific questions (in written or oral form). Since 2012, the Initial Integration of Foreigners Programme includes both free language courses, covering issues related to life and work, and Slovenian society courses. As regards the conditions of access, the report refers to the Decree on the methods and scope of providing support programmes for the integration of third country nationals (Official Gazette of the Republic of Slovenia [*Uradni list RS*], Nos. 70/12 and 58/16) and confirms that the programme is free of charge for third-country nationals who reside in the Republic of Slovenia on the basis of a permanent residence permit and for their family members who reside in the Republic of Slovenia on the basis of a temporary residence permit due to family reunification, regardless of the length of residence in the Republic of Slovenia or of the permit validity; for those who reside in the Republic of Slovenia based on a temporary residence permit issued for a period of at least one year; and for those who are family members of Slovenian or EU citizens residing in the Republic of Slovenia on the basis of a family member's residence permit, regardless of the length of residence or the permit validity. In 2014 and 2015, the number of participants to integration programmes was respectively 1819 and 1973, and the number of participants successfully completing the language exam was respectively 580 and 380. The Committee asks the next report to provide further details on the conditions of access to the programme and its implementation.

As regards more specifically access to healthcare, the authorities explain in the report that pursuant to Article 33 of the Aliens Act, health insurance is one of the main requirements that foreigners must meet to be eligible for a residence permit. EU-nationals are covered by the appropriate health insurance scheme in accordance with the EU regulations on coordination of social security schemes, while non-EU residents and their family members are covered by the Slovenian healthcare system. The report points out that, in order to facilitate communication for foreigners receiving health services or treatment in healthcare institutions, a dictionary in six languages is being compiled by the Ministry of the Interior in cooperation with other competent institutions and was expected to be available to the general public by mid-2017 (out of the reference period). The Committee asks the next report to provide updated information on the implementation of this project.

The Committee furthermore notes that information for foreigners, covering inter alia social security and healthcare, but also access to accommodation, schooling, financial assistance

etc. is available on a web portal in six languages (http://www.infotujci.si/index.php?setLang=EN&t=&id=).

The Committee takes also note of the details provided in the report, in response to the Committee's question, concerning the medical and social assistance provided to applicants for international protection and persons granted international protection, in conformity with the International Protection Act adopted in April 2016 and harmonised with the directives of the Common European Asylum System. The report states that persons who have been granted international protection have the right to information on their status, rights and obligations, the right to reside in Slovenia, the right to financial compensation for private accommodation, assistance with integration, and the right to healthcare and social protection, education, employment and work. In respect of healthcare and education, according to the report, persons granted international protection are equal to Slovenian citizens; they exercise their rights to employment and work on the basis of regulations governing the employment and work of foreigners.

In the light of the information provided, the Committee considers that the situation is in conformity with the Charter. It asks nevertheless the next report to provide complete and updated information on all measures taken in favour of migrant workers and their families, in case they need assistance during their first weeks in the country in relation to their placement and integration in the workplace, but also to their accommodation, health or financial situation.

The Committee recalls that the situation concerning other aspects covered by Article 19§2 will be examined in the framework of the regular reporting cycle (Conclusions 2023) and asks that relevant and updated information be provided in that context. In particular, the next report should clarify whether any form of collective recruitment applies and, if this should be the case, how do the national authorities ensure that health and safety guarantees apply to the journey of such collectively recruited migrants.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in Slovenia is in conformity with Article 19§2 of the Charter.

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

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

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

The Committee takes note of the information submitted by Slovenia in response to the conclusion that it had not been established that sufficient measures had been taken to ensure that the treatment of migrant workers concerning remuneration, employment and other working conditions would not be less favourable than that of nationals.

In its previous conclusion (Conclusions 2015), the Committee had already noted the anti-discrimination legislation and the remedies available but had requested in particular further information on the implementation of such legislation, in the light of any relevant statistics concerning discrimination in the workplace, and on any measures taken to promote awareness on discrimination issues.

In response to this question, the report refers to a new Employment, Self-Employment and Work of Aliens Act of 2015 which reaffirms that, as regards the rights and obligations deriving from employment, aliens employed in Slovenia have equal status to that of Slovenian citizens. The implementation of this act, as well as of the Employment Relationship Act of 2013, falls under the supervision of the Labour Inspectorate.

The Committee takes note of the measures presented in the report which have been adopted with a view to increasing the effectiveness of the implementation of legislation, in particular:

- the enhanced preventive and monitoring activities of the Labour Inspectorate in the area of anti-discrimination law (including the training of inspectors and other Labour Inspectorate staff);
- targeted actions aimed at supervising implementation of the anti-discrimination law in the sectors where most aliens work (construction);
- awareness-raising initiatives aimed at informing workers and employers on their rights and obligations arising from the anti-discrimination law, including campaigns specifically addressed at informing migrant workers about their rights (Information for Foreigners Portal, publication of booklets on life and work in Slovenia in the languages of the countries from which most migrants come etc.).

According to the statistical data referred to in the report, despite an increase in the number of controls, the number of violations related to the work of aliens has decreased from 339 in 2007 to 47 in 2015. Furthermore, no case involving discrimination at work on grounds of nationality, race or ethnic origin was heard by the Higher Labour and Social Court and the Constitutional Court between April 2013 and September 2016 (data concerning the labour courts or the Supreme Court are not available).

The report also refers to a new Protection against Discrimination Act which entered into force in 2016, out of the reference period, and replaced the Implementation of the Principle of Equal Treatment Act of 2004, as revised. According to the report, the new Act strengthens the legal protection of victims of discrimination based on any personal circumstance, including ethnic origin, as victims are provided with free representation in judicial and administrative procedures, and it lays down higher fines for perpetrators. The Act also provides for a new regulation of the status of Advocate of the Principle of Equality and anyone who considers to have been discriminated against can file a petition with the Advocate, who can ask the offender to adopt suitable measures to protect the victim of discrimination or any other person helping the victim, or to take remedial action. The Committee asks the next report to provide relevant updated information on the implementation of this legislation.

As regards posted workers, the report refers to the EU relevant Directives and states that they must be guaranteed minimum working and employment conditions as provided by national regulations or generally applicable collective agreements of the country where work is carried out. Workers from non-EU countries posted to Slovenia perform their work on the basis of the Employment, Self-employment and Work of Aliens Act of 2015, which provides that aliens employed in Slovenia enjoy equal status to that of Slovenian workers. Individual employment relationships are governed by the Employment Relationship Act of 2013: an employer who temporarily posts workers under an employment contract governed by foreign law to work in Slovenia must provide these workers with the rights guaranteed by Slovenian legislation and the relevant collective agreements governing working hours, breaks and rest periods, night work, minimum annual leave, wages, health and safety at work, special protection of workers and equal treatment where these are more favourable to the workers. The Employment Relationship Act applies to all employed or self-employed foreigners or foreigners performing work (posted workers) in Slovenia, which means, according to the report, that their status is equal to that of Slovenian nationals.

The Committee notes from the Country Report 2015 on Slovenia of the European Network of Legal Experts on Gender Equality and Non-Discrimination that the Employment Relationship Act also covers training for employees and that equality of access to vocational training was also guaranteed under the Act Implementing the Principle of Equal Treatment. It asks the next report to confirm that foreign workers enjoy equality of treatment in access to vocational training in the field of employment also under the Protection of Discrimination Act of 2016.

In the light of the information provided, the Committee considers that the situation is in conformity with Article 19§4.a.

The Committee recalls that the situation concerning other aspects covered by Article 19§4 will be examined in the framework of the regular reporting cycle (Conclusions 2023) and asks that relevant and updated information be provided in that context.

Conclusion

The Committee concludes that the situation in Slovenia is in conformity with Article 19§4 of the Charter.

Article 31 - Right to housing

Paragraph 1 - Adequate housing

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31st October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the information submitted by Slovenia in response to the conclusion that it had not been established that the supervision of housing standards was adequate.

According to the report, the Housing Act provides that the landlord must hand over and maintain a dwelling and the common parts of the building in a condition that enables the tenant normal use of the dwelling and the common parts. Consequently, the landlord is responsible for legal and material defects in the leased dwelling.

In response to the Committee's request for information on procedures in place to verify that buildings comply with security norms (Conclusions 2015), the report states that the housing inspectorate may, at the request of tenants, issue an order for the landlord to carry out the necessary work as to enable normal use of the dwelling and the common parts by the tenants. If the landlord fails to execute the order within the set deadline, the tenant may provide the needed repairs himself or herself at the landlord's expense (the tenant may offset the incurred costs of such works against the owner's claims for rent) or require the landlord to supply other suitable housing. The Committee also asked for information on the number of sanctions imposed and of structures restored following inspections finding shortcomings. According to the report, no statistical data exist on this issue since the legislation does not provide for the collection of such data.

The Committee recalls that the effectiveness of the right to adequate housing requires its legal protection through adequate procedural safeguards. Occupiers must have access to affordable and impartial judicial or other remedies. Any appeal procedure must be effective. It accordingly asks the next report to provide any relevant information, including case-law or statistical data, concerning the implementation of the procedures in practice, in particular in case of non-compliance by the landlords of their obligations following findings of shortcomings. It reserves in the meantime its position on this point.

The Committee recalls that the situation concerning other aspects covered by Article 31§1 will be examined in the framework of the regular reporting cycle (Conclusions 2023) and asks that relevant and updated information be provided in that context. It also recalls that the next assessment of the follow-up given to collective complaint FEANTSA v. Slovenia complaint, No. 53/2008, decision on the merits of 8 September 2009, will take place on the basis of the information to be submitted in October 2019 (in this complaint, the Committee found that, as regards former holders of a "housing right" over flats that had been restored to their private owners, the combination of insufficient measures for the acquisition or access to a substitute flat, the evolution of the rules on occupancy and the increase in rents, were, after the Slovenian Government's reforms, likely to place a significant number of households in a very precarious position, and to prevent them from effectively exercising their right to housing).

Conclusion

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

Article 31 - Right to housing

Paragraph 2 - Reduction of homelessness

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31st October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the information submitted by Slovenia in response to the conclusion that it had not been established that there was adequate legal protection for persons threatened by eviction, and, that sufficient procedures were put into place ensuring that evictions of Roma were carried out in conditions respecting the dignity of the persons concerned.

The Committee previously asked (Conclusions 2011 and 2015) whether NGOs and associations protecting the rights of homeless persons or any specific category of the population which is at risk of becoming homeless are entitled to legal aid.

Following the amendments to the rules on eviction, the Committee also asked for clarifications on the two following issues:

- the non-suspensive effect of an eviction in case a tenant has no possibility to access alternative accommodation; and
- the lack of informal and informative procedures enabling the individuals to really understand and take into account the aim of the eviction prior to any expulsion.

The report states that assistance, such as first social aid, personal assistance and family assistance can be provided by the competent social work centre. Within these services, counsellors and persons subject with eviction jointly seek a solution most favourable to the latters (and their family). Where the debt cannot be repaid, the counsellor inform the persons concerned about accommodation options, such as accommodation with relatives or within the client's social network or temporary accommodation provided by the state. The Committee asks whether such assistance is provided on a systematic basis and free of charge to tenants in need prior to any expulsion. It also wishes to receive more information on the non-profit dwelling provided by the municipalities and their allocation procedure.

The report points out that in 2015, the Ministry of Labour, Family, Social Affairs and Equal Opportunities, in cooperation with NGOs, prepared an aid package for the most vulnerable persons. One of the three main measures is a pilot project providing aid in the event of eviction. According to this project, evicted persons can be placed in vacant dwellings of the Housing Fund of the Republic of Slovenia, and they can also receive aid and support for social inclusion and sustainable solutions to their personal and housing issues. The Committee asks the next report to provide further information on the implementation of this project and to clarify whether it also concerns the Roma population.

The Committee notes that the report provides still no information on the suspensive effect of an eviction in case a tenant has no possibility to access alternative accommodation. Therefore, the Committee reiterates its question and reserves its position on this matter. It also takes note in this connection of the judgment of the European Court of Human Rights in the case of Vaskrsić vs. Slovenia (application No. 31371/12, judgment of 25 April 2017, final on 25 July 2017), finding a disproportionate interference with the applicant's property rights in that the authorities had seized and sold his house in 2010, in order to secure the payment of a low debt he owed to the public water-supply company, without considering other suitable and less onerous measures.

As regards the housing conditions of the Roma population, the report states that Roma at risk of eviction in Slovenia enjoy the same rights to free legal aid and services provided by social work centres as other Slovenian citizens. The Committee takes note of the information provided in the report but considers that it remains insufficient to assess the situation, in particular whether Roma at risk of eviction are, in practice, informed about such an eviction,

receive effective aid and assistance and, when evictions occur, they are carried out under conditions which respect the dignity of the persons concerned.

In this regard, the Committee asks the next report to clarify the situation and considers that it has not been established that sufficient procedures were put into place ensuring that evictions of Roma are carried out in conditions respecting the dignity of the persons concerned.

The Committee recalls that the situation concerning other aspects covered by Article 31§2 will be examined in the framework of the regular reporting cycle (Conclusions 2023) and asks that relevant and updated information be provided in that context.

Conclusion

The Committee concludes that the situation in Slovenia is not in conformity with Article 31§2 of the Charter on the ground that it has not been established that sufficient procedures have been put into place ensuring that evictions of Roma are carried out in conditions respecting the dignity of the persons concerned.

January 2018

European Social Charter

European Committee of Social Rights

Conclusions 2017

“THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”

This text may be subject to editorial revision.

The following chapter concerns "the former Yugoslav Republic of Macedonia", which ratified the Charter on 6 January 2012. The deadline for submitting the 4th report was 31 October 2016 and "the former Yugoslav Republic of Macedonia" submitted it on 7 March 2017.

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 "Health, social security and social protection":

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

"The former Yugoslav Republic of Macedonia" has accepted all provisions from the above-mentioned group except Articles 3§1, 3§3, 23 and 30.

The reference period was 1 January 2012 to 31 December 2015.

The conclusions relating to "The former Yugoslav Republic of Macedonia" concern 13 situations and are as follows:

– 8 conclusions of conformity: Articles 3§4, 11§1, 11§2, 11§3, 12§2, 12§3, 13§2 and 13§4,

– 3 conclusions of non-conformity: Articles 12§1, 12§4 and 13§1.

In respect of the other 2 situations related to Articles 3§2 and 13§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 former Yugoslav Republic of Macedonia" under the Charter. The Committee requests the authorities to remedy this situation by providing the information in the next report.

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In addition, the report contains also information requested by the Committee in Conclusions 2015 in respect of its conclusions of non-conformity due to a repeated lack of information:

- the right of children and young persons to protection – special protection against physical and moral dangers (Article 7§10),
- the right of employed women to protection of maternity – illegality of dismissal during maternity leave (Article 8§2).

The Committee examined this information and adopted 2 conclusions of conformity relating to these Articles.

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The next report will deal with the following provisions of the thematic group "Labour Rights":

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 21),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 22),
- the right to dignity at work (Article 26).

- the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28)
- the right to information and consultation in collective redundancy procedures (Article 29).

The report should also contain information requested by the Committee in Conclusions 2016 in respect of its conclusions of non-conformity due to a repeated lack of information:

- the right to work – vocational guidance, training and rehabilitation (Article 1§4),
- the right of persons with disabilities to independence, social integration and participation in the life of the community – vocational training for persons with disabilities (Article 15§1).

The deadline for submitting that report was 31 October 2017. The report was registered on 15 January 2018. Conclusions on the Articles concerned will be published in January 2019.

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Conclusions and reports are available at www.coe.int/socialcharter as well as in the HUDOC database.

CONCLUSIONS RELATING TO ARTICLES FROM THE THEMATIC GROUP

‘Health, social security and social protection”

Article 3 - Right to safe and healthy working conditions

Paragraph 2 - Safety and health regulations

The Committee takes note of the information contained in the report submitted by "the former Yugoslav Republic of Macedonia".

Content of the regulations on health and safety at work

The Law on Safety and Health at Work was adopted in 2007 (Official Gazette No. 92/07). According to the report, the law is completely harmonised with the EU legislation, and establishes the basic principles and minimum requirements on safety and health of the employees in accordance with the EU Framework Directive 89/391/EEC on introducing measures to enhance the safety and health of the worker at work. It also prescribes new solutions as obligations of the employer and employees in the implementing the safety and health measures at work. Pursuant to the Law, the employer shall be obliged to organise and implement the safety and health at work, especially by assessing the risk on any workplace, to remove the identified risks and hazards, and to undertake measures to remove the risk of injuries and diseases, information, training, and consultations with workers.

According to the report, the Law on Safety and Health at Work contains a foundation for adoption of bylaws i.e. rulebooks on more detailed and precise regulation of certain areas and for further transpositions of specific EU directives in this area. The report gives a list of the health and safety adopted rulebooks, transposing 25 EU individual directives on health and safety at work, which relate primarily to the use of work equipment; personal protection equipment; signs for safety and health at work; protection of workers in manual handling of loads; temporary and mobile construction sites; safety and health at work of employees exposed to risk of noise, mechanical vibrations, explosive atmospheres, exposure on chemical and biological substances, asbestos, cancerous, mutagenic or substances toxic for the reproduction system.

The report indicates that this law has created a legal basis for adopting the National Strategic Document for further development in the field. It also established a Council for Safety and Health at Work, as a consultative and expert body of the Government, reviewing and assessing conditions, policies and strategic documents in the area of safety and health at work.

Pursuant to Article 4 of the Law on Safety and Health at Work, the Government shall adopt a Programme for Safety and Health at Work which determines the strategic directions for development of safety and health at work, and then, a strategy and action plans for safety and health at work for the period of five years shall be prepared on this basis.

The Committee notes that the Government adopted the 2011-2015 National Strategy for Safety and Health at Work along with the Action Plan for its implementation in May 2011. The Strategy enabled the perception of the current state in this area and provided strategic directions for including all actors an achieving modern, effective and efficient safety and health system at work, which should contribute to reduction of accidents at work as well as occupational diseases.

According to the report, occupational safety and health policy is based on relevant international regulations and documents such as ILO Conventions (74 Conventions were ratified), EU Directives and the Community Strategy 2007-2012 on Safety and Health at Work, as well as the WHO Global Plan of Action on Workers' Health 2008-2017. ILO Conventions No. 136 on Benzene (1971), No. 148 on Working Environment (Air Pollution, Noise and Vibration) (1977) and No. 155 on Occupational Safety and Health (1981) are in force.

The Committee points out that under the terms of Article 3§2 of the Charter, regulations concerning health and safety at work must cover work-related stress, aggression and violence specific to work, and especially for workers under atypical working relationships

(Statement of Interpretation on Article 3§2 of the Charter, Conclusions 2013). It requests the next report to contain this information.

The Committee asks that the next report provide full and detailed information on the legislation and regulations, including any amendments thereto adopted during the reference period, which specifically govern the risks listed in the general introduction to Conclusions XIV-2. It also asks for an explanation on the relevance of the respective legislation, regulations and standards within the legal system.

Levels of prevention and protection

The Committee examines the levels of prevention and protection for by the legislation and regulations in relation to certain risks.

Establishment, alteration and upkeep of workplaces

The report lists various regulations, which incorporate the Community *acquis* on the establishment, alteration and upkeep of workplaces: the Rulebook on protective measures for work with display screens (Official Gazette No. 115/05) to incorporate Council Directive 90/270/EEC of 29 May 1990 on the minimum safety and health requirements for work with display screen equipment; the Rulebook on safety and health in use of work equipment (Official Gazette No. 116/07) to incorporate Directive 89/655/EC of 30 November 1989 concerning the minimum safety and health requirements for the use of work equipment by workers at work; the Rulebook on signs for safety and health at work (Official Gazette No. 127/07) to implement Council Directive 90/270/EEC of 29 May 1990 on the minimum safety and health requirements for work with display screen equipment, etc. The Committee notes that ILO Convention No. 119 on Guarding of Machinery (1963) is in force, whereas ILO Convention No. 120 on Hygiene (Commerce and Offices) (1964) is not.

In order to determine, whether the level set by the international reference standards has been reached, the Committee asks for information on the Government's intent to ratify or implement ILO Conventions No. 167 on Safety and Health in Construction (1988); No. 176 on Safety and Health in Mines (1995); and No. 184 on Safety and Health in Agriculture (2001). It also asks for more detailed information on the implementation of preventive measures geared to the nature of risks, on the provision of information and training for workers, as well as on a schedule for compliance.

Protection against hazardous substances and agents

The report indicates that the reduction and limitation of exposure to asbestos is implemented by the Regulation on minimum requirements for safety and health of workers concerning the risks related to exposure to asbestos at work (Official Gazette No. 50/09), as well as the Rulebook on minimum requirements for safety and health at work of workers concerning the risks related to exposure to carcinogens, mutagens or substances toxic for the reproductive system (Official Gazette No. 110/10). ILO Conventions No. 139 on Professional Cancer (1974) and No. 162 on Asbestos (1986) are in force.

The report provides no information on the protection of workers against ionising radiation. However, the Committee notes that ILO Convention No. 115 on Radiation Protection (1960) is not in force.

The Committee takes note of this information. It asks that the next report provide detailed information on exposure limit values, on the ban of production and sale of asbestos and products containing it, and on the incorporation of the requirements of the International Commission on Radiological Protection Recommendation (No. 103, 2007). It asks whether the authorities have considered drawing up an inventory of all contaminated buildings and materials. Bearing in mind the importance of this question in the light of the right to health of the population (Article 11), the Committee asks the next report to provide specific information

on steps taken to this effect. It asks whether the authorities have considered drawing up an inventory of all contaminated buildings and materials. Bearing in mind the importance of this question in the light of the right to health of the population (Article 11), the Committee asks the next report to provide specific information on steps taken to this effect. It asks whether workers are protected up to a level at least equivalent to that set in the Recommendations by the International Commission on Radiological Protection (ICRP Publication No. 103, 2007).

The Committee also asks the next report to provide information on the specific provisions relating to protection against risks of exposure to benzene.

Personal scope of the regulations

The report provides information neither on the protection of workers in fixed-term employment, agency and temporary workers; nor on the protection of self-employed, home and domestic workers.

Recalling that all workers, all workplaces and all sectors of activity must be covered by the regulations on occupational health and safety, the Committee asks the next report to provide information on how the above categories of workers are protected effectively and without discrimination, including against risks related to successive periods of exposure to dangerous substances when working for different employers, and through the prohibition of the use of non-permanent and temporary workers for some particularly dangerous tasks, is implemented in the laws and regulations. It asks for details about the access of the above categories of workers to information and training regarding occupational safety and health, as well as to medical surveillance and representation at work.

Consultation with employers' and workers' organisations

The report indicates that according to the Law on Safety and Health at Work, the Government established a Council for Safety and Health at Work in 2009 as an expert advisory body. It is comprised of 15 members, representatives of the Government, employer organisations, trade unions, educational institutions performing its activity in the field of safety and health at work, labour medicine, and representatives of the associations of experts in the safety at work.

According to the report, the 2011-2015 Strategy for Safety and Health at Work and the Action Plan for its implementation were prepared in cooperation with all relevant institutions, non-governmental sectors and social partners. Both documents were also considered within the Council for Safety and Health at Work during their preparation.

The report also indicates that, pursuant to Article 11 of the amended Law on Safety and Health at Work performed, (Official Gazette No. 158/14), each employer must prepare and provide a statement on safety for each job position, stating the manner and measures to be undertaken. After the statement on safety is prepared, the employer shall be obliged to obtain an opinion of the trade union organisation or employee representative**.**

The Committee asks the next report to provide information on how employers' and workers' organisations are consulted in the preparation of regulations on safety and health at work.

Conclusion

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

Article 3 - Right to safe and healthy working conditions

Paragraph 4 - Occupational health services

The Committee takes note of the information contained in the report submitted by "The former Yugoslav Republic of Macedonia".

This is the first time the Committee examines the framework on occupational health services.

The report indicates that, pursuant to Article 20 of the Law on Safety and Health at Work, primary tasks of the authorised health institutions in which occupational medicine activity is performed, are, among others, conducting preventive health examinations of employees, providing medical services for employees with occupational diseases, providing proposals and measures to the employers on health protection of workers exposed to great danger of injury or health damage, participating in each risk, safety and health at work and environment assessment and introducing the employees into the risks related to their work. According to the report, the Government Decree on Type, Manner, Volume and Pricing of Medical Examinations of Employees (Official Gazette No. 60 on 24 April 2013) also contains legal operation of employers and health institutions in which the occupational medicine activity is performed.

In addition, the report indicates that the WHO Plan on Workers' Health 2008-2017, one of whose strategic goals is promotion of quality and availability of occupational medicine services, shall be implemented by mutual inter-sectoral cooperation between the State Labour Inspectorate and the authorised health institutions in the field of occupational medicine. ILO Convention No. 161 on Occupational Health Services (1985) is in force.

The State Labour Inspectorate in the area of safety and health at work and the State Sanitary and Health Inspectorate conduct coordinated inspection supervisions in health institutions that perform the occupational medicine activity (147 authorised health institutions were supervised in 2015). According to Article 22 of the Law on Safety and Health at Work, employers must provide medical examinations for the employees. In 2014, the State Labour Inspectorate in the area of safety and health at work conducted 16 735 inspection supervisions (17 412 in 2015), where it has been determined that out of the 235 999 covered employees (262 425 in 2015), 212 546 (236 144 in 2015) were provided with medical examinations by their employers.

The Committee recalls that, in accepting Article 3§4 of the Charter, States Parties undertake to ensure that all workers have access to occupational health services in all sectors of activity and in all business enterprises. It asks that the next report provide existing strategies or incentives to foster access, especially for workers from small and medium-sized enterprises, to occupational health services. It also asks for information about access to occupational health services for interim workers, temporary workers or workers on fixed-term contracts; self-employed workers and domestic workers.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in "the former Yugoslav Republic of Macedonia" is in conformity with Article 3§4 of the Charter.

Article 11 - Right to protection of health

Paragraph 1 - Removal of the causes of ill-health

The Committee takes note of the information contained in the report submitted by "the former Yugoslav Republic of Macedonia".

Measures to ensure the highest possible standard of health

The Committee notes from WHO that life expectancy at birth stood at 75.7 in 2015 (compared to 74.5 in 2009 and 75.1 in 2010). The life-expectancy rate is below that of other European countries. For instance, according to Eurostat, the average life expectancy at birth in the EU-28 was estimated at 80.6 years in 2015.

The report indicates that the principal causes of death remain the cardiovascular diseases and malignant neoplasms. The report provides information on the measures undertaken during the reference period, such as the Cardiovascular Disease Programme and the Programme for Transplantation. The Committee asks to be kept informed on the measures taken to address the main causes of premature death.

With regard to infant mortality rate (per 1 000 live births) the Committee noted previously that it decreased from 11.74 in 2009 to 7.5 in 2011 (Conclusions XX-2 (2013)). The data provided in the current report indicate that the infant mortality rate stood at 9.7 in 2012, 10.2 in 2013, 9.9 in 2014 and 8.6 in 2015. According to Eurostat, the average EU-28 rate was of 3.6 per 1,000 live births in 2015. The report adds that congenital anomalies and perinatal causes were the main causes of infant mortality (0-12 months). The Committee takes note of the detailed figures on the infant mortality rates according to regions, the education level and the ethnicity of the mother, as well as the measures taken during the reference period to improve the health of mothers and children. The Committee asks for updated information on the infant mortality rate in the next report and on the impact of the measures carried out in practice.

The report indicates that the maternal mortality rate oscillated during the reference period between 4.2 in 2012 and 4.4 in 2013 to 12.7 in 2014. The Committee notes that, according to World Bank indicators, the maternal mortality rate stood at 8 deaths per 100, 000 live births and remained stable during the reference period (2012-2015). The Committee takes note of the detailed information on the measures undertaken during the reference period to improve the maternal health/ sexual and reproductive health. It asks that the next report provide updated figures on the maternal mortality rate and information on the impact of such measures in practice.

Access to health care

The Committee took note of the characteristics of the healthcare system in its previous conclusions (Conclusions XIX-2 (2010) and Conclusions XX-2 (2013)).

The Committee takes note of the strategies and action plans adopted during the reference period, such as the National Strategies on HIV and Tuberculosis Control, Third Action Plan for Food and Nutrition, and the Immunisation Strategy 2012-2012.

The report indicates that with a view to improving the quality of health protection and the conditions of stay in healthcare facilities, the Ministry of Health purchases new modern medical equipment for the public health institutions. The implementation of the project for upgrading and reconstruction of health institutions is ongoing, and activities for construction of new Clinical Hospital in Shtip and the Clinical Centre Skopje have started. The report indicates that the budget for implementation of the public health programmes continued to increase in 2015 and it amounted to approximately € 64.5 million compared to 2012 when it amounted to approximately € 42.8 million. The Committee asked for figures on health expenditure as a percentage of GDP (Conclusions 2013). The Committee notes from World Bank figures that the public health expenditure represented 4.1% of GDP in 2014. The same

source indicates that the out-of-pocket health expenditure represented 36.7% of the total health expenditure.

The Committee recalls that the health care system must be accessible to everyone. The right of access to care requires *inter alia* that the cost of health care should be borne, at least in part, by the community as a whole (Conclusions I (1969), Statement of Interpretation on Article 11) and the cost of health care must not represent an excessively heavy burden for the individual. Out-of-pocket payments should not be the main source of funding of the health system (Conclusions 2013, Georgia). The Committee asks for updated information in the next report on the public health expenditure as a share of GDP and out-of-pocket payments as a share of total health expenditure, as well as measures taken to reduce the out-of-pocket payments.

The Committee noted previously that at the end of 2011, a pilot project was launched aimed at the introduction of an electronic keeping of the list of appointments and interventions through the web application which is maintained by the Ministry of Health (Conclusions 2013). The Committee wished to be informed on average waiting times for specialist and hospital treatment (Conclusions 2013). The report indicates that for the development and improvement of integrated health information system, a Department for electronic health as a body within the Ministry of Health was established. According to the data from the last 6 months, the general average waiting time from the moment of appointment to the realisation of the specialised examination is 7 days. The report further provides detailed information on the concrete waiting time for most individual specialties as provided by the Department for Electronic Health. The Committee takes note that according to the Euro Health Consumer Index 2015, the country has made a remarkable breakthrough in electronic booking of appointments – since July 2013, any GP can call up the booking situation of any specialist or heavy diagnostic equipment in the country in Real Time with the patient sitting in the room, and book anywhere in the country.

In reply to a general question addressed by the Committee to all states on the availability of rehabilitation facilities for drug addicts, and the range of facilities and treatments (Conclusions XIX-2 (2010) and Conclusions XX-2 (2013), the report indicates that the treatment for the drug addicts is available throughout the country, with over 12 centres for prevention and treatment of drug abuse and other psychoactive substances, and the Clinic for Toxicology and Emergency Medicine (which offers treatment only with buprenorphine). The treatment is available for all arrested and detained persons. The report adds that the funds for providing substance therapy (methadone and buprenorphine) for around 1400 persons each year is provided through the Annual Programme for Treatment of Addiction Diseases. The treatment system includes daily in-patient treatment, in-patient treatment, detoxification and substance treatment. Most drug users that are treated are receiving daily in-patient treatment, where they get a substitution treatment, psycho-social interventions, individual or group counselling and social psychotherapy. Moreover, the report lists several facilities for rehabilitation, re-entry in society and re-integration for addicted persons which were set up through the cooperation between the NGO sector, the local self-government and the government sector.

The Committee asks that the next report contain information on the availability of mental health care and treatment services, including information on the prevention of mental disorders and recovery measures.

The Committee asks that the next report contain information on dental care services and treatments (such as who is entitled to free dental treatment, the costs for the main treatments and the proportion of out-of-pocket paid by the patients).

As regards the right to protection of health of transgender persons, the Committee previously asked whether the legal recognition of transgender persons requires (in law or practice) that they undergo sterilisation or any other invasive medical treatment, which may impair their health or physical integrity (Conclusions 2013). The report indicates that there are no legal

provisions requiring any medical treatment for transgender people. It adds that in "the former Yugoslav Republic of Macedonia" there are no medical interventions for sex change. The Committee takes note of the submissions by Transgender Europe and the International Lesbian and Gay Association (European Region) (ILGA) on the implementation of the European Social Charter in the current cycle stating that the process of legal gender recognition is based on three procedures under different laws. The same submissions state that there are no regulations setting out the criteria according to which the Directorate for Registration (the “relevant institution”) authorises changes to the registry, resulting in arbitrary decisions. The Committee asks for comments on the above matters.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in "the former Yugoslav Republic of Macedonia" is in conformity with Article 11§1 of the Charter.

Article 11 - Right to protection of health

Paragraph 2 - Advisory and educational facilities

The Committee takes note of the information contained in the report submitted by "the former Yugoslav Republic of Macedonia".

Education and awareness raising

As regards public information and awareness-raising, the report indicates that each year of the reference period around 25,000 lectures on vaccinations, proper nutrition, hygiene maintenance, prevention of addiction illnesses – alcohol addiction, drug addiction, smoking, preventing cardiovascular diseases, malignant neoplasms, diabetes, osteoporosis, Chronic Obstructive Lung Disease (COLD) and other chronic non-contagious diseases were organised. Moreover, on average around 2000 workshops were organized yearly, on family planning, maintaining a hygiene-dietetic regime, i.e. the primary sanitary minimum, early cancer detection and other contents regarding health promotion and disease prevention, as well as 5,000 courses on average regarding first aid, taking care of proper nutrition and proper growth and development of children, etc.

The Committee takes note of the promotional actions and campaigns listed in the report which were carried out during the reference period such as “Save A Life”, campaigns on raising awareness on prevention of malignant neoplasms, promoting sexual and reproductive health of women, on diseases caused by the hepatitis virus, and for promoting rational use of antibiotics. The report mentions that a large number of articles have been published in professional and scientific magazines and daily newspapers and numerous health promotional materials – posters, brochures, instructions, etc. in Macedonian and in Albanian languages. The Government sector works with the NGOs in organising and implementing numerous forums and conferences with presentations and other kinds of activities dedicated to the Roma population, the health of children and mothers, sexual and reproductive health, road safety, etc. The Committee takes note of the information provided in the report on the measures taken in to prevent obesity and promote healthy nutrition. It also notes that activities for education of different groups, students and the general population are continuously organised as part of the preventive public health activities of the Public Health Institute and the Public Health Centres, as well as through the activities of the NGO sector involved in the HIV/AIDS Programme funded by the Global Fund.

As regards health education in schools, the Committee took note previously of the subjects taught at schools, such as ‘life skills’ and ‘biology’ (Conclusions XX-2 (2013)). The report indicates that the country is a member of the network ‘Healthy Schools in Europe’, and at universities more and more attention is paid to introducing subjects and topics that refer to promotion of health of the population. For example, a curriculum was created in 2014 that introduced the subject ’Health Promotion’ for general medicine students at the Faculty of Medicine in Skopje and the subject ’Promotion of Health and Health Education’ is taught at the University of Shtip, Faculty of Medical Sciences.

Counselling and screening

The Committee noted previously that counselling and testing services for the population are carried out through the activities of the public health programmes which are adopted each year in the framework of the Law on Health Care (Conclusions XX-2 (2013). The report indicates that free preventive examinations are provided within the programme ’Health for All’ which is implemented throughout the country including in rural areas and includes blood pressure and blood sugar/fats checks as well as free counselling on health, diet and healthy lifestyles.

The report indicates that the programme for free health examinations and general medical examinations for pupils (aged 6-18 years) and students in their first year of university studies continues.

The report further indicates that free services – tests are provided through the Programme for early detection of malignant diseases, such as breast cancer and uterine cancer, as well as through the Programme for HIV/AIDS and through the Programme for measures to prevent tuberculosis.

The Committee takes note of the information provided in the report on the measures taken in the field of sexual and reproductive health. For example, through the National Programme for Public Health, within the activities of Counselling Centres for Sexual and Reproductive health of the 10 Public Health Centres, a total of 3 091 persons received education and counselling on topics for family planning, birth control, protection against sexually transmitted infections within the period 2012 – 2015.

The report indicates that since 2010, the annual programme for early detection of malignant diseases has been implemented, which marked the commencement of activities for implementing a pilot screening for uterine and breast cancer. As part of the programme, a free Pap smear was provided for women in their reproductive age and in the period from 2012 to 2015, on average 30 000 women were given tests per year, and 2.6% of women annually were detected with cell abnormalities. As a result of the screening measures undertaken, the mortality rate of women from cervical cancer is not increasing and on average it is around 4 women who die out of 100 000 women. The strategy for safe motherhood is implemented through activities established in the Programme for active healthcare of mothers and children focused on reducing the mortality rate and morbidity rate with pregnant women and new-borns, through which since 2015 free folic acid and iodine are provided for every pregnant woman in the country. In 2015, a National Centre for Reproductive Health was established, and a database of the state of reproductive health of pregnant women and new-borns was created.

Conclusion

The Committee concludes that the situation in "the former Yugoslav Republic of Macedonia" is in conformity with Article 11§2 of the Charter.

Article 11 - Right to protection of health

Paragraph 3 - Prevention of diseases and accidents

The Committee takes note of the information contained in the report submitted by "the former Yugoslav Republic of Macedonia".

Healthy environment

With regard to water quality, the report indicates that the Public Health Centres, in accordance with the National Annual Programme on Public Health in the Republic of Macedonia, each year performs continuous monitoring and evaluation of the sanitary-hygienic condition of the water supply for the population, of water supply facilities and of the safety (quality and health accuracy) of the drinking water, as well as the water for bathing and recreation. The report provides information on the activity of the Public health care offices with regard to health correctness of the drinking water for the period 2012-2015.

Concerning air quality, the report indicates that under the Law on Health Protection and the Law on Ambient Air Quality, the public health institutions, namely the Public Health Centres, are obliged to organise and perform monitoring of the air quality in the populated areas. The report further indicates that the total aero-sediment is monitored at 81 measuring spots, in Veles they monitor the presence of Pb, Cd, Zn, Ni and Fe in aero-sediment, in Kumanovo the presence of Pb, Cd and Zn in aerosediment; in Skopje and Veles floating particles (smoke) and SO2-sulphur dioxide is monitored, and the presence of CO is also monitored in Skopje.

The report further states that during the period of 2012-2015, according to the program tasks for public health, the level of noise has been monitored in the towns Bitola, Kichevo and Kumanovo by the regional Public Health Centres, in the periods defined with the Law on Environmental Noise Protection (Official Gazette of The former Yugoslav Republic of Macedonia No. 79/07). In accordance with the results obtained from the measurements, in those cases with registered increased level of noise, recommendations are given for overcoming the determined deficiencies in order to prevent the risk of occurring negative health effects due to exposure to increased noise level.

Concerning asbestos, the report indicates that in 2014, an asbestos profile was prepared with data regarding the asbestos presence in the construction and other materials and, thus, prevention measures have been proposed. During 2014, the Public Health Institute implemented the first study on human biomonitoring in “the former Yugoslav Republic of Macedonia”. The Committee asks to be kept informed of any developments in this field.

With regard to food safety, the report provides detailed figures on the results of laboratory tested food samples for each year of the reference period. For example, in 2015, the analysis of the health safety of the food products shows the highest percentage of defective products from trade and domestic production in relation to additives and microbiological safety (1.5%). The additive incorrectness is higher with the analysed products from domestic production (2%) in comparison with the incorrectness with the analysed samples from import, whose percentage is significantly lower (0.6%). All 5 254 tested samples of food products for presence of pesticide residues corresponded to the legal regulations on food safety. The Committee takes note of the detailed information and data in the report related to the monitoring of food safety in educational institutions, schools, kindergartens and health institutions.

The Committee takes note of the detailed information in the report with regard to the measures taken in relation to protection from radioactivity and climate change.

The Committee asks for updated information in the next report on the concrete measures taken, as well as on the levels and trends with regard to air pollution, waste management, water quality, food safety, noise pollution, asbestos.

Tobacco, alcohol and drugs

The Committee takes note of the measures taken during the reference period to combat smoking, alcoholism and drug addiction.

The report indicates that the Law on Protection against Smoking stipulates a prohibition of smoking in public places and a prohibition of selling cigarettes to minors. It also regulates advertising and sponsoring. The Law on Tobacco sets forth quality standards, the levels of tar and nicotine, health warnings and graphic warnings. In 2013, the Law on Protection against Smoking has been amended. The amendments provide a wider scope of the inspection services, which will be able to penalize for smoking in places where it is forbidden to smoke. In accordance with the new amendments, inspectional supervision may also be performed by the Public Revenue Office – PRO (Tax Authority) and the Ministry of Interior – MoI. In 2013, the State Sanitary Health Inspectorate performed around 2,000 regular supervisions in public and private health institutions, in which cases it was concluded that there is compliance with the law. In 2014, the Counselling Centres for stopping smoking started their activity at 10 Public Health Centres (PHC). Within these centres, educational lectures are provided, which are focused on presenting the harmful effects of smoking on smokers' health and the harmful effects of tobacco smoke on the environment. For example, the number of people that were provided with counselling in the first half of 2015 was 153 in the Counselling Centres for stopping smoking.

In reply to a question of the Committee on trends in consumption, the report indicates that according to the results of the Study on behaviour of children of school age to health, conducted in 2014/2015, there is a visible trend of decline of everyday smoking, i.e. tobacco use by pupils aged 15, and also a trend of decline of the prevalence of weekly use of alcohol by these pupils. The same study indicates that there are no improvements in terms of the use of marijuana by 15 year old children. The Committee asks for updated information on the prevalence of adult smokers (over 15 years old).

The report provides data on the average annual quantities of alcoholic beverages (expressed in litres) per household/per household member. The report further indicates that during the last several years, statistics show that there is an increase in the number of persons who died from reasons linked to alcohol psychosis and cirrhosis. Mortality as a consequence of alcohol use is most common for age groups aged between 45 and 54.

The Committee takes note of the measures taken with regard to drug consumption. In 2014, a National Strategy on drugs 2014 – 2020 was adopted, which deals with issues of coordination and organisation of various sectors that are involved in this area and it establishes measures and activities for reducing the consumption and demand of drugs. The Committee wishes to be kept informed on the implementation of the Strategy and on trends in drug consumption.

The Committee asks that the next report contain updated figures on the tobacco, alcohol and drug consumption and trend of such consumption.

Immunisation and epidemiological monitoring

The Committee takes note of the measures taken during the reference period in the field of epidemiological monitoring. The report indicates that the immunisation in "The former Yugoslav Republic of Macedonia" is mandatory and free for all children aged 0 – 18. Mandatory vaccinations are also implemented for persons exposed to communicable diseases – after epidemiological indications, as well as active immunisation after epidemiological and clinical indications, also for travellers in international traffic. Mandatory vaccination is provided against tuberculosis, type B hepatitis, type B haemophilus influenza, polio, diphtheria, tetanus, pertussis (whooping cough), smallpox, rubella, measles, and diseases caused by Human Papilloma Viruses (HPV). In accordance with the Strategy for Immunisation, polyvalent vaccines were introduced in the Immunisation Calendar. A vaccine

was provided against Streptococcus pneumonia, for children with clinical indications and following a recommendation from a paediatrician.

The Committee notes the coverage rates for the mandatory vaccinations during the reference period which were high (between 88.6% and 91.8% in 2015 with the exception of HPV of 42.2%). The Committee wishes to be kept informed on the coverage rates for the mandatory vaccinations in the next report.

Accidents

The report indicates that there have been no changes in the sense of new activities and new statistical data since the previous national report of 2012 (6th national report). The Committee recalls that under Article 11§3, States Parties must take steps to prevent accidents. The main sorts of accidents covered are road accidents, domestic accidents, accidents at school and accidents during leisure time. The Committee asks for updated information in the next report on the measures taken to reduce injury and death by accidents as well as trends in the number of accidents.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in "the former Yugoslav Republic of Macedonia" is in conformity with Article 11§3 of the Charter.

Article 12 - Right to social security

Paragraph 1 - Existence of a social security system

The Committee takes note of the information contained in the report submitted by "the former Yugoslav Republic of Macedonia".

In the case of **family** and **maternity benefits**, the Committee refers to its conclusions on, respectively, articles 16 and 8§1 (Conclusions 2015).

Risks covered, financing of benefits and personal coverage

The Committee refers to its previous conclusions for a description of the social security system in "the former Yugoslav Republic of Macedonia", and notes that it continues to cover the traditional risks (medical care, sickness, unemployment, old age, work accidents/occupational diseases, family, maternity, invalidity and survivors). The system also continues to rest on collective funding: it is funded by contributions (employers, employees) and by the State budget.

The report indicates that there have been no changes as regards **healthcare** legislation. The Committee had previously found that healthcare coverage was satisfactory inasmuch as a mandatory insurance covered all employees and self-employed persons, pensioners, beneficiaries of unemployment benefits or social assistance, detainees, and people earning less than a certain income. In addition, certain categories of persons who cannot be insured on any other ground (children and young people in education, elderly persons, unemployed women during pregnancy and confinement) are also covered.

As regards the other branches, the Committee had however asked for updated figures concerning the percentage of persons insured out of the total active population and indicated that, should this information not be provided, there would be nothing to establish the situation's conformity with the Charter. In this respect, the Committee notes from official statistics that the active population in 2015 was 954 924 persons, of which 705 991 were employed and 248 933 were unemployed persons. The report states however that no data is available concerning the number of insured persons out of the total number of the active population (workers and unemployed persons). The Committee notes from Missceo that **sickness** insurance covers all employed and self-employed persons. A compulsory insurance for **work accidents and occupational diseases** covers employees, the self-employed, farmers, persons/students engaged in practical or voluntary work and unemployed during professional and vocational retraining. As regards **old age**, all employed, self-employed and farmers are covered by a compulsory insurance and, according to the report, in 2015 there were 182 954 recipients of old age pensions. All employed, self-employed and farmers, as well as persons engaged in practical or voluntary work, unemployed/students during professional and vocational training and prisoners are covered by compulsory **invalidity** insurance and the number of beneficiaries in 2015 was 39 814. Both employed and self-employed persons are covered by **unemployment** insurance. The report indicates that in 2015 the average number of unemployment benefits recipients was 11 243 persons. The Committee takes note of the information provided, in the absence however of the requested data concerning the percentage of the active population covered, it is not in a position to assess whether the coverage of the population is adequate. The Committee asks that the next report provide update data concerning the total population, the active population, the number of persons covered respectively in respect of healthcare; sickness; work accidents and occupational diseases; old age, disability and death as well as unemployment. In the meantime, it considers that it has not been established that the existing social security schemes cover a significant percentage of the population.

Adequacy of the benefits

According to Eurostat data, the median equivalised annual income was €2120 in 2015, or €177 per month. The poverty level, defined as 50% of the median equivalised income, was

€1060 per year, or €88 per month. 40% of the median equivalised income corresponded to €71 monthly. The report indicates that the minimum (net) wage was MKD9590 (€155) and that the minimum net wage in the sector of textile, clothes and leather production was MKD8050 (€130), while the national average (net) wage was MKD21904 (€353) and the average gross wage was MKD32171 (€519).

According to Missceo, employed and self-employed persons who have been insured for at least six months are entitled to **sickness** cash benefits in the amount of 70% of the average salary prior to the sickness (85% in case of a malignant disease), but not more than four times the national average monthly salary paid in the previous year. On the basis of the minimum wage, the Committee notes that the amount is adequate (€109-€91). This also applies to the benefits paid in case of **work accidents or occupational diseases**, which correspond to 100% of the average salary.

The report indicates that the reform of old age and disability pensions continued during the reference period. The conditions for entitlement to **old age** pension remain however the same, i.e. having reached the age of 64 (for men) or 62 (for women) with contributions of at least 15 years. According to the report, the lowest old-age pension amount in 2015 was MKD8241 (€133), which is above the poverty level and is therefore in conformity with Article 12§1 of the Charter. As regards **invalidity** pensions, the Committee notes from Missceo that the minimum invalidity benefit is respectively 37.60% (for men) and 43.40% (for women) of the calculation basis, that is the average net earnings over the entire insurance period. The actual amount is however determined according to the individual's working period and invalidity level. The Committee asks the next report to indicate the minimum amount of invalidity pensions. If no legal minimum is set, the Committee asks what is, for example, the minimum amount of an invalidity pension payable to a man with at least 80% permanent invalidity (not resulting from work accidents) and 15 years of contributions at minimum salary. It reserves in the meantime its position on this point.

The Committee previously found the duration of payment of **unemployment** benefits to be too short (Conclusions 2009, 2013), insofar as persons satisfying the minimum requirements for entitlement (9 months of uninterrupted employment or 12 months employment insurance out of the last 18 months) are only entitled to one month unemployment benefits (up to 12 months for persons with more than 25 years of employment insurance, or unlimited duration for persons near the retirement age). According to the report, in 2015 only 54 persons, i.e. 0.5% of the total number of beneficiaries, were granted unemployment benefits for one month (they constituted 0.3% in 2011). As the situation has however not changed in this respect, the Committee maintains its findings of non-conformity.

The Committee furthermore notes from Missceo that the payment of unemployment benefits can be suspended for one year, inter alia, in case of refusal of a job offer. The Committee asks the next report to clarify whether this sanction is applied only in case of refusal of a job offer which is considered to be adequate, whether the law defines what constitutes an "adequate" job offer, and after what period a jobseeker may be requested to accept a job offer not corresponding to his/her qualifications. It furthermore asks the next report to indicate what remedies are available to contest a decision to suspend or withdraw unemployment benefits.

The amount of unemployment benefits corresponds to 50% of the reference earnings (that is, the average monthly net salary paid to the worker over the last 24 months of employment) during the first 12 months and 40% of the reference earnings in the remaining time period. On the basis of the general minimum wage (€155), the Committee notes that the level of unemployment benefits (€78) falls between 40% and 50% of the median equivalised income and asks therefore whether there are additional benefits which might be added. The level of unemployment benefits (€65) is on the other hand too low in respect of persons earning the minimum wage in the sector of textile, clothes and leather production. The situation is therefore not in conformity with Article 12§1 of the Charter on this point.

The Committee asks the next report to provide updated information concerning the minimum wage and the minimum levels of income-replacement benefits (sickness, work accidents and occupational diseases, unemployment, old age and disability).

Conclusion

The Committee concludes that the situation in "the former Yugoslav Republic of Macedonia" is not in conformity with Article 12§1 of the Charter on the grounds that:

- it has not been established that the existing social security schemes cover a significant percentage of the population;
- the minimum duration of payment of unemployment benefits is too short;
- the minimum amount of unemployment benefit, calculated on the basis of the minimum wage in certain sectors, is inadequate.

Article 12 - Right to social security

Paragraph 2 - Maintenance of a social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security

The Committee takes note of the information contained in the report submitted by "the former Yugoslav Republic of Macedonia".

The Committee notes that "the former Yugoslav Republic of Macedonia" has not ratified the European Code of Social Security. Therefore the Committee cannot take into consideration other sources such as the resolutions of the Committee of Ministers on application of the Code and has to make its own assessment based on the information received in the report.

The Committee recalls that Article 12§2 obliges states to establish and maintain a social security system which is at least equal to that required for ratification of the European Code of Social Security. The Code requires acceptance of a higher number of parts than ILO Convention 102 on Social Security (Minimum Standards), as six of the nine contingencies must be accepted although certain branches count for more than one part (medical care counts as two and old age counts as three).

The Committee notes that "The former Yugoslav Republic of Macedonia" has ratified ILO Convention N° 102 and has accepted Parts II to VI, VIII and X. Part VI is no longer applicable as a result of the ratification of Convention No. 121 on Employment Injury Benefits.

The Committee recalls that in order to assess whether the social security system is maintained at a level at least equal to that necessary for the ratification of the Code, it has to assess the information regarding the branches covered, the personal scope and the level of benefits.

The Committee refers to its assessment under Article 12§1 where it notes that the social security system continues to cover the traditional risks (medical care, sickness, unemployment, old age, work accidents/occupational diseases, family, maternity, invalidity and survivors). The Committee refers to its conclusion under Article 12§1 that it has not been established that the social security schemes cover a significant percentage of the population and its request under Article 12§1 that the next report provides updated data in this respect.

The Committee also refers to its conclusion under Article 12§1 that the minimum duration of payment of unemployment benefits is too short and the minimum amount of unemployment benefit, calculated on the basis of the minimum wage in certain sectors, is inadequate. With regard to invalidity pension, the Committee in its assessment under Article 12§1 requests more detailed information and reserves its position on this point. It takes into account that the level of benefits in the remaining branches appear to be at a satisfactory level, at least equal to that necessary for ratification of the European Code of Social Security.

The Committee notes that the 2017 Report of the ILO Committee of Experts on Application of Conventions and Recommendations does not refer to any observation or direct request to the Government with regard to ILO Conventions 102 and 121.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in "the former Yugoslav Republic of Macedonia" is in conformity with Article 12§2 of the Charter.

Article 12 - Right to social security

Paragraph 3 - Development of the social security system

The Committee takes note of the information contained in the report submitted by "the former Yugoslav Republic of Macedonia".

It refers to its previous conclusions for a description of the national social security system and in particular the three pillars pension system. As regards changes concerning family and maternity benefits, the Committee refers to its conclusions on, respectively, articles 16 and 8§1. As regards other branches of social security, the Committee takes note of the legislative developments during the reference period. In particular, the report mentions the following improvements:

- the increase in the pensions' amounts, in accordance with the increase of average salaries and the index of living costs, all through the reference period (see details in the report);
- the modernisation of the pension system, by setting up electronic means allowing a quicker management of pensions (as from 2012) and easier access for insured persons to their own contributory data (as from 2015).
- the setting up, in 2015, of a Social Security Council, with the aim of reviewing topics related to social insurance and social protection. The Council includes representatives from the Union of Pensioners' Association, other relevant NGOs, the Red Cross, the Pension and Disability Insurance Fund, the Ministry of Health, the Health Insurance Fund, the Ministry of Labour and Social Policy etc. The Committee asks the next report to clarify whether this body has an advisory role or can also take decisions in the field of social security.

Other measures are mentioned in the report whose impact in terms of personal coverage and benefits' levels does not appear to be clear. The report refers for example to further developments in the field of old-age insurance, in relation with the implementation, as from 2014, of the Law on Payment of Second and Third Pillar Pensions. The Committee notes in particular that the right to minimum pension amount is guaranteed if the sum of the pension from the first pension pillar and the amount of the pension paid from the second pension pillar is less than the minimum pension amount. It also notes that the Agency for Supervision of the Fully Funded Pension Insurance is no longer under Government's control but is independent, under the control of the Parliament. The report refers to other measures taken in respect of other branches, for example the adoption of a number of employers' incentives to promote employment and the introduction of different rates of disability pensions in relation to the degree of impairment.

The report does not explain, however, what is the impact of all these measures in terms of categories and numbers of persons concerned and the minimum level of income replacement benefits. The Committee accordingly asks that this information be systematically provided under the heading of changes introduced during the reference period, in order to assess compliance of the situation with Article 12§3. The Committee recalls in this respect that Article 12§3 requires States Parties to improve their social security system, for example by expanding schemes, protecting against new risks or increasing the level of benefits. The improvements should lead to a gradual raising of the social security system of the country in question above the level required by International Labour Convention No. 102 (Statement of Interpretation on Article 12§3, Conclusions III (1973)).

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in "the former Yugoslav Republic of Macedonia" is in conformity with Article 12§3 of the Charter.

Article 12 - Right to social security

Paragraph 4 - Social security of persons moving between States

The Committee takes note of the information contained in the report submitted by "the former Yugoslav Republic of Macedonia".

Equality of treatment and retention of accrued benefits (Article 12§4)

Right to equal treatment

Equal treatment between nationals and nationals of other States Parties in respect of social security rights shall be ensured through the conclusion of bilateral or multilateral agreements or through unilateral measures.

The Committee notes from its previous conclusion (Conclusions 2013) that the country's own nationals and nationals of other countries, who are employed or self-employed in the State, are all covered by the mandatory pension and disability insurance in accordance with the Law on pension and disability insurance. The other benefits (i.e. health insurance, healthcare, maternity, rights in case of accidents at work and occupational disease, temporary unemployment) are, however, covered by bilateral social security agreements concluded by "the former Yugoslav Republic of Macedonia". The Committee notes from the report that "the former Yugoslav Republic of Macedonia" concluded social security agreements with Albania and the Slovak Republic during the reference period. Agreements with Denmark, Hungary and Italy have been signed and ratified by "the former Yugoslav Republic of Macedonia" but still need to be ratified by the others States parties concerned. The report also states that negotiations with the Russian Federation and France are carried out.

The Committee takes note of this information but notes, however, that there are still no agreements with Andorra, Armenia, Azerbaijan, Cyprus, Estonia, Finland, Georgia, Greece, Iceland, Ireland, Latvia, Lithuania, Malta, the Republic of Moldova, Portugal, Spain and Ukraine. It asks whether such agreements or any unilateral measures, whether legislative or administrative are planned and, if so, on what timescale. It also asks the next report to provide information on cases brought by migrant workers to the Commission for Protection against Discrimination, the Office of the Ombudsman, the competent authorities, and the courts with respect to access to social security benefits, and the outcome of these cases.

The Committee notes from ILO that section 88 of the Law on Foreigners provide that holders of a permanent residence permit shall enjoy the same rights as those of citizens, unless laws otherwise provide, including with respect to, for example, social protection and support. Section 4 of the Law on the Prevention and Protection against Discrimination prohibits direct and indirect discrimination with regard to inter alia social security and housing in respect of a number of grounds, including citizenship or any other ground established by the law or by ratified international agreements. However, the Committee notes that section 14(1) of the Law allows for different treatment of persons which are not citizens of "the former Yugoslav Republic of Macedonia". The Committee asks the next report to provide further information on this matter and, in the meantime, considers the situation to be not in conformity with the Charter on this point.

In respect of payment to family benefits, the Committee considered that the requirement for the child to reside in the territory of the paying State is in conformity with Article 12§4 (Statement of Interpretation on Article 12§4, Conclusions XVIII-1 (2006)). However, since not all countries apply such a system, States Parties applying the 'child residence requirement' are under the obligation, in order to secure equal treatment within the meaning of Article 12§4, to enter, within a reasonable period of time, into bilateral or multilateral agreements with those States which apply a different entitlement principle (Conclusions 2006, Cyprus).

As regards unilateral measures undertaken by the "the former Yugoslav Republic of Macedonia", the Committee notes from the report that family benefits, in particular child allowances, are granted for a child citizen of the "former Yugoslav Republic of Macedonia" to one of his or her parents citizen of the "former Yugoslav Republic of Macedonia" with permanent residence in the territory of "the former Yugoslav Republic of Macedonia" (Article 16 of the Law on Child Protection). It notes however that foreign nationals living in "the former Yugoslav Republic of Macedonia" can also apply for child allowances in accordance with the Law on Children Protection and ratified international treaties. It further notes that similar citizenship requirement apply for the “one-off financial assistance for new-born child”. In this regards, it asks the next report to provide comprehensive information on the conditions that foreign nationals are required to meet under the Law on Children Protection for the payment of Child allowances and one-off financial assistance for new-born child as well as the number of foreign nationals who received or have been receiving such allowances.

As regards bilateral agreements concluded with other States Parties, the report states that all bilateral agreements concluded by "the former Yugoslav Republic of Macedonia" cover family benefits except for those concluded with Austria and Germany. The Committee also notes that no agreements covering family benefits exist with Andorra, Armenia, Azerbaijan, Cyprus, Estonia, Finland, Georgia, Greece, Iceland, Ireland, Latvia, Lithuania, Malta, the Republic of Moldova, the Russian Federation Portugal, Spain and Ukraine. It requests the next report to indicate whether such agreements are foreseen with the above States Parties, with the exception of the Russian Federation, and, if so, on what timescale. In the meantime, the Committee reserves its position on this point.

Right to retain accrued benefits

The Committee previously noted (Conclusions 2009 and 2013) that the retention of accrued social security benefits is guaranteed in all the agreements concluded by "the former Yugoslav Republic of Macedonia". It notes that the report is once again silent as to whether nationals of States Parties not bound by bilateral agreements may also retain accrued social security benefits. In the absence of information, the Committee considers that it has not been established that the retention of accrued benefits for persons moving to a State Party which is not bound by an agreement with "the former Yugoslav Republic of Macedonia" is guaranteed. Should the next report not provide any information in this respect, there will be nothing to establish that the situation is in conformity with the Charter on this point.

Right to maintenance of accruing rights (Article 12§4b)

The Committee previously noted (Conclusions 2009 and 2013) that the accumulation of employment periods and the pro rata calculation of benefits are guaranteed where a bilateral agreement has been negotiated**.** It notes that the report continues not to provide information as to whether and how the principle of aggregation of accruing social security rights is implemented for nationals of States Parties that are not bound by bilateral agreements with "the former Yugoslav Republic of Macedonia". In the absence of information, the Committee considers that it has not been established that nationals of States Parties which are not covered by an agreement with "the former Yugoslav Republic of Macedonia" can accumulate periods of insurance or employment completed in other countries.

Conclusion

The Committee concludes that the situation in "the former Yugoslav Republic of Macedonia" is not in conformity with Article 12§4 of the Charter on the grounds that:

- equal treatment with regard to social security rights is not guaranteed to nationals of all other States Parties;
- it has not been established that the retention of accrued benefits is guaranteed to nationals of all other States Parties;
- it has not been established that the right to maintenance of accruing rights is guaranteed to nationals of all other States Parties.

Article 13 - Right to social and medical assistance

Paragraph 1 - Adequate assistance for every person in need

The Committee takes note of the information contained in the report submitted by "the former Yugoslav Republic of Macedonia".

Types of benefits and eligibility criteria

In its previous conclusion (Conclusions 2013) the Committee asked for clarification regarding the length of the period during which social assistance benefits may be withdrawn in response to the refusal to fulfil the work obligation (active employment measures, seasonal work, public works).

During 2013, a change in the engagement of social financial assistance beneficiaries in public work was made by increasing the engagement period to 90 days in a calendar year. The person who rejected the work engagement shall be excluded from using the right to social financial assistance in the next 12 months, while the household may continue to exercise this right. The Committee notes from MISSCEO in this regard that unemployed social assistance beneficiaries must be registered as active job seekers with the Employment Service Agency. They must report every month and accept any suitable job assignment (seasonal work, temporary tasks etc), as well as training, qualification etc. offered by the Employment Agency. Social assistance will be suspended for 6 months if the beneficiary refuses to accept suitable job or training twice. During the year, social assistance beneficiary may spend up to 90 calendar days in public works/seasonal work/temporary employment organised either by municipalities or public institutions, or private or state-run companies.

The Committee asks the next report to clarify whether social assistance may be suspended for 6 months or twelve months and whether suspension of benefits may deprive a person of his/her means of subsistence. 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 with the Charter.

In its previous conclusion the Committee asked for confirmation that health insurance contributions for the persons without resources are financed from the state budget. The Committee notes from MISSCEO in this regard that persons in need are entitled to health insurance, which is provided through Health Insurance Fund. All members of the household are covered for healthcare. Contributions for health insurance are paid from the State Budget. Beneficiaries of permanent financial assistance are also exempted from the participation when using health care services.

The Committee also takes note of the Law on One-Time Write-off of the Citizens' Debts as well as of the National Strategy for the Elderly 2010-2020.

Since "The former Yugoslav Republic of Macedonia" has not accepted Article 23, the Committee also examines the situation as regards the minimum level of pension benefit under Article 13. The Committee notes that permanent social assistance is paid to persons incapable of work, including the elderly. The Committee asks whether this is the social assistance that is paid to the elderly persons without resources.

Level of benefits

To assess the situation during the reference period the Committee takes note of the following information:

- Basic benefit: the Committee takes note of the evolution of the basic financial assistance. It notes that in 2015 the amount was increased by 10% and stood at MKD 2,696 (€ 43) for a single person. The amount of permanent financial assistance was also increased by 10% and stood at MKD 4,045 in 2015 (€ 65).

- Additional benefits: the Committee notes from MISSCEO that the right to financial assistance for social housing is granted to persons who are considered in social risk and who do not have a home. Financial assistance for social housing is funded by the State budget and the amount of the benefit depends on the material and family status of the beneficiary. According to MISSCEO the costs for rent of a housing facility are covered in the amount of MKD 4,156 (€ 67) for an individual. The costs for utilities (electricity, heating, water and waste) are covered in the amount of MKD 1,559 (€ 25) for an individual. The Committee asks the next report to provide an estimate of an average *monthly* amount of all additional benefits that would be paid to a single persons, recipient of social assistance.
- Poverty threshold defined as 50% of median equivalised income and calculated on the basis of the Eurostat at-risk-of-poverty threshold value): it was estimated at € 88 in 2015.

The Committee notes that the level of social assistance benefits has increased steadily during the reference period. However, their amounts, both as regards financial assistance and permanent financial assistance fall below the Eurostat poverty indicator and are, therefore, not adequate. The Committee reiterates its previous finding of non-conformity on this ground.

Right of appeal and legal aid

In its previous conclusion the Committee wished to be informed about the nature and number of social assistance-related complaints lodged before the administrative court. It notes in reply that the administrative court provides legal protection within the independent court system. The Committee takes note of the numbers of complaints filed relating to the right to financial assistance, permanent financial assistance as well as one-time financial assistance.

Personal scope

The Committee recalls that, under Article 13§1, States are under the obligation to provide adequate medical and social assistance to all persons in need, both their own nationals as well as nationals of States Parties lawfully resident within their territory, on an equal footing. In addition, with reference to its Statement of Interpretation of Articles 13§1 and 13§4 (Conclusions 2013) regarding the scope of Articles 13§1 and 13§4 in terms of persons covered, the Committee considers that as regards emergency social and medical assistance, foreign nationals in an irregular situation in the territory of the State concerned are also covered under Article 13§1, rather than under Article 13§4, which was previously its practice.

The Committee henceforth examines whether the States who have accepted Article 13§1 ensure the right to:

- adequate social and medical assistance for their own nationals and for nationals of other States Parties lawfully resident within their territory on an equal footing;
- emergency social and medical assistance to foreign nationals unlawfully present in their territory.

Nationals of States Parties lawfully resident in the territory

In its previous conclusion the Committee found that the situation was not in conformity with the Charter on the ground that social financial assistance and permanent financial assistance were granted to nationals of States Parties only subject to an excessive length of residence requirement (five years).

The Committee notes from the report in this respect that social assistance beneficiaries are nationals as well as nationals of States Parties, holders of permanent residence. The latter

requires five years of residence in the territory. The Committee notes that there has not been any changes to the situation which the Committee has previously found not to be in conformity with the Charter.

Foreign nationals unlawfully present in the territory

As regards the right to emergency social and medical assistance for unlawfully present persons, the Committee previously noted that they are placed in the Reception Centre for Foreigners (*Gazi Baba*) where they are given food, clothing, shelter and medical assistance until such time as they can be returned to their country of origin. The Committee asked whether there were situations where this category of persons could receive emergency social assistance outside the reception centre. It notes in reply that pursuant to Article 48 paragraph 2 of the Law on Asylum and Temporary Protection, as amended, after he/she has been placed in the Reception Centre, the asylum seeker can apply to the Ministry of Labour and Social Policy to reside outside the Reception Centre at his own expense. In terms of access to social protection rights with the regulations concerning the provision of one-time financial assistance, when submitting an application for the exercise of this right to the locally competent Centre for Social Work, the person shall submit personal documents to determine the status, place of residence and the personal identification number.The Ministry of Labour and Social Policy shall ensure the subsistence and health care of asylum seekers while they reside in the Reception Centre or other place of accommodation assigned by this Ministry.

In this connection, the Committee recalls that persons in an irregular situation must have a legally recognised right to the satisfaction of basic human material need (food, clothing, shelter) in situations of emergency to cope with an urgent and serious state of need. It likewise is for the States to ensure that this right is made effective also in practice (European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, §187).

The Committee cannot accept the necessity of halting the provision of such basic emergency assistance as shelter, guaranteed under Article 13 as a subjective right, to individuals in a highly precarious situation. The Committee has considered that even within the framework of the current migration policy, less onerous means, namely to provide for the necessary emergency assistance while maintaining the other restrictions with regard to the position of migrants in an irregular situation, remain available to the Government with regard to the emergency treatment provided to those individuals, who have overstayed their legal entitlement to remain in the country (Complaint No. 90/2013, Conference of European Churches (CEC) v. the Netherlands, decision on the merits of 1 July 2014, §123).

The Committee asks the next report to confirm that the legislation and practice comply with these requirements. In the meantime, it reserves its position on this issue.

Conclusion

The Committee concludes that the situation in "the former Yugoslav Republic of Macedonia" is not in conformity with Article 13§1 of the Charter on the grounds that:

- the level of social assistance paid to a single person without resources is not adequate;
- nationals of States Parties lawfully resident are subject to a length of residence requirement of five years for entitlement to social assistance.

Article 13 - Right to social and medical assistance

Paragraph 2 - Non-discrimination in the exercise of social and political rights

The Committee takes note of the information contained in the report submitted by "the former Yugoslav Republic of Macedonia".

In its previous conclusion (Conclusions 2013) the Committee asked that the next report contain up-dated information on whether being in receipt of social assistance could lead to a diminution of political or social rights.

In reply the Committee notes from the report that Article 3 of Law on Prevention and Protection against Discrimination expressly prohibits direct or indirect discrimination.

The Committee takes note of the legislative framework providing protection against discrimination in the context of social and political rights detailed in the report, such as the Law on Labour Relations which provides guarantees of a general nature for non-discrimination on the ground of social status.

The Committee asks the next report to confirm that provisions enshrining the principle of equality and prohibiting discrimination in the exercise of political or social rights are interpreted in practice in such a way as to prevent discrimination on the basis of receipt of social or medical assistance.

Conclusion

The Committee concludes that the situation in "the former Yugoslav Republic of Macedonia" is in conformity with Article 13§2 of the Charter.

Article 13 - Right to social and medical assistance

Paragraph 3 - Prevention, abolition or alleviation of need

The Committee takes note of the information contained in the report submitted by "the former Yugoslav Republic of Macedonia".

The Committee notes from the report that the Minister of Finance in association with the Ministry of Labour and Social Policy organised training for the Centres for Social Services regarding assistance to citizens who submitting their requests for assistance.

The Committee further recalls that Article 13§3 concerns free of charge services offering advice and personal assistance specifically addressed at persons without adequate resources or at risk of becoming so. The social services covered by Article 13§3 must play a preventive, supportive and treatment role. This means offering advice and assistance to make those concerned fully aware of their entitlement to social and medical assistance and how they can exercise those rights. In assessing national situations under this provision the Committee specifically examines whether there are mechanisms to ensure that those in need may receive help and personal advice services free of charge and whether such services and institutions are adequately distributed on a geographical basisThe Committee asks the next report to provide updated information regarding the activities of the Centers for Social Services as regards advice and personal help provided to to persons without resources in order to prevent, abolish or alleviate their need.

Conclusion

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

Article 13 - Right to social and medical assistance

Paragraph 4 - Specific emergency assistance for non-residents

The Committee takes note of the information contained in the report submitted by "the former Yugoslav Republic of Macedonia".

The Committee refers to its conclusion under Article 13§1 (personal scope) and recalls that Article 13§4 from now on will cover emergency social and medical assistance for nationals of States Parties lawfully present (but not resident) in the territory.

The Committee recalls that States Parties are required to provide non-resident foreigners, without resources, with emergency social and medical assistance. Such assistance must cover accommodation, food, clothing and emergency medical assistance, to cope with an urgent and serious state of need (without interpreting too narrowly the 'urgency' and 'seriousness' criteria). No condition of length of presence can be set on the right to emergency assistance (Complaint No 86/2012, European Federation of national organisations working with the Homeless (FEANSA) v. the Netherlands, decision on the merits of 2 July 2014, §171).

In its previous conclusion the Committee requested clarification as to whether one-off assistance guaranteed in accordance with Section 15 of the Law on Social Protection also extended to those who are lawfully present in the territory without residing there so as to meet any need for shelter, food and clothing (or whether such need is met pursuant to other provisions of the law).

In reply to the Committee' question the report states that the Law on Health Care, as amended, stipulates that foreign nationals are provided with emergency care and other health services at the request of the beneficiary. In addition, foreign citizens bear the costs themselves for the given emergency care or other health services, unless otherwise provided by law or international agreement. The health institution that provided the foreign citizen with an urgent medical assistance is obliged to enable him to make contact with the relevant diplomatic or consular mission or the bank where the foreign citizens has the financial means in order to pay the fee for the given emergency care.

If the health institution does not charge for the provided emergency care, because the foreigner has no funds, it is obligated in order to collect these funds from the state budget.In order to materialise the compensation for the provided emergency care to the foreigner, the health institution submits a request to the Ministry of Foreign Affairs within 60 days of the day of the provided services. Along with the request, the medical institution also attaches the bill with specification for the services rendered in duplicate, as well as evidence that there it attempted to recover the costs. After the payment of compensation to the medical institution which provided the emergency care to the foreigner, the Ministry of Foreign Affairs takes measures through the relevant diplomatic authority of the foreign citizen to collect for the service, in favour of the budget.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in "the former Yugoslav Republic of Macedonia" is in conformity with Article 13§4 of the Charter.

CONCLUSIONS RELATING TO CONCLUSIONS OF NON-CONFORMITY DUE TO A REPEATED LACK OF INFORMATION IN CONCLUSIONS 2015

Article 7 - Right of children and young persons to protection

Paragraph 10 - Special protection against physical and moral dangers

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the information submitted by "the former Yugoslav Republic of Macedonia" in response to the conclusion that it had not been established that all children under the age of 18 are protected against all forms of sexual exploitation.

Protection against sexual exploitation

In its previous conclusion (Conclusions 2013) Committee could not establish that all acts of sexual exploitation, including trafficking of children were prohibited with all children under the age of 18, irrespective of the lower national age of sexual consent or the consent of the minor to be engaged in such activities.

The Committee notes from the report that the Criminal Code in its Article 122, paragraph 2 (item 22) provides for the definition of a child victim that complies with international standards on the definition of a child: a child victim of crime is a minor under 18 years of age. The Committee further notes that Article 191 of the Criminal Code, paragraph 1 incriminates recruiting, inducing, encouraging or enticing a person to prostitution or participation in any way in handing over a person to someone else for prostitution. According to the report 191a (child prostitution) and 192 (procuring and enabling sexual acts) have been repealed by the amendments to the Criminal Code.

The Committee takes note of Article 418-g (Trafficking with a child) of the Criminal Code, as amended, which provides in paragraph 1 that whosoever induces a child to sexual activities or enables sexual activities with a child or persuades, transports, transfers, buys, sells or offers for sale, obtains, supplies, harbours or accepts a child for the purpose of exploiting him/her in sexual activities for money or other forms of compensation or other forms of sexual exploitation, pornography, forced work or servicing, begging or exploitation for an activity prohibited by law, slavery, forced marriage, forced fertilisation, illegal adoption, or forces consent as a mediator for child adoption, illegally transplants human organs, shall be sentenced to imprisonment of at least eight years. According to paragraph 7 of Article 418-g, the consent of the child for the actions anticipated in paragraph 1 is not significant to the existence of the crime in the meaning of paragraph 1.

The Committee understands that the Criminal Code criminalises all acts of sexual exploitation of children, including child pornography (and simple possession) and child prostitution until the age of 18. The Committee notes that this situation is in conformity with the Charter and asks the next report to provide updated information regarding relevant legislative amendments.

Conclusion

The Committee concludes that the situation in "the former Yugoslav Republic of Macedonia" is in conformity with Article 7§10 of the Charter.

Article 8 - Right of employed women to protection of maternity

Paragraph 2 - Illegality of dismissal during maternity leave

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the information submitted by "the former Yugoslav Republic of Macedonia" in response to the conclusion that it had not been established that reinstatement or adequate compensation is provided for in cases of unlawful dismissal during pregnancy or maternity leave.

The Committee recalls in this connection that, under Article 8, paragraph 2 of the Charter, the reinstatement of employees unlawfully dismissed during pregnancy or maternity leave should be the rule and that, where this is not possible (e.g. if the enterprise has closed down or the employee concerned does not wish to be reinstated), adequate compensation must be available. Domestic law must not prevent courts from awarding a level of compensation that is sufficient both to deter the employer and fully compensate the victim of dismissal.

In particular, the Committee had asked for detailed information on the applicable provisions concerning the procedures available to the employee to contest a dismissal during pregnancy and maternity leave and how such provisions are interpreted in the domestic case-law.

It had furthermore asked:

- whether the law provided for reinstatement of employees unlawfully dismissed during pregnancy or maternity leave;
- whether it provided for adequate compensation of such employees, particularly when the reinstatement cannot take place;
- whether there was a ceiling on the amount that can be awarded as compensation to the employee and, if so, whether this upper limit covered both pecuniary and non-pecuniary damage or whether the victim could also seek unlimited non-pecuniary damage through other legal avenues (e.g. anti-discrimination legislation);
- whether pecuniary and non-pecuniary damage were awarded by the same courts and how long did it take on average for courts to award compensation;
- whether the same regime applied to women employed in the public sector.

In response to the Committee's questions, the report indicates that the labour inspection can suspend the contested dismissal (Section 262 of the Labour Relations Act) pending a final court decision, if the employee files a labour dispute. The report does not provide however any example of case-law in this respect. The Committee accordingly reiterates its request.

According to the report, Section 102 of the Labour Relations Act provides for the reinstatement of the employee, if the court finds that the employment was illegally terminated. In addition to the reinstatement, "the employer shall pay the employee the gross salary she was receiving when she was at work, in accordance with the law, collective agreement and the employment agreement, reduced by the amount of the income the employee earned from work, after the termination of the employment".

If the reinstatement is not possible, the report refers to the fact that this could be considered a form of discrimination and that, in accordance with Section 10 of the Labour Relations Act, the dismissed employee could claim damages under the Law on Obligations.

As regards the amount of compensation, the Committee understands from the report that there is not a predefined limit to compensation, but that the level of the amounts of material and non-material damage are decided by the court. The report explains that if material and non-material damages are claimed in the framework of the same procedure, this claim is

decided by the same civil court. Under the Law on Civil Procedure, labour disputes are emergency procedures, therefore the court is expected to complete the procedure within a reasonable time.

The report furthermore confirms that the Labour Relations Act, the Law on Civil Procedure and the Law on Obligations apply equally to all employees, whether they are employed in the public or private sector.

The Committee recalls that the situation concerning other aspects covered by Article 8§2 will be examined in the framework of the regular reporting cycle (Conclusions 2019) and asks that relevant and updated information be provided in that context.

Conclusion

The Committee concludes that the situation in "the former Yugoslav Republic of Macedonia" is in conformity with Article 8§2 of the Charter.

January 2018

European Social Charter

European Committee of Social Rights

Conclusions 2017

TURKEY

This text may be subject to editorial revision.

The following chapter concerns Turkey, which ratified the Charter on 27 June 2007. The deadline for submitting the 9th report was 31 October 2016 and Turkey submitted it on 20 April 2017.

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 "Health, social security and social protection":

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

Turkey has accepted all provisions from the above-mentioned group.

The reference period was 1 January 2012 to 31 December 2015.

The conclusions relating to Turkey concern 19 situations and are as follows:

– 5 conclusions of conformity: Articles 11§2, 12§2, 12§3, 13§2 and 13§3,

– 8 conclusions of non-conformity: Articles 3§3, 11§1, 12§1, 13§1, 14§1, 14§2, 23 and 30.

In respect of the 6 other situations related to Articles 3§1, 3§2, 3§4, 11§3, 12§4 and 13§4 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 Turkey under the Charter. The Committee requests the authorities to remedy this situation by providing the information in the next report.

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

Article 12§3

- The number of people insured for old age has increased by 19% (from 17 076 451 to 20 380 319) from 2011 to 2015, while the total population growth in the same period was below 6% (from 74 525 696 to 78 741 053);
- In 2013, the personal coverage of healthcare insurance has been extended to children below 18 years old who were not already covered on account of their family or curators, to persons under a protective injunction (victims of domestic violence), to persons training to work in penal institutions and jails and their families, to persons who graduated from high-schools or higher education in the last two years (subject to age conditions) and were not already covered as dependants;
- In 2014 (Law No. 6552) the time limit for survivors to claim their pension has been extended from 6 to 12 months;
- In 2014 and 2015, certain measures have been taken in favour of workers performing underground works in the mines, in particular their earliest pensionable age has been set for 50 years (instead of 55) for those who worked underground for at least 20 years (Law No. 6552) and favourable provisions have been taken in favour of survivors of miners deceased because of work accidents in coal and lignite mines in the last ten years (Law No. 6645).

Article 13

New legislation in Turkey to strengthen the link between social assistance and the labour market (Law No 6704) was adopted on 14 April 2016.

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In addition, the report contains also information requested by the Committee in Conclusions 2015 in respect of its conclusions of non-conformity due to a repeated lack of information:

- the right of children and young persons to protection – fair pay (Article 7§5);
- the right of children and young persons to protection – inclusion of time spent on vocational training in the normal working time (Article 7§6);
- the right of children and young persons to protection – special protection against physical and moral dangers (Article 7§10);
- the right of employed women to protection of maternity – illegality of dismissal during maternity leave (Article 8§2);
- the right of the family to social, legal and economic protection (Article 16);
- the right of children and young persons to social, legal and economic protection – assistance, education and training (Article 17§1);
- the right of migrant workers and their families to protection and assistance – assistance and information on migration (Article 19§1);
- the right of migrant workers and their families to protection and assistance – equality regarding legal proceedings (Article 19§7);
- the right of migrant workers and their families to protection and assistance – guarantees concerning deportation (Article 19§8);
- the right of migrant workers and their families to protection and assistance – teaching language of host state (Article 19§11);
- the right of migrant workers and their families to protection and assistance – teaching mother tongue of migrant (Article 19§12);
- the right of workers with family responsibilities to equal opportunity and treatment – participation in working life (Article 27§1);
- the right of workers with family responsibilities to equal opportunity and treatment – egality of dismissal on the ground of family responsibilities (Article 27§3);
- the right of workers with family responsibilities to equal opportunity and treatment – adequate housing (Article 31§1);
- the right of workers with family responsibilities to equal opportunity and treatment – reduction of homelessness (Article 31§2);
- the right of workers with family responsibilities to equal opportunity and treatment – affordable housing (Article 31§3).

The Committee examined this information and adopted the following conclusions:

- 1 conclusion of conformity: Article 7§6,

- 10 conclusions of non-conformity: Articles 7§10, 17§1, 19§1, 19§7, 19§8, 19§11, 19§12, 31§1, 31§2 and 31§3,

- 5 deferrals: Articles 7§5, 8§2, 16, 27§1 and 27§3.

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The next report will deal with the following provisions of the thematic group "Labour Rights":

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 21),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 22),
- the right to dignity at work (Article 26).
- the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28)

- the right to information and consultation in collective redundancy procedures (Article 29).

The report should also contain information requested by the Committee in Conclusions 2016 in respect of its conclusions of non-conformity due to a repeated lack of information:

- the right to work – vocational guidance, training and rehabilitation (Article 1§4),
- the right to vocational training – long term unemployed persons (Article 10§4),
- the right of persons with disabilities to independence, social integration and participation in the life of the community – vocational training for persons with disabilities (Article 15§1),
- the right of persons with disabilities to independence, social integration and participation in the life of the community – employment of persons with disabilities (Article 15§2),
- the right of persons with disabilities to independence, social integration and participation in the life of the community – integration and participation of persons with disabilities in the life of the community (Article 15§3).

The deadline for submitting that report was 31 October 2017.

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Conclusions and reports are available at www.coe.int/socialcharter as well as in the HUDOC database.

CONCLUSIONS RELATING TO ARTICLES FROM THE THEMATIC GROUP

‘Health, social security and social protection”

Article 3 - Right to safe and healthy working conditions

Paragraph 1 - Health and safety and the working environment

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

General objective of the policy

In its previous conclusion (Conclusions 2013), the Committee noted the existence of a policy which aimed at fostering and preserving a culture of prevention as regards occupational safety and health. It asked for detailed information on the Act No. 6331. It also reiterated its request relating to whether the policy was regularly assessed and reviewed in light of changing risks.

In reply, the report states that Act No. 6331 of 20 June 2012 on occupational health and safety sets out a permanent review of health and safety conditions, develops a prevention policy in the workplaces, sets out risk assessment at every step of the production process, includes information to workers about the risks they face at the workplace, and institutes an occupational health and safety official. In addition, it defines the main stakeholders namely employees, employers and the State, and their duties and responsibilities in working life.

The report states that there are two policy documents concerning the reference period: National Occupational Health and Safety (OHS) Policy Document II for 2009-2013, and National OHS Policy Document III for 2014-2018. According to the report, there are 7 fundamental goals, 42 action plans and 28 performance indicators in the National OHS Policy Document III and Action Plan for 2014-2018. More specifically, the goals planned to be reached are the following: improving the quality of activities in the field of OHS and their standardisation; improving occupational health and safety statistics and a recording system; reducing the rate of accidents at work in 100 000 workers for each sector in metal, mining and construction sectors; collecting pre-diagnosis through identifying possible occupational diseases; increasing the activities for improving OHS in public and agricultural sector; extending the occupational health and safety culture in the society; and making Professional Competence Certificates obligatory in hazardous and very hazardous work. The report contains however no mention of the activities implemented and the results obtained according to the National OHS Policy Document for 2009-2013.

The Committee notes from the observation raised by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) adopted in 2015 (105th ILC session) on Occupational Safety and Health Convention No. 155 (1981), that, according to information provided by the International Trade Union Confederation and the Confederation of Public Employees' Trade Unions, the new document and plan are merely a repetition of previous plans that are not implemented. The Committee invites the authorities to comment on this observation in the next report and to provide all relevant information in this respect.

The Committee points out that new technology, organisational constraints and psychological demands favour the development of psychosocial factors of risk, leading to work-related stress, aggression, violence and harassment. It would also point out that, with regard to Article 3§1 of the Charter, it takes account of stress, aggression, violence and harassment at work when examining whether policies are regularly evaluated or reviewed in the light of emerging risks. The States parties have a duty to carry out activities in terms of research, knowledge and communication relating to psychosocial risks (Statement of Interpretation on Article 3§1 of the Charter, Conclusions 2013). The report does not provide any information on this point. The Committee accordingly reiterates its request.

The Committee notes that there is a legislative framework, which provides for an overall approach to occupational health and safety policy. However, it requests again that the next report indicate whether policies and strategies are periodically reviewed and, if necessary, adapted in the light of changing risks. It also asks the next report to provide information on the activities implemented and the results obtained by the Action Plan 2014-2018. It

reserves in the meantime its position on these points. The Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Turkey is in conformity with Article 3§1 of the Charter.

Organisation of occupational risk prevention

In its previous conclusion (Conclusions 2013), the Committee noted the existence, at national and territorial level, of measures for the prevention of occupational risks suited to the nature of the risks, together with measures of information and training for workers. It also noted that the Labour Inspection Board (LIB) and territorial labour inspectorates participated in developing an occupational health and safety culture among employers and employees and in sharing knowledge acquired during inspection activities.

The report indicates that the most important step of the preventive occupational health and safety approach is to make an appropriate risk assessment in the workplace. According to the Occupational Health and Safety Act No. 6331, the employers should perform risk assessment and has the responsibility of taking all necessary measures to ensure OHS.

According to Article 4 of Act No. 6331, the employer has a duty to ensure the safety and health of workers in every aspect related to work. In this respect the employer shall take the measures necessary for safety and health protection of workers, including provision of necessary organisation, designating safety and health staff, informing and training of workers, carrying out risk assessment, implementing measures related to occupational safety and health in accordance with the legislation, etc.

According to Article 6 of Act No. 6331, the employer shall designate workers as occupational safety experts; designate occupational physicians and other health staff: meet the need for means of space and time to help designated people or organisations fulfil their duties; ensure cooperation and coordination among the occupational safety and health staff, etc. Moreover, Article 6(e) requires employers to ensure that designated persons, external services consulted and other workers and their employers from any outside enterprise or undertaking engaged in work in their undertaking or enterprise receive adequate information regarding the factors known to affect, or suspected of affecting, the safety and health of workers.

In its previous conclusion (Conclusions 2013), the Committee asked for information on how small and medium-sized enterprises discharge their obligations to assess work-related risks and adopt preventive measures geared to the nature of risks in practice. In reply, the report indicates that the risk assessment should be made regardless of the size (big, medium, small) of the workplaces. In addition, the studies of risk assessment were realised through visiting the workplaces with many projects that were completed or are still going on. The relevant parties were assisted on risk assessment through trainings, workshops and conferences. Moreover, the Council of Ministers may authorise the Ministry to provide subsidies to enterprises employing fewer than ten workers and classified as less hazardous. The studies on risk assessment are included within this scope (Article 7 of the Act No. 6331).

However, the Committee notes from the report that the application of Articles 6 (occupational health and safety services), 7 (State subsidies to occupational health and safety services) and 8 (occupational physicians and occupational safety specialists) of the Act No. 6331 is postponed to 1st July 2017 (out of the reference period) as regards public institutions and enterprises where less than 50 workers are employed and which are classified as less hazardous.

Improvement of occupational safety and health

In its previous conclusion (Conclusions 2013), the Committee noted the existence of a system aimed at improving occupational health and safety through scientific and applied research, development and training, in which public authorities were involved. However, it

reiterated its request for examples of training and counselling conducted by the Directorate General for Occupational Health and Safety (DGOHS). It also asked for information on the respective competencies of the Occupational Health and Safety Centre (İSGÜM) and the Ministry of National Education and the Ministry of Labour and Social Security Training and Research Centre for Labour and Social Security (ÇASGEM) within the national system, as well as on the resources allocated to the mentioned institutions and bodies.

In reply, the report indicates that the Regulation on the Duties, Authority and Responsibilities of the Presidency of Occupational Health and Safety Research and Development Institute No. 29417 of 15 July 2015 identifies the organisational structure, working rules and procedures and the quality, duty, authority and responsibilities of the staff of the Presidency of Occupational Health and Safety Research and Development Institute, the affiliated Regional Laboratory Directorates of Occupational Health, and the Safety Research and Development Institute.

According to Article 5 of the Regulation No. 29417 of 15 July 2015, İSGÜM is authorised, among others, to make measurement, analysis and counselling in the workplaces on occupational health and safety and to take the necessary samples for this purpose. The expertise training for asbestos – dismantling experts is given by İSGÜM (Article 19 of the Regulation No. 28539 of 25 January 2013 on Health and Safety Measures in the Work with Asbestos). The related training was conducted seven times in total as of January 2014, and certificates were given to 255 asbestos – dismantling experts. The Committee takes note of other competencies of İSGÜM detailed in the report as well as training and counselling activities realised during the reference period. The amount of resources allocated to İSGÜM for 2017 is TRY 10 233 000 (€2 377 141).

The Labour and Social Security Training and Research Centre (ÇASGEM), which is a body affiliated to the Ministry of Labour and Social Security, is a public institution. It organises training courses and conferences and developed training materials. It also carries out research activities and organises seminars on working life, social security, employer-worker relations, ergonomics, first aid, labour statistics, etc.

Consultation with employers' and workers' organisations

In its previous conclusion (Conclusions 2013), the Committee noted that social partners were consulted in the design and implementation of the occupational health and safety policy. However, it reiterated its request for information on the functioning and duties of the National Occupational Health and Safety Council as a body separate from the Tripartite Advisory Board. In reply, the report indicates that the National Occupational Health and Safety Council is chaired by the Undersecretary of the Ministry of Labour and Social Security and Secretarial support is provided by General Directorate of Occupational Safety and Health. There are 26 members in the Council, half from public institutions and half from civil society organisations (employees' and employers' associations, engineering and medical associations and other relevant organisations). Its aim is to advise the Ministry and the government on developing policies and strategies to improve occupational safety and health conditions in the country, taking into consideration the national and international developments. The Council meets twice in a year with a pre-determined agenda.

Conclusion

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

Article 3 - Right to safe and healthy working conditions

Paragraph 2 - Safety and health regulations

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

Content of the regulations on health and safety at work

In its previous conclusion (Conclusions 2013), the Committee asked for detailed and up-to-date information on Occupational Health and Safety Act No. 6331 of 20 June 2012. In reply, the report indicates that this Act applies to all employees of all occupations and workplaces in both the public and private sectors, regardless of their field of activity or number of workers. It covers all employees, interns, employers and their representatives. This Act regulates the duties, authority, responsibilities, rights and obligations of employers and employees in order to ensure occupational safety and health in the workplaces. The report specifies that the application of Articles 6 (Occupational health and safety services), 7 (State subsidies to occupational health and safety services) and 8 (Occupational physicians and occupational safety specialists) of this Act is postponed to 1st July 2017 (out of the reference period) as regards public institutions and enterprises where less than 50 workers are employed and which are classified as less hazardous.

The report also refers to a number of amendments to the Occupational Health and Safety Act which were adopted during the reference period. In this regard, the Committee notes that Act No. 6645 of 4 April 2015 on Amendments to the Occupational Safety and Health Act and other Acts and Decrees contains some provisions aimed at improving working conditions and notably in the mining sector.

However, the Committee notes from the report that the Act No. 6331 does not apply to domestic services, persons producing goods and services in their own name and on their own account without employing workers. The Turkish Armed Forces, the Police Department and specific activities in civil defense services (intervention activities of disaster and emergency units) are not covered by this law. The Committee asks whether this would mean that these categories of workers are left without any standard of protection or if other protective rules apply.

The report indicates that following the entry into force of the Occupational Health and Safety Act No. 6331, 36 regulatory texts regarding occupational health and safety were issued during the reference period. They concern, *inter alia*, the measures of health and safety in working with asbestos, carcinogenic or mutagen substances, chemical substances, screen equipment, ceasing work in the workplaces, health and safety conditions in the use of work equipment, the protection of workers from the hazards of explosive environment, prevention of exposure risks to biological factors, emergency in the workplaces, the use of personal protective equipment in the workplaces, manual handling, protection of workers from noise related risks, risks of vibration, etc.

The Committee notes that, according to the ILO website, Turkey ratified the ILO Conventions No. 187 on Promotional Framework for Occupational Safety and Health (2006) on 16 January 2014, No. 176 on Safety and Health in Mines (1995) on 23 March 2015 and No. 167 on Safety and Health in Construction (1988) on 23 March 2015.

The Committee points out that under the terms of Article 3§2 of the Charter, regulations concerning health and safety at work must cover work-related stress, aggression and violence specific to work, and especially for workers under atypical working relationships (Statement of Interpretation on Article 3§2 of the Charter, Conclusions 2013). The report does not provide any information on this point. The Committee accordingly reiterates its request. It reserves in the meantime its position on this point.

Levels of prevention and protection

The Committee examines the levels of prevention and protection provided for by the national legislation and regulations in relation to certain risks.

Establishment, alteration and upkeep of workplaces

In its previous conclusion (Conclusions 2013), the Committee asked whether the Ministry of Labour and Social Security Regulation No. 25369 of 10 February 2004 refers to the protection of machines, manual handling of loads, work with display screen equipment; hygiene (commerce and offices); maximum weight; air pollution, noise and vibration; personal protective equipment; safety and/or health signs at work. In reply, the report indicates that the Regulation No. 28710 of 17 July 2013 on the Health and Safety Measures in Enterprises and Their Premises abrogated the old Regulation No. 25359 of 10 February 2004, and identifies the minimum health and safety conditions in enterprises.

In addition, the report gives a list of regulations issued and amended during the reference period: Regulation No. 28628 of 25 April 2013 on Health and Safety Conditions in the Usage of Equipment, Regulation No. 28620 of 16 April 2013 on Health and Safety Measures in the Work with Screen Equipment, Regulation No. 28717 of 24 July 2013 of Manual Handling, Regulation No. 28721 of 28 July 2013 on the Protection of Workers from the Risks Related to Noise, Regulation No. 28743 of 22 August 2013 on the Protection of Workers, Regulation No. 28695 of 2 July 2013 on the Use of Personal Protective Equipment in the Workplaces, Regulation No. 28762 of 11 September 2013 of Health and Safety Signs, and Regulation No. 28741 of 20 August 2013 on the Laboratories Making Work Hygiene Measurement, Testing and Analysing.

Moreover, the report indicates that, according to Article 5 of the Act No. 6331, the employer shall fulfil the responsibility of avoiding risks, evaluating risks which cannot be avoided, combating the risk at its source, adapting the work and working conditions to the individual, adapting to technical progress, substituting dangerous substances or procedures with a non-dangerous or less dangerous ones, provide appropriate training and instructions to the workers, etc.

Protection against hazardous substances and agents

Protection of workers against asbestos

The report indicates that the Regulation No. 28539 of 25 January 2013 on the Measures of Health and Safety in Working with Asbestos (as amended by Regulation No. 28884 of 16 January 2014) takes into account Directive 2003/18/EC of the European Parliament and of the Council of 27 March 2003 amending Council Directive 83/477/EEC on the protection of workers from the risks related to exposure to asbestos at work, Directive 2009/148/CE of 30 November 2009 on the protection of workers from the risks related to exposure to asbestos at work, and Council Directive 91/382/EEC of 25 June 1991 amending Directive 83/477/EEC on the protection of workers from the risks related to exposure to asbestos at work.

Protection of workers against ionising radiation

In its previous conclusion (Conclusions 2013), the Committee asked whether Regulation No. 18861/1985 took account of the Recommendations (1990) by the International Commission on Radiological Protection (ICRP Publication No. 60), relating to exposure limit values in the workplace but also to persons who, although not directly assigned to work in a radioactive environment, may be exposed occasionally to ionising radiation.

In reply, the report indicates that the existing legislation of the Turkish Atomic Energy Authority was prepared on the basis of the report of ICRP published in 1990. The limit values concerning radiation doses in the Legal Notice No. 18861 of 7 September 1985 on Radiation

Safety were reviewed in compliance with the report published by ICRP in 1990 for public persons and those working with radiation (Article 10 of the Regulation No. 23999 of 24 March 2000 on Radiation Safety).

Personal scope of the regulations

The Committee examines the personal scope of legislation and regulations with regard to workers in atypical employment.

Temporary workers

In its previous conclusion (Conclusions 2013), the Committee asked for concrete examples of how workers employed on fixed-term contracts, temporary and agency workers received, occupational health and safety information and training, including when re-hired and upon change of job. It also asked for information on whether they had access to occupational health services and representation at work.

In response, the report indicates that the Regulation No. 28744 of 23 August 2013 on Occupational Health and Safety Requirements for Temporary or Fixed-Term Employment was prepared in line with Article 30 of the Act No. 6331 and Council Directive 91/383/EEC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship. The purpose of this Regulation is to ensure that employees with temporary or fixed-term employment contracts have the same level of protection as other employees concerning health and safety.

The Committee notes from the report that the qualifications of workers' representative and the rules and procedures of their election are determined by the Legal Notice No. 28750 of 29 August 2013 on the Qualifications of Workers' Representative and the Rules and Procedures of Their Election related to Occupational Health and Safety. In order to be a workers' representative, the worker should be a full-time, permanent worker, have at least 3 years of work experience and be at least a secondary school graduate. However, the conditions relating to full-time work and work experience do not apply to temporary or fixed-term workers.

Other types of workers

The report indicates that the Occupational Health and Safety Act No. 6331 of 20 June 2012 does not apply to domestic services, persons producing goods and services in their own name and on their own account without employing workers. The Committee asks whether this means that these categories of workers are left without any standard of protection or if other protective rules apply. It reserves in the meantime its position on this point.

Consultation with employers' and workers' organisations

In its previous conclusion (Conclusions 2013), the Committee noted that social partners were consulted in the design and implementation of occupational health and safety regulations. It asked for information on workers' representation in undertakings with less than 50 employees.

In reply, the report indicates that, according to Article 20 of the Act No. 6331, in the event that no person is elected or chosen to represent workers, the employer shall designate a workers' representative considering the risks present at work and the number of workers with special attention to balanced participation of workers. One representative shall be designated for enterprises between two and fifty workers.

Conclusion

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

Article 3 - Right to safe and healthy working conditions

Paragraph 3 - Enforcement of safety and health regulations

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

Accidents at work and occupational diseases

In its previous conclusion (Conclusions 2013), the Committee noted that the situation was not in conformity with Article 3§3 of the Charter on the ground that measures to reduce the excessive rate of fatal accidents were inadequate. It asked for detailed information on obligations to report occupational accidents and on any measures taken to counter potential under-reporting in practice. It also reiterated its requests for information on accidents at work with respect to different sectors of activity and for figures on cases of occupational diseases. It further asked for the standardised rate of fatal accidents.

The Committee notes from the report that according to Article 14 of the Act No. 6331, the employer shall keep a list of all accidents at work and occupational diseases and draw up reports after required studies are carried out. The employer shall also investigate and draw up reports on incidents that might potentially harm the workers, workplace or work equipment or have damaged the workplace or equipment despite not resulting in injury or death. He shall notify the Social Security Institution within three work days of the date of accident at work and after receiving the notification of an occupational disease from health care providers or workplace physicians. Occupational physician or health care providers shall refer workers who have been pre-diagnosed with an occupational disease to health care providers authorised by the Social Security Institution.

The Committee notes that according to Article 26 of the Act No. 6331, administrative fines apply in cases where an employer or health service provider fails to notify the competent authority of any accidents at work or occupational diseases. According to Article 4 of the Law No. 6645 of 4 April 2015 to amend the Occupational Health and Safety Act and certain Statutory Decrees, the administrative fine is given by the Social Security Institution. The amount of administrative fine which shall be applied with the final regulation varies according to the hazard category of the workplace and the number of workers.

The report indicates that in 2014, 221 366 insured workers had an accident at work (74 871 in 2012) and 1 626 had a fatal accident at work (744 in 2012). The report indicates an increasing trend in the standardised incidence rate of accidents at work per 100 000 workers (627 in 2010 and 1 672 in 2014) and a downward trend in the standardised incidence rate of fatal accidents at work and occupational diseases (14.5 in 2010 and 12.3 in 2014). The Committee notes that these figures relate to just two years out of the reference period, and remains that figures should be given for the whole of the reference period.

The Committee takes note of the distribution of fatal accidents at work per activity branch in 2013-2014: construction sector (34.6%), mining sector (14.8%), transport (13.2%) and metal sector (7.4%). It notes that this information relates to just two years out of the reference period, and remains that figures should be given for the whole of the reference period. The Committee asks the next report to provide the most frequent causes of accidents at work and the preventive and enforcement activities undertaken to prevent them.

The report also indicates that that one of the objectives of the National OHS Policy Document III 2014–18 aims to develop occupational accident and disease statistics and a recording system. The Committee asks that the next report provide information on the activities implemented and the results obtained according to this objective.

As regards occupational diseases, the report indicates that there were 494 occupational diseases in 2014 and 395 in 2012, including one fatal occupational disease. The Committee notes that figures should be given for the whole of the reference period. It asks that the next report provide information on the legal definition of occupational diseases; the mechanism for recognising, reviewing and revising of occupational diseases (or the list of occupational

diseases); the incidence rate and the number of recognised and reported occupational diseases during the reference period (broken down by sector of activity and year), including cases of fatal occupational diseases, and the measures taken and/or envisaged to counter insufficiency in the declaration and recognition of cases of occupational diseases; the most frequent occupational diseases during the reference period, as well as the preventive measures taken or envisaged.

The report states that Turkey is not at the required level in terms of both occupational diseases and accidents at work. The Committee notes from the report that nearly 606 accidents at work occur a day and 4.5 persons lose their lives as a result of such accidents.

The Committee notes that the number of accidents at work remains at a high level and that the standardised incidence rate remains very high, especially in the mining and construction sectors. It considers that the figures provided do not establish that accidents at work and occupational diseases are monitored efficiently. The Committee recalls that satisfactory application of the Charter cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised, and that the frequency of accidents at work and their evolution are key aspects of monitoring the effective observance of the right enshrined in Article 3§3 of the Charter. In the meantime, the Committee concludes that the situation is not in conformity with Article 3§3 of the Charter on the ground that measures taken to reduce the number of accidents at work are insufficient.

Activities of the Labour Inspectorate

The report indicates that the Presidency of Labour Inspection Board supervises and makes inspections whether the legislation is implemented as required in terms of occupational health and safety and whether or not its execution in the workplaces is covered by Occupational Health and Safety Act No. 6331 and the Labour Law No. 4857. Within the scope of occupational health and safety inspections, corrective and preventive measures concerning the risks determined by the risk team in the workplaces are fulfilled by the responsible persons identified in the risk assessment document. The Labour Inspection Board carries out two types of inspections: scheduled (programmed) and unscheduled (incidental) inspections. Scheduled inspections are performed for a number of predetermined targets and for the purpose of checking enforcement of either the whole or any particular legislative provisions. In case of notification of a workplace accident or an occupational disease, an unscheduled inspection is carried out.

The Committee notes from the report that the number of inspection visits dealing with occupational health and safety increased during the reference period (from 11 533 in 2012 and 8 332 in 2013 to 13 296 in 2015).

The total amount of administrative fines imposed for occupational health and safety breaches also increased, from 26 891 194 TRY (€6 205 944) in 2012 (3 030 workplaces), 19 504 330 TRY (€4 501 205) in 2013 (2 640 workplaces) workplaces and 59 490 680 TRY (€13 731 598) in 2015 (4 298 workplaces).

In reply to the Committee's question for detailed and up-to-date information on the number of inspectors, the report indicates that 122 assistant inspectors were recruited in 2012 and 58 in 2015. In 2015, a total of 974 labour inspectors were working at the Labour Inspection Board. More than half (572) were occupational safety and health inspectors, while 402 were inspectors of labour relations. The Committee notes that recruitment of an additional number of 61 labour inspectors is expected to be completed in 2016 (outside of the reference period).

The Committee notes, according to figures published by ILOSTAT, that the number of labour inspectors was 853 in 2015, 714 in 2013 and 960 in 2012; the average number of labour inspectors per 10 000 employed persons was 0.4 in 2012 and 0.3 in 2013 and in 2015; the number of labour inspection visits to workplaces during the year increased from 11 533 in

2012 to 21 304 in 2015; and the average of labour inspection visits per inspector also increased during the reference period (12 in 2012, 32.9 in 2013 and 25 in 2015). The Committee requests the next report to explain why the numbers which are stated in the report and those published by ILOSTAT are different.

In reply the Committee's question on the resources allocated to the Labour Inspection Board (LIB) and the Social Insurance Inspection Board, the report indicates that the number of resources allocated to the Presidency of Labour Inspection Board increased during the reference period, from 65 455 300 TRY (€15 100 895) to 84 855 500 TRY (€19 577 621).

The Committee notes that under Article 3§3 of the Charter, States Parties must implement measures to focus labour inspection on small and medium-sized enterprises (Statement of Interpretation on Article 3§3, Conclusions 2013). Since it cannot find an answer to its question (Conclusions 2013) in the report with regard to this point, the Committee requests again the next report to contain this information.

The Committee concludes that due to the low level of human resources in the inspectorate service responsible for monitoring compliance with occupational health and safety legislation, the labour inspection system cannot be considered efficient with regard to Article 3§3 of the Charter. The Committee asks that the next report provide information on the measures taken to increase staffing levels in the labour inspectorate. It also requests the next report to indicate the proportion of workers who are covered by inspections and the percentage of companies which underwent a health and safety inspection in the years covered by the reference period. Furthermore, it asks for information on the application of the legislation and the regulations on the labour inspectorate throughout the country in practice; details, by category, of administrative measures that labour inspectors are entitled to take and, for each category, the number of such measures actually taken; the outcome of cases referred to the prosecution authorities with a view to initiating criminal proceedings; and figures for each year of the reference period.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 3§3 of the Charter on the grounds that:

- measures taken to reduce the number of accidents at work are insufficient;
- the labour inspection system does not have sufficient human resources to adequately monitor compliance with occupational health and safety legislation.

Article 3 - Right to safe and healthy working conditions

Paragraph 4 - Occupational health services

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

In its previous conclusion (Conclusions 2015), the Committee found that the situation as regards national occupational health services was not in conformity with the Charter on the ground that it had not been established that there was a strategy to institute access to occupational health services for all workers in all sectors of the economy.

The report lists the laws and regulations issued and amended during the reference period: Regulation No. 28512 of 29 December 2012 on Occupational Health and Safety Services, Regulation No. 28512 of 29 December 2012 on Occupational Health and Safety Risk Assessment, Regulation No. 28512 of 29 December 2012 on the Duties, Powers, Responsibilities and Education of Occupational Health and Safety Specialists, Regulation No. 29401 of 29 June 2015 on Occupational Health and Safety Services Conducted by the Employer or Employer Representative in the Workplaces, Legal Notice No. 28989 of 3 May 2014 on the support for Occupational Health and Safety Services.

The report indicates that according to the Occupational Health and Safety Act No. 6331 of 20 June 2012 which applies to all employees of all works and workplaces in both the public and private sectors, all of the workers of a workplace, regardless of the number of workers, are given the means to benefit from OHS services. The Committee takes note that, according to the report, the application of Articles 6 (occupational health and safety services), 7 (State subsidies to occupational health and safety services) and 8 (occupational physicians and occupational safety specialists) of this Act is postponed to 1st July 2017 (outside the reference period) as regards for the public institutions and enterprises where less than 50 workers are employed and which are classified as less hazardous. Moreover, the Committee notes that, according to the information from the observation raised by the ILO Committee of Experts on the Application of Conventions and recommendations (CEACR) adopted in 2016 (106th ILC session) on Occupational Health Services Convention No. 161 (1985), there is an obligation for the assignment of an occupational health and safety physician and specialist in all workplaces without any limitation as to the number of employees, sector and class of danger, including the public sector as of 1 July 2016 (outside the reference period).

Under Article 6 of the Act No. 6331, employers are required to recruit occupational physicians and occupational safety experts in all undertakings to assist them in relation to OHS matters and that pursuant to Article 8 of the Act, occupational physicians and occupational safety experts have a duty to inform the employer in writing of any shortcomings relating to OHS, failing which their certification may be suspended. In the event that the employer fails to implement any measures in relation to life threatening hazards, occupational physicians and occupational safety experts shall notify the Ministry. The Committee notes from the ILO National Profile on Occupational Safety and Health (2017), that, according to Article 8 of the Act No. 6331, as amended in 2015 (Act No. 6645 of 2015 amending the OHS Act and several other statutes and decrees with force of law), a compensation, amounting to at least one-year’s salary, shall be paid to occupational safety experts dismissed for complying with their reporting obligations.

The Regulation No. 28512 of 29 December 2012 on Occupational Health and Safety Services (as amended by Regulation No. 29209 of 18 December 2014) aims to define the creation of occupational health and safety units to carry out the health and safety services, their empowerment, cancellation of certificates, duties, powers and responsibilities and working methods and principles. According to Article 5 of this Regulation, the employer shall designate one or more workplace physician or an occupational safety expert among his workers in order to identify occupational health and safety measures and their follow-up in the workplace, to prevent accidents at work and occupational diseases, to carry out the first-aid and urgent treatment as well as protective health and safety services of the workers.

The Committee notes from the report the number of certificated occupational safety experts (5 003 in 2012 and 37 105 in 2015) and occupational physicians (6 336 in 2012 and 4 089 in 2015) during the reference period. The number of education and training centres authorised by General Directorate of Occupational Health and Safety decreased during the reference period (34 in 2012, 195 in 2013, 11 in 2015). The number of joint occupational health and safety unit increased during the reference period (from 191 in 2012 to 406 in 2015), but the number of Community health centres decreased (from 11 in 2012, 38 in 2013 to 3 in 2015).

The report also indicates that that one of the objectives of the National OHS Policy Document III 2014–18 provides for increasing activities that aim to develop occupational safety and health in the public and agriculture sectors. The Committee asks the next report to provide information on the activities implemented and the results obtained according to this objective.

The Committee observes that the Law no. 6331 require employers to provide medical examination to employees. In view of the progressive nature of the obligation in Article 3§4 of the Charter, the Committee repeats its request for information regarding the percentage of employees covered by occupational health services be provided in the next report.

The Committee reiterates its previous questions (Conclusions 2013) for detailed information in the next report on the tasks of occupational health services; the proportion of undertakings equipped with such services, and the number of workers monitored by such as compared to the previous reference period. It asks the next report to provide more detailed information on duties and responsibilities of a workplace physician and of the occupational safety expert and to explain how the functions performed by them are adapted in practice to all undertakings, especially in small and medium-sized enterprises. It also requests information clarifying the manner in which access to occupational health services takes place in practice for temporary workers or workers on fixed-term contracts, self-employed workers and domestic workers. It reserves in the meantime its position on these points.

Conclusion

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

Article 11 - Right to protection of health

Paragraph 1 - Removal of the causes of ill-health

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

Measures to ensure the highest possible standard of health

The Committee notes from WHO that life expectancy at birth in 2015 (average for both sexes) has risen to 76.9. The average life-expectancy rate in Turkey is still low relative to other European countries, for example the EU-28 average that same year was 80.6.

The death rate (deaths/1 000 population) has increased during the reference period, standing at 6 from 5.1 in the last cycle.

The Committee notes from the report that the most common causes of death are circulatory diseases, cancer, and respiratory diseases and takes note of the measures taken to fight them. In particular, a comprehensive National Cancer Control Program 2011–2015 was introduced, prompted by late stage diagnosis (III–IV) for most cancers, including breast and cervical.

The focal point for screening is the KETEMs (Cancer Early Diagnosis, Screening and Training Centers), which provide early cancer diagnosis, screening and training. 140 KETEMs opened in 2012/2013 bringing the total number of KETEMS to 264. Cancer screening coverage rates have increased rapidly as a result of the programme and roll-out of KETEMs. Between 2007 and 2012, the opening of KETEMs has led to a doubling of coverage rate from 16% to 27% for mammography, and from 6% to 13% for cervical cancer screening.

Infant mortality increased since the last reference period. In 2015 the rate was 11.7 per 1,000 live births from 7.8 in 2010. The Committee notes that the rate remains above that in other European countries (for example, the EU-28 rate in 2015 was 3.6 per 1,000).

As regards the maternal mortality rate, it has not changed since the last reference period. In 2015 the rate reached 16 deaths per 100 000 live births. This rate however also remains above the average in other European countries.

The Committee finds that the situation is not in conformity with Article 11§1 on the ground that the measures taken to reduce infant and maternal mortality rates have been insufficient.

Access to health care

The report mentions that one of the major reforms during the reference period was the implementation of the second phase of the Health Transformation Program. In particular the Family Medecine Program which assigned each patient to a specific doctor was established throughout the country. In addition, access to health insurance has been expanded by including stateless persons and refugees within the scope of Universal Health Insurance. The report indicates that on the management of waiting lists and waiting time, as well as on measures to further improve access in rural areas a centralized Hospital Appointment System (CHAS) has been established aiming to ensure better planning for hospitals, effective use of resources and higher service quality for citizens. A unified call center number (182) is at the heart of the system, enhancing better resource planning for hospitals and decreasing queues. The patient can also make an appointment via Internet through the CHAS portal. Resource planning and allocation is measurable, making it possible to ensure the quality and effectiveness of healthcare services.

The Committee recalls that arrangements for access to care must not lead to unnecessary delays in its provision. It underlines that it will pay particular attention to whether access to treatment is based on transparent criteria, agreed at the national level, taking into account the risk of deterioration, in clinical terms as well as in terms of quality of life (Conclusions XV-2 (2001), United Kingdom). Concerning management of waiting lists and waiting times, the

Committee repeatedly asked for specific information on the average waiting time for care in hospitals, as well as for a first consultation in primary care, with a view to showing that access to health care is provided without undue delays. The Committee reiterates its request for information regarding the rules applicable to the management of waiting lists and waiting times as well as statistical data on the actual average waiting times for inpatient/outpatient care as well as for primary care, specialist care and surgeries. The Committee emphasises that, if this information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter on this point.

The present report does not provide information on reforms in the private health sector and their impact, as previously requested by the Committee (Conclusions 2013), therefore it reiterates its question.

In the European Commission country report 2015, the Committee notes that public health in Turkey has generally improved. Quantitative capacity of health services improved, including the number of doctors per capita.

Total health spending held at 5.4% of GDP during the reporting period. However, Turkey's total health expenditure per capita amounts to only one third of the EU average. The Committee also notes that out of pocket health expenditure was 17.8 in 2014, a rate that still remains above that in other EU-28 average.

In addition, the Committee notes from the European Commission country report 2015, that significant shortcomings persist on integration and empowerment of persons with disabilities with respect to their environment, social attitudes and quality of services. Lack of early and suitable diagnosis hinders many children with disabilities or developmental delays from early access to appropriate services. Turkey still has no mental health law. There is no independent body to monitor mental health institutions. The Committee asks the next report to provide comments to these observations.

The Committee asks that the next report on Article 11§1 contain information on dental care services and treatments (such as who is entitled to free dental treatment, the costs for the main treatments and the proportion of out-of-pocket paid by the patients).

The report indicates that in order to raise the awareness of mouth and teeth health in schools, a "Protocol of Collaboration on Development of Mouth and Teeth Health Awareness" has been signed between the Ministry of National Education and Colgate Palmolive Cleaning Products Industry and Trade Incorporation. In total 2 535 824 students have been reached in 53 provinces within 5 years (2008 – 2013). This Protocol has been renewed for another 5 years. The Committee asks that the next report contain information on dental care services and treatments (such as who is entitled to free dental treatment, the costs for the main treatments and the proportion of out-of-pocket paid by the patients).

As regards the right to protection of health of transgender persons, the report indicates that alteration of sex is regulated by the Article 40 of the Turkish Civil Code. According to the article, the permission can only be given if the person is over 18 and unmarried and if the person has obtained official medical board reports to prove that the operation is psychologically needed and that the ability to reproduce is permanently lost. The Committee notes that in March 2015 the European Court of Human Rights ruled on Turkey's excessive domestic requirements for the recognition of the preferred gender. In the Chamber judgment in the case of Y. Y. v. Turkey (application no. 14793/08) the European Court held, unanimously, that there had been a violation of Article 8 (right to respect for private and family life of the European Convention on Human Rights due to the refusal by the Turkish authorities to grant authorisation for gender reassignment surgery on the grounds that the person requesting it, a transsexual, was not permanently unable to procreate. The Committee takes note of the information provided in the report and by other sources. It reserves its position on this point until a decision is taken in the Collective Complaint No. 117/2015 Transgender-Europe and ILGA-Europe v. Czech Republic.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 11§1 of the Charter on the grounds that measures taken to reduce infant and maternal mortality rates have been insufficient.

Article 11 - Right to protection of health

Paragraph 2 - Advisory and educational facilities

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

Education and awareness raising

The Committee recalls that pursuant to this provision, States Party are required to develop policies on health education aimed at the general population as well as for groups affected by specific problems, notably through awareness-raising campaigns.

In its previous conclusion (Conclusions 2013) the Committee asked the next report to include up-dated information on the whole range of activities undertaken by public health services, or other bodies, to promote health and prevent diseases, with examples of specific information campaigns.

In reply, the report indicates that 127 133 persons have been trained on reproductive health training in 2014 and 220 533 persons in 2015.

The Committee notes from the report that the Ministry of National Education has created the “Healthy school” web page. A guide booklet for “Healthy School” is also available online for public use. Health related activities at schools aiming to prevent and increase the awareness about Malnutrition have been organised such as: "Calorie for Life", "Run for Health" as well as the “School Milk Program” conducted in Primary Schools. In terms of promoting physical activity in schools Turkey is working on “physical activity education certificates” in primary, secondary and high schools. Nutrition Friendly Schools Project Studies have been launched within the scope of the Protocol on Nutrition Friendly Schools signed on 21 January 2010 between the Ministry of National Education and the Ministry of Health, and the schools are assessed whether they bear the conditions required concerning healthy nutrition criteria. 202 schools have received the “Nutrition Friendly School Certificate” as of 3 August 2011. This Protocol was renewed on 20 September 2013 for another 5 years. In order to raise the awareness of mouth and teeth health in schools, the “Protocol of Collaboration on Development of Mouth and Teeth Health Awareness” has been signed between the Ministry of National Education and Colgate Palmolive Cleaning Products Industry and Trade Incorporation. In total 2 535 824 students have been reached in 53 provinces within 5 years (2008 – 2013). This Protocol was renewed on 4 February 2013 for another 5 years.

The report indicates that sexual and reproductive health education, hygiene, nutrition, harmful effects of tobacco products, alcohol and drug and their consumption is provided throughout all school life, starting from the 1st level class to 12th level class. Health related special Days and Weeks are set in all elementary and secondary education institutions.

The Committee recalls that sexual and reproductive health education is a process aimed at developing the capacity of children and young people to understand their sexuality in its biological, psychological, socio-cultural and reproductive dimensions which will enable them to make responsible decisions with regard to sexual and reproductive health behaviour. It is acknowledged that cultural norms and religion, social structures, school environments and economic factors vary across Europe and affect the content and delivery of sexual and reproductive health education. However, relying on the basic and widely accepted assumption that school-based education can be effective in reducing sexually risky behaviour, States Parties must ensure that sexual and reproductive health education forms part of the ordinary school curriculum; that the education provided is adequate in quantitative terms; that the form and substance of the education, including curricula and teaching methods, are relevant, culturally appropriate and of sufficient quality, in particular that it is objective, based on contemporary scientific evidence and does not involve censoring, withholding or intentionally misrepresenting information, for example as regards contraception and different means of maintaining sexual and reproductive health; and that a procedure is in place for monitoring and evaluating the education with a view to effectively

meeting the above requirements (International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Croatia, Complaint No. 45/2007, Decision on the merits of 30 March 2009, §§46 – 47). The Committee asks for information in the next report on whether and how sexual and reproductive education is provided in schools in Turkey.

Counselling and screening

In its previous conclusion, the Committee asked what mass screening programmes are available in the country, and also what is the situation concerning school health services.

In reply, the report indicates that scanning school health services are shared between family physicians and Community Health Centers. During the school year 2011 – 2012, seventeen million students in primary, secondary and pre-school education periods went through the Scanning School health service representing 22.5% of the population.

In addition, it points out a variety of preventive health services for pregnant women and their children, which include health controls, screening and vaccination. The Committee asks the next report to provide information on the proportion of women covered. It also asks for information on access to such screenings for women living in rural areas.

As indicated in the report, Turkey has adopted a systematic approach to cancer screening bringing results in terms of earlier detection, more successful treatment and ultimately reducing cancer mortality. The focal point for screening is the KETEMs (Cancer Early Diagnosis, Screening and Training Centers), which provide early cancer diagnosis, screening and training. The centres also provide smoking cessation services. In 2012/2013 the total number of operational KETEMS was 264. The Ministry of Health plans to have one KETEM per 250 000 population and mobile KETEMs. KETEMs are located mostly in hospitals and collaborate closely with family medicine centres. Between 2007 and 2012, the opening of KETEMs has led to a doubling of coverage screening rate from 16% to 27% for mammography, and from 6% to 13% for cervical cancer screening. The Committee notes in the European Commission 2016 country report that there has been good progress in the fight against cancer through improved infrastructure. Cancer screening coverage reached 35% for breast and 80% for cervical cancer. The cancer control programme has been integrated into primary healthcare and active cancer registration expanded to every province. The Committee asks the next report to provide updated information on the cancer screening coverage rate.

Conclusion

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

Article 11 - Right to protection of health

Paragraph 3 - Prevention of diseases and accidents

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

Healthy environment

The Committee notes that Turkey's environmental policy has been shaped by international regulatory frameworks. As a candidate state to the European Union, Turkey has been harmonizing the national environmental legislation with the EU environmental acquis. An important impetus to strengthen air management policy in Turkey came when Turkey adopted its EU Integrated Environmental Strategy which called for the full harmonization of the Turkish legal frame work with the EU Air Quality Framework Directive.

Since 2012, air quality data have been available in a new format. They come from 195 stable air quality measurement stations and four mobile air quality measurement stations in the context of National Air Quality Observation Network program. The data are made available in real time to the public through the Ministry of Environment and Urbanization website.

However, the Committee notes from the 2015 European Commission Country report that national air quality legislation still needs to be adopted in line with the current directives on ambient air quality, national emissions ceilings and volatile organic compounds. In particular severe air pollution in some cities has been reported. Local clean air action plans have to be prepared.

A national recycling strategy and action plan were adopted by the Higher Planning Council in December 2014.

In the area of water quality, the preparation of river basin management plans is under way. The Committee asks information on the concrete measures taken, including environmemtal legislation and regulations on the prevention of avoidable risks, as well as on the levels of water contamination during the reference period.

The Committee asks the next report to also include information on measures taken with regard to industrial pollution control and risk management.

In respect of noise pollution, the Assessment and Management of Environmental Noise Regulation, has been published in the Official Gazette No. 27601 dated 4 June 2010. Under this Regulation, it has been made compulsory to prepare noise maps for the areas having more than 100,000 resident population and settlements which have more than 1,000 people per km, also for the main highways, for major railways and airports. It is also compulsory to prepare prevention and control measures taking into account the results of the noise maps. The programs, duties, authorizations, responsibilities are determined for the preparation of noise maps and action plans.

The report does not provide any information on food safety. The Committee wishes to receive updated information on the levels of air pollution, contamination of drinking water and food intoxication during the reference period, namely whether trends in such levels increased or decreased. It also asks information on the noise pollution, waste management, and risks related to asbestos.

It reserves in the meantime its position on these points.

Tobacco, alcohol and drugs

In its previous conclusion (Conclusions 2013), the Committe took note of the legal framework providing for a ban on smoking of tobacco products in public places and restrictions on the advertising of tobacco products. The current report states that regulations have started to be implemented on passive smoking. It is now prohibited to smoke in all open and closed public spaces.

In the area of tobacco control, an action plan for 2015-2018 became effective. The support programme for tobacco addiction drugs was initiated by the Ministry of Health since 2011. 413 centres are proceeding to provide services as of May 2012 within the scope of smoking cessation services within the body of the Ministry of Health and the universities. The report indicates that the rate of smokers throughout the society has decreased from 33,4% to 31,2%.

The Law No. 4250, on the Monopoly of Alcohol and Alcoholic Beverages has been amended in 2013 providing in particular that advertising activities and promotions aimed at consumers shall under no circumstances be conducted. No campaign, promotion or activity that encourages or promotes the use of such products shall be conducted. Alcoholic beverages cannot be sold and cannot be served to people under the age of 18.

Moreover the amended law stipulates increased penalties for breaching the aforementioned articles. As per the amendments to Article 9 of the Law in 2013, enterprises selling retail or serving alcoholic beverages are required to be situated at least 100 meters away from educational institutions, student dormitories, and places of worship. The Committee asks the next report to also include information on consumption trends.

On drugs, Turkey is implementing its 2013-2018 national strategy and 2013- 2015 action plan under the coordination of the national police. The strategy and action plan address topics such as coordination, reduction of supply, prevention, treatment, rehabilitation, harm reduction, international cooperation, data collection, research and assessment. Following a Prime Ministry circular of November 2014, an anti-drug emergency action plan has entered into force with a number of complementary objectives.

The Committee asks for updated data and information on trends in consumption of tobacco, alcohol and drugs.

It reserves in the meantime its position on these points.

Immunisation and epidemiological monitoring

In its previous conclusion, the Committee asked that updated information on national immunisation programmes, as well as on measures to prevent epidemic diseases be included in every report. As no information has been provided on that matter, the Committee reiterates its request. It points out 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 on this point.

Accidents

The Committee previously noted that an Action Plan on Road Safety for 2011-2020 had been adopted, with a view to reducing traffic accidents and asked to be kept informed of the measures implemented in this area. It also asked information on the measures taken to prevent domestic accidents, accidents at school and accidents during leisure time. As no information has been provided on that matter, the Committee reiterates its requests. The Committee points out 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 on this point. The Committee notes that states must take steps to prevent accidents. The main types of accidents covered are road accidents, domestic accidents, accidents at school and accidents during leisure time (Conclusions 2005, Republic of Moldova).

Conclusion

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

Article 12 - Right to social security

Paragraph 1 - Existence of a social security system

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

In the case of **family** and **maternity benefits**, the Committee refers to its conclusions on, respectively, articles 16 and 8§1 (Conclusions 2015).

Risks covered, financing of benefits and personal coverage

The Committee refers to its previous conclusions for a description of the social security system in Turkey, and notes that it continues to rest on collective funding: it is funded by contributions (employers, employees) and by the State budget. The system covers since 2008 the following social insurance branches (Law No. 5510): medical care, sickness, old age, work accidents/occupational diseases, maternity, invalidity and survivors. Employees from the public and private sector are covered in respect of unemployment under a separate system (Law No. 4447), but not civil servants, workers in agriculture and forestry, household workers, military personnel, students, and self-employed persons. Furthermore, Turkey does not have yet a national scheme of family benefits, except for civil servants.

The Committee notes from official statistics that the total population in 2015 was 78 741 053 and that the active population was 28 929 000 (25 890 000 employed persons between 15 and 64 years and 3 039 000 unemployed persons in the same age range). According to the report, which refers to the Social Security Institution's data, the number of insured persons was 20 700 000 (72% of the active population). According to other data presented in the report, the number of persons covered by social security was 67 330 236, i.e. 86% of the total population. The Committee asks the next report to clarify whether this refers to the healthcare coverage or also to other branches and to ensure that the figures provided are consistent and clear.

The Committee previously noted (Conclusions 2013) that the resident population was covered in respect of **healthcare**, under the universal health insurance programme introduced in 2008. According to the information provided in the latest report concerning the European Code of Social Security, the population group benefiting from the Institution's health care benefits for the year 2015 was 66 945 138, i.e. approximately 85% of the overall population. The Committee asks the next report to clarify what categories of the population are not covered by the healthcare system. As regards the other branches, the report indicates that, in 2015, the number of people insured in respect of **sickness** was 17 635 257, i.e. 61% of the active population; the number of people insured in respect of **old-age** was 20 380 319, i.e. 70% of the active population and the number of workers protected against **unemployment** was 14 100 000, i.e. 49% of the active population. The Committee recalls that, to comply with Article 12§1 of the Charter, the system should cover a significant percentage of the active population as regards income-replacement benefits, such as sickness, maternity and unemployment benefits, pensions, and work accidents or occupational diseases benefits. It notes that, according to the figures provided, the rate of personal coverage is rather low in respect of sickness, old-age or unemployment and no data is provided in respect of maternity, work accidents/occupational diseases, invalidity and survivors branches. The Committee accordingly asks the next report to provide updated information concerning the number of persons covered in respect of all these risks, out of the active population (employed and unemployed persons, but not the economically inactive, such as students or retired people). In the meantime, it considers that it has not been established that the existing social security schemes cover a significant percentage of the population.

Adequacy of the benefits

The Committee notes that no Eurostat data is available for 2015 as regards the median equivalised annual income or the poverty level. The latest available data from Eurostat refer

to 2013, when the median equivalised income was €3438, and the poverty level, defined as 50% of the median equivalised income, was €1719 per year, or €143 per month. 40% of the median equivalised income corresponded to €57 monthly. The minimum wage was €416. According to the report, the national poverty line, corresponding to 50% of the median income was 5554 TRY (€1966 at the rate of 31/12/2014) for 2014 or 462.8 TRY (€164) per month. In 2015, 50% of the median income was 6246 TRY (€1961, at the rate 31/12/2015), i.e. 520.5 TRY (€163) per month. The 40% threshold was 4997 TRY (€1670), i.e. 416 TRY monthly (€139). The minimum wage was €424 in 2015.

The report indicates that the **sickness** insurance covers all temporary incapacity for work resulting from sickness, but also from **work accidents/occupational diseases** and maternity. In order to be entitled to sickness cash benefits, the worker must have contributed for at least three months in the last 12 months (no qualifying period applies in case of accident). The amounts paid – both in case of sickness and in case of work accidents/occupational diseases – correspond to half of the reference earnings in case of hospital treatment and two thirds of the reference earnings in case of outpatient treatments. According to Missceo, the minimum daily amount paid in the case of hospital treatment was 21.22 TRY (€7) in 2015. The Committee finds the level of these benefits to be in conformity with the Charter.

As regards **old-age** pensions, the Committee refers to its assessment under Article 23. As regards **invalidity** pensions, in the second half of 2015, the minimum amount, according to the report, was 535.10 TRY (€168). The Committee finds this level to be in conformity with the Charter.

In order to qualify for **unemployment** benefits, the person must have contributed for at least 600 days. In addition, according to Missceo, the person must have been in permanent work during the last 120 days prior to redundancy. The Committee asks the next report to provide more detailed information on the conditions required to be entitled to the benefits. The Committee previously noted (Conclusions 2013) that unemployment benefits are paid for a maximum of 180 days (6 months) for those with 600 days of unemployment insurance contributions, 240 days for those with 900 days of unemployment insurance contributions, and up to 300 days for those with 1080 days of unemployment insurance contributions.

In response to the Committee’s question, the report indicates that the payment of unemployment benefits can be suspended if the recipient refuses, without a valid reason, a job offer which is professionally appropriate, close to the wage and working conditions of his/her previous job and within the municipal adjacent area where the person resides. The Committee asks the next report to further clarify what is considered to be an "adequate job offer", what valid reasons can justify an offer to be refused without the benefits being suspended and what remedies are available to contest a decision to suspend or withdraw the payment of the benefits.

The amount of benefits, according to the report, corresponds to 40% of the gross average earnings of the last 4 months before the end of employment. The amount so calculated cannot exceed 80% of the gross minimum wage. Accordingly, in the second half of 2015, unemployment allowances paid were at least 505,53 TRY (€159). The Committee notes that this amount falls between 40% and 50% of the median income. It accordingly asks the next report to clarify what additional (contributory or non contributory) benefits, if any, might be added for persons who get the minimum amount of benefit. It reserves in the meantime its position on this point.

The Committee asks the next report to provide updated information concerning the poverty threshold (defined as 50% of the median equivalised income), the minimum wage and the minimum levels of income-replacement benefits (sickness, work accidents and occupational diseases, unemployment, old age and disability).

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 12§1 of the Charter on the ground that it has not been established that the existing social security schemes cover a significant percentage of the population.

Article 12 - Right to social security

Paragraph 2 - Maintenance of a social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security

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

The Committee notes that Turkey has ratified the European Code of Social Security on 7 March 1980 and has accepted Parts II, III, V, VI, VIII, IX and X.

The Committee notes from Resolution CM/ResCSS(2016) 20 of the Committee of Ministers on the application of the European Code of Social Security by Turkey (period from 1 July 2014 to 30 June 2015) that the law and practice in Turkey continue to give full effect to all the Parts of the Code that have been accepted, subject to determining the reference wage used for the calculation of the replacement rate of benefits.

Conclusion

The Committee concludes that the situation in Turkey is in conformity with Article 12§2 of the Charter.

Article 12 - Right to social security

Paragraph 3 - Development of the social security system

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

It refers to its previous conclusions (Conclusions 2009 and 2013) for a description of the Turkish social security system, following the reforms which entered into force in 2008. As regards changes concerning family and maternity benefits, the Committee refers to its conclusions on, respectively, articles 16 and 8§1. As regards other branches of social security, the Committee takes note of the legislative developments during the reference period. In particular, the report mentions the following improvements:

- the number of people insured for old age has increased by 19% (from 17 076 451 to 20 380 319) from 2011 to 2015, while the total population growth in the same period was below 6% (from 74 525 696 to 78 741 053);
- in 2013, the personal coverage of healthcare insurance has been extended to children below 18 years old who were not already covered on account of their family or curators, to persons under a protective injunction (victims of domestic violence), to persons training to work in penal institutions and jails and their families, to persons who graduated from high-schools or higher education in the last two years (subject to age conditions) and were not already covered as dependants;
- in 2014 (Law No. 6552) the time limit for survivors to claim their pension has been extended from 6 to 12 months;
- in 2014 and 2015, certain measures have been taken in favour of workers performing underground works in the mines, in particular their earliest pensionable age has been set for 50 years (instead of 55) for those who worked underground for at least 20 years (Law No. 6552) and favourable provisions have been taken in favour of survivors of miners deceased because of work accidents in coal and lignite mines in the last ten years (Law No. 6645);
- as from 2015 (Law No. 6645), a lower reduction has been applied to people who continue working as self-employed while receiving an old-age pension.

With regard to the other changes mentioned in the report, the Committee points out that in order to assess their scope in relation to Article 12§3 and thus assess whether they involve improvements to the system or restrictions, it must be informed of their impact (categories and numbers of people concerned, levels of allowances before and after alteration). It therefore requests that future reports always provide this information. As regards in particular the measures, mentioned in the report, concerning partial retirement and the cumulation of work earnings with old-age and invalidity pensions (Law No. 6663) the Committee notes that they have entered into force in 2016, out of the reference period, it accordingly asks the next report to provide information on their implementation and impact.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Turkey is in conformity with Article 12§3 of the Charter.

Article 12 - Right to social security

Paragraph 4 - Social security of persons moving between States

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

Equality of treatment and retention of accrued benefits (Article 12§4)

Right to equal treatment

Equal treatment between nationals and nationals of other States Parties in respect of social security rights shall be ensured through the conclusion of bilateral or multilateral agreements or through unilateral measures.

In its previous conclusion (Conclusions 2013), the Committee concluded that equal treatment was guaranteed to all foreigners in respect of all branches of insurance (work accident, unemployment, occupational disease, sickness, maternity, invalidity, old age and death). However, the Committee notes from the report that foreign nationals residing in Turkey are deemed to be insured under the Universal Health Insurance Scheme provided that the principle of reciprocity apply. Indeed, Article 60§2, sub-paragraph d) of the Law No 5510 states that individuals of foreign countries who have residence are deemed to be insurance holders, provided that the principle of reciprocity is also taken into consideration. The Committee understands that the application of this Law is still conditional upon reciprocity and asks the next report to clarify this point.

The Committee also notes that Law No. 5510 on Social and Health Insurance imposes a residence condition of one year minimum for foreign citizens to be covered by universal health insurance. It asks the next report to clarify whether this also concerns emergency healthcare.

In respect of payment to family benefits, the Committee recalls that the requirement for the child to reside in the territory of the paying State is in conformity with Article 12§4 (Statement of Interpretation on Article 12§4, Conclusions XVIII-1 (2006)). However, since not all countries apply such a system, States Parties applying the ‘child residence requirement’ are under the obligation, in order to secure equal treatment within the meaning of Article 12§4, to enter, within a reasonable period of time, into bilateral or multilateral agreements with those States which apply a different entitlement principle (Conclusions 2006, Cyprus).

The Committee previously asked (Conclusions 2013) whether conclusion of agreements with States Parties with which there are no such agreements or unilateral measures were planned and, if so, when. The report provides no information in this regard. However, the Committee refers to its previous conclusion on Article 16 (Conclusions 2015) where it concluded that the situation was not in conformity with the Charter on the ground that there was no general system of family benefits; only civil servants and workers covered by collective agreements were eligible for such benefits. It notes from the report that there is still no general system of family benefits in Turkey. In this respect, it asks whether there is a citizenship requirement to be eligible for civil service and, if not, whether family benefits are granted to nationals of other States Parties who are civil servants or covered by a collective agreement on an equal footing with Turkish nationals placed in such situations**.** It also asks whether entitlement to family benefits for those concerned is conditional upon a "child residence requirement". It reserves in the meantime its position on this point.

The Committee finally notes from MISSCEO that maternity (and paternity) benefits are granted to Turkish parents. The Committee asks whether such benefits are also awarded to nationals of other States Parties.

Right to retain accrued benefits

The Committee previously asked (Conclusions 2013) information on the current state of the law. As the report provides no information on this point, the Committee reiterates its request.

It asks in particular how the principle of retention of accrued benefits is guaranteed since the reform in 2006. It points out that in the absence of a reply in the next report, there will be nothing to prove that the situation is in conformity with the Charter on this point. It reserves in the meantime its position on this point.

Right to maintenance of accruing rights (Article 12§4b)

In its previous conclusion (Conclusions 2013), the Committee pointed out that Turkey had ratified the European Convention on Social Security to demonstrate that it had undertaken to apply the accumulation of insurance or employment periods to non-nationals. The Committee, thus, reiterates its conclusion of conformity in this respect.

Conclusion

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

Article 13 - Right to social and medical assistance

Paragraph 1 - Adequate assistance for every person in need

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

Types of benefits and eligibility criteria

Legal basis

In its previous conclusion (Conclusions 2013) the Committee found that the situation in Turkey was not in conformity with the Charter on the ground that during the reference period there was no legally established general assistance scheme that would ensure that everyone in need had a subjective, enforceable right to social assistance.

The Committee notes from the report that social benefits are given to those who are in need and who meet certain criteria. These criteria are broken down in the Law No. 3294 on Social Assistance and Solidarity Encouragement. According to the report, social assistance programmes implemented by the General Directorate of Social Assistance (SYGM) in Turkey are carried out in accordance with the legal regulations such as Law No. 3294, Law No. 2022 on payment of pensions to elderly persons (65 years old and over) who are destitute and the Law No. 2828 on Social Services.

The Committee notes from the Flash Report of the European Commission (ESPN 2016/40) that the new legislation in Turkey to strengthen the link between social assistance and the labour market (Law No 6704) was adopted on 14 April 2016 (outside the reference period). Compared with the earlier law on social assistance (Law on the Promotion of Social Assistance and Solidarity), it brings two important novelties. First, social assistance recipients whose per capita household income is lower than one third of the minimum wage and who are deemed to be “employable” will be registered with the official employment agency (İŞKUR), which is regulated by the Ministry of Family and Social Policies (MoFSP). Then, if they refuse to participate in active labour market programmes or to take a job offer three times, social assistance will be stopped for one year. Secondly, a subsidy will be given to employers who offer job opportunities to social assistance beneficiaries. The Government will pay the employer’s share of social security contributions for one calendar year for those who move from social assistance to a job.

The Committee understands that during the reference period social assistance was provided under the Law No 3294. According to the report *periodic aid* (food aid, accommodation and heating materials), *regular aids* (conditional education and health assistance) as well as disaster and emergency assistance were provided under this law. The Committee notes that *regular* aid continues to be provided as long as there is a need for it and other necessary conditions are met.

The Committee recalls that under Article 13 the system of assistance must be universal in the sense that benefits must be payable to ’any person’ on the sole ground that he/she is in need. This does not mean that specific benefits cannot be provided for the most vulnerable population categories, as long as persons who do not fall into these categories are also entitled to appropriate assistance.

The Committee asks the next report to describe how these requirements are met both by the Law No 3294 as well as the Law of 14 April 2016. In particular, the Committee asks the next report to indicate which legal provision guarantees the subjective right to a basic benefit (e.g. *regular aid*), for any person in need, subject to a means-test, as well as additional benefits (e.g. *periodic aids*, such as housing and heating allowances). In the meantime, the Committee reserves its position as to whether the legislation provides for a legally recognised enforceable right to social assistance for any person in need.

Eligibility criteria

The Committee takes note of the reforms implemented during the reference period. The provision of social benefits were gathered under the roof of the Ministry of Family and Social Policy (ASPB) and institutional unity was ensured with the legislative arrangements made in 2011. The General Directorate of Social Assistance (SYGM), which is structured as the main service unit of the Ministry, has become the largest public institution in terms of both the target group reached and the amount of the resources used in the field of social assistance. It conducts its services through the Social Assistance and Solidarity Foundation (SYDV) established in every province and district.

The Committee takes note of the Integrated Social Assistance Information System, which manages applications for social assistance, household files, including the reports related to the on-site social examination related to the socio-economic status of the family. The Committee notes that as of January 2012, information about the persons based on households, including socio-economic data, social examination reports, help received by persons are kept electronically. Social benefits beneficiaries are registered through the integrated system, so that employment-social assistance relationship is established. Upon receipt of an application, as a first step, central database enquiry is conducted regarding the application. The enquiry is carried out by online questioning via web sites of relevant public authorities. After the initial profiling of the applicant, the Social Assistance and Solidarity Encouragement Foundation staff makes visits and conducts inspections on-the-spot.

The Turkish Statistical Institute (TUIK) is the responsible body to define poverty threshold which is used to qualify individuals' and families' eligibility for particular types of benefits and services and also is an important guideline for plans and programmes to be pursued

The Committee notes that in 2015 over one million households received *regular aid* and 699,927 households received *periodic* aids. The General Directorate of Social Assistance by its Solidarity Foundations reached approximately 3 million families in 2015 with more than 30 social assistance programmes.

As regards the obligation to accept the job offered, sanctions are imposed by Social Assistance and Solidarity Encouragement Fund if a member of a targeted household rejects to accept the job offered without any reasonable excuse. Cash aids may be suspended as a result, but *regular aid* will continue to be paid.

Medical assistance

As regards medical assistance, in its previous conclusion the Committee asked for confirmation that those persons who are not covered by the green card system and are, therefore, not entitled to health coverage either under contributory or non-contributory system, are financed by the state budget (for in-patient, out-patient treatment, including medical examinations). The Committee notes in reply that since 2012 all citizens are included in the universal health insurance scheme under Article 60 of the Law No 5510. All persons whose per capita income in the family is lower than one third of gross minimum wage are covered. The Committee asks whether all persons in receipt of social assistance are included in the universal health insurance and whether the latter goes beyond emergency assistance.

Level of benefits

- Basic benefit: the Committee notes that there is no information regarding the level of basic and supplementary benefits that would be paid to a single person without resources.
- Additional benefits: the Committee asks the next report to provide an estimate of all additional benefits (e.g.periodical aid, home assistance, housing allowance, food aid etc) that a single person without resources, in receipt of the basic benefit is entitled to.

- Poverty threshold: the Committee notes that no Eurostat data is available for 2015 as regards the median equivalised income. The latest available data from Eurostat refer to 2013, when the median equivalised income was €3,438, and the poverty level, defined as 50% of the median equivalised income, was €1719 per year, or €143 per month. According to the report, the national poverty line, corresponding to 50% of the median income was 5554 TRY (€1966 at the rate of 31/12/2014) for 2014 or 462.8 TRY (€164) per month. In 2015, 50% of the median income was 6246 TRY (€1961, at the rate 31/12/2015), i.e. 520.5 TRY (€163) per month.

The Committee notes that the report does not provide information as regards the amounts of different benefits. In the absence of the monetary values of basic and additional benefits and also, pending receipt of the information as to the universality of social assistance, the Committee considers that it has not been established that the level of social assistance paid to a single person without resources is adequate.

Right of appeal and legal aid

According to the report, a beneficiary of social assistance can file a legal action before administrative court about monthly social payments or implementation of social assistance services, against public institutions and organisations. In accordance with Article 45 of Administrative Procedure Law No 2577, objection can be made on disputes arising from the implementation by the public institutions. The decisions of the regional administrative courts are final and lodging an appeal with the Supreme Court is not possible. The Committee refers to its reservation of the position as to whether the legislation provides for a legally recognised enforceable right to social assistance and also reserves its position as to whether the right to social assistance is supported by an effective right of appeal.

Personal scope

The Committee recalls that, under Article 13§1, States are under the obligation to provide adequate medical and social assistance to all persons in need, both their own nationals as well as nationals of States Parties lawfully resident within their territory, on an equal footing. In addition, with reference to its Statement of Interpretation of Articles 13§1 and 13§4 (Conclusions 2013) regarding the scope of Articles 13§1 and 13§4 in terms of persons covered, the Committee considers that persons in an irregular situation in the territory of the State concerned are also covered under Article 13§1, rather than under Article 13§4, which was previously its practice.

The Committee henceforth examines whether the States who have accepted Article 13§1 ensure the right to:

- adequate social and medical assistance for their own nationals and for nationals of other States Parties lawfully resident within their territory on an equal footing;
- emergency social and medical assistance to persons unlawfully present in their territory.

Nationals of States Parties lawfully resident in the territory

In its previous conclusion the Committee found that foreign nationals of other States Parties, lawfully resident in Turkey were entitled to social and medical assistance on an equal footing with Turkish nationals only under condition of reciprocity. According to the report, social benefits are given to those who are in need and who meet certain criteria without reciprocity. These criteria are broken down in the "Social Assistance and Solidarity Encouragement Law" No. 3294, which, in its Article 1 provides that social assistance programmes shall be implemented for nationals who are in need and where necessary, for foreigners who come to Turkey, to ensure that income distribution is fairly managed by taking measures to reinforce social justice, to encourage social assistance and solidarity. According to the report, social

assistance and solidarity funds provide various types of social assistance for foreigners through Social Assistance and Solidarity Encouragement Foundation.

The Committee further notes that the Law No 6458 of 2013 on Foreigners and International Protection provides in its Article 2 that this Law shall be implemented without prejudice to provisions of international agreements to which Turkey is party. Furthermore, Temporary Protection Regulation was issued in accordance with Article 91 of the Law No. 6458, by the Directorate General of Migration Management in 2014. According to this Regulation, the foreigners who are in need may benefit from the social assistance in accordance with the procedures and principles to be determined by the Council of Social Assistance and Solidarity Encouragement Fund under the Law No 3294. In addition, the same Regulation enables foreigners who are in need to benefit from social services in accordance with the procedures and principles determined by the Ministry of Family and Social Policies.

The Committee asks whether nationals of States Parties lawfully resident in Turkey are entitled to social and medical assistance on an equal footing with nationals, without being subject to any length of residence requirement. In the meantime, the Committee reserves its position on this issue.

Foreign nationals unlawfully present in the territory

In its previous conclusion the Committee asked the next report to clarify what social and medical assistance was available to migrants in an irregular situation who are not considered to be "victims" and are not in a repatriation centre. It also asked what was the nature and extent of the assistance which is provided to unlawfully present foreigners and whether a specific legal basis exists for the provision of this form of assistance in cases of urgent need.

The Committee notes from the report that the Directorate General of Migration Management was established by the Law No. 6458 of 2013 on Foreigners and International Protection.This Law regulates the principles and procedures with regard to foreigners' entry, stay and exit from Turkey and the scope and implementation of the protection to be provided to foreigners who seek protection.

It is the responsibility of the Ministry of Family and Social Policies to determine the social assistance to be provided for foreigners under temporary protection, to determine the principles and procedures for granting these benefits, and to ensure that the social benefits are distributed equally and fairly.

In this connection, the Committee recalls that persons in an irregular situation must have a legally recognised right to the satisfaction of basic human material need (food, clothing, shelter) in situations of emergency to cope with an urgent and serious state of need. It likewise is for the States to ensure that this right is made effective also in practice (European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, §187).

The Committee cannot accept the necessity of halting the provision of such basic emergency assistance as shelter, guaranteed under Article 13 as a subjective right, to individuals in a highly precarious situation. The Committee has considered that even within the framework of the current migration policy, less onerous means, namely to provide for the necessary emergency assistance while maintaining the other restrictions with regard to the position of migrants in an irregular situation, remain available to the Government with regard to the emergency treatment provided to those individuals, who have overstayed their legal entitlement to remain in the country (Complaint No. 90/2013, Conference of European Churches (CEC) v. the Netherlands, decision on the merits of 1 July 2014, §123).

The Committee asks the next report to confirm that the legislation and practice comply with these requirements.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 13§1 of the Charter on the ground that it has not been established that the level of social assistance paid to a single person without resources is adequate.

Article 13 - Right to social and medical assistance

Paragraph 2 - Non-discrimination in the exercise of social and political rights

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

The Committee takes note of Law No 6701 on Human Rights and Equality Institution which entered into force on 20 April 2016 (outside the reference period). Article 3 of this law prohibits discrimination based on sex, race, colour, language, religion, belief, philosophical and political opinion, ethnicity, wealth, marital status, health status, disability and age.

In its previous conclusion (Conclusions 2013) the Committee noted that the beneficiaries of social and medical assistance are not exposed to any restriction in their political and social rights. The Committee asks the next report to provide updated information as regards whether the provisions enshrining the principle of equality and prohibiting discrimination in the exercise of political or social rights are interpreted in practice in such a way as to prevent discrimination on the basis of receipt of social or medical assistance.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Turkey is in conformity with Article 13§2 of the Charter.

Article 13 - Right to social and medical assistance

Paragraph 3 - Prevention, abolition or alleviation of need

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

The Committee recalls that Article 13§3 concerns free of charge services offering advice and personal assistance specifically addressed at persons without adequate resources or at risk of becoming so. The social services covered by Article 13§3 must play a preventive, supportive and treatment role. This means offering advice and assistance to make those concerned fully aware of their entitlement to social and medical assistance and how they can exercise those rights. In assessing national situations under this provision the Committee specifically examines whether there are mechanisms to ensure that those in need may receive help and personal advice services free of charge and whether such services and institutions are adequately distributed on a geographical basis. The Committee asks the next report to provide updated information on how these requirements are met in legislation and practice, whether by means of the Social Assistance and Solidarity Funds or otherwise.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Turkey is in conformity with Article 13§3 of the Charter.

Article 13 - Right to social and medical assistance

Paragraph 4 - Specific emergency assistance for non-residents

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

The Committee refers to its conclusion under Article 13§1 (personal scope) and recalls that Article 13§4 from now on will cover emergency social and medical assistance for nationals of States Parties lawfully present (but not resident) in the territory.

The Committee recalls that States Parties are required to provide non-resident foreigners, without resources, with emergency social and medical assistance. Such assistance must cover accommodation, food, clothing and emergency medical assistance, to cope with an urgent and serious state of need (without interpreting too narrowly the 'urgency' and 'seriousness' criteria). No condition of length of presence can be set on the right to emergency assistance (Complaint No 86/2012, European Federation of national organisations working with the Homeless (FEANSA) v. the Netherlands, decision on the merits of 2 July 2014, §171). The Committee asks the next report to confirm that these requirements are met.

As regards emergency medical assistance for foreign nationals, according to Article 98 of the Law no 2918 on Highway Traffic, all expenses for healthcare-related services provided by all public and private healthcare facilities and hospitals affiliated to universities, due to traffic accidents shall be reimbursed by the Social Security Institution within the framework of reimbursement rules and procedures for healthcare services, irrespective of whether the victim is covered under social security or not. The Committee asks whether medical emergencies, other than road accidents are treated in the same way as regards lawfully present foreign nationals without resources.

Conclusion

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

Article 14 - Right to benefit from social welfare services

Paragraph 1 - Promotion or provision of social services

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

Organisation of the social services

The Committee previously found that the situation in Turkey was not in conformity with Article 14§1 of the Charter on the ground that it had not been established that there existed an effective and equal access to social services (Conclusions 2013). It then took note of the information submitted by Turkey in response to this finding (Conclusions 2015) and noted that information was still lacking on any eligibility criteria for social services and the decision making procedure, including appeals possibilities, on the resources available to the social services (both financial and human) and on their geographical distribution. It recalled that figures were needed on the number of beneficiaries broken down by type of service, on staff and on expenditure. In the absence of this information the Committee reiterated its finding of non-conformity on the grounds that it had not been established that there existed an effective access to social services.

In response to the Committee's request for detailed information on the new legislation in force and its implementation (Conclusions 2013), the report states that the new Ministry of Family and Social Policy is responsible for providing social services in collaboration with municipalities, associations, foundations and private organizations.

The report focuses in particular on the organisation of social services for the elderly and disabled persons describing the different institutions (public and private care and rehabilitation centers, day care and home care support services).

The report indicates that a new law No. 6284 is in force from 8 March 2012 on the protection of the family and women victims of domestic violence. This new law provides protective measures against victims of violence and preventive measures for offenders or those likely to practice violence. The Law establishes Violence Prevention and Monitoring Centers (ŞÖNİM) the duties, powers and responsibilities of the personnel working in them, in particular "Psycho-social support services," "legal support services," "education support services," "health support services," and "call support" services are provided to the persons who are victims of violence.

The report provides information on the regulation on Social Service Centers (SSC) entered in force on 9 February 2013. The report underlines that SSC are institutions that work to assess and help the persons in need. They take the necessary measures to intervene in order to provide preventive, protective, supportive, and developmental services, guidance and counseling for different beneficiaries in the most appropriate and accessible way. They are also responsible for providing services in coordination with local authorities, universities, non-governmental organizations and volunteers when needed and facilitating coordination of these services. The SSC shall provide services that are supply-oriented as well as services upon application, on-site, with an integrated approach and monitoring capacity. The number of SSC have been determined considering geographical location of the districts, social and demographic structure and the existence of institutions and organizations that can cooperate in the provision of services. In 2015 there were 175 Social Service Centers in 81 provinces that contributed to give assistance to 1 267 304 beneficiaries.

Effective and equal access

The Committee previously requested (Conclusions 2013) clarifications as to how, generally speaking, decisions concerning the provision of social services were taken; it furthermore requested information on whether and how nationals of other States Parties had access to social services.

The report provides a partial answer by only mentioning the case of the elderly, disabled and unaccompanied children. The Committee, therefore, reserves its position on this point. 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 states that the law No. 6701 on Human Rights and Equality Institution of Turkey became effective with its publication in the Official Gazette dated 20 April 2016 No. 29690, (outside the reference period). The law aims to protect and develop human rights, to secure the right to equal treatment of persons on the basis of human dignity, and to prevent discrimination in the enjoyment of legally recognized rights and freedoms. Article 3 of this law prohibits discrimination based on age, sex, racial or ethnic origin, religion or belief, disability, philosophical and political belief, colour, language, wealth, birth, marital status and health conditions.

Quality of services

In its previous conclusion (Conclusions 2015), the Committee requested information on the geographical distribution of social services and on the qualification and number of staff in social services and to indicate the ratio of staff to users.

The report answers only in part, by mentioning some data on services for the elderly, disabled, children and people victims of domestic violence. There are SSC for the elderly and disabled in 64-63 provinces out of a total of 81. There are 159 specialised centers for disabled in 56 provinces. The report indicates that there are no data on children social services geographical distribution. The Committee notes that the statistical data provided are not sufficient to establish that staff working in social services is qualified and in sufficient numbers, and that the geographical distribution is sufficiently wide. Figures are needed on the number of beneficiaries broken down by type of service, on staff and on expenditure. In the absence of this information the Committee reiterates its finding of non-conformity.

As regards the supervision mechanisms in charge of ensuring the adequacy of services, public as well as private (see Conclusions 2013), the report indicates that public and private institutions are inspected on the basis of the provisions of the Regulation on the Presidency of the Inspection Services of the Ministry of Family and Social Policy, Social Services and Child Protection Agency Law No. 2828 and Regulation on Nursing Homes and Elderly Care and Rehabilitation Centers. The Ministry of Family and Social Policy inspectors and the provincial directorate personnel perform regular or unplanned inspections on institutions. In this respect, the Committee asks whether regular inspections are undertaken also in the social services provided by non governmental organisations and the impact of inspections activities on the improvement of quality of social services.

In response to the Committee's question (Conclusions 2013) as to whether there was any legislation on personal data protection, the report indicates that the Law on the Protection of Personal Data No. 6698 entered into force in March 2016, out of the reference period.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 14§1 of the Charter, on the ground that it has not been established that the number of social services staff is adequate and has the necessary qualification to match user's needs.

Article 14 - Right to benefit from social welfare services

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

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

In its previous conclusion (Conclusions 2015), the Committee took note of the information submitted by Turkey in response to the conclusion of non conformity with Article 14§2 of the Charter on the ground that it had not been established that the conditions under which non-public providers take part in the provision of welfare services were adequate (Conclusions 2013). The Committee noted that information was still lacking and requested detailed information on the types of social services provided by voluntary associations and individuals and on the number of beneficiaries of these services. It also wished to receive information on the public and/or private funding set aside for encouraging participation by voluntary associations and individuals in social services provision and on the results of the supervision carried out by the public authorities. Finally, it asked whether and how the users of social services were consulted on questions concerning the organisation and delivery of social services.

The Committee notes that the report provides only information on 159 special care centers for persons with disabilities opened by private entities and that voluntary associations, organizations and private people can cooperate as social service providers by participating to the construction or renting of the service building and providing the specialised staff. The report indicates that between 2010-2015, the Ministry of Interior provided support for 454 projects on social assistance run by private non-governmental organisations with a total amount of TRY 24 152 279. The Committee notes that the current report does not answer its questions and therefore considers that, in view of the lack of information, it has not been established that the conditions under which non-public providers take part in the provision of welfare services are in conformity with Article 14§2 of the Charter.

The Committee furthermore previously asked (Conclusions 2013) whether and how the Government ensures that services managed by the private sector are effective and are accessible on an equal footing to all, without discrimination at least on grounds of race, ethnic origin, religion, disability, age, sexual orientation and political opinion. It also asked information on the financial measures taken to promote the activities of voluntary organisations.

As the report does not answer to these questions, the Committee repeats them and reserves in the meantime its position on this point. 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

The Committee concludes that the situation in Turkey is not in conformity with Article 14§2 of the Charter on the ground that it has not been established that the conditions under which non-public providers take part in the provision of welfare services are adequate.

Article 23 - Right of the elderly to social protection

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

Legislative framework

The Committee takes note of the information provided concerning the implementation programme on the situation of elderly persons in Turkey and the ageing national action plan and asks in this respect to be kept informed about the practical measures taken and their results.

The Committee would point out that the main aim of Article 23 of the Charter is to enable elderly persons to remain full members of society and it consequently invites the States Parties to make sure that they have appropriate legislation, firstly to combat age discrimination outside employment and, secondly, to provide for a procedure of assisted decision-making.

With regard to combating age discrimination, the Committee notes from the report that Article 3 of Law No. 6701 on the Human Rights and Equality Institution prohibits age discrimination but that the said law entered into force outside the reference period. The Committee therefore considers that the situation was not in conformity with the Charter during the reference period. It asks the next report to contain information on this new Law as well as its implementation in practice.

With regard to assisted decision-making for the elderly, the Committee asked in its previous conclusions (Conclusions 2009 and 2013) whether such a procedure existed and, in particular, whether there were safeguards to prevent the arbitrary deprivation of autonomous decision-making by the elderly. As the report does not provide any information on this subject, the Committee reiterates its question and considers that, in the meantime, it has not been established that such procedure exists.

Adequate resources

When assessing adequacy of resources of elderly persons under Article 23, the Committee takes into account all social protection measures guaranteed to elderly persons and aimed at maintaining an income level allowing them to lead a decent life and participate actively in public, social and cultural life. In particular, the Committee examines pensions, contributory or non-contributory, and other complementary cash benefits available to elderly persons. These resources are then compared with median equivalised income. However, the Committee points out that its task is to assess not only the law, but also the compliance of practice with the obligations arising from the Charter. For this purpose, the Committee will also take into consideration relevant indicators relating to at-risk-of-poverty rates for persons aged 65 and over.

The Committee notes from the report that the poverty threshold, calculated as 50% of the median value of the consumption expenditure per equivalent household, was TRY 6 246 in 2015 (TRY 520.50 per month, or €163.28). The Committee will take this indicator into account when assessing the adequacy of income-replacement benefits.

The Committee notes from MISSCEO that the minimum pension for civil servants was no less than TRY 1 455.52 (approximately €456.60) at the end of 2015. For other workers, the minimum pension was TRY 462 (approximately €144.93) at the end of 2015. The Committee nevertheless notes that the information in the report refers to a minimum pension of TRY 535.10 (approximately €168) in 2015. The Committee notes that this is substantially higher than the above-mentioned poverty thresholds and points out that it previously (Conclusion 2013) requested clarification in this respect. As there is no information on the subject in the report, the Committee reiterates its question. It also asks for information concerning the pensions paid to elderly persons under Laws Nos. 1479 and 2926.

The Committee also asked for information on the conditions for entitlement to the minimum pension as well as the share of elderly persons in receipt of such a pension as well as full information on all assistance available to elderly persons not in receipt of a pension, including information on the conditions for receipt of such assistance. The report provides no information on the conditions for entitlement but indicates that 8 534 000 elderly persons have received an old-age pension in 2015. The Committee further notes from the report that in accordance with Law No. 2022 as amended, the elderly in need and their spouse receive an aid amounting to TRY 217.48 per month (i.e. approximately €68.22). 546 207 seniors received this benefit in 2015.

In the meantime, the Committee reserves its position on this point.

Prevention of elder abuse

In its previous conclusion (Conclusions 2013), the Committee requested information on the measures taken to prevent elder abuse and what the authorities were doing to evaluate the extent of the problem and to raise awareness of the need to eradicate elder abuse and neglect. The report states that trainings on the elimination of elder neglect and abuse have been provided to service providers and elderly persons. A survey covering 2013-2014 was also conducted on the identification of neglect and abuse victims in nursing homes of the Ministry of Family and Social Policy. The Committee takes note of the information provided on the subject in the report and asks what measures have been taken or are planned to remedy the situation.

The report also indicates that, under the implementation programme on the situation of elderly persons in Turkey and the ageing national action plan, it is planned to set up a specialised support and advisory service on the issues of neglect, abuse and violence, to introduce new regulations on preventing elder abuse, to provide training on the subject and to establish mechanisms for reporting such abuse. The Committee notes that the planned regulations have still not been introduced since the previous reference period. The Committee requests that the next report provide details on the content of the draft legislation and its expected timeframe for adoption.

The Committee also notes from the report that violence prevention and monitoring centres (ŞÖNİM) exist. It requests that the next report indicate whether these centres are authorised to deal with issues relating to cases of elder abuse.

Services and facilities

The Committee points out that, although Article 23 makes reference only to information about services and facilities, it presupposes that such services and facilities exist.

With regard to the services and facilities themselves, the Committee asked in its previous conclusions (Conclusions 2009 and 2013) whether, in general, the supply of home help services for the elderly match the demand for them, how their quality is monitored and if there is a possibility for elderly persons to complain about services. Furthermore, it asked whether the extent of their provisions differ from one municipality to another and whether there is a charge for any of these services. The report states that Turkish municipalities have duties and responsibilities for providing services for elderly persons. The services provided by municipalities vary between regions and depending on the needs of the persons concerned; They include benefits in kind and financial aid, home health services, home technical services (maintenance, repairs and renovation, etc.), house cleaning, personal hygiene, catering, assignment of accompanying persons, social support services (cultural events and sightseeing) and psychological support.

The report further states that inspectors from the Ministry of Family and Social Policy and staff from provincial directorates conduct regular inspections, whether planned or unannounced, of both public and private service providers. The findings of the inspections

are notified to the institutions concerned, which must take the necessary steps to remedy any problems identified. If the latter persist, penalties are applied and the institutions concerned may be closed by order of the Ministry.

While taking note of this information, the Committee nevertheless notes that the report does not answer the questions whether the supply of home help services for the elderly matched the demand for them, whether the extent of their provisions differ from one municipality to another and whether there is a charge for any of these services and, therefore, reiterates them. It underlines that if the relevant information is not provided in the next report, there will be nothing to show that the situation is in conformity with the Charter in this respect.

The Committee also asked for more information on any services or facilities (such as respite care) for families caring for elderly persons, in particular highly dependent persons, as well as on any particular services for those suffering from dementia. The Committee takes note of the information in the report, including those relating to the Support Program for Elderly entitled "YADES", which entered into force outside the reference period, and requests to be informed of the implementation of this program. It also asked whether temporary care centres and public day-care services are available for elderly persons' families. The Committee also notes from the report that the social service centres under the Ministry of Family and Social Policy offer solutions to psychosocial and socioeconomic problems of elderly persons as well as consultancy and guidance services to increase social solidarity and promote active ageing.

With regard to measures to inform people about the existence of services and facilities, the Committee asks the next report to provide information on this matter.

Housing

The Committee previously asked whether a housing policy had been designed for those elderly persons living in their own homes. The Committee notes from the report that the implementation programme on the situation of elderly persons in Turkey and the ageing national action plan includes a section on housing.

The Committee also asked (Conclusions 2013) whether the needs of elderly persons were taken into account in national or local housing policies, whether adequate sheltered/supported housing was provided, whether the supply of such housing was sufficient and whether assistance for home adaptation was available. The report states that housing policy for the elderly in Turkey is aimed at enabling them to stay in their own homes for as long as possible. The Committee asks what share of persons aged 65 years and over remain in their own homes.

The report states that persons aged 65 years and over who live in old, neglected or substandard houses are entitled to financial support within the scope of housing aid from the Social Assistance and Solidarity Fund to refurbish their homes or build new ones. The Committee notes that the grants are means-tested. The persons concerned must also be able to prove that they have been living in the relevant dwelling for at least five years. The Committee requests that the next report indicate whether other types of housing benefit exist.

The report also indicates that 25% of housing projects carried out by the Housing Development Administration (TOKİ) are allocated to elderly persons. A payment system suited to elderly persons has been introduced, under which 7 717 houses payable in monthly instalments starting from TRY 250 (approximately €78.42) for up to 240 months have been made available for sale to elderly persons who do not have their own housing.

The Committee notes that a new type of specialised housing is available for elderly persons: houses for the elderly. The aim of the dwellings concerned is to enable elderly persons to remain in their own homes while receiving care and enjoying a higher standard of living. The dwellings may either be attached to existing retirement homes, in which case the needs and

expenditure of the elderly persons are covered by the relevant home, or be stand-alone. The Committee asks the next report to indicate how many elderly persons benefit from such dwellings, what the overall capacity is and what they cost when the elderly persons themselves have to pay.

Health care

The Committee previously asked (Conclusions 2013) for more information about health care programmes and services specifically aimed at the elderly, in particular mental health programmes, palliative care services and training for individuals caring for elderly persons. It also asked for information on any new measures taken to improve the accessibility and quality of geriatric and long-term care or the co-ordination of the social and health care services in respect of the elderly. The Committee notes from the report that the Turkey Healthy Ageing Action Plan and Implementation Programme 2015-2020 is aimed, among other things, at the development of health services, including specialised care services geared to the needs of elderly persons, and ensuring their accessibility. The Committee wishes to be informed of the practical measures and the results of this policy.

With regard to the co-ordination of health care services, the Committee also notes that a protocol on the implementation of health care and social support services at home at provincial level was signed in March 2015 and then distributed to municipalities for application. The Committee asks the next report to further indicate what rules and measures this protocol imposes on local authorities and how they are monitored.

Institutional care

The report states that institutional care nursing homes may be provided by public or private-sector providers. In this respect, the Committee takes note of the exhaustive list of the various categories of care institutions provided in the report.

The Committee also takes note of the statistics provided in the report but notes that they refer to a date outside the reference period.

As regards public institutions, the Committee in its previous conclusion (Conclusions 2013) asked for further information on the fees charged and the independence of the inspection bodies. The report states that the fees are determined annually by the General Directorate of Disabled and Elderly Services, depending on the type of institution, the type of room and the personal situations of the elderly persons. Discounts and exemptions may nevertheless be granted to elderly persons on low income.

Public institutions are inspected by inspectors and officials from the Ministry of Family and Social Policy by means of auditing and guidance activities performed independently. The Committee asks for more information on the status of these inspectors and officials. It also asks whether procedures exist for complaining about the standard of care and services or about ill-treatment in this type of institution.

As regards private institutions, the Committee also asked for information on how fees were set, how the facilities were licensed and whether procedures existed for complaining about the standard of care or services or about ill-treatment in this type of institution. The report states that the monthly fees for private care institutions are determined by a commission, in accordance with the regulation on private nursing homes and nursing home elderly care centres. Private institutions are inspected once a year by inspectors from the Ministry of Family and Social Policy and twice a year by officials from the provincial directorate who, on the basis of their inspections and relevant notifications, may order the closure of the institutions if neglect, exploitation, violence or breaches of legislation or moral rules are determined.

Lastly, the Committee asked for information on whether and how the rights of elderly persons living in institutions were safeguarded – in particular, the right to appropriate care

and services, the right to privacy, to personal dignity, to maintain personal contacts, to participate in decisions concerning living conditions in their institution and to complain about ill-treatment. The Committee notes that, apart from the right to maintain personal contacts, the report does not provide any other information, and therefore reiterates its request.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 23 of the charter on the grounds that:

- during the reference period, there was no anti-discrimination legislation;
- it has not been established that there is an assisted decision-making procedure for elderly persons.

Article 30 - Right to be protected against poverty and social exclusion

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

Measuring poverty and social exclusion

The main indicator used by the Committee to measure poverty is the relative poverty rate. This corresponds to the percentage of people living under the poverty threshold, which is set at 60% of the equivalised median income. The Committee takes note of the detailed explanation in the report on the indicators used by the Turkish Statistical Institute (TURKSTAT) to measure poverty and social exclusion (indicators based on the one hand on "income" and on the other hand on "expenditure").

In 2015, according to the report, the at-risk-of-poverty rate (cut-off point: 60% of median equivalised income after social transfers) stood at 21.9% having decreased slightly from 22.7% in 2012. The trend is confirmed by Eurostat which puts the poverty rate at 22.5% in 2015 down from 23.7% in 2012. Before social transfers the poverty rate was 24.2% having decreased from 25.3% in 2012. It would thus appear that the positive effect of social transfers is quite limited. In addition, the European Semester headline poverty indicator (which includes persons suffering severe material deprivation and people aged 0-59 living in households with very low work intensity) stood at 41.3% in 2015.

The Committee notes from the European Commission Staff Working Document,Turkey 2016 Report (SWD(2016) 366 final) that contrary to recent years, poverty indicators show no improvement in reduction of social inequalities. Severe material deprivation persists, especially for Roma children, and it is higher in the eastern regions. People with disabilities are at high risk of social exclusion and poverty; measures to increase their employment have been ineffective (the public sector’s employment rate for people with disabilities is around 2%). According to the European Commission report the severe material deprivation rate, after having fallen significantly from 59.4% in 2010 to 29.4% in 2014 again increased slightly in 2015 to 30.3%.

With regard to the lack of information on the situation of ethnic minorities and single mothers, the report states that the authorities do not collect, maintain or use either qualitative or quantitative data on ethnicity for reasons of privacy and non-profiling.

Finally, the Committee notes that although overall poverty rates have decreased very slightly during the reference period, they remain at a high level and in certain regions and for certain groups (notably persons with disabilities and Roma) the situation is particularly serious.

Approach to combating poverty and social exclusion

The Committee takes note of the information on certain legislative measures taken during the reference period, including an amendment of the Revenue Tax Law, No. 193, which provides for tax reductions for persons with mental disabilities in order to protect the most disadvantaged persons against social exclusion as well as a new regulation (No. 28554/2013) on social service centres. It defines the procedures and principles related to the establishment and operation of the social service centres affiliated to the Ministry of Family and Social Policies and to the assignment of duties, competences and responsibilities of the staff working at these centres. According to the report, the regulation aims at achieving a more holistic and verifiable social service approach.

The reports asserts that Turkey has taken significant steps in combating poverty and inequalities. A more comprehensive social security system and a more efficient and extensive social support system have been installed in the country. The share of the population covered by social security insurance has risen to 85.5% in 2015 from 83% in 2012. As of 1 January 2012, general health insurance became compulsory and all citizens are covered by general health insurance. Social assistance programmes have been increased to promote persons in, or at risk of finding themselves in, a situation of poverty or

social exclusion. In these respects, the Committee refers to its conclusions in particular under Articles 12§1 (social security), Article 13§1 (social assistance) as well as under Article 11 (health).

The report further states that many projects have been developed for people who are at risk of social exclusion. EU funded projects such as “Improving Social Integration and Employability of Disadvantaged Persons”, “Promoting Social Inclusion in Densely Roma Populated Areas” “Coordination and Training for Employment Project 4" have entered the implementation phase.

The National Strategy on Social Inclusion of Roma Citizens for the period 2016-2021 and its Action Plan was adopted on 26 April 2016. The Strategy is composed of 5 main policy areas; education, employment, housing, health, social assistance and social support services, and it will be implemented through three-year action plans. The National Roma Integration Strategy aims *inter alia* at increasing the effectiveness of social inclusion policies, enhancing access to general public services, combating discrimination and preventing hate crimes and ensuring social participation on the basis of a strengthened civil society. Basic implementation principles such as antidiscrimination, equal treatment, participation of civil society and a regional policy approach are also set forth as strategic targets. Funds for the implementation of the projects in the framework of the Strategy and Action Plans will be provided by the respective governmental institutions’ own budgets. A Monitoring and Evaluation Board will be established to monitor the implementation of the policies formulated in the National Strategy Document.

The report also states, regarding institutional arrangements, that the establishment of the Ministry of Family and Social Policy in 2011 created a unified system in which the division of tasks and functions are clearer and the problem of ambiguity that that tended to diffuse responsibilities have been overcome. The Ministry has brought institutions responsible for social assistance and social care services together within the framework of a coordinated and overall approach.

The Committee notes the information on the budgetary resources allocated and the number of beneficiaries in areas such as income support, access to health, access to housing, access to food and access to education. In order to assess the trend in this respect, it asks that the next report provide these data for each year of the reference period. It also notes that in the period under examination (2012-2015) expenditure for social assistance (public) was increased by 40.5% and the share of social assistance in GDP increased from 1.18% to 1.37%.

According to European Commission analysis (see the abovementioned Turkey 2016 Report) the most recent developments have not led to reduction of social inequalities and severe material deprivation persists and from the same source the Committee notes that social protection expenditure represents just over 14% which is well below the European Union average (close to 20%). It also notes that almost half of social protection expenditure is allocated to old age pensions, whereas income support for the working-age population is still comparatively low, despite recent increases in social assistance spending. Finally, it notes the relatively limited positive effect of social transfers.

While noting the information provided and despite the role now played by the Ministry of Family and Social Policy, it appears to the Committee on the basis of the information at its disposal that the measures referred to are not situated in an explicit strategic framework (excepting the Roma strategy) and it does not see clear evidence or indication of how they add up to an overall and coordinated approach to combating poverty and social exclusion. It therefore asks that the next report contain information specifically on the strategic framework as well as information on the existence of coordination mechanisms for the various measures, including at delivery level (that is, how coordination is ensured in relation to the individual beneficiaries of assistance and services). It also asks that the next report contain

detailed data demonstrating that the budgetary resources allocated to combating poverty and social exclusion are sufficient in view of the scale of the problem at hand.

The Committee further refers to its conclusions of non-conformity under other provisions of the Charter which are relevant to its assessment of compliance with Article 30 (see Conclusions 2013, Statement of interpretation on Article 30). It refers in particular to:

- Article 12§1 and its conclusion that it has not been established that the existing social security schemes cover a significant percentage of the population (Conclusions 2017);
- Article 13§1 and its conclusion that it has not been established that the level of social assistance paid to a single person without resources is adequate (Conclusions 2017);
- Article 14§1 and its conclusion that it has not been established that the number of social services staff is adequate and has the necessary qualification to match user's needs (Conclusions 2017);
- Article 10§4 and its conclusion that it has not been established that special measures for the retraining and reintegration of the long-term unemployed have been effectively provided or promoted (Conclusions 2016);
- Article 15§2 and its conclusion that it has not been established that persons with disabilities are guaranteed effective protection against discrimination in employment and that the legal obligation to provide reasonable accommodation is respected (Conclusions 2016);
- Article 16 and its conclusion that there is no general system of family benefits (Conclusions 2015);
- Article 31§2 and its conclusion that there are no effective measures to reduce and prevent homelessness (Conclusions 2015); it has not been established that adequate eviction procedures exist and it has not been established that the right to shelter is guaranteed (Conclusions 2015 and 2017);
- Article 31§3 and its conclusion that it has not been established that there are remedies with respect to excessive waiting periods for the allocation of social housing (Conclusions 2015 and 2017) and that the majority of qualified households receive housing benefits in practice (Conclusions 2015).

Taking into account all of the above, in particular the high poverty rates, the relatively low spending levels and the assessments made under other provisions of the Charter, the Committee considers that the situation is in breach of Article 30 as there is no adequate overall and coordinated approach to combating poverty and social exclusion.

Monitoring and evaluation

The report refers to the Social Assistance and Solidarity Foundations which were established in each province and district. It states that these foundations provides services from the nearest point to the target group so as to identify needy people quickly and understand their needs locally. Thus, these foundations serve as a bridge between the state and poor citizens, in terms of direct and immediate delivery of social benefits to citizens. The foundations are are private law legal entities governed by boards of trustees and chaired by province and sub-province governors and also include elected mayors, village and district headman, NGO representatives, charitable citizens in addition to appointed directors of governmental institutions and ministries. According to the report, this governing structure allows fair and impartial distribution of social assistance in a rapid and flexible manner.

The Committee asks that the next report explain in more detail whether and how the Social Assistance and Solidarity Foundations may contribute to monitoring and evaluation in the meaning of Article 30.

Moreover, as noted above a Monitoring and Evaluation Board will be established to monitor the implementation of policies for the social inclusion of Roma.

The Committee asks that the next report provide information on monitoring and evaluation of the efforts to combat poverty and social exclusion, both with respect to the overall level and in relation to other areas than social assistance. The Committee wishes in particular to be informed about any evaluations of the efforts and about any measures taken to act upon such evaluations. The Committee recalls in this respect that Article 30 of the Charter requires the existence of monitoring mechanisms for reviewing and adapting the efforts in all areas and sectors, at all levels, national, regional, local, to combat poverty and social exclusion; mechanisms which should involve all relevant actors, including civil society and persons directly affected by poverty and exclusion (see Conclusions 2003, France, Article 30).

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 30 of the Charter on the ground that there is no adequate overall and coordinated approach to combating poverty and social exclusion.

CONCLUSIONS RELATING TO CONCLUSIONS OF NON-CONFORMITY DUE TO A REPEATED LACK OF INFORMATION IN CONCLUSIONS 2015

Article 7 - Right of children and young persons to protection

Paragraph 5 - Fair pay

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

Apprentices

The Committee takes note of the information submitted by Turkey in response to the conclusion that it had not been established that the allowances paid to apprentices were appropriate.

The Committee recalls that under Article 7§5 of the Charter, apprentices may be paid lower wages, since the value of the on-the-job training they receive must be taken into account. However, 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 (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).

In its previous conclusion (Conclusions 2015) the Committee noted that no information was provided concerning the wages paid to apprentices in practice. The report did not contain any information evidencing that apprentices receive at least one third of the adult minimum or starting wage at the beginning of apprenticeship. Moreover, no information was provided on the amount of the allowance paid to apprentices at the end of the apprenticeship. Given the lack of information, the Committee concluded that the situation was not in conformity with Article 7§5 of the Charter on the ground that it had not been established that the allowances paid to apprentices were appropriate.

The Committee notes from the current report that according to Article 25 of the Law on Vocational Education No 3308 wages and wage rise that shall be paid to apprentices and trainees shall be set by an agreements between parents of the apprentice, school board for students and the owner of the business. The wage that shall be paid however cannot be less than 30% of the net minimum wage in enterprises with 20 or more employees and not less than 15% in enterprises with less than 20 employees. The wages of the apprentices cannot be less than 30% of the minimum wage. The Committee asks whether the wages are gradually increased to arrive at least at two-thirds of the minimum wage at the end of the apprenticeship. It also asks for information on apprentices wages in practice. It reserves in the meantime its position on this point.

The Committee recalls that the situation concerning other aspects covered by Article 7§5 will be examined in the framework of the regular reporting cycle (Conclusions 2019) and asks that relevant and updated information be provided in that context.

Conclusion

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

Article 7 - Right of children and young persons to protection

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

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the information submitted by Turkey in response to the conclusion that it had not been established that the time spent in vocational training by young workers was included in the normal working time and remunerated as such.

The Committee recalls that in application of Article 7§6, time spent on vocational training by young people during normal working hours must be treated as part of the working day (Conclusions XV-2 (2001), Netherlands). Such training must, in principle, be done with the employer's consent and be related to the young person's work. Training time must thus be remunerated as normal working time, and there must be no obligation to make up for the time spent in training, which would effectively increase the total number of hours worked (Conclusions V (1977), Statement of Interpretation on Article 7§6). This right also applies to training followed by young people with the consent of the employer and which is related to the work carried out, but which is not necessarily financed by the latter. Given the lack of information, the Committee considered that the situation is not in conformity with Article 7§6 of the Charter on the ground that it has not been established that the time spent in vocational training by young workers was included in the normal working time and remunerated as such.

According to the report, working conditions and the types of jobs where a child and young workers can be employed are governed by the Regulation on the Procedures and Principles of Employment of Children and Young Workers of 06 April 2004. Article 7 (times that count as part of daily work periods) indicates the time that counts as part of daily work period, in addition to the time which counts as part of daily work periods pursuant to Article 66 of the Labour Law No 4857. Namely, periods spent in training which the employer must provide, periods spent in courses and meetings which the employer sends employees to outside the workplace and periods in vocational training programmes arranged by the authorised institutions and establishments, shall count as working periods.

In light of this information, the Committee holds that the situation is in conformity with Article 7§6 of the Charter on this point.

Conclusion

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

Article 7 - Right of children and young persons to protection

Paragraph 10 - Special protection against physical and moral dangers

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

Protection against sexual exploitation

The Committee takes note of the information submitted by Turkey in response to the conclusion that it had not been established that child victims of sexual exploitation could not be prosecuted. The Committee notes that as regards child victims of sexual exploitation, procedures relating to the child assessed as victim are carried out in accordance to the Child Protection Law No 5395 of 2005. Victims who are designated as children are guided to the relevant units of the Ministry of Family and Social Policy. The Child Police who are in charge of all judicial and administrative actions concerning delinquent children or child victims of crime, are involved in trainings in the fields of child abuse and investigation.

The Committee recalls that under Article 7§10 children, victims of sexual exploitation should always be treated as victims rather than criminals by the law enforcement and judicial authorities. There should be a a clear obligation of non-prosecution in the criminal justice system. Child victims of criminal practices, including children involved in prostitution, should be treated exclusively as victims in need of recovery and reintegration and not as offenders. The Committee considers that the information provided by Turkey again fails to clarify the national situation in this respect. Therefore, the Committee reiterates its previous finding of non-conformity on the ground that it has not been established that child victims of sexual exploitation are not treated as offenders.

The Committee recalls that the situation concerning other aspects covered by Article 7§10 will be examined in the framework of the regular reporting cycle (Conclusions 2019) and asks that relevant and updated information be provided in that context.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 7§10 of the Charter on the ground that it has not been established that child victims of sexual exploitation cannot be prosecuted.

Article 8 - Right of employed women to protection of maternity

Paragraph 2 - Illegality of dismissal during maternity leave

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the information submitted by Turkey in response to the conclusion that it had not been established that adequate compensation is provided for in cases of unlawful dismissal during pregnancy or maternity leave.

The Committee recalls in this connection that, under Article 8, paragraph 2 of the Charter, the reinstatement of employees unlawfully dismissed during pregnancy or maternity leave should be the rule and that, where this is not possible (e.g. if the enterprise has closed down or the employee concerned does not wish to be reinstated), adequate compensation must be available. Domestic law must not prevent courts from awarding a level of compensation that is sufficient both to deter the employer and fully compensate the victim of dismissal.

In particular, the Committee had repeatedly asked whether the ceilings to compensation provided for in the Labour Act (Sections 17 and 21) covered compensation for both pecuniary and non-pecuniary damage or whether unlimited compensation for non-pecuniary damage could also be sought by the victim through other legal avenues (e.g. anti-discrimination legislation). It also asked whether both types of compensation were awarded by the same courts, and how long it took on average for courts to award compensation.

In response to the Committee's questions, the report recalls that, in case of violation of the right to termination of employment, the Labour Code provides that the employer must pay a compensation amounting to three times the cost corresponding to the term of notice in case (Article 17) and between 4 and 8 months' wages if, despite the employee's request, the employee is not reinstated (Article 21). According to the report, if the termination of employment is found to be discriminatory (Article 5), the employee can claim up to four months' wage compensation plus any other benefits, bonus, wage increases etc. that the employee might have lost because of the abusive termination of employment. However, the report indicates that the doctrine is divided as to whether compensation for discrimination can be claimed together or in addition to compensation for loss of employment, and states that in any case a claim for moral damages could not be made under the provisions of the Labour Code, but rather under the general provisions of the Civil Code and Code of Obligations concerning infringements against the person. In this case, according to the report, the ceilings to compensation provided by Articles 17 and 21 of the Labour Law would not apply.

The Committee asks the next report to provide relevant examples of case-law demonstrating that, under the Civil Code and Code of Obligations, it is effectively possible for an employee illegally and discriminatorily dismissed during pregnancy to obtain compensation for moral damage, without reference to the ceiling provided under the Labour Law. It holds that, should this information not be provided, there will be nothing to establish that the situation is in conformity with the Charter on this point. It reserves in the mean time its position on this issue.

The report also indicates that cases contesting termination of employment are decided by the labour courts, unless the parties agree to refer the case to private arbitration, and this is provided for in the collective agreement. The labour courts must decide within two months and, if their decision is appealed, the Court of Cassation must issue its final judgment within one month.

As regards the information provided in the report, concerning the other grounds of non-conformity found in Conclusions 2015, the Committee will examine such information in the framework of its next regular assessment of compliance with Article 8§2 of the Charter

(Conclusions 2019) and invites the authorities to provide at that occasion all relevant and updated information. The same applies in respect of the information concerning the new legislation which was adopted and entered into force in 2016, out of the reference period, and which extends maternity and parental rights (Law No. 6663) and prohibits discrimination (Law No. 6701).

Conclusion

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

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

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31st October 2016 on conclusions of non-conformity for repeated lack of information in conclusions 2015.

The Committee takes note of the information submitted by Turkey in response to the conclusion that it had not been established that associations representing families were consulted when family policies are drawn up.

The Committee recalls that to ensure that families' views are catered for when family policies are framed, the authorities must consult associations representing families.

In this regard, the report states that Family Councils were established by the Regulation on Family Councils (Official Journal on 31 July 1990) and subsequently amended since then. Family Councils aim to gather and discuss the views of universities, voluntary organisations, other public institutions, and organisations involved in family issues. They also take position on principles and programs that need to be included when the national policy on family affairs are framed. The Committee asks the next report to provide further information on the membership of those Family Councils, the frequency of their meetings as well as the impact of their report on the policies adopted by the competent authorities. In the meantime, it reserves its position on this matter.

The Committee recalls that the situation concerning other aspects covered by Article 16 will be examined in the framework of the regular reporting cycle (Conclusions 2019) and asks that relevant and updated information be provided in that context.

Conclusion

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

Article 17 - Right of children and young persons to social, legal and economic protection

Paragraph 1 - Assistance, education and training

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the information submitted by Turkey in response to the conclusions that: it had not been established that the maximum length of a pre-trial detention was not excessive and that minors were always separated from adults in prisons.

Young offenders

As regards pre-trial detention of minors, in its previous conclusion the Committee recalled that the criminal procedure relating to children and young persons must be adapted to their age and proceedings involving minors must be conducted rapidly. Minors should only exceptionally be detained pending trial for serious offences, for short period of time and should in such cases be separated from adults. The Committee asked what was the maximum length of a pre-trial detention and whether young offenders were always separated from adults.

The Committee notes from the report that for a pre-trial detention to take place, there must exist a strong suspicion of a person having committed a crime. According to Article 20 of the Child Protection Act No.5395, in cases where the judicial control decision produces no result or there has been non-compliance with such decisions, a detention decision may be given. In accordance with Article 21 of the same Act, no detention decision may be given for children under the age of 15 for criminal acts requiring prison sentences not exceeding five years at most. The same provision exists in Article 11 of the Regulation on Principles and Procedures Concerning the Implementation of the Child Protection Act. The Committee notes that the information provided in the report does not reply to its question concerning the maximum permissible length of detention of minors who are remanded in custody pending trial. Therefore, the Committee reiterates its previous finding of non-conformity on this ground.

As regards separation of minors from adults, according to the report, Articles 11, 15 and 111(3) of the Act No.5275 on the Execution of Sentences and Security Measures require that children should be separated from adults and the detainees from the convicts. Detained children are kept in the closed penitentiary institutions for children or in the provinces where there is no such institution, in the separate units of the closed penitentiary institutions for adults. When there is no separate unit for detained girls in the closed penitentiary institutions for children, these girls are housed in the separate units reserved for them in the closed penitentiary institutions for women. Convicted children are housed in the child educational facilities. The Committee asks whether minors in pre-trial detention are also separated from adults. It reserves in the meantime its position on this point.

The Committee recalls that the situation concerning other aspects covered by Article 17§1 will be examined in the framework of the regular reporting cycle (Conclusions 2019) and asks that relevant and updated information be provided in that context.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 17§1 of the Charter on the ground that it has not been established that the maximum length of pre-trial detention of minors is not excessive.

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

Paragraph 1 - Assistance and information on migration

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

The Committee takes note of the information submitted by Turkey in response to the conclusion that it had not been established that migrant workers were provided with free assistance services and information.

In its previous conclusion (Conclusions 2015), the Committee took note in particular of the fact that information relevant to migrants (on work permits etc.) was provided via a telephone helpline (YİMER ALO 170) and via a website of the Ministry of Labour and Social Security. However, the Committee considered that such services were inadequate, insofar as the information provided on the website was only available in Turkish. It accordingly required a more comprehensive description of the services and information available in all formats to migrant workers.

The report refers again to the Foreigners Communication Centre (YİMER ALO 170) which was established within the Directorate General of Migration Management and became operational on 20 August 2015 to deliver effective, continuous and rapid service to foreigners 7/7 days, 24 hours, and respond to all questions and problems of foreigners in Turkish, Arabic, English, Russian, German and Persian. The report indicates that as of 22 September 2016 (out of the reference period), the helpline had received 839 228 calls, mostly concerning requests for information, and had answered 53% of them. The report also indicates that the hotline which provides assistance to victims of human trafficking YİMER 157), since 20 August 2015 is also providing 7/7 days, 24 hours information in Turkish, English, Arabic, Russian, German and Persian with regard to visa, residence, international and temporary protection.

According to the report, migrant workers can also obtain information, free of charge, from the Centre, hotline and provincial directorates of Migration Management as well as through mechanisms such as BİMER (The Prime Ministry Communications Centre) and CİMER (The Presidency Communications Centre). The report furthermore states that, within the scope of a project carried out with IOM, a web site (workinturkey.gov.tr) was designed to facilitate the provision of information for migrant workers and employers. According to the report, the website is available in 5 languages and a related mobile telephone application has been designed.

The Committee notes that the situation as regards the provision of information to migrant workers has not significantly changed: the provision of telephone helplines is a valuable service, but the information provided does not allow to conclude that it is sufficient to respond to the needs of migrant workers (almost half of the requests, according to the report, are not answered and the report does not provide any information which would prove that migrant workers are well aware of the existence of the helpline). As for the resources and services available online, the Committee notes once more that, contrary to what is stated in the report, the websites mentioned are only available in Turkish and do not appear, therefore, to be adequate to the needs of information of migrant workers.

In the light of the information provided, the Committee considers that the situation remains not in conformity with Article 19§1 of the Charter, as it has not been established that migrant workers are provided with adequate free assistance services and information.

The Committee recalls that the situation concerning other aspects covered by Article 19§1 (including measures taken to combat human trafficking and protect victims, as detailed in the report), will be examined in the framework of the regular reporting cycle (Conclusions 2019) and asks that relevant and updated information be provided in that context.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 19§1 of the Charter on the ground that it has not been established that migrant workers are provided with adequate free assistance services and information.

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

Paragraph 7 - Equality regarding legal proceedings

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

The Committee takes note of the information submitted by Turkey in response to the conclusion that it had not been established that migrant workers are guaranteed equal treatment with regard to legal proceedings, in particular to legal aid.

In its previous conclusion (Conclusions 2015), the Committee had reiterated its request for information (see Conclusions 2011 and 2015) as to whether domestic legislation makes provision for migrant workers who are involved in legal or administrative proceedings and who do not have counsel of their own choosing to be advised to appoint counsel and, whenever the interests of justice so require, be provided with counsel, free of charge if they do not have sufficient means to pay the latter; whether migrant workers may have the free assistance of an interpreter if they cannot properly understand or speak the national language used in the proceedings and have any necessary documents translated; whether such assistance is also available for obligatory pre-trial hearings.

As regards criminal procedure, the report mentions that legal aid is provided upon request, and in some cases ex officio, in conformity with the Code of Criminal Procedure, but does not provide any clear answer to the question of whether this applies to a foreigner on the same basis as for a national and whether or how the free assistance of an interpreter is guaranteed. In this respect, the report only refers to the provision of translation or interpretation in the framework of the probation system, but does not clarify whether interpretation can be guaranteed to foreigners as from the pre-trial (investigations) stage of the procedure, free of charge.

As regards civil procedure, the report reiterates that, pursuant to Article 334 of the Code of Civil Procedure, free legal aid is provided to foreigners subject to the principle of reciprocity. No mention is made in the report about the possibility for foreigners to have legal aid in administrative proceedings.

The Committee points out that, under Article 19§7 of the Charter, States Parties must ensure that migrants have access to courts, to lawyers and legal aid on the same conditions as their own nationals. This obligation applies to all legal proceedings concerning the rights guaranteed by Article 19 (i.e. pay, working conditions, housing, trade union rights, taxes). More specifically, 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. Furthermore, the rights guaranteed in the Charter must be granted to all nationals of states parties lawfully within the territory on an equal footing with nationals, irrespective of reciprocity or bilateral agreements.

In light of the information available, the Committee holds that the situation in Turkey is not in conformity with Article 19§7 on the ground that, in respect of the civil procedure, free legal aid is only provided to foreigners subject to the principle of reciprocity.

The Committee furthermore reiterates its request for information concerning the provision of free legal assistance and interpretation, if need be, in civil, administrative and criminal proceedings (as from the pre-trial stage) to foreign nationals, legally residing in Turkey, whether or not a bilateral agreement has been concluded with their country of origin. The Committee asks in particular that the next report provide not only information about the legal basis pursuant to which a foreigner might claim a right to free legal aid and interpretation, but elements of evidence (relevant case-law, statistical data etc.) concerning the effective implementation of this right in practice.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 19§7 of the Charter on the ground that, as regards the civil procedure, equal treatment is not guaranteed for the nationals of every State party, in respect of the right to legal aid.

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

Paragraph 8 - Guarantees concerning deportation

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

The Committee takes note of the information submitted by Turkey in response to the conclusion that it had not been established that, during the reference period, lawfully resident migrant workers were entitled to adequate guarantees in case of expulsion.

In its previous conclusion (Conclusions 2015), the Committee noted that new legislation (Law No. 6458) had entered into force after the relevant period, in 2014, which had amended inter alia the rules on deportation. Under Article 54 of Law No. 6458, deportation of aliens is provided in respect of foreigners who, inter alia, are leaders, members or supporters of a terrorist organisation or a benefit oriented criminal organisation; who submit untrue information and false documents during the entry, visa and residence permit actions; who made their living from illegitimate means during their stay in Turkey and who pose a threat to public order, public security or public health. Pursuant to the same provision, a deportation decision may be rendered against international protection applicants or international protection status holders only when there are serious reasons to believe that they pose a threat to national security of Turkey or if they have been convicted upon a final decision for an offence constituting a public order threat. Section 55 of the Law provides for exceptions to deportation to be assessed on a case by case basis, in respect of victims of human trafficking or violence or if the deportation would put at risk the health or life of the person concerned. According to the report, when the deportation is not carried out for one of the reasons listed under Article 46 of the Law (in the best interest of the child, if an appeal is pending, if the person would face risks for his/her life etc.), the person is granted a humanitarian residence permit with a maximum duration of one year, renewable.

The Committee previously noted that this Law provided for the right to appeal and for the right not to be deported pending the finalisation of the appeal proceedings (see Conclusions 2015). However, on a number of other points, the Committee found that clarifications were needed. In particular, the Committee asked:

- whether the individual circumstances of the migrant (such as residence permits, attendance of educational institutions, work permits, family ties and length of presence on the territory) were taken in consideration;
- whether expulsion on ground of public health was carried out only when the person refused to undergo suitable treatment.
- whether migrant workers could be removed on the grounds that they posed a threat to public order only as a penalty imposed by a court in connection with a criminal conviction;

In response to the first question, the report confirms that elements such as the foreigner's family ties in Turkey, duration of residence, situation in the country of origin and best interest of the child are taken into account by governorates – subject to court appeal – when deciding deportation on the basis of refusal of a residence permit, its cancellation or non-renewal. The report does not provide any information, however, on whether these elements are also taken into account when deportation is carried out on other grounds. The Committee considers therefore that, on this point, it has not been established that the situation is in conformity with the Charter. The Committee reiterates its request for information on this issue, and recalls that, pursuant to Article 19§8, deportation 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.

The report does not provide any relevant information concerning deportation on ground of threat to public health. The Committee reiterates that, under Article 19§8, risks to public health cannot constitute a ground for expulsion, unless the person refuses to undergo suitable treatment. It recalls that this question has been outstanding since 1995 (Conclusions XIII-3 (1995)) and, in the light of the persistent lack of information, considers that it has not been established that the situation is in conformity with the Charter on this point.

As regards deportation on grounds of threat to public order or security, the report does not clarify whether a deportation order on these grounds can be carried out even if it does not result from a criminal conviction and whether the seriousness of the threat is assessed by a court and on the basis of which criteria. The Committee maintains that, on this point, it has not been established that the situation is in conformity with the Charter and reiterates its request of information. It recalls in this connection that, to be in conformity with the Charter, deportation on these grounds can 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.

The Committee furthermore notes from the report that, following the amendment in 2011 of Law 5683, "The Ministry of Interior has the power to drive out stateless or foreign subject gypsies and foreign nomads who are not connected to Turkish culture". Pursuant to the Law No. 6458, stateless persons shall however not be deported "unless they pose a serious threat to public order or public security". The Committee had already found that the removal of foreigners on ground that they are not connected to the Turkish culture is not, per se, in conformity with the Charter (Conclusions 2011). It asks the next report to provide any relevant explanation on this provision and its application in practice.

In light of the information available, the Committee maintains that the situation continues to be not in conformity with the Charter. It asks the next report to provide clear, exhaustive and updated information on all the outstanding points, not only as regards the legal provisions but also their application in practice (examples of case law, statistical data etc.).

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 19§8 of the Charter on the grounds that:

- it has not been established that lawfully resident migrant workers are entitled to adequate guarantees in case of expulsion;
- "foreign gypsies and nomads" can be deported by decision of the Ministry of Internal Affairs on ground that they are not connected to Turkish culture.

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

Paragraph 11 - Teaching language of host state

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

The Committee takes note of the information submitted by Turkey in response to the conclusion that it had not been established that sufficient measures were taken to promote the teaching of the national language to migrant workers and their families.

In its previous conclusions, the Committee had noted that Turkey had ratified the International Convention on Protection of the Rights of All Migrant Workers and Members of Their Families Convention, which imposes on States the obligation to take measures in order to teach the local language first, so as to adapt the children of the migrant workers to the education system and had requested information on how this obligation was applied in practice (Conclusions 2011). It had subsequently noted (Conclusions 2015) the adoption in 2013 of a Law on Foreigners and International Protection, which provides inter alia that foreigners may attend Turkish language courses and that distant learning should be promoted, in cooperation with public institutions and agencies and non-governmental organisations. As a follow-up to this information, the report indicates that a protocol of cooperation was signed on 25 April 2016 (out of the reference period) in cooperation with the Directorate General of Life-long Learning and the Directorate General of Migration Management for the purpose of organising courses and certify those who succeed for Turkish language courses, adaptation courses and for improving vocational and social skills. In addition, the report refers to a Circular on "Education and Training Services for the Foreigners" No. 2014/21 of 23 September 2014, according to which school managements may open refresher courses in order to facilitate the integration of the students coming from abroad.

While taking note of these measures, the Committee does not find in the report any concrete evidence that language courses are effectively organised for foreign workers from States parties to the Charter in order to facilitate their integration. In fact, the report provides extensive information, including statistical data, concerning special courses provided for asylum seekers, persons under international protection and, in particular, Syrian migrants (see details in the report) but it does not provide yet any information concerning other categories of foreigners.

The Committee points out in this connection that Article 19§11 concerns specifically the teaching of the national language, free of charge, not only to refugees (see Statement of Interpretation on the rights of refugees under the Charter, Conclusions 2015) but, more generally, to migrant workers from States Parties to the Charter and the members of their families, whether or not they are of school age, through special assistance at school (in addition to the regular courses available in the school curriculum), in the workplace, in the voluntary sector or in public establishments such as universities.

The Committee accordingly reiterates its request of relevant information on the measures taken to provide additional educational support to children of migrant workers needing to learn Turkish language, as well as on language teaching available to the migrants themselves and the adult members of their families. The information required should include data concerning the number of children and adults benefitting from such teaching, waiting lists for courses and any fees that may be payable. The next report should furthermore clarify whether the language courses referred to in connection with the implementation of the 2013 Law on Foreigners and International Protection, the protocol of cooperation of 2016 and the circular on "Education and Training Services for the Foreigners" of 2014 concern only the teaching of Turkish language to Syrian refugees or also other categories of

foreigners. Should this be the case, the Committee asks the next report to provide all relevant and updated information on the implementation in practice of these measures.

In the meantime, in the light of the information provided, the Committee considers that it has not been established that sufficient steps are taken to promote the teaching of Turkish language to migrant workers and their families, other than those falling under international protection.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 19§11 of the Charter on the ground that it has not been established that sufficient steps are taken to promote the teaching of Turkish language to migrant workers and their families, other than those falling under international protection.

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

Paragraph 12 - Teaching mother tongue of migrant

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

The Committee takes note of the information submitted by Turkey in response to the conclusion that it had not been established that Turkey effectively promotes and facilitates teaching of the migrants' mother tongue to their children, in particular through the school system or community organisations.

The report provides extensive information on teaching provided in Arabic in Temporary Education Centres to Syrian children (see the report for details). It furthermore refers to certain legislative texts or regulations, such as the Regulation on the Training of Children of Migrant Workers and the Law on Foreigners and International Protection No. 6458, but it does not explain how in practice the relevant legislation is implemented in respect of migrant workers and their families, other than those under international protection.

Under Article 19§12 of the Charter, the States Parties undertake to promote and facilitate the teaching, in schools or other structures, such as voluntary associations, of those languages that are most represented among migrants within their territory. In this connection, the Committee asks the next report to indicate which languages, apart from Arabic, are most represented among migrant workers, what services are available to such workers if they wish to ensure the teaching of their mother-tongue to their children, whether within the school system or in other contexts such as voluntary associations or non-governmental organisations. It asks in particular whether the teaching of other languages than Turkish or Arabic takes place within the framework of bilateral/reciprocal agreements, how many foreign children – other than Syrians – receive education in their language and how this is organised in practice, i.e. whether this is done at school or through other bodies (voluntary associations or non governmental organisations) and to what extent such activities are funded by the State.

In the meantime, in the light of the information available and the questions outstanding, the Committee considers that it has not been established that Turkey effectively promotes and facilitates teaching of the migrants' mother tongue to their children, other than those under international protection.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 19§12 of the Charter on the ground that it has not been established that Turkey effectively promotes and facilitates teaching of the migrants' mother tongue to their children, other than those under international protection.

Article 27 - Right of workers with family responsibilities to equal opportunity and treatment

Paragraph 1 - Participation in working life

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

Conditions of employment, social security

The Committee takes note of the information submitted by Turkey in response to the conclusion that it had not been established that workers on parental leave are entitled to social security benefits (Conclusions 2015, Turkey).

According to the information provided by Turkey, there are no specific provisions indicating that periods of parental leave due to family responsibilities affect the pension entitlement conditions and the monthly amount of the pension, in the legislation about pensions. As regards entitlement to other social security benefits, the Committee asks the next report to confirm that mothers on unpaid parental leave, both public and private sector employees, and fathers on unpaid parental leave in the public sector, continue to enjoy the right to all branches of social security, including health.

The Committee recalls that the situation concerning other aspects covered by Article 27§1 will be examined in the framework of the regular reporting cycle (Conclusions 2019) and asks that relevant and updated information be provided in that context.

Conclusion

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

Article 27 - Right of workers with family responsibilities to equal opportunity and treatment

Paragraph 3 - Illegality of dismissal on the ground of family responsibilities

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the information submitted by Turkey in response to the conclusion that it had not been established that adequate compensation is provided for in cases of unlawful dismissal due to family responsibilities. The Committee previously asked whether the upper limit to compensation under Articles 17 and 21 of the Labour Law would cover both pecuniary and non-pecuniary damage or whether compensation could also be sought through other legal avenues.

The Committee notes that pursuant to Article 17, the employer abusing the right to termination should pay compensation in the amount of three times the cost corresponding to the term of notice. Pursuant to Article 21 of the Law, if the court or the arbitrator concludes that the termination is unjustified because no valid reason has been given or the alleged reason is invalid, the employer must re-engage the employee in work within one month. If, upon the application of the employee, the employer does not re-engage him/her in work, compensation not less than four months' wages of the employee and not more than eight months' wages shall be paid to him/her by the employer.

The report states that termination on the basis of discrimination is not a termination on a valid ground. In this respect, the provisions in the Civil Code and Code of Obligations which should be applied in case of attacks on personality should also be taken into account also in employment relations. In this regard, the ceiling calculations stipulated in Articles 17 and 21 of the Labour Law are not valid for material and moral damages.

The employee who has suffered discrimination can demand compensation according to the general provisions. The compensation for discrimination is not compensation in technical terms, but since it is a legal sanction for the violation of equal treatment. In order for the employee to demand compensation it is enough for him/her to be exposed to a behaviour constituting an absolute discrimination. Moreover, it is not necessary for harm to have occurred. Within this scope, it is considered possible for the employee to demand moral indemnity due to attacks on his/her personality within the framework of general provisions of the Code of Obligations.

The Committee refers to its conclusion under Article 8§2 and asks the next report to provide relevant examples of case-law demonstrating that, under the Civil Code and Code of Obligations, it is effectively possible for an employee illegally and discriminatorily dismissed on the ground of family responsibilities to obtain compensation for moral damage, without reference to the ceiling provided under the Labour Law. It holds that, should this information not be provided, there will be nothing to establish that the situation is in conformity with the Charter on this point. In the meantime it reserves its position on this issue.

The Committee recalls that the situation concerning other aspects covered by Article 27§3 will be examined in the framework of the regular reporting cycle (Conclusions 2019) and asks that relevant and updated information be provided in that context.

Conclusion

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

Article 31 - Right to housing

Paragraph 1 - Adequate housing

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31st October 2016 on conclusions of non-conformity for repeated lack of information in conclusions 2015.

The Committee takes note of the information submitted by Turkey in response to the conclusion that it had not been established that:

- adequate housing is defined in law,
- there are rules imposing obligations on landlords to ensure that dwellings they let are of an adequate standard and that
- the legal protection of the right to adequate housing is guaranteed.

Criteria for adequate housing

According to the report, requirements to be respected for new constructions, including *inter alia* the procedures and principles, are laid down in the Housing Law No. 2985 as well as the Construction Zoning Law No. 3194 and its implementing regulations. The report also refers to Law No. 6306 on the Transformation of Areas under Disaster Risk which determine the principles and procedures concerning improvement, demolition and renewal at areas under disaster risk, as well as any other lands and plots which accommodate risk-bearing buildings, in order to establish suitable, healthy and safe living environments compatible with science and craft norms and standards.

The Committee notes that no detailed information is provided in the report on the abovementioned laws and, therefore, it is still not clear whether the notion of adequate housing is defined in law. The report does not provide any details with respect to health and sanitation requirement; nor does it indicates whether the rules apply to the entire housing stock, including the renovation of existing property. Likewise, it does not provide details concerning the standards on surface area for dwellings.

Consequently, the Committee considers that the information provided is not sufficient for it to assess the situation in the light of the principles it has laid down. It asks whether "adequate housing" in Turkish law means a dwelling which is structurally secure, safe from a sanitary and health point of view i.e. it must possess all basic amenities, such as water, heating, waste disposal, sanitation facilities and electricity and must also be structurally secure, not overcrowded and with secure tenure supported by the law (see Conclusion 2003, France and Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, § 43) and, if so, whether those standards apply to new buildings, but also gradually to the existing housing stock. The Committee asks whether there is a general scheme for the renovation of existing property and whether it imposes similar criteria as for the construction.

For these reasons, the Committee considers that considers that the situation is not in conformity with the Charter on the ground that it has not been established that adequate housing is defined in law.

Responsibility for adequate housing

The Committee recalls that it is incumbent on the public authorities to ensure that housing is adequate through different measures such as, in particular, an inventory of the housing stock, injunctions against owners who disregard urban development rules and maintenance obligations for landlords. Public authorities must also guard against the interruption of essential services such as water, electricity and telephone (Conclusions 2003, France).

The Committee takes note of the information provided in the report concerning the building permission and the occupancy permit documents but find no information on the maintenance

obligations for landlords. It considers, therefore, the situation to be not in conformity with the Charter on the ground that it has not been established that there are rules imposing obligations on landlords to ensure that dwellings they let are of an adequate standard.

Legal protection

The Committee recalls that the effectiveness of the right to adequate housing requires its legal protection through adequate procedural safeguards. Occupiers must have access to affordable and impartial judicial or other remedies (administrative review, etc.) (Conclusions 2003, France). Any appeal procedure must be effective (European Federation of National Organisations Working with the Homeless (FEANTSA) c. France, Complaint No 39/2006, decision on the merits of 5 December 2007, §§ 80-81).

The report states that companies that perform construction and supervise construction are legally liable for 15 years for defective manufacture and even longer for hidden defects.

The Committee notes that the report does not provide the required information and, therefore, considers that the situation is not in conformity with the Charter on the ground that it has not been established that the legal protection of the right to adequate housing is guaranteed.

The Committee recalls that the situation concerning other aspects covered by Article 31§1 will be examined in the framework of the regular reporting cycle (Conclusions 2019) and asks that relevant and updated information be provided in that context.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 31§1 of the Charter on the grounds that:

- it has not been established that adequate housing is defined in law;
- it has not been established that there are rules imposing obligations on landlords to ensure that dwellings they let are of an adequate standard;
- it has not been established that the legal protection of the right to adequate housing is guaranteed.

Article 31 - Right to housing

Paragraph 2 - Reduction of homelessness

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31st October 2016 on conclusions of non-conformity for repeated lack of information in conclusions 2015.

The Committee takes note of the information submitted by Turkey in response to the conclusion that it had not been established that adequate eviction procedures exist and that the right to shelter is guaranteed.

Forced eviction

The Committee asked in its previous conclusion (Conclusions 2015) to be provided with information on the legal framework applicable to evictions in Turkey and related figures.

The Committee recalls that in order to comply with Article 31§2 of the Charter, legal protection for persons threatened by eviction must include:

- obligation to consult the parties affected in order to find alternative solutions to eviction;
- an obligation to fix a reasonable notice period before eviction;
- a prohibition to carry out evictions at night or during winter;
- accessibility to legal remedies;
- accessibility to legal aid;
- compensation in case of illegal eviction;
- obligation to carry out evictions under conditions which respect the dignity of the persons concerned and with rules of procedure sufficiently protective of the rights of the persons;
- obligation to adopt measures to re-house or financially assist the persons concerned by evictions carried out in the public interest.

As regards the obligation to consult the parties affected with evictions, the report states that urban transformation projects carried out within the framework of Law No. 6306 are being developed with the participation of citizens. Priority is given to the citizen's consent and, therefore, a person who does not intend to leave his or her dwelling voluntarily is not forced to eviction. When the owner of the property cannot be reached, eviction is decided by a court decision. Provisions on the eviction procedures and notice periods are stated in detail in Law No. 6306 and its implementing regulation. The Committee wishes to receive further information on this matter in the next report. In this regard, it recalls that a notice period is considered to be reasonable as from two months before eviction (European Federation of National Organisations Working with the Homeless [FEANTSA] v. France, Complaint No 39/2006, decision on the merits of 5 December 2007, §§ 86-87; International Movement ATD Fourth World v. France, Complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 78-79).

As regards accessibility to legal remedies and legal aid, the report states that owners of immovable properties located in the implementation areas of urban regeneration and development projects may bring cases before courts against the municipality (Article 18 of the Law No. 3194). The report adds that those immovable properties for which no owner have been identified in the land registry or on which there are pending legal disputes in regard to property rights shall be directly expropriated and their prices shall be blocked in a bank designated by the court for the right holders to be identified. Ongoing constructions shall be suspended for five years, except in certain circumstances. The duration of suspension may not exceed ten years. The Committee notes however from the report that municipalities enjoys a large margin of manoeuvre, and, consequently, they are entitled to cease suspension after only five years. The Committee asks whether such decisions rely on

a court decision and, if not, under what conditions the municipalities are entitled to do so. It also asks whether claimants/applicants are provided with legal aid.

As regards compensation in case of illegal eviction, the report distinguishes between two categories: those who are covered by Law No. 2981 and those who are not. The Committee understands that those who are covered enjoy more rights than those who are not. The latter shall be compensated for the value of their property or be directed to another property to buy. The Committee wishes to receive more information in the next report, in particular the rights granted to persons covered by the said law in comparison with those who are not, whether financial compensation is systematic and, with regard to people who refuse, whether they will be relocated in the new housing built.

With regard to obligation to adopt measures to re-house or financially assist the persons concerned by evictions carried out in the public interest, the report states that, in accordance with Article 5 of the Law No. 6306, temporary residence or rent allowance can be granted to owners and residents evicted from the urban regeneration and development areas or dangerous/risky buildings. The report provides no figures concerning evictions in Turkey, rehousing or financial assistance provided following eviction.

The Committee also notes that the report provides no information whatsoever on the obligation to carry out evictions under conditions which respect the dignity of the persons concerned or the prohibition to carry out evictions at night or during winter. Consequently, the Committee considers that it has not been established that evictions are carried out under conditions which respect the dignity of the persons concerned.

Right to shelter

According to Article 31§2, homeless persons must be offered shelter as an emergency solution. Moreover, to ensure that the dignity of the persons sheltered is respected, shelters must meet health, safety and hygiene standards and, in particular, be equipped with basic amenities such as access to water and heating and sufficient lighting. Another basic requirement is the security of the immediate surroundings (Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, § 62).

Since the right to shelter is closely connected to the right to life and is crucial for the respect of every person's human dignity, under Article 31§2 of the Charter, States Parties are required to provide adequate shelter also to children unlawfully present in their territory for as long as they are in their jurisdiction (DCI v. the Netherlands, §§ 47 and 64).

The temporary provision of shelter, however adequate, cannot however be considered a lasting solution.

- As regards, persons lawfully resident or regularly working within the territory of the Party concerned accommodated in emergency shelters, they must, within a reasonable time, be offered either long-term accommodation suited to their circumstances or housing of an adequate standard as provided by Article 31§1.
- As regards persons unlawfully present within the territory, since no alternative accommodation may be required by States for them, eviction from shelter should be banned as it would place the persons concerned, particularly children, in a situation of extreme helplessness which is contrary to the respect for their human dignity (DCI v. the Netherlands, § 63).

Furthermore, the Committee refers to its Statement of Interpretation on Article 31§2 (Conclusions 2015) and recalls that eviction from shelters without the provision of alternative accommodation is prohibited.

The Committee asked in its previous conclusion (conclusion 2015) whether:

- shelters/emergency accommodations satisfy security requirements (including in the immediate surroundings) and health and hygiene standards (in particular

whether they are equipped with basic amenities such as access to water and heating and sufficient lighting);
- shelter/emergency accommodation is provided regardless of residence status; and
- the law prohibits eviction from shelters or emergency accommodation.

The report states that Temporary Protection Centres have been established in order to accommodate displaced people from Syria. Turkey is currently hosting about 253 045 Syrian immigrants in 26 Temporary Protection Centers. The report points out that those centers and their surroundings are subject to security measures. They are also provided with cleaning services, water, heating and lighting. Residents cannot be evicted from the centres they are living in against their will. The Committee takes note of the effort made by Turkey to manage this major migration flow but observes, nevertheless, that those centres are only used for accommodating persons under temporary protection status. The report provides no information on homeless persons who are not entitled to such a status. The Committee asks, therefore, whether those persons are also entitled to and, if not, whether other centres or shelter/emergency accommodation dedicated to homeless persons exist in Turkey. In this regard, it asks whether those shelters/emergency accommodations satisfy security requirements (including in the immediate surroundings) and health and hygiene standards (in particular whether they are equipped with basic amenities such as access to water and heating and sufficient lighting) and whether the law prohibits eviction from shelters or emergency accommodation.

The Committee considers that it has not been established that the right to shelter is guaranteed.

The Committee recalls that the situation concerning other aspects covered by Article 31§2 will be examined in the framework of the regular reporting cycle (Conclusions 2019) and asks that relevant and updated information be provided in that context.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 31§2 of the Charter on the grounds that:
- it has not been established that adequate eviction procedures exist;
- it has not been established that the right to shelter is guaranteed.

Article 31 - Right to housing

Paragraph 3 - Affordable housing

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31st October 2016 on conclusions of non-conformity for repeated lack of information in conclusions 2015.

The Committee takes note of the information submitted by Turkey in response to the conclusion that it had not been established that there were remedies with respect to excessive waiting periods for the allocation of social housing and that the majority of qualified households received housing benefits in practice.

Social housing

The Committee recalls that States Parties must adopt measures to ensure that waiting periods for the allocation of housing are not excessive and judicial and non-judicial remedies must be available when waiting periods are excessive (International Movement ATD Fourth World v. France, Complaint No 33/2006, decision on the merits of 5 December 2007, § 131) .

In reply to the Committee's question, the report merely states that the existing demand for TOKI properties far exceeds supply. Due to the very high demand, houses are sold to applicants through a lottery supervised by a public notary. While taking note of this information, the Committee notes that it does not answer yet the question concerning the remedies with respect to excessive waiting periods for the allocation of social housing. The Committee accordingly reiterates it and considers the situation not to be in conformity with the Charter on this point.

Housing benefits

The Committee recalls that States Parties must introduce housing benefits at least for low-income and disadvantaged sections of the population. Housing benefit is an individual right: all qualifying households must receive it in practice; legal remedies must be available in case of refusal (Conclusions 2003, Sweden).

In its previous conclusion (Conclusions 2015), the Committee asked whether the Council Housing Programme implemented for low-income persons covered financial aid. The report indicates in this respect that house construction/repair aids are provided to households on low income: a maximum of 25 000 TRY is paid to persons having their own land to help them constructing their own house or buying a new one. An aid of maximum 15 000 TRY may also be granted to persons living in unfavorable and unhealthy conditions for repair of the houses. 336 million TRY was allocated for this purpose between the years 2010-2016 which benefited to 28 000 families.

As regards the number of persons qualified for the TOKI's social housing project (Conclusions 2015), the report indicates that as of October 2016 (out of the reference period), the construction of 29 268 social housing was completed and delivered to the right-holders, construction proceedings for 4 261 dwellings were under way and a total of about 33 529 dwellings were planned.

Social housing program is also implemented in the provinces where there is a high rate of Roma population. As of November 2013, a total of 1 856 houses were completed in these areas and 2 088 houses are under construction in these areas.

The report adds that, within the scope of the "Planned Urbanization and Housing Production Mobilization", 753 946 housing units have been produced in 81 provinces by the end of 2016 (out of the reference period); 644 617 (85.50%) of these houses fall under the scope of Social Housing and 331 493 of them (43.97%) have been distributed to low and middle

Income group; 149 462 (19.82%) have been provided to the Lower Income group and 120 181 (15.94%) to the slum (Gecekondu) Transformation.

The Committee also asked whether remedies were available for those who are refused support by social housing projects. The report provides no information on this point. The Committee accordingly reiterates its question and reserves its position on this issue in the meantime.

The Committee recalls that the situation concerning other aspects covered by Article 31§3 will be examined in the framework of the regular reporting cycle (Conclusions 2019) and asks that relevant and updated information be provided in that context.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 31§3 of the Charter on the ground that it has not been established that there are remedies with respect to excessive waiting periods for the allocation of social housing.

January 2018

European Social Charter

European Committee of Social Rights

Conclusions 2017

UKRAINE

This text may be subject to editorial revision.

The following chapter concerns Ukraine, which ratified the Charter on 21 December 2006. The deadline for submitting the 9th report was 31 October 2016 and Ukraine submitted it on 23 March 2017.

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 "Health, social security and social protection":

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

Ukraine has accepted all provisions from the above-mentioned group except Article 12 and Article 13.

The reference period was 1 January 2012 to 31 December 2015.

The conclusions relating to Ukraine concern 11 situations and are as follows:

– 1 conclusion of conformity: Article 14§2.

– 8 conclusions of non-conformity: Articles 3§2, 3§3, 3§4, 11§1, 11§2, 11§3, 23 and 30.

In respect of the 2 other situations related to Articles 3§1 and 14§1 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 Ukraine under the Charter. The Committee requests the authorities to remedy this situation by providing the information in the next report.

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

Article 30
A reform of subsidies was implemented in 2014-2015 aiming at simplifying procedures and strengthening social protection.

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In addition, the report contains also information requested by the Committee in Conclusions 2015 in respect of its conclusions of non-conformity due to a repeated lack of information:

- the right of employed women to protection of maternity – maternity leave (Article 8§1),
- the right of employed women to protection of maternity – prohibition of dangerous, unhealthy or arduous work(Article 8§5),
- the right of the family to social, legal and economic protection (Article 16),
- the right to housing – adequate housing (Article 31§1),
- the right to housing – reduction of homelessness(Article 31§2).

The Committee examined this information and adopted 5 conclusions of non-conformity relating to these Articles.

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The next report will deal with the following provisions of the thematic group "Labour Rights":

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),

- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 21),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 22),
- the right to dignity at work (Article 26),
- the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28),
- the right to information and consultation in collective redundancy procedures (Article 29).

The report should also contain information requested by the Committee in conclusions 2016 in respect of its conclusions of non-conformity due to a repeated lack of information:

- the right to work – policy of full employment (Article 1§1),
- the right to work – freely undertaken work (non-discrimination, prohibition of forced labour, other aspects (Article 1§2 (1st ground)),
- the right to work – free placement services (Article 1§3),
- the right to work – vocational guidance, training and rehabilitation (Article 1§4),
- the right to vocational guidance (Article 9),
- the right to vocational training – technical and vocational training; access to higher technical and university education (Article 10§1),
- the right to vocational training – long term unemployed persons (Article 10§4),
- the right to vocational training – full use of facilities available (Article 10§5),
- the right of persons with disabilities to independence, social integration and participation in the life of the community – employment of persons with disabilities (Article 15§2 (1st ground)),
- the right of persons with disabilities to independence, social integration and participation in the life of the community – Integration and participation of persons with disabilities in the life of the community (Article 15§3),
- the right to engage in a gainful occupation in the territory of other States Parties – simplifying existing formalities and reducing dues and taxes (Article 18§2),
- the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex (Article 20 (1st ground)).

The deadline for submitting that report was 31 October 2017.

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Conclusions and reports are available at www.coe.int/socialcharter as well as in the HUDOC database.

CONCLUSIONS RELATING TO ARTICLES FROM THE THEMATIC GROUP

‘Health, social security and social protection”

Article 3 - Right to safe and healthy working conditions

Paragraph 1 - Health and safety and the working environment

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

General objective of the policy

The Committee previously noted (Conclusions 2013) that there was a legislative framework which allows a comprehensive approach to occupational health and safety.

In its previous conclusion (Conclusions 2013), the Committee asked whether these policies were regularly reviewed in the light of changing risks. The report does not provide any information on this point. However, the Committee takes note that, according to the information from the comments and direct request raised by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) published in 2016 (105th ILC session) on the Occupational Safety and Health Convention No. 155 (1981), regulations on occupational safety are reviewed no less than once every ten years, in light of scientific and technical advances which can contribute to improvements in workers' protection and in the working environment (Section 34 of the Labour Protection Law).

The report states that the National Social Programme on the Improvement of Occupational Safety and Health and the Working Environment 2014–2018 was approved by Law No. 178-VII of 4 April 2013. The Programme aims to comprehensively tackle occupational safety problems, create a modern healthy and safe working environment, minimise the risk of work-related injuries, cases of occupational disease and accidents in the workplace, and preserve and develop Ukraine's labour potential. The Programme includes, *inter alia*, increasing of the efficiency of the state control over labour protection by various means (bringing the legal and regulatory framework in the field of labour protection in compliance with the modern requirements and EU legislation; monitoring the development, implementation and operation of labour protection management systems at national, industrial and regional levels, etc.). The Committee asks the next report to provide information on the activities implemented and results obtained by the National Programme.

In its previous conclusion (Conclusions 2013), the Committee noted a considerable number of initiatives for developing an occupational health and safety policy which had not reached the implementation stage in the period under review and asked of how these initiatives have helped to create a culture of prevention in respect of occupational health and safety in practice. In reply, the report provides the information only on coal mining sector, notably, on the Programme for improving occupational safety at the coal-mining and mine construction enterprises. This programme, approved by Resolution of the Cabinet of Ministers No. 374 of 29 March 2006, as amended by Resolution No. 521 of 18 May 2011, has been operating since 2011. The Programme has been ordered by the Ministry of Energy and Coal Industry and is aimed at preserving the life and health of miners by means of implementing legal, organisational, technical and socio-economic mechanism to ensure labour protection and safety at coal-mining and mine-construction enterprises. Its main task is to reduce the number of accidents at work, including fatal accidents, at coal-mining and mine-construction enterprises, and the number of miners' occupational diseases. The Committee repeats its request for information of how previously listed initiatives in other sectors than coal mining have helped to create a culture of prevention in respect of occupational health and safety in practice.

The Committee also notes that, according to ILO database NORMLEX, ILO Convention No. 155 on Occupational Safety and Health (1981) was ratified on 4 January 2012.

The Committee points out that new technology, organisational constraints and psychological demands favour the development of psychosocial factors of risk, leading to work-related stress, aggression, violence and harassment. It would also point out that, with regard to Article 3§1 of the Charter, it takes account of stress, aggression, violence and harassment at

work when examining whether policies are regularly evaluated or reviewed in the light of emerging risks. The States parties have a duty to carry out activities in terms of research, knowledge and communication relating to psychosocial risks (Statement of Interpretation on Article 3§1 of the Charter, Conclusions 2013). The report does not provide any information on this point. The Committee accordingly reiterates its request.

Organisation of occupational risk prevention

The Committee previously noted (Conclusions 2013) that, while it described certain measures aimed at organising occupational risk prevention, the report did not provide information on how these measures were implemented in sectors other than mining.

In its previous conclusion (Conclusions 2013), the Committee asked for information on the part played by the *Derzhhirpromnahlyad* in developing a health and safety culture among employers and workers, and on the requirement for the labour inspectorate to share (practical instruction, prevention measures, advice) knowledge of occupational risks and prevention gained through inspection activities. The report indicates that a new State Labour Service (*Derzpraci*) of Ukraine was established in 2014 by Resolution of the Cabinet of Ministers No. 442 of 10 September 2014 on Optimisation of the Central Executive Authorities System through reorganising and merging the State Inspectorate of Labour and the State Service of Mining Supervision and Industrial Safety. The new State Labour Service (*Derzpraci*) is responsible for, among others, the implementation of state policy in the field of industrial safety, labour protection and occupational health. According to the Law on Labour Protection, the State Labour Service (*Derzpraci*) shall increase the level of industrial safety by ensuring continuous technical control over the state of production, technologies and products. In addition, 25 Expert Technical Centres (state enterprises) which are controlled by the State Labour Service, assess the state of labour protection and industrial safety at enterprises and organisations.

In its previous conclusion (Conclusions 2013), the Committee also asked for information on the assessment of work-related hazards and the adoption of preventive measures geared to the nature of risks, and on the provisions of information and training for workers. In response, the report indicates that the Law on Labour Protection stipulates the general procedure for training on labour protection. Workers at the time of taking up a job and in the course of work must be instructed, trained at the expense of the employer on occupational safety and health issues, on first aid provision to victims of accidents at work and on rules of conduct in the event of an emergency. Officials involved in the organisation of safe works shall undergo training, and their knowledge of labour protection shall be assessed with the participation of trade unions upon hiring and periodically, every three years (or annually — on a special basis). Those employees, including officials, who have not undergone the training, instruction and testing on labour protection, shall not be allowed to work. In addition, the State Labour Service (*Derzpraci*) carrying out state supervision over the compliance with labour protection legislation, including the issues on training organisation (including special training) and assessment of knowledge about labour protection, provides clarification and participates in assessing knowledge of officials and other employees about labour protection.

The report also states that Presidential Decree No. 685 of 18 August 2006 established the Labour Protection Day (28 April). The Organising Committee of the State Labour Service is usually involved in preparing for this even, where an action plan is also approved.

In addition, the report specifies that the State Labour Service and its territorial bodies conducted awareness-raising activities, as well as preventive and consultative work in each region and each enterprise with the purpose to prevent accidents at work.

Improvement of occupational safety and health

In its previous conclusion (Conclusions 2013), the Committee observed that there was a system which was designed to improve occupational health and safety through research, development and training and asked for information on the resources allocated to the institutions and bodies mentioned and on the materials (recommendations, guides, good practice, advice) aimed at undertakings in the private sector.

Apart from the texts and measures described in the previous conclusions (Conclusions 2013), the Committee notes from the report that several workshops and conferences were held in 2013, particularly in coal mining industry. According to the report, the work conducted contributed to reduction of accident rate, including fatalities, at agro-industrial enterprises, those of social and cultural field, wood and light industry. Furthermore, the active explanatory work was carried out on the creation of the labour protection control system at enterprises during 2012–2015.

Since the report only partially answers its questions, the Committee reiterates all the specific questions concerning improvement of occupational safety and health (Conclusions 2013). The Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Ukraine is in conformity with Article 3§1 of the Charter in this respect.

Consultation with employers' and workers' organisations

In its previous conclusion (Conclusions 2013), the Committee noted that there was a system for consulting social partners at public authority level. It also noted that the General Agreement was not truly tripartite as it allied the Cabinet of Ministers and employers' organisations and asked for information on consultation with the competent occupational health and safety bodies within enterprises, in particular enterprises where there are no workers' representatives. The report does not provide any information on these points. The Committee reiterates its request and considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Ukraine is in conformity with Article 3§1 of the Charter in this respect.

The Committee recalls that Article 3§1 requires consultation not only for tripartite co-operation between authorities, employers and workers to seek ways of improving their working conditions and working environment but also for the co-ordination of their activities and co-operation on key safety and prevention issues. Mechanisms and procedures of consultation with employers' and workers' organisations must be set up at national and sectoral level. The right to consultation is satisfied where there are specialised bodies made up of representatives of the government and of employers' and workers' organisations, which are consulted by the public authorities. If these consultations may take place on a permanent or *ad hoc* basis; they must in any case be efficient with regard to powers, procedures, participants, frequency of meetings and matters discussed, in promoting social dialogue in occupational safety and health matters.

Conclusion

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

Article 3 - Right to safe and healthy working conditions

Paragraph 2 - Safety and health regulations

The Committee takes note of the information contained in the report submitted by Ukraine, but highlights the significant gaps in information provided in relation to the specific requirements of Article 3§2 of the Charter.

Content of the regulations on health and safety at work

The Committee previously examined (Conclusions 2013) the general scope of the regulations and considered that the coverage of occupational hazards by specific occupational health and safety legislation and regulations was insufficient. Nevertheless, the report states that no significant amendments in the national legislation were made during the reference period.

The report indicates that for the purpose of implementation of the Association Agreement between Ukraine and the EU, the plans for implementation of the EU Directives (Council Directives 90/270/EEC 29 of May 1990, 92/57/EEC of June 14, 1992, 92/104/EEC of 3 December 1992, 92/91/EEC of 3 November 1992 and 2009/104/EEC of 16 September 2009) were approved by Order of the Cabinet of Ministers No. 745-r of 17 July 2015.

In addition, the report indicates that Annex XL to Chapter 21 on Cooperation on Employment, Social Policy and Equal Opportunities, Section V of the Association Agreement the European Union (EU) and Ukraine provided for implementation of 27 European directives, including Directives 2002/44/EC of 25 June 2002 and 2003/10/EC of 6 February 2003 (the Directive's provisions shall be implemented within 10 years of the entry into force of this Agreement). However, the Committee notes that this Agreement came into full force in July 2017. It recalls that the fact that national provisions are in conformity with the EU Directive does not automatically render them in conformity with the Charter.

The Committee points out that under the terms of Article 3§2 of the Charter, regulations concerning health and safety at work must cover work-related stress, aggression and violence specific to work, and especially for workers under atypical working relationships (Statement of Interpretation on Article 3§2 of the Charter, Conclusions 2013). The report does not provide any information on this point. The Committee accordingly reiterates its request.

The Committee therefore considers that the legislation and regulations in force do not meet the general obligation under Article 3§2 of the Charter, which requires that most of the risks listed in the general introduction to Conclusions XIV-2 be specifically covered, in line with the level set by international reference standards.

Levels of prevention and protection

The Committee examines the levels of prevention and protection provided for by the legislation and the regulations in relation to certain risks.

Establishment, alteration and upkeep of workplaces

The Committee previously examined the prevention and protection levels in relation to the establishment, alteration and upkeep of workplaces (Conclusions 2013 and 2009) and asked for comprehensive information on any regulatory acts to implement the provisions of Act No. 2694-XII. It also asked whether employers are under the duty to assess exposure to occupational risks beyond highly hazardous works and highly hazardous machines, mechanisms and equipment.

The report indicates that the Government will take account of some EU regulations (Directive 92/58/EEC of 24 June 1992, 89/654/EEC of 30 November 1989, 90/270/EEC of 29 May 1990 and 90/269/EEC of 29 May 1990) which have the implementation period from 3 to10

years from the date of the entry into force of the Association Agreement between Ukraine and the EU. The Committee recalls that the fact that national provisions are in conformity with the EU Directive does not automatically render them in conformity with the Charter.

Given the generality of the information provided, the Committee is not in a position to examine whether the legislation and regulations in force satisfy the obligation under Article 3§2 of the Charter, which requires that levels of prevention and protection required by the legislation and regulations in relation to the establishment, alteration and upkeep of workplaces be in line with the level set by international reference standards. The Committee reiterates its previous requests and considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Ukraine is in conformity with Article 3§2 of the Charter in this respect.

Protection against hazardous substances and agents

The Committee asks the next report to provide information on the specific provisions relating to protection against risks of exposure to benzene.

Protection of workers against asbestos

The Committee previously examined (Conclusions 2009 and 2013) the level of prevention and protection in relation to asbestos. It considered (Conclusions 2013) that the level of prevention and protection against asbestos was not in line with the benchmark international standards. It noted that, during the reference period, the draft regulations on the protection of the health of workers exposed to asbestos and asbestos-containing materials were not yet in force. It therefore requested whether ILO Convention No. 162 was ratified.

The report states that the Action Plan on implementation of the National Programme of Adaptation of the Ukrainian Laws to the EU Laws were approved by Order of the Cabinet of Ministers No. 156-r of 28 March 2012. For the purpose of its implementation, the State Sanitary Rules and Regulations on Safety and Protection of Workers from Harmful Exposure to Asbestos and Asbestos-Containing Materials were approved by Order of the Ministry of Health No. 762 of 1st October 2012 (registered in the Ministry of Justice on 23 October 2012 under No. 1776/22088). According to the report, these rules and regulations include general hygiene requirements for enterprises, institutions and organisations using chrysotile and chrysotile-containing materials and products; sanitary requirements for processes and production equipment; sanitary and hygiene requirements for packaging, storage, transportation and handling operations; requirements for collection, storage, transportation and / or disposal of chrysotile-containing waste; requirements for ventilation, air conditioning and heating of facilities; requirements for providing the employees with individual protective means; requirements for sanitation and housekeeping support of workers; and special requirements for certain industries that use chrysotile and chrysotile-containing materials and products. The Committee asks that the next report provide information on the application of these rules and regulations in practice, as well as on the activities implemented and results obtained by the National Programme regarding the protection of workers against asbestos.

In addition, the report indicates that ILO Convention No. 162 concerning Safety in the Use of Asbestos was not ratified.

The Committee asks whether the authorities have considered drawing up an inventory of all contaminated buildings and materials. Bearing in mind the importance of this question in the light of the right to health of the population (Article 11), the Committee asks the next report to provide specific information on steps taken to this effect. Furthermore, it asks the next report to indicate measures ensuring that in all workplaces where workers are exposed to asbestos, employers take all appropriate measures to prevent, or control, the release of asbestos dust in the air, and that employers comply with the prescribed exposure limits.

Protection of workers against ionising radiation

The Committee previously examined (Conclusions 2009 and 2013) the level of prevention and protection in relation to ionising radiation and asked for information on whether the Radiation safety standards (NRBU-97) and the Principal sanitary regulations for the provision of radiation safety (OSPU-2005) incorporate either ICRP Recommendation (1990) or Council Directive 96/29/EURATOM of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation. It also asked for information on whether obligations had been undertaken under the National Programme or the PCA (Partnership and Co-operation Agreement of 14 June 1994) to incorporate Council Directive 97/43/EURATOM of 30 June 1997 on health protection of individuals against the dangers of ionising radiation in relation to medical exposure, and Council Directive 2003/122/EURATOM of 22 December 2003 on the control of high-activity sealed radioactive sources and orphan sources.

The report does not provide any information on this point. The Committee reiterates its previous requests, in particular whether workers are protected up to a level at least equivalent to that set in the Recommendations by the International Commission on Radiological Protection (ICRP Publication No. 103, 2007). It considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Ukraine is in conformity with this aspect of Article 3§2 of the Charter.

Personal scope of the regulations

The Committee examines the personal scope of legislation and regulations with regard to workers in atypical employment.

Temporary workers

In its previous conclusion (Conclusions 2013), the Committee noted that non-permanent and temporary workers employed in heavy works, works with harmful or hazardous working conditions or works requiring professional selection have access to medical surveillance, and asked for information on the representation of these workers at work. It also asked for information and concrete examples of how these types of workers receive training and information in occupational health and safety matters. In addition, it asked for information on whether agency or temporary workers or employees on fixed-term contracts in other sectors of the economy involving exposure to high risks than mining, or at any workplaces, have access to medical surveillance and are represented at work.

The report indicates that the scope of the Law on Labour Protection applies to all legal entities and individuals, who use hired labour according to the legislation, and to all employees (Article 2).

According to the report, the general rule for training in labour protection is determined in Article 18 of the Law on Labour Protection and regulated by Model Regulations on the Procedure for Training and Testing on Labour Protection, approved by Order of the State Committee on Supervision over Labour Protection No. 15 of 26 January 2005 (registered in the Ministry of Justice on 15 February 2005 under No. 231/10511). The Model Regulations establish the procedure for training and testing of public officials and other employees during the work process, as well as students, cadets, attendees and students of educational institutions during the employment and professional education. According to the report, they are aimed at implementation of training system on labour protection of public officials and other employees, medical emergency treatment of accident victims and rules of conduct in case of emergency in Ukraine.

Since the report only partially answers its questions, the Committee reiterates all the specific questions concerning the personal scope of legislation and regulations with regard to workers in atypical employment (Conclusions 2013). The Committee considers that if the

requested information is not provided in the next report, there will be nothing to establish that the situation in Ukraine is in conformity with this aspect of Article 3§2 of the Charter.

Other types of workers

In its previous conclusion (Conclusions 2013), the Committee asked to indicate how information and training on occupational health and safety, and medical surveillance is made available to self-employed, home and domestic workers in practice. It also asked for information on existing arrangements for the representation of these types of workers at work.

The report does not provide any information on this point. The Committee reiterates its previous requests and considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Ukraine is in conformity with this aspect of Article 3§2 of the Charter.

Consultation with employers' and workers' organisations

The Committee recalls that regulations must be drawn up in consultation with employers' and workers' organisations. Article 3§2 requires consultation not only for tripartite co-operation between authorities, employers and workers to seek ways of improving their working conditions and working environment but also for the co-ordination of their activities and co-operation in the drafting of laws and regulations at all levels and in all sectors.

In its previous conclusion (Conclusions 2013), the Committee noted that there was a system for consulting social partners at public authority level. It also noted that the General Agreement was not truly tripartite as it allied the Cabinet of Ministers and employers' organisations and asked for information on consultation with the competent occupational health and safety bodies within enterprises, in particular enterprises where there are no workers' representatives.

The report indicates that the representatives of the executive authorities, employers' organisations and trade unions are constantly engaged in comprehensive inspections of enterprises, institutions, organisations for safety and working conditions, are included into the committees on special investigation of each industrial accident, give suggestions for development of law projects and other regulatory legal acts to improve the legal regulation of labour relations and harmonisation of national legislation on labour protection with the rules of the international law, including the International Labour Organisation, participate in meetings of the panels and territorial bodies of the State Labour Service, various preventive activities, meetings, round tables, seminars on labour protection, improvement of industrial safety state.

The Committee reiterates its previous requests and considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Ukraine is in conformity with this aspect of Article 3§2 of the Charter.

Conclusion

The Committee concludes that the situation in Ukraine is not in conformity with Article 3§2 of the Charter on the ground that the coverage of occupational hazards by specific occupational health and safety legislation and regulations is insufficient.

Article 3 - Right to safe and healthy working conditions

Paragraph 3 - Enforcement of safety and health regulations

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

Accidents at work and occupational diseases

The Committee previously examined (Conclusions 2009) the level of accidents at work and occupational diseases and considered that measures taken to reduce the excessive number of fatal accidents were insufficient.

In its previous conclusion (Conclusions 2013), the Committee asked the next report to explain the disparity between the number of fatal accidents indicated in the report and that published by ILOSTAT. In reply, the report explains it by the difference in the system of collection of relevant information by means of the state statistical observation and the system of collection by means of operational records of accidents at work being subject to special investigation. More specifically, the data published by the ILO are based on the information of the state statistical observation No. 7-tnv (annual) “Report on occupational injuries”. While filling the form of the State Statistics Service, enterprises should specify the information on the accident, the investigation of which is completed and the relevant acts are drawn up in the reporting period. The information included in the Report is based on the operational records of accidents at work, that occurred in the reported period, being subject to special investigation and maintained by the State Labour Service (Paragraph 61 of the Procedure for investigation and registration of accidents at work, occupational diseases, and breakdowns in production, approved by Resolution of the Cabinet of Ministers No. 1232 of 30 November 2011).

In its previous conclusion (Conclusions 2013), the Committee requested for detailed information on reporting obligations under Cabinet of Ministers Resolution No. 1112 and on any penalties applicable in case of failure to fulfil these obligations. In response, the report indicates that Resolution of the Cabinet of Ministers No. 1112 of 25 August 2004 became void following a new procedure for investigation and registration of accidents at work, occupational diseases, and breakdowns in production. It was approved by Resolution of the Cabinet of Ministers No. 1232 of 30 November 2011 on some aspects of investigation and registration of accidents at work and occupational diseases. The new procedure requires the employer, when informed by the healthcare establishment and by the employee of the occurrence of an accident at work, to notify the competent authorities and to instruct a commission of inquiry on the facts of the accident if the accident is not the subject of a special investigation within 24 hours. In addition, the legal provisions also provide for penalties for non-communication or late communication by undertakings of information relating to an accident at work. During inspections carried out by the National Employment Service (*Derzpraci*) in the undertakings, measures were taken to identify these accidents and to take the necessary steps to investigate the facts and to responsible for the companies that are responsible for their actions (51 cases of this type were identified in 2015, for which 51 persons had their administrative responsibility established and which resulted in monetary penalties for a total amount of 21 thousand UAH (€689)).

In its previous conclusion (Conclusions 2013), the Committee also asked for information on steps taken to reduce the high level of fatal accidents and diseases and to counter potential under-reporting in practice. The report does not provide information requested, but indicates that the number of accidents at work has been decreasing overall during the reference period (from 9 816 in 2012 to 4 260 in 2015), as has the rate of incidence for such accidents (from 70.62 in 2012 to 38.56 in 2015). These figures reflect a persistent downward trend compared to the previous reference period. The number of fatal accidents has been decreasing too (from 623 in 2012 to 375 in 2015), as has the rate of incidence for such accidents (from 4.48 in 2012 to 3.39 in 2015). These figures reflect a steady downward trend compared to the previous reference period. The report repeats its previous questions.

The Committee notes that the report does not provide pertinent figures or statistics on the number of occupational diseases. It therefore considers that during the reference period occupational diseases were not adequately monitored. The Committee asks that the next report provide information on the legal definition of occupational diseases; the mechanism for recognising, reviewing and revising of occupational diseases (or the list of occupational diseases); the incidence rate and the number of recognised and reported occupational diseases during the reference period (broken down by sector of activity and year), including cases of fatal occupational diseases, and the measures taken and/or envisaged to counter insufficiency in the declaration and recognition of cases of occupational diseases; the most frequent occupational diseases during the reference period, as well as the preventive measures taken or envisaged.

Activities of the Labour Inspectorate

The Committee previously concluded (Conclusions 2013) that the labour inspection system was inefficient. It noted that labour inspection services are divided between several public authorities, who lack resources and co-operate only imperfectly, and asked for information on the implementation of joint labour inspections under the Regulations on the interaction between the *Derzhatomrehuliuvannia* and the *Derzhhirpromnahliad* in matters of occupational health and safety in the use of nuclear energy (registered with the Ministry of Justice on 22 March 2010 under No. 234/17529).

The report indicates that according to Resolution of the Cabinet of Ministers No. 442 of 10 September 2014, the State Labour Service, *Derzpraci,* was created by reorganising and merging the State Labour Inspectorate and the State Service of Mining Control and Industrial Safety. The Regulation on the State Labour Service (*Derzpraci),* which sets out its main tasks, has been approved by Resolution of the Cabinet of Ministers No. 96 of 11 February 2015. Its tasks are multiple: implementation of the national policy on industrial safety, protection of workers, occupational health, implementation of supervision of mines on the national territory, supervision and the verification of compliance with labor legislation, employment of the population, compulsory social insurance scheme in terms of the granting, calculation and payment of benefits, compensation, provision of social services and other forms of physical security; etc.

The report also indicates that 25 expert technical centres (ETC, state enterprises) assess the state of labour protection and industrial safety at enterprises and organisations. Assessment is conducted by inspecting the production sites and analysing the documentation. During the inspection, the methodological assistance is provided to employers, and control over works performance and operation of high-risk equipment is carried out. ETC also carry out periodic technical inspections to determine the technical state of the equipment during its functioning; they also draw up a technical diagnosis of high-risk equipment whose lifetime is in principle exceeded, the results of which are then used to determine whether the equipment in question can continue to be used.

In its previous conclusion (Conclusions 2013), the Committee noted that the proportion of workers covered by inspection visits was too low, and asked for statistics on the number of labour inspectors and on administrative measures (fines, suspensions or termination of activity, cases filed with public prosecution) taken. It also asked for statistics on sanctions applied following cases filed with the prosecution authorities. It then asked for information on the fines and penalties applicable under the Code of Administrative Offences and the Criminal Code for violations of Act No. 2694-XII.

The report indicates that the number of the state inspectors on industrial safety and labour protection decreased during the reference period (from 1 387 in 2012 to 1 022 in 2014 and 635 in 2015). The number of persons who were brought to administrative responsibility in the field of industrial safety and labour protection also decreased significantly (from 91 012 in 2012 to 2 310 in 2015). The number of cases which were transferred to law enforcement

bodies in the field of industrial safety and labour protection, according to the results of inspections, further decreased (from 1 466 in 2015 to 33 in 2015). The number of decisions on termination, suspension, restriction of economic activity (court ruling following claims of the State Labour Service) fell from 54 442 in 2012 to 34 in 2015.

The Committee notes, according to figures published by ILOSTAT, that the number of labour inspectors decreased (from 573 in 2012, 582 in 2014 to 441 in 2015), the average number of labour inspectors per 10 000 employed persons remains steadily low (0.3) during the reference period, the number of labour inspection visits to workplaces during the year fell significantly from 39 478 in 2013 to 2 704 in 2015, and the average of labour inspection visits per inspector also fell during the reference period (from 69 in 2012 to 16.3 in 2015). The Committee requests the next report to explain why the numbers of workplace inspections which are stated in the report and those published by ILOSTAT are different.

The report explains that decline of supervisory activity rates is caused by moratorium on inspections introduced between August 2014 and June 2015 by Laws No. 719-VII of 16 January 2014 on State Budget of Ukraine for 2014 and No. 76-VIII of 28 December 2014 on Introducing Amendments and Declaring Some Legislative Acts Invalid, as well as introduction, starting from the second half of 2013, of the rule regarding possibility of suspension, restriction of works performance, services provision under decision of the administrative court (according to Law No. 353-VII of 20 June 2013 on Amendments to Certain Legislative Acts on Removing Restrictions on Business Activities).

The Committee recalls that under Article 3§3 of the Charter, States Parties must implement measures to focus labour inspection on small and medium-sized enterprises (Statement of Interpretation on Article 3§3, Conclusions 2013). Since it cannot find an answer to its question in the report with regard to this point (Conclusions 2013), the Committee requests that the next report contain this information.

The Committee considers that in the reference period, labour inspection structures were not sufficiently developed in practice to establish that there is an efficient labour inspection, and that in absolute terms, the number of fines imposed and the amounts involved remain too low to have a dissuasive effect. The Committee recalls that an efficient inspection system can only be maintained where a minimum of inspections are performed on a regular basis, the aim being to ensure that the right to enshrined in Article 3 is effectively enjoyed by the largest possible number of workers. It requests that the next report contain information concerning the proportion of workers covered by inspection visits actually made during the reference period, and the number of inspection visits made in the civil service.

Conclusion

The Committee concludes that the situation in Ukraine is not in conformity with Article 3§3 of the Charter on the ground that the labour inspection system, insofar as it concerns occupational health and safety, is inefficient.

Article 3 - Right to safe and healthy working conditions

Paragraph 4 - Occupational health services

The Committee takes note of the information contained in the report submitted by Ukraine, but highlights the significant gaps in information provided in relation to the specific requirements of Article 3§4 of the Charter.

In its previous conclusion (Conclusions 2015, in conformity with the decision adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on findings of non-conformity for repeated lack of information in Conclusions 2013), the Committee found that the situation as regards national occupational health services was not in conformity with the Charter on the ground that it had not been established that there was a strategy to progressively institute access to occupational health services for all workers in all sectors of the economy. The Committee asked that the next report contain a detailed clarification of the situation whether occupational health services were available for all workers in all branches and sectors of the economy, public as well as private, and if not, whether there was a national strategy for bringing about such access. It also asked whether health services were limited to medical examinations or include for example information, advice and counselling in occupational health matters and whether workers participated in organisation and/or management of health services. It asked for information on the content and organisation of occupational health services in enterprises with less than 50 workers. Moreover, the Committee asked for information on the objectives and consequences of the reorganisation of the State Labour Service as far as occupational health services were concerned.

The report indicates that no significant amendments in the national legislation were made during the reference period.

However, the report indicates that a new State Labour Service (*Derzpraci*) was created according to Resolution of the Cabinet of Ministers No. 442 of 10 September 2014 on Optimisation of the Central Executive Authorities System. This occured through the merge of the State Inspectorate of Labour and the State Service of Mining Supervision and Industrial Safety and the transfer of functions to the newly formed Service on occupational health, radiation control of workplaces, and exposure doses of workers. The Regulations on the State Labour Service were approved by Resolution of the Cabinet of Ministers No. 96 of 11 February 2015.

The Committee considers that there is no strategy to institute access to occupational health services for all workers in all sectors of the economy.

Conclusion

The Committee concludes that the situation in Ukraine is not in conformity with Article 3§4 of the Charter on the ground that there is no strategy to develop occupational health services for all workers.

Article 11 - Right to protection of health

Paragraph 1 - Removal of the causes of ill-health

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

Measures to ensure the highest possible standard of health

The Committee notes from WHO that life expectancy at birth in 2015 (average for both sexes) was 71.3 years (compared to 69.7 in 2009). Despite this upward trend, the life expectancy rate is still low relative to other European countries. For instance, life expectancy at birth in the EU-28 was estimated at 80.6 years in 2015.

According to the World Bank data, the death rate (deaths/1 000 population) has increased during the reference period from 14.4 in 2012 to 14.9 in 2015. The report provides statistical data on the mortality rate in urban settlements (13.2 in 2015) as well as in urban areas (18.0 in 2015), stating that the mortality rate of rural population exceeds the mortality rate of urban population by 37.1%.

The Committee notes from the report that the main causes of death are cardiovascular diseases (67.3%), cancer (13.3%), external causes (6.3%) and diseases of the digestive system (4%).

In the context of the national targeted social programs which received funding in the reference period 2012-2015, the report mentions cancer control and measures aimed at prevention and treatment of cardiovascular and cerebrovascular diseases. The Committee asks that the next report contain information on the concrete measures taken to address the main causes of death and their outcomes.

The report indicates that the infant mortality decreased since the last reference period – 8.6 in 2012 and 7.9 in 2015 (compared to 9.17 per 1 000 live births in 2010). The Committee notes this decline, but considers that the rate is still high relative to other European countries (according to Eurostat, the average EU-28 rate was of 3.6 per 1,000 live births in 2015).

As regards the maternal mortality rate, the report mentions that during 2012-2015, the measures taken thorough the State Program “Reproductive Health of the Nation” were aimed at reducing maternal morbidity and mortality. According to the report, the maternal mortality rate reached 12.7 per 100 thousand live births in 2012, followed by its further increase up to 12.9 in 2013, 14.8 in 2014, 14.6 in 2015. The Committee notes that according to the World Bank indicators, the maternal mortality rate stood at: 25 deaths per 100,000 live births in 2012 and at 24 deaths per 100,000 live births in 2013-2015. These rates are also considerably above the average in other European countries.

The Committee considers that the prevailing high infant and maternal mortality rates, examined together with the low life expectancy rate, show that the situation in Ukraine is below the average in other European countries, and point to weaknesses in the health system. It therefore finds that insufficient efforts and progress has been made in respect of such indicators, and therefore maintains its previous conclusion of non-conformity.

Access to health care

The Committee refers to its previous conclusion for a description of the health system (Conclusions 2013). It takes note of the information provided in the report on the measures taken during the reference period with regard to emergency medical assistance, tuberculosis, hepatitis, HIV/AIDS, drug abuse. The Committee asks to be kept informed on the implementation of these measures/programmes in the next report.

The Committee previously asked to be kept informed on the implementation of reforms, on how these are meeting the health needs of the population, their impact on health care costs, and whether the reforms are translating into decreasing rates of avoidable mortality (Conclusions 2013). The report indicates that the reform concerning primary medical

assistance (PMA) institutions is in progress due to the administrative-territorial reform and creation of new, united communities. The issues of healthcare facilities autonomy, as well as development and introduction of modern, effective indicators of qualitative primary medical assistance, creation of a pool of modern managers for primary healthcare facilities, are being solved/ addressed. The report provides statistical data on the number of institutions of general practice/family medicine as well as doctors involved in primary medical assistance.

The Committee noted previously that health care expenditure in Ukraine was low by regional standards and had not increased significantly as a proportion of gross domestic product (GDP) since the mid 1990s; expenditure could not match the constitutional guarantees of access to unlimited care. Although prepaid schemes such as sickness funds were growing in importance, out-of-pocket payments accounted for 37.4% of total health expenditure (Conclusions 2013).

The Committee notes from the World Bank data that the public health expenditure represented 4.12% of GDP in 2012 and 3.6% of GDP in 2014. The same source indicates that the out-of-pocket health expenditure represented 41.98% of the total health expenditure in 2012 and 46.21% in 2014, therefore showing an increasing trend during the reference period.

With regard to the financing of the health care, the report indicates that during 2012-2015, the sources of health care system financing are the state and local budgets, as the main and mandatory source, as well as social security funds, private funds of households, employers, non-profit organisations serving households, and funds of international donor organisations for health protection system. In 2015, the funding of medical measures of certain state programs from the state budget amounted to UAH 3,696.9 billion – 33.8% of expenditures for health care (in 2014, UAH 3.13 billion were used for these purposes). Taking into account the significant growth in prices for medicines and medical goods, measures provided for by programs combating tuberculosis, HIV/AIDS, hepatitis, programs aimed at immunologic prophylaxis of children, cancer treatment, the health of seriously ill children's, were funded within the scope of expenditures in 2014.

The Committee took note previously of the comments sent by the "All-Ukranian Council for Patients' Rights and Safety" stating that despite the consitutional provision which guarantees everyone the right to health care, the lack of political will, poor government performance and complicated procedures effectively prevent millions of patients from getting timely access to adequate treatment. The cost of treatment in some therapeutic areas as well as the high prices of medication, which many patients cannot afford, were underlined as major problems. They also claimed that the limited health care budget in Ukraine could have disastrous consequences in ensuring access to health care in particular for haemophilia and hepatitis C patients. The Committee invited the Government to provide comments on these allegations (Conclusions 2013). The Committee notes from the data presented in the report that the funds dedicated to the national targeted social programs related to centralised measures on treatment of children and adults suffering from haemophilia as well as prevention, diagnostics and treatment of hepatitis, have increased during the reference period.

The Committee recalls that arrangements for access to care must not lead to unnecessary delays in its provision. Access to treatment must be based on transparent criteria, agreed at national level, taking into account the risk of deterioration in either clinical condition or quality of life (Conclusions XX-2 (2013), Poland). The Committee asks that the next report provide statistical data on the actual average waiting times for primary and specialised care as well as inpatient and outpatient care, including surgeries.

The Committee notes from the Report Health Systems in Transition Ukraine 2015 of the European Observatory on Health Systems and Policies that three phases of reforms were to be implemented over a four-year period (2010 – 2014) and sought to strengthen primary and emergency care, rationalise hospitals and change the model of health care financing from

one based on inputs to one based on outputs. However, no fundamental reform of the system has yet been implemented, as conflict and political instability have proved the greatest barrier to reform implementation.

The same source indicates that the core challenges for the Ukrainian health system are still the ineffective protection of the population from the risk of heavy health care costs and the structural inefficiency of the health system, which is sustained by an inefficient system of health care financing. Health system weaknesses are also highlighted by increasing rates of avoidable mortality. According to the same Report Health Systems in Transition 2015, concerns about affordability are linked to the prevalence of informal payments and the cost of pharmaceuticals for treatment, and these concerns in themselves constitute a barrier to access. The Committee asks that the next report contain information on measures and steps taken to tackle these issues. It asks in particular that the next report provide information on the share of out-of-pocket expenses attributable to informal payments, the frequency of informal payments and whether the informal payments represent a common practice Ukraine. In the meantime, recalling that the cost of health care must not represent an excessively heavy burden for the individual and the out-of-pocket payments should not be the main source of funding of the health system, the Committee concludes that the situation is not in conformity with Article 11§1 of the Charter on the ground that insufficient measures have been taken to effectively guarantee the right of access to health care.

The Committee has previously adopted a general question addressed to all States on the availability of rehabilitation facilities for drug addicts, and the range of facilities and treatments (Conclusions 2009). In its previous conclusion, the Committee reiterated its request that such information be included in the next report (Conclusions 2013). The report indicates that the action plan for 2015 on implementation of the state drug policy for the period till 2020 was approved by Resolution of the Cabinet of Ministers of Ukraine No. 514-r of 25 March 2015. The report provides statistical data regarding the network of institutions providing drug treatment in Ukraine. During 2012-2014, 5 regional centres of re-socialization of drug-addicted youth in 5 regions: Donetsk, Zhytomyr, Kyiv, Mykolaiv, Kherson Regions operated in Ukraine.

The Committee asks that the next report on Article 11§1 contain information on the availability of mental health care and treatment services, including information on the prevention of mental disorders and recovery measures.

The Committee asks that the next report on Article 11§1 contain information on dental care services and treatments (such as who is entitled to free dental treatment, the costs for the main treatments and the proportion of out-of-pocket paid by the patients).

As regards the right to protection of health of transgender persons, the Committee had previously received submissions from the International Lesbian and Gay Association (European Region) (ILGA) stating that "in Ukraine there is a requirement that transgender people undergo sterilisation as a condition of legal gender recognition". In this respect, the Committee asked whether legal gender recognition for transgender persons requires (in law or in practice) that they undergo sterilisation or any other invasive medical treatment which could impair their health or physical integrity (Conclusions 2013, General Introduction).

The report indicates that a medical certificate is issued to a person who has undergone gender reassignment, on the basis of which it is decided on further changes in legal status. According to the common practice accepted in Ukraine, the main principles of treatment of patients who intend to reassign gender include conservative and surgical treatment which shall be agreed with the patient by signing of the relevant document, so called "informed consent". This document is a legal confirmation of patient’s consent to medical intervention. The report adds that the current national legislation in the field of health care on gender reassignment does not require mandatory sterilisation. The decision on removal of reproductive organs is made only upon request and consent of the patient.

The Committee takes note of the comments submitted by Transgender Europe and ILGA-Europe on the implementation of Article 11 of the Charter in the current cycle stating that in Ukraine there have recently been isolated cases where courts have ruled against sterilisation or other invasive medical treatment, although there is no guarantee that these rulings will be repeated consistently across the country. Additionally, the authorities have put forward proposals for changes in procedures which would end such requirements. The Committee asks to be kept informed of any developments regarding the case law of the courts and the legal framework in relation to the procedure of legal gender recognition for transgender persons.

Conclusion

The Committee concludes that the situation in Ukraine is not in conformity with Article 11§1 of the Charter on the grounds that:

- the measures taken to reduce infant and maternal mortality have been insufficient;
- insufficient measures have been taken to effectively guarantee the right of access to health care.

Article 11 - Right to protection of health

Paragraph 2 - Advisory and educational facilities

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

Education and awareness raising

In its Conclusions 2013, the Committee had concluded that the situation was not in conformity with Article 11§2 of the Charter on the ground that it has not been established that public information and awareness raising is a public health priority (Conclusions 2013).

In its Conclusions 2015, the Committee took note of the information submitted by Ukraine in response to the conclusion that it had not been established that public information and awareness raising was a public health priority. The Committee considered it established that public information and awareness raising is a public health priority. It nevertheless asked that the next report contain information on the implementation of the different measures (Conclusions 2015).

The report provides information on the measures taken during the reference period such as campaigns to prevent drug abuse among young people, educational events on drug abuse prevention and promotion of healthy life style for children, youth and their parents, mass media campaigns, annual events promoting the protection of environment, harmful habits prevention, balanced diet, HIV/AIDS prevention.

As regards health education in schools, the Committee noted previously of the activities carried out by the network of Youth-Friendly Clinics (YFC) which have been established in co-operation with UNICEF. The report indicates that in 2015, there were 139 YFCs operating in the country. The Committee understands that the YFCs are providing health education in schools and asks that the next report confirm this understanding.

The Committee recalled that health education should be provided through school life and form part of school curricula. It therefore asks whether providing health education at schools is a statutory obligation, how it is included in school curricula (as a separate subject or integrated into other subjects), and the content of health education (Conclusions 2013).

The report indicates that the legislation provides for medical education at schools. The general education of youth is a priority direction of "Hygienic Education of Children, Adolescents and Youth", and the strategy "Health through Education". For this purpose, the integrated course "Fundamentals of Health", being a part of state component of education for pupils of Forms 5-9 was improved. The academic programs of basic secondary education according to the new State Standards for the Basic and Complete Secondary Education have been implemented since 1 September 2013. The program covers 35 hours. It is structured in four sections: (i) human health; (ii) physical component of health (iii) mental and emotional components of health; (iv) social component of health. The subject "Health and Safety" (0.5 hours per week) according to the academic program "Fundamentals of Health and Safety" is studied in Forms 10-11, as in previous years.

The Committee recalls that sexual and reproductive health education is a process aimed at developing the capacity of children and young people to understand their sexuality in its biological, psychological, socio-cultural and reproductive dimensions which will enable them to make responsible decisions with regard to sexual and reproductive health behaviour. It is acknowledged that cultural norms and religion, social structures, school environments and economic factors vary across Europe and affect the content and delivery of sexual and reproductive health education. However, relying on the basic and widely accepted assumption that school-based education can be effective in reducing sexually risky behaviour, States Parties must ensure that sexual and reproductive health education forms part of the ordinary school curriculum; that the education provided is adequate in quantitative terms; that the form and substance of the education, including curricula and teaching methods, are relevant, culturally appropriate and of sufficient quality, in particular that it is

objective, based on contemporary scientific evidence and does not involve censoring, withholding or intentionally misrepresenting information, for example as regards contraception and different means of maintaining sexual and reproductive health; and that a procedure is in place for monitoring and evaluating the education with a view to effectively meeting the above requirements (International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Croatia, Complaint No. 45/2007, Decision on the merits of 30 March 2009, §§46 – 47). The Committee asks for information in the next report on whether and how sexual and reproductive education is provided in schools in Ukraine.

Counselling and screening

The Committee took note previously that according to the Ministry of Health issued Order No. 417 on 15 July 2011, all pregnant women are entitled to free observation and examination during pregnancy and in the postnatal period. The report does not provide any information on this point. While referring to its Conclusion under Article 11§1 where it noted that the rate of maternal mortality remains high, the Committee asks updated and comprehensive information on the frequency and results of the consultation and screening for pregnant women throughout the country.

With regard to screening, the Committee has repeatedly asked for any any relevant information on counselling and screening for the population at large (Conclusions 2009, 2013 and 2015).

Given the lack of information, the Committee previously concluded that the situation was not in conformity with Article 11§2 of the Charter on the ground that it had not been established that prevention through screening is used as a contribution to the health of the population (Conclusions 2013 and Conclusions 2015).

The report states that during the reference period no preventive programs of screening for diseases which constitute the main cause of death were implemented. Such activities are held by charity funds, public organisations or at the expense of local budgets during campaigns.

The Committee recalls that under Article 11§2 of the Charter there should be screening, preferably systematic, for the diseases which constitute the principal cause of death (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 Committee notes that there are no screening programs available for the population at large. It therefore considers that the situation in Ukraine is not in conformity with Article 11§2 of the Charter on the ground that prevention through screening is not used as a contribution to the health of the population.

Conclusion

The Committee concludes that the situation in Ukraine is not in conformity with Article 11§2 of the Charter on the ground that prevention through screening is not used as a contribution to improving the health of the population.

Article 11 - Right to protection of health

Paragraph 3 - Prevention of diseases and accidents

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

Healthy environment

In its previous conclusion, the Committee took note of the different pieces of legislation and regulations adopted by Ukraine during the reference period for the reduction of environmental risks, in particular in the field of air quality, water management, waste management, environmental noise, ionising radiation and food safety. It asked for information on environmental indicators, namely the trends in respect of air pollution, contamination of drinking water and food intoxication during the reference period (Conclusions 2013).

The report provides statistical data with regard to air pollution in urban and rural settlements. For example, in 2015, 3.6% of samples taken in urban settlements contained pollutants in concentrations exceeding maximum permissible level (as compared to 3.3% in 2014, 5.4% in 2013 and 5.8% in 2012), in rural area – 1.0% (as compared to 1.0% in 2014, 0.6% in 2013; 1.1% in 2012).

With regard to drinking water, the report indicates that during the last years, up to 5% of water-pipes did not meet the sanitary standards (3.2% in 2015, 3.1% in 2014, 3.8% in 2013, 4,5% in 2012). Concerning rural population water supply, the report indicates that 5.3% of the rural water-pipes do not comply with sanitary rules and regulations (5.4% in 2014, 6.3% in 2013).

As regards food safety, according to statistic data for 2015, the percentage of samples not complying with standards under microbiological indices is 3.4% (3.2% in 2014, 3.1% in 2013, 2.9% in 2012), under sanitary and chemical indices in 2015 – 0.8% (0.9% in 2014, 1% in 2013, 1% in 2012). The State Sanitary Epidemic Service carries is responsible of finding and removal of defective and dangerous products from circulation.

The Committee wishes to be kept informed on any measures taken to reduce environmental risks as well as trends in respect of air pollution, asbestos, contamination of drinking water and food intoxication during the reference period.

Tobacco, alcohol and drugs

The Committee noted previously that advertisement of tobacco on television, radio, outdoor advertising media and in printed media is prohibited. Moreover in May 2012, the Parliament passed a law which completely prohibited smoking of tobacco products in public places, transport, enterprises, institutions and organisations (Conclusions 2013).

The report indicates that according to the data of national surveys conducted by the Kiev International Institute of Sociology, the spread of daily smoking among the population in Ukraine aged 18 and older was 9.0% among women and 42.4% among men in December 2015. The report adds that according to the survey of the State Statistics Service of Ukraine, the prevalence of smoking among population in Ukraine aged 12 and older was 18.4% in 2015. In general, the prevalence of smoking decreased from 21.8% to 18.4% during three years (2012-2015). The most significant reduction of heart diseases prevalence was observed in 2013 when it decreased by 9% during a year. The report adds that smoking was prohibited in catering and other places in 2013. The Committee notes from the WHO Report on the global tobacco epidemic, country profile Ukraine 2017, that indoor offices and workplaces are not smoke-free environments in Ukraine. It asks whether measures are taken to address this issue.

With regard to alcohol consumption, the report indicates that in 2013, amendments were brought to Article 130 of Code of Ukraine on Administrative Offences in order to strengthen

the responsibility for driving vehicles in a state of alcohol, drug or other intoxication. Moreover, on 1 July 2015 amendments were brought to the Tax Code in the sense that all drinks containing ethyl alcohol in quantity exceeding 0.5% by volume belong to the category of alcohol drinks, including beer. That meant in fact that all legislative regulations governing alcoholic industry will apply to beer (e.g. restrictions in respect of advertising, sponsorship).

Concerning drugs, the report indicates that the action plan for 2015 on implementation of the state drug policy for the period till 2020 was approved by Resolution of the Cabinet of Ministers of Ukraine No. 514-r of 25 March 2015. Preventive and awareness-raising activities on combating drug abuse, promotion of healthy lifestyle and habits to resist harmful influence of drug abuse in last years were carried out together with more than 100 NGOs. These NGOs provide services to young people who have mental and behavioural disorders as a result of use of psychoactive substances. The Committee asks to be kept informed on the implementation of this policy, namely on its impact concerning trends in drug consumption.

The Committee asks that the next report contain updated figures on the levels and trends with regard to tobacco, alcohol and drugs consumption, as well as the measures taken to reduce and prevent the consumption.

Immunisation and epidemiological monitoring

The Committee noted previously that an external review of Ukraine's National Immunisation showed that programme performance in Ukraine had declined in recent years due to vaccine stock-outs, excessive medicalisation of vaccine delivery, and the loss of public confidence in immunisation. The Committee took note of the low vaccination coverage rate of infants in 2011 (e.g. poliomyelitis – 54.3%; pertussis, diphtheria, tetanus – 45.9%; hemophilic infection – 26.2%; measles, parotitis, rubella – 67.0%; hepatitis B – 21.6%). The Committee invited the Government to submit comments on this matter and reserved its position on this point (Conclusions 2013).

The report indicates that for the last years, it could be noted "an instability of epidemic situation in respect of infectious diseases controlled by means of specific immunological prophylaxis." The situation is connected with the decrease of volumes of preventive injections due to substantial lack of financing of the State Immunological Prophylaxis Program for 2009-2015 and delayed supply of immuno-biological medicines to the regions. The report does not provide data on the coverage rate corresponding to the reference period under monitoring. The Committee requests that the next report contain data on the vaccination coverage rate for the vaccines included in the National Immunisation Programme.

The Committee notes from the WHO that on 1 September 2015, Ukraine's Minister of Health announced that polio had been identified as the cause of paralysis in 2 children, aged 10 months and 4 years, who lived in Zakarpatska oblast in south-western Ukraine. The country conducted three rounds of supplemental immunisation to protect the children of Ukraine against the crippling disease. The same source indicates that a team of technical experts assessed Ukraine's response to a polio outbreak and concluded that transmission of poliovirus has been interrupted. Nevertheless, the team remained concerned about significant gaps in immunisation and surveillance that put Ukraine at high risk for new outbreaks. Owing to low coverage, immunisation gaps accumulated in Ukraine.

According to WHO, in April 2016 a worldwide the "OPV Switch" took place replacing the trivalent OPV (tOPV) vaccine to bivalent OPV (bOPV) vaccine, removing the type 2 component (OPV2) from immunisation programmes. Trivalent vaccines must be destroyed to prevent any chance of transmission. The Committee asks whether this has been done in Ukraine and whether the new vaccine is being used. The Committee notes the WHO recommendation with regard to poliovirus, that if enough people in a community are immunised, the virus will be deprived of susceptible hosts and will die out. High levels of

vaccination coverage must be maintained to stop transmission and prevent outbreaks occurring.

The Committee recalls that States Parties must operate widely accessible immunisation programmes. They must maintain high coverage rates not only to reduce the incidence of these diseases, but also to neutralise the reservoir of the virus and thus achieve the goals set by WHO to eradicate several infectious diseases (Conclusions XV-2 (2001), Belgium). Countries must demonstrate their ability to cope with infectious diseases, such as arrangements for reporting and notifying diseases, special treatment for AIDS patients and emergency measures in case of epidemics (Conclusions XVII-2 (2005), Latvia). In light of the above, the Committee considers that the situation in Ukraine is not in conformity with Article 11§3 of the Charter on the ground that efficient immunisation and epidemiological monitoring programmes are not in place.

Accidents

The report does not provide any information on this point. The Committee recalls that under Article 11§3 of the Charter, States Parties must take steps to prevent accidents. The main sorts of accidents covered are road accidents, domestic accidents, accidents at school and accidents during leisure time (Conclusions 2005, Republic of Moldova).

The Committee asks for information on measures/policies taken to reduce and prevent the number of the above mentioned types of accidents and trends in this field (whether the number of accidents increased or decreased).

Conclusion

The Committee concludes that the situation in Ukraine is not in conformity with Article 11§3 of the Charter on the ground that efficient immunisation and epidemiological monitoring programmes are not in place.

Article 14 - Right to benefit from social welfare services

Paragraph 1 - Promotion or provision of social services

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

Organisation of the social services

The report underlines that a number of regulatory legal acts aimed at reforming the system of social services provision was approved during the reference period. The Strategy for Reforming Social Services Provision (hereinafter "the Strategy") was approved by Resolution of the Cabinet of Ministers of Ukraine No. 556 of August 08, 2012. The purpose of the Strategy is to ensure that social services are available to all people and also to increase their efficiency and quality. In order to achieve these objectives the Strategy set up areas of intervention, principles and criteria to be developed. The report indicates that, in this respect, for the purpose of implementing the Strategy, an Action Plan for 2013-2016 was approved by Resolution of the Cabinet of Ministers of Ukraine No. 208 of March 13, 2013. With the reform of the system of social services an organizational model for the provision of social services at the local level has been created. In this respect the Committee asks to know the impact of the Strategy for Reforming Social Services and the effect of the Action Plan 2013-2016 on social services beneficiaries.

The report indicates that to implement the reform of social services during 2012-2015, 40 regulatory legal acts were adopted providing for: a basic list of social services; criteria for activity of the entities providing social services; the procedure for providing social services with establishment of differentiated fees according to the income of the beneficiaries; the procedure for ordering social services and methods of assessing bids; methodical recommendations on monitoring and assessment of the quality of social services, on informing people/users on their rights and on the determination of the cost of social services. Moreover, a new revision of the Law of Ukraine *On Social Services* was developed to ensure the realisation of a specific system for providing social services and for the purpose of eliminating legislative and technological problems due to the decentralization of social services,

Effective and equal access

In its previous conclusion (Conclusions 2013) the Committee requested confirmation that entitlement to general social welfare services applies to the whole population.

The report indicates that in accordance with the Law of Ukraine *On Social Services*, every person and separate groups of persons being in difficult life circumstances are entitled to social services provisions. The report underlines that the methodical recommendations on informing the population about access to social services were approved by Order of the Ministry of Social Policy No. 828 of October 28, 2014.

In its previous conclusion (Conclusions 2013)the Committee requested the next report to provide clarification on whether social welfare services are only available to persons in need who have no relatives to help them, the type of assistance which relatives are required to provide and the consequences for the relatives if they refuse.

The report indicates that the territorial centres provide social services to all citizens, irrespective of the fact whether they have relatives or not.

In its previous conclusion (Conclusions 2013) the Committee requested to know the average fee charged to users. While acknowledging the list of categories of individuals entitled to free access to social services, the Committee asked whether these services are available free of charge for persons who are not on this list but do not have the means to pay for the social services they need.

The report indicates that rates for chargeable social services are established by a territorial centre in accordance with Resolution of the Cabinet of Ministers of Ukraine No. 268 of April 9, 2005 *On Approval of the Procedure of Regulation of Rates for Chargeable Social Services*. The report provides a detailed list of the average cost of different social services at territorial centres. In order to give services also to people unable to pay it has been established a differentiated fee amounting to not more than 12% of the person's income. In this respect the Committee asks that the next report provides information on the maximum amount charged to beneficiaries. The report underlines that according to the Law *On Local Self-Government of Ukraine* , the local self-government authorities may, at their own expense establish to guarantee social services provision to the people in need, in addition to those established by the legislation. The report states that, according to the Law approved by Decree of the Cabinet of Ministers of Ukraine No. 1417 of December 29, 2009, citizens having relatives who are obliged to provide care and assistance to them, in some exceptional cases, may be released from payment for social services if they have a low-income and receive state social support in the manner prescribed by the legislation, or if they are addicted to psycho-active substances, alcohol, are imprisoned etc.

In its previous conclusion (Conclusions 2013) the Committee reiterated its question about the geographical distribution of social services in order to be able to assess whether it is broad enough for social services to be available in practice for persons who need them regardless of where they live.

The report provides statistical data from the State Statistics Service of Ukraine "Social Protection of Population" indicating the geographical distribution of territorial centres of social servicing, residential facilities for elderly people and disabled persons (adults, children and youth)social services for family, children and youth. According to a Research of Caritas Ukraine ordered by the Ministry of Social Policy it is also indicated the Regional indices of the level of satisfaction of users of social services in every region. *The Procedure for Determination of Needs of Population of an Administrative Territorial Unit in Social Services* was approved by Order of the Ministry of Social Policy of Ukraine No. 28 of January 20, 2014.

In its previous conclusion (Conclusions 2013) the Committee requested clarification whether the authority to which the beneficiaries of social services may appeal in urgent cases of discrimination and infringements of human dignity is an independent body.

The report indicates that the authority (Prosecutor's Office) to which the beneficiaries of social services may appeal in urgent cases of discrimination and infringements of human dignity is an independent body. The legal aspects of independence of the Prosecutor's Office are determined by Law of Ukraine No. 1697-VII October 14, 2014 *On the Prosecutor's Office*.

In its previous conclusions (2013), as there is no exception in the 2003 Act on Social Services regarding its application to foreigners, the Committee asked to confirm that equal treatment between nationals and non-nationals from states parties to the Charter is ensured.

The report confirms that the right to access to social services is available to the citizens of Ukraine, as well as to foreigners and stateless persons who live in Ukraine in a regular situation and are found themselves in difficult life circumstances, including persons covered by the Law of Ukraine *On Refugees and Persons Requiring Additional or Temporary Protection*.

Quality of services

In its previous conclusion (Conclusions 2013), the Committee concluded that the situation was not in conformity with Article 14§1 of the Charter on the ground that there are no mechanisms for supervising the sufficiency of social welfare services.

The report indicates that the Methodical Recommendations for Monitoring and Assessment of Quality of Social Services were approved by Order of the Ministry of Social Policy No. 904 of December 27, 2012. In it a number of different stages of assessment of social services quality are recommended. Moreover the recommendations include, indices of quality of social services and criteria of compliance for internal and external assessment of quality of social services. In this respect the Committee asks that the next report provides information on the effective implementation of the quality assessment and of the impact on the quality of social services since the introduction of the Methodical Recommendations for Monitoring and Assessment of Quality of Social Services.

In its previous conclusion (Conclusions 2013), the Committee reiterated its question concerning the amount of public spending on *social services and the legal basis for data confidentiality and respect for privacy.*

The report indicates that the confidentiality of personal data is guaranteed by Law of Ukraine No. 2297-VI of June 01, 2010 *On Protection of Personal Data*.

The report indicates that in 2014 the financing of institutions and organizations providing social services was decentralized to regional budgets, budgets of regional cities, district budgets, budgets of united territorial communities. The total amount of funds of local budgets allocated for providing social services by different institutions and individuals exceeded UAH 4.7 billion in 2015. According to statistical reports, as of the end of 2015, in Ukraine operates: – 657 territorial centres of social servicing (providing social services), which provide services to more than 1.43 million persons); – 289 residential facilities for elderly persons and disabled persons (46.400 people); – 105 facilities for homeless persons, centres of social adaptation of persons who served their sentences of restriction of liberty or imprisonment (more than 27.200 people).

Conclusion

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

Article 14 - Right to benefit from social welfare services

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

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

The legal framework governing relations concerning voluntary activities is Law No. 3236-VII of 19 April 2011 on volunteer activities (Conclusions 2013).

In its previous conclusion (Conclusions 2013) the Committee pointed out that a supervisory machinery must be put in place to monitor the quality of the services provided by individuals and voluntary organisations, while safeguarding users' rights and ensuring respect for human dignity and fundamental freedoms, therefore it asked to clarify the situation in this respect.

The report indicates that a number of regulatory legal acts aimed at reforming the system of social services provision was approved in the reported period. (see the information on Article 14 § 1 regarding the methodological recommendations of monitoring and assessment of social services quality)

In its previous conclusion (Conclusions 2013) the Committee asked that the next report provided statistical data on subsidies paid by the central government and local authorities to voluntary organisations which provide social services. It also requested that the next report described any other types of support that may exist for voluntary organisations, such as, for example, tax incentives.

The report indicates that the organisations and institutions engaged in voluntary activities are entitled to receive specific funds or properties to develop their work also in the sector of provision of social services (e.g. by participating to bids or public private partnership). The report indicates that in 2015, 9 regional advisory bodies have been created (responsible for coordination of work regarding the voluntary and charitable assistance). The promotion of voluntary sector resulted in an active involvement of the young and elderly people in volunteering with organization of charity fundraising and providing voluntary assistance to socially vulnerable groups of the population.

The report indicates that in 2015, social services were commissioned in accordance with Resolution of the Cabinet of Ministers of Ukraine No. 324 of April 29, 2013 *On* Approval of the Procedure for Commissioning of Social Services at the Expense of *the Budget Funds* in two regions) for total amount of approximately UAH 200,000 (in 2014 social services were commissioned in one region for total amount of UAH 95,000). The report indicates that in order to involve non-governmental organizations to the provision of social services, the local authorities can use also other mechanisms to support them (e.g. funds for social projects, allocation of funds from the local budgets within the framework of social and economic development of the regions).

Conclusion

The Committee concludes that the situation in Ukraine is in conformity with Article 14§2 of the Charter.

Article 23 - Right of the elderly to social protection

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

Legislative framework

The Committee points out that the main aim of Article 23 of the Charter is to enable elderly persons to remain full members of society and, it consequently invites the States Parties to make sure that they have appropriate legislation to, firstly, combat age discrimination outside employment and to, secondly, provide for a procedure of assisted decision making.

With regard to the fight against age discrimination, the Committee asked in its previous conclusions (Conclusions 2013), if the prohibition of discrimination enshrined in Law No. 3712-XII of 16 December 1993 applied both to the public sector and to the private, and what remedies were available to victims of discrimination. The report does not answer the first part of the question but does state that Law No. 5207-VI of 6 September 2012 on the Principles of Preventing and Combating Discrimination in Ukraine applies to natural and legal persons under public and private law**.** The law ensures equal rights and freedoms, equal treatment and equal opportunities for all individuals and groups of individuals. The Committee wishes to know whether there is a case-law on age discrimination outside employment which would protect elderly persons from such a form of discrimination.

The report also states that victims of discrimination have the right to complain to the relevant government authorities, the Commissioner for Human Rights of the Verkhovna Rada of Ukraine or a court. The Committee asks whether there is any relevant case-law or whether statistics can be provided on the number of complaints registered or cases dealt with in relation to age discrimination.

With regard to assisted decision making for elderly persons, the Committee previously asked (Conclusions 2009 and 2013) whether there were safeguards to prevent elderly persons from being arbitrarily deprived of the right to take autonomous decisions. The report states, in this respect, that persons who are recognised as being fully or partly incapacitated have the right to be placed under guardianship or wardship after a court decision. All persons who are aware of a situation which may be of interest to the guardianship or wardship authorities are required to notify it thereof. Persons with legal capacity whose state of health does not enable them to exercise their rights or meet their obligations are entitled to be assisted by a third party of their choice. At the request of the person concerned, the name of his or her de facto representative is initially registered then confirmed by the guardianship or wardship authority.

Adequate resources

When examining the adequacy of resources of elderly persons under Article 23, the Committee takes into account all social protection measures provided for elderly persons, aimed at maintaining an income level allowing them to lead a decent life and participate actively in public, social and cultural life. In particular, the Committee examines pensions, contributory or non-contributory, and other complementary cash benefits available to elderly persons. These resources are then compared with median equivalised income. However, the Committee points out that its task is to assess not only the law, but also the compliance of practice with the obligations arising from the Charter. For this purpose, the Committee will also take into consideration relevant indicators relating to at-risk-of-poverty rates for persons aged 65 and over.

The Committee notes that the statutory retirement age for women has been raised: it is now 60 years and 30 years of contributions. There has been no change in the age of entitlement to old-age benefits for men.

The report states that Law No. 3668 of 8 July 2011 on measures to ensure the legislative reform of the pension system made it possible both to adjust pensions in line with monthly

wages from 1 May 2012 onwards and to increase pensions for war veterans. The report also states that the conflicts in Ukraine in 2014-2015 resulted in increased inflation and economic decline. However, the Committee notes that despite the austerity measures adopted in 2014, Ukraine raised the minimum amount of social assistance pension from UAH 949 during the previous reference period to UAH 1 074 (about €43) from 1 September 2015 onwards.

The Committee notes that in 2014-2015, the poverty threshold was UAH 1 560 (about €62), whereas the extreme poverty threshold (as per the relative criterion) was UAH 1 248 (about €49). It acknowledges the efforts made by Ukraine but notes nonetheless that, although the minimum pension significantly increased in comparison to the previous reference period, by at least 13%, it is still lower than the poverty threshold and even slightly lower than the extreme poverty threshold. It also notes that the relative-criterion-based poverty rate was 23.8% in 2014-2015 while the extreme poverty level was 10.3%.

The Committee asked in its previous conclusion (Conclusions 2013) whether any additional cash benefits/allowances were available for recipients of minimum old age pension (or guarantee pension for low income elderly persons, where this applied). The report does not provide any information on this subject, so the Committee repeats its question.

For these reasons, the Committee considers that the minimum level of pension is inadequate. Therefore, the situation is not in conformity with the Charter in this respect.

Prevention of elder abuse

In its previous conclusions (Conclusions 2009 and 2013), the Committee asked, *inter alia,* what had been done to assess the extent of the problem and raise awareness on the need to eradicate elder abuse and neglect, and if any legislative or other measures had been taken or were planned in this area. The report states that the non-profit organisation Care for Elderly People in Ukraine launched a campaign to prevent elder abuse with the support of the European Union. The results of this campaign have been published and a conference on the subject was held in Kyiv in February 2014. The Committee asks for further information on the outcome of this campaign in the next report. The report also states that Commissions to help victims of abuse have been established in co-operation with local authorities. The Committee asks for more information on this subject. Lastly, the report states that a methodological guide on identifying signs of abuse has been translated and published and that 300 volunteers have attended training courses on how to detect cases of elder abuse and help victims.

Services and facilities

The Committee points out that, although Article 23 makes reference only to information about services and facilities, it presupposes that such services and facilities exist.

With regard to the services and facilities themselves, the Committee asked, firstly, in its previous conclusion (Conclusions 2013) for clarification on the services available, and their scope and cost. The report states that the Strategy for Reforming the System of Social Services, adopted by Resolution No. 556 of the Ukraine Cabinet of 8 August 2012, is intended to ensure that social services are available, improve their quality and make them more efficient. The report specifies that, to implement this strategy, the Cabinet adopted an Action Plan for 2013-2016, approved by Resolution No. 208 of 13 March 2013, in addition to over 40 regulatory instruments.

In 2014, Ukraine had 658 social service centres providing services for 1,430,016 persons. The Committee notes that the number of centres has been steadily decreasing since its initial conclusion (Conclusions 2009) and, asks for the next report to explain why there has been this decrease and what impact it has had on the elderly. It also asks what is the proportion of the elderly on the Ukrainian population.

The report provides an exhaustive list of social services provided by social service centres. To determine the content and scope of social services, the means of providing them and the indices of their quality, the Ministry of Social Policy has issued a number of orders. The report adds, moreover, that unemployed persons may provide assistance for elderly persons or persons with disabilities who require constant physical assistance at home in exchange for financial compensation. Over 71 000 elderly citizens and disabled people have received this type of service. Some regions, particularly Volyn, Odessa, Kharkiv, Poltava, Kirovograd and Kyiv, have set up special transport services for the elderly and the disabled. Over 86 000 people benefited from these services in 2015. More than 36 800 elderly persons have benefited from the courses provided at some 300 Universities of the Third Age operating at social service centres.

Persons who are unable to care for themselves because of their old age, their state of health or their disability have free access to the social services under the Law of 2003 on the social services (see Conclusions 2009 and 2013, Article 14§1). A fee may, however, be charged. The amount of the fees to be covered by the beneficiaries is set by the social service centres. To facilitate access to services for persons with low incomes, these fees, which may be deferred, may not exceed 12% of the income of the person concerned. Furthermore, in accordance with the Law on Local Self-Government in Ukraine, local authorities may adopt more generous rules on social security for their inhabitants. The Committee asks for information in the next report on the number of elderly people who benefit from these services and, among these, what proportion must pay for them.

Secondly, the Committee asked whether in general, supply matches demand and how the quality of services is monitored. In general, most regions' coverage rate is higher than 80%. The regions with the lowest figures for the coverage of people in need are Zaporizhia (79%), Kharkiv (72%), Cherkasy (67%), Kherson (67%), Odessa (65%), Sumy (62%) and Zakarpattia (59%). The Committee asks what measures are planned to improve this low rate.

Thirdly, it asked how the participation of elderly persons in cultural and leisure facilities was ensured and encouraged. The report does not provide any information on this subject so the Committee repeats its question.

With regard to measures to inform people about the existence of services and facilities, the Committee previously asked for information on how elderly people were informed about the services on offer and any differences between the municipalities in this respect. The report states that methodological recommendations on monitoring and assessment of the quality of social services were approved by Order No. 828 of the Ministry of Social Policy of 28 October 2014. As a result, the people must be informed by all existing means about available services and service providers. The Committee asks the next report to indicate what measures were implemented to inform elderly persons.

Housing

In its previous conclusion (Conclusions 2013), the Committee asked for more information about how the right to suitable social accommodation for the elderly is implemented in practice. The report does not provide any information on this subject. However, the Committee notes from the Governmental Committee report on the 2013 Conclusions that a new law had been adopted to regulate housing benefits. It also notes that a new programme of grants is also being drawn up. It asks for further information in the next report on this law and programme, particularly their aims and their impact on elderly people's living conditions. It also asks what proportion of the elderly live in their own homes.

Health care

According to Law No. 3712-XII of 16 December 1993 on the basic principles of social protection of retirees and other elderly persons in Ukraine, elderly persons are guaranteed

free medical care in geriatric centres, hospitals for the elderly and outpatient services and through home-help.

In its previous conclusion (Conclusions 2013), the Committee firstly asked for further information on the implementation of the Intersectoral Integrated Programme for 2002-2011, particularly how it addresses issues of improving elderly people's health and increased average life expectancy. The Committee takes note of the information provided in the report but notes that it does not answer the question, so repeats it. It also notes that a new national action plan is being drawn up, namely the Social Programme on Population Ageing in Ukraine for the period 2017-202, drawing on the UN's Madrid International Plan of Action on Ageing, and requests further information on this in the next report.

Secondly, the Committee asked whether specialised centres were sufficient to meet the needs of elderly persons in all regions of the country, taking into account their capacity and geographical location. The Committee notes that elderly persons' healthcare needs are generally only partly met. It notes in this respect that there was a reduction in hospitals in activity during the reference period, particularly in the regions of Donetsk (2) and Luhansk (1) and in the Autonomous Republic of Crimea (1). The Committee asks the next report to indicate what is the impact of such reduction on the health of elderly persons.

Furthermore, the report states that highly specialised care is provided for the elderly, whether or not they are suffering from dementia or Alzheimer's disease, by the network of research institutions and clinics of the Ministry of Health and National Medical Academy of Ukraine (cardiology, orthopaedics, neurology, oncology, psychiatry, etc.). The report also points out that some psychiatric hospitals run geriatric departments for elderly people suffering from cognitive diseases. The Committee asks whether these services make it possible to cover the entire country. The Committee points out that some NGOs provide care for elderly people who are dependent or suffer from neurological disorders. The Committee asks for more detailed information on this subject in the next report.

Thirdly, the Committee asked whether it was possible to receive primary health care services at home, including domiciliary nursing services. The report states that elderly people may receive primary health care at home and that this is provided by GPs, clinics and emergency and ambulance services. It also points out that this type of care is constantly on the increase, particularly among people aged 80 to 85.

Institutional care

In its previous conclusion (Conclusions 2013), the Committee asked what kinds of service were offered in large boarding facilities on the one hand and smaller residential homes on the other. It also asked whether there were enough places for elderly persons in institutional facilities and whether they were affordable. The report states that the network of residential establishments, which consisted with 289 nursing facilities and 332 smaller accommodation facilities at the end of 2015, meets the needs of the elderly people taken care of. The Committee notes that the report does not answer the question, so that it reiterates its question as to whether there are enough places in institutional facilities.

The report points out that institutions provide residential care services, palliative care, adapted accommodation, consulting, etc. Services are provided either free of charge or for a fee, in accordance with the legislation in force. The Committee asks for more detailed information in the next report on the rules concerning payment or non-payment of fees.

The report also points out that national social policy is being reframed to take account of the growing number of elderly people in Ukraine every year. It should seek, in particular, to strengthen their legal protection, provide them with a decent standard of living, increase the role of families in caring for them, organise effective care and psychological support and ensure that they have access to information. The Committee asks for more information on

this subject in the next report, particularly on the practical measures that the Government intends to implement to achieve the aims of the policy.

The Committee also asked (Conclusions 2009 and 2013) whether these facilities are licensed and inspected, and whether there are procedures to complain about the standard of care and services or about ill treatment in this type of institution. Lastly it has asked for information regarding staff qualifications and the use of physical restraints. The report states that Ukraine has adopted a number of measures to monitor respect for residents' rights. A telephone helpline has been set up and bodies charged with supervising the activities of residential institutions have been established. Representatives of the Commissioner for Human Rights also carry out inspection visits. The Committee asks whether reports or records are published following these visits. It also asks how many breaches of the legislation are recorded by these supervisory bodies every year and what powers and/or resources they have to remedy them.

The Committee reiterates its questions whether these residential establishments are covered by a licensing system.

Conclusion

The Committee concludes that the situation in Ukraine is not in conformity with the Charter on the ground that the level of the minimum pension is manifestly inadequate.

Article 30 - Right to be protected against poverty and social exclusion

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

Measuring poverty and social exclusion

The main indicator used by the Committee to measure poverty is the relative poverty rate. This corresponds to the percentage of people living under the poverty threshold, which is set at 60% of the equivalised median income.

The Committee notes that, according to the report, relative or absolute indicators are used in Ukraine to assess poverty: relative criteria (75% of the median total costs), relative criteria of extreme poverty (60% median total costs) or absolute criteria (costs below the minimum subsistence level). It takes note in the report of the detailed explanation on the indicators and that the main information base for measuring poverty indicators is household budget surveys.

The Committee observes from the report that the main poverty indicators for the period 2012-2015 indicate that in 2015 the relative poverty rate increased (23.8%) from 2014 (23.4%) as well as the extreme poverty rate (10.3% against 10.1% in 2014). The poverty rate decreased in households with one child (23.4%) but increased in household with three and more children (by 2.3% points). The poverty rate among children under 18 slightly decreased to 29.9% (31.1% in 2014). The poverty rate for persons of retirement age decreased to 29.2% in 2015 (31.3% in 2014).

The Committee notes that the absolute poverty rate decreased to 9.1% in 2015 (19.6% in 2012 and 17.6 in 2014) and asks the reason for this very significant decrease in an extremely short period of time.

The poverty depth coefficient, which reflects the share of the extremely poor population in the poor population decreased very slightly to 19.8% (19.9% in 2014). In the previous reference period it was 20.6% (Conclusion 2013).

As regards the indicators concerning the population that is socially excluded, the Committee notes from the report that no social exclusion indicator is stipulated, but that the Methodology for Comprehensive Poverty Assessment, which should be improved in 2017, should include indicators for social exclusion measurement.

The Committee recalls that Article 30 does not only cover poverty but also social exclusion and the risk of social exclusion and asks that the next report contains detailed information in this respect, including any statistics relating to social exclusion.

The Committee notes that, though measures were put in place during the reference period, the overall poverty rates increased in 2015.

Approach to combating poverty and social exclusion

The Committee recalls that with a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, Article 30 requires States Parties to adopt an overall and coordinated approach, which should consist of an analytical framework, a set of priorities and measures to prevent and remove obstacles to access fundamental social rights. The overall and coordinated approach must link and integrate policies in a consistent way, moving beyond a purely sectoral or target group approach and coordinating mechanisms, including at the level of delivery of assistance and services to those living in or at risk of poverty, should exist.

The Committee notes that the National Programme for Overcoming and Preventing Poverty included measures for its implementation without specific expenditures for each measure. The Programme is funded at the expense of state and local budgets (determined annually based on the specific challenges and opportunities of the budget) and the expense of other

sources. Under the budget programmes, managed by the Ministry of Social Policy, the amount of funding for implementation of the program as a whole (provided for from the state budget and other sources) constituted UAH 11.3 billion (350387055 €), and the actual amount of funding is UAH 10.9 billion (338257589 €). In addition, during the examination of the Programme, the objectives and activities were agreed upon by the public organisations, and their suggestions and comments were taken into account.

The Committee further notes that a reform of subsidies was implemented in 2014-2015 aiming at simplifying procedures and strengthening social protection and that the 2016 Poverty Overcoming Strategy, which is expected to be implemented by 2020, aims at a gradual reduction of poverty and social exclusion in Ukraine and at new prevention mechanisms. It observes, in this respect, from Eurostat data that the total social benefit expenditure in 2015 of 29.3% of GDP surpassed the EU-28 average of 27.5% .

While noting the information on various measures the Committee does not see clear evidence or indication of how they add up to an overall and coordinated approach to combating poverty and social exclusion.The Committee therefore asks that the next report contain detailed information/data/figures demonstrating that the budgetary resources allocated to combating poverty and social exclusion are sufficient in view of the scale of the problem/the challenge at hand.

The Committee further recalls that the measures taken to combat poverty and social exclusion must promote and remove obstacles to access to fundamental social rights, in particular employment, housing, training, education, culture and social and medical assistance (Conclusions 2003, France).

The Committee refers to its conclusions on non-conformity under other provisions of the Charter which are relevant to its assessment of compliance with Article 30 (see Conclusions 2013, Statement of interpretation on Article 30). It refers in particular to Article 1§1 and its conclusion that it has not been established that employment policy efforts have been adequate in combatting unemployment and promoting job creation (Conclusions 2016); Article 7§5 and its conclusions that the young workers' wages are not fair (Conclusions 2015); Article 15§1 and its conclusion that the right of persons with disabilities to mainstream education is not effectively guaranteed and Article 15§2 and its conclusion that mainstreaming in employment is not effectively guaranteed in respect of persons with disabilities (Conclusions 2016); Article 16 of the Charter and its conclusion that it has not been established that equal treatment of nationals of other States Parties and stateless persons with regard to family benefits is guaranteed (Conclusions 2017); Article 23 and its conclusion that the level of the minimum pension is manifestly inadequate (Conclusions 2017); Article 31§2 and its conclusion that it has not been established that the right to shelter is guaranteed (Conclusions 2017).

Taking into account all of the above, in particular the increase in overall poverty rates, especially in households with three or more children and the extreme poverty rate, the Committee considers that the situation remains in breach of Article 30 as there is no adequate overall and coordinated approach to combating poverty and social exclusion.

Monitoring and Evaluation

The Committee notes that a Methodology for Monitoring and Assessment of Effectiveness of Social Support Programme was approved in 2013 in order to increase the efficiency and improve the management of the social support system. It provides for the system of indicators that are based on statistical and administrative data and on public survey results on the effectiveness of social support programs.

The Committee takes note of the National Programme for Overcoming and Preventing Poverty for the period until 2015 aiming at improving methodological approaches with a multidimensional assessment of poverty by criteria for monitoring the poverty situation.

During the period 2012-2015, a comprehensive poverty assessment based on the monitoring of indicators considering the effects of the measures aimed at poverty reduction was conducted quarterly according to specified parameters to ensure a systematic analysis of the tasks in certain directions of the Programme.

The Committee notes that the Ministry of Social Policy ensures the coordination of central and local executive authorities. The general information on the implementation of measures was prepared quarterly and was submitted to the Cabinet of Ministers of Ukraine, and at special requests – to the Verkhovna Rada (Parliament) of Ukraine. The information was also provided at the request of public organisations and individual citizens.

However, the Committee recalls that Article 30 of the Charter requires the existence of monitoring mechanisms for reviewing and adapting the efforts in all areas and sectors, at all levels, national, regional, local, to combat poverty and social exclusion; mechanisms which should involve all relevant actors, including civil society and persons directly affected by poverty and exclusion (see Conclusions 2003, France, Article 30). It therefore asks that the next report contain comprehensive information on such mechanisms covering all sectors and areas of the combat against poverty and social exclusion.

Conclusion

The Committee concludes that the situation in Ukraine is not in conformity with Article 30 of the Charter on the ground that there is no adequate overall and coordinated approach to combating poverty and social exclusion.

CONCLUSIONS RELATING TO CONCLUSIONS OF NON-CONFORMITY DUE TO A REPEATED LACK OF INFORMATION IN CONCLUSIONS 2015

Article 8 - Right of employed women to protection of maternity

Paragraph 1 - Maternity leave

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the information submitted by Ukraine in response to the conclusion that it had not been established that there are in law and in practice adequate safeguards to protect employees from undue pressure to take less than six weeks postnatal leave.

In this respect, the Committee had noted that the authorities had not provided evidence that there was a six-week compulsory postnatal leave that could not be shortened, not even at the employee's request, or that there were in law and in practice adequate safeguards to protect employees from pressures to take less than six weeks postnatal leave.

It is once more recalled in the report that Article 179 of the Labour Code provides for up to 126 days of maternity leave, of which up to 70 days (10 weeks) can be used before birth and 56 days (8 weeks) after birth. The authorities underline that the 8 weeks post-natal leave shall be granted in full irrespective of the number of days actually used before birth.

The report does not clarify, however, whether the worker must compulsorily use her full period of post-natal leave or whether she can take a shorter period, as it is explicitly the case for the maternity leave prior to the birth. The Committee accordingly reiterates its request for explicit information on this point. In addition, it asks the next report to provide any relevant data concerning the average length of maternity leave effectively taken.

As regards the other Committee's question (Conclusions 2015) concerning the existing safeguards, the report refers to Article 2§1 of the Labour Code, which prohibits any discrimination at work, including as regards the respect of equal rights and opportunities and direct or indirect restrictions of the workers' rights based on gender identity and family responsibilities. However, the report does not provide any evidence that this provision can be applied and is actually applied to avoid the shortening of the maternity leave period. The Committee accordingly asks the next report to clarify this issue, in the light of any existing example of relevant case-law. It considers in the meantime that it has not been established that there are in law and in practice adequate safeguards to protect employees from undue pressure to take less than six weeks postnatal leave.

The Committee recalls that the situation concerning other aspects covered by Article 8§1 will be examined in the framework of the regular reporting cycle (Conclusions 2019) and asks that relevant and updated information be provided in that context.

Conclusion

The Committee concludes that the situation in Ukraine is not in conformity with Article 8§1 of the Charter on the ground that it has not been established that there are in law and in practice adequate safeguards to protect employees from undue pressure to take less than six weeks postnatal leave.

Article 8 - Right of employed women to protection of maternity

Paragraph 5 - Prohibition of dangerous, unhealthy or arduous work

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the information submitted by Ukraine in response to the conclusion that it had not been established:

- that pregnant women as well as women who have recently given birth or are nursing their child are adequately protected in respect of dangerous, unhealthy and arduous work, and
- that, in case of reassignment to a different post, they retain the right to return to their initial employment at the end of the protected period.

As regards the protection in respect of dangerous, unhealthy and arduous work, the Committee had repeatedly asked (Conclusions 2011 and 2015) whether and how activities involving exposure to benzene, ionizing radiation, high temperatures, vibration or viral agents were prohibited or strictly regulated for pregnant women as well as women who have recently given birth and/or are nursing their infant. It had furthermore asked whether underground work in mining was prohibited for these categories of women.

In response to this question, the report confirms that the Order of the Ministry of Health No. 256 of 29 December 1993, registered with the Ministry of Justice on 30 March 1994 (No. 51/260) prohibits the activities at issue for all women. In the light of this information, the Committee considers that the situation is in conformity with the Charter on this point.

As to the second ground of non conformity, the report reiterates the information already noted by the Committee (Conclusions 2011 and 2015) concerning the employee's right to be transferred to another post, without loss of salary, until her child reaches the age of three. However, the report does not clarify, as repeatedly requested, whether at the end of the protected period – i.e. when the child turns three years old, under the Ukrainian law – the reassigned employee has a statutory right to return to the post she occupied before the maternity-related reassignment. Given the repeated absence of information on this point, the Committee considers that, in case of reassignment to a different post, Ukrainian law does not guarantee the employees' right to return to their initial employment at the end of their maternity/nursing period.

Conclusion

The Committee concludes that the situation in Ukraine is not in conformity with Article 8§5 of the Charter on the ground that in case of reassignment to a different post, Ukrainian law does not guarantee the employees' right to return to their initial employment at the end of their maternity/nursing period.

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

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31st October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the information submitted by Ukraine in response to the conclusion that it had not been established that there is an adequate legislation on domestic violence against women and equal treatment of nationals of other States Parties and stateless persons with regard to family benefits is guaranteed.

With regard to domestic violence against women, the report states that the project on preventing and combating violence against women and domestic violence was implemented within the framework of the "Action Plan of the Council of Europe for Ukraine 2015-2017". The Committee asks the next report to provide further information on actions and measures implemented, in particular whether the Council of Europe Convention on preventing and combating violence against women and domestic violence has been ratified.

Furthermore, the report states that the draft law on preventing and combating domestic violence was adopted by the Parliament of Ukraine in the first reading on 17 November 2016. The Committee notes the efforts made by Ukraine but notes, nevertheless, that the draft law has not been yet ratified, so that there is still no appropriate measure to ensure an adequate protection with respect to women in law. It therefore considers the situation not to be in conformity with the Charter on this point.

In respect of equal treatment of foreign nationals and stateless persons with regard to family benefits, the Committee previously asked what are the criteria foreign nationals, stateless persons and refugees must fulfill to be granted with family benefits and, if relevant, the criteria to get permanent residence. The report provides no information in this regard, so that the Committee reiterates its questions and considers the situation not to be in conformity with the Charter on the ground that it has not been established that there is equal treatment of nationals of other States Parties and stateless persons with regard to family benefits.

Conclusion

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

- there is no adequate legislation on domestic violence against women;
- it has not been established that equal treatment of nationals of other States Parties and stateless persons with regard to family benefits is guaranteed.

Article 31 - Right to housing

Paragraph 1 - Adequate housing

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31st October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the fact that Ukraine has submitted no information in response to the conclusion that it had not been established that the supervision of housing standards was adequate and that measures were taken by public authorities to improve the substandard housing conditions of Roma.

The Committee recalls that it is incumbent on the public authorities to ensure that housing is adequate through different measures such as, in particular, an inventory of the housing stock, injunctions against owners who disregard obligations, urban development rules and maintenance obligations for landlords. Public authorities must also take measures to avoid the interruption of essential services such as water, electricity and telephone (Conclusions 2003, France). Once again, the report does not provide information in this regard and does not answer the Committee's questions as to how adequacy of housing is monitored; whether rules exist imposing obligations on landlords to ensure that dwellings they let are of an adequate standard and to maintain them and how public authorities supervise such rules. The Committee considers accordingly that it has not been established that the supervision of housing standards is adequate.

Concerning Roma, the Committee had asked for information on implementation of the Strategy of Roma national minority protection and integration into Ukrainian society. As the report does not provide any information in this respect, the Committee maintains its finding of non-conformity with Article 31§1 of the Charter on this point.

The Committee recalls that the situation concerning other aspects covered by Article 31§1 will be examined in the framework of the regular reporting cycle (Conclusions 2019) and asks that relevant and updated information be provided in that context.

Conclusion

The Committee concludes that the situation in Ukraine is not in conformity with Article 31§1 of the Charter on the grounds that:

- it has not been established that the supervision of housing standards is adequate;
- it has not been established that measures are taken by public authorities to improve the substandard housing conditions of Roma.

Article 31 - Right to housing

Paragraph 2 - Reduction of homelessness

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31st October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the fact that Ukraine has submitted no information in response to the conclusion that it had not been established that it had not been established that the right to shelter was adequately guaranteed.

The Committee had asked clarifications in particular on whether shelters/emergency accommodation satisfied security requirements (including in the immediate surroundings) and health and hygiene standards (in particular whether they were equipped with basic amenities such as access to water and heating and sufficient lighting) and whether the law prohibited eviction from shelters or emergency accommodation, unless an alternative accommodation was provided.

As the report provides no information on these points, the Committee maintains its finding of non-conformity.

The Committee recalls that the situation concerning other aspects covered by Article 31§2 will be examined in the framework of the regular reporting cycle (Conclusions 2019) and asks that relevant and updated information be provided in that context.

Conclusion

The Committee concludes that the situation in Ukraine is not in conformity with Article 31§2 of the Charter on the grounds that it has not been established that the right to shelter is guaranteed.