



January 2018

European Social Charter

European Committee of Social Rights

Conclusions XXI-2 (2017)

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

Articles 3, 11, 12, 13, 14 of the 1961 Charter
and Article 4 of the Additional Protocol



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General Introduction

This text may be subject to editorial revision.

GENERAL INTRODUCTION

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

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, (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 1961 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 4 of the 1988 Additional Protocol).

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

6. Greece, Iceland and Luxembourg have submitted their report too late for examination and adoption in December 2017. Therefore, the Conclusions in respect of these States will be made public in March 2018.

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

- Group A, made up of eight States: France, Greece, Portugal, Italy, Belgium, Bulgaria, Ireland, Finland¹;
- Group B, made up of seven States: the Netherlands, Sweden, Croatia, Norway, Slovenia, Cyprus, the Czech Republic².

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 bound by the 1961 Charter: Croatia and Czech Republic. They were published in September 2017.

8. Finally, certain States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions XX-4 (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 Conclusions XXI-2 (2017) are the Czech Republic, Germany, Poland and Spain.

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

10. The Committee's conclusions as outlined above are published in 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 XXI-2 (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

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

² The Netherlands, Sweden, Norway, Slovenia and Cyprus are Parties to the Revised 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

12. 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

13. 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 and Article 2 and 3 of the 1988 Additional protocol. 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 XXI-1 (2016).

CONCLUSIONS XXI-2 (2017)

Article	CZECH REPUBLIC	DENMARK	GERMANY	POLAND	SPAIN	UNITED KINGDOM
Article 3.1		+	-	0	+	-
Article 3.2		+	0	+	-	+
Article 3.3		+	+	+	0	+
Article 7.5	0				+	
Article 8.2	0					
Article 11.1		+	0	-	+	+
Article 11.2		+	0	+	+	+
Article 11.3		+	0	+	+	+
Article 12.1		+	-	-	-	-
Article 12.2		+	+	+	+	
Article 12.3		+	+	0	+	
Article 12.4		-	-	-	-	
Article 13.1		-	-		-	0
Article 13.2		+	+	+	+	+
Article 13.3		+	0	0	+	+
Article 13.4		+	+		+	+
Article 14.1		+	0	-	+	+
Article 14.2		+	0		+	+
Article 16				-	+	
Article 19.1					+	
Article 19.2				+		
Article 19.3					-	
Article 19.4			0			
Article 19.6					-	
P Article 4		0			0	

+ conformity	- non-conformity	0 deferral	□ non-accepted provision
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**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		
Azerbaijan	18/10/01	02/09/04		
Belgium	03/05/96	02/03/04	23/06/03	
Bosnia and Herzegovina	11/05/04	07/10/08		
Bulgaria	21/09/98	07/06/00	07/06/00	
Croatia	06/11/09	26/02/03	26/02/03	
Cyprus	03/05/96	27/09/00	06/08/96	
Czech Republic	04/11/00	03/11/99	04/04/12	
Denmark	*	03/05/96	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

1961 European Social Charter

European Committee of Social Rights

Conclusions XXI-2 (2017)

CZECH REPUBLIC

This text may be subject to editorial revision.

The following chapter concerns the Czech Republic which ratified the 1961 Charter on 3 November 1999. The deadline for submitting the 14th report was 31 October 2016 and the Czech Republic submitted it on 3 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 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 XX-4 (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 employed women to protection – illegality of dismissal during maternity leave (Article 8§2).

The Committee examined this information and deferred the conclusions 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 2 of the Additional Protocol),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 3 of the Additional Protocol).

The deadline for submitting that report was 31 October 2017. The report was registered on 28 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.

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 the Czech Republic in response to the conclusion that it had not been established that the apprentices' allowances are adequate.

Apprentices

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

The Committee has repeatedly asked information on the minimum amount of the allowances (2015) granted to apprentices in their last year of apprenticeship. In its previous conclusion, as the report did not provide the requested information, the Committee considered that the situation was not in conformity with the Article 7§5 of the 1961 Charter on the ground that it had not been established that the apprentices' allowances are adequate.

According to the report, the Government Regulation No 561/2004 Coll. stipulates a level of allowances for apprentices connected with their vocational training during apprenticeship and covers all sectors of national industry and all parts of the national territory. The minimum allowance guarantees 30% of the minimum wage of an adult worker. The maximum allowance is without any limit, i.e. can be higher than minimum wage of the adult worker. The level of the allowance depends on the apprentice's work productivity. There are not deductions from the allowances.

The Committee notes that there are no statistics at disposal of Ministry of Labour and Social Affairs concerning the level of allowance, as the schools concerned are funded by Regional Authorities, the executive section of regional self-government and not by particular employers. In this respect, the risk that employers will use apprentices as underpaid workers, does not exist. The Committee asks the next report to indicate whether towards the end of the apprenticeship the apprentices are paid the wage that is higher than their starting wage.

As regards the information provided in the report concerning young workers' wage, the Committee will take it into account in its next assessment of the situation in respect of Article 7§5 in 2019.

Conclusion

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

Article 8 - Right of employed women to protection

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 Czech Republic in response to the conclusion that it had not been established that, where there is no reinstatement, the law provides for an adequate compensation.

The Committee recalls in this connection that, under Article 8, paragraph 2 of the Charter, that, where the reinstatement of employees unlawfully dismissed during pregnancy or maternity leave 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 response to the Committee's questions (Conclusions XX-4 (2015)), the report states that the same court can award both pecuniary and non-pecuniary damage, depending on the claims submitted and provides the data requested concerning the average length of such proceedings (602 days on average, in total – district courts and regional courts – in 2014 and 2015). The report also confirms that the same regime applies to employees in the private and the public sector, and for all forms of labour law relationships, including temporary contracts.

As regards the compensation available to an employee who does not ask for reinstatement, the report confirms that such employee is entitled to compensation in the amount of the average earnings for the period of regular notice of dismissal. The Committee asks the next report to clarify whether this means that the courts can only award the abovementioned limited amount, without taking into account the damage effectively suffered in a specific case, even though the dismissal was found to be illegal. It reserves in the meantime its position on this issue.

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 XXII-4 (2023)) and asks that relevant and updated information be provided in that context.

Conclusion

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



January 2018

1961 European Social Charter

European Committee of Social Rights

Conclusions XXI-2 (2017)

DENMARK

This text may be subject to editorial revision.

The following chapter concerns Denmark which ratified the 1961 Charter on 3 March 1965. The deadline for submitting the 36th report was 31 October 2016 and Denmark submitted it on 22 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 4 of the Additional Protocol).

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

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

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

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

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 Denmark 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

Act No. 356 of 9 April 2013 amended the Working Environment Act. The amendment pinpoints that the Act also deals with the psychological working environment.

Article 3§2

Since January 2012 inspections by the WEA are risk-based, and all enterprises with two or more full-time employees (FRE) will be inspected at least once before the end of 2019.

Article 12§3

A number of measures were introduced in favour of persons who had exhausted their right to unemployment benefits, such as a special education allowance (Act No. 1374 of 23 December 2012, Act No. 790 of 28 June 2013) or temporary labour-market benefits (Act No. 1610 of 26 December 2013, Act No. 174 of 24 February 2015). Furthermore, measures were taken to maintain unemployment benefits during sickness, for the first 14 days (Act No. 720 of 25 June 2014). Additional measures in favour of unemployed people were taken in the framework of the Employment reform 2014 (Act No. 1486 of 23 December 2014).

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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 2 of the Additional Protocol),

- the right to take part in the determination and improvement of the working conditions and working environment (Article 3 of the Additional Protocol).

The report should also contain information requested by the Committee in Conclusions XXI-1 (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 physically or mentally disabled persons to vocational training, rehabilitation and social resettlement – education and training for persons with disabilities (Article 15§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 - Safety and health regulations (Art. 3-2 1996 RESC)

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

Content of the regulations on health and safety at work

The general legal framework in the field of occupational health and safety is contained in the Working Environment Act. The latest version of this Act is the Consolidated Act No. 1072 of 7 September 2010, which was amended by Act No. 1538 of 21 December 2010, Act No. 254 of 14 June 2011, Act No. 356 of 9 April 2013, Act No. 54 of January 2015 and Act No. 1869 of 29 December 2015. The report indicates that the Act covers the work performed by Danish citizens and by foreign workers on Danish territory and applies to all sectors of industry, including loading and unloading of ships and shipyard work aboard ships.

The enforcement of the Working Environment Act falls under the responsibility of the Danish Working Environment Authority (WEA), as well as other government departments. The report indicates that since 1 January 2015, WEA supervises the health and safety aspects of the offshore installations on the Danish Continental Shelf in the North Sea.

The report gives a list of the main health and safety legal provisions issued during the reference period. These provisions concern, *inter alia*, the limit values for substances and materials; psychological working environment; recognising health and safety certificate; authorisation of external health and safety advisors; building and construction; health and safety activities of the enterprises; work of youths; offshore-safety; work with substances and materials; asbestos; work related violence outside working hours; measures to protect workers from the risks related to exposure to carcinogenic substances and materials at work; special duties of manufactures, suppliers and importers etc. of substances and materials.

The Committee points out that under the terms of Article 3§1 of the 1961 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§1 of the 1961 Charter, Conclusions XX-2 (2013)). The report indicates that Act No. 356 of 9 April 2013 amended the Working Environment Act. The amendment pinpoints that the Act also deals with the psychological working environment.

In addition, the report indicates that the Parliament adopted a new Strategy for Working Environment Efforts up to 2020. Through this strategy the Government wished to target its efforts towards those enterprises that have the most issues relating to working environment. The strategy contains three concrete objectives to be achieved in the period 2012-2020 concerning accidents at work, the psychosocial working environment (the strategy aims to reduce by 20% the number of employees who are psychologically overloaded by 2020) and musculoskeletal disorders (see Conclusions XX-2 (2013)).

In addition, the report indicates that WEA has continued the mobile task force on prevention of violence. The task force has had meetings with the management of municipalities, regions and relevant institutions in order to identify challenges, dilemmas and best practices on prevention of violence. In 2015, a status was made on the political agreed objectives on the 2020 Strategy. According to the report, the result showed a positive development in the areas of serious accidents and musculoskeletal disorders.

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

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.

Protection against dangerous agents and substances

Protection of workers against asbestos

The report only indicates that the Executive Order No. 1792 on asbestos was adopted on 18 December 2015. 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 (106th ILC session, 2017) on the Asbestos Convention No. 162 (1986), it is prohibited to produce, import, utilise or work with asbestos or materials containing asbestos under any form with the following exceptions (pursuant to section 2 of Order No. 1502 on asbestos, as amended): (i) the production, import and utilisation of diaphragms for existing electrolysis plants under stated conditions; and (ii) buildings, facilities and technical aids containing asbestos that were lawfully marketed prior to 1 January 2005 may continue to be marketed. There are no permissible values for exposure to asbestos, but the Danish Working Environment Authority does not require personal protective equipment for values below 0.1 fibres/cm³. Executive Order No. 1502 of 21 December 2004 on asbestos (as amended) does not specify the period of time for which measurements of airborne dust in the working environment must be kept. The Committee invites the authorities to comment on this observation in the next report and to provide all relevant information in this respect.

Protection of workers against ionising radiation

The report does not indicate any changes in the situation which the Committee has previously considered to be in conformity (Conclusions XX-2 (2013)).

The Committee notes that, according to the information from the comments and direct request by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) adopted in 2011 (101st ILC session, 2012) on the Radiation Protection Convention No. 115 (1960), there is a difference between international standards and regional standards in the approach adopted to occupational and health problems and the manner on which they are to be addressed. The Committee invites the authorities to comment on this observation in the next report and to provide all relevant information in this respect.

Given that no update has been provided, 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 relate to that subject.

Personal scope of the regulations

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

Temporary workers

The report does not indicate any changes in the situation which the Committee has previously considered to be in conformity (Conclusions XX-2 (2013)). Given that no update has been provided, the Committee maintains its previous finding of conformity and 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.

Other types of workers

The report does not indicate any changes in the situation which the Committee has previously considered to be in conformity (Conclusions XX-2 (2013)). Given that no update has been provided, the Committee maintains its previous finding of conformity and 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

Pending receipt of the requested information, the Committee concludes that the situation in Denmark is in conformity with Article 3§1 of the 1961 Charter.

Article 3 - Right to safe and healthy working conditions

Paragraph 2 - Enforcement of safety and health regulations (Art. 3-3 1961 RESC)

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

Accidents at work and occupational diseases

As regards accidents, the report provides information with respect to the following industrial sectors: agriculture, hunting, forestry and fishery; raw material extraction; manufacturing; electricity, gas, heat and water supply; building and construction industry; wholesale and retail; hotel and catering; transport agencies; banking, financial institutions and insurance companies; real estate, rental services etc.; public administration; defence and social security; education; health authorities and social organisations; culture, entertainment and sports and domestic work; territorial organisations and institutions, etc.

The data provided show that, even if for some of the above-mentioned sectors there was an increase in the reported accidents, the total number of recognised industrial accidents decreased during the reference period: 18 928 reported accidents in 2012 (but only 13 659 recognised as 'industrial accidents'); 20 673 in 2015 (only 10 039 recognised as 'industrial accidents'). According to the same data, the number of fatal accidents in the above sectors decreased in the reference period from 40 in 2012 (but only 22 recognised as 'industrial accidents') to 30 in 2015 (only 10 recognised as 'industrial accidents').

The Committee notes that Eurostat data confirms the trend with regard to the number of fatal accidents (47 in 2012 and 38 in 2014) and to the incidence rate for such accidents (2.95 in 2012 to 1.94 in 2014) which remains significantly below the average rate in the EU-28 (2.42 in 2012 and 2.32 in 2014) at the end of the reference period. According to the Eurostat figures, the number of non-fatal accidents at work causing at least four calendar days of absence also decreased during the referenced period (from 57 761 in 2012 to 54 157 in 2014). The standardised rate of incidence of non-fatal accidents at work per 100 000 workers fell slightly from 2 177.93 in 2012 to 1 983.09 in 2014. The Committee however notes that this rate is higher than the average rate in the EU-28 (1 717.15 in 2012 and 1 642.09 in 2014). It asks the next report to provide the preventive and enforcement activities undertaken to prevent the accidents at work.

As regards occupational diseases, the data provided – also referring to the above-mentioned industrial sectors – remain stable during the reference period: 20 403 reported diseases in 2012 (but only 4 748 recognised as 'industrial injuries'); 21 109 in 2015 (only 4 660 recognised as 'industrial injuries'). As regards the diagnosis, the figures provided refer to skin diseases, hearing disorder, lung conditions, cancer, shoulder and neck condition, arms conditions, other conditions in the locomotive apparatus, back conditions and mental illness / distress.

Activities of the Labour Inspectorate

The Committee notes that under Article 3§2 of the 1961 Charter, States Parties must implement measures to focus labour inspection on small and medium-sized enterprises (Statement of Interpretation on Article 3§2, Conclusions XX-2 (2013)). The report does not provide any information on this point.

According to the report, since January 2012 inspections by the WEA are risk-based, and all enterprises with two or more full-time employees (FRE) will be inspected at least once before the end of 2019. In addition, enterprises may, regardless of the number of employees, be subjected to inspections as a result of accidents at work, complaints issued by employees, etc. The report also provides the following figures: the number of risk based inspections: 27 984 in 2012 and 27 365 in 2014; the number of visits at companies with a high incidence rate: 101 in 2012 and 258 in 2014; and the number of investigations of serious accidents 1 897 in 2012 and 2 239 in 2014.

In its previous conclusion (Conclusions XX-2 (2013)), the Committee asked for data on the total number of inspection visits by WEA and the number of staff assigned to occupational and health tasks in this framework, including inspectors. In reply, the report indicates that the total number of inspection visits by WEA increased from 50 388 to 62 600 in 2014. In 2012 the number of staff within the WEA who were assigned to occupational safety and health tasks was 665 (compared to 716 in 2014), including 400 inspectors (365 in 2014). The Committee takes note of the increase of inspection visits and of staff involved with safety and health.

The Committee takes note of the special inspections and their outcomes conducted during the reference period.

The WEA can administer a time-bound injunction, a consultancy notice, a prohibition, an administrative fine or file a police report if a company does not fulfil its obligations under the Working Environment Act. The Committee asks that the next report provide information on offences noted by the WEA, fines imposed and their overall amount, as well as on ordered suspensions of activities.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in Denmark is in conformity with Article 3§2 of the 1961 Charter.

Article 3 - Right to safe and healthy working conditions

Paragraph 3 - Consultation with employers' and workers' organisations on safety and health issues

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

The report indicates that the situation did not change during the reference period. The Committee refers to its previous conclusion (Conclusions XX-2 (2013)) and considers that the situation is in conformity with the Charter.

Conclusion

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

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 80.6 years in 2015 (compared to 79.2 years in 2010). 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 that the next report provide information and concrete figures on death rate and the main causes of premature death, as well as on the measures taken to address these causes.

The Committee also asks for information in the next report on the infant and maternal mortality rates.

Access to health care

The report indicates that all residents in Denmark have access to the public healthcare system, and most services are provided free of charge. National legislation ensures that diagnosis and treatment are provided within certain time limits and establishes a free choice of hospital for patients. The regions are required to ensure that any patient referred to a hospital is assessed with a view to diagnosis within one month from the date of referral. If, for medical reasons, it is not possible to determine the condition of the patient within one month, the patient must receive a detailed plan to ensure further investigation of his/her health problem, including, for example, further examinations at another public or private hospital. If the hospital, due to problems of capacity, cannot ensure that treatment will be initiated within 30 days, patients have the right to a so-called 'extended free choice of hospital'. Thus, patients may choose freely among all public or private hospitals in Denmark and abroad. The extended free choice of hospital covers not only the treatment itself but also the assessment with a view to diagnosis.

With respect to waiting times, the report indicates that, according to the data collected by the Danish Health Data Authority, the average waiting time for planned hospital surgery has fallen from 54 days in 2011 to 48 days in 2015. The Committee takes note from the report of the updated data on the national average waiting time on various selected operations.

The Committee took note previously of the complaint system regarding professional treatment in the health care which was handled by the National Agency for Patients' Rights and Complaints (Conclusions XX-2 (2013)). The current report indicates that the National Agency for Patients' Rights and Complaints was replaced by the Danish Patient Safety Authority in October 2015. The Patient Safety Authority functions as a single point of access for patients who wish to complain about a treatment or a specific health care professional. The Committee takes note from the report of the information concerning the number and types of complaints and on outcomes. Patients may also complain about patient rights that have been overridden, e.g. right to see own medical records, free choice of hospital, right to treatment abroad if the treatment is not available in Denmark. The Patient Safety Authority is also responsible for supervising that treatments are conducted in a safe way by both the individual health care professional and by the health care institutions. This task was overtaken from the Danish Health Authority in 2015.

The report further indicates that patients may seek compensation for injuries caused by examination or treatment in hospitals or by authorized health care professionals in private practice through a compensation system which has two review bodies: the Patient Compensation Association and the Patient Compensation Appeals Board. The compensation covers health expenses, pain and suffering, permanent injury, loss of

earnings and/or work capacity relating to treatment. In case of death, compensation can be paid for the loss of the provider and the coverage of funeral expenses.

The report further mentions that in 2016 (outside the reference period), a new National Healthcare Quality Programme was launched by the government together with the regions and the municipalities. The programme establishes a framework for continuously improving the quality of care in the healthcare system. The Danish Healthcare Quality Programme introduces a new approach that puts even stronger emphasis on the expertise and skills of healthcare professionals and less emphasis on process-related registration requirements. A set of ambitious national goals for the quality of care was established. The Committee asks to be informed of the implementation of this programme and its outcome/impact on the quality of healthcare for the individual patient.

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).

In its previous conclusion, the Committee asked whether in Denmark there is a requirement that transgender people undergo sterilisation as a condition of legal gender recognition (Conclusions XX-2 (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 Denmark is one of the states that have amended their laws since 18 March 2015, and no longer require sterilisation. In reply to the Committee's question, the report indicates that in Denmark legal gender recognition for transgender persons do not require (in law or practice) that they undergo sterilisation or any other invasive medical treatment which might impair their health or physical integrity.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Denmark is in conformity with Article 11§1 of the 1961 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 Denmark.

The report indicates that there have been no changes to the situation during the reference period (since the previous report).

Education and awareness raising

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 information in the next report on the specific information and awareness raising campaigns organised during the reference period.

Counselling and screening

The Committee took note previously of the screening programmes for the adult population and of the figures on participation, coverage and detection rates for the different programmes for cancer (Conclusions XX-2 (2013)). The Committee asks for updated information on screening programmes for the diseases that constitute the principal causes of death.

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 Denmark is in conformity with Article 11§2 of the 1961 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 Denmark.

Healthy environment

The Committee takes note of the detailed information in the report on a wide variety of measures taken to prevent air, water, soil and noise pollution. It asks for updated information in the next report.

As regards food safety, the report provides a detailed description of the legislation applicable to food hygiene and control as well as information on the action/monitoring programmes for campylobacter and salmonella. According to the report, the occurrence of disease caused by salmonella has dropped significantly in recent years.

Tobacco, alcohol and drugs

The report provides information on the measures taken during the reference period with regard to drug abuse such as the establishment and operation in the three largest cities of drug consumption rooms for persons aged 18 years or above with a severe dependency resulting from long-term and continuing abuse of narcotic drugs; and the extension of the heroin prescription programme in order to include abusers using heroin in the tablet form. The Committee wishes to be informed of the results achieved.

The report does not provide any information on the measures taken in the field of tobacco and alcohol consumption. 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.

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.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Denmark is in conformity with Article 11§3 of the 1961 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 Denmark.

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 Danish 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 employers' and employees' contributions and by the State budget) with the exception of unemployment insurance which is voluntary but largely subscribed to by employees and self-employed.

The report does not provide information on the personal coverage of social security risks. The Committee noted previously (Conclusions XX-2 (2013)) that the entire resident population is covered for health care, invalidity, old age (social pension) and death. It also notes from the report under the European Code of Social Security that the active population stood at 2 861 000 people in 2015 (the total population was 5 707 251 in 2016, out of the reference period). Furthermore, according to MISSOC:

- all employees and self-employed (including helping spouses) are entitled to sickness cash benefits;
- compulsory insurance to the supplementary old age pension applies to all employees from the age of 16, working 9 hours or more per week; persons who receive daily allowances in case of sickness, birth, adoption, or unemployment or who have started participating in activation or training/ education measures or who are in a period of work placement according to the law on an active labour policy; beneficiaries of disability pension granted since 1 January 2003; beneficiaries of the guarantee of sufficient resources or other transfer income. Voluntary membership is furthermore possible for persons in early retirement and persons with a disability pension granted before 1 January 2003 as well as employees who take up a self-employed activity (upon conditions);
- compulsory insurance in respect of work accidents and occupational diseases applies to all employees, trainees and children affected with a disease or congenital illness caused by the work of their father or mother; voluntary insurance is possible for self-employed persons;
- unemployment insurance is available, on a voluntary basis, to resident persons between 18 and 62 years prior to the age of retirement, persons under the age of 18 can also be admitted if they have completed vocational training of at least 18 months. The Committee notes from the report that there were 2 200 000 insured in 2015, i.e. 76% of the active population.

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. The Committee asks that relevant data on the rate of coverage (percentage of persons insured out of the total active population) for the income-replacement benefits be regularly provided in all future reports.

Adequacy of the benefits

According to Eurostat data, the median equivalised annual income was €28 364 in 2015, or €2364 per month. The poverty level, defined as 50% of the median equivalised income, was €14 182 per annum, or €1182 per month. 40% of the median equivalised income corresponded to €945 monthly.

According to MISSOC, employees are entitled to **sickness** benefits if they have been working at least 74 hours during the last 8 weeks preceding the sickness and the benefits can be paid up to 22 weeks within a period of 9 months (with possibilities to prolong the payment). The amount is calculated on the basis of the hourly wage of the employee, with a maximum of DKK 4135 (€554) per week or DKK 111.76 (€15) per hour (37 hours per week), and on the number of hours of work. The report indicates that minimum sickness benefits in 2015 amounted approximately to DKK 215 020 per annum, or DKK 4135 (€554) per week for full-time employees, which corresponds to €2216 monthly, a level which is in conformity with Article 12§1 of the 1961 Charter. The Committee notes however that the level indicated as minimum in the report also corresponds to the one indicated as maximum in Missoc. It accordingly asks the next report to clarify this point. In order to assess, inasmuch as possible, the minimum level of these benefits, it also asks the next report to provide information on the estimated level of minimum wage for a full-time worker.

The Committee notes from MISSOC that the amount of benefits in case of temporary incapacity resulting from **work accidents and occupational diseases** is equivalent to that paid in case of sickness; it asks the next report to provide comprehensive information on this point (conditions for entitlement, length of payment, minimum amount paid).

To be entitled to contributory **unemployment** benefits, a person must have been insured to an unemployment insurance fund for at least one year and have been working for at least 1924 hours (52 weeks) within the last three years. Unemployment benefits are provided for up to five days per week and are paid for a maximum of two years, within three years. The Committee refers to its previous conclusions (Conclusions XIX-1(2009) and XX-2 (2013) on Article 12§1 and 12§3, as well as Conclusions XX-4 (2015) on Article 1§2) as regards the notion of "reasonable job offer" and the sanctions in case of refusal of such an offer. It asks the next report to indicate what remedies are available to contest the suspension of benefits. Unemployment benefits can be paid up to a maximum of 90% of the member's previous work income (but not more than €111 per day, in 2015). According to the report, the minimum unemployment benefits in 2015 amounted approximately to DKK 678 (€90.85 at the rate of 31 December 2015) per day for full-time insured persons (i.e. around €1999 monthly, based on 22 working days). The Committee considers this rate to be adequate.

As regards **old age** pension, the Committee refers to its assessment under Article 4 of the Additional Protocol.

Invalidity pension is calculated on the same basis as the social pension, based on the years of residence in Denmark between 15 and 65 years, with a minimum pension available after residing at least three years in Denmark (ten years for foreigners) and a full pension available for a length of residence of 40 years. The Committee asks the next report to indicate the minimum level of invalidity pension, as well as of any additional benefits that may be cumulated with it. It reserves in the mean time its position on this point.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Denmark is in conformity with Article 12§1 of the 1961 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 International Labour Convention No. 102

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

The Committee notes that Denmark has ratified the European Code of Social Security on 16 February 1973 and has accepted parts II, III, IV, V, VI, VII, VIII and IX.

The Committee notes from Resolution CM/ResCSS(2016)4 of the Committee of Ministers on the application of the European Code of Social Security by Denmark (period 1 July 2014 to 30 June 2015) that the law and practice in Denmark continue to give full effect to the Parts of the Code which have been accepted.

Conclusion

The Committee concludes that the situation in Denmark is in conformity with Article 12§2 of the 1961 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 Denmark.

It refers to its previous conclusions for a description of the Danish social security system. In the case of family and maternity benefits, the Committee refers to its conclusions on, respectively, Articles 16 and 8§1 (Conclusions XX-4 (2015)). As regards other branches of social security, the Committee takes note of the legislative developments during the reference period.

The Committee notes the adoption of certain restrictive measures such as:

- the repeal of the rule which allowed refugees to be entitled to old age pension by counting the residence years in their home country and in other countries where the person had been considered a refugee as equivalent to residence years in Denmark, and
- the entry into force in 2012, of the reduction of the period during which an unemployed person is entitled to unemployment benefits, from 4 years to 2 years (see also Conclusions XX-2 (2013)).

The report indicates however that certain provisional measures have been taken to moderate the immediate impact of these measures. Accordingly, the equivalence rule for old age pensions continue to apply to persons with refugee status in Denmark who have entered the country before 1st September 2015 and who reach the pension age before 1 January 2021. Furthermore, as regards the right to unemployment benefits, a temporary extension was adopted in 2012, as well as other measures aimed at persons who had exhausted their entitlement (see hereafter).

In particular, in addition to the yearly increase in the rates of social benefits, the report mentions certain improvements concerning unemployment benefits. In this respect, the report indicates that certain rules were simplified (Act No 152 of 28 February 2012) and that a number of measures were introduced in favour of persons who had exhausted their right to unemployment benefits, such as a special education allowance (Act No. 1374 of 23 December 2012, Act No. 790 of 28 June 2013) or temporary labour-market benefits (Act No. 1610 of 26 December 2013, Act No. 174 of 24 February 2015). Furthermore, measures were taken to maintain unemployment benefits during sickness, for the first 14 days (Act No. 720 of 25 June 2014). Additional measures in favour of unemployed people were taken in the framework of the Employment reform 2014 (Act No. 1486 of 23 December 2014).

In the light of this information, the Committee considers that Denmark continues to be in conformity with Article 12§3 of the 1961 Charter.

The Committee also takes note of the changes introduced to the old age pensions system, as described in the report. It notes in particular the 'Retirement Reform' of 2011, which entered into force on 1 January 2014 and provides for an increase in the pension age to take effect successively from 2019 to 2022 (instead of from 2024 to 2027 as provided by the 'Welfare reform' of 2006) as well as for an increase of the pensioners' incentives to continue working, as provided by the 'Jobplan'. According to the report, this reform does not affect the minimum social pensions directly but will contribute to raise the pensioners' income by increasing their supplementary private pensions. The 'Retirement reform' also increases the age at which persons can get early retirement (Voluntary Early Retirement Pay), while shortening its length from 5 to 3 years, and simplifies the access to (invalidity) anticipatory pension for persons over the age of 60 who are unable to work. A general reform of the (invalidity) anticipatory pension system took also place in 2013, which according to the report aims at developing the potential to work for persons with disabilities, unless it is proven that their work capacity cannot be improved. The Committee asks the next report to provide information on the effects of these changes, if any, on the personal scope and the levels of the benefits concerned.

The report also mentions measures coming into force out of the reference period, notably a reform of the unemployment benefits system, which will enter into force in 2017 (Act No. 624 of 8 June 2016), and it indicates that the yearly increase in social benefits is expected to be moderated by 0.3% in 2016, 0.4% in 2017 and 0.75% in 2018. The Committee asks the next report to provide information on the implementation and impact of these measures, as well as of any steps taken to identify and moderate the possible negative impact of restrictive measures as regards the scope and level of social security benefits.

Conclusion

The Committee concludes that the situation in Denmark is in conformity with Article 12§3 of the 1961 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 Denmark.

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

Right to equal treatment

In its previous Conclusions (Conclusions XIX-2 (2009) and XX-2 (2013)) the Committee considered that Denmark ensures equal treatment between nationals and nationals of other EU Member States or parties to the EEA, pursuant to Article 4 of Regulation No. 883/2004 on the coordination of social security systems of 29 April 2004.

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.

The report states that Denmark guarantees the principles of equal treatment through bilateral agreements only. Agreements are signed with countries with which there are, firstly, a significant migration flow, and, secondly, a mutual interest in concluding such an agreement. The report underlines that during the reference period Denmark entered into an agreement with Croatia and opened negotiations with the "former Yugoslav Republic of Macedonia" with a view to concluding such an agreement.

The Committee acknowledges that the conclusion of bilateral agreements presupposes an interest from both sides and that where migratory movements are negligible such interest may be limited or absent. However, as noted above the right to 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 1961 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 Denmark applies the rules whereby the payment of family benefits is conditional upon the claimant's children being resident in Denmark.

In its previous conclusion (Conclusions XIX-2 (2009)) the Committee asks, *inter alia*, for more information on any agreements that are being planned with States Parties which apply a different principle to that of a child residence requirement for entitlement to family benefits (Albania, Andorra, Armenia, Georgia and Turkey) and, if so, the time span for their negotiation. It notes from the report that no new agreement was concluded nor planned during the reference period.

The Committee also notes that nothing changed with regard to the ten-year residence requirement imposed for the early retirement pension for people with disability and standard retirement pension, so that the situation is still not in conformity with the 1961 Charter on this point.

Right to retain accrued benefits

The Committee notes that the report contains no information in this regard and therefore reiterates its finding of non-conformity on this point. It also asks each future report to provide information on the current state of the law or practice.

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

The report contains no information in this regard and, consequently, reiterates its finding of non-conformity on this point. It also asks each future report to provide information on the current state of the law or practice.

Conclusion

The Committee concludes that the situation in Denmark is not in conformity with Article 12§4 of the 1961 Charter on the grounds that:

- equal treatment with regard to social security rights is not guaranteed to nationals of all other States Parties;
- the ten-year residence requirement imposed on nationals of States Parties not covered by EU regulations or bound by bilateral agreement with Denmark for entitlement to an early retirement pension for persons with disabilities or to ordinary old-age pensions is excessive;
- 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 Denmark.

Types of benefits and eligibility criteria

The Committee takes note of the legislative amendments as concerns social assistance benefits which entered into force in 2012.

According to the report, there have been three significant reforms of the system during the period of reference. In October 2011 a new Government took office and benefits such as starting allowance, introduction allowance, the ceiling for assistance recipient and the 300 hour-rule (cash assistance is not payable unless a person has worked for a minimum of 300 hours within 2 years) were abolished and replaced by ordinary social assistance from the 1 January 2012. The second change was a reform of the social assistance system, where the allowances were changed and a new allowance for persons under the age of 30 was introduced – social assistance for persons under 30 without an education. In June 2015 a new Government took office and benefit such as integration allowance (for persons, who have not been living in Denmark for 7 years out of the last 8 years), was introduced in September 2015 for persons who came to Denmark from that date.

In its previous conclusion the Committee took note of the on-going work on the possible devising of a nationally defined poverty line. In this respect the Committee notes from the report that on May 11 2012, the Government set up an expert committee with the aim of identifying various methods to measure poverty and suggest a possible Danish poverty line. The Committee delivered a report in June 2013. However, the new Government that came to power in 2015 has since declined to suggest a Danish poverty line.

Level of benefits

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

- Basic benefit: according to MISSOC, in 2015 basic amount of social assistance (*kontanthjælp*) for persons under 30 years living separately was € 937; basic amount for a person under 30 years with at least one child was € 1,847; basic amount for person of 30 years or more was € 1,454. The Committee also notes from the report that the new integration allowance was introduced on 1 September 2015 for newly arrived foreigners as well as newly arrived Danish citizens who have not lived in Denmark for at least seven of the past eight years. The amount of integration allowance corresponds to education allowance (*uddannelseshjælp*). Financial support constituted a monthly amount of DKK 12,019 (€ 1,562) for single persons with dependent children; DKK 8,411 (€ 1,093) for married or cohabitant persons with dependent children; DKK 6,010 (€ 781) for persons without children.
- Additional benefits: according to MISSOC individual housing benefit (*individuel boligstøtte*) is granted after an objective calculation based on the housing expenditure, the income of the household, the area of the dwelling and the composition of the household. The Committee asks what is the average amount of this benefit paid to a single person without resources.
- 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 € 1,181 in 2015.

In its previous conclusion the Committee considered that the situation was not in conformity with the Charter on the ground that the levels of the ordinary social allowance paid to persons under 25 years of age was not adequate and the levels of starting allowance paid to persons both under and over 25 years of age were not adequate.

The Committee notes that according to the report one of the problems of using the 50% of the median equivalised income threshold is that people who voluntarily work part time, the self-employed as well as students may have incomes that fall below the threshold, without being considered as poor. Furthermore, the report states that depending on each individual case, different forms of allowances can be offered. The Government maintains that to at least present a more accurate picture of a person's or a family's need situation relative to some poverty threshold, it is not appropriate to look at each benefit rate separately. Denmark has no official definition of poverty or a poverty line. Poverty is regarded as a broader phenomenon than the lack of financial resources. The Committee notes however in this respect that the report does not provide any indication as to the average amount of additional benefits that would be paid to all single persons without resources, in receipt of social assistance. The Committee asks the next report to provide this information. The Committee reiterates its case-law position that assistance is appropriate where the monthly amount of assistance benefits – basic and/or additional – paid to a single person living alone is not manifestly below the poverty threshold, i.e. 50% of the median equivalised income.

The Committee considers that the levels of social assistance (*kontanthjælp*) paid to persons under 30 years of age and of integration allowance (*uddannelseshjælp*) paid to single persons are not adequate on the basis that the total amount that can be obtained is not compatible with the poverty threshold.

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 found that the situation was not in conformity with the Charter on the ground that nationals of other States Parties not bound by the European Economic Area agreement or not covered by agreements concluded by Denmark could have their residence permit withdrawn on the sole ground of being in receipt of social assistance for more than six months, unless they had resided in Denmark for more than seven years.

In this respect it notes from the report that the decision as to whether a person in need of permanent assistance should be returned to his or her home country is always based on an individual assessment of the personal circumstances of the person concerned. Those criteria include notably the following:

- whether the person is married to and is cohabiting with a Danish citizen, a refugee or a non-citizen who has lawfully been living in Denmark for more than three years with a view to obtaining permanent residence;
- the duration of his/her stay in Denmark;
- his/her medical condition;
- any family connection or other ties to Denmark as compared to the country of origin.

The Committee further notes from the report of the Governmental Committee (TS-G (2014)20) that concerning people from outside the EU, residence permits for the purpose of work, studies and family reunification are granted, as a main rule, on the condition that the applicant was self-sufficient. If this condition was no longer met, the Danish Immigration Service may revoke or refuse to extend the residence permit in accordance with the Aliens Act. It is therefore, not a situation based on the Act on Social Assistance. In some rare situations, according to the Act on Social Assistance it is possible to repatriate a person on the grounds that he or she has received social assistance for more than six months.

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, while it is still valid, solely on the grounds that the person concerned is without resources and unable to provide for the needs of his/her family.

The Committee considers that the possibility of revoking a residence permit on the sole ground that the person concerned has been in receipt of social assistance for more than six months while his/her residence permit is still valid, is contrary to the Charter and therefore, the situation is not in conformity.

Foreign nationals unlawfully present in the territory

In its previous conclusion regarding Article 13§4 the Committee considered that the situation was in conformity as regards emergency social and medical assistance to unlawfully present foreign nationals.

The Committee asks the next report to provide updated information as regards emergency social and medical assistance to foreign nationals unlawfully present in Denmark.

Conclusion

The Committee concludes that the situation in Denmark is not in conformity with Article 13§1 of the 1961 Charter on the grounds that:

- the levels of social assistance (*køstanthjælp*) paid to persons under 30 years of age and of integration allowance (*uddannelseshjælp*) paid to single persons are not adequate;
- nationals of States Parties can have their residence permit withdrawn on the sole ground of being in receipt of social assistance for more than six months, unless they had resided in Denmark for more than seven 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 Denmark.

The Committee notes that there have been no changes to the situation which it has previously found to be in conformity with the Charter. According to the report, receipt of social assistance does not result in any limitations of the recipient's political or social rights.

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

The Committee concludes that the situation in Denmark is in conformity with Article 13§2 of the 1961 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 Denmark.

According to the report, pursuant to Sections 10-12 of the Act on Social Services the municipalities shall ensure that everybody is given the opportunity to obtain free counselling. The object of such counselling is to prevent social problems and to help the person to overcome immediate difficulties and in the longer term enable the person to deal with problems as they arise. The municipalities shall provide counselling as to the choice of technical aids and consumer products as well as instructions in the use thereof. In connection to the counselling, the municipalities shall consider if the recipient is in need of any other assistance.

According to Section 2(1) of the Act on Social Services any person who is lawfully resident in Denmark is entitled to assistance under the Act, including counselling.

Conclusion

The Committee concludes that the situation in Denmark is in conformity with Article 13§3 of the 1961 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 Denmark.

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.

In its previous conclusion the Committee considered that the situation was in conformity with the Charter as regards lawfully present foreign nationals.

In reply to the Committee's question the report states that the legal basis for providing social services to persons lawfully resident in Denmark is the Act on Social Services. The Committee understands that Section 2 of this Act guarantees assistance not only to any person who is lawfully resident in Denmark but also to persons who are lawfully present in the territory (tourists etc.).

With regard to the Committee's question concerning provision of emergency assistance to persons who are lawfully present, but not residents of Denmark, the report confirms that assistance pursuant to the Act on Social Services, including emergency social assistance, is provided to any person who is lawfully staying in Denmark.

The Committee further notes that Section 110 of the Act on Social Services stipulates that the municipal council shall provide temporary accommodation in facilities for persons with special problems who have no home or who cannot stay in their own home and who are in need of accommodation and activating support, care and subsequent assistance. The provision provides for accommodation in facilities such as homeless shelters.

The Committee considers that the situation is in conformity with the Charter as regards emergency social assistance to nationals of States Parties lawfully present in the territory. It asks for updated information as regards emergency medical assistance.

Conclusion

The Committee concludes that the situation in Denmark is in conformity with Article 13§4 of the 1961 Charter.

Article 14 - The 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 Denmark.

Organisation of the social services

The report provides information on recent developments aimed at improving social services in various areas, whereby special attention was given to the protection of families and children, socially disadvantaged adults and persons with disabilities.

The 2011 reform of the social welfare services for children amounts to DKK 210-250 million per year (2010 level).

The report further underlines that the Government launched on January 1, 2014 a major reform of the supervision of placement facilities for children in order to improve standards and the quality of care and treatment.

In 2013, the Government allocated DKK 268 million to an initiative strengthening the protection of children and young people from abuse. The report mentions some other recent initiatives in this area, such as the improvement of early preventive support to vulnerable children, young people and families, the support for strategic cooperation between municipalities and NGOs etc. to improve standards and the quality of care and treatment.

In the area of social welfare services for the socially disadvantaged adults, the report provides a detailed description of the programme implemented under the national Homelessness Strategy from 2009 and its follow-up. The programme ran from 2009-2013 with a budget of DKK 500 million and was followed by other programmes addressing homelessness in the period 2013-2015.

Effective and equal access

The Committee in its previous conclusion (Conclusions XX-2(2013)) asked whether some social services are free of charge and, in respect of services which are not free of charge, what criteria regulate the fees.

The report indicates that according to Section 158 of the Act on Social Services a person who receives social services pursuant to the act is as a main rule obliged to pay for the assistance. However, a number of services are provided free of charge. The report gives examples of services provided free of charge that are mainly related to counselling and legal assistance. The report indicates that for assistance not provided free of charge the fee shall be calculated according to the income of the person receiving the assistance individual's economic situation and ability to pay. For low-income groups no fee may be charged for certain types of assistance. A fee is charged for the provision of assisted temporary or long-term accommodation. Each municipality decides on a fee according to specific criteria. Individuals who during the stay maintain own residence, are without income or for other reasons have difficulties paying the fees may be granted an exemption by the municipality.

Quality of services

The Committee refers to its previous conclusion for a general description of the quality of services and data protection. In this respect asks that the next report provides updated information on general developments in the quality of social services.

Conclusion

The Committee concludes that the situation in Denmark is in conformity with Article 14§1 of the 1961 Charter.

Article 14 - The 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 Denmark.

The report refers to the information contained in the 32nd national report (cycle 2013), describing the Council for Volunteer Action, the Centre for Voluntary Social Work, section 18 of the Act on Social Services, the PUF Fund (the Fund for Voluntary Social Work for the Benefit of Persons with Social Problems) and the non-profit voluntary sector in Denmark.

The Council for Volunteer Action focuses on the development of policies and the cooperation between the local authorities and the voluntary social organisations.

The Centre for Voluntary Social Work aims at promoting and supporting the development of voluntary social work.

According to the report, Section 18 of the Act on Social Services plays a key role in relation to local interaction between public and voluntary social work by requiring from local authorities to cooperate with the voluntary social organisations and societies and to allocate an annual amount in support of voluntary social work.

The PUF Fund is a fund for voluntary social work for the benefit of socially disadvantaged people, through which the Minister for Social Welfare lends financial support to voluntary social organisations and societies. For 2012, the PUF Fund had €6.7 million at its disposal.

In its previous conclusion (Conclusions 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 pursuant to the Act on Social Services it is the obligation of the relevant municipal council to ensure that all necessary services and facilities under the Act on Social Services are available. The municipal council is hence responsible for ensuring that a person in need receives the necessary and appropriate assistance under the Act on Social Services without discrimination on the grounds of i.a. race, ethnic origin, religion, disability, age, sexual orientation or political opinion. The assistance in question may be provided by municipalities, regions or private service providers. The Committee asks how the above-mentioned responsibilities of the municipal council are realised in practice and how the control/supervision of private-sector providers of social services is organised and implemented in practice.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Denmark is in conformity with Article 14§2 of the 1961 Charter.

Article 4 of the 1988 Additional Protocol - Right of the elderly to social protection

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

Legislative framework

The Committee points out that the main aim of Article 4 of the 1988 Additional Protocol to the 1961 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, secondly, to provide for a procedure of assisted decision making.

With regard to age-based discrimination, the Committee previously considered (Conclusions XX-2 (2013)) that the situation in Denmark was not in conformity with the 1961 Charter on the ground that no such legislation had been enacted. The Committee notes from the Governmental Committee report on Conclusions 2013 that the principle of non-discrimination is a basic element of public law in Denmark. The Danish legislation contains in this regard general provisions to combat discrimination outside the labour market and, therefore, no legislation aimed specifically at combating age-based discrimination is being either prepared or envisaged. The Committee asks whether there exist a case-law on age discrimination outside employment which would protect elderly persons from such discriminations. Meanwhile, it reserves its position on this issue.

With regard to assisted decision making for elderly persons, the Committee asked, in essence, in its previous conclusion (Conclusions XX-2 (2013)) what is the difference between the appointment of a legal guardian and restrictions on self-determination imposed by the municipalities. The report states that, under Danish law, a guardianship does not restrict the personal autonomy of the person under guardianship. All legal guardians are supervised by the State Administration, must act in the best interest of the person under guardianship and must also be free of any conflict of interest. The Committee takes note of this information but notes, nevertheless, that the report does not provide any information concerning the restrictive measures which municipalities can take as allowed by the Social Services Act. Therefore, it reiterates its question.

The Committee also asked whether consideration had been given to establishing a mechanism which would allow elderly persons to appoint a trusted third party of their own choice to assist with their decisions. The Committee notes that Denmark adopted an Act on continuing powers of attorney in May 2016 outside the reference period. It asks the next report to provide more information on this subject.

Adequate resources

When assessing the adequacy of the resources of elderly persons under Article 4 of the Additional Protocol, the Committee takes into account all social protection measures guaranteed to elderly persons and aimed at maintaining an income level which allows 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.

The Committee points out that, in addition to the retirement pension (*arbejdsmarkedets tillægspension* – ATP) paid to workers affiliated to the social insurance system in proportion to their contributions, all persons living in Denmark are entitled to a state pension (*folkepension*) as from 65 years of age. In order to be entitled to a pension, a Danish national must, like all nationals of an EU Member State or of the EEA, have lived in Denmark for at least three years between 15 and 65 years of age. The national of a third country, including the States Parties to the Charter which are not members of the EU or the EEA must, on the contrary, prove that they have lived in the country for ten years between 15 and

65 years of age, five of which must be immediately before the pension is paid. The right to a full pension is acquired after 40 years' residence in Denmark between 15 and 65 years of age. Persons who have lived in the country for a shorter period of time are entitled to a state pension which is equivalent to 1/40th of the full pension for each year spent in Denmark between the ages of 15 and 65. According to MISSOC, the full monthly pension for a single person was DKK 12 258 in 2015, in other words €1 646.83, to which is added a supplementary pension of DKK 16 400, i.e. €2 203, paid once a year to the most disadvantaged beneficiaries.

In addition to this, elderly persons who receive a state pension, including those who only receive an incomplete pension, may, under certain conditions, also be entitled to a number of further benefits:

- a health allowance (*helbredstillæg*);
- a heating allowance;
- a housing allowance;
- a reduction on their local rates.

In addition, particularly disadvantaged pensioners may be granted a personal allowance (*personligt tillæg*) following a specific assessment of their needs.

The report also points out that pensioners are entitled to a number of services free of charge, in particular home help and hospital treatment. The report points out that the granting of these services is not determined by any residence conditions.

The Committee also notes that persons aged 60 years and over who are not entitled to a state pension are offered, *inter alia*, welfare assistance corresponding to the amount of the pension paid to a married person who has no other income than the said pension.

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 €1 182 per month in 2015 (the poverty threshold fixed at 40% of median equivalised income was €945 per month). The Committee notes that the amount of the state pension, pension supplements, allowances and other services granted to pensioners ensure the adequacy of elderly persons' resources in accordance with Article 4 of the Additional Protocol of the 1961 Charter.

Prevention of elder abuse

In its previous conclusion (Conclusions XIX-2 (2009) and XX-2 (2013)), the Committee asked whether the extent of elder abuse is evaluated, in institutions, at home or in private care facilities in their area, whether awareness raising campaigns are run and whether any specific measures to combat this problem have been taken. According to the report, the matter was not assessed at national level during the period of reference.

The Committee understands that the municipalities are responsible for such matters. In this respect the report points out that the municipalities are responsible for supervising amenities and activities as well as the elderly persons themselves. It points out that institutions are obliged to report any cases of abuse to the municipality, which is then obliged to take action. It also points out that specific procedures are in place as regards cases of abuse (use of force) towards people with dementia. The Committee wishes to receive more information on this subject in the next report. It also asks what is done at local level by the municipalities to evaluate the extent of elder abuse in institutions, at home or in private care facilities in their area, whether they run awareness raising campaigns and have taken any specific measures to combat this problem.

Services and facilities

In its previous conclusion (Conclusions XX-2 (2013)), the Committee asked to be informed of the results of the work of the Commission on home help services. According to the report,

the work of the Commission resulted in rehabilitation schemes during the reference period. Since January 2015, the municipal council must provide a brief and time-limited rehabilitation programme for persons with functional impairment when the programme is deemed capable of helping him or her to regain independence. Every rehabilitation scheme must be adjusted according to the recipient's resources and needs. Elderly persons who are not allowed to benefit from the rehabilitation scheme will receive home care services if needed. The Committee wishes to be informed of all the other initiatives being taken by the Commission, as well as all aspects of the rehabilitation programme, in particular the number of persons who are benefiting from this scheme.

The Committee also asked whether in general the supply of home help services for the elderly matches the demand for them and how their quality is monitored, whether the extent of their provision differs from one municipality to another, and whether there is a charge for any of these services. The Committee notes that the report does not contain any information as to whether the services offered meet the demand, with the result that it reiterates its question. The report states that each municipality must determine the nature and amount of assistance offered to elderly persons in light of the local context. The quality standards and price requirements for both public and private services are determined by the local authority. The quality standards define the service level of the municipality and gives information to the citizens about the help they can expect to be offered. The services, including home help, are financed by local taxes and by State grants; an equalisation system ensures that the municipalities have uniform (financial) conditions for meeting municipal responsibilities. The Committee understands that services and their level vary according to the municipalities.

The Committee notes from the Governmental Committee report on Conclusions 2013 that any complaints concerning the level of service and local activities, irrespective of whether they are provided by a public or private service, may be lodged with the municipal council. Appeals against the decisions taken by the municipal council may be lodged with the national complaints committee after consultation of the municipal council.

The Committee also notes that the municipalities are obliged to propose several service providers for the same service. Home help services are provided free of charge by the municipalities. The Committee asks whether, given the free choice offered to the elderly, a service provided by a public service provider which is initially free of charge continues to be so when provided by a private service provider. It also asks whether the cost of the service to be paid by the elderly person remain the same irrespective of whether it is provided by a public or a private service provider.

Finally, the Committee asked for information on any services or facilities for families caring for elderly persons, in particular highly dependent persons, as well as on any particular services for those suffering from dementia. According to the report, a person taking care of a family member in the terminal phase of their life is entitled to a care allowance (paid by the municipality) irrespective of the financial situation of the helper or the ill person.

Housing

In its previous conclusion (Conclusions XX-2 (2013)), the Committee asked for information on the cost of social housing, as well as on any housing allowances, benefits or subsidies that were available to help the elderly to meet the costs of their housing. According to the report, the total cost of social housing was approximately DKK 10 billion, granted to 280 000 pensioner households. The report also states that pensioners living in nursing homes (*plejehjem*) cannot receive housing benefit because nursing homes are not covered by the law on individual housing benefit.

The Committee recalls that the housing benefit is calculated as a percentage of the housing cost less a percentage of the household income up to a ceiling. In 2014 housing benefit corresponded to the difference between the annual cost of the housing plus an extra DKK 6,300 (approximately €845.10) and 22.5% of the annual income of the beneficiary exceeding

DKK 149,300 (approximately €20 027.36). The law sets maximum limits for the amount of housing benefit, the cost of the housing (DKK 83,700) and the size of the dwelling. The Committee notes, however, in the document "Pensions at a Glance 2015" issued by the OECD, that pensioners have to pay a minimum part of the housing cost which amounts to 11% of the household income and at least DKK 15,800 (approximately €2 119.44) per annum in 2014 before they are entitled to housing benefit. The Committee asks that the next report provide updated information on this point.

Health care

In its previous conclusion (Conclusions XX-2 (2013)), the Committee asked information on recent health care initiatives for elderly persons. The report mentions a National Action Plan for the Elderly Medical Patient, which was adopted outside the reference period. The Committee asks to be informed of the objectives and main measures of this plan and its results in the next report.

Institutional care

According to the report, elderly persons who need sheltered housing are entitled to choose housing in or outside the geographical area covered by their own municipality. The Committee notes from the report that the municipalities are responsible for ensuring that a sufficient supply of housing is available. However, the Committee notes that no further information has been provided which would enable the Committee to assess the situation with regard to the objectives imposed on the municipalities in this field, so that it asks for next report to provide such an information on this subject.

In its previous conclusion (Conclusions XX-2 (2013)), the Committee asked for updated information on inspection of institutions and other complaints procedures. The report states that under the Social Service Act each municipality undertakes to supervise the performance of municipal duties with regard to personal and practical assistance, and rehabilitation services. The report explains that the municipal council systematically examines and checks that the services received correspond to the needs of the persons concerned and meet requirements in terms of quality, as determined by the municipality. To that end, it makes at least one unannounced visit per year to nursing homes in the area for which it is responsible and takes the measures it considers necessary to remedy any detrimental situation of which it has been informed.

Conclusion

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



January 2018

1961 European Social Charter

European Committee of Social Rights

Conclusions XXI-2 (2017)

GERMANY

This text may be subject to editorial revision.

The following chapter concerns Germany which ratified the 1961 Charter on 27 January 1965. The deadline for submitting the 34th report was 31 October 2016 and Germany submitted it on 18 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 4 of the Additional Protocol).

Germany has accepted all provisions from the above-mentioned group except Article 4 of the Additional Protocol.

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

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

– 5 conclusions of conformity: Articles 3§3, 12§2, 12§3, 13§2, and 13§4

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

In respect of the 7 other situations related to Articles 3§2, 11§1, 11§2, 11§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 Germany under the 1961 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

Two clarifying provisions on psychological stress in the Safety and Health at Work Act (*Arbeitsschutzgesetz*) entered into force on 25 October 2013 (Article 8 (1) of the Act of 19 October 2013,). Section 4 (1) of the Safety and Health at Work Act stipulates that work shall be shaped so as to avoid, as far as possible, any risk to life and physical and mental health and to keep the remaining risk as low as possible. A new point 6 "psychological stress at work" was incorporated into Section 5(3) on Assessment of the condition of work of the Act.

Article 12§3

The insurance coverage of the Statutory occupational accident insurance scheme was extended, in 2012 and 2015, to new categories of persons and four additional occupational illnesses were recognised as such in 2015.

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In addition, the report contains also information requested by the Committee in Conclusions XX-4 (2015) in respect of its conclusions of non-conformity due to a repeated lack of information regarding the right of migrant workers and their families to protection and assistance – equality regarding employment, right to organise and accommodation (Article 19§4).

The Committee examined this information and deferred the Conclusion 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 2 of the Additional Protocol),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 3 of the Additional Protocol).

The report should also contain information requested by the Committee in Conclusions XXI-1 (2016) in respect of its findings 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 right to engage in a gainful occupation in the territory of other States Parties – liberalising regulations (Article 18§3).

The deadline for submitting that report was 31 October 2017. The report was registered on 28 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 3 - Right to safe and healthy working conditions

Paragraph 1 - Safety and health regulations (Art. 3-2 1996 RESC)

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

Content of the regulations on health and safety at work

The report indicates that the First Ordinance Amending the Ordinance on Occupational Health Care (*Erste Verordnung zur Änderung der Verordnung zur arbeitsmedizinischen Vorsorge*) entered into force on 31 October 2013 (Federal Law Gazette I p. 3882). This amending ordinance has further strengthened occupational work and health: company doctors assess the links between work and health at individual level, educate employees about personal health risks, and offer them advice. It also includes updates in the annex on the health care which must be offered in the case of dangerous activities and on mandatory health care which must be provided in the case of especially dangerous activities. In the case of all other activities, occupational health care is to be provided on request.

The Ordinance on Safety and Health Protection at Workplaces Involving Biological Agents (*Verordnung über Sicherheit und Gesundheitsschutz bei Tätigkeiten mit biologischen Arbeitsstoffen*) was revised in 2013 in order to transpose into national law Council Directive 2010/32/EU of 10 May 2010 implementing the Framework Agreement on prevention of injuries from sharp objects in the hospital and healthcare sector concluded by the European Hospital and Healthcare Employers' Association and the European Public Services Union. The provisions of the Biological Agents Ordinance were adapted to take account of recent scientific and technical developments.

The Committee points out that under the terms of Article 3§1 of the 1961 Charter, regulations concerning health and safety at work must cover stress, aggression and violence specific to work, especially for workers under atypical working relationships (Statement of Interpretation on Article 3§1 of the 1961 Charter, Conclusions XX-2 (2013)). In reply, the report states that two clarifying provisions on psychological stress in the Safety and Health at Work Act (*Arbeitsschutzgesetz*) entered into force on 25 October 2013 (Article 8 (1) of the Act of 19 October 2013, Federal Law Gazette I p. 3836). Section 4 (1) of the Safety and Health at Work Act stipulates that work shall be shaped so as to avoid, as far as possible, any risk to life and physical and mental health and to keep the remaining risk as low as possible. A new point 6 "psychological stress at work" was incorporated into Section 5(3) on Assessment of the condition of work of the Act. However, the Committee asks the next report provide more information on this point.

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

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.

Protection against dangerous agents and substances

Protection of workers against asbestos

In its previous conclusion (Conclusions XX-2 (2013)), the Committee asked for full and updated information on the protection of workers against asbestos. Given that the report does not provide any information on this point, 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 also asks for information on any measures adopted to incorporate into domestic law the exposure limit of 0.1 fibres per cm³ 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

Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Germany is in conformity with Article 3§1 of the Charter in this respect.

Protection of workers against ionising radiation

In its previous conclusion (Conclusions XX-2 (2013)), the Committee asked for full and updated information on the protection of workers against ionising radiation. Given that the report does not provide any information on this point, 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 relate to that subject. It also 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 considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Germany is in conformity with Article 3§1 of the Charter in this respect.

Personal scope of the regulations

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

Protection of temporary workers

In its previous conclusion (Conclusions XX-2 (2013)), the Committee asked for full and updated information on this point. The report does not provide any information on this point. 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 Germany is in conformity with Article 3§1 of the Charter in this respect.

Other types of workers

The Committee notes that Germany has ratified the ILO Convention No. 189 (2011) concerning decent work for domestic workers which entered into force on 5 September 2013.

In its previous conclusions (Conclusions XX-2 (2013), XIX-2 (2009), XVIII-2 (2007)), the Committee concluded that the situation in Germany was not in conformity with Article 3§1 of the Charter on the ground that certain categories of self-employed workers were not sufficiently covered by the occupational health and safety regulations. The report and the written information submitted by the German representative to the Governmental Committee (Report concerning Conclusions 2013) confirm the information already provided; in particular that all self-employed persons have and will continue to have the possibility at any time to voluntarily comply with the occupational health and safety regulations applicable to employers and employees. However, the legal status of self-employed persons alone precludes that an employer's duty of care to his/her employees applies to them as well. The report indicates again that, in line with European law principles, there is no general application of the legal provisions on safety and health at work to self-employed persons and states that the situation was not changed during the reference period. The Committee asks the next report to provide information regarding how Germany ensures protection of persons considered self-employed. In the meantime, it reiterates its previous conclusion of non-conformity on the ground that certain categories of the self-employed are not sufficiently protected.

Conclusion

The Committee concludes that the situation in Germany is not in conformity with Article 3§1 of the 1961 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 2 - Enforcement of safety and health regulations (Art. 3-3 1961 RESC)

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

Accidents at work and occupational diseases

The report indicates that in the reference period the numbers of reportable and fatal accidents at work follow the trend of many years and continue to decrease. The number of fatal accidents at work fell from 677 in 2012 to 639 in 2014, and reached a historic low of 606 in 2013. 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 Committee notes that Eurostat data confirms the trend with regard to the number of fatal accidents (516 in 2012 and 500 in 2014) and to the standardised incidence rate for such accidents (1.26 in 2012 to 1.42 in 2014) which remains significantly below the average rate in the EU-28 (2.42 in 2012 and 2.32 in 2014). According to the Eurostat figures, the number of non-fatal accidents at work causing at least four calendar days of absence also decreased during the referenced period (from 854 665 in 2012 to 847 370 in 2014). The standardised rate of incidence of non-fatal accidents at work per 100 000 workers fell slightly from 2 202.46 in 2012 to 2 118.73 in 2014. The Committee however notes that this rate is higher than the average rate in the EU-28 (1 717.15 in 2012 and 1 642.09 in 2014).

The report also indicates that in the field of occupational diseases, there has been a slight increase in the number of occupational diseases recorded. According to the report, the reasons are notably attributable to the changes on the legislation on occupational diseases and greater awareness on the part of workers, experts in safety and health at work, and medical experts. 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

In its previous conclusion (Conclusion XX-2 (2013)), the Committee asked for information about the reasons of the decrease in the staff numbers of the bodies in charge of labour inspection.

The report indicates that the number of supervisory personnel of Labour Inspectorate increased during the reference period from 3 007 in 2012 to 3 319 in 2015, but the number of inspections (267 2008 in 2012 and 206 197 in 2015) and companies inspected (110 207 in 2012 and 83 284 in 2015) decreased. According to the report, the decrease in the number of inspections by the Labour Inspectorate authorities of the *Länder* is due to fewer human resources being available in many of the *Länder* as a result of budget consolidation measures. In addition, the introduction of system checks in some *Länder* means that inspections are no longer categorised by individual provisions or legal areas. The project group on safety and health at work set up by the *Länder* Committee on Safety and Health at Work and Safety Technology (LASI) is therefore currently working on a revision of the report.

As regards the Occupational accident insurance funds, the report indicates that the number of supervisory personnel (2 802 in 2012 and 2 486 in 2015), the number of inspections (603 483 in 2012 and 585 131 in 2015) as well as companies inspected (337 345 in 2012 and 292 2294 in 2015) decreased during the reference period. The report explains that, insofar as there has been a decline in the number of measures of supervision carried out by the

occupational accident insurance funds in recent years, these figures do not signify a reduction in the preventive measures undertaken by the occupational accident insurance funds and public-sector accident insurers, according to the German Statutory Accident Insurance organisation (*Deutsche Gesetzliche Unfallversicherung*). Instead, it argues, they reflect a reorientation and diversification in the prevention work carried out in the workplace which is not yet depicted in the structure of the Safety and Health at Work (SuGA) statistics.

The Committee notes, according to figures published by ILOSTAT, that the number of labour inspectors was 6 008 in 2015 and 6 025 in 2013, the average number of labour inspectors per 10,000 employed persons was 1.5 during the reference period, the number of labour inspection visits to workplaces during the year decreased slightly from 842 108 in 2013 to 805 113 in 2015, and the average of labour inspection visits per inspector also decreased during the reference period (from 139.8 in 2013 to 134 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.

The report indicates that, as the statistics only record the size categories of the companies in question, it is not possible to state the exact number of employees covered by inspections.

The Committee observes that the number of inspection visits is continuing to decrease, in line with the previous trend. It asks that the next report provide data 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 notes that under Article 3§2 of the 1961 Charter, States Parties must implement measures to focus labour inspection on small and medium-sized enterprises (Statement of Interpretation on Article 3§2, Conclusions XX-2 (2013)). Since it cannot find an answer to its question (Conclusions XX-2 (2013)) in the report with regard to this point, the Committee requests that the next report 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 in Germany is in conformity with Article 3§2 of the 1961 Charter.

Conclusion

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

Article 3 - Right to safe and healthy working conditions

Paragraph 3 - Consultation with employers' and workers' organisations on safety and health issues

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

The report states that Germany has pursued a coherent occupational safety and health policy with the involvement of the social partners for decades. The concrete targets for this policy have been updated in the reference period by the Joint German Occupational Safety and Health Strategy (*Gemeinsame Deutsche Arbeitsschutzstrategie – GDA*), in which the Federal Government, the Lander, the occupational accident insurance funds and the social partners are involved (strategy stakeholders). In the field of prevention, the GDA strategy stakeholders act on the basis of jointly defined safety and health goals. According to the report, several work programmes were implemented in fields of activity with special risks and their benefit for enterprises and employees was evaluated. This was done on a nationwide scale and according to uniform criteria.

Conclusion

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

Article 11 - Right to protection of health

Paragraph 1 - Removal of the causes of ill-health

The Committee notes that the report submitted by Germany does not provide information on the specific requirements of Article 11§1 of the 1961 Charter. It only mentions that some preventive care programmes for children were developed.

Measures to ensure the highest possible standard of health

The Committee asks that the next report contain information and concrete figures on the life expectancy at birth (average for men and women), death rate and the main causes of premature death, as well as on the measures taken to address these causes.

The Committee also asks for information in the next report on the infant and maternal mortality rates.

Access to health care

The Committee took note previously of the main features of the healthcare system and the access to health care for the most disadvantaged members of society (Conclusions XX-2 (2013)). The Committee asks for updated information on any changes, developments and measures taken during the reference period. The Committee also asks for updated information on the total expenditure on health as a percentage of GDP.

The Committee recalls that 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 in the next report on the proportion of out-of-pocket payments for health care.

The Committee took note previously of the arrangements made to manage health care waiting times. It noted that the Federal States regularly review their hospital planning, taking into account the demographic development, changes in the population structure and medical developments and adapt to changing needs (Conclusions 2013). The Committee asks for updated information on average waiting times for inpatient and outpatient care.

In its previous conclusion, the Committee took note of the reforms undertaken with respect to the problem of uneven geographical distribution of doctors between urban and rural areas, such as the Act to Improve the Efficiency of Care Structures in Statutory Health Insurance (Conclusions XX-2 (2013)). The Committee asks for updated information on the implementation of such reforms, in particular whether effective access to health care services is equally ensured 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. It also 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 by patients).

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 Germany. However, there are significant gaps in information provided in relation to the specific requirements of Article 11§2 of the 1961 Charter.

Education and awareness raising

The Committee took note previously of the education and awareness raising campaigns concerning alcohol consumption, addictions and the prevention of drug addiction and smoking (Conclusions XX-2 (2013)). It asks for updated information on these matters.

In its previous conclusions (Conclusions XX-2 (2013) and Conclusions XIX-2 (2009)), the Committee asked whether there are specific public campaigns in such areas as nutrition, sexuality and the environment. The report does not provide the information requested. 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 information on concrete/specific educational or awareness-raising campaigns/initiatives undertaken in the areas mentioned above.

In its previous conclusion, the Committee noted that the topics of smoking, alcohol, road safety and healthy eating have been firmly included in the guidelines and curricula for all types of school (Conclusions XX-2 (2013)).

The Committee recalls that States Parties must ensure that sexual and reproductive health education forms part of the ordinary school curriculum, in particular with regard to prevention of sexually transmitted diseases and AIDS ((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 these topics are incorporated into the school curriculum and whether all pupils are concerned.

Counselling and screening

The Committee took note previously of the regular check-ups available for pregnant women, children and adolescents (Conclusions XX-2 (2013)). The report indicates that the Federal Government's action programme "Early Assistance for Parents and Children and Social Early-Warning Systems", that aims at protecting children against neglect and abuse, has been developed further. Since 2012, this programme has included the Federal Initiative for Early Assistance and Family Midwife Networks, which has been anchored in the Federal Child Protection Act (*Bundeskinderschutzgesetz*).

Concerning the population at large, 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). It asks that the next report provide updated information on this issue.

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 notes that the report submitted by Germany does not provide information on the specific requirements of Article 11§3 of the 1961 Charter.

Healthy environment

The report does not provide any information on this point. In its previous conclusion, with respect to air pollution, water pollution, noise and food safety, the Committee referred to its previous conclusion where it found the situation to be in conformity (Conclusions XX-2 (2013), Conclusions XIX-2 (2009)). The Committee asks that the next report provide updated information on the concrete 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 does not provide any information on this point. 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.

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.

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 Germany.

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 and notes from other sources (ISSA, Missoc, report concerning the European Code of Social Security) that the German social security system 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. It also continues to rest on collective funding by contributions (employers, employees) and by the State budget.

As the report does not provide any information on the coverage, the Committee notes from the above-mentioned sources that:

- compulsory **health care** insurance applies, since 2009, to the whole resident population, whether under the public scheme, the private scheme or a combination of the two. In particular, according to Missoc, all employees and assimilated categories, earning up to €54 900 per year (in 2015), are covered, as well as pensioners, students, persons with disabilities, apprentices, and recipients of unemployment benefits. Special systems apply to miners, artists, and farmers. Are exempted from the compulsory health care insurance employees earning more than the threshold income (voluntary coverage is however available to them) or less than €450 monthly, civil servants, magistrates, professional soldiers, full-time self-employed. Coverage for these categories of persons is available through private health insurance companies. According to the CLEISS (French Liaison Centre for European and International Social Security), 90% of the population were insured under the public insurance scheme;
- a compulsory **old-age** insurance scheme applies to all employees (except in case of low-paid employment, up to €450 per month), military personnel, certain beneficiaries of unemployment, invalidity and other benefits, and certain groups of self-employed; voluntary insurance is also open to all persons over the age of 16 resident in Germany and Germans living abroad; special schemes apply to certain self-employed persons, miners, public-sector employees, civil servants, and farmers. In 2015, 37 704 000 employees out of 38 664 000, that is 97.5% of all employees (including civil servants) were covered by old-age insurance scheme, according to the report concerning the European Code of Social Security. In response to the Committee's question, the report indicates that the share of persons covered by **invalidity** insurance is the same as that covered by old-age insurance. The Committee understands from the information available that the same apply as regards the coverage in respect of **survivors'** insurance. It asks the next report to clarify the situation in the light of updated information;
- as regards **work accidents and professional diseases**, a compulsory social insurance scheme applies to employees, certain groups of entrepreneurs and self-employed and other groups (students, pupils, children in day-care institutions or being looked after by qualified day carers, certain volunteers, persons undergoing rehabilitation, home carers and some other persons are compulsorily insured). Voluntary insurance is possible for entrepreneurs not compulsorily insured and assimilated categories and certain groups of not compulsorily insured volunteers. Most categories of self-employed persons (notably doctors, pharmacists etc.) are exempted, as well as civil servants, who are covered by a special scheme, and members of ecclesiastical associations. According to the

report concerning the European Code of Social Security, 100% of employees (including civil servants) were insured in 2015;

- a compulsory **sickness** insurance scheme applies to all employees having worked at least 4 weeks (and with a monthly salary higher than €450) and categories of persons assimilated thereto up to a certain income limit;
- a compulsory **unemployment** insurance scheme applies to all employees, voluntary insurance is furthermore possible for persons who care for family members at least 14 hours per week, self-employed persons working at least 15 hours per week, persons employed outside the European Union or associated countries. According to the report concerning the European Code of Social Security, 87.5% of the employees (32 068 000 out of 36 662 000) were covered in 2015.

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 these data, the Committee asks the next report to indicate the rate of coverage (percentage of persons insured out of the total active population) for unemployment, sickness, old age (including invalidity and survivors' schemes) as well as work accidents and professional diseases, whether under the compulsory insurance scheme or other schemes.

Adequacy of the benefits

According to Eurostat data, the median equivalised annual income was €20 668 in 2015, or €1722 per month. The poverty level, defined as 50% of the median equivalised income, was €10 334 per annum, or €861 per month. 40% of the median equivalised income corresponded to €839 monthly. In 2015, the minimum monthly wage was €1440 (€8.50 hourly).

The Committee takes note of the objections set out in the report concerning the criterion for assessing the adequacy of benefits. In this connection, it refers to its Statement of Interpretation on Articles 12§1, 12§2 and 12§3 (Conclusions XVI-1 (2002)), in which it stated that it was necessary to reassess the minimum standard recognised in ILO Convention No. 102 and that the level of benefits should, in cases of wage substitution, whether temporary or permanent, always stand in a reasonable relation to the wage in question and should in any event exceed the minimum subsistence level. The Committee subsequently reaffirmed and clarified this principle, stating that when social security benefits are income-replacement benefits, their level 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. However, 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 (Statement of Interpretation on Article 12§1, Conclusions XX-2 (2013)).

The report reiterates in particular that the German social security system does not provide for a minimum level of benefits. It accordingly provides some information on the rate of benefits, based on the assessment criteria applied in respect of the European Code of Social Security, which refer to the replacement rate for a "typical" beneficiary, i.e. a male employee whose earnings are equal to 125% of average earnings. The Committee points out once more that, regardless of the compliance with the European Code of Social Security, these criteria do not correspond to those applied in the assessment of the conformity with Article 12§1 of the 1961 Charter. In the absence of a legally defined minimum of benefits in

Germany, it asks that the next report provide information on the level of benefit, for each branch of social security, for a single person without dependants working full-time on a minimum wage.

In case of **sickness**, the employer pays 100% of the insured's earnings for the first six weeks. After this period, sickness benefits can be paid for up to 78 weeks in a three-year period for the same illness and their amount correspond to 70% of the normal salary (up to 90% of net earnings). The Committee notes that, in the case of a person earning the minimum salary, the amount of sickness benefits is adequate (€1008).

As regards **work accidents and professional diseases**, the employer continues to pay the salary for the first six weeks of incapacity to work. The injury benefits are calculated in principle as in statutory sickness insurance, and amount to 80% of the average gross earnings of the month before the incapacity occurred (but must not exceed the net salary), they are paid for each day of incapacity for work. The Committee notes that, in the case of a person earning the minimum salary, the amount of sickness benefits is adequate (€1152).

The Committee notes from the European Trade Union Institute (ETUI), that the German **old age** pensions system is made up of the state pension (accounting for around 85% of all pensions paid), company/occupational pensions (accounting for around 5% of all pensions paid) and supplementary pensions (accounting for around 10% of all pensions paid). Different requirements apply as regards minimum age and periods of contributions (Age 65 and five months – gradually rising until reaching age 67 in 2029 – with at least five years of contributions; age 67 for insured persons born since 1964) with possibilities for early retirement upon certain conditions (disability, long or very long period of contributions, unemployment, women born before 1952, etc.). The amount of the pension is calculated on the basis of the Personal remuneration points (PEP) multiplied by the coefficient corresponding to the type of pension (1.0 for old age in the general scheme), multiplied by the current pension value (AR). The PEP is calculated by dividing the insured earnings for each year by the national average of earnings for the same year, plus the remuneration points corresponding to certain non-contributory periods (education, maternity leave, military service, incapacity, unemployment...) and by multiplying the resulting sum by a coefficient corresponding to the age (in case notably of early retirement/deferred retirement). The AR is the amount corresponding to the monthly old-age pension of the general pension insurance without reductions, if contributions based on the average earnings were paid over one calendar year. In 2015, the pension value amounted to €29.21 in the old Länder and €27.05 in the new Länder. According to the report the replacement ratio of net old-age pension to the net income of a worker earning 125% of the average income stood at 67% in Western Germany (old Länder) and 68.2% in Eastern Germany (new Länder). The Committee notes from the report that the net annual income in old age of a person having earned 125% of the average income with a presumed insurance period of 30 years amounted to €19 195 in the old Länder (€1600 monthly) and €17 304 in the new Länder (€1442 monthly) in 2015. The Committee notes that these amounts are well above the poverty level, but do not correspond to the information requested. The Committee recalls in this respect that in its previous conclusions (Conclusions XX-2 (2013)) it held that if the information concerning the minimum level of old-age pension would not be provided, there would be nothing to establish the conformity of the situation with the 1961 Charter. It accordingly asks that the next report provide information on the estimated net pension of a single person without dependants having worked 30 years at a minimum wage. It furthermore asks whether non-contributory benefits are available for people not satisfying the conditions to have a contributory pension. It considers in the meantime that it has not been established that the level of old-age benefits is adequate.

The report indicates that the **invalidity** pension benefit rate for a married employee with two children in the event of full loss of earning capacity (based on the situation of an employee earning 125% of the average wage in the event of invalidity after 15 years of employment) corresponds to €34 104 (€2842 monthly) in Western Germany and €30 715 (€2560 monthly)

in Eastern Germany, i.e. a replacement rate of respectively 65.1% and 67.5%. The Committee reiterates that, although these levels are well above the poverty level, they do not correspond to the assessment criteria relevant to Article 12§1 of the 1961 Charter. It accordingly asks that the next report provide information on the estimated net pension of a single person without dependants, with full loss of earning capacity, having worked 15 years at a minimum wage before the invalidity occurred and considers in the meantime that it has not been established that the level of invalidity benefits is adequate.

In order to be entitled to **unemployment** (contributory) benefits, the jobseeker must have been insured for at least 12 months during the last 2 years and actively look for work and be available to accept reasonable job offers. In this connection, the report explains that the criteria, according to which a job offer is deemed to be "reasonable", are set out in the law: firstly, the employment on offer must not be in breach of provisions on working conditions stipulated by law or in collective or works agreements, or of provisions on occupational safety and health. For example, an employment offer would be deemed unreasonable if the pay level breached the Minimum Wage Act which entered into force on 16 August 2014. Secondly, the employment can be deemed unreasonable for personal reasons, with reference to the individual circumstances of the unemployed person in question. Such reasons relate for example to the commuting time and pay levels of the employment at issue. A job offer would thus be unreasonable if the pay were to be significantly lower than assessable earnings for the purpose of determining unemployment benefit (a 20% lower pay is deemed reasonable in the first three months; 30% lower in the next three months; and from the seventh month onwards a job offer would only be deemed unreasonable if the pay were to be less than the unemployment benefit). In determining the reasonableness of the job offer, the interests of the unemployed person and those of all contribution payers must be balanced against each other. As a rule, local employment agencies aim to place unemployed claimants of unemployment benefit in employment commensurate with the claimants' qualifications. If an unemployed person refuses a reasonable offer of employment, the unemployment benefit is suspended for three weeks on the first occasion, six weeks on the second occasion and twelve weeks on any subsequent occasion. The Committee takes note of the statistical data provided concerning the number of benefit suspensions due to rejection of employment during the reference period, which have decreased from 26 966 in 2011 to 12 889 in 2015. In response to the Committee's question, the report points out that unemployed persons can generally reject unreasonable job offers without losing entitlement to their benefit, without any time limitation. The Committee asks the next report to clarify what remedies are available to contest decisions to suspend or withdraw unemployment benefits. As regards the duration of payment of unemployment benefits, the Committee notes that it depends on the age of the claimant and his/her length of coverage under the compulsory insurance. For a person satisfying the minimum entitlement requirements (12 months of coverage), the duration of payment is 6 months, while the maximum duration of payment is 24 months for a person over 58 years old with at least 48 months of contributions. In response to the Committee's question, the report indicates that there is no minimum level of contributory unemployment benefit, as the amount is calculated on the basis of the income subject to insurance earned by the unemployed person prior to unemployment and on whether the person must pay maintenance for a child (the amount then being 67% of assessable earnings) or not (60%). The Committee notes that, on the basis of a single person without dependants with a minimum wage, the level of benefit is in conformity with the 1961 Charter (€364 monthly).

Conclusion

The Committee concludes that the situation in Germany is not in conformity with Article 12§1 of the 1961 Charter on the ground that it has not been established that the level of old age and invalidity pensions is adequate in all cases.

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 International Labour Convention No. 102

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

The Committee notes that Germany ratified the European Code of Social Security and its Protocol on 27 January 1971 and has accepted the following parts, as modified by the Protocol: II, III, IV, V, VI, VII, VIII, IX and X.

The Committee notes from the Resolution CM/ResCSS(2016)7 of the Committee of Ministers on the application of the European Code of Social Security and its Protocol by Germany (period 1 July 2014 to 30 June 2015) that the law and practice in Germany continue to give full effect to all parts of the Code and the Protocol, subject to updated calculation of the replacement rate of the old-age pension under Part V.

Conclusion

The Committee concludes that the situation in Germany is in conformity with Article 12§2 of the 1961 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 Germany.

It refers to its previous conclusions for a description of the German social security system. In the case of family and maternity benefits, the Committee refers to its conclusions on, respectively, articles 16 and 8§1 (Conclusions XX-4 (2015)). 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, resulting in particular from the adoption of the Act Improving Pension Benefits (*RV-Leistungsverbesserungsgesetz*), with effect from 1 July 2014:

- the introduction of the possibility for persons with an insurance period of at least 45 years to claim an old-age pension without reductions as from the age of 63 instead of 65 (the pensionable age will then be gradually raised to 65 by 2028). In addition to periods of employment, self-employment, long-term care or child-rearing, the qualifying period of contributions can also take into account, upon conditions, periods for which voluntary contributions have been paid as well as periods during which the person was granted unemployment benefit or other wage replacement benefits under the law concerning employment promotion;
- a pension increase for parents of children born before 1992, due to the fact of taking into account and crediting a 12-months child-raising period both for parents retiring after 1 July 2014 and for those who were already retired at that time;
- a pension increase for persons with reduced earning capacity who retire after 1 July 2014, due to the possibility to add two years of contributions at their previous average income (with the added period extended by two years from age 60 to 62 and credited on the basis of the individual's average earnings), except if this reduces the value of the added period (for example because the person went part time or was on sick leave before retirement);
- the raising of the rehabilitation budget cap as from 1 January 2014 by indexing it to gross wages and salaries (a demographic component has been introduced to ensure that primarily demographically driven additional funding needs are taken into account in annual budgeting for participation assistance).

The Committee further takes note of the decrease in the general pension insurance contribution rate (from 19.6% in 2012 to 18.7% in 2015) and of the pension adjustments occurred during the reference period, as detailed in the report. It notes that pensions are regularly adjusted each year, as of 1 July, taking into account wages-growth, but also sustainability factors. The increases in pension value for, respectively, Western and Eastern Germany were +2.18% and +2.26% in 2012; +0.25 and +3.29% in 2013; +1.67% and +2.53% in 2014 and +2.10% and +2.50% in 2015. The report explains in detail how the sustainability factor affected negatively the pensions-growth, by slowing it down, and anticipates that, due to demographic trends, the impact of the sustainability factor on pension adjustments will also be presumably negative in the forthcoming years. The Committee asks the next report to provide updated information in this respect.

The report mentions the following further improvements resulting from the reorganisation of the Statutory occupational accident insurance scheme:

- the number of insurance providers was reduced in the agriculture and railways sectors (see details in the report);
- insurance coverage was extended, in 2012 and 2015, to new categories of persons;
- four additional occupational illnesses were recognised as such in 2015;
- the cash benefits under statutory occupational accident insurance (accident benefits, surviving dependants' pensions and care allowance) have been

increased by the same rates indicated above in respect of pensions in Western and Eastern Germany.

In light of this information, the Committee considers that the situation is in conformity with Article 12§3 of the Charter.

Conclusion

The Committee concludes that the situation in Germany is in conformity with Article 12§3 of the 1961 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 Germany.

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 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 unilateral measures undertaken by Germany, the report provides no information.

As regards bilateral agreements concluded with States Parties not member of the EU or EEA, the report states that a Social Security Agreement was concluded with Albania in September 2015 but has not yet entered into force. It also comes out from the report that Germany is currently negotiating such an agreement with the Republic of Moldova. However, the Committee notes that there are still no such agreements with Andorra, Armenia, Azerbaijan and Georgia, and therefore requests that the next report provide information on the planned agreements, if any, and when these might be signed. The Committee also notes that the report does not provide any information on the outcomes of negotiations previously initiated with the Russian Federation and Ukraine. It therefore wishes to be informed on this matter in the next report.

Therefore, the Committee concludes that the situation is not in conformity with the 1961 Charter 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).

The Committee notes from MISSOC that Germany applies the rules whereby the payment of family benefits is conditional on the claimant's children being resident in Germany.

As the situation remained unchanged during the reference period, the Committee reiterates its conclusion of non-conformity and asks whether it is planned to negotiate agreements with the other States Parties which apply a different principle to that of a child residence requirement for entitlement to family benefits (Albania, Andorra, Armenia and Georgia).

Right to retain accrued benefits

In its previous conclusion (Conclusions XX-2 (2013)), the Committee found the situation to be in conformity as far as the retention of accrued benefits was concerned. Given that the situation has not changed, the Committee reiterates its conclusion. However, it asks each future report to provide information on the current state of the law or practice.

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

In its previous conclusion (Conclusions XX-2 (2013)), the Committee found that the situation of Germany was not in conformity with the 1961 Charter because no bilateral agreement existed with Albania, Andorra, Armenia, Azerbaijan, Georgia or the Republic of Moldova with respect to the right to the maintenance of accruing rights. 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 Germany is not in conformity with Article 12§4 of the 1961 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 Germany.

Types of benefits and eligibility criteria

In its previous conclusion (Conclusions XX-2 (2013)) the Committee asked the next report to provide updated and comprehensive information on the medical assistance provided to persons without resources. It notes from the report in this regard that as a basic principle, insurance is compulsory under the statutory health insurance system and the social long-term care insurance system for employable persons eligible for benefits under Book II of the Social Code who are drawing long-term unemployment benefit. Unless they are insured for free as a family member in the statutory health insurance system and the social long-term care insurance system, individuals drawing social allowance receive a subsidy from the job centre for the contribution amount to be paid to the health insurance or long-term care insurance system. Individuals who were most recently insured under the private health insurance system receive a subsidy from the job centre to cover their contributions to the private health insurance system.

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 assistance towards living expenses/needs based pension supplement in old age and basic security benefits for jobseekers stood at € 404 for person living alone.
- Additional benefits: in its previous conclusion the Committee asked for an updated and clear information on the average amount of supplementary benefits. It notes from the report in this regard that the benefits provided under basic income support for job-seekers factor in monthly basic needs (particularly for food, clothing, personal hygiene, household effects, household energy, personal daily needs, including participation in social and cultural life), the actual costs of accommodation and heating (including electric heating) up to what is considered reasonable, as well as additional needs in certain circumstances in life (e.g. additional needs for pregnant women, single parents, costly foods on medical grounds, decentralised warm water supply), needs regarding education and participation (for people under 25) or for special needs (e.g. to furnish an apartment for the first time, including household appliances). With regard to benefits to cover basic needs, heating and accommodation expenses and additional needs, where applicable, according to the report, the following average values applied for the month of May 2016: a single person had total monthly needs of €719 on average (€312 of which were for housing expenses). The average amount of benefits to cover the cost of living stood at €628. The difference between the total average needs and the average amount paid in benefits stems from the fact that low-income, low-asset individuals can also be entitled to top-up benefits under basic income support for job-seekers.
- 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 € 861 in 2015.

The Committee recalls that to be considered adequate, the monthly amount of assistance benefits -basic and/or additional – paid to a person living alone should not fall below the poverty threshold in the above sense. The Committee notes that the figures in the report are for 2016, which is outside the reference period. However, considering that a single person received € 404 as the basic benefit in 2015 and housing expenses represent around 43% of the total assistance (the Committee's estimate based on the figures in the report), the

Committee deduces that total amount of assistance that could be obtained stood around € 715 in 2015, which is not compatible with the poverty threshold. Therefore, the situation is not in conformity with the Charter.

The Committee asks the next report to provide updated figures for the next reference period as concerns basic assistance and supplementary benefits paid to a single person without resources.

Right of appeal and legal aid

In its previous conclusion the Committee asked whether it was possible to lodge an appeal with an independent committee against decisions concerning social and medical assistance, and whether free legal aid was provided where necessary. It notes from the report in this regard that action against a decision by a social benefit agency regarding the provision of social assistance can first be taken by the party concerned in a social administrative proceeding, in order to check the admissibility and appropriateness of the administrative decision. Pursuant to Section 64 of Book X of the Social Code, no fees and charges are levied for these procedures before the authorities.

If the party concerned does not agree with the final social administration decision, he or she can appeal the decision before the Social Court. Independent judges are appointed to the Social Courts and are not subject to any orders or instructions or any other outside influence. No court fees apply to proceedings before Courts of Social Jurisdiction for insured parties, benefit recipients and people with disabilities.

In principle, all parties involved can represent themselves in proceedings before the Social Court or Higher Social Court. Individuals are entitled to legal aid for representation in court if legal representation by a lawyer is stipulated by law (e.g. before the Federal Social Court), or if the opponent is represented by a lawyer, or if representation by a lawyer is deemed necessary (Section 73a of the Social Courts Act (*Sozialgerichtsgesetz*) in connection with Section 121 (2) of the Code of Civil Procedure (*Zivilprozessordnung*)). To qualify for legal aid, the applicant must be unable to cover the cost of a lawyer, or only able to pay the cost in part or in instalments, due to his or her personal and economic circumstances, and the intended prosecution or legal defence must have a sufficient chance of success and must not appear to be in bad faith.

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 asked the next report to clarify whether all nationals of States Parties, lawfully resident in Germany were entitled to social and medical assistance on an equal footing with German nationals. It notes from MISSOC that assistance towards living expenses and basic security benefits for jobseekers are granted to persons with actual residence in the country. The Committee also notes from the report that basic income support for job-seekers is also provided to non-nationals who are habitually resident in Germany. The Committee asks the next report to provide detailed information regarding the status of 'habitually resident' or 'likely to remain permanently'. It asks in particular whether this does not signify that a length of residence requirement is imposed on nationals of States Parties lawfully resident in Germany for them to be eligible for these benefits. In the meantime, the Committee reserves its position as regards equal treatment of nationals of States Parties lawfully resident in Germany.

Foreign nationals unlawfully present in the territory

In its previous conclusion on Article 13§4 the Committee held that the situation was in conformity with the Charter as regards emergency social and medical assistance to unlawfully present persons. It noted in particular that as under the Asylum-Seekers Benefits Act (Section 1, paragraph 1, Nos. 4 and 5), persons without legal residence are entitled to emergency social and medical assistance.

The Committee further notes from the report in this regard that pursuant to Section 4 of the Act on Benefits for Asylum Applicants (*Asylbewerberleistungsgesetz*), benefits are granted for medical and dental treatment. In addition, under Section 6 of the Act on Benefits for Asylum Applicants, additional benefits and services can be granted that are essential in individual cases to safeguard the health of the individual. This can also include treatment for chronic illnesses, necessary urgent medical rehabilitation measures or assistance which is needed from a medical point of view.

The Act on Benefits for Asylum Applicants applies to all foreigners who do not reside permanently in Germany and do not have a secure residence status. According to the report, the right to claim benefits is not restricted to persons who have applied for asylum or other forms of refugee status. Rather, this right also applies to individuals unlawfully in the country (cf. Section 1 (1), nos. 4 and 5 of the Act on Benefits for Asylum Applicants). The Committee asks the next report to confirm that emergency social assistance (food, shelter, clothing) is also provided for unlawfully present foreign nationals for as long as they are in the territory.

Conclusion

The Committee concludes that the situation in Germany is not in conformity with Article 13§1 of the 1961 Charter on the ground that the total level of social assistance, including the basic and additional benefits 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 Germany.

In reply to the Committee's question, the report specifically reiterates that persons receiving social or medical assistance do not suffer from a diminution of their political and social rights either in practice or by law.

Conclusion

The Committee concludes that the situation in Germany is in conformity with Article 13§2 of the 1961 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 Germany.

The Committee recalls that Article 13§3 guarantees equal treatment of nationals of States Parties lawfully resident in the territory, with nationals of the State concerned, as regards access to advice and personal help offered by social services responsible for prevention, abolition or alleviation of need. Equality of treatment also implies that no length of residence requirement may be imposed on nationals of States Parties to enjoy equal treatment.

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 requests information on how everyone in Germany can access social services in the sense of accessing those services with a view to obtaining advice and personal help, such as the services provided under Articles 67-68 of Book Twelve of the Social Code. The Committee underlines that under Article 13§3 of the Charter the right to receive such advice and help is independent of eligibility for specific social and medical assistance.

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 Germany.

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 medical 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 under Article 13§1 and considers that the situation is in conformity as regards lawfully present foreign nationals.

Conclusion

The Committee concludes that the situation in Germany is in conformity with Article 13§4 of the 1961 Charter.

Article 14 - The 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 Germany.

Organisation of the social services

The Committee refers to its previous conclusion (Conclusions XIX-2(2009)) for a description of the organisation of the social welfare system.

Effective and equal access

The Committee refers to its previous conclusion (Conclusions XIX-2(2009)) for general information on effective and equal access to social services.

In its previous conclusion (Conclusions XX-2(2013)), the Committee asked whether access to social services is free in certain situations. The report indicates that in the system of basic support for job-seekers are available free of charge to individuals eligible for benefits.

The Committee requests that the next report provides information in this regard also for other social welfare services (whether there are fees or not and how their payment is regulated).

In its previous conclusion (Conclusions XX-2(2013)) the Committee asked to indicate what measures exist to ensure an equal access to social services to nationals of other States Parties legally residing or regularly working in the country. In this respect the Committee reiterates its question.

In its previous conclusion (Conclusions XX-2(2013)) the Committee asked for information on the ratio of staff to users of social services. The Committee notes that this information was not provided in the report, (the information was provided only for job centres and for June 2016, which is outside the reference period), therefore, the Committee reiterates its question.

Quality of services

The Committee notes that the report does not provide information as regard to the quality of social services and 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). In this respect it asks that the next report provides updated information on quality of social services.

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 Committee asks that the next report provides details and updated information on each of these elements.

Conclusion

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

Article 14 - The 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 Germany.

The Committee refers to its previous conclusion (Conclusions XIX-2 (2009)) (Conclusions XX-2 (2013)) for information on the public participation in the establishment and maintenance of social services and voluntary sector positive contribution to the social welfare system in Germany.

In its previous conclusion the Committee asked whether and how the Government ensures that social services managed by the private sector are effective and are accessible on an equal footing to all, without discrimination 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, therefore reiterates its questions and defers 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 1961 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 XX-4 (2015)**

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 Germany in response to the conclusion that it had not been established that adequate practical measures have been taken to eliminate all discrimination concerning remuneration and other employment and working condition.

The report indicates that Germany set up the Office for the Equal Treatment of EU workers under the Federal Government Commissioner for Migration, Refugees and Integration in May 2016 (out of the reference period), in order to implement Directive 2014/54/EU of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers. The objective of the Equal Treatment Office is to support EU citizens and their family members with their rights with respect to the principle of freedom of movement for workers.

The report also indicates that advisory centres established in 8 German cities under the project "Fair mobility – Actively promoting the free movement of workers in a social and fair manner" launched in 2011 offer support (information and advisory services) to mobile workers from Central and Eastern Europe, nationals of EU Member States, on social and labour issues with a view to, *inter alia*, enforcing their rights to fair wages and working conditions on the German labour market.

The Committee notes however that the abovementioned bodies provide their services only to nationals of EU Member States, excluding therefore nationals of other States Parties not member of the EU lawfully present in the German territory. In this respect, it recalls that in accepting Article 19§4 of the 1961 Charter, States Parties undertake to secure for migrant workers of all other States Parties lawfully within their territories treatment not less favourable than that of their own nationals regarding, *inter alia* employment conditions. Therefore, it asks whether those bodies also welcome and support nationals of those States when requiring help. It reserves in the meantime its position 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 XXI-4 (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.



January 2018

1961 European Social Charter

European Committee of Social Rights

Conclusions XXI-2 (2017)

POLAND

This text may be subject to editorial revision.

The following chapter concerns Poland which ratified the 1961 Charter on 25 June 1995. The deadline for submitting the 16th report was 31 October 2016 and Poland submitted it on 19 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 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 4 of the Additional Protocol).

Poland has accepted all provisions from the above-mentioned group except Articles 13§§1 and 4, 14§2 and Article 4 of the Additional Protocol.

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

The conclusions relating to Poland concern 13 situations and are as follows:

- 6 conclusions of conformity: Articles 3§2, 3§3, 11§2, 11§3, 12§2 and 13§2;
- 4 conclusions of non-conformity: Articles 11§1, 12§1, 12§4 and 14§1.

In respect of the 3 other situations related to Articles 3§1, 12§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 Poland 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 Regulation of the Minister of Health of 21 December 2012 on granting authorisation for radiological protection inspectors in laboratories using X-ray equipment for medical purposes and the Regulation of the Council of Ministers of 10 August 2012 on posts which are critical for nuclear safety and radiation protection and radiation protection inspectors were adopted during the reference period.

Article 3§3

The Council for Social Dialogue replaced the Tripartite Commission for Socio-Economic Affairs in accordance with the Law of 24 July 2015. The Committee notes that the Council is made up of representatives of the government, workers represented by members of representative trade union organisations, and employers represented by members of representative employers' organisations. It conducts dialogue in order to lay the foundations for socio-economic development and increase economic competitiveness and social cohesion in Poland.

Article 12§3

The extension of certain health care benefits to refugees, their families, pregnant women and women who have just given birth and children under 18 years with refugee status or enjoying additional protection (law of 26 June 2014).

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In addition, the report contains also information requested by the Committee in Conclusions XX-4 (2015) in respect of its conclusions of non-conformity due to a repeated lack of information:

- the right of the family to social, legal and economic protection (Article 16),
- the right of migrant workers and their families to protection and assistance – departure, journey and reception (Article 19§2).

The Committee examined this information and adopted 1 conclusion of conformity relating to Article 19§2 and 1 conclusion of non-conformity relating to Article 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 2 of the Additional Protocol),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 3 of the Additional Protocol).

The deadline for submitting that report was 31 October 2017. The report was registered on 21 September 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 - Safety and health regulations (Art. 3-2 1996 RESC)

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

Content of the regulations on health and safety at work

The report presents a list of legislative and regulatory texts concerning health and safety at work which entered into force during the reference period. It includes the new legislation concerning safety and health at work or the amendment of the legislation that was already in force, as a result of the implementation of European Union Directives and the adaptation of legislation to technical progress.

With regard to the education sector, the report lists a series of regulations of the Minister of Education which were adopted in 2012 with regard to vocational education programmes, which encompass issues pertaining to safety and health at work.

The Committee takes note that the national policy on safety and health at work is implemented through the multi-year programme "Improving Safety and Conditions at Work". The report provides detailed information about the objectives of this policy and the anticipated outcomes of stage III of the programme for 2014-2016. The Committee asks for the next report to provide information about the outcomes of the third stage of the programme.

The Committee points out that under the terms of Article 3§1 of the 1961 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§1 of the 1961 Charter, Conclusions XX-2 (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 Poland is in conformity with Article 3§1 of the Charter.

Levels of prevention and protection

Protection against dangerous agents and substance

Protection of workers against asbestos

The report does not indicate any changes in the situation which the Committee has previously considered to be in conformity (Conclusions XX-2 (2013)). Given that no update has been provided, the Committee asks that the next report indicates any changes made in terms of protection of workers against asbestos.

Protection of workers against ionising radiation

In its previous conclusion (Conclusions XX-2 (2013)), the Committee requested up-to-date information about ionising radiation. The Committee previously noted (Conclusions XVIII-2 (2007)) that 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 had been transposed into domestic legislation. The report states that the Regulation of the Minister of Health of 21 December 2012 on granting authorisation for radiological protection inspectors in laboratories using X-ray equipment for medical purposes and the Regulation of the Council of Ministers of 10 August 2012 on posts which are critical for nuclear safety and radiation protection and radiation protection inspectors were adopted during the reference period.

The Committee takes note that the Law of 29 November 2000 on nuclear energy, the Regulation of the Minister of Health of 18 February 2011 on safe methods of using ionising radiation for all types of medical exposure and the Regulation of the Minister of Health of 7 April 2006 on the minimum requirements for health centres which request authorisation to pursue activities involving exposure to ionising radiation for medical purposes, which consist of the provision of healthcare services in the field of radiation oncology, were amended during the reference period.

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

Protection of temporary workers

The report does not indicate any changes in the situation which the Committee has previously considered to be in conformity (Conclusions XX-2 (2013)). Given that no update has been provided, the Committee asks that the next report indicates any changes made in terms of protection of temporary workers.

According to the report, the Law of 26 June 1974 (Labour Code), in particular Section X "Safety and Health at Work", was amended by the Law of 9 November 2012, which abolished the obligation for employers who are beginning their economic activity to provide the National Labour Inspectorate and the Health Inspectorate-General within 30 days following the commencement of the activity with details of the place, type and scope of their activity, and also by the Law of 7 November 2014 on the facilitation of economic activity. The latter dispensed with the obligation to carry out a pre-recruitment medical examination for persons who are hired by another employer within 30 days following the termination or expiry of the previous labour relationship, on certain conditions. The report states that this does not concern persons who are assigned to particularly dangerous tasks.

Other types of workers

In its previous conclusion (Conclusions XX-2 (2013)), the Committee requested information about self-employed workers and the implications of health and safety regulations for them. In response, the report states that Article 304§1 of the Labour Code as amended obliges employers to ensure that working conditions are safe and healthy for persons who pursue individual economic activity on their own account on the site or in another location stipulated by the employer. According to the report, the employer fulfils this obligation by, among other things, providing safe and hygienic working conditions and ensuring that rules and principles concerning safety and health at work are complied with on the site, by adapting to needs to maintain health and safety at work and by adjusting the measures taken to improve the level of protection of the lives and health of employees, in the light of changes in the conditions in which work is carried out. In addition, the employer can conclude that in order to fulfil this obligation, employees must undergo suitable medical examinations and, due to the dangers present in the workplace, must attend training on safety and health in the workplace.

In parallel, the provisions of the Labour Code oblige self-employed workers to comply with health and safety regulations where a company hires their services; they therefore need to be aware of health and safety rules, wear protective equipment, undergo medical examinations at the beginning of and during their contract, and co-operate with the employer in the performance of obligations concerning health and safety at work.

Conclusion

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

Article 3 - Right to safe and healthy working conditions

Paragraph 2 - Enforcement of safety and health regulations (Art. 3-3 1961 RESC)

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

Accidents at work and occupational diseases

The report states that the number of accidents at work fell slightly over the reference period from 90,464 in 2012 to 88,138 in 2014. This decrease affects the following, among other things: the total number of victims, which fell from 91,000 in 2012 to 88,641 in 2014; the number of victims of fatal accidents, which fell from 350 in 2012 to 263 in 2014; the number of victims of serious accidents, which fell from 627 in 2012 to 530 in 2014; and the number of minor accidents, which fell from 90,023 in 2012 to 87,848 in 2014.

According to EUROSTAT figures, in 2014, 76,274 non-fatal accidents at work resulting in at least four calendar days of absence were recorded in Poland and the number of fatal accidents was 263. There were an average of 1.9 fatal accidents per 100,000 employed persons in 2014, as compared with 525 non-fatal accidents per 100,000 employed persons (standardised incidence rate).

According to the report, the number of occupational diseases fell slightly over the reference period: 2,402 in 2012; 2,214 in 2013; 2,351 in 2014 and 2,094 in 2015. These figures correspond respectively to 23 occupational diseases per 100,000 employees in 2012, 21.4 in 2013, 22.6 in 2014 and 19.5 in 2015. The most significant decreases concern asbestosis and infectious or parasitic diseases. However, the Committee notes the increase in chronic vocal diseases, anthracosis and cancer.

As for the agricultural sector, the report states that over the reference period, the number of reported accidents fell from 22,370 in 2012 to 18,814 in 2015, while the number of fatal accidents fell from 92 in 2012 to 63 in 2015. The number of occupational diseases in agriculture rose from 198 in 2012 to 245 in 2015. These figures correspond respectively to 13.3 occupational diseases per 100,000 employees in 2012, 15.9 in 2013, 17.7 in 2014 and 17.6 in 2015. The biggest increases concern infectious or parasitic diseases, including Lyme's disease. The Committee takes note of the steps taken by the Social Insurance Fund for Farmers to reduce the number of accidents at work.

The Committee concludes that the situation is in conformity with Article 3§2 of the 1961 Charter on this point.

Activities of the Labour Inspectorate

The Committee reiterates that under the provisions of Article 3§2 of the 1961 Charter, States Parties must take measures to focus labour inspection more on small and medium-sized enterprises (Statement of Interpretation on Article 3§2, Conclusions XX-2 (2013)). The report outlines the powers and methods of action of the main bodies responsible for inspecting and supervising working conditions: the National Health Inspectorate (PIS) and the National Labour Inspectorate (PIP) (see Conclusions XV-2 (2001)). The Health Inspectorate-General implements the provisions of the Law on the Health Inspectorate-General, the Labour Code (Section X) and laws on chemical substances and mixtures thereof and biocide products, which prohibit the use of products containing asbestos. It conducts health monitoring in order to improve working conditions and protect the health of employees against the negative impact of harmful and burdensome factors which are present in the workplace. The National Labour Inspectorate (PIP) monitors compliance with employment law, including rules and principles concerning health and safety at work and provisions concerning the legality of employment and other forms of paid work. It focuses on economic sectors and sites with the highest levels of occupational hazards. The report states that educational actions are aimed in particular at small and medium-sized enterprises, among which the level of knowledge of the law is lower.

The report states that the total number of employees of the National Labour Inspectorate rose from 2,758 on 31 December 2012 to 2,768 on 31 December 2015. The report also provides information about the internal organisation of the offices responsible for the oversight and data analysis functions, and about changes in the distribution of posts within the structures in question (at central level and in the decentralised units). According to figures published by ILOSTAT, the number of employees of the National Labour Inspectorate was 1,600 in 2015. The Committee requests for the next report to explain why the numbers of employees of the National Labour Inspectorate which are stated in the report and by ILOSTAT are different. It also asks to be informed of the percentage of workers who are covered by the inspection visits that are made within each sector of activity.

The Committee notes that according to the report, the number of measures resulting in cessation of the operation of machines and equipment rose over the reference period (7,983 in 2012 – 9,297 in 2015). The number of measures banning work or activities also rose (282 in 2012 – 779 in 2015). The report also provides detailed information about the type and number of penalties imposed in connection with the adoption of the measures in question: with regard to the cessation of the operation of machinery and equipment, the number of requests for punishment transmitted to the courts fell from 167 in 2012 to 153 in 2015, while the number of fines imposed in the form of the mandate increased from 2,728 in 2012 to 3,198 in 2015. Concerning the prohibition of continuing work or activities, the number of requests for punishment transmitted to courts (11 in 2012 and 21 in 2015) and the number of fines imposed in the form of the mandate (140 in 2012 and 448 in 2015) increased during the period of reference. Concerning the establishment of the circumstances and causes of accidents, the number of requests for punishment transmitted to courts (20 in 2012 and 19 in 2015) and the number of fines imposed in the form of the mandate (124 in 2012 and 128 in 2015) remain stable.

Over the reference period, the number of inspections remained steady (89,949 in 2012 and 88,299 in 2015). In particular, in 2012, 55.3% of inspections concerned enterprises with between 1 and 9 employees, and this percentage rose to 57.1% in 2015. For enterprises with between 10 and 49 employees, the following percentages were noted: 27.4% in 2012 and 26.1% in 2015. In 2012, 12% of inspections concerned enterprises with between 50 and 249 employees, and in 2015, this figure was 11.2%. For enterprises with over 250 employees, the percentage rose from 5.3% in 2012 to 5.6% in 2015.

The Committee considers, in the light of the number of inspection visits and the level of the measures followed up, that labour inspection is effective.

Conclusion

The Committee concludes that the situation in Poland is in conformity with Article 3§2 of the 1961 Charter.

Article 3 - Right to safe and healthy working conditions

Paragraph 3 - Consultation with employers' and workers' organisations on safety and health issues

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

In its previous conclusion (Conclusions XX-2 (2013)), the Committee considered that the machinery and procedures for consultation of professional organisations was in conformity with Article 3§3 of the 1961 Charter.

The Committee notes that during the reference period, in accordance with two laws of 23 May 1991 on trade unions and employers' organisations (see Conclusions XVI-2 (2003) and XV-2 (2001)), the Minister of Labour and Social Policy and the other ministers, in their respective areas of competence, conducted consultations with employers' and workers' organisations on a number of draft legal texts concerning health and safety at work.

According to the report, the Council for Social Dialogue replaced the Tripartite Commission for Socio-Economic Affairs in accordance with the Law of 24 July 2015. The Committee notes that the Council is made up of representatives of the government, workers represented by members of representative trade union organisations, and employers represented by members of representative employers' organisations. It conducts dialogue in order to lay the foundations for socio-economic development and increase economic competitiveness and social cohesion in Poland. The Committee takes note of the consultation procedure which is fully described in the report.

As regards the structures and procedures for consultations at enterprise level, the report does not indicate any changes in the situation which the Committee has previously considered to be in conformity (Conclusions XVIII-2 (2007)). Given that no update has been provided, the Committee asks that the next report indicates any changes made in terms of consultation at enterprise level.

Conclusion

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

Measures to ensure the highest possible standard of health

The Committee notes from WHO data that overall life expectancy at birth was 77.5 years in 2015 (as against an average of 79.6 years for EU member states). Life expectancy therefore remains lower than in some other European countries, but has increased since the previous reference period (76.5 years in 2009). According to Eurostat, life expectancy at birth in the EU-28 was estimated at 80.6 years in 2015.

According to the report, the infant mortality rate (per 1 000 live births) fell from 4.6 in 2012 to 4.2 in 2014, while the maternal mortality rate (number of deaths per 100 000 live births) increased from 4 in 2012 to 7 in 2013 and 8 in 2014.

The Committee noted previously that cardiovascular diseases were the main cause of mortality, followed by cancer, and asked to be kept informed about further progress made in reducing mortality resulting from these diseases (Conclusions XIX-2 (2010)). In its previous conclusion, the Committee noted that the relevant mortality rates remained the same as during the previous reference period and requested that the next report indicate whether the measures taken have decreased the mortality rates resulting from cardiovascular diseases and cancer (Conclusions XX-2 (2013)).

The report indicates that the implementation of the national anticancer programme (2006-2015) continued during the reference period with measures related to early detection and diagnosis, the use of modern diagnosis and treatment methods, training of doctors and the purchase of specialized equipment. Some of the measures resulted, for example, in an increase in the number of women undergoing cytological screening (42.11% of women in 2015 as against 24.4% of women in 2011 and 12.7% in 2006), mammographic screening (45.52% of women in 2015, 43.48% of women in 2011, as against 23.37% in 2006) and a marked increase in the five-year survival rate in cases of colorectal cancer (46% of women in 2014). In addition, programmes to improve the quality of cancer diagnosis and treatment for children were developed.

The Committee notes from the report that the national programme POLKARD (2010-2012) continued during the period 2013-2016 in order to reduce deaths resulting from cardiovascular diseases, to expand the use of modern diagnosis and treatment methods and improve access to highly specialised cardiology, paediatric cardiology, heart surgery and neurology services. The Committee takes note from the report of the detailed description of the specialised equipment purchased during the reference period. The programme involved also a study monitoring the epidemiological situation in Poland in relation to cardiovascular diseases (Project WOBASZ II), the premature and general mortality and hospital admissions due to cardiovascular diseases.

The report does not provide any updated information with regard to the rates of mortality resulting from cardiovascular diseases and cancer. The Committee notes from Eurostat that the mortality rate for cancer was of 24.3 in 2013 (same in 2010). Data from OECD show that in 2014 there were 236 deaths from cancer per 100 000 inhabitants in Poland. The Committee notes that according to these data, the mortality rate has not decreased but remained at the same levels. The Committee notes that according to the OECD, the mortality from cardiovascular diseases has decreased in recent decades after its peak in mid-1980s at a slightly faster pace than many other OECD countries but it is still higher than the OECD average, at 476 per 100 000 population in 2011 (456 in 2010), 59% higher than the OECD average of 299. The Committee takes note of all the detailed information regarding the actions taken described in the report. It asks that the next report provide information on the exact levels of mortality rates and whether the implementation of the

measures and programmes developed had a concrete effect in reducing the rate of premature death resulting from cardiovascular diseases and cancer.

The Committee noted previously that 1.6 million people are receiving treatment for mental health problems and that a national mental health protection programme (2011-2015) and related strategy had been launched and requested that the next report indicate the effects of these measures (Conclusions XX-2 (2013)). The report indicates that the funding allocated to the implementation of the program increased in a systematic way (in 2011 it amounted to 2,023,817,000 zł, against 2,318,665,000 zł in 2014), the financial resources devoted to psychiatric care and treatment of addictions increased by 18.62%, and those spent on environmental psychiatric care increased by 126.6%. The number of home treatment teams has increased from 60 in 2011 to 124 in 2014. Information, education, prevention and training activities have been strengthened. The Committee takes note of the measures described in the report. It asks for updated information on the availability of mental health care and treatment services, including information on the prevention of mental disorders and recovery measures.

Access to health care

The Committee refers to its previous conclusion for a description of the health care system (Conclusions XX-2 (2013)). The Committee noted that according to an OECD survey, Poland was one of the OECD countries where out-of-pocket expenditure as a share of total health care expenditure was the largest and asked information on any developments in this area (Conclusions XX-2 (2013)).

The report provides information on the Law of 12 May 2011 concerning the reimbursement of medicines, foodstuffs intended for particular nutritional uses and medical devices, which introduced several categories of payment in order to reduce the financial burden on the patients. The report adds that, as a result, patients pay an average of about 1/3 of the price of reimbursable medicines. During the 4-year period during which the law on reimbursement of medicines has been into force, the level of co-payment by the patient decreased from 34.5% (on 31 December 2011) to 31% (at the end of the first quarter of 2014). The report further indicates that the law of 18 March 2016 (outside the reference period) amending the law on health care financed from public funds, introduced the free supply of certain medicines, foodstuffs for special nutritional uses and medical devices to persons over 75 years of age.

The Committee takes note of all measures to reduce the costs of medicines for patients described in the report. It asks the next report to provide updated information on the level of out-of-pocket expenditure as a share of total health care expenditure.

The Committee takes note from OECD that health spending in Poland (excluding investment expenditure in the health sector) was 6.4% of GDP in 2013, well below the OECD average of 8.9%. The Committee takes note that according to Euro Health Consumer Index (EHCI) which assesses the performance of national healthcare systems in 35 European countries, the overall situation of healthcare deteriorated in Poland which came down from the 32nd place in 2013 to the 34th place in 2015 with only 523 points (before Montenegro which scored as the last country in this comparison with 484 points).

In its previous conclusion (Conclusions XX-2 (2013)), the Committee found that the situation in Poland was not in conformity with Article 11§1 of the 1961 Charter on the ground that equal access to health care is not ensured because of long waiting lists.

The report provides information on the actions taken to reduce waiting times such as: (i) changes to improve access to health care for cancer patients, by creating a diagnosis and treatment card which gives the possibility to register on a separate list of patients awaiting oncological diagnosis; (ii) changes to address problems associated with the poor management of waiting lists; (iii) measures to monitor the waiting lists in an effective

manner; (iv) the right for nurses and midwives, in certain conditions, to order medicines and issue prescriptions for them, as well as order specific examinations and medical devices; (v) introduction of the regional and national cards of medical needs to facilitate identifying the different needs of medical treatment at regional and national level.

The Committee takes note of the measures designed to reduce waiting times described in the report. However, it notes from the statistics provided by OECD that waiting times are still long for example in case of some specialist medical treatment involving cataract surgery – the waiting time from specialist assessment to treatment increased from 294 days in 2012 to 371 in 2013 and to 384 in 2014; hip replacement, total and partial, including the revision of hip replacement – the waiting times from specialist assessment to treatment were of 336 days in 2012, 364 days in 2013 and 386 days in 2014 and the waiting time of patients on the list increased from 423 days in 2012, to 461 days in 2013 and 492 days in 2014; for a knee replacement, the waiting times from specialist assessment to treatment was of 419 days in 2012, 469 days in 2013 and 513 days in 2014 and the waiting time of patients on the list increased from 613 days in 2012, to 662 days in 2013 and 722 days in 2014.

Despite the measures already taken as described in the report, the Committee finds that the situation has not improved since the previous assessment and that efforts to improve efficiency and increase capacity so as to reduce waiting times should be continued. According to the data from the OECD it seems that in some cases, the situation has even deteriorated. The Committee asks updated information in the next report on the measures taken in this sense and information about real waiting times for different medical treatments. Meanwhile, the Committee considers that the situation in Poland is still not in conformity with Article 11§1 of the 1961 Charter on the ground that equal access to health care is not ensured because of long 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).

As regards the right to protection of health of transgender persons, the Committee asked whether in Poland 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 XX-2 (2013)). The report indicates that there is a judicial procedure to resolve differences between sex in the birth certificate and gender identity, in accordance with the law of 17 November 1964, namely the Code of Civil Procedure. The report adds that in order to determine sex in accordance with the provisions of the Code of Civil Procedure, Polish legislation does not regulate the therapeutic process and does not require sterilisation or other invasive medical procedures that could impair health or the mental integrity. The Committee takes note of the information provided in the report and in the comments submitted by Transgender Europe and ILGA- Europe on the implementation of Article 11 of the Charter. It asks updated information in the next report.

Conclusion

The Committee concludes that the situation in Poland is not in conformity with Article 11§1 of the 1961 Charter on the ground that access to health care is not ensured because of long waiting times.

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 Poland.

The Committee previously concluded that the situation was in conformity with Article 11§2 of the 1961 Charter (Conclusions XX-2 (2013) and Conclusions XIX-2 (2010)).

The Committee takes note of the information provided in the report concerning the measures taken in the area of perinatal care and the relevant statistics concerning the number of preventive consultations for pregnant women, which fell during the reference period: 36 200 in 2012, 29 500 in 2013 and 25 400 in 2015.

In its previous conclusion, the Committee took note of the adoption of a regulation in 2010 aimed at encouraging pregnant women to consult doctors at an earlier stage (see Conclusions XX-2 (2013)), and asked what steps the authorities had taken to publicise the regulation. In reply, the report states that information was published on the websites of the Ministry of Health and the Ministry of Labour and Social Policy, in the media, in medical journals and by associations representing doctors, nurses and midwives; and posters were put up in primary health care centres.

The Committee asks that the next report provide updated information on the measures taken in the areas of health education and awareness raising, including in schools, as well as counselling and screening, namely medical checks and screening for pregnant women and children and for all the diseases that constitute principal causes of premature death.

Conclusion

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

Healthy environment

In its previous conclusion, the Committee noted that, despite the prevention activities conducted during the reference period, pollution emission limits were still being exceeded in many Polish regions and asked to be provided with updated information concerning air protection. The report does not provide any information on the subject.

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 Committee takes note of the updated information and statistics on smoking supplied by Poland, which show that the proportion of regular cigarette smokers has fallen (31% in 2011, 27% in 2013 and 24% in 2015).

With regard to alcohol consumption levels, the Committee notes from the report that in 2014 the figure was 9.4 l per inhabitant, which was 0.27 l down on 2013. The report also states that 11.9% of Polish adults abuse alcohol and that alcohol-related problems affect men much more frequently than women. In reply to a question by the Committee (Conclusions XX-2 (2013)), the report gives examples of the results of the measures taken to limit alcohol consumption. For instance, (i) the number of deaths due to mental problems related to alcohol consumption fell by 14% (1 362 deaths in 2013, as against 1 583 in 2012); (ii) the number of deaths from alcohol poisoning fell by 8% (from 1 571 in 2012 to 1 448 in 2013).

The Committee takes note of the information concerning the policies and measures taken to combat the use of psychotropic substances and the detailed statistics on the use of psychotropic substances provided in the report. The report states that many prevention campaigns and programmes have been implemented. The Committee requests that the next report provide information on the effects/impacts of these campaigns on reducing drug use.

Immunisation and epidemiological monitoring

The Committee notes from the report that, during the reference period, the General Health Inspectorate continued its work in terms of epidemiological monitoring of acute flaccid paralysis; broadening the categories of children subject to compulsory preventive immunisation (for instance, compulsory preventive vaccination against chickenpox); and the introduction in 2012 of immunisation against diphtheria, tetanus and pertussis for children who did not receive the relevant vaccine at the age of 5 years.

The report adds that, during the reference period, the General Health Inspectorate continued its work to broaden the categories of children subject to compulsory and recommended immunisation against infectious diseases. The inspectorate also supervised the organisation of immunisation programmes, including their implementation, the distribution of vaccines and reports on the matter, and analyses, simulations and other activities to promote preventive immunisation.

The report states that the vaccination coverage rate among children was 96% to 99.9% during the reference period.

The Committee takes note of the information in the report on the measures taken and the campaigns conducted, in particular regarding the prevention of infectious diseases.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Poland is in conformity with Article 11§3 of the 1961 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 Poland.

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 noted previously (Conclusions XIX-2 (2009)) that the Polish social security system covered the branches of social security corresponding to all traditional risks: medical care, sickness, unemployment, old age, employment injury, family, maternity, invalidity and survivors. It also noted that the system was collectively funded, i.e. by contributions (employees and employers) and by the state budget. The report indicates that the situation has not changed.

In order to be able to assess effective personal coverage, the Committee asked (Conclusions XX-2 (2013)) the next report to provide figures, for the reference period, for every branch of social security. For medical care, it asked for information on the percentage of persons insured out of the entire population. For pension, sickness, maternity and unemployment benefits, it asked for information on the percentage of persons insured out of the total active population.

The report does not provide the information requested. It indicates that at the end of 2015, there were 15.9 million persons insured under compulsory health insurance; 14.2 million insured against employment injury; 13.2 million with sickness insurance; 14.8 million insured for old age and invalidity pensions and 1.3 million persons were affiliated to the agricultural insurance fund (KRUS).

According to CLEISS (the French Liaison Centre for European and International Social Security), in principle, all persons who are gainfully employed in Poland are compulsorily covered by pensions insurance and occupational injury-disease insurance. This also applies to members of the clergy, persons in receipt of unemployment or maternity benefits and all persons on parental leave. Employees are also compulsorily covered by sickness-maternity insurance and unemployment insurance in respect of their employment. Family benefits are provided through a universal scheme covering the entire population on the basis of residence. Lastly, all persons covered by compulsory pension insurance may remain affiliated on a voluntary basis when compulsory cover ends. Self-employed workers in the non-agricultural sector are compulsorily insured against all risks except for sickness-maternity insurance cash benefits. For the latter risks, they may opt for voluntary insurance on payment of an additional social insurance contribution of 2.45%. The Committee understands from this information that the entire active population is covered as regards old age, disability and survivor's pensions, sickness and maternity cash benefits, work injury and unemployment; all employees, self-employed persons, artists, authors, pensioners, unemployment allowance beneficiaries, persons undergoing professional rehabilitation, students, and the insured's dependent family members are eligible for medical benefits; and all residents are eligible for family benefits. It requests that the next report confirm whether this interpretation is correct or provide any necessary clarification. It also requests that the next report indicate the number of persons covered by the various branches of social security as a percentage of the overall population (sickness insurance and family benefits) and of the active population (sickness and maternity benefits, unemployment benefits, pensions, and work accident or occupational diseases benefits).

Adequacy of the benefits

The Committee takes note of the objections set out in the report concerning the respective scope of Articles 12§1 and 12§2 and on the criterion for assessing the adequacy of benefits.

In this connection, it refers to its Statement of Interpretation on Articles 12§1, 12§2 and 12§3 (Conclusions XVI-1 (2002)), in which it stated that it was necessary to reassess the minimum standard recognised in ILO Convention No. 102 and that the level of benefits should, in cases of wage substitution, whether temporary or permanent, always stand in a reasonable relation to the wage in question and should in any event exceed the minimum subsistence level. The Committee subsequently reaffirmed and clarified this principle, stating that when social security benefits are income-replacement benefits, their level 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. However, 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 (Statement of Interpretation on Article 12§1, Conclusions XX-2 (2013)).

According to Eurostat data, median equivalised income in 2015 was €5 556, or €463 a month. On a monthly basis, the poverty threshold, defined as 50% of median equivalised income, was therefore €231.50. 40% of the median equivalised income corresponded to €185 monthly. In 2015, the minimum wage was €410.

In its previous conclusion, the Committee held that the minimum level of **unemployment benefits** was inadequate. In this connection, it notes from MISSOC that the basic monthly level of unemployment benefits in 2015 was PLN 831.10 (€196) for the first three months and PLN 652.60 (€154) thereafter. The Committee notes that this is less than 40% of median equivalised income and therefore maintains its finding of non-conformity with Article 12§1 of the 1961 Charter.

Again according to MISSOC, the duration of unemployment benefits is six months in regions where the unemployment rate is under 150% of the national average and 12 months in regions where the unemployment rate is at least 150% of the national average or if the person concerned is aged over 50 and has completed a qualifying period of 20 years, or if his or her spouse is unemployed, is not entitled to unemployment benefits and if they have at least one dependent child aged under 15.

The Committee requests that the next report indicate whether legislation provides for a reasonable initial period during which an unemployed person may refuse a job that does not match his or her previous occupation and skills without losing his or unemployment benefits.

The report does not indicate the minimum level of **sickness benefits**, details of which were requested by the Committee (Conclusions XX-2 (2013)). The Committee notes from MISSOC that sickness benefits (*Zasitek chorobowy*) are paid by the employer for the first 33 days of illness in a calendar year (14 days if the individual is aged 50 or over), at the level of 80% of the reference wage. In the case of illness caused by an accident at work/occupational disease or an illness during pregnancy, the reference wage is paid in full by the Social Insurance Institute (*Zakład Ubezpieczeń Społecznych, ZUS*). Benefits are paid for a maximum of 182 days, or 270 days in certain cases (tuberculosis etc.). On the basis of the minimum wage, the Committee considers that the minimum level of sickness benefits is adequate.

In the case of benefits relating to **work accidents and occupational diseases**, MISSOC indicates that employees are entitled to payment of their full wage for six months and up to nine months in the case of tuberculosis. The Committee considers that the level of this benefit is adequate.

With regard to **old age pensions** and **total disability pensions**, the Committee notes from MISSOC that the minimum monthly amount is PLN 880.45 (€208), or between 40% and 50% of the Eurostat median equivalised income. In this connection, the Committee requested

information about the other benefits available to persons in receipt of the minimum pension. According to MISSOC, a nursing care supplement of PLN 208.17 (€49) (adjusted in line with pensions) may be paid to individuals who are in receipt of old-age or disability pensions, who are totally incapable of working and require the assistance of another person, or who have reached the age of 75. The old age pension may also be combined with the industrial accident allowance or the occupational disease allowance. However, the disability pension may not be paid in conjunction with an old age pension, industrial accident or occupational disease allowance, or unemployment benefits. The Committee requests that the next report confirm this information and provide any clarification necessary.

Conclusion

The Committee concludes that the situation in Poland is not in conformity with Article 12§1 of the 1961 Charter on the ground that the minimum level of unemployment 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 International Labour Convention No. 102

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

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 ILO Convention No. 102.

The Committee notes that Poland has accepted Parts II, V, VII, VIII and X of the ILO Convention No. 102.

The Committee, in its last Conclusion, asked to be informed of the replies to the questions raised by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) published in 2013 (102nd ILC session). The current report does not provide the information, however it refers to the preparation of the report in 2016 under ILO Convention 102 which would provide the replies to the questions raised.

The Committee notes the information provided in the current report concerning those Parts of the ILO Convention 102 which Poland has not ratified.

The Committee notes that Poland submitted its report under ILO Convention 102 in 2016, and 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 the treaty.

Conclusion

The Committee concludes that the situation in Poland is in conformity with Article 12§2 of the 1961 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 Poland.

It takes note of the legislative developments during the reference period, in particular:

- the extension of certain health care benefits to refugees, their families, pregnant women and women who have just given birth and children under 18 years with refugee status or enjoying additional protection (law of 26 June 2014) and
- the increase in retirement and pension benefits (law of 23 October 2014) in line with the adjustment index – the minimum retirement pension rose from €163 in 2012 to €196 on 1 January 2015, i.e. an increase of around 20%, and the same adjustment was applied to disability and survivor's pensions (these benefits are adjusted annually on 1 March on the basis of a set adjustment rate. The latter is defined as the average annual consumer price and services index, plus at least 20% of the real growth in average monthly incomes in the previous calendar year).

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 corresponding information and reserves its position on this issue in the meantime.

The Committee also notes that during the reference period changes were introduced with regard to maternity and family benefits. Since Poland has ratified Articles 8 and 16 of the Charter, the Committee will assess the scope and impact of such changes when it next examines compliance with these articles.

The Committee notes that it previously found the situation not to be in conformity with Article 12§3 (Conclusions XX-2 (2013)) because of the restrictive change in the unemployment branch, as the duration of payment had been reduced from 18 to 6 months (12 in some cases). According to the information supplied to the Governmental Committee (Governmental Committee's report concerning Conclusions XX-2 (2013)), the reduction in the duration of payment affected only two groups of unemployed persons, for whom payment of unemployment benefits had been reduced from 18 to 12 months, and in no case from 18 to six months. The authorities also indicate in the report that the situation has not changed in the meantime and that they are not planning either to extend the duration of payment of unemployment benefits or to increase the amount of the benefits.

Having noted the clarification provided by the authorities concerning the reduction in the duration of payment of unemployment benefits, the Committee requests that the next report provide updated figures on the results achieved by the restrictions. It also requests that the next report explain why the increase in unemployment benefits during the reference period was much lower than for old age, disability and survivor's pensions (almost 15% for unemployment benefits, as against around 20% for the other benefits). In the meantime, it reserves its position on this issue.

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 Poland.

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 considered in its previous conclusion (Conclusion XX-2 (2013)) the situation to be in conformity with the 1961 Charter on this point 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 No. 987/2009, as amended by Regulation (EU) No. 1231/2010, and Section 2a of the Social Security Act of 13 October 1998.

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 XVIII-1 (2006), Cyprus).

The Committee notes from MISSOC that Poland only applies the child residence criterion to nationals of other States Parties not member of the EU or EEA legally residing or working in the territory of Poland.

The report states that Poland concluded new bilateral agreements on social security with the Republic of Moldova and Ukraine during the reference period. However, no provisions related to family benefits were included within those agreements. The report also states that Azerbaijan has expressed its will to open negotiations with a view to concluding an agreement, and Poland has proposed to negotiate such an agreement with the Russian Federation. However, no agreement is foreseen with Albania, Andorra, Armenia and Georgia.

The Committee recalls that in the absence of bilateral agreements, equal treatment between nationals of States Parties with regard to social security must be guaranteed by unilateral measures.

In this regard, the report states that the Family benefit Act of 28 November 2003 has been amended extending its scope to all foreign nationals in possession of a residence permit with specific mention "access to the employment market". The Committee notes that the child residence criterion still applies to nationals of other States Parties not member of the EU or EEA so that equal treatment is still not guaranteed with regard to access to family benefits in respect of all other States Parties. Therefore, the Committee considers the situation not in conformity with the 1961 Charter on this point.

Right to retain accrued benefits

The Committee recalls its previous conclusions (Conclusions XIX-2 (2009) and XX-2 (2013)) where it found the situation to be in conformity with the Charter with respect to the exportability of pensions, sickness and maternity benefits for nationals of other States Parties not covered by EU regulation or any bilateral agreements. As the situation remained

unchanged during the reference period, the Committee reiterates therefore its conclusion of conformity on this point.

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

In its previous conclusions (Conclusions XIX-2 (2009) and XX-2 (2013)), the Committee found the situation not to be in conformity with the 1961 Charter because the aggregation of insurance or employment periods is not guaranteed in respect of nationals of all other States Parties.

The Committee recalls that States Parties can choose between bilateral or multilateral agreements or unilateral measures to fulfill their obligations.

As regards bilateral agreement concluded with other States Parties not member of the EU or EEA, the report states that Poland concluded new agreements with the Republic of Moldova and Ukraine. However, the Committee notes that no agreements have been concluded or is foreseen with Albania, Andorra, Armenia, Azerbaijan, Georgia.

As regards unilateral measures undertaken by Poland, the Committee notes from the report that no measure is envisaged, so that it reiterates its conclusion of non-conformity on this point.

Conclusion

The Committee concludes that the situation in Poland is not in conformity with Article 12§4 of the 1961 Charter on the grounds that:

- equal treatment with regard to access to family 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 2 - Non-discrimination in the exercise of social and political rights

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

The Committee notes that there have been no changes to the situation which it has previously (Conclusions XX-2 (2013)) found to be in conformity with the Charter. 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 Poland is in conformity with Article 13§2 of the 1961 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 Poland.

According to the report, under the Act of 5 August 2015, amending the Act of 12 March 2014 on social assistance, it was made possible for *gminas* to carry out social work on the basis of a social project. The social project is a set of actions aimed at improving the situation of individuals, families and groups at risk of poverty, marginalisation and social exclusion. The development and implementation of projects is a mandatory task of the *gmina*. The Committee takes note of social assistance programmes implemented for low-income families, as an element of social policy in the field of financial support to *gminas*, who provide assistance both in-kind as well as cash benefits.

The Committee further takes note of the National Programme 2020 of 12 August 2014 of the Council of Ministers to Combat Poverty and Social Exclusion. The programme has five operational objectives and envisages a range of activities, including ensuring that families with children have access to quality social services, facilitation of social inclusion and development of the family, guaranteeing access to low-cost housing. The activities are financed from the State budget, the budgets of local Government institutions, private funds and European funds (in particular the European Social Fund).

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 defers its conclusion.

Article 14 - The 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 Poland.

Organisation of the social services

In its previous conclusion (Conclusions XX-2(2013)), the Committee asked for a description of the organisation and functioning of Poland's social services. Given the time that has passed since the first description, the Committee asked that the next report provide a new description updating or confirming the information, as appropriate.

The report indicates that no fundamental changes have been introduced in the organization of social assistance and the solutions provided for in the Social Assistance Act still apply. Given the time that has passed since the first description, the Committee reiterates the request to receive in the next report a full information on the organisation and functioning of Poland's social services. The Committee underlines that if the necessary 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 underlines that a new regulation of the Minister of Labour and Social Policy on "specialisation in the profession of social worker" came into force on 17 April 2012. A new basic program of specialisation's courses was introduced defining how to establish the central jury and the regional juries, how to obtain an authorisation to carry out specialisation courses, how to obtain degrees of specialisation, how to carry out inspections of entities dispensing training and regional juries. Moreover, the amendments to the Social Assistance Act introduced on 18 March 2011 and 5 August 2015, define the legal basis for the supervision of social work as well as the conditions for obtaining the supervisor's certificate and the types of entities that can provide training.

The report indicates that between 2011 and 2015, more than 10,000 social workers participated in the projects financed by the European Social Fund under the Human Capital Operational Program 2007-2013 aimed at increasing professional skills. Social workers, including those in direct contact with social assistance users, have participated in specialised courses, postgraduate studies, and specialised training in the prevention of domestic violence. Specialised courses for social workers and studies for social work candidates are organised within the framework of the Operational Program Knowledge-Education-Development 2014-2020.

The report indicates that in December 2015, the Ministry of Family, Labour and Social Policy began to implement the project "Streamlining the Organisation of Social Assistance by Orienting Activities to Improve Customer Service". Some two hundred social assistance centres will benefit from active support in this context. A restructuring of the entity responsible for these issues will be carried out in order to distinguish between the administrative tasks of social assistance centres on the one hand, and social work and social services on the other. This will improve the services offered to users who turn to these centres to overcome a difficult situation. The solutions implemented should optimise the use of the skills and competences of social workers; they should also contribute to a larger share of social work in the activities of the above mentioned centres and increase the efficiency of social assistance.

Effective and equal access

When considering equal access to social services, the Committee, in its last three conclusions (Conclusions XVII-2 (2007), XIX-2 (2009) and XX-2 (2013)), the Committee concluded that the situation was not in conformity due to the existence of an excessive length of residence requirement (five years on uninterrupted residence). The report indicates that no amendments were made to the Social Assistance Act during the reference period

and that the amendment in order to extend the personal scope of its provisions is not foreseen. The Committee therefore reiterates its conclusion of non-conformity.

The Committee moreover recalls that users must have the means to put forward their complaints and to be able to appeal to an independent body in urgent cases of discrimination and violation of human dignity. In its previous conclusion (Conclusions XX-2 (2013)) the Committee asked what remedies were available in such cases. According to the report, people applying for social assistance can claim their rights before an administrative authority in the event of discrimination or violation of their dignity, in accordance with the general principles, like all citizens of the Republic of Poland, they may seize the institutions designated for this purpose (ordinary courts, Ombudsman).

Quality of services

Regarding the progress of measures aimed at balancing the availability of social services at regional level, the report states that the project "Creation and development of social assistance and social inclusion standards" implemented under the Operational Program Human Capital 2007-2013, financed by the European Social Fund, has developed a number of models to meet specific needs of certain districts (powiat, gmina) or certain categories of population (home care services for the elderly, social work standards for persons with disabilities and their families, including for people with mental disorders, social work standards for a family affected by violence). The models and standards developed in the framework of the project have been communicated to social welfare institutions and local administrations in the form of advice, recommendations or guidelines and will be used by the Ministry of Family, Labour and Social Affairs. The Committee asks that the next report provides detailed information on the measures and policy regarding quality of services.

In its previous conclusion (Conclusions XX-2 (2013)) the Committee asked the statistical data concerning the total expenditure on social services and social assistance. According to the report, it is not possible to determine the total amount of expenditure necessary to maintain the social assistance system, since it is financed by the State and the local authorities, and no procedure was set up to collect the data that would enable the total amount of expenditure to be established. Additionally, the report highlights figures and statistics and other relevant information on actual access to social services (total number of beneficiaries, number of beneficiaries per social service category, number and geographical distribution of social services, number and qualifications of employees).

Conclusion

The Committee concludes that the situation in Poland is not in conformity with Article 14§1 of the 1961 Charter on the ground that access to social services by nationals of other States Parties is subject to an excessive length of residence requirement.

**CONCLUSIONS RELATING TO CONCLUSIONS OF NON-
CONFORMITY DUE TO A REPEATED LACK OF INFORMATION
IN CONCLUSIONS XX-4 (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 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions XX-4 (2015).

With regard to Article 16, the Committee had concluded that it had not been established:

- that families had access to adequate housing;
- that a significant number of families were entitled to family benefits.

Access to adequate housing

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

With regard to the availability of adequate housing for families, the report does not include any information on how many families are waiting for housing or on the adequacy of housing. The Committee therefore reiterates its conclusion of non-conformity for repeated lack of information.

With regard to procedural safeguards, the report indicates that refusal to allocate social housing is a legal act of a local authority which, under the Law on Local Authorities of 8 March 1990, may be appealed against in administrative courts following unsuccessful formal notice. The Committee concludes that the situation is in conformity on this point.

Number of families entitled to family benefits

The report does not contain any information on family benefits. However, the Law on Family Benefits (*Ustawa o świadczeniach rodzinnych*) of 28 November 2003 was supplemented by the Law on State Aid for Child Support (*Ustawa o pomocy państwa w wychowywaniu dzieci*) of 11 February 2016.

This law makes sweeping changes to the family benefits system with a view to increasing the birth rate. The Committee will study it in detail during the next supervision cycle relating to Article 16. It asks for detailed information on the new system and its implementation in the next report.

In the meantime, it reserves its position on this point.

Conclusion

The Committee concludes that the situation in Poland is not in conformity with Article 16 of the 1961 Charter on the ground that it has not been established that families have access to adequate housing.

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 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions XX-4 (2015).

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

The information in the report refers only to the reception of foreigners. In view of the country's migration policy, the reception of foreigners is particularly limited.

Online help desks operate in migrants' main countries of origin – in Ukraine and in two States non-parties to the Charter – Belarus and Vietnam. In addition, an information portal for migrants (www.migrant.info.pl) provides information on entry into and residence in Poland, employment and self-employment, the arrival of spouses, the tax system and housing. The portal also gives practical advice about daily life in Poland, including the cost of living, the education system and health care. The portal is available in Polish, English, French, Russian, Ukrainian and Armenian, as well as Chinese and Vietnamese.

Under the "Migrants' rights in practice 2" project (implemented in July 2014), an infoline offering consultations by telephone and email is also available.

In the light of the information available, the Committee considers that the obligations under Article 19§2 are met. It nevertheless requests that the next report confirm that equivalent services exist for Poles wishing to emigrate.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Poland is in conformity with Article 19§2 of the 1961 Charter.



January 2018

1961 European Social Charter

European Committee of Social Rights

Conclusions XXI-2 (2017)

SPAIN

This text may be subject to editorial revision.

The following chapter concerns Spain which ratified the 1961 Charter on 6 June 1980. The deadline for submitting the 29th report was 31 October 2016 and Spain submitted it on 19 October 2016. The Committee received on 3 October 2017 observations from the Galician Unions' Confederation (CIG) on the application of Articles 3, 11, 12, 13, 14 and Article 4 of the 1988 Additional Protocol. Observations from the Government on the comments from the Galician Unions' Confederation were registered on 8 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 4 of the Additional Protocol).

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

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

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

– 11 conclusions of conformity: Articles 3§1, 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§2, 12§1, 12§4, 13§1.

In respect of the 2 other situations related to Article 3§3 and Article 4 of the 1988 Additional Protocol the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Spain under the 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

Law No. 3/2012 of 6 July 2012 on urgent measures for the reform of the labour market has been adopted. According to the report, Section 13 of the Law defines "teleworking" as work where the work activity is carried out primarily in the worker's home or in a place chosen freely by the worker, as an alternative to being physically present at the company's work centre. The Law recognises that teleworkers have the right to suitable protection in relation to safety and health.

Article 3§2

- The new Law No. 23/2015 of 21 July 2015 on the regulation of the Labour and Social Security System Inspectorate (ITSS) which repeals and replaces Law No. 42/1997 of 14 November 1997. The new law features several innovations in that it assigns new powers to sub-inspectors in relation to the prevention of occupational risks and creates a labour and social security inspectorate as a body which is independent of the national administration of the state or the regulation of a national body to tackle undeclared work, illegal employment and social security fraud as a specialised department of the ITSS. The law also governs the functions and powers of the ITSS, the remit, its organisation and its co-operation with other institutions. It explicitly recognises protection for its staff, including against acts of violence, compulsion, threats or illegal influence aimed at its inspectors and sub-inspectors;
- The new Labour, Social Security and Occupational Health Sub-inspectors Service strengthens the functions of the ITSS in terms of overseeing and

monitoring the application of regulations concerning the prevention of occupational risks. In particular, this Service is responsible for verifying or checking the application of regulations which directly involve physical working conditions (situations as regards safety, health and hygiene at work), preventative actions according to the analysis of the rate of accidents at work, and information and assistance for businesses and workers.

Article 12§3

- The integration into the general social security scheme of the special scheme for domestic staff and the special agricultural scheme (Act 27/2011 of 1 August 2011, Act 28/2011 of 22 September 2011, Royal Legislative Decree 29/2012 of 28 December 2012), and of clergy belonging to the Spanish federation of evangelical churches (Royal Decree 839/2015 of 21 September 2015, implementing the European Court of Human Rights judgment of 3 April 2012, final on 3 July 2012, in the case of *Manzanas Martin*, application No. 17966/10);
- Measures to authorise persons, under certain conditions, to combine receipt of a retirement pension with certain forms of employment (Royal Legislative Decree 5/2013 of 15 March 2013);
- Measures to assist the self-employed, including reductions in and rebates on their contributions (Royal Legislative Decree 4/2013 of 22 February 2013; Act 14/2013 of 27 September 2013; Act 25/2015 of 28 July 2015);
- Reduced employer contributions under measures to promote business creation and youth employment (Act 11/2013 of 26 July 2013), and the employability of workers in general (Royal Legislative Decree 16/2013 of 20 December 2013; Royal Decree 3/2014 of 28 February 2014; Royal Legislative Decree 8/2014 of 4 July 2014; Royal Decree 637/2014 of 25 July 2014);
- Measures to protect part-time workers (Royal Legislative Decree 11/2012 of 2 August 2012; Act 1/2014 of 28 February 2014);
- A special agreement to assist persons with disabilities (Royal Decree 1567/2013 of 1 March 2013).

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In addition, the report contains also information requested by the Committee in Conclusions XX-4 (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 the family to social, legal and economic protection (Article 16),
- 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 – cooperation between social services of emigration and immigration states (Article 19§3),
- the right of migrant workers and their families to protection and assistance – family reunion (Article 19§6).

The Committee examined this information and adopted the following conclusions:

- 3 conclusions of conformity: Articles 7§5, 16 and 19§1,
- 2 conclusions of non-conformity: Article 19§3 and 19§6.

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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 2 of the Additional Protocol),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 3 of the Additional Protocol).

The report should also contain information requested by the Committee in Conclusions XXI-1 (2016) in respect of its conclusions of non-conformity due to a repeated lack of information:

- the right to vocational training – Promotion of technical and vocational training; access to higher technical and university education (Article 10§1)
- 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. 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 3 - Right to safe and healthy working conditions

Paragraph 1 - Safety and health regulations (Art. 3-2 1996 RESC)

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

Content of the regulations on health and safety at work

The report lists the specific regulatory texts that were adopted during the reference period. They include the minimum provisions concerning safety and health at work on board fishing boats; subcontracting in the construction sector; protection of workers from risks associated with exposure to carcinogenic agents during work; protection of health and safety against risks associated with chemical agents during work; violence at work; the framework concerning occupational diseases within the social security system, the criteria for reporting and recording them; and noise levels on board boats. The report mentions a significant number of legal instruments (laws, decrees, orders, resolutions) adopted by different authorities over the reference period which also relate, directly or indirectly, to issues of safety and health at work.

The report states that the National Strategy for Safety and Health at Work 2015-2020 was adopted by way of an agreement of the Council of Ministers of 24 April 2015. It is structured into three two-year action plans commencing in 2015 and is aimed in particular at significantly reducing accidents at work, occupational diseases and damage associated with work. This strategy is described as the tool that will serve as a reference framework for public policy on safety and health at work until 2020 and guide the actions of the competent institutions in this field.

During the reference period, numerous resolutions which resulted from collective bargaining between representatives of employers and workers were approved; among other things, they relate to the issues of safety and health at work in relation to the country's many sectors of economic and commercial activity (metal sector, construction, wood, furniture, manufacturers of gypsum, plaster, lime and cement derivatives; chemical industry, glass, ceramics, etc.).

The report also states that ILO Convention No. 155 concerning Occupational Safety and Health was ratified and Directive 89/391/EEC was transposed into Spanish law.

The Committee points out that under the terms of Article 3§1 of the 1961 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§1 of the 1961 Charter, Conclusions XX-2 (2013)). In this context, the report mentions the adoption of the Resolution of 26 November 2015 of the Ministry of Public Administration, which publishes the agreement of the Council of Ministers of 20 November 2015 approving the Protocol for Action against Violence at Work within the General Administration of the State and associated or affiliated public bodies. This Protocol was negotiated by the Technical Commission for the Prevention of Occupational Risks.

The Committee considers that the situation of Spain continues to satisfy the general obligation laid down in Article 3§1.

Levels of prevention and protection

Protection against dangerous agents and substances

The Committee notes that, 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 transposed into domestic law by Royal Decree 598/2015 of 3 July 2015.

In its previous conclusion (Conclusions XX-2 (2013)), the Committee requested details of the content of the measures following the ratification of ILO Benzene Convention No. 136. In response, the report states that the measures in question are included in Spanish law (Act 31/1995 on the prevention of occupational risks, Royal Decree 39/1997 pursuant to which the Regulation on Prevention Services was adopted; Royal Decree 665/1997 on the protection of workers from risks associated with exposure to carcinogenic and mutagenic agents during work). As for the restriction on the use of products containing benzene, 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). The Committee asks for the next report to provide information about the categories of workers who carry out the types of work listed in the aforementioned Annex.

Protection of workers against asbestos

In its previous conclusion (Conclusions XX-2 (2013)), the Committee concluded that the situation of Spain with regard to the legal framework for the protection of workers against asbestos was in conformity with Article 3§1.

The report presents the National Programme to Monitor the Health of Workers Exposed to Asbestos which was adopted by way of a joint agreement in 2013, and states that an assessment covering the last five years has been carried out. The programme is made up of the following activities: developing and facilitating procedures for access to medical examinations following exposure to asbestos; applying the Special Health Monitoring Protocol; establishing the follow-up to post-exposure health monitoring; encouraging medico-legal recognition of diseases resulting from exposure to asbestos; and evaluating the health monitoring programme. The report also presents the evaluation document for this programme which is dated 2014.

The Committee asks for the next report to state whether there are any plans to revise Royal Decree No. 396/2007 of 31 March 2006 laying down the minimum provisions concerning safety and health applicable to workers who are at risk of being exposed to asbestos in the light of the experience that has been gained and the current level of knowledge, including the outcomes of the development of the aforementioned programme.

The Committee takes note of the observations of the Confederation of Workers' Committees (CCOO) to the Committee of Experts on the Application of Conventions and Recommendations of the International Labour Organisation (CEACR ILO) where it was stated that the results of the "Programme to Monitor the Health of Workers Exposed to Asbestos" show that a large number of occupational diseases were diagnosed.

The Committee requests that the report provide information concerning 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 which repeals Directive 83/477/EEC, including whether the limit values laid down by the Directive are actually in force and whether they are being adhered to.

Protection of workers against ionising radiation

In its previous conclusion (Conclusions XX-2 (2013)), the Committee requested clarifications of the amendments made by Royal Decree No. 1439/2010 to the Regulation on protection against ionising radiation which was adopted pursuant to Royal Decree No. 738/2001. Since the report does not contain the requested information, the Committee reiterates its request.

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 points out that under Article 3§1 of the 1961 Charter, the States Parties must specifically cover most of the risks listed in the Statement of Interpretation on Article 3, Conclusions XIV-2 (1998), reviewing the measures taken by public authorities to protect workers from work-related stress, aggression and violence specific to work performed under atypical working relationships (Statement of Interpretation on Article 3§1, Conclusions XX-2). According to the report, the Protocol for Action against Violence at Work within the General Administration of the State and Related or Affiliated Public Bodies is conceived as a tool for general use throughout the General Administration of the state for prevention and action in relation to work-related aggression, without prejudice to its adaptation to the specific characteristics and problems of each Department or body, according to the type of activity pursued. The report also notes that the various actions and measures envisaged in the Protocol will be implemented. The Committee requests that the next report provide details of the measures taken by virtue of this Protocol and the measures taken to protect workers from work-related stress, attacks and violence in the private sector.

Temporary workers

In its previous conclusion (Conclusions XX-2 (2013)), the Committee concluded that the situation of Spain as regards the legal framework concerning protection of temporary workers was in conformity with Article 3§1. Since this report does not contain any additional information, the Committee understands that the situation has not changed. It requests that the next report provide full and up-to-date information on this point.

Other types of workers

In its previous conclusion (Conclusions XX-2 (2013)), the Committee concluded that the situation of Spain as regards the legal framework concerning the protection of self-employed workers was in conformity with Article 3§1. Since this report does not contain any additional information, the Committee understands that the situation has not changed. It requests that the next report provide full and up-to-date information on this point.

The Committee notes that Law No. 3/2012 of 6 July 2012 on urgent measures for the reform of the labour market has been adapted. According to the report, Section 13 of the Law defines “teleworking” as work where the work activity is carried out primarily in the worker’s home or in a place chosen freely by the worker, as an alternative to being physically present at the company’s work centre. The Law recognises that teleworkers have the right to suitable protection in relation to safety and health. The Committee requests that the next report provide information about the consequences in the insecure employment sector.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in Spain is in conformity with Article 3§1 of the 1961 Charter.

Article 3 - Right to safe and healthy working conditions

Paragraph 2 - Enforcement of safety and health regulations (Art. 3-3 1961 RESC)

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

Accidents at work and occupational diseases

In its previous conclusion (Conclusions XX-2 (2013)), the Committee reserved its position on this point and requested a full summary table of the data on serious accidents and fatal accidents. In response, the report states that the total number of accidents at work rose from 408,537 in 2012 to 424,625 in 2014. This increase concerns sectors including agriculture (25,358 in 2012 and 30,250 in 2014) and services (243,210 in 2012 and 264,144 in 2014). With regard to serious accidents, the total number of victims fell (except in the agriculture sector) from 3,738 in 2012 to 3,329 in 2014, while the total number of victims of fatal accidents rose from 452 in 2012 to 467 in 2014 (this does not concern the industry and construction sector).

The report also states the rate of incidence of accidents expressed as a number of accidents per 100,000 workers. The rate of incidence of accidents rose from 2,948.9 in 2012 to 3,111.3 in 2014, and the rate of incidence of fatal accidents rose from 3.26 in 2012 to 3.42 in 2014.

According to the Eurostat figures, in 2014, 387,439 non-fatal accidents at work causing at least four calendar days of absence occurred in Spain and the number of fatal accidents rose to 280. The standardised rate of incidence of non-fatal accidents at work per 100,000 workers was 3,220.41 in 2014. In this regard, the Committee notes that the average in the countries of the European Union (EU-28) was 1,642.09 in 2014. With regard to fatal accidents at work, the standardised rate of incidence was 3.11 in 2014 (the average for the other countries of the EU-28 was 2.32 in 2014).

The Committee finds that over the reference period, the standardised rates of incidence of non-fatal and fatal accidents increased. These rates remain high and above the average for other European Union countries. The Committee is monitoring effective respect for the right enshrined in Article 3 under paragraph 2 of this provision and considers in this regard that the frequency of accidents at work and changes in this frequency are of key importance. It considers that the frequency of accidents is too high for it to consider that this right is being guaranteed.

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 notes from the figures from EUROGIP (a French organisation which was created in 1991 to study issues concerning insurance and the prevention of accidents at work and occupational diseases at international level, and more particularly at European level), which are broken down by sector, that the number of occupational diseases rose from 15,711 in 2012 to 19,138 in 2015. The causes of these illnesses were as follows: chemical agents, physical agents, biological agents, inhalation of other substances and agents, skin diseases caused by other substances and agents, carcinogenic agents. The Committee invites the authorities to comment on this observation in the next report. It also 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 points out that according to Article 3§2 of the 1961 Charter, States Parties must take measures to focus labour inspections more on small and medium-sized enterprises (Statement of Interpretation on Article 3§2, Conclusions XX-2 (2013)). The report mentions the enactment of the new Law No. 23/2015 of 21 July 2015 on the regulation of the Labour and Social Security System Inspectorate (ITSS) which repeals and replaces Law No. 42/1997 of 14 November 1997. The new law features several innovations in that it assigns new powers to sub-inspectors in relation to the prevention of occupational risks and creates a labour and social security inspectorate as a body which is independent of the national administration of the state or the regulation of a national body to tackle undeclared work, illegal employment and social security fraud as a specialised department of the ITSS. The law also governs the functions and powers of the ITSS, the remit, its organisation and its co-operation with other institutions. It explicitly recognises protection for its staff, including against acts of violence, compulsion, threats or illegal influence aimed at its inspectors and sub-inspectors.

The report states that the new Labour, Social Security and Occupational Health Sub-inspectors Service strengthens the functions of the ITSS in terms of overseeing and monitoring the application of regulations concerning the prevention of occupational risks. In particular, this Service is responsible for verifying or checking the application of regulations which directly involve physical working conditions (situations as regards safety, health and hygiene at work), preventative actions according to the analysis of the rate of accidents at work, and information and assistance for businesses and workers.

Law No. 13/2012 of 26 September 2012 on combating illegal employment and social security fraud made amendments to the law on social order infringements and penalties (Royal Decree-Law No. 5/2000). The Committee requests the next report to indicate whether this law also made changes to the operation of the ITSS or the work of inspectors and sub-inspectors.

The report states that the aims of the National Strategy on Safety and Health at Work 2015-2020 include strengthening the competent institutions in relation to the prevention of occupational risks, including the ITSS. The Committee requests the next report to provide details of the outcomes achieved.

The report states that the total number of ITSS inspectors rose from 959 in 2012 to 981 in 2014, while the number of sub-inspectors fell from 912 in 2012 to 861 in 2014. According to data published by ILOSTAT, the number of employees of the ITSS fell from 1,879 in 2012 to 1,816 in 2014. The Committee requests the next report to explain why the numbers of employees of the ITSS which are stated in the report and those published by ILOSTAT are different. It also asks to be informed of the percentage of workers who are covered by inspection visits in each sector of activity.

With regard to the reference period, the report provides detailed information about the number of inspection visits made in relation to the prevention of occupational risks (93,305 in 2012 – 69,928 in 2015); the number of interventions resulting from visits (379,395 in 2012 – 317,431 in 2015); the number of infringements identified (15,983 in 2012 – 14,483 in 2015); the total amount of the penalties proposed (€46,595,014.76 in 2012 – €40,215,142.77 in 2015); the number of workers affected by infringements (84,266 in 2012 – 185,702 in 2015); the number of accident investigations (9,244 in 2012 – 8,796 in 2015); and the number of infringements identified in the aforementioned accidents (2,809 in 2012 – 2,822 in 2015). In 2015, these departments sent 104,818 formal notices demanding an improvement in the situation (112,637 in 2012) and issued 153 orders to cease activity (stoppages, 197 in 2012).

The Committee takes note of the detailed information concerning the reduction in the activities of labour inspection departments during the previous assessment cycle, including the fact that the figures include only inspection visits where the main aim of the department

was to prevent occupational risks and not secondary, substantive matters. The report also states other reasons for the decrease in the activities of these departments, including the economic situation or characteristics of the market in certain sectors (construction).

To assess the conformity of the situation with this aspect of Article 3§2, the Committee needs to know the proportion of the total workforce which is covered by inspections. It therefore 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 of Spain is not in conformity with Article 3§2 of the 1961 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 3 - Consultation with employers' and workers' organisations on safety and health issues

The Committee notes that the report submitted by Spain does not provide any information on Article 3§3 of the Charter.

The Committee refers to its previous conclusion (Conclusions XX-2 (2013)) where it held that the situation was in conformity with the Charter. The Committee asks the next report to provide updated information.

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 Spain.

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 82.8 years in 2015. Life expectancy is one of the highest of the WHO Europe region (the second after Switzerland with 83.4 years) and has increased since the previous reference period (81.91 years in 2009). According to Eurostat, life expectancy at birth in the EU-28 was estimated at 80.6 years in 2015.

The report states that the infant mortality rate decreased from 3.19 deaths per 1 000 live births in 2010 to 2.7 in 2013. As regards the maternal mortality rate, the report indicates that there were 18 deaths registered in 2013, which means a rate of 4.2 deaths per 100 000 live births.

The Committee takes note of the above indicators providing a good general overview of the health situation in Spain, which is characterized by high life expectancy and low infant and maternal mortality. The report indicates that cardiovascular diseases and cancer remain the main causes of death in Spain. The Committee takes also note of the statistics provided in the report showing that it has been a decrease in the actual mortality rates from these causes.

The Committee notes from a report of OECD that obesity rates among adults have increased in Spain, with the rate rising from one in eight adults (12.6%) in 2000 to one in six adults (16.6%) in 2013, although it is still lower than the OECD average (19%). The same report indicates that overweight and obesity among children have also grown a lot in Spain, and about three out of ten boys and girls are now at least overweight if not obese, a higher percentage than the average across OECD countries. The Committee asks whether measures have been taken to address this problem and what were the outcomes of such measures.

Access to health care

The Committee refers to its previous conclusion for a description of the health care system (Conclusions XX-2 (2013)).

The Committee takes note from the OECD that health spending in Spain was of 9% of GDP in 2013, which was above the OECD average of 8.9%. It further takes note from OECD reports that reduction in health spending in Spain in recent years has been driven partly by a reduction in pharmaceutical expenditure, with public spending on pharmaceuticals falling by more 6% in real terms each year since 2009. This follows the introduction of a series of measures to reduce public cost on pharmaceuticals, including a general rebate applicable for all medicines prescribed by NHS physicians in 2010, mandated price reductions for generics, and increases in user-charges for certain prescription drugs in 2012 which shifted some of the spending to private payers (either households or their complementary private insurance).

The report provides examples of reforms in this sense brought by the Royal Decree 16/2012 of 20 April on urgent measures to guarantee a sustainable national health system and improve the quality and security of care such as the exoneration of payment for long-term unemployed who lost the unemployment benefit and who used to pay 40% of the price of medicines before this amendment. Patients with severe illnesses and chronic patients have a reduced 10% contribution to medicines and sanitary products, with a maximum contribution limit of € 4.24. The Committee takes note of all measures to reduce the costs of medicines for patients described in the report. It asks that the next report provide updated

information on the level of out-of-pocket expenditure as a share of total health care expenditure.

The Committee takes note from the report of the detailed description of strategies developed and measures taken during the reference period in relation to patient safety, cancer, ischemic heart disease, mental health, diabetes, childbirth assistance, sexual and reproductive health, chronic diseases, rheumatic and muscular-skeletal diseases, among others.

In its previous conclusion, the Committee recalled that the right of access to health care also requires that the arrangements for access to care must not lead to unnecessary delays in its provision and asked for specific data on average waiting times for hospital treatment and for initial primary care consultations (Conclusions XX-2 (2013)). The report indicates that the average waiting time for performing a surgical procedure in the national health system was of 100, 98, 87 and 89 days, respectively during the reference period 2012-2015. The Committee asks to be kept informed on the actual waiting times for hospital treatment and for initial primary care consultations in the next reports.

With regard to access to medical assistance for foreign nationals unlawfully present in Spain, in its previous conclusion the Committee requested information regarding the application of the Royal Decree-Law 16/2012 of 20 April 2012 (Conclusions XX-2 (2013)). In view of the reply, the Committee refers to its conclusion on Article 13 on this matter.

The Committee asks that the next report contain in particular updated 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 Spain is in conformity with Article 11§1 of the 1961 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 Spain.

Education and awareness raising

With regard to health education at school, the Committee took note previously of a framework agreement between the Ministry of Education and Science and the Ministry of Health, Social Services and Equality on health education and promotion in schools. It asked for information in the next report on how health education was included in school curricula (as a separate subject or part of other subjects) and the content of health education (Conclusions XX-2 (2013)).

The report states that health education has been a cross-disciplinary component of curricula in schools since 1989 and successive laws have made provision for its inclusion. Health education is not a separate subject but methodologies and materials on the subject have been gathered over 25 years and study days have been held between the Autonomous Communities bringing together the education and health sectors, which are required to work together in all the country's autonomous communities and cities.

The report adds that various health promotion activities have been carried out in this connection, for instance dissemination of the recommendations of a guide on improving health at school and of quality criteria for the expansion of health promotion programmes and activities in the education system. The report mentions other measures such as a programme to improve young people's health designed to facilitate dissemination of information and strategies for working with young people in three key areas: sexual and reproductive health, alcohol consumption and mental health; health promotion in the university environment through the Spanish Network of Healthy Universities; and measures relating to healthy eating and nutritional education in schools.

The Committee takes note of the information in the report on the campaigns to prevent obesity, encourage healthy eating and promote physical activity and healthy lifestyle habits (the NAOS Strategy), and to promote food hygiene and safety, along with specific information campaigns on issues such as drugs, alcohol, smoking, diets, sexuality and the environment.

Counselling and screening

The report gives information on the relevant legislation and practical examples of screening programmes for the population at large which are covered by the public health system. These programmes include screening services for endocrinometabolic diseases and for cancer, and services to assist women (detection of high-risk groups and early diagnosis of gynaecological and breast cancer), children and adolescents, adults and the elderly.

In its previous conclusion (Conclusions XX-2 (2013)), the Committee asked if free medical check-ups were conducted throughout children's school education – and how frequently they took place, what their objectives were and what proportion of pupils were covered.

The report states that check-ups for school pupils are free of charge and are carried out at health centres as part of a "healthy child scheme", which forms part of the joint programmes of the national health system services. Some autonomous communities have their own specific approaches, meaning that some school health activities such as monitoring obesity are part of a distinct programme such as the Perseo Programme.

Conclusion

The Committee concludes that the situation in Spain is in conformity with Article 11§2 of the 1961 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 Spain.

Healthy environment

In its previous conclusion, the Committee took note of the legislation that applies to the environment, particularly in the areas of air quality, water quality, chemical products, food safety and ionising and non-ionising radiation, and asked for information in the next report on the institutional arrangements for implementing the above-mentioned legislation. It also asked for information on air pollution levels, drinking water contamination and food poisonings during the reference period so as to assess whether the trend was rising or falling (Conclusions XX-2 (2013)). The report provides the information requested.

The report states that in April 2013, a national air quality improvement plan was adopted and one of its aims is to apply limit values for PM10s and NO₂ while simultaneously reducing ozone precursors. The report states that there is a national climate change adaptation plan, which provides the general framework for activities to evaluate the effects of climate change on health. In 2009, a Health and Climate Change Monitoring Centre (OSCC) was set up; it co-ordinates the activities of four expert working groups – on extreme temperatures, air quality, water quality and transmissible diseases. The Committee notes that during the summer months in the years between 2012 and 2015 a national action plan was activated to implement the measures needed to reduce the public health impact of extreme temperatures and co-ordinate the state institutions concerned through a system of temperature forecasting and daily and category-specific mortality rate monitoring. An interministerial commission was set up to implement this plan.

The Committee takes note of the information provided in the report concerning water quality. Drinking water quality is monitored by the National Drinking Water Information System (SINAC) while bathing water quality is monitored by the National Bathing Water Information System (NAYDE).

The Committee asks to be kept updated on any new developments concerning air quality, water quality, chemical products, food safety, ionising and non-ionising radiation.

Tobacco, alcohol and drugs

With regard to trends in smoking, the report states that there has been a general reduction in overall smoking levels among adults, which fell from 27% in 2012 to 25.4% in 2014 (whereas the proportion of men who smoke was 30.4% in 2014, there has been a more marked decline among women, from 22.8% in 2011-2012 to 20.5% in 2014). As to alcohol, the report states that there has been a steady decline in the per capita consumption and daily consumption at mealtimes. However, there has also been an increasing tendency to drink more excessively among those who do drink, particularly among the young.

The Committee took note previously of the National Drug Strategy for 2009-2016 and asked for information on its implementation and, in particular, its impact on drug taking (Conclusions XX-2 (2013)). The report states that an Action Plan on Drugs was adopted for the period from 2013 to 2016, making the Strategy operational in 6 action areas and through 68 concrete measures. Every two years the situation is assessed and a report or a memorandum describing the activities is drawn up. The Committee repeats its question concerning the impact of these activities on drug taking and asks for relevant statistics to be provided.

Immunisation and epidemiological monitoring

In reply to a question put by the Committee previously, the report provides data on the coverage rate of all the vaccines included in the national immunisation programme for children, adolescents, and persons aged 65 or over, showing that the coverage rate is high.

With regard to the prevention of epidemic diseases, the report states that the diagnosis and treatment of transmissible diseases such as tuberculosis or HIV is carried out free of charge for all, including undocumented immigrants, who are given easy access to all public health and disease prevention programmes, including immunisation programmes and the programmes to prevent and monitor transmissible diseases run by regional governments.

The report states that there has been no major change in the number of notifiable diseases or the general trends in this area. With regard to cases of tuberculosis for example, the report by the European Centre for Disease Prevention and Control (ECDC) shows a reduction in the number of cases (17.5% in 2007; 18.1% in 2008; 16.6% in 2009; 15.7% in 2010; and 14.7% in 2011, which was the last date of notification). According to the national epidemiological report, the incidence rate in 2014 was 10.8%. As to HIV, the ECDC report shows that the incidence rate has remained stable.

Conclusion

The Committee concludes that the situation in Spain is in conformity with Article 11§3 of the 1961 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 Spain. It also takes note of the information contained in the comments by the Galician Unions' Confederation, registered on 3 October 2017, as well as of the addendum to the report by Spain, in response to these comments, transmitted on 8 November 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 has previously noted (Conclusions XIX-2 (2009)) that the Spanish social security system covers the branches of social security corresponding to all traditional risks: medical care, sickness, unemployment, old age, employment injury, family, maternity, invalidity and survivors. It also notes from the report that contributory benefits are still mainly financed from employees' and employers' social contributions, while non-contributory benefits are financed from the state budget.

To assess the extent of actual personal coverage, the Committee asked, in Conclusions XX-2 (2013), for detailed statistics on each of the social security branches in the reference period. In the case of medical care, it asked what percentage of the total population was covered. For income-replacement benefits (unemployment, sickness, maternity and old-age), it asked for the percentage of insured individuals in the total active population.

In answer to the question, the report states that Royal Legislative Decree 16/2012 of 20 April 2012 establishes a universal right to health care. The following are therefore entitled to health care under the social security system:

- all employed and self-employed persons affiliated to one of the social security schemes, together with their families;
- all residents on low incomes (below €100 000 per annum for those not working);
- recipients of a social security pension or any other regular social security benefits, including unemployment benefits, and persons no longer eligible for unemployment or related benefits who are resident in Spain, are not employed and are not insured in any other capacity.

According to the official statistics in the report, 97.82% of residents have health care coverage.

Turning to income-replacement benefits, the report states that, according to national statistical office figures, 22.92 million persons were economically active in 2015, out of a total population of 46.44 million and that the number of affiliated persons in employment rose from 16.33 million in 2012 to 17.18 million in 2015. The Committee notes the detailed figures in the report on the number of persons affiliated to the various social security schemes during the reference period, and the number of retirement pensions paid. It asks for detailed information in the next report on the relevant personal coverage and an indication of whether these figures concern all the various social security branches.

Adequacy of the benefits

According to Eurostat data, the median equivalised annual income was €13 352 in 2015, or €1 112 per month. The poverty level, defined as 50% of the median equivalised income, was €6 672 per annum, or €556 per month. 40% of the median equivalised income corresponded to €445 monthly. According to the report, in 2015, the minimum wage was €756.60 per month.

The Committee previously concluded (Conclusions XX-2 (2013)) that the minimum level of **sickness** benefits was inadequate. In the report, the authorities explain that the temporary

incapacity, or sickness, benefits are not subject to a minimum linked to the national reference system for social benefits (IPREM), but corresponds to 60% (from the 4th to the 20th day of sick leave) or 75% (from the 21st day) of the assessment basis, which will be at least the minimum wage, which means in turn that benefits are higher than the IPREM. Thus, in 2015 the minimum basis for contributions was €756.50 per month and the temporary incapacity benefit was €15.13 per day between the 4th and 20th days and €19.14 per day thereafter. While this information is contested by the Galician Unions' Confederation, the authorities maintain in their addendum to the report that sickness benefits are calculated in proportion to the contribution basis. The Committee notes that the level of minimum sickness benefits during the first 20 days of temporary incapacity, would fall between 40% and 50% of the median equivalised income, if calculated on the basis of the minimum wage. The Committee accordingly asks the next report to clarify whether additional benefits are paid to a person earning the minimum level of sickness benefit. **It reserves in the mean time its position on this point.**

As regards **old age** pension, the Committee refers to its assessment under Article 4 of the Additional Protocol.

In answer to the Committee's question about **invalidity** benefits, the report presents the applicable amounts for the reference period. The Committee notes that the situation is compatible with the 1961 Charter with regard to the minimum pension applicable to total incapacity for work (from the age of 60), to absolute incapacity and to severe disability. The report does not specify the minimum levels of **industrial accident** benefits, but the Committee notes from MISSOC data that they correspond to 75% of the wage or salary. Since the minimum wage in 2015 was €756.70, the Committee considers that the minimum level of benefits (€567.52) is adequate.

Finally, since there is no relevant information on **unemployment** benefits in the report, the Committee notes from MISSOC data (as well as from the comments submitted by the Galician Unions' Confederation) that the minimum level of such benefits (*prestaci3n por desempleo*) is 107% of the IPREM for an unemployed person with and 80% for one without a dependent family. Since the IPREM was €532.51 in 2015, the Committee notes that the minimum level of benefits for an unemployed person with no dependent family was €426, which is less than 40% of the median equivalised income. Accordingly, the Committee considers that it was inadequate.

The Committee also asks whether unemployed persons are allowed an initial period in which they can refuse offers of employment on the grounds that they do not match their requirements or their occupational/professional experience, without the risk of losing, permanently or temporarily, their unemployment benefits. It also asks the next report to indicate the duration of payment of unemployment benefits.

Conclusion

The Committee concludes that the situation in Spain is not in conformity with Article 12§1 of the 1961 Charter on the ground that the level of unemployment benefits for unemployed without family responsibilities 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 International Labour Convention No. 102

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

The Committee notes that Spain has ratified the European Code of Social Security on 8 March 1994 and has accepted parts II – VI, VIII and IX.

The Committee notes from Resolution CM/ResCSS(2016)17 of the Committee of Ministers on the application of the European Code of Social Security by Spain (period from 1 July 2014 to 30 June 2015) that the law and practice in Spain continue to give full effect to all the parts of the Code which have been accepted, subject to reviewing conditions of lump-sum compensation for permanent partial disability under Part VI. In so doing, Spain maintains a social security system that meets the requirements of ILO Convention No. 102

Conclusion

The Committee concludes that the situation in Spain is in conformity with Article 12§2 of the 1961 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 Spain.

It notes the changes to the legislation during the reference period. In this respect, the report draws attention to a number of improvements, in particular:

- the integration into the general social security scheme of the special scheme for domestic staff and the special agricultural scheme (Act 27/2011 of 1 August 2011, Act 28/2011 of 22 September 2011, Royal Legislative Decree 29/2012 of 28 December 2012), and of clergy belonging to the Spanish federation of evangelical churches (Royal Decree 839/2015 of 21 September 2015, implementing the European Court of Human Rights judgment of 3 April 2012, final on 3 July 2012, in the *case of Manzanas Martin*, application No. 17966/10);
- measures to authorise persons, under certain conditions, to combine receipt of a retirement pension with certain forms of employment (Royal Legislative Decree 5/2013 of 15 March 2013);
- measures to assist the self-employed, including reductions in and rebates on their contributions (Royal Legislative Decree 4/2013 of 22 February 2013; Act 14/2013 of 27 September 2013; Act 25/2015 of 28 July 2015);
- reduced employer contributions under measures to promote business creation and youth employment (Act 11/2013 of 26 July 2013), and the employability of workers in general (Royal Legislative Decree 16/2013 of 20 December 2013; Royal Decree 3/2014 of 28 February 2014; Royal Legislative Decree 8/2014 of 4 July 2014; Royal Decree 637/2014 of 25 July 2014);
- measures to protect part-time workers (Royal Legislative Decree 11/2012 of 2 August 2012; Act 1/2014 of 28 February 2014);
- a special agreement to assist persons with disabilities (Royal Decree 1567/2013 of 1 March 2013).

The report furthermore states that the average retirement pension rose by 3.5% in 2012, 3.4% in 2013, 2.1% in 2014 and 2.2% in 2015, whereas the change in the consumer price index was +2.9% in 2012, +0.3% in 2013, -1% in 2014 and 0% in 2015, which points to an increase in pensioners' purchasing power. The report also refers to the new system introduced in 2014 (the IRP) for reevaluating social security contributory pensions.

The Committee notes however the adoption of certain restrictive measures such as:

- the introduction, in late 2012, of a condition of residence in Spain for entitlement to social security pension supplements (Royal Legislative-Decree 1716/2012);
- the introduction, as of 2019 (outside the reference period), of a new criterion for calculating pensions, a so-called "durability" factor, which takes account of the increase in life expectancy in order to safeguard the financial sustainability of the pensions system while maintaining adequate pensions (Act 23/2013 of 23 December 2013);
- the application, since 2014, of a new index for uprating social security contributory pensions, the IRP, whose value lies between 0.25% and the IPC + 0.50%, which means that pensions are no longer inflation-linked. Since 2014, an annual increase of 0.25% has been applied, though with corrective measures to assist those on the lowest pensions;
- the extension of the contribution period necessary to qualify for early or partial retirement, from, respectively, 33 to 35 years and 30 to 33 years (Royal Legislative Decree 5/2013 of 15 March 2013);
- the introduction of more restrictive conditions for entitlement to non-contributory unemployment benefits, after the age of 55 (Royal Legislative Decree 5/2013 of 15 March 2013).

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 a revision of the general social security legislation, to take effect in 2016, outside the reference period (Royal Legislative Decree 8/2015 of 30 October 2015). It 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. 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.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in Spain is in conformity with Article 12§3 of the 1961 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 Spain. It also takes note of the information contained in the comments by the Galician Unions' Confederation, registered on 3 October 2017, as well as of the addendum to the report by Spain, in response to these comments, transmitted on 8 November 2017.

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 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.

As regards bilateral agreements concluded with other States Parties that are not EU/EEA member States, the report recalls that Spain concluded such agreements with Andorra, the Federation of Russia and Ukraine. These agreements ensure equal treatment, retention of accrued benefits and aggregation on insurance or employments periods. The report also states that negotiations with the Republic of Moldova and Turkey are ongoing. However, the Committee observes that no agreements have neither been concluded nor planned with Azerbaijan, Bosnia and Herzegovina, "the former Yugoslav Republic of Macedonia" and Georgia.

As regards unilateral measures undertaken by Spain, the Committee notes from the report that Organic Law No. 4/2000 on the rights and freedoms of foreigners in Spain and their social integration of 11 January 2000, in particular Articles 10 (1) and 14, guarantees the principle of equal treatment between nationals and nationals of other countries who are affiliated to the Spanish social security scheme with respect to social security.

However, the Committee refers to its previous conclusions (Conclusions XIX-2 (2009) and XX-2 (2013)) where it found the ten-year residence requirement to benefit from old-age pensions excessive. The report indicates that such a requirement does not imply for the person concerned to be resident in Spain for ten years without interruption.

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 (Conclusions XIII-4, Denmark).

In this regard, the Committee notes that the non-contributory old-age pension is a fixed-rate pension scheme available for persons over 65 who have no claim to a contributory pension, either because they did not pay contributions or because they were not in the contributory scheme for the minimum period. It aims at ensuring that those persons have a reasonable income during their retirement. The Committee considers that the non-contributory old-age pension at issue is a basic benefit.

According to the report, entitlement to pension payments depends in principle on two conditions: a person must be legally resident in Spain for at least ten years between the age of 16 and 65, and lacks sufficient means or income. The report further indicates that the residence in one State Party member of the EU or EEA is, according to the principle of assimilation of facts laid down in Article 5 b) of Regulation (EC) no. 883/2004, treated as if it had taken place in the territory of Spain, thus satisfying the residence condition required. However, nationals of other States Parties that are not EU member or part of the EEA do not benefit from such a principle, so that the Spanish legislation imposes stringent conditions upon nationals of other States Parties that are not member of the EU or the EEA in comparison with those who are.

For these reasons, the Committee considers the "ten-year residence" requirement applicable to nationals of States Parties that are not EU members or part of the EEA to be excessive and, consequently, 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, 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 Spain applies the rules whereby the payment of family benefits is conditional on the claimant's children being resident in Spain.

The Committee also notes from the report that no agreements have been concluded with the other States Parties which apply a different principle (Albania, Andorra, Armenia and Georgia), so that the Committee reiterates its conclusion of non-conformity on this point.

The Committee recalls that in the absence of any applicable bilateral agreements, equal treatment between nationals of States Parties with regard to social security must be regarded by unilateral measures.

Right to retain accrued benefits

The report provides no information on the exportability of social benefits. However, the Committee found the situation in Spain to be in conformity with the 1961 Charter on this point in its previous conclusions (Conclusions XVI-1 (2002) to XX-2 (2013)). Given that the situation remained unchanged, the Committee reiterates its conclusion and asks each future report to provide information on the current state of the law or practice.

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

In its previous conclusion (Conclusions XX-2 (2013)) the Committee asked whether nationals of States Parties that are not members of the EU or the EEA or bound by a bilateral agreement with Spain have a guaranteed right to accumulate periods of insurance and employment. The report provides no information on this issue. Therefore, the Committee asks again the next report to confirm whether the principle is guaranteed to nationals of States Parties that are not members of the EU or the EEA or bound by a bilateral agreement with Spain. In the meantime, it reserves its position on this point.

Conclusion

The Committee concludes that the situation in Spain is not in conformity with Article 12§4 of the 1961 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 length of residence requirement (ten years) for entitlement to non-contributory old-age pension 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 Spain. It also takes note of the information contained in the comments by the Galician Unions' Confederation, registered on 3 October 2017, as well as of the addendum to the report by Spain, in response to these comments, transmitted on 8 November 2017.

Types of benefits and eligibility criteria

Social assistance

In its previous conclusion (Conclusions 2013) the Committee found that the situation was not in conformity with the Charter on several grounds:

- minimum income eligibility was subject to a length of residence requirement
- minimum income eligibility was subject to age requirements (25 years old)
- minimum income was not paid for as long as the need persists.

As regards the first ground, the Committee notes from the report that in the majority of Autonomous Communities the length of residence requirement is 12 months. However, several Autonomous Communities are engaged in drawing up reciprocity agreements which will guarantee that persons moving across regions will continue to receive social assistance without being subject to any length of residence requirement. The Committee understands that during the reference period there has been no change to the situation whereby persons moving across regions lose their entitlement to social assistance for a certain period of time. Therefore, the Committee reiterates its previous finding of non-conformity on this ground.

As regards the second ground, the Committee notes from the report that in most Autonomous Communities, the minimum age requirement is 25 years as a general rule, with a few exceptions relating to specific circumstances, such as when the beneficiary has children or disabled persons in his/her care. The Committee considers that the situation which it has previously considered not to be in conformity with the Charter has not changed. Therefore, it reiterates its previous finding of non-conformity on this ground.

As regards the third ground, the Committee notes from the report that the majority of Autonomous Communities set a limit on the duration of the benefit, which is usually 12 months. The Autonomous Communities may provide for the possibility of an extension of the provision of minimum income, as long as the situation giving rise to the benefit is maintained. The duration of the benefit can thus be extended to between 24 and 60 months, or even be unlimited as in the case of Galicia and Murcia. In three other Autonomous Communities (Asturias, Castile-Leon and Madrid) the allocation of the benefit is not limited in time but is subject to an annual review. Moreover, according to the report, progress is being made towards a greater interconnection between these services and vocational integration, known as "active inclusion", and some Autonomous Communities are already considering establishing a direct link with the employment services. In the Basque Country, for example, collaboration and coordination between basic social services and Lanbide (Basque Employment Service) was set up in 2010 for the preparation, conclusion and follow-up, in order to guarantee the continuity and the coherence of the paths of inclusion.

The Committee recalls that social assistance must be provided for as long as the situation of need persists and cannot therefore be subject to time-limits. The right to social assistance must be conditional only on the criterion of necessity and the availability of adequate resources must be the sole criterion according to which assistance may be denied, suspended or reduced (Spain, 2006). The Committee considers that despite some positive developments in some autonomous communities, the situation in which social assistance is not paid for as long as the need persists has not changed in all Communities. Therefore, the Committee reiterates its previous finding of non-conformity on this ground.

Medical assistance

In its previous conclusion the Committee noted from MISSOC that medical assistance covered all resident with insufficient means of subsistence. It asked the next report to provide updated information in this respect. The Committee notes that in accordance with the Royal Decree 16/2012 of 20 April 2012, the right to healthcare is universal. Therefore, the following categories of persons are covered under the health system:

- all workers and their dependents, who are covered under one of the social security systems;
- all residents who who have insufficient resources (below 100,000 per year)

The Committee notes from the report that the Royal Decree-Law 16/2012 of 20 April 2012 and its implementing regulations have involved clear improvements in terms of access to health care for the long-term unemployed, who are no longer entitled to unemployment benefits but receive some other form of income as well as for certain liberal professionals (lawyers, engineers, architects) who were previously excluded from the public health system.

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 unemployment assistance is an allowance paid to persons over 16 years of age and under ordinary retirement age (whose income does not exceed 75% of the minimum wage). Active integration income is paid to unemployed persons over 45 and under 65 years of age (whose income does not exceed 75% of the minimum wage). As regards the amounts granted, both unemployment assistance and active integration income stood at 80% of the Public Income Rate of Multiple Effects (IPREM), which amounted to €425,6 in 2015.

The Committee notes from the report that the minimum integration income falls within the exclusive competence of the Autonomous Communities. According to the report, considerable progress has been made in the legislative framework of benefits, particularly in the recognition of the subjective right of access to such benefits, as a guarantee of minimum resources for subsistence or as an instrument of social inclusion, with the introduction of basic social benefits for citizens, which are recognised as such in the new statutes of autonomy of certain Autonomous Communities, under various denominations, such as 'basic income', 'guaranteed income' etc.

According to the report, conditions to be fulfilled (for example, the requirement of a minimum period of residence or a minimum age), the duration of the benefit or its amount may differ across autonomous Communities. However, the common characteristic is that they are addressed to persons / families who do not have sufficient financial resources to meet their basic needs in order to provide them with the necessary means to overcome this deficiency. The Ministry of Health, Social Services and Equality compiles annually in the form of reports the main data relating to minimum integration income.

The Committee notes that in 2014 the amount of the minimum income varied between €300 and €665,9.

- Additional benefits: the Committee notes that the report does not reply to its previous question concerning regular supplementary benefits that would be paid to persons without resources, in addition to the minimum guaranteed income. The Committee reiterates its question.
- 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 €552 in 2014.

In its previous conclusion the Committee found that the situation was not in conformity with the Charter as the level of social assistance paid to a single person was manifestly inadequate (except for the Basque country and Navarra). The Committee now notes that with the exception of Pais Vasco, the minimum guaranteed income in all Autonomous Communities falls below 50% of the Eurostat median equalivalised income and is therefore, not adequate.

Right of appeal and legal aid

The Committee recalls that the right to assistance may not depend solely on the discretion of the administrative authorities: it must constitute an individual right laid down in law and be supported by an effective right of appeal. 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

As regards social and medical assistance to nationals of States Parties lawfully resident in Spain, the Committee notes that they are entitled to such assistance under the same conditions as Spanish Nationals. Organic Law 4/2000 of 11 January 2000 on the rights and freedoms of foreigners in Spain. Since 2012, anyone who is lawfully resident in Spain and who does not have financial resources in excess of € 100 000 per year has a subjective and guaranteed right to the health care provided by the public health services as insured persons, which puts them on an equal footing with active workers or pensioners, who enjoy this right by virtue of their attachment to the social security system. Furthermore, Royal Decree 576/2013 of 26 July 2013 provides for a mechanism for access to public health care for a person with sufficient income but without access to the national health system, which is stipulated in a special agreement, voluntarily subscribed by the said person, which guarantees universal access to the public health care system for all those who so wish, on payment of a public tax for the provision of healthcare.

Foreign nationals unlawfully present in the territory

The Committee takes note of the information contained in the comments by the Galician Unions' Confederation, as well as of the addendum to the report by Spain, in response to these comments, regarding Article 11§1. The Committee recalls that foreign nationals, unlawfully present in the territory are covered under Article 13§1 of the Charter.

The Committee recalls that persons in 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. Furthermore, a functioning appeals mechanism before an independent judicial body as crucial for the proper administration of shelter distribution. 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). The Committee asks for updated information regarding provision of emergency social assistance to unlawfully present foreign nationals.

As regards medical assistance to foreigners unlawfully present in Spain, the Committee takes note of the Royal Decree-Law 16/2012 of 20 April 2012 adopting urgent measures to guarantee the sustainability of the national health system and improve the quality and safety of its services, which provides in Article 3b that foreigners who are not registered as residents or authorised to reside in Spain will receive health care in the following cases:

- in the case of an emergency for serious illness or accident, whatever the cause, until their recovery;
- during pregnancy, childbirth and the post-natal period. In all cases, foreigners under the age of 18 receive health care under the same conditions as nationals.

According to the report, in addition to these actions, which fall within the scope of the health services provided by the national health system, the Autonomous Communities, in the exercise of their exclusive social assistance powers have undertaken action to preserve the health of foreigners over 18 years of age who are not authorised to reside in Spain or who are not registered as residents but who are de facto in the territory of an Autonomous Community and do not have sufficient financial resources to meet their health needs. In 2015, the Ministry of Health, Social Services and Equality considered the possibility of establishing minimum criteria in order to unify the criteria of the Autonomous Communities and thus to rationalise the access of persons without legal residence to the system of health care through basic care (as a complement to care in emergency services and comprehensive care for pregnant women and minors). To this end, a proposal for an agreement to unify the level of health protection of foreigners without a residence permit has been presented and is currently being studied in the Autonomous Communities. The Committee asks the next report to provide updated information in this regard.

The Committee also notes that upon discharge from the emergency department and patients in irregular administrative situations are entitled to the care and treatment required by their condition until the end of the course of care. Furthermore, in accordance with the General Public Health Act (Law 33/2011 of 4 October 2011), public health care services under the national health system include preventive measures, care and follow-up with a view to preserving the public health of the population and avoiding the risks associated with situations of alert and health emergency, whatever the administrative situation of the people.

The Committee considers that the situation in Spain is in conformity with Article 13§1 as regards personal scope.

Conclusion

The Committee concludes that the situation in Spain is not in conformity with Article 13§1 of the 1961 Charter on the grounds that:

- minimum income eligibility is subject to a length of residence requirement in the majority of Autonomous Communities;
- minimum income eligibility is subject to age requirements (25 years old);
- minimum income is not paid for as long as the need persists;
- the level of social assistance paid to a single person 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 Spain.

The Committee recalls that under Article 13§2 of the Charter any discrimination against persons receiving assistance that might result – directly or indirectly – from an express provision must be eradicated. 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 Spain is in conformity with Article 13§2 of the 1961 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 Spain.

According to the report, welfare information, guidance, counseling, diagnosis and evaluation services are one of the essential elements of the social services system. These services represent the gateway to the public social service system by providing information, technical advice, guidance and evaluation. They facilitate access to different resources while guaranteeing social rights.

The Committee notes that the Autonomous Communities, who have exclusive competence in the field of social services, have made advances in updating the legislative framework, particularly in the recognition of certain social services as a subjective right of individuals. In addition, there has been an increase in the number of Autonomous Communities who have, or plan to have, a portfolio or catalogue of social services. These catalogues or portfolios define the services which make up the system, their characteristics and the conditions for access.

The report highlights that at the national level, the Social Services Reference Catalogue, the result of consensus and joint work with the Autonomous Communities and the cities of Ceuta and Melilla, was approved in January 2013 at the initiative of the Ministry of Health, Social Services and Equality. This document, which is discussed at length in the report, lists all the services that people can claim throughout the Spanish territory, while defining common principles of quality and good use.

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 adequately distributed on a geographical basis. The Committee asks the next report to provide updated information in the light of these requirements.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Spain is in conformity with Article 13§3 of the 1961 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 Spain.

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.

In its previous conclusion (Conclusions 2013) the Committee found that the situation was in conformity with the Charter as regards access to emergency social and medical assistance to nationals of States Parties lawfully present in Spain.

According to the report, the reference text on social assistance is Law 4/2000 of 11 January 2000 on the rights and freedoms of foreigners in Spain and their social integration, provides in Article 14 (the right to social security and social services) that foreigners, regardless of their administrative status, are entitled to basic social services and benefits.

The Committee notes that in 2014 472,918 foreigners benefited from social services, such as housing, information and orientation.

Conclusion

The Committee concludes that the situation in Spain is in conformity with Article 13§4 of the 1961 Charter.

Article 14 - The 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 Spain.

The Committee takes note of the information contained in the report submitted by Spain. It also takes note of the information contained in the comments by the Galician Unions' Confederation, registered on 3 October 2017, as well as of the addendum to the report by Spain, in response to these comments, transmitted on 8 November 2017.

Organisation of the social services

In its previous conclusion (Conclusions XX-2 (2013)), the Committee found that the situation in Spain was not in conformity with Article 14§1 of the 1961 Charter on the ground that it had not been established that effective access to social services was guaranteed.

The report recalls that, in Spain, the responsibility for Social services lies with the Autonomous communities (Article 148-2 of the Constitution) section 27.3 of the Local Authorities Act 7/85 of 2 April 1985 (as amended by the Local Government Rationalisation and Sustainability Act 27/2013 of 27 December 2013).

Effective and equal access

According to Article 41 of the Spanish Constitution of 1978, "public authorities shall maintain a public system of social security for all citizens which shall guarantee social assistance and services which are sufficient in cases of need, especially in cases of unemployment." In addition, under Article 139.1, all Spaniards are to have "the same rights and obligations in any part of the territory of the State" while Article 149.1.1. provides for "equality of all Spaniards in the exercise of their rights and fulfilment of their constitutional duties".

As regards the use of social services, the number of beneficiaries rose steadily until 2010 (6 946 299), as the impact of the economic crisis first began to make itself felt, before falling sharply over the period 2011-2014 (5 466 140).

There has also been an increase in the number of beneficiaries of certain basic services provided by municipalities, in particular those intended to help households, this provision having been bolstered by funds specifically for families and children.

The report indicates the ratio of beneficiaries to social services staff (157:1 in 2014 compared with 192:1 in 2008).

In the Autonomous Communities and the cities of Ceuta and Melilla, effective access, without discrimination, is recognised as a subjective right, to be enjoyed by all citizens. For example, in the oldest social services legislation, the "first generation" laws such as Act 2/1988 of 4 April 1988 on social services in Andalusia. Section 2 of this Act establishes equality and universality as a general rule for social services, with all citizens to be covered without discrimination, whether based on gender, civil status, race, age, ideology or religion. Likewise, Section 3 states that everyone residing in Andalusia and non-foreign nationals passing through, as well as foreign nationals, refugees and stateless persons residing within the Autonomous Community are entitled to social services. In this respect the Committee asks the length of residence requirement in order to be entitled to access to social services.

In its previous conclusion (Conclusions XX-2 (2013)), the Committee concluded that the situation in Spain was not in conformity with Article 14§1 of the 1961 Charter on the ground that the conditions to be met by providers of social services were not clearly defined.

The report indicates that as regards the existence of fees for social services in the Autonomous Communities, charges and fees are generally set for the provision of social services such as accommodation in homes for the elderly, reviewing certain degrees of dependence, disability, etc. Each Autonomous Community makes its own rules on fees,

usually through the Autonomous Communities' annual budget legislation. In their respective laws on social services, and sometimes in the regulations on accreditation, authorisation and registration of services and social services centres, the Autonomous Communities establish the framework for co-operation with private entities providing social services and specify the criteria to be met by service providers and the conditions governing service delivery. There is no single framework, therefore, as this is exclusively a matter for the Autonomous Communities. At the same time, the above-mentioned Social Services Reference Catalogue for 2013 establishes guiding principles for public social service provision. These principles are as follows: public responsibility, meaning that the public authorities must ensure that services are available and accessible for everyone, must regulate and organise them, and provide the human, technical and financial resources required for their operation; participation, meaning that the public authorities must encourage and ensure participation [...] by third-sector social welfare entities [...] in the planning, development, monitoring and evaluation process; co-operation and collaboration, meaning that the public authorities must act in accordance with the principles of co-operation and collaboration between public authorities and the private sector, while at the same time encouraging the measures needed to implement these principles.

Quality of services

In its previous conclusion (Conclusions XX-2 2013)), the Committee found that the situation in Spain was not in conformity with Article 14§1 of the 1961 Charter on the grounds that it had not been established that supervisory arrangements for ensuring that providers of social services complied with the conditions ensuring the quality of services existed.

The report states that, as regards supervisory arrangements for ensuring that providers of social services comply with the conditions ensuring the quality of services, virtually all the Autonomous Communities recognise in their ("second-"and "third- generation") social services legislation the importance of the quality of social services on two fronts: firstly by recognising that such quality is a priority objective or a basic principle of the public system of social services and, secondly, by introducing social services quality plans, as in Catalonia (social services quality plan 2010-2013) or Navarre (first social services quality plan 2010-2013) or general frameworks for quality, as in Aragon (Quality of Public Services Act 5/2013 of 20 June 2013). Quality is one of the principles set out in the Catalogue and which are meant to guide and inspire public social services provision, hence the concern to seek to ensure, for all provision, the existence of appropriate, basic quality standards, for example by introducing evaluation tools to promote quality, and by putting the concept of people's quality of life, effectiveness, efficiency and ethics at the centre of any action taken, so as to continuously improve the public system of social services. Likewise, the Catalogue has a specific section on common quality criteria which cover both the European context and Spain's public system of social services. The following aspects are addressed: 1. general quality principles for the provision of social services within the European Union; 2. common quality criteria for service provision in the public system of social services, with the focus on: a) technical and management quality b) social and technological innovation c) quality in employment d) quality of services. In this regard, the Committee requests that the next report present detailed information on the development of the instruments put in place to promote the quality of social services throughout the Autonomous Communities.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Spain is in conformity with Article 14§1 of the 1961 Charter.

Article 14 - The 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 Spain.

The “new generation” of social service legislation enacted by the Autonomous Communities during the reference period guarantees citizens using social services a right of participation.

According to the report, the state system of social services information (SEISS) is a web application which collects and collates information and data on social services in Spain. Its primary objective is to inform everyone, in a straightforward and transparent manner, of the results of public policy in this area. The SEISS features indicators published on a regular basis by the competent departments of the State Secretariat for Social Services and Equality of the Ministry of Health, Social Services and Equality. These indicators are as follows: a) primary social services; b) elderly persons; c) people with disabilities; d) dependent persons; e) child protection; f) non-contributory social security pensions.

In its previous conclusion (Conclusions XX-2 2013)), the Committee found that the situation in Spain was not in conformity with Article 14§2 of the Charter of 1961 on the grounds that it had not been established that there were means of monitoring the actions of non-governmental organisations and other non-public service providers and that there was equal and effective access to social services provided by non-governmental organisations and other non-public service providers.

The report underlines the existence of a State System of Information of Social Services (SEISS), by means of which it collects and systematizes the information and data of the social services of Spain, as means of control and supervision thereof. and in relation to Non-Governmental Organizations (NGOs), they are provided with controlled funding through annual calls for grants.

In 2015 and 2016, direct, non-transferable grants were awarded to third-sector entities operating at national level and working with the State Secretariat for Social Services and Equality, to ensure their upkeep and operation. The grant-awarding body carries out checks to ensure the funds are used for the purpose intended, in addition to any checks performed by central government auditors and those required under the Court of Auditors legislation. Monitoring and evaluation of the grants awarded to NGOs are likewise provided for in Articles 15 and 16 of the royal decree 536/2013 of 12 July 2013 (published in Spain’s Official Gazette of 13 July 2013) approving the rules on central government grants for implementing public-interest programmes covered by the personal income tax allocation within the scope of the State Secretariat for Social Services and Equality.

The report further states that, as regards effective and equal access to social services provided by non-governmental organisations and other non-public service providers, as already mentioned in the section on Article 14§1, in all the Autonomous Communities and the cities of Ceuta and Melilla, effective access, without discrimination, is recognised as a subjective right. The right to effective access, on an equal footing, must therefore be observed by all service providers, whether public or private.

The report states that various initiatives have been implemented by professionals in the social services sector. In January 2015, the General Council on Social Work signed the *Alliance for the sustainability and improvement of the four cornerstones of the welfare state: health, social services, education and pensions*. Fifteen scientific and professional organisations signed the convention setting up the Scientific and Professional Alliance for the improvement and sustainability of the welfare state, whose aims are, among others, to improve social dialogue in the field of health, social services, education and pensions, and to improve the participation of citizens and civil society organisations.

Conclusion

The Committee concludes that the situation in Spain is in conformity with Article 14§2 of the 1961 Charter.

Article 4 of the 1988 Additional Protocol - Right of the elderly to social protection

The Committee takes note of the information contained in the report submitted by Spain. It also takes note of the information contained in the comments by the Galician Unions' Confederation, registered on 3 October 2017, as well as of the addendum to the report by Spain, in response to these comments, transmitted on 8 November 2017.

Legislative framework

The Committee points out that the main aim of Article 4 of the Additional Protocol to the 1961 Charter is to enable elderly persons to remain full members of society and consequently invites the States Parties to make sure 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 previously noted that age was not among the grounds of discrimination expressly prohibited under Article 14 of the Spanish Constitution. There is no indication in the report that there has been any change regarding the adoption or amendment of legislation or administrative measures in this area. The Committee notes, however, that the wording of Article 14 of the Constitution is such that it can cover other grounds than those explicitly listed, including age. Therefore, 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. It further notes that the Spanish Constitution affords the Autonomous Communities a competence in social matters and, therefore, wishes to know whether these Communities have managed to adopt legislation or administrative measures to combat age discrimination.

With regard to assisted decision making for the elderly, the Committee asked in its previous conclusion (Conclusion XX-2 (2013)) whether consideration has been given to introducing such procedures. The Committee notes that during the reference period, Spain conducted a major reform of its system to promote personal autonomy and assistance for highly dependent persons. It asks the next report to provide more information about the main changes introduced via this reform and, in particular, whether it covers assisted decision making.

The Committee also takes note of the arguments presented by the Institute of the Elderly and Social Services ('IMSERSO') to the Governmental Committee report concerning conclusions XX-2 (2013). Indeed, IMSERSO points out that under Law No. 41/2002, health professionals are required to inform, and to obtain the free and informed consent of patients prior to any intervention involving their health. IMSERSO also refers to the Spanish Civil Code, in particular the sections which provide for the appointment of *de facto* guardian and the right of individuals to make any arrangements relating to their person or assets, including the appointment of a legal representative, in case a court declares them to be incapable. IMSERSO also mentions the growth of autonomous public guardianship agencies such as the Adult Guardianship Agency of the Community of Madrid as well as privately-run guardianship foundations. The Committee asks the next report to provide further information on those guardianship agencies and foundations.

Adequate resources

When assessing adequacy of the resources of elderly persons under Article 4 of the Additional Protocol to the 1961 Charter, 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 the at-risk-of-poverty rates for persons aged 65 and over.

The contributory old age pension is available to those who reach 65 years of age and have paid the necessary employment-based contributions. According to the information provided by IMSERSO in the aforementioned Governmental Committee report, the minimum contributory annual old age pension was €8 404.20 in 2014 (i.e. €600.30 per month), €10 932.60 (i.e. €780.90 per month) or €8 860.60 (i.e. €632.90 per month) depending on whether the claimant is single, lives with a dependent spouse or cohabitee. However, the minimum annual amount was €7 831.60 (i.e. €559.40 per month), €10 246.60 (i.e. €731.90 per month), or €8 288 (i.e. €592 per month) when claimants are single, living with a dependent spouse or cohabitee and have not reached the age of 65.

The non-contributory old age pension is available to persons over 65 who are not eligible for a contributory pension. In this connection, the Committee previously (Conclusion XX-2 (2013)) asked full details of the level of the non-contributory pension as well as information on the various benefits or allowances beneficiaries of this pension would be entitled to. IMSERSO indicated in the aforementioned Governmental Committee report that the amount of this non-contributory pension varies according to the person's marital status. According to this report, the non-contributory old age pension available to a single person amounted to €5 122.60 per year in 2014 (i.e. €365.90 per month). However, this sum may be reduced if the claimant has income of his or her own equal to more than 35% of the annual amount set for the pension (€5 122.60), although it cannot be less than 25% of the amount of the pension, i.e. €1 280.65 per year (or €91.48 per month). IMSERSO also states that alongside this pension, individuals can claim a "personal assistance supplement" set at €2 561.30 per year in 2014 (i.e. €182.95 per month), if they are, among other things, assessed as having a degree of impairment equal to or greater than 75%. No information was provided on accommodation allowance. The Committee asks the next report to provide a full and up-to-date information on the level of non-contributory pension and other benefits and/or allowances beneficiaries of this pension 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, was estimated at €6 634.50 per year in 2014 (approximately €552.88 per month). The Committee notes that the old age pensions, both contributory and non-contributory, are generally above the poverty threshold.

Prevention of elder abuse

In its previous conclusion (Conclusions XX-2 (2013)), the Committee asked what legislative or other measures had been taken by Spain to evaluate the extent of the problem, and to raise awareness about the need to eradicate elder abuse and neglect. In this connection, IMSERSO stated in the aforementioned Governmental Committee report that the National Strategy for the Eradication of Violence against Women for the period 2013-2016 includes a section on prevention and eradication of abuse and violence against elderly persons. The Committee asks to be provided with further information on this subject in the next report.

The Committee further notes from IMSERSO's website that the implementation of a Heightened Security Plan which is primarily aimed at preventing all the risks to which elderly persons are exposed (abuse, theft, scams and fraudulent use of their assets and bank cards by third parties), while at the same time offering appropriate solutions.

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 in its previous conclusion (Conclusion XX-I (2013)), asked for information on the average fees charged for

receiving appropriate assistance. IMSERSO states in the aforementioned Governmental Committee report that persons requiring assistance generally bear some of the cost of the services, depending on their means, the kind of service and its cost. Elderly persons on low incomes are not required to make any contribution towards the cost of the service. The Committee further notes that in October 2014, Spain adopted a "Framework of Action for the Elderly" with the aim of ensuring greater participation of the elderly in society and enabling them to lead independent, healthy and active lives. The Committee requests that the next report provide further information about the results of this "Framework of Action for the Elderly".

Likewise, the Committee asked whether there was a complaints procedure for complaining about the services provided to the elderly. IMSERSO states in the aforementioned Governmental Committee report that a complaints procedure does exist. It explains that anyone who has been denied a service can contest the decision before the competent authority or the courts. The Committee wishes to be provided with further information on this subject in the next report.

The Committee notes from the report that older persons benefit from social tourism programmes offering holidays and/or hydrotherapies subsidized by the State.

With regard to measures to inform people about the existence of services and facilities, the Committee notes, firstly, that in January 2013, Spain adopted a "reference catalogue of social services". This catalogue lists all the services available to people throughout Spain, while at the same time laying down common principles governing quality and proper use. Secondly, the Committee notes that Spain has developed numerous IT tools for providing information to the elderly and the public at large.

Health care

In its previous conclusions (Conclusions XVII-2 (2005), XIX-2 (2009) and XX-2 (2013)) the Committee asked a number of questions related to healthcare of elderly persons.

As regards the requested information on health care services for elderly persons, IMSERSO explains in the aforementioned Governmental Committee report that elderly persons receive the medical care they need and which is appropriate to their circumstances.

As regards primary health care, the Committee notes from the aforementioned Governmental Committee report that in 2012, home nursing care for the elderly accounted for 12% of primary care activities, with the number of home visits totalling 9 653 997. The Committee asks the next report to provide updated information on this matter.

As regards programmes or guidelines on health care for elderly persons, IMSERSO states in the aforementioned Governmental Committee report that in September 2013, the Spanish Senate adopted a motion setting up a one-stop-shop for social and health care to provide, where appropriate, increased support for dependent persons and those requiring co-ordinated health and social care. The Committee asks to be provided with further details in the next report. It also reiterates its previous questions as to what is the proportion of the cost of medicines to be born by elderly persons, whether there are guidelines on health care for elderly persons if any, mental programmes for persons with dementia and related illness, palliative care for the elderly as well as special training for individuals caring for elderly persons. It points out that, in case such information is not provided, there will be nothing to establish that the situation is in conformity with Article 4 of the Additional Protocol to the 1961 Charter on this point.

Housing and Institutional care

In its previous conclusion (Conclusion XX-2 (2013)), the Committee asked for updated information on housing for elderly persons. The report states that during the reference period, Spain adopted a national plan 2013-2016 consisting of two programmes: A building

refurbishment programme and an urban regeneration and renewal programme. The Committee wishes to be informed of the implementation of these programmes and their outcomes in the next report.

The Committee also asked whether facilities were licensed and inspected, and whether complaints procedures existed. IMSERSO explains in the aforementioned Governmental Committee report that the system consists of two tiers, national and regional. The General Administration which operates at national level awards accreditation to residential centres, whether they are state-run or privately-owned, and inspects them via IMSERSO's own inspection department and the Inspectorate General of Services of the Ministry of Health, Social Services and Equality. Forms are available for making complaints and/or suggestions. The Autonomous Communities which make up the regional level have exclusive competence in the management of residential centres, both state-run and private, including where inspections procedures are concerned. Each Autonomous Community has its own inspection department. When it comes to awarding accreditation, however, the Autonomous Communities are required to comply with the common criteria adopted by the Territorial Council on Social Services and Dependence. The Committee asks the next report to provide further information on this subject.

The Committee also asked whether places available in institutional care matched the demand. The Committee notes from IMSERSO's website "Espacio mayores" that as at 1 January 2014, 8 442 427 people were aged 65 or over. It also notes that there were 467 899 places in institutional care, spread across 3 174 day centres and 6 610 residential facilities. 7 963 people used the day centres that year, equating to a national coverage rate of approximately 1.02. However, there are regional disparities in the provision of institutional care and, asks what measures have been undertaken or planned to remedy to this situation.

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 XX-4 (2015)**

Article 7 - Right of children and young persons to protection

Paragraph 5 - Fair pay

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

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 Spain in response to the conclusion that it had not been established that the apprentices' allowances are adequate (Conclusions XX-4 (2015)).

The report indicates that according to the amendments brought to the Workers' Statute by the Royal Decree 2/2015, the apprentices' remuneration shall be fixed taking into consideration the actual working time, in accordance with the collective agreement. The report adds that in any case, the remuneration shall not be lower than the minimum inter-professional wage calculated proportionally with the effective time worked. The report provides information on the minimum wage for the year 2016, namely of 21.84 Eur per day and 655.20 Eur per month.

The report further indicates that the duration of an apprenticeship varies between 1 year and maximum 3 years or by collective agreement it may be between 6 months and 3 years. The effective working time, which is compatible with the work devoted to training activities, may not be less than 75% in the first year, or 85% in the second and third years of the maximum daily working time laid down in the collective agreement or established by law.

The Committee concludes that the situation is in conformity with the 1961 Charter with regard to the apprentices' allowances.

Conclusion

The Committee concludes that the situation in Spain is in conformity with Article 7§5 of the 1961 Charter with regard to the apprentices' allowances.

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 XX-4 (2015).

The Committee takes note of the information submitted by Spain in response to the conclusion that it had not been established that:

- adequate childcare facilities exist;
- adequate family counselling services exist;
- associations representing families are consulted in the framing of family policies;
- adequate mediation services exist.

Childcare facilities

The report states that services for children in Spain outside of the family include education and social services. The law provides that socio-educational assistance for children under the age of compulsory schooling is part of the education system. These services, called "nurseries" or "preschools" are the responsibility of the autonomous communities. Approximately 33% of 0-2 year-olds and 95% of 3-5 year-olds attend these facilities.

The Committee considers the situation to be in conformity with Article 16 of the 1961 Charter on this point. It asks for updated information on childcare facilities in future reports.

Consultation of families

In the previous conclusion (Conclusion XIX-4 (2011)) the Committee for the second time requested information on the participation of associations representing the families concerned in the framing of family policies. Since the subsequent report did not contain the required information, the Committee concluded (Conclusion XX-4 (2015)) that the situation was not in conformity with Article 16 of the 1961 Charter on the grounds that it had not been established that associations representing families were consulted in the framing of family policies.

According to the report, bodies representing family associations participate in relevant policy-making processes within the State Council for Families, an interministerial, consultative and collegial body that is designed to provide a means for family associations involved in state policy to participate and collaborate with the General State Administration (Royal Decree 316/2007, of 11 May, establishing and governing the State Council for Families and the National Observatory for Families).

This Council, which is under the jurisdiction of the Ministry of Health, Social Services and Equality, is made up of representatives from the General State Administration (the ministerial departments of Justice; Economy and Competitiveness; Public Finances and Administration; Development; Employment and Social Security; Industry, Energy and Tourism; Presidency; Education, Culture and Sport; and the Ministry of Health, Social Services and Equality itself) and representatives from family associations involved in state policy on the basis of the following criteria:

- two representatives of federations, movements or other types of groups involved in state policy, which bring together associations from the family sector in general;
- two representatives of social action groups that are part of the State Council of Non-Governmental Organisations for Social Action and which are involved in the family sector;
- two representatives of large-family organisations;
- two representatives of parents' associations;
- a representative of entities specialised in assisting in family conflicts;

- a representative of entities for single mothers;
- a representative of entities for separated or divorced persons;
- a representative of entities for widows;
- a representative of associations for persons with disabilities or their family members, which are part of the National Council for Disabilities;
- a representative of entities for families from rural areas;
- a representative of entities for same-sex parents;
- a representative of foster family associations;
- a representative of adoptive family organisations;
- a representative of entities that promote and protect the rights of children;
- a representative of entities specialised in the reconciliation of family life, personal life and work.

The State Council for Families analyses the state of families and their quality of life and the monitoring of public policies that affect them. It makes proposals and recommendations on strategy lines and priorities for action relating to national family policies. It also drafts reports, opinions and memoranda on draft regulations concerning family policies submitted to it.

Additionally, family associations are also represented in the State Council of Non-Governmental Organisations for Social Action, a consultative body at the Ministry of Health, Social Services and Equality, which is a forum for meetings, dialogue and voluntary sector participation in the framing of social policies (Royal Decree 235/2005, of 4 March).

On 14 May 2015, the Spanish Council of Ministers adopted the Comprehensive Plan for the Support of Families 2015-2017, an instrument drafted with contributions from all government ministries and family associations, which incorporates all the policies and actions regarding families. When the plan was drawn up, 45 bodies were consulted – all those which are part of the State Council for Families and of the State Council of Non-Governmental Organisations for Social Action, along with other bodies which were deemed important – at two different stages of the process: when defining the general objectives, principles and strategic lines (April to May 2014) and with regard to specific measures concerning each of the strategic lines (October to November 2014).

The Comprehensive Plan for the Support of Families 2015-2017 itself includes, as a specific measure, the improvement in the monitoring of the State's family policies carried out by participatory bodies, within which the voluntary associations from the family sector will be represented. This will be achieved through a reform of the State Council for Families.

The Committee considers the situation to be in conformity with Article 16 on this point. It asks that the next report include the progress of the reform dealing with the consultation of families and their representatives in the framing of family policies.

Family counselling services and mediation services

In its previous conclusion (Conclusion XIX-4 (2011)), the Committee for the second time requested information on access to family mediation services, whether they were provided free of charge, their distribution across the country and their effectiveness. Since the subsequent report did not contain the required information, the Committee concluded (Conclusion XX-4 (2015)) that the situation was not in conformity with Article 16 of the 1961 Charter on the grounds that the existence of adequate mediation services had not been established.

Social assistance and social services specialised in supporting families are the sole responsibility of the autonomous communities. Each community provides family counselling and/or family mediation. The Committee takes note of the fact that 13 communities have a specific legal framework on this subject. These laws deal with the types of situations that require mediation, guidelines for mediation, the mediation profession and mediation bodies,

the process, access and cost, and the situations in which these services are provided free of charge.

Family counselling services operate as part of specialised social services, for which the autonomous communities are responsible. These services may be provided directly through public authorities or through other service providers under specific agreements. They include family intervention and counselling services; professional psycho-educational and social services to help families; services to encourage positive parenting; and services to offer support in the event of family conflicts or psychosocial difficulties, or when there is a risk of social exclusion or ill-treatment in the family.

All the autonomous communities have systems and programmes to provide these services. The Committee takes note of the examples provided by the report on this matter.

As one of its strategic lines, the Comprehensive Plan for the Support of Families 2015-2017 includes supporting families that have special needs and developing mediation in the event of family conflicts.

In addition, intra-judicial mediation has been developed for civil and criminal cases. The General Council of the Judiciary encourages a “mediation culture” amongst judges. In particular, it has produced a “Practical guide to intra-judicial mediation”, which includes a specific protocol on family mediation.

The Committee considers that the situation is in conformity with Article 16 of the 1961 Charter on these points. It asks that the next report include information on the implementation of the Comprehensive Plan for the Support of Families 2015-2017, especially in relation to family counselling and mediation.

Conclusion

The Committee concludes that the situation in Spain is in conformity with Article 16 of the 1961 Charter.

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 submitted by Spain in response to the finding of non-conformity on the ground that it was not established that adequate measures had been taken to prevent misleading propaganda relating to emigration and immigration.

The report states that Spain is implementing a comprehensive strategy against racism, racial discrimination, xenophobia and other related forms of intolerance. A report evaluating the strategy was published in 2014. It reveals considerable successes in terms of education, prevention and protection of victims of racism, xenophobia and other forms of intolerance.

In its previous conclusion (Conclusions XX-4 (2015)), the Committee requested details of the initiatives conducted as part of the FIRIR project. The report states that several training sessions have been run for the security forces through the project. Among other things, the FIRIR project has led to the development, publication and distribution of a handbook to help to train the security forces and corps to identify and record racist or xenophobic incidents. The handbook has been used to train 165 trainers, who have in turn trained over 22,000 specialist officers in the *Guardia Civil* and police officers. The FIRIR project has also led to the publication by the Ministry of the Interior of annual reports on recorded incidents, the development of an action protocol, the improvement of statistical information collection systems, and better collaboration and inter-administrative co-ordination to prevent and combat racism and xenophobia.

The report adds that training has also been provided for employers and teaching staff: the GESTIMED project sought to alert employers to the benefits of appropriate management of cultural diversity in small and medium-sized enterprises. The FRIDA project, meanwhile, sought to raise the awareness of teaching staff, heads of education centres and the education community about human rights and measures to prevent and detect racism, xenophobia and other related forms of intolerance.

Secondly the Committee requested details of measures taken at national, regional and local level to counter the dissemination of negative stereotypes concerning immigrant workers. The report states that the comprehensive strategy promotes the development, publication and dissemination at national level of polls and reports on racism and xenophobia which can be used to make an annual diagnosis of the situation and developments in the field of racism, xenophobia and other forms of intolerance in Spain. The results of the most recent poll, which was entitled "Attitudes towards immigration" and was conducted in 2014 by the Sociological Research Centre at the request of the General Secretariat for Immigration and Emigration of the Ministry of Employment and Social Security, show that the Spaniards who were surveyed were becoming more tolerant (or accepting) of immigration in most of the aspects that were investigated. The report adds that with the support of the European Social Fund, Spain subsidises nearly eight projects per year to raise awareness of and promote equal treatment and non-discrimination in employment for immigrants from third countries.

Thirdly the Committee requested details of the current legal framework and the national body with responsibility for matters of equality: the Council for the Promotion of Equal Treatment and Racial or Ethnic Non-discrimination. The report states that Organic Law No. 1/2015 of 30 March 2015, which entered into force on 1 July 2015, has reformed the Criminal Code. The report points out that among other things, the law has extended and clarified the provisions on the incitement of hatred and discrimination. Law No. 4/2015 of 27 April 2015, which entered into force on 7 July 2015, gives victims greater protection.

As to the Council for the Promotion of Equal Treatment and Racial or Ethnic Non-discrimination, the report states that Law No. 15/2014 of 16 September 2014 on the streamlining of the public sector and other administrative reform measures has renamed it the “Council for the Elimination of Racial or Ethnic Discrimination” and clarified its powers. The report points out in this regard that the Council provides assistance to victims of racial or ethnic discrimination, pursues information and awareness-raising activities, carries out studies and publishes reports and recommendations on this subject. The Council is assisted and supported in its work by the Institute for Women and Equal Opportunities (IMIO), a public body which protects equal treatment and non-discrimination. The Council’s human and financial resources are guaranteed by IMIO. According to the report the Council carried out a study of the “perception of racial or ethnic discrimination by victims in 2013” during the reference period and made a recommendation to political parties and other actors with a view to curbing discriminatory, racist or xenophobic speech in election campaigns. In September 2015, IMIO published a practical guide co-financed by the EU to inform persons who have been victims of discrimination or hate crimes about response mechanisms provided for by law and possible steps and procedures.

Lastly, the Committee requested information concerning monitoring of acts of discrimination and racism. The report states that the Ministry of the Interior’s crime statistics system (SEC) has been collecting information and other statistical data on acts of discrimination and racism since 2011. The report points out in this regard that the number of complaints made and other racist, xenophobic or other criminal offences recorded by the SEC is constantly increasing – a consequence of greater public awareness.

The report also states that several polls were conducted during the process of developing a “map of discrimination in Spain”. An inter-ministerial group was also created in order to improve the systematic collection of empirical data on discrimination-related complaints, offences and penalties. The Committee asks the next report to provide updated information on the activities carried out by this inter-ministerial group and results attained.

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 XXI-4 (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 Spain is in conformity with Article 19§1 of the 1961 Charter.

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

Paragraph 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 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 Spain in response to the finding of non-conformity on the ground that it was not established that there was adequate co-operation between the social services of Spain and emigration and immigration states.

The report states that by virtue of the powers vested in the Autonomous Communities by the Spanish Constitution, they have adopted their own laws in relation to social services. In this regard, the report states that during the reference period, the Directorate-General for Immigration of the Community of Madrid carried out several activities with a view to the reception and integration of immigrant populations in the Madrid region. The Community also established immigrant participation centres (CEPIs). CEPIs are meeting places and discussion venues intended to promote the full integration of immigrants and their families into Madrid society. They provide legal and psychosocial assistance, training and help with jobseeking. The report stresses that CEPIs work together with diplomatic authorities, education and employment services and services which assist women and children from the countries of origin of the largest foreign populations in the Autonomous Community of Madrid.

The report adds that since a new government took office, the Social Welfare Department of the Autonomous Community of Castilla-La Mancha has been devising new strategic guidelines which, where appropriate, should lead to the development of new co-operation tools.

The Committee understands that the range of services on offer varies considerably from one Autonomous Community to another. It asks for the next report to contain detailed information about the measures taken by the other Autonomous Communities to promote co-operation between their social services and the social services of emigration and immigration states.

The Committee notes that the report does not address the issue of Spanish workers residing in other States Parties. In this respect, the Committee points out that the scope of Article 19§3 "extends to migrant workers immigrating as well as migrant workers emigrating to the territory of any other State". Consequently, it asks for the next report to contain statistics on the number of Spanish migrant workers who have settled in the other States Parties to the Charter.

In the light of the foregoing, the Committee notes that the information provided in the report still does not enable it to assess the situation and, in particular, to ascertain whether the co-operation between services enables the workers concerned, wherever they are on Spanish territory, to resolve their personal and family problems. It asks for an up-to-date description in the next report of the contacts and information exchanges established by the Spanish social services, regardless of the Autonomous Community, in emigration and immigration states. It points out, in this respect, that contacts and information exchanges should be established between public and/or private social services in emigration and immigration countries with a view to facilitating the life of emigrants and their families, their adjustment to the new environment and their relations with members of their families who remain in their country of origin (Conclusions XIV-1). It also states 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. Common situations in which such co-operation would be useful would be for example where the migrant worker, who has left his or her family in the home country, fails to send money back or needs to be contacted for family reasons, or where the worker has returned to his or her

country but needs to claim unpaid wages or benefits or must deal with various issues in the country in which he [or she] was employed” (Conclusions XIV, Finland).

The Committee therefore considers that it has still not been established that there is adequate co-operation between the social services of Spain and emigration and immigration states.

Conclusion

The Committee concludes that the situation in Spain is not in conformity with Article 19§3 of the 1961 Charter on the ground that it has not been established that there is adequate co-operation between the social services of Spain and emigration and immigration states.

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

Paragraph 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 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 Spain in response to the finding of non-conformity on the ground that it was not established that social welfare benefits were not excluded from the calculation of the worker's income for the purposes of family reunion.

The Committee points out in this regard that the level of means required by States to bring in the family or certain family members should not be so restrictive as to prevent any family reunion (Conclusions XVII-1 (2004), Netherlands). Social benefits must not be excluded from the calculation of the income of a migrant worker who has applied for family reunion (Conclusions 2011, Statement of Interpretation on Article 19§6).

The report states that social welfare benefits are only counted/taken into account where a residence permit is renewed in order to maintain/extend family reunion, in accordance with Article 61§3 b) of the Regulations pertaining to Organic Law No. 4/2000, as amended by Organic Law No. 2/2009 (BOE No. 103 of 30 April 2011). Article 54 of these regulations sets out the financial requirements for obtaining a residence permit with a view to reunion with the applicant's family members (national of a third country). Article 54§4 provides that income "derived from the social assistance system will not be included when calculating the amount of financial resources to be declared when applying for authorisation for a temporary residence permit for the purpose of family reunion, while other income provided by the spouse who resides in Spain and cohabits with the requesting party will be taken into account". In this respect, the Committee asked previously which benefits were included within social assistance and thus not recognised as income for the purposes of family reunion, and those which were not considered social assistance and therefore could be taken into account.

The Committee notes that the report does not provide any information in this respect and therefore repeats its question; it also considers that the situation in Spain is not in conformity on the ground that it has still not been established that social welfare benefits are not excluded from the calculation of the worker's income for the purposes of family reunion.

The Committee recalls that the situation concerning other aspects covered by Article 19§6 will be examined in the framework of the regular reporting cycle (Conclusions XXI-4 (2019)) and asks that relevant and updated information be provided in that context.

Conclusion

The Committee concludes that the situation in Spain is not in conformity with Article 19§6 of the 1961 Charter on the ground that it has not been established that social welfare benefits are not excluded from the calculation of the worker's income for the purposes of family reunion.



January 2018

1961 European Social Charter

European Committee of Social Rights

Conclusions XXI-2 (2017)

UNITED KINGDOM

This text may be subject to editorial revision.

The following chapter concerns the United Kingdom which ratified the 1961 Charter on 11 July 1996. The deadline for submitting the 36th report was 31 October 2016 and the United Kingdom submitted it on 11 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 4 of the Additional Protocol).

The United Kingdom has accepted all provisions from the above-mentioned group except Article 12§2 to 4 and Article 4 of the 1988 Additional Protocol.

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

The conclusions relating to the United Kingdom concern 13 situations and are as follows:

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

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

In respect of the other situation related to Article 13§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 the United Kingdom 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 Control of Asbestos Regulations came into force on 6 April 2012, updating previous asbestos regulations to take into account of the European Commission's view that the UK had not fully implemented the EU Directive 2009/148/EC on exposure to asbestos. According to Article 2 of these Regulations, the control limit of the concentration of asbestos on the atmosphere is 0.1 f/cm³ of air averaged over a continuous period of 4 hours

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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 2 of the Additional Protocol),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 3 of the Additional Protocol).

The deadlind for submitting that report was 31 October 2017. The report was registered on 21 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.

Article 3 - Right to safe and healthy working conditions

Paragraph 1 - Safety and health regulations (Art. 3-2 1996 RESC)

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

Content of the regulations on health and safety at work

The report states that the general legal framework (previously described in Conclusions XX-2 (2013) and XIX-2 (2009), remains unchanged overall. The Health and Safety at Work etc. Act (HSWA) 1974, and its Northern Ireland equivalent, the Health and Safety at Work (Northern Ireland) Order 1978, are the primary pieces of legislation covering occupational health and safety in the United Kingdom.

According to the report, there have been several government reviews of health and safety during the reference period. These found there was no case for radically altering the existing legislation. However, the Health and Safety Executive (HSE) has revoked and amended legislation to make the legal framework for health and safety clearer by removing unnecessary burdens, scrapping outdated legislation and cutting out duplications, amongst other measures.

As regards Northern Ireland, the report indicates that Health and Safety Executive in Northern Ireland (HSENI) sets out its strategy for implementing the legal framework in its successive Corporate Plans. Its plan for the years 2011-2015 sets out the pathway for the better regulation of health and safety at work. That plan has been extended until 2017.

The report specified that the Health and Safety Executive has a duty to consult others a appropriate on any proposals for regulations (Section 50(3) of the HSWA and Approved Codes of Practice Section 16(2)). The views of the social partners, including trade unions and employers' organisations are routinely sought in the formulation, implementation and review of the national strategy for health and safety at work.

Concerning the Isle of Man, the report indicates that the health and safety legislation framework for that is built upon the Health and Safety at Work etc. Act 1974 of the UK Parliament (as applied to the Island) and the Management of Health and Safety at Work Regulations 2003. Both the Act and the Regulations are Isle of Man adaptations of existing UK legislation. These two pieces of core legislation are supplemented by a range of risk and industry specific Acts and Regulations. In 2012 two pieces of legislation – the Construction Health and Safety Regulations 1985 and the Construction Head Protection Regulations 1999 – were revoked. Health and Safety at Work legislation is applicable to all employers, employees and contractors who operate on the Island including those who come to the Island from other jurisdictions.

The Committee points out that in terms of Article 3§1 of the 1961 Charter, regulations concerning health and safety at work must cover work-related stress, aggression and violence specific to work, and especially for workers in atypical working relationships (Statement of Interpretation on Article 3§1 of the 1961 Charter, Conclusions XX-2 (2013)). The report indicates that the Health and Safety at Work Act (HSWA) 1974 and the Management of Health and Safety at Work Regulations 1999 establish a regime for the management of work place hazards, including the risk of work related stress, violence and aggression, requiring risk assessments for all such hazards and other actions. Under Section 2 of the Health and Safety at Work Act, the HSE can take action where an employer has failed to assess the risk to their employees or has failed to take sufficient adequate measures to prevent injury to its employees. Cases of work related violence which result in conditions that meet the revised Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) criteria (come into force from 1 October 2013) must be notified to the HSE.

As regards the Isle of Man, the report indicates that the identification of stress related ill-health is an important and embedded element of inspections and investigations undertaken by the Health and Safety at Work Inspectorate. Inspectors have been trained to identify the possible causes of stress and adopt the UK HSE's guidance when undertaking work place interventions. The potential for health and safety implications as a consequence of work place aggression and violence is also considered during interventions by Inspectors.

The report indicates that the HSE developed the Management Standards approach to tackling work related stress specifically to cope with the individual circumstances an employer may experience. The Management Standards approach is an enhanced risk assessment tool that, among others, informs employers about the process of risk assessment.

Protection against dangerous agents and substances

The Committee examines the levels of occupational prevention and protection provided for by legislation and the regulations pertaining to certain risks.

Protection of workers against asbestos

The report does not indicate any changes to the situation in which the Committee has previously considered to be in conformity (Conclusions XX-2 (2013)). However, the Committee notes from the information published on the HSE's website, that the Control of Asbestos Regulations came into force on 6 April 2012, updating previous asbestos regulations to take into account of the European Commission's view that the UK had not fully implemented the EU Directive 2009/148/EC on exposure to asbestos. According to Article 2 of these Regulations, the control limit of the concentration of asbestos on the atmosphere is 0.1 f/cm³ of air averaged over a continuous period of 4 hours.

Protection of workers against ionising radiation

The report does not indicate any changes in the situation which the Committee has previously considered to be in conformity (Conclusions XX-2 (2013)). Given that no update has been provided, 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 relate to 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 scope of legislation and regulations with regard to workers in atypical employment.

Protection of temporary workers

In its previous conclusion (Conclusions XX-2 (2013)), the Committee asked for full and updated information on this point. The report indicates that there are no developments with respect to the legal framework relating to the protection of temporary workers. HSE published revised guidance on this topic which addresses the most common issues, particularly where the responsibility lies for training and personal protective equipment requirements.

Other types of workers

In its previous conclusion (Conclusions XX-2 (2013)), the Committee asked for information on the categories of domestic workers covered by health and safety laws. It also asked to be informed on the steps taken to protect health and safety of domestic workers without

interfering with private home. In response, the report indicates that domestic workers employed in private households are not covered by UK health and safety law and other related legislation whilst other workers in a domestic setting such as health and social care workers, are covered. Domestic work describes work that takes place within private households that is governed by an employment relationship and covers occupations such as cleaners, gardeners, secretaries or cooks. The report specifies that it would not be proportionate or practical to extend criminal health and safety law, including inspections, to private households employing domestic workers as this would impose disproportionate burdens and raise issues of privacy. The Committee considers that in the absence of protection of all domestic workers, the situation is not in conformity with the Charter.

As regards self-employed workers, the report states that health and safety law in relation to the self-employed changed from 1 October 2015. Section 3(2) of the Health and Safety at Work Act etc. 1974 will not apply to the self-employed if their work activity poses no risk to the health and safety of others, including other workers and members of the public. The Schedule to the regulations prescribes certain risk work activities to ensure that self-employed people carrying out these activities will still have a duty with regard to themselves and others. This is intended to include those activities where there are high numbers of self-employed persons, which statistically result in high numbers of fatalities or injuries and where EU requirements impose a specific duty on someone who is self-employed to protect themselves from risks to their own health and safety (work in agriculture, construction, gas, railway, with asbestos or GMO). The Regulations also contain a risk-based provision such that those self-employed persons, whose work activities do pose a risk of harm to others, continue to have duties under Section 3(2) of HSWA. Section 1 of the Deregulation Act 2015 amended HSWA to limit the scope of Section 3(2) so that only those self-employed persons who conduct an undertaking described in regulations will continue to have a duty under the provision.

The Committee recalls that 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 as long as employed and self-employed workers are normally exposed to the same risks. Therefore, the Committee considers that the situation is not in conformity with the Charter as regards self-employed workers.

Conclusion

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 3§1 of the Charter on the ground that all self-employed and domestic workers are not covered by the occupational health and safety regulations.

Article 3 - Right to safe and healthy working conditions

Paragraph 2 - Enforcement of safety and health regulations (Art. 3-3 1961 RESC)

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

Accidents at work and occupational diseases

The report indicates that, according to the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR, as amended in 2013), under which fatal and defined non-fatal injuries to workers and members of the public arising from work activity are reported by employers, the number of reported injuries decreased from 111 299 (with a rate of 442.6 per 100 000 employees) in 2011/12 to 76 054 (with a rate of 292.9) in 2014/15. The number of fatal accidents also decreased from 171 (with a rate of 0.58) in 2011/12 to 142 (with a rate of 0.46) in 2014/15.

As regards Northern Ireland, the report indicates that the number of accidents at work decreased from 3 119 in 2011/12, with a rate of 447 per 100 000 employees, to 2 740 in 2014/15, with a rate of 381. According to the report, the number of fatal accidents in Northern Ireland was 4 in 2011/12, with a rate of 1.00 per 100 000 employees, 3 in 2012/13 and 2013/14 and rate of 0.43, and 7 in 2014/15 and a rate of 0.97.

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 227 676 in 2012 to 244 948 in 2014). The standardised rate of incidence of non-fatal accidents at work per 100 000 workers also rose from 894.32 in 2012 to 1 015.31 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 also rose from 161 in 2012 to 239 in 2014. The standardised incidence rate of fatal accidents at work per 100 000 workers increased from 1.37 in 2012 to 1.62 in 2014. The Committee notes that this rate remain significantly below the average rate in the EU-28 (2.42 in 2012 and 2.32 in 2014). The Committee asks that the next report explain the discrepancy between the figures on accidents at work given in the report and those published by EUROSTAT.

In its previous conclusion (Conclusions XX-2 (2013)), the Committee noted the particularly low level of occupational diseases in Northern Ireland and asked whether that level constitutes an indication of under-reporting. In response, the report explains that it cannot be said with certainty if the perceived low level of occupational diseases is indicative of under-reporting. Health and Safety Executive in Northern Ireland (HSENI) has focussed on occupational health as a priority topic and has prioritised issues (asbestos related ill health, silicosis, musculoskeletal disorders, occupational asthmas, etc.). The report indicates that in Northern Ireland there were 32 occupational diseases in 2011/12, 11 in 2012/13, 17 in 2013/14 and 14 in 2014/15. The Committee asks what steps had been taken to address possible under-reporting of occupational diseases in Northern Ireland.

The report fails to give figures regarding occupational diseases in Great Britain. The Committee requests that the next report provide information on that aspect.

Activities of the Labour Inspectorate

The report indicates that the system of labour inspection in Great Britain continues to apply to all workplaces. The HSE's established enforcement policy statement accommodates the need for inspectors to target key risks and take proportionate action. This focuses enforcement action on serious risks and on those employers seeking an economic advantage from working with poor risk controls and not complying with the law. The Government's reform of the health and safety system implemented from 2011 with the launch of the "Good Health and Safety, Good for Everyone" programme introduced a new categorisation of non-major hazard industries in which inspection is concentrated on the

higher risk industrial sectors. Lower risk sectors are not targeted for inspection, where it is considered to be less effective in terms of outcomes. However, employers in any sector who under-perform in health and safety may still be visited. The Committee asks that the next report provide detailed information on the new system, particularly with regards to the number of labour inspectors.

The report indicates that the Health and Safety at Work Inspectorate (HSWI) of the Isle of Man was moved from the Department of Infrastructure (DOI) to the Department of Environment, Food and Agriculture (DEFA) in July 2014 in order to combine the HSWI with the Island Environmental Health team. Environmental Health Officers are undertaking health and safety inspections in shops, offices, restaurants and some residential homes while Inspectors attached to the HSWI cover health and safety in industrial, agricultural, construction and Government locations. All occupational and community health and safety matters are now covered by the same group of professional inspectors (8 inspectors/officers and two managers).

The Committee notes that under Article 3§2 of the 1961 Charter, States Parties must implement measures to focus labour inspection on small and medium-sized enterprises (Statement of Interpretation on Article 3§2, Conclusions XX-2 (2013)). In response, the report indicates that the HSE is in process of developing an online version of the indicator questionnaire and analysis tool that will give real-time analysis for smaller numbers of employees and a tool providing size-specific guidance for carrying out a risk assessment for work related stress which is more user friendly for smaller employees.

The report indicates that the HSE is reviewing its provision on work related stress. The HSE is working directly with representative employers from sectors of industry that have statistically higher than average incidence rates for work related stress, to provide more data on levels of work related stress, to gather more specific data on the stressors, to review the relevance of the Management Standards approach to these stressors, and to provide additional or specific guidance to these sectors.

The report provides the following figures: as regards Great Britain, the HSE issued 9 908 health and safety enforcement notices in 2011/12, 8 807 in 2012/13, 10 119 in 2013/14 and 9 446 in 2014/15. With respect to the same time periods, local authorities issued respectively 6 045, 4 693, 3 671 and 2 984 health and safety notices. As regards prosecutions taken by HSE, the Committee notes that there were 576 cases (531 convictions – 92% conviction rate) in 2011/12; 606 cases (575 convictions – 95% conviction rate) in 2012/13; 605 cases (567 convictions – 94% conviction rate) in 2013/14; and 650 cases (606 convictions 93% conviction rate) in 2014/15. Local authorities took 98 cases (95 convictions – 97% conviction rate) in 2011/12; 109 cases (104 convictions – 95% conviction rate) in 2012/13; 92 cases (89 convictions – 97% conviction rate) in 2013/14; and 78 cases (76 convictions 97% conviction rate) in 2014/15. The Committee notes from the HSE's Annual Report and Accounts 2014/15 that the number of total HSE staff, including the Health and Safety Laboratory (HSL), in post by full-time equivalents was 2 454 on 31 March 2015 and 3 183 on 31 March 2013.

As regards Northern Ireland, the report provides the following figures: the competent HSENI issued 285 health and safety enforcement notices in 2011/12, 315 in 2012/13, 254 in 2013/14 and 203 in 2014/15. The number of inspections conducted by HSENI was 13 755 in 2011/12, 15 084 in 2012/13, 13 922 in 2013/14 and 10 516 in 2014/15. In this framework, HSENI took 35 prosecutions in 2011/12; 19 in 2012/13, 21 in 2013/14 and 29 in 2014/15.

As regards the Isle of Man, the report provides the following figures for 2012-2016: the HSWI issued 14 improvement notices, 26 prohibition notices, and 4 formal cautions; 14 reports were presented to the Attorney General Chambers for consideration, with the recommendation that 11 cases should be prosecuted and alternative action should be taken by the inspectorate for the other 3 cases. The number of site interventions (proactive inspections and investigations) remains stable, 382 in 2012/13 and 386 in 2015/16.

The Committee take note of this information. However, in order to assess compliance with this part of Article 3§2, the Committee needs to know 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

Pending receipt of the requested information, the Committee concludes that the situation in United Kingdom is in conformity with Article 3§2 of the 1961 Charter.

Article 3 - Right to safe and healthy working conditions

Paragraph 3 - Consultation with employers' and workers' organisations on safety and health issues

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

The report indicates that the situation did not change during the reference period. Consultation and involvement take place through the Board of the Health and Safety Executive (HSE) and Industry Advisory Committees. The HSE issues consultative documents to gather views. The views of social partners, including trade unions, are routinely sought in the formulation, implementation and review of national strategy for health and safety at work. The Health and Safety Executive in Northern Ireland (HSENI) has similar arrangements in place for Northern Ireland.

Conclusion

The Committee concludes that the situation in United Kingdom is in conformity with Article 3§3 of the 1961 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 United Kingdom.

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 81.2 (compared to 80.5 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 that according to the World Bank data, the death rate (deaths/1,000 population) remained stable with 9 in 2015 compared with 9.02 in 2010.

The report indicates that the infant mortality rate has decreased from of 4.6 per 1,000 live births in 2008 to a rate of 3.7 in 2014. According to the Eurostat data, the average rate for the EU-28 countries in 2015 was 3.6 per 1,000 live births.

The report further indicates that the maternal mortality rate has fallen from 13.95 deaths per 100,000 live births in 2003-2005 to 9.02 in 2011-2013.

The main causes of death remain cardiovascular diseases (CVD), respiratory diseases, diabetes and cancers. The Committee takes note from the report of the detailed information describing the measures taken to reduce premature mortality caused by these diseases.

The report indicates that Northern Ireland has an overall mortality rate that is higher than that in England and Wales, but lower than in Scotland. Circulatory diseases, cancer and respiratory diseases continue to be the main causes of death among both sexes. The Committee notes from the Equality and Human Rights Commission website that in Scotland deaths from coronary heart disease have been the highest in Western Europe since the 1980s. Moreover, the overall death rate from cancer is higher for both men and women compared to men and women in England and Wales.

The Committee asks for information in the next report on the concrete measures taken to reduce the mortality rate caused by the above mentioned diseases in England, Scotland, Wales and Northern Ireland, as well as statistical data on the number of premature deaths caused by such diseases.

Access to health care

The Committee notes from the OECD data that the total health expenditure represented 9.8% of the country's GDP in 2015, which is close to the EU average of 9.9%. The Committee notes that the OECD average was 8.9% in 2013.

The Committee noted previously that access to NHS primary medical care is in the main provided by General Practitioners (GP) under contract to the NHS (Conclusions XX-2 (2013)). The report clarifies that currently registration with a GP in England is not based on residency. The procedure for registration is set out in the legislation governing the contracts between NHS England and individual providers of primary medical services. The Committee takes note from the report of the measures taken to improve access to the GP services in England such as the NHS Direct and NHS Walk-in Centres.

The Committee also notes the measures and initiatives taken in Scotland. The Scottish Government is committed to a vision of a modern Primary Care and GP service with more GPs working in Scotland as part of multi-disciplinary teams, alongside nurses, pharmacists, optometrists and other allied health professionals to support patients to live well in their communities, and allow them to access the right person at the right time. The recent 2015/2016 Health and Care Experience Survey has shown an overall positive picture for access to GPs. Over 90% of GP patients said they were able to see or speak to a doctor or

nurse within two working days of requesting an appointment, with an increase in the number of respondents who were happy with their GP opening hours.

The report indicates that in Northern Ireland patients can only receive treatment if they are registered with a GP and to be registered with a GP the patient must be 'ordinarily resident' in Northern Ireland. Emergencies and treatment that is immediately necessary (i.e. treatment that cannot reasonably be delayed), must be provided free of charge by a GP to a person regardless of whether the person is registered or not.

The Committee takes note of the information in the report on the health system and measures taken in the Isle of Man. Access to comprehensive medical care (including maternity, early years and health improvement/prevention programmes) is provided at the point of delivery through community, primary and secondary care services. Tertiary care is commissioned from appropriate specialist centres in England. Current priorities for improving public health are the reduction of lifestyle risk factors – such as smoking, overweight and obesity, drug and alcohol misuse, and sexual health.

Concerning hospital waiting times, the Committee noted previously that since 1 January 2009, the standard in England is that no-one should wait more than 18 weeks from GP referral to the start of hospital treatment or other clinically appropriate outcome unless they choose to do so, or it is clinically appropriate that they wait longer. The Committee asked the next report to indicate how this operational standard is being met in practice (Conclusions XX-2 (2013)).

The report indicates that the NHS Constitution states that patients “*have the right to access certain services commissioned by NHS bodies within maximum waiting times, or for the NHS to take all reasonable steps to offer a range of suitable alternative providers if this is not possible.*” The two waiting time rights, set out in the Handbook to the NHS Constitution, are: (i) to start consultant-led treatment within a maximum of 18 weeks of referral for non-urgent conditions; and (ii) to be seen by a cancer specialist within a maximum of two weeks from GP referral for urgent referrals where cancer is suspected. The report lists the operational standards published by the NHS England in the form of percentage thresholds that set a minimum level of performance (for example 95% of patients to be admitted, transferred or discharged within four hours of arrival in all types of accident and emergency department). The report indicates that the rising demand from a growing and ageing population has made the achievement of these standards more challenging in recent years. As of September 2016, the waiting time standards (for four hour accident and emergency waits, 18 weeks from referral-to-treatment, 62 days to start of cancer treatment, and six weeks for diagnostic tests) were being missed.

Statistical data provided in the report show that the number of patients who were waiting longer than the established deadlines have increased towards the end of the reference period in Northern Ireland. For example, at 31 December 2015, 52.4% (35,113) of patients were waiting longer than 13 weeks for inpatient and day case treatment; with 21,413 of these patients waiting over 26 weeks. At 31 December 2015, 70.0% (164,638) of patients were waiting longer than 9 weeks for a first outpatient appointment; with 122,771 of these patients waiting over 18 weeks.

The Committee asks to be kept informed on the trends in waiting times for both inpatient and outpatient care, supported by statistical data. It reserves its position on this point.

The report indicates that the levels of overweight and obesity in England continue to remain high. Data show that 62% of adults, and 31% of children are either overweight or obese. The Committee notes the concerns of the Equality and Human Rights Commission indicating that the number of people of normal or healthy weight is declining and obesity is on the rise. Only around 30-40% of men and women in Britain are of a normal or healthy weight. The Committee takes note of the information in the report on the measures and campaigns undertaken such as the “Childhood Obesity: A Plan for Action”, “Change4Life”, “Start4Life”. It

also takes note that a ten year strategy to prevent obesity was initiated in 2012 in Northern Ireland. The Committee asks that the next report provide updated information on the levels of overweight and obesity as well as information on the concrete impact/outcome of the measures taken on preventing and reducing obesity both among adults and children.

With regard to mental health, the report indicates that according to NHS England in 2014/2015 mental illness was the single largest cause of disability in England and 1 in 4 people are estimated to have a mental health condition. The Committee takes note from the report of the programmes developed to reform mental health services such as: “Suicide Prevention Strategy”, “Closing the Gap: Priorities for essential change in mental health”, “Better Access to Mental Health by 2020” which set out the commitment to introduce first ever waiting times for mental health, “Future in Mind – children and young people mental health” and the “Five Year Forward View for Mental Health” by the Independent Mental Health Taskforce which set out visions for transforming mental health services by 2020/2021. It also notes the measures taken to improve mental health in Scotland mainly through the Mental Health Strategy 2012-2015. In Wales, *Together for Health* programme contained a number of major health condition delivery plans e.g. heart disease, cancer, diabetes, stroke, neurological conditions, respiratory, liver disease, critically ill and end-of-life care. The Committee asks that the next report to provide information on the impact/outcome of the measures taken on improving the mental health of people.

The Committee notes from the Equality and Human Rights Commission data that groups vulnerable to pressures such as poverty and victimisation show high rates of mental illness. The risk of having poor mental health scores is higher for certain ethnic groups with high poverty rates (for example the risk of mental health problems is nearly twice as likely for Bangladeshi men than for white men). It is reported that mental health is an issue of concern for both the LGBT and transgender population. The Committee asks for comments on these matters in the next report. It 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.

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 the United Kingdom is in conformity with Article 11§1 of the 1961 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 United Kingdom.

Education and awareness raising

In its previous conclusion, the Committee asked for examples of concrete activities and campaigns undertaken by public health services, or other bodies, to promote health and prevent diseases (Conclusions XX-2 (2013)). The report indicates that in April 2013, the Government established Public Health England (PHE) as an executive agency of the Department of Health. PHE supports local authorities (LAs) in England in taking forward their duty to improve the health of their populations, not least through providing the evidence base and advice on public health interventions.

The report lists the range of campaigns carried out by PHE such as: (i) national campaigns to improve the public's health (for example flu vaccination, young people's health and wellbeing "Rise Above"; "Talk to Frank" about drugs advice); (ii) social marketing campaigns like "Starting Well", which includes the flagship Change4Life campaign; "Living Well", which uses the One You brand to inspire and help adults to lead healthier lives and supports smoking cessation; and "Ageing Well", which encourages people to act on a range of signs and symptoms of diseases like cancer, to facilitate earlier diagnosis and help increase survival rates; (iii) campaigns related to maternity and early years such as the "Best Start in Life Programme" aimed at reducing smoking in pregnancy, improving perinatal mental health, improving oral health, reducing inequalities in speech, language and communication, reducing harm from accidents; (iv) campaigns under "Healthy Child Programme" delivered by school nurses related to sexual health, healthy eating, hand washing and antimicrobial resistance.

The Committee previously asked for updated information on health education in schools in England, namely whether it 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 XX-2 (2013)). The report indicates that Change4Life programme makes resources available to schools to support a whole school approach to maintaining a healthy weight, including materials to encourage daily physical activity and healthy eating. PHE published "What works in schools and colleges to increase physical activity" in November 2015. The Childhood Obesity Action Plan states that a Healthy Schools Rating Scheme will be developed for primary schools from 2017/2018 onwards and this will cover physical activity, healthy eating and emotional health and wellbeing.

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 throughout the United Kingdom.

The report further indicates that alcohol and drug education is already a statutory part of the key stage 4 national curriculum for science and teaches children about the effects of recreational drugs, including alcohol, on behaviour, health and life processes. The Government's Drug Strategy confirms the commitment to provide accurate information to young people, and their parents/carers, about drugs and alcohol through education and the FRANK drug information and advice service.

The report indicates that in the Isle of Man a comprehensive programme of 'personal, health, social and economic' education is delivered by teachers in schools, which is overseen by the Department of Education and Children. There is also a programme to support emotional wellbeing and resilience in children and young people.

The Committee takes note from the report of the measures and campaigns undertaken, such as the “Childhood Obesity: A Plan for Action”, “Change4Life”, “Start4Life” to prevent and reduce overweight and obesity.

The Committee asks for updated information in the next report on the concrete measures and campaigns undertaken in England, Scotland, Wales, Northern Ireland and the Isle of Man.

Counselling and screening

The Committee asked previously information on concrete medical checks carried out through the period of schooling (including their frequency, their objectives, and the proportion of pupils covered) (Conclusions XX-2 (2013)). The report indicates that the National child measurement programme (NCMP) measures the height and weight of all children in state schools age 5-6 and 10-11. The measurements taken in the 2015/16 academic year covered 95% of all pupils. The original purpose of the NCMP was as a surveillance tool to determine the obesity prevalence of primary school aged children but it is now used as a method of screening and offering support to children who are not a healthy weight. Similar programmes operate (with the same purpose and frequency) throughout the UK, such as the Child Measurement Programme for Wales and Scottish Child Health Programme.

The Committee asked the next report to indicate what screening activities are funded and organised by the public health system (Conclusions XX-2 (2013)). The report indicates that the “Healthy Child Programme” offers every family a programme of screening tests, immunisations, developmental reviews, information and guidance to support parenting and healthy choices. Through the Healthy Child Programme, health visitors provide advice and support to help parents care better for their child. The Committee recalls that there must be free and regular consultation and screening for pregnant women throughout the country. It asks updated information on the available screening programs for pregnant women and their frequency throughout the United Kingdom.

The report also mentions that Public Health England (PHE) developed a major programme targeting cardio-vascular disease prevention, including the NHS Health Checks which is offered to people aged 40-75 on a 5 year rolling basis. The Committee takes note from the report of the national screening programmes targeted at all children and adults in Wales.

The Committee takes note of the information in the report regarding the screening programmes available in the Isle of Man: breast screening, cervical screening and bowel screening.

The Committee asks that the next report provide updated information on the screening programmes for the population at large available in England, Scotland, Wales, Northern Ireland and the Isle of Man.

Conclusion

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

Healthy environment

The Committee took note previously of the different measures and regulations applicable for the reduction of environmental risks, in particular in the field of air quality, water quality, noise and food safety (Conclusions XX-2 (2013)). It takes note from the report of the measures taken during the reference period in the areas of water quality, contaminated land, exposure to noise and food safety.

The Committee 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 XX-2 (2013)).

With regard to air pollution, the report "Air Pollution in the United Kingdom 2015", concluded that, overall, the latest data showed an improving picture compared to the previous year's data. The report indicates that the Drinking Water Inspectorate publishes annual reports on the quality of drinking water. The report adds that the drinking water in the United Kingdom is of the highest standard, at a record level of quality and among the best in the world. As regards food intoxication, the Food Standards Agency published research on how many people suffer from food poisoning in the United Kingdom every year providing public officials with the most detailed picture yet of this problem.

Tobacco, alcohol and drugs

The Committee previously asked for information on trends on tobacco consumption (Conclusions XX-2 (2013)). The report indicates that smoking rates in England are at their lowest ever levels – down to 16.9% for adults and 8% for 15 year olds. However, there are considerable regional differences and around 7.7 million people in England still smoke. The report indicates that a new tobacco control plan was developed which focuses on the harmful effects of tobacco on disadvantaged communities.

The Committee takes note of the information on the legal framework, measures taken and statistics related to tobacco consumption in Scotland. The report indicates that a detailed report on the use of tobacco in Northern Ireland was published in December 2015 and a Tobacco Control Action Plan for Wales was elaborated as well.

Concerning alcohol, the Committee noted previously that a Government Alcohol Strategy was adopted in March 2012 which set out how local and national government, the alcohol industry and people themselves can combat irresponsible drinking. The Committee asked to be kept informed on the implementation of this strategy (Conclusions XX-2 (2013)). The report indicates that the authorities continue to build on the Alcohol Strategy launched in 2012 to tackle alcohol as a driver of crime and support people to stay healthy.

The Committee takes note of the measures taken during the reference period such as the new Change4Life campaign, education related to the risks of alcohol consumption in schools, the interdiction of sales of alcohol below the level of duty plus VAT to avoid the worst cases of very cheap and harmful alcohol; awareness raising campaigns for children and young persons.

Survey data show a steady decline, over recent years, in the proportion of 11-15 year olds who drink alcohol (falling from 61% in 2003 to 38% in 2014). The report indicates that however, evidence suggests that alcohol consumption has increased over the long-term and alcohol-related harms are still increasing. Alcohol consumption overall has fallen recently, but long term consumption has risen and a significant minority of people misuse alcohol, for

example 1.1 million hospital admissions are alcohol-related (7% of the total). Moreover, the report indicates that alcohol remains one of the fourth biggest behavioural risk factors for disease and death in the United Kingdom along with smoking, obesity and lack of physical activity; and over 6,800 deaths each year in England are thought to be caused by alcohol.

The report mentions that one of the measures taken through the Drug Strategy is to provide accurate information to young people and their parents/carers on drugs and alcohol through education and the FRANK drug information and advice service.

The Committee asks for updated information in the next report on the measures taken to prevent and reduce the consumption of alcohol, tobacco and drugs among all population, in particular young people, and data on the trends in consumption.

Immunisation and epidemiological monitoring

The report indicates that in the United Kingdom the immunisation programme currently protects against 16 different diseases based on high quality independent expert advice from the Joint Committee on Vaccination and Immunisation.

The most recent additions to the programme are: pertussis for pregnant women (2012); Rotavirus for infants (2013); Shingles for older people (2013); Meningococcal disease serogroup B for infants (2015); Meningococcal disease serogroups ACWY for adolescents (2015). In addition, a seasonal flu programme for children was introduced in 2013. The programme will eventually extend to all children aged 2-16 but started with the youngest children first. In 2016/2017 the vaccine was offered to all children aged 2-7 years old. The report states that the coverage rate for the immunisation programmes is high with more than 90% uptake of the target population for most childhood vaccines. The Committee takes note of the information in the report on the coverage rates for the main vaccines in the Isle of Man which is more than 92%.

The Committee asks for updated figures on the coverage rates for the main vaccines throughout the United Kingdom in the next report.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in the United Kingdom is in conformity with Article 11§3 of the 1961 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 United Kingdom.

As regards **family** and **maternity benefits**, the Committee refers to its conclusions on, respectively, articles 16 and 8§1 (Conclusions XX-4 (2015)).

Risks covered, financing of benefits and personal coverage

The Committee refers to its previous conclusions (Conclusions XX-2(2013), XIX-2 (2009) and previous ones) for a description of the separate but corresponding social security schemes operated in Great Britain and Northern Ireland. The report states that reciprocal arrangements between the two ensure that the schemes operate as a single system with contributions and benefit rates and dates of commencement maintained in parity. The Committee notes that the system continues to cover all the traditional risks (medical care, sickness, unemployment, old age, work accidents/occupational diseases, family, maternity, invalidity and survivors) and continues to be based on collective funding: it is funded by contributions (employers, employees) and by the State budget.

In response to the Committee's question, the report confirms that 100% of the population ordinarily residing in the United Kingdom is covered by the universal Health Care system. As regards other branches, the Committee notes from the report under the European Code of Social Security that in 2015 some 47% of the resident population was covered in respect of Sickness (30 512 000 individuals), Old-Age and Survivors benefits (30 527 000 individuals) and that 90% of employees (28 299 000 individuals) were insured for unemployment benefits (Job Seeker Allowance). The Committee previously noted (Conclusions XIX-2 (2009)) that all persons residing in the United Kingdom were eligible for old age, disability and survivors non contributory pensions; that all unemployed jobseekers meeting the qualifying conditions were eligible for unemployment benefits and that all employed persons were covered in respect of work injury risk. It asks the next report to indicate what categories of persons (i.e. employees, self-employed, unemployed, all residents, etc.) are covered under each branch. The Committee furthermore recalls that, in order to assess whether a significant proportion of the total and/or active population in the United Kingdom 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 unemployment, sickness, old-age, disability, work injury and survivors' benefits, the report should provide the percentage of insured individuals out of the total active population.

Adequacy of the benefits

According to Eurostat data, the median equivalised annual income was €20 945 in 2015, or €1745 per month. The poverty level, defined as 50% of the median equivalised income, was €10 473 per year, or €873 per month (€218 weekly). 40% of the median equivalised income corresponded to €698 monthly (€174.5 weekly).

The Committee previously found (Conclusions XX-2 (2013)) that the minimum levels of short-term and long-term incapacity benefits, of state pension and of job seeker's allowance were manifestly inadequate. The State contests this finding in its report, arguing that the benefit rates are considered in isolation, without taking into account the safety net of other benefits and credits available. According to the report, contributory benefits are supplemented by a range of non-contributory, means-tested benefits such as income-related Employment and Support Allowance, income-based Jobseeker's Allowance, Housing Benefit, Attendance Allowance, Disability Living Allowance and Personal Independence

Payment. Therefore, according to the report, the overall income of households should be taken into account when assessing the adequacy of benefits. The report points out that 88% of adults in families/benefit units in receipt of contribution-based ESA or JSA in the UK are in households with equivalised incomes above 40% of median income in 2014/15 (as regards households in receipt of less than 40% of median income, the report explains that this could be because they possess large sums of capital or are not taking up their entitlements to income-related benefits). 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. Supplementary benefits, including social assistance, are taken into account only when an income-substituting benefit stands between 40% and 50% of median equivalised income as defined above. 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 **Sickness**, all employees earning at least GBP 112 (€158) per week are covered by the Statutory Sick Pay (SSP), a contributory benefit which is paid from the fourth day of incapacity and up to 28 weeks. Workers, including the self-employed, who do not qualify for SSP or have exhausted their entitlement to it can claim Employment Support Allowance (ESA). ESA can be awarded on the basis of either National Insurance (NI) contributions (contributory ESA (ESA(C)) or low income (income-related ESA (ESA (IR))). Both elements can be paid at the same time. To be entitled to contributory ESA, a claimant must have paid or been credited enough NI contributions in the previous two tax years (at least 26 weeks paid contributions or contributions paid/credited for at least 50 times the minimum threshold). Since 2012, this benefit can be paid for up to one year for those capable of work-related activity. Income-related ESA is on the other hand a means-tested non-contributory benefit payable without a time-limit. In 2015, SSP amounted to GBP 88.45 (€120) per week. ESA is paid at different rates depending on the individual's age, circumstances and the stage of the claiming process. In 2015, during the first 13 weeks of incapacity, the rate was GBP 57.90 (€82) or GBP 73.10 (€103) per week, for beneficiaries under 25 years of age and those over this age, respectively. As from the 14th week of incapacity, the rates were GBP 102.15 (€144) per week for those capable of work-related activity or GBP 109.30 (€154) for those requiring support. Those in the support group and on income-related ESA, were also entitled to the Enhanced Disability Premium at GBP 15.75 (€22) a week. In addition, according to the report, claimants may qualify for additional support such as Personal Independence Payment, Housing Benefit, Child Tax Credits, or Child Benefit. The Committee notes that the rates of SSP, as well as the minimum levels of ESA, are lower than 40% of the median equivalised income. Accordingly, regardless of the additional social assistance benefits which might be available, the Committee considers that the level of these benefits is manifestly inadequate.

Since 2008, ESA covers not only short-term incapacity but also long-term incapacity (**disability**). Since 2011, recipients of the former Incapacity Benefit have been reassessed for ESA, taking into account their work capability. The report indicates that, with the progressive introduction since 2013 of the Universal Credit (UC) (see also Conclusions on Article 13§1), ESA will remain as contributory benefit and UC will be the non-contributory benefit. The Committee understands from the report that, during the reference period, long-term incapacity benefits were still paid in some cases, at a basic amount of GBP 105.35 in 2015, i.e. €143 per week, to be increased if the disability started before the age of 35 or between 35 and 44. As regards ESA rates, the Committee refers to its remarks above and notes that increased rates are paid in case of enhanced or severe disability (respectively GBP 15.75 and GBP 61.85 per week, i.e. €22 and €84). As the minimum rates of long-term benefits and ESA remain lower than 40% of the median equivalised income, the Committee considers that the level of these benefits is manifestly inadequate.

According to the report, the Welfare Reform Act 2012 simplified the way **industrial injuries benefits** are claimed. Several old schemes were abolished, and all remaining claimants on those schemes were moved to the existing Industrial Injuries Disablement Benefit (IIDB) scheme, thus establishing a single claiming option for all claimants. All employees are compulsorily protected against employment injury and disease and the level of benefit depends on the incapacity level (which should be at least 14%), whether temporary or permanent. In 2015, the level of benefit in case of 100% disablement was GBP 168 (€237) per week. The Committee considers that the level of this benefit is adequate.

The **Unemployment** scheme was amended in 2013, with the introduction of the New Style Job Seeker Allowance (JSA), a contributory benefit granted for a maximum of 182 days in any period of employment. The contribution conditions that a claimant needs to satisfy to be entitled to new style JSA are the same as for old style JSA (at least 50 minimum weekly contributions paid or credited in the last two years, of which at least 26 weekly contributions paid in one year). In addition to the contributions requirement, new style JSA claimants are also required to be available for work and search for work for up to 35 hours a week. Failure to follow the work related requirements will result in a benefit sanction (suspension of benefit payment for one to 26 weeks). The Committee recalls that there must be a reasonable initial period during which an unemployed person may refuse a job or a training offer not matching his previous skills without losing his unemployment benefits. It refers to its Conclusions XXI-1 (2016), concerning Article 1§2, where it noted that the recipients of unemployment benefit is, in principle, entitled to reject a job offer that does not correspond to their customary occupation during an initial 13-week period ("permitted period"), but that decisions on this issue were made on a case-by-case basis, depending on circumstances. The Committee asks the next report to provide details of the sanctions applicable in the case of a refusal of a job offer not matching the claimant's profile, as well as on the judicial remedies available. Regardless of whether a jobseeker is entitled to the contributory JSA, a non-contributory benefit (Universal Credit (UC)) is also available to persons whose total income is below GBP 16 000 (€22 583), whose partners do not work more than 24 hours/week and who have been resident in the United Kingdom for at least three months before the claim. The income-related assistance is provided for an unlimited duration, as long as the entitlement conditions continue to be satisfied. In 2015, the rates of the New-Style JSA amounted to GBP 57.90 (€82) per week or GBP 73.10 (€103) per week, depending on whether the claimant was aged between 18 and 24 or was older. The Committee notes from MISSOC that the basic level of non-contributory unemployment benefit for single people was the same as for contribution-based JSA. The Committee understands from the report that the contributory and non-contributory benefit can be combined, and that additional benefits might apply such as the ESA and Personal Independence Payment, in case of work incapacity, as well as Housing benefits, Child benefits and Child Tax Credits. It notes however, that the minimum levels of the unemployment benefits (New Style JSA and non-contributory benefits) are both below 40% of the median equivalised income, and that at least for people younger than 25 this remains the case even when both contributory and non-contributory benefits are taken together. It accordingly considers that the levels of (contributory and non-contributory) unemployment benefits are manifestly inadequate.

The Committee notes that the levels of the contribution-based ESA and JSA, as well as of the SSP, have also been found too low to comply with the requirements of ILO Convention No. 102 (Observation (CEACR) – adopted 2016, published 106th ILC session (2017) concerning Social Security (Minimum Standards) Convention 1952, No. 102) and the European Code of Social Security (Committee of Ministers' Resolution CM/ResCSS(2016)21 on the application of the European Code of Social Security by the United Kingdom, Period from 1 July 2014 to 30 June 2015).

As regards **old-age** pensions, the report describes the new State Pension scheme adopted in 2014, which applies to people reaching state pension age on or after 6 April 2016. As the implementation of this reform falls out of the reference period, the Committee will examine it

when it will next assess the UK conformity to Article 12§1 of the Charter. It asks the next report to provide all relevant and updated information in this respect.

The old-age pension system which applied during the reference period was a two-tier system that consisted of the basic state retirement pension (basic flat-rate benefit) and the second state pension (earnings related additional pension) which was paid to men aged 65 and women aged 63 with at least 30 years of paid or credited contributions. A non-contributory pension (Pension credit) was furthermore available for people who were not entitled to the contributory pension. According to the report, the full basic (contributory) pension for a single person was GBP 115.95 (€164) in 2015, and the average amount paid in November 2015 was GBP 130.71 (€186). This basic amount would be increased under the Graduated Benefit scheme and the Second state pension scheme, depending on the duration and level of contributions. According to the report, the average amount paid in November 2015 was GBP 136.03 (€193) when considering also these increases. The Committee notes that the basic State Pension rate, taken alone, was lower than 40% of the median equivalised income and that there is no defined minimum as regards the graduated benefit and second pension increases. However, it notes from the examples indicated in the report that, conditional upon resources, the basic amount is topped up with the non-contributory pension, the level of which was, in 2015, GBP 151.20 (€214) for a single person, to which a number of additional benefits, depending on personal circumstances (age, disability, winter weather...) might be added (such as the Housing Benefit, the ESA, winter fuel payment of GBP200, i.e. €283; the Christmas bonus of GBP 10, i.e. €14 etc.). The Committee asks the next report to clarify whether a recipient of the minimum state pension whose income would be lower than the legal threshold, even when adding the graduated benefit and second pension increases, would be entitled to receive as a supplement the non-contributory pension. It also asks under what circumstances a person might only receive the basic state pension, without any increases. In the meantime, it reserves its position on this point.

Conclusion

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 12§1 of the 1961 Charter on the grounds that:

- the level of the Statutory Sick Pay (SSP) is inadequate;
- the minimum levels of the Employment Support Allowance (ESA) are inadequate;
- the level of long-term incapacity benefits is inadequate;
- the level of unemployment benefits 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 United Kingdom.

Types of benefits and eligibility criteria

The Committee takes note from MISSOC of the benefits that are administered and paid centrally. The following are granted on the basis of a subjective right:

- Income support – means-tested scheme providing financial help for people who are not in full-time work, who are not required to register as unemployed and whose income from all sources is below a set minimum level.
- Jobseekers' Allowance (income-based): means-tested scheme for resident unemployed people whose income from all sources is below a set minimum level and who are not in full-time work;
- Pension Credit: means-tested minimum income guarantee scheme for men and women over the women's state pension age;
- Employment Support Allowance (ESA): means-tested social assistance scheme for people unable to work because of sickness or disability.
- Housing benefit: means-tested social assistance scheme to help people in and out of work who are on a low income and who need help to meet their rent liability.

The report summarises the the main provisions of the Welfare Reform Act of 2012. The Committee notes that Universal Credit replaced income based Jobseeker's Allowance, as well as income-related Employment and Support Allowance and Income Support. According to the report as of November 2016 over 420,000 claimants were receiving Universal Credit.

In its previous conclusion (Conclusions XX-2 (2013)) the Committee noted that under the Welfare Reform Act 2012 sanctions (suspension of benefits) would be strengthened and the hardship payments would be granted only to those claimants in greatest need. It asked the next report to clarify what criteria would be applied in practice to ensure that, in conformity with the Charter, a person is not be deprived of his/her means of subsistence. In response, the report states that if a claimant demonstrates they cannot meet their immediate and most essential needs, including accommodation, heating, food and hygiene, as a result of their sanction, they can apply for a hardship payment. Claimants who are sanctioned can apply for hardship payments equivalent to 60% of their normal benefit payment. Universal Credit claimants can apply for hardship payments as soon as they receive a payment reduced by a sanction. In addition to hardship payments, claimants who are not eligible or do not have day one access are signposted to local authorities where they can receive immediate assistance. Each local authority will tailor their support to meet the needs of their communities.

The Committee notes from the submission of Just Fair to the Committee on Economic, Social and Cultural Rights of October 2015 (Parallel Report regarding the Implementation of the International Covenant on Economic, Social and Cultural Rights in the United Kingdom of Great Britain and Northern Ireland) that available evidence suggests that the post-recession rise in UK hunger is intimately connected to the rise in benefit delays, caused by an increase in both benefit sanctioning, as well as maladministration (particularly with regard to late payment and underpayment). In 2001, 279,840 Job Seekers Allowance (JSA) sanctions were imposed; by 2013, this number had risen to 553,000.

According to Just Fair, stricter sanctions and conditionality regulations were introduced by the Coalition Government on 22nd October 2012. Benefit sanctions are the cessation of benefit payments for a period of 4 – 156 weeks, in circumstances where the Department of Work and Pensions finds that the person has not done everything they can to find work. Just Fair observes that the high percentage of successful appeals against welfare benefit decisions provides further confirmation of the prevalence of poor administration.

The Committee further notes from the same source that previously, when individuals faced hunger due to sanctions or late payment, they could potentially rely on crisis loans to obtain vital short-term expenses, such as food or clothes, or community care grants to obtain basic living essentials, such as cooking equipment. However, fiscal responsibility for crisis loans and community care grants was transferred to local authorities in April 2013.

The potential for crisis loans to assist in securing access to food was greatly diminished by localisation, as many councils restricted eligibility criteria for the fund. As a result, only 20% of the money available had been spent during the first six months of the transfer, with some councils allocating as little as 1% of their crisis loan budgets. In January 2014, the Government announced that the fund would be cut completely by April 2015.

The Committee observes that Just Fair's recommends to the Government to undertake further research in order to determine why food bank usage has significantly increased in recent years. It also recommends that the Government urgently reforms the benefit sanctions scheme, and takes steps to reduce benefit delay.

The Committee asks the next report to provide comprehensive comments as regards the situation concerning maladministration and benefit sanctioning as well as crisis loans. The Committee holds that if this information is not provided in the next report, there will be nothing to establish that there is an effective right to social assistance for all persons in need.

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 Personal Allowances paid to a single person over 25 years of age stood at €103 per week in 2015.
- Additional benefits: according to MISSOC the amount of Premium paid to a single person stood at €46 per week. Winter Fuel Payment, an annual lump sum payment stood at €282 per year for persons up to the age of 79 and at €423 if aged 80 or over. Cold weather payment was paid automatically to people receiving specified means-tested benefits, which stood at €35. The Committee notes from another source (<https://www.gov.uk/government/statistics/housing-benefit-caseload-statistics>) that the average weekly award of housing benefit in 2015 stood at £95 (€123) for all claimants (all tenure types).
- 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 at €873.

The Committee considers that the level of social assistance, including supplements, that can be obtained by a single person without resources is adequate as it is compatible with the poverty threshold.

Right of appeal and legal aid

In reply to the Committee's question the report states that Mandatory Reconsideration (MR) was introduced for Universal Credit and Personal independent Payment in April 2013 and for all other benefits from October 2014. The Committee notes that there has been a significant drop in appeals, particularly in ESA, since the introduction of MR.

According to the report, Mandatory Reconsideration is a key component of the decision making process which if done properly benefits both claimants and the Department. The Department's Social Security Advisory Committee (SSAC) decided to research the effectiveness of its introduction, focusing on ESA. In its recently published Report, whilst it approved the policy, it made a number of recommendations around the process. Even though the statistics suggest that MR is working in that claimants are being given the

opportunity to present new evidence and very few go on to appeal, the department recognises the need for the improvements recommended by SSAC e.g. how it gathers key information from claimants at the MR stage, rather than have this produced only on appeal, and will be addressing these over the coming months. The Committee asks to be kept informed of the results as well as the relevant statistics.

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, in the light of the explanations and case-law examples provided, the Committee found that the "habitual residence" test, as applied in the United Kingdom was in conformity with the Charter. It asked nevertheless to be kept informed of any legislative or other development in this area, as well as of any relevant data concerning the applications accepted and rejected, in relation with the entitlement to social and medical assistance benefits.

The Committee notes that since 2013 the Government has introduced a number of changes with regard to EEA nationals' access to benefits. According to the report, these measures are designed to ensure that only those who come to the UK to work, and have a realistic chance of finding work, are able to access the benefits system. In particular, the Committee notes that in December 2013 a more robust Habitual Residence Test was introduced and used for face to face interviews with migrants and returning UK nationals claiming benefits. The strengthened test is intended to help benefit decision makers to make more consistent decisions on benefit entitlement.

- Since 1 January 2014, newly arrived jobseekers have been unable to claim income-based Jobseeker's Allowance until they have been living in the UK for a period of three months. This is in addition to the requirement to demonstrate that they are habitually resident. This measure also applies to UK nationals returning to the UK after an extended absence abroad.
- Since 1 January 2014, immigration regulations only allow EEA nationals to reside in the UK as a jobseeker or as a person who 'retains' worker status for a maximum of six months, unless they have genuine chance of getting work. A 'Genuine Prospect of Work' assessment is applied after six months to EEA nationals claiming income-based Jobseeker's Allowance. The 'Genuine Prospect of Work' assessment considers whether the claimant has an imminent job start or has had a change of circumstances leading to a potential job offer. If compelling evidence not provided, the EEA national's right to reside in UK ends and entitlement to income-based Jobseeker's Allowance stops. If evidence of a job offer is provided, payment of this benefit will be extended to the date of the job start. Furthermore, from November 2014, the length of time new EEA

jobseekers could claim JSA (IB) was reduced from 6 months to 91 days (after satisfying an initial 3 month residence requirement) unless they passed a GPoW assessment. In February 2015 this measure was extended to existing long-term claimants.

- Since 1 April 2014, EEA migrants with a right to reside as a jobseeker are unable to access Housing Benefit.
- Since 10 June 2015, new EEA migrants with a right to reside as a jobseeker are unable to access Universal Credit.

The Committee recalls that Article 13§1 of the Charter does not regulate procedure for admitting foreigners to the territory of States Parties and the rules governing resident status are left to national legislation. As a result, that status may be made subject to a condition of length of residence or presence in the territory. However, once the residence status has been granted and the foreigner concerned becomes lawfully resident, he/she should be made eligible to claim benefits in case of need, without any length of residence requirement.

The Committee notes that for EEA nationals access to benefits has been restricted (three months waiting period and the requirement to prove that there is a genuine prospect of work after three months) or denied (e.g. housing allowance and universal credit). As regards the practical application of these restrictions the Committee notes from the Analysis of EEA Migrants' Access to Income-Related Benefits Measures that In 2015/16, 92% of JSA claims by EEA jobseekers lasting three months or longer were cut short because the claimant was unable to provide evidence of a Genuine Prospect of Work (GPoW). Over the initial period in which measures were introduced (November 2013 to August 2015), there was a 45% fall in new JSA claims by EEA nationals and a 68% fall in the JSA EEA national caseload.

The Committee asks if during the three months waiting period as well as in case of a failure to provide evidence of a genuine prospect of work after three months, the persons concerned, who have also been denied the right to housing benefit, cannot meet their immediate and most essential needs, including accommodation, heating, food and hygiene, can apply for a hardship payment and if so, what the hardship payment consists of. The Committee also asks what rules apply to non-EEA nationals. Furthermore, the Committee asks the next report to provide updated statistics on the numbers of foreign nationals, lawfully resident in the UK who fail to meet the habitual residence test and are denied access to benefits because of the restrictions imposed. In the meantime, the Committee reserves its position.

Nationals of States Parties unlawfully present in the territory

As regards emergency medical assistance, according to the report, some groups of unlawfully present foreign nationals are exempt from charges, such as, among others, asylum seekers, failed asylum seekers receiving support under section 21 of the Nationals Assistance Act 1948 or the Care Act 2014. Other unlawfully present foreign nationals are chargeable for all hospital services they receive, unless the service itself is exempt from charge.

Treatment which a clinician considers to be immediately necessary, or urgent enough not to be able to wait until the patient has returned to their home country, will always be given regardless of whether or not a chargeable patient has paid in advance or will be able to do so. This does not mean that the treatment is then free; hospitals must make and recover charges from the person liable to pay but can decide not to actively pursue for debt when the person is genuinely without funds if not considered cost effective to do so.

As regards primary care, General Practitioners have a measure of discretion as to who they accept as NHS patients on their lists and provide with free primary medical services. They can only turn down an application to join their list of patients if they have a reasonable reason for doing so which would not include a person's immigration status. Any primary care

treatment which a health professional considers to be immediately necessary would be provided regardless of registration.

In its previous conclusion (Article 13§4) the Committee asked the next report to clarify whether compliance with the Social Charter is taken into account by the authorities when assessing the need to provide emergency social assistance to people excluded from the National Assistance Act.

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 as regards emergency social assistance.

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 United Kingdom.

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

The Committee concludes that the situation in United Kingdom is in conformity with Article 13§2 of the 1961 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 United Kingdom.

The Committee notes that, according to the report, the situation which it has found to be in conformity with the Charter (Conclusions 2013) has not changed.

However, the Committee notes that in their Submission to the Committee on Economic, Social and Cultural Rights of October 2015 (Parallel Report regarding the Implementation of the International Covenant on Economic, Social and Cultural Rights in the United Kingdom of Great Britain and Northern Ireland), Just Fair has observed that Citizens' Advice services have had their funding cut in recent years and struggle to provide the same level of service as previously, at a time when demand is at an all time high due to the extent and breadth of welfare reform. According to Just Fair, reductions in local authority funding have forced councils to reduce funding of local advice charities, including Citizens' Advice Bureaux. Many advice services have therefore been forced to downsize.

The Committee asks the next report to provide comments on these observations and to indicate what measures were taken to mitigate the impact of reduced funding for advice services. It also asks for updated information as regards operation of social services offering advice and personal assistance specifically addressed at persons without adequate resources or at risk of becoming so.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in United Kingdom is in conformity with Article 13§3 of the 1961 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 United Kingdom.

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.

As regards emergency medical assistance, the Committee notes from the report that *primary care* continues to be free to all, other than statutory charges that apply to all patients (unless they qualify for an exemption).

As regards *secondary care*, entitlement to free NHS hospital treatment is based on whether the person seeking treatment is "ordinarily resident" in the UK. This broadly means that the person is living here on a lawful, voluntary and properly settled basis for the time being. From April 2015, non-EEA nationals must also have the immigration status of indefinite leave to remain.

Those people who are not ordinarily resident are deemed overseas visitors and are subject to the NHS (Charges to Overseas Visitors) Regulations 2015, as amended, which place a legal duty on NHS hospitals to identify those patients who are overseas visitors and to make and recover the charge for their treatment, unless they are covered by an exemption from charge category listed within these regulations. One category of exemption is for an overseas visitor who is a national of a state which is a contracting party to the European Social Charter, where they are lawfully present in the UK and without sufficient resources to pay the charge. This is limited only to treatment the need for which arises during their visit to the UK.

Furthermore, from April 2015, an immigration health surcharge is payable by non-EEA nationals who apply for a visa to enter or remain in the UK for more than six months.

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§4 as regards emergency social assistance to unlawfully present foreign nationals and asks what is the situation with lawfully present foreign nationals.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in United Kingdom is in conformity with Article 13§4 of the 1961 Charter.

Article 14 - The 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 United Kingdom.

Organisation of the social services

In its previous conclusion (Conclusions XX-2 (2013)) the Committee asked further information on a reform that aimed to enable social care professionals to undertake their role more effectively and empower care users.

In reply, the report indicates that following the adoption of the Care Act 2014 there is a new care system in place in England from April 2015 that prioritises independence and wellbeing at an early stage and throughout an older person's care journey. The measures set out in the Care Act try to support better access, quality and sustainability. The Care Act 2014 provides the legislative framework for the Adult Social Care system. It defines the way the system works, the responsibilities of local government and their partners, and the rights, outcomes and experience of people who need care, carers and their families. In this respect the Committee asks the next report to provide information on the implementation of the Care Act 2014 in practice and the impact of this reform on the users of social welfare services.

The report states that in Scotland the Scottish Government works in partnership with service users, carers, local authorities, the National Health Service, the Care Inspectorate as well as the voluntary and independent sectors to improve community care services. In order to improve social services two public bodies have been established in April 2011: the Care Inspectorate who is in charge of inspecting, regulating and supporting the improvement of social care and social work services and the Healthcare Improvement Scotland who takes over the regulation of independent healthcare services and is an authority on the development of evidence-based advice, guidance and standards to support health and social care improvement. In this respect the Committee asks that the next report provides information on the impact on client/users after the introduction of these two new public bodies.

As regards Northern Ireland, the report provides a comprehensive picture of social services expenditure and provision across all major programmes of care and the five Health and Social Care Trusts (HSCTs). The HSCTs provide integrated health and social care services across Northern Ireland, manage and administer hospitals, health centres, residential homes, day centres and other health and social care facilities and they provide a wide range of health and social care services to the community. In 2012, a review of the provision of health and social care services ("Transforming Your Care") was undertaken, with the aim to bring forward recommendations for the future shape of services and provide an implementation plan. The implementation of "Transforming Your Care" is being developed in some of the key areas, such as an Integrated Care Partnerships (bringing together health and social care providers from both the statutory and voluntary sector), a Self Directed Support (increases the choice, flexibility and control that services users have over their social care budget and the services they receive), etc.. In this respect the Committee asks the next report to provide information on the impact of these changes on the users of social welfare services.

In its previous conclusion (Conclusions XX-2 (2013)) the Committee asked for information on the legislative developments taking place in Wales.

The report indicates that in Wales during the reference period the debate about paying for care was part of the Welsh Government's wider reform of social care, as set out in its strategic direction 'Fulfilled Lives, Supportive Communities' (June 2008). That established the principle of local authority social services supporting individuals to live independently as possible, wherever possible at home. The Welsh Government has reformed arrangements

for the funding of care and support. More fundamental reform of social services in Wales took place outside the reference period.

The report indicates that the Social Services and Well-being (Wales) Act 2014 came into force in April 2016 outside the reference period. The Committee asks that the next report to provide information on the implementation of this Act in practice and on the impact of this reform on the respective users of these social services.

The report gives information on social services' organisation on the Isle of Man. The responsibility for social and mental care was transferred to the newly formed Department of Health and Social Care from 1st April 2014. The Social Care Division is divided into three service areas: Adults, Children and Families, and Mental Health. The total expenditure across the service areas was of 25.063.000 GBP in 2015/2016. The legal basis for the provision of services to adults is contained in the Social Services Act 2011 and the Chronically Sick and Disabled Persons Act 1981 which provides a legal framework for the assessment and provision of support to those people deemed eligible for Social care services. The report indicates that a Fair Access to Care Services Eligibility Criteria was introduced in December 2013. It assesses those eligible for support and enables charges to be made for the provision of social care services to meet assessed needs. As a requirement of the Regulation of Care Act 2013 all social work staff must be registered with the Health Care Professionals Council (HCPC). The report also indicates a number of services provided including statistics on social services activity.

Effective and equal access

As to the equal and effective access of persons to social services the Committee refers to its previous conclusion where it found the situation to be in conformity.

The report gives a substantial statistical overview for the reference period, including data on social services workforce and personal services activity (places in residential homes, number of clients receiving home care, nursing home care packages etc.) as well as the breakdown of expenditure in 2014/2015 in Northern Ireland by Programme of Care .

The report also indicates a number of measures, programmes and guidance and regulations implemented for improving social services for children and young people. In 2014, the Department for Education reformed the care planning and children's homes regulations to improve the safety of children in residential care. The report underlines that the first cross-government care leaver strategy was published in 2013 which recognised the need to work coherently across government to address care leavers' needs and introduced a number of changes to policies and practices so that care leavers were better supported. A progress update was published in 2014 to ensure that support for care leavers is embedded in all relevant departmental policies.

According to the report, the Children and Families Act 2014 takes forward the government's commitments to improve services for vulnerable children and families; it introduced changes to support the welfare of children.

Quality of services

The Committee refers to its previous conclusions for a detailed description of the quality of services and data protection.

The report indicates that the Care Quality Commission (CQC) oversees national standards and checks whether hospitals, care homes and care services, including care in the home, comply with those standards. The CQC makes sure that health and social care services provide people with safe, effective, high-quality care and encourage care services to improve. It also has the role to promote and protect equality and human rights for everyone who uses health and social care services. It also has an additional responsibility to protect the human rights of people whose circumstances make them vulnerable, such as people

who are being cared for under the Mental Health Act or the Mental Capacity Act Deprivation of Liberty Safeguards.

The report indicates that with the introduction of the Protection of Freedoms Act , in 2012 a specific service to safeguard vulnerable groups clients, the Disclosure and Barring Service (DBS) helps employers make safer recruitment decisions and prevent unsuitable people from working with vulnerable groups, including children.

The report also indicates that in Northern Ireland the Regulation and Quality Improvement Authority set up in 2005 (RQIA) is responsible for registering, inspecting and encouraging improvement in a range of health and social care services delivered by statutory and independent providers, in accordance with The Health and Personal Social Services (Quality, Improvement and Regulation)(Northern Ireland) Order 2003 and its supporting regulations. The RQIA regulates facilities including residential care homes; nursing homes; children's homes; independent health care providers; nursing agencies; adult placement agencies; domiciliary care agencies; residential family centres; and day care settings. RQIA also inspects schools providing accommodation. The Northern Ireland Social Care Council (NISCC) is the regulatory body for the social care workforce in Northern Ireland. The NISCC was established to increase public protection by regulating the social care workforce and professional training courses for social workers. The standards of professional practice and conduct required of social care workers are set down in the NISCC Code of Practice for Social Care Workers. The NISCC Code of Practice for Employers of Social Care Workers sets down the responsibilities of employers in the regulation of social care workers.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in the United Kingdom is in conformity with Article 14§1 of the 1961 Charter.

Article 14 - The 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 United Kingdom.

The report indicates that the Department of Health recognises the vital role played by active individuals and voluntary organisations in delivering client focused services. The White Paper *Caring for our future: reforming care and support* (2012) sets out the Department of Health's commitment to make it easier for people to contribute to their communities through volunteering schemes and to support the growth and development of neighbourhood support models that help people share time, talents and skills with others in their community.

In its previous conclusion (Conclusions XX-2 (2013), the Committee asked for information on the implementation of "The Compact", an agreement which governs relations between the Government and the civil society organisation, such as charities, in England.

In reply to the Committee requests, the report states that "The Compact" lays the foundation for effective, mutually beneficial partnership working between the Government and Civil Society Organisations (CSOs). It includes areas such as promoting CSO's involvement in policy design, service design and delivery, funding arrangements, promoting equality and strengthening independence. According to the report the government remains supportive of the principles of the Compact and will take a decision about re-signing it in due course.

In its previous conclusion (Conclusions XX-2 (2013), the Committee in the absence of information concerning the issue of discrimination, 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.

In reply to the question, the report states that the Equality Act 2010 requires equal treatment in access to private and public services, regardless of the protected characteristics of age, disability, gender reassignment, marriage and civil partnership, race, religion or belief, sex, and sexual orientation. It emphasises that civil cases can be brought against those in violation of the Act.

In its previous conclusion (Conclusions XX-2 (2013), the Committee requested information on the total budget for grants from the Department of Health to the voluntary sector.

In reply to the question, the report indicates that the total budget on grants to voluntary sector organisations in 2015/16 was £66,420,935.

The report also underlines that the Care Act (2014) states that local authorities must promote the efficient and effective operation of a sustainable market in services for meeting care and support needs and ensure that there is a meaningful choice of providers who, when taken together, provide a variety of services. This could be independent private providers, third sector, and voluntary and community based organisations, including user-led, mutual and small businesses.

The report also indicates a number of initiatives and reports that provide a framework, supported by detailed advice and tools aiming to encourage public social services to take a more strategic approach towards volunteering.

The Committee, in the absence of information concerning the supervisory mechanisms to control the quality of services and ensure the rights of the users, asks that the next report provide updated information on the implementation of effective supervisory system of social services also in the private sector.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in the United Kingdom is in conformity with Article 14§2 of the 1961 Charter.