



March 2022

EUROPEAN SOCIAL CHARTER (REVISED)

European Committee of Social Rights

Conclusions 2021

MALTA

This text may be subject to editorial revision.

The function of the European Committee of Social Rights is to rule on the conformity of the situation in States with the European Social Charter. In respect of national reports, it adopts conclusions; in respect of collective complaints, it adopts decisions.

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

The following chapter concerns Malta, which ratified the Revised European Social Charter on 27 July 2005. The deadline for submitting the 14th report was 31 December 2020 and Malta submitted it on 16 December 2020.

The Committee recalls that Malta was asked to reply to the specific targeted questions posed under various provisions (questions included in the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter). The Committee therefore focused specifically on these aspects. It also assessed the replies to all findings of non-conformity or deferral in its previous conclusions (Conclusions 2017).

In addition, the Committee recalls that no targeted questions were asked under certain provisions. If the previous conclusion (Conclusions 2017) found the situation to be in conformity, there was no examination of the situation in 2020.

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 concerned the following provisions of the thematic group II "Health, social security and social protection":

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

Malta has accepted all provisions from the above-mentioned group except Articles 12§2 and 30.

The reference period was from 1 January 2016 to 31 December 2019.

The conclusions relating to Malta concern 15 situations and are as follows:

– 3 conclusions of conformity: Articles 3§1, 3§2 and 14§1.

– 7 conclusions of non-conformity: Articles 3§3, 11§2, 11§3, 12§1, 13§1, 13§3 and 23.

In respect of the other 5 situations related to Articles 11§1, 12§3, 12§4, 13§4 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 Malta under the Revised Charter.

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

- the right to just conditions of work (Article 2);
- the right to a fair remuneration (Article 4);
- the right to organise (Article 5);
- the right to bargain collectively (Article 6);
- the right to information and consultation (Article 21);
- the right to take part in the determination and improvement of the working conditions and working environment (Article 22);
- the right to dignity at work (Article 26);

- the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28);
- the right to information and consultation in collective redundancy procedures (Article 29).

The deadline for submitting that report was 31 December 2021.

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

Article 3 - Right to safe and healthy working conditions

Paragraph 1 - Safety and health regulations

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

The Committee notes that for the purposes of this report, States were asked to reply to the specific targeted questions put to them in relation to Article 3§1 of the Charter, as well as, where applicable, previous conclusions of non-conformity or deferrals (see appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the remit of the thematic group “Health, social security and social protection”).

In its previous conclusion, the Committee found that the situation in Malta is in conformity with Article 3§1 of the Charter (Conclusions 2017). It will therefore restrict its consideration to the Government’s replies to the targeted questions.

The Committee wishes to point out that it will take note of the reply to the question relating to Covid-19 for information purposes only, as it relates to developments outside the reference period (i.e., after 31 December 2019). In other words, the information referred to in the Covid-19 section below will not be assessed for the purposes of Charter compliance in the current reporting cycle.

General objective of the policy

In its targeted question, the Committee asked about policy formulation processes and practical arrangements made to identify new or emerging situations that represent a challenge to the right to safe and healthy working conditions, the results of such processes as well as intended future developments.

The Committee observes that the Strategic Plan for Occupational Health and Safety 2014-2020 identifies “new and emerging risks” as one of the top five key priorities for 2014-2020 and sets out a non-exhaustive list of specific initiatives that the Occupational Health and Safety Agency (OHSA) intends to take in order to achieve healthier and safer workplaces, especially with regard to new and emerging risks. The report specifically refers to the following activities: the regular review and update of policies and legislation; the provision of continuous training for OHSA Officers to reflect changing circumstances; implementation of actions to address new risks, such as Covid-19; the provision of information and awareness-raising courses for employers, self-employed workers and workers; the implementation of specific actions targeting different risk groups; the issuing of guidance documents; monitoring and keeping up to date with research and findings; the promotion of early warning systems and formulation of an action plan to improve the quality of service provided by occupational health service providers; the provision of information and training to medical practitioners; and detailed analysis of workplace statistics.

The Committee also notes that OHSA is working with various stakeholders to identify funding options to be able to carry out, or to commission, research with regard to new and emerging risks. Moreover, it also notes that OHSA is in the process of strengthening its legislative framework regarding the obligation of medical practitioners to notify the relevant authorities when work-place related diseases are identified.

The Committee considers that this policy aims to foster and preserve a culture of prevention in occupational and safety health at the national level.

Organisation of occupational risk prevention

The Committee previously found the situation to be in conformity in this respect (Conclusions 2017).

Improvement of occupational safety and health

The Committee previously found the situation to be in conformity in this respect (Conclusions 2017).

Consultation with employers' and workers' organisations

The Committee previously found the situation to be in conformity in this respect (Conclusions 2017).

COVID-19

In its targeted question, the Committee asked about the protection of frontline workers, instructions and training, the quantity and the adequacy of personal protective equipment provided to workers, and the effectiveness of these measures within the context of the Covid-19 pandemic.

The Committee notes that OHSa took an active role in addressing the risks posed by Covid-19. In this regard, OHSa developed an internal action plan detailing the measures to be taken to address risks posed by Covid-19 and issued various guidance documents concerning the management of Covid-19. It also participated in various webinars, radio and TV programmes concerning Covid-19, and addressed several queries from employers, self-employed persons and workers. The Committee further notes that the OHSa gathered Covid-19 data and participated in discussions on Covid-19 held amongst the EU countries, sharing both its guidance documents and its action plan so they could serve as guidance for EU labour inspectorates. The Committee notes that, in the context of the initiative taken at EU level by the European Commission, the OHSa promoted the influenza vaccine during its inspections and via its media channels.

The Committee recalls that, during a pandemic, States Parties must take all possible measures as referred to above in the shortest possible time, with the maximum use of available financial, technical and human resources, and by all appropriate means, both national and international in character, including international assistance and cooperation.

The Committee notes that, according to the report, special attention was paid to Covid-19 related issues. Based on the information in the report, the Committee understands that the Government is aware that that general safety rules on training and instructing of workers and on personal protective equipment have still to be applied, given the evolution of the pandemic, and remarks that the prompt provision of necessary personal protective equipment is particularly necessary in the case of frontline workers.

In line with its Statement on Covid-19 and social rights (March 2021), the Committee recalls that, in the context of the Covid-19 crisis, and with a view to mitigating the adverse impact of the crisis and accelerating the post-pandemic social and economic recovery, each State Party must assess whether its existing legal and policy frameworks are adequate to ensure a Charter-compliant response to the challenges presented by Covid-19. Where those frameworks are not adequate, the State must amend them within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources, including through the adoption of any additional measures that are required to ensure that the State is able to comply with its Charter obligations in the face of the social rights risks posed by the Covid-19 crisis.

The Committee points out that, in order to secure the rights set out in Article 3, a response to Covid-19 in terms of national law and practice should involve the immediate introduction of health and safety measures at the workplace such as adequate physical distancing, the use of personal protective equipment, strengthened hygiene and disinfection measures, as well as stricter medical supervision, where appropriate. In this respect, due account should be

taken of the fact that certain categories of workers, such as frontline health care workers, social workers, teachers, transport and delivery workers, garbage collection workers, and agro-food processing workers are exposed to heightened risks. States Parties must ensure that their national policies on occupational safety and health, and their health and safety regulations, reflect and address the hazardous agents and the particular psychosocial risks faced by different groups of workers in the Covid-19 context. The Committee also stresses that the situation requires a thorough review of occupational risk prevention at national policy level, as well as at company level, in close consultation with the social partners as stipulated by Article 3§1 of the Charter. The national legal framework may require amendment, and risk assessments at company level must be adapted to the new circumstances.

Conclusion

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

Article 3 - Right to safe and healthy working conditions

Paragraph 2 - Safety and health regulations

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

The Committee notes that for the purposes of the present report, States were asked to reply to the specific targeted questions posed to States for this provision (questions included in the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Health, social security and social protection”) as well as previous conclusions of non-conformity or deferrals.

The previous conclusion was one of conformity pending receipt of information requested (Conclusions 2017). The assessment of the Committee will therefore only concern the information provided by the Government in response to the targeted question.

Content of the regulations on health and safety at work

In previous conclusions, the Committee noted that, according to ILO database NORMLEX, the number of ILO Conventions ratified by Malta was particularly low in the important shipping, fishing and docking sectors, and asked for information on the Government’s intent to improve the situation in this regard (Conclusions 2013, 2017).

It also previously noted that the Control of Major Accident Hazards Regulations were repealed during 2015 and a new set of regulations were published to include all amendments to the relevant EU Directive. The Committee requested the next report to provide further details about these regulations (Conclusions 2017).

The report contains no information on these issues, it states that Malta’s national Occupational Health and Safety (OHS) regulatory framework is constantly updated to reflect the amendments made through specific OHS EU Directives. Therefore the Committee asks that the next report provide updated information on the most important regulations on health and safety at work.

In its targeted question on Article 3§2, the Committee asked for information on regulations adopted to improve health and safety in evolving new situations such as in the digital and platform economy by, for example, strictly limiting and regulating electronic monitoring of workers, by recognising a right to disconnect, right to be unavailable outside agreed working and standby time, mandatory digital disconnection from the work environment during rest periods. It also requested information on regulations adopted in response to emerging occupational risks.

According to the report matters concerning harassment, electronic monitoring of workers, mandatory digital disconnection from the work environment during rest periods, these form part of the conditions of employment and thus are addressed and regulated by the Department of Industrial and Employment Relations (DIER). The Committee asks for more information on the regulations in this respect (and the role of the Labour Inspectorate in monitoring them).

The report states that work-related stress, is high on OHS’s agenda. Work-related stress has been consistently identified as one of the major workplace concerns. In this regard, OHS has implemented various activities to address this issue. Activities such as the organisation of seminars, the provision of awareness-raising courses, TV and radio programs, internal training for OHS inspectors and, the coordination of EU-OSHA’s Healthy Workplaces Manage Stress 2014-2015 campaign. OHS also developed a Maltese framework agreement on work-related stress. This agreement outlines the various steps that must be taken for the early recognition and prevention of work-related stress. It also lays out a model policy establishing an effective and consistent approach to the prevention of work-

related stress. The agreement was endorsed by the social partners forming part of OHSAs board and was welcomed by many employers .

The report states that stress at work is also considered one of the various factors that may lead to substance abuse. While on a national level no regulatory provisions were adopted with regards to the use of drugs and, or alcohol in the workplace, OHSAs has still promoted the importance of having specific workplace programs to address such sensitive issue. This has been mostly done through media initiatives and participation in various seminars organised by third parties. OHSAs has also been involved in various discussions with local insurance companies and agencies concerning the need to introduce legal provisions in OHS legislation addressing the use of drugs and, or alcohol in the workplace.

The report states that the OHSAs is still confident that such decision may be re-evaluated and does not rule out a change in the national OHS legislation. In that case, OHSAs will support such decision. The Committee asks to be kept informed in all changes to the situation.

The Covid-19 pandemic has changed the way many people work, and many workers now telework or work remotely. Teleworking or remote working may lead to excessive working hours.

The Committee considers that, consistent with States Parties' obligations in terms of Article 3§2, in order to protect the physical and mental health of persons teleworking or working remotely and to ensure the right of every worker to a safe and healthy working environment, it is necessary to enable fully the right of workers to refuse to perform work outside their normal working hours (other than work considered to be overtime and fully recognised accordingly) or while on holiday or on other forms of leave (sometimes referred to as the "right to disconnect").

States Parties should ensure there is a legal right not to be penalised or discriminated against for refusing to undertake work outside normal working hours. States must also ensure that there is a legal right to protection from victimisation for complaining when an employer expressly or implicitly requires work to be carried out outside working hours. States Parties must ensure that employers have a duty to put in place arrangements to limit or discourage unaccounted for out-of-hours work, especially for categories of workers who may feel pressed to overperform (e.g. those during probationary periods or for those on temporary or precarious contracts).

Being connected outside normal working hours also increases the risk of electronic monitoring of workers during such periods, which is facilitated by technical devices and software. This can further blur the boundaries between work and private life and may have implications for the physical and mental health of workers.

Therefore, the Committee considers that States Parties must take measures to limit and regulate the electronic monitoring of workers.

Establishment, alteration and upkeep of workplaces

The Committee previously found the situation to be in conformity in this respect (Conclusions 2017).

Protection against hazardous substances and agents

The Committee asked whether workers were 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) (Conclusions 2017).

The report provides no information on this issue the Committee notes that Malta has transposed Council Directive 2013/59/EURATOM.

Personal scope of the regulations

In its previous conclusion, the Committee also asked for information on the occupational health and safety legislation and regulations applicable to persons employed on vessels registered in Malta (Conclusions 2017).

The report provides no information on this issue. The Committee repeats its request for this information.

Consultation with employers' and workers' organisations

In its previous conclusion, the Committee found that the situation was in conformity with Article 3§2 of the Charter on this point (Conclusions 2017).

Conclusion

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

Article 3 - Right to safe and healthy working conditions
Paragraph 3 - Enforcement of safety and health regulations

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

The Committee notes that for the purposes of the present report, States were asked to reply to the specific targeted questions posed to States for this provision (questions included in the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Health, social security and social protection”) as well as previous conclusions of non-conformity or deferrals.

In its previous conclusion, the Committee concluded that the situation in Malta was not in conformity with Article 3§3 of the Charter (Conclusions 2017).

Assessment of the Committee will therefore concern the information provided by the Government in response to the non-conformity conclusion and to the targeted questions.

Accidents at work and occupational diseases

In its previous conclusions, the Committee considered that even though the total number of fatal accidents decreased during the reference period, the standardised incidence rates of fatal accidents remain too high in comparison to the EU-28 average and concluded that the situation was not in conformity with Article 3§3 in this respect (Conclusions 2017). It asked that the next report contain figures on accidents at work and fatal accidents at work, standardised incident rates per 100,000 workers and statistics by sector of activity. In its targeted question on Article 3§3 with regard to accidents at work and occupational diseases, the Committee asked for information on statistical data on prevalence of work-related death, injury and disability including as regards suicide or other forms of self-harm, PTSD, burn-out and alcohol or other substance use disorders, as well as on epidemiological studies conducted to assess the long(er)-term health impact of new high-risk jobs (e.g. cycle delivery services, including those employed or whose work is managed through digital platform; performers in the sports entertainment industry, including in particular contact sports; jobs involving particular forms of interaction with clients and expected to use potentially harmful substances such as alcohol or other psychoactive products; new forms of high-yield high-stress trading; military and law enforcement; etc.) and also as regards the victims of harassment at work and poor management.

The Committee notes, according to the reports by Occupational Health and Safety Authority (“OHSA”) and the Department of Social Security, that, the number of accidents at work (incapacity for work for one day or more) remained stable overall since 2016 (3,220 accidents in 2016 and 2019). The incidence rate per 100,000 workers decreased from 1,547 in 2016 to 1,281 in 2019. The number of fatal accidents at work decreased from 7 in 2016 to 3 in 2019. The incidence rate of these accidents per 100,000 workers decreased from 3.4 in 2016 to 1.2 in 2019. The report also indicates, with regard to sectoral rates, that for the past five years, the transport and storage sector (air and water transport, warehousing and support activities for transportation and postal and courier activities) has been associated with the highest rate of claims for injuries in accidents at work under the Social Security Act. According to the report, while there are high rates of accidents at work in the construction and manufacturing sectors, there is a downward trend in those sectors in respect of work accidents.

The Committee finds that, according to Eurostat figures, the number of non-fatal accidents at work causing at least four calendar days of absence decreased from 2289 in 2015 to 2001 in 2018. The standardised rate of incidence of non-fatal accidents at work per 100,000 workers decreased from 1,231 in 2015 to 839 in 2018. The number of fatal accidents at work was 5 in 2016, 1 in 2017 and 4 in 2018. The standardised incidence rate of fatal accidents at work

per 100,000 workers decreased from 2.69 in 2015 to 1.68 in 2018. The Committee notes that in 2018, the standardised rates of incidence of fatal and non-fatal accidents are lower than the average rates in the EU (1,518 for non-fatal accidents at work and 1.77 for fatal accidents at work).

In the previous conclusion, the Committee noted that the report did not provide any figures on cases of occupational diseases and asked that the next report provide information on the concept of occupational diseases; the mechanism for recognising, reviewing and revising of occupational diseases (or the list of occupational diseases); the incidence rate and the number of recognised and reported occupational diseases during the reference period (broken down by sector of activity and year), including cases of fatal occupational diseases, and the measures taken and/or envisaged to counter insufficiency in the declaration and recognition of cases of occupational diseases; the most frequent occupational diseases during the reference period, as well as the preventive measures taken or envisaged (Conclusions 2017).

The report does not contain any information in these regards. The Committee recalls that in the previous report, it noted that cases of occupational diseases were not recorded on a regular basis and the number of recorded cases was excessively low. In the absence of any information in the report concerning the questions raised by the Committee regarding occupational diseases, there is nothing to establish that occupational diseases are monitored effectively.

Activities of the Labour Inspectorate

In its previous conclusions, the Committee considered that it had not been established that the labour inspection system was effective, on account of the repetitive absence of figures, provided by the national report, concerning the proportion of workers covered by inspections compared with the total work force. The Committee also asked that the next report provide updated and detailed information on activities and resources of the Labour Inspectorate during the reference period (including number of inspections made), and on measures against employers with insufficient knowledge of safety rules and inadequate training and employers who did not ensure the respective training for employers. The Committee also requested previously information on measures taken to focus labour inspection on small and medium-sized enterprises.

The targeted question with regard to accidents at work concerned the organisation of the Labour Inspectorate, and the trends in resources allocated to labour inspection services, including human resources; number of health and safety inspection visits by the Labour Inspectorate and the proportion of workers and companies covered by the inspections as well as the number of breaches to health and safety regulations and the nature and type of sanctions; whether inspectors are entitled to inspect all workplaces, including residential premises, in all economic sectors.

In reply, the report indicates that throughout 2019, OHSA carried out 3,511 workplace inspections targeting various sectors such as construction, manufacturing, agriculture and transport, etc. It is also explained that workplace inspections may result in the issue of administrative fines. In addition, when an offence against Occupational Health and Safety Act is committed, OHSA may impose a pecuniary fine instead of instituting criminal proceedings. This Act applies to all workplaces and to all sectors of work activity, both public and private. In 2019, OHSA issued 354 administrative fines and initiated 97 judicial proceedings. OHSA also issued intimation letters. The report also gives a list of trainings and lectures provided by OHSA in order to improve occupational safety and health.

Nevertheless, the report does not provide any information, nor data, on the proportion of workers covered by inspections compared with the total workforce and on measures taken to focus labour inspection on small and medium-sized enterprises. Nor does it provide information on trends in resources allocated to labour inspection services. The Committee

reiterates its request that the next report provide detailed information concerning the number, while distinguishing clearly between administrative staff and inspection staff, of inspectors; the number of general, thematic, and unscheduled inspection visits assigned solely to the occupational health and safety legislation and regulations; and the number of workers covered each year by the inspections. Pending receipt of this information, the Committee concludes that there is nothing to establish that the labour inspection system is effective.

Conclusion

The Committee concludes that the situation in Malta is not in conformity with Article 3§3 of the Charter on the grounds that it has not been established that:

- occupational diseases are monitored effectively.
- the labour inspection system is effective.

Article 3 - Right to safe and healthy working conditions

Paragraph 4 - Occupational health services

The Committee notes that no targeted questions were asked under Article 3§4 of the Charter. As the previous conclusion found the situation in Malta to be in conformity with the Charter, there was no examination of the situation in 2021.

Article 11 - Right to protection of health

Paragraph 1 - Removal of the causes of ill-health

The Committee notes that the report of Malta does not provide any information concerning this provision of the Charter.

The Committee recalls that for the purposes of the present report, States were asked to reply to targeted questions for Article 11§1 of the Charter, as well as, where applicable, previous conclusions of non-conformity or deferrals (see the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Health, social security and social protection”).

In its previous conclusion, the Committee concluded that the situation in Malta was in conformity with Article 11§1 of the Charter, pending receipt of the information requested (Conclusions 2017).

Since the report does not provide any information in response to the targeted questions, the Committee reiterates its questions.

Measures to ensure the highest possible standard of health

The Committee asks for overall and disaggregated statistical data on life expectancy across the country and different population groups (urban; rural; distinct ethnic groups and minorities; longer term homeless or unemployed; etc.) identifying anomalous situation (e.g. particular areas in the community; specific professions or jobs; proximity to active or decommissioned industrial or highly contaminated sites or mines; etc.) and on prevalence of particular diseases among relevant groups (e.g. cancer) or blood borne infectious diseases (e.g. new cases HIV or Hepatitis C among people suffering from substance use disorders or who are held in prison; etc.).

Access to healthcare

The Committee asks for information about sexual and reproductive healthcare services for women and girls (including access to abortion) and statistical information about early (underage or minor) motherhood, as well as child and maternal mortality. It also asks for information on policies designed to remove as far as possible the causes for the anomalies observed (premature death; preventable infection by blood borne diseases; etc.). The Committee points out that if such information is not provided in the next report, there will be nothing to establish that the situation in Malta is in conformity with Article 11§1 of the Charter on this point.

The Committee asks for information on measures to ensure informed consent to health-related interventions or treatment.

Covid-19

The Committee asks for information focused on measures taken to treat the ill (sufficient number of hospital beds, including intensive care units and equipment, and rapid deployment of sufficient numbers of medical personnel).

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 notes that Malta does not provide any information regarding this provision.

The Committee notes that for the purposes of the present report, States were asked to reply to the specific targeted questions posed to States for this provision (questions included in the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter with respect to the provisions falling within the thematic group “Health, social security and social protection”) as well as previous conclusions of non-conformity or deferrals.

The Committee deferred its previous conclusion (Conclusions 2017).

Education and awareness raising

In its targeted questions, the Committee asked for information about health education (including sexual and reproductive health education) and related prevention strategies (including through empowerment that can serve as a factor in addressing self-harm conducts, eating disorders, alcohol and drug use) in the community on a lifelong or ongoing basis, and in schools. It also asked for information about awareness-raising and education with respect to sexual orientation and gender identity (SOGI) and to gender-based violence. The report does not contain any information in this respect. Therefore, the Committee reiterates its question. It points out that, should the necessary information not be provided in the next report, nothing will enable the Committee to establish that the situation in Malta is in conformity with Article 11§2 of the Charter in this respect.

In its previous conclusions, the Committee asked for information on concrete activities, such as educational or awareness-raising campaigns, undertaken by public health services, or other bodies, to promote health and prevent diseases (Conclusions 2017 and 2013). The Committee emphasised that this information was necessary to fully assess the situation and to establish that the situation is in conformity with the Charter.

The report does not contain any information requested on this point. Therefore, the Committee considers that the situation in Malta is not in conformity with Article 11§2 of the Charter on this point on the ground that it has not been established that public information and awareness raising are public health priorities.

In its previous conclusions, the Committee requested for updated information on health education in schools and which particular topics were covered (such as smoking, alcohol and drugs, healthy diet, sexuality, road safety or the environment) (Conclusions 2017 and 2013). The Committee emphasised that this information was necessary to fully assess the situation and to establish that the situation is in conformity with the Charter.

The report does not contain any information requested on this point. Therefore, the Committee considers that the situation in Malta is not in conformity with Article 11§2 of the Charter on this point on the ground that it has not been established that health education is incorporated into the school curriculum.

Counselling and screening

In its previous conclusion, the Committee asked for updated information on the screening programmes and activities, in particular for the diseases that constitute the principal causes of premature death (Conclusions 2017). The report does not contain any information on this point. Therefore, the Committee reiterates its question. It points out that, should the necessary information not be provided in the next report, nothing will enable the Committee to establish that the situation in Malta is in conformity with Article 11§2 of the Charter in this respect.

Conclusion

The Committee concludes that the situation in Malta is not in conformity with Article 11§2 of the Charter on the grounds that it has not been established that:

- public information and awareness raising are public health priorities,
- health education is incorporated into the school curriculum.

Article 11 - Right to protection of health

Paragraph 3 - Prevention of diseases and accidents

The Committee notes that the report of Malta does not provide any information concerning this provision of the Charter.

The Committee notes that for the purposes of the present report, States were asked to reply to the specific targeted questions posed to States for this provision (questions included in the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Health, social security and social protection”) as well as previous conclusions of non-conformity or deferrals.

Therefore, it will focus on the Government’s replies to the targeted questions, namely about healthcare services in prison; community-based mental health services; drug abuse prevention and harm reduction; healthy environment; immunisation and epidemiological monitoring; Covid-19; and any previous deferrals or non-conformities.

The Committee wishes to point out that it will take note of the information provided in reply to the question relating to Covid-19 for information purposes only, as it relates to developments outside the reference period (namely, after 31 December 2019). In other words, the information referred to in the Covid-19 section will not be assessed for the purposes of Charter compliance in the current reporting cycle.

In its previous conclusion, the Committee deferred its conclusion (Conclusions 2017).

Healthcare services in places of detention

In a targeted question, the Committee asked for a general overview of healthcare services in places of detention, in particular prisons (under whose responsibility they operate/which ministry they report to, staffing levels and other resources, practical arrangements, medical screening on arrival, access to specialist care, prevention of communicable diseases, mental health-care provision, conditions of care in community-based establishments when necessary, etc.).

The report does not contain the information on any of these subjects. Therefore, the Committee reiterates its request and considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Malta is in conformity with Article 11§3 of the Charter.

Community-based mental health services

In a targeted question, the Committee asked for information regarding the availability and extent of community-based mental health services and on the transition to community-based mental health from former large-scale institutions. The Committee also asked for statistical information on outreach measures in connection with the mental health assessment of vulnerable populations and on proactive measures adopted to ensure that persons in need of mental healthcare are not neglected.

Consistent with the World Health Organisation (WHO) Comprehensive Mental Health Action Plan 2013-2030, and other relevant standards, the Committee considers that a human rights-compliant approach to mental health requires at a minimum the following elements: a) developing human rights-compliant mental health governance through, inter alia, mental health legislation and strategies that are in line with the Convention on the Rights of Persons with Disabilities and other relevant instruments, best practice and evidence; b) providing mental health in primary care community-based settings, including by replacing long-stay psychiatric hospitals with community-based non-specialised health settings; and c)

implementing strategies for promotion and prevention in mental health, including campaigns to reduce stigmatisation, discrimination and human rights violations.

The report does not contain information on any of these subjects. Therefore, the Committee reiterates its request and considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Malta is in conformity with Article 11§3 of the Charter.

Drug abuse prevention and harm reduction

In a targeted question, the Committee asked for information about drug-related deaths and transmission of infectious diseases among people who use or inject psychoactive substances both in the community and in custodial settings. The Committee also asked for an overview of the national policy designed to respond to substance use and related disorders (dissuasion, education, and public health-based harm reduction approaches, including use or availability of WHO listed essential medicines for opioid agonist treatment) while ensuring that the “available, accessible, acceptable and sufficient quality” criteria (WHO’s 3AQ) are respected, subject always to the exigency of informed consent. This rules out, on the one hand, consent by constraint (such as in the case of acceptance of detox and other mandatory treatment in lieu of deprivation of liberty as punishment) and, on the other hand, consent based on insufficient, inaccurate or misleading information (i.e. not based on state of the art scientific evidence).

In its previous conclusions, the Committee additionally asked for information on drug consumption (Conclusions 2017).

The report does not contain the information on any of these subjects. Therefore, the Committee reiterates its request and considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Malta is in conformity with Article 11§3 of the Charter.

Healthy environment

In a targeted question, the Committee asked for information on the measures taken to prevent exposure to air, water or other forms of environmental pollution, including proximity to active or decommissioned (but not properly isolated or decontaminated) industrial sites with contaminant or toxic emissions, leakages or outflows, including slow releases or transfers to the neighbouring environment, nuclear sites, mines, as well as on the measures taken to address the health problems of the populations affected, and to inform the public, including pupils and students, about general and local environmental problems.

In its previous conclusions, the Committee noted that the report did not provide any information on this important aspect of Article 11§3 of the Charter and asked for updated information on the measures taken as well as on the levels and trends with regard to air quality, water contamination and food safety during the reference period (Conclusions 2017). The Committee also asked for information regarding the implementation of various air quality and noise pollution regulations, as well as on environmental monitoring related to those activities which have the potential to cause serious pollution.

The report does not contain the information on any of these subjects. The Committee thus considers that it has not been established that adequate measures were taken to overcome environmental pollution.

Immunisation and epidemiological monitoring

In its previous conclusions, the Committee noted that the report did not provide any information on this point and asked 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 (Conclusions 2017).

The report does not contain the information on any of these subjects. The Committee thus considers that it has not been established that efficient immunisation and epidemiological monitoring programmes are in place .

In a targeted question, the Committee asked States Parties to describe the measures taken to ensure that vaccine research is promoted, adequately funded and efficiently coordinated across public and private actors.

The report does not address this question.

Alcohol

In its previous conclusions, the Committee repeated its request for comments on the phenomenon of binge drinking and asked whether any measures were being taken as regards consumption of alcohol by young persons (Conclusions 2017).

The report does not contain the information on any of these subjects. The Committee thus considers that it has not been established that adequate measures were taken to prevent alcohol consumption.

Accidents

In its previous conclusions, the Committee noted that no information was provided in the report on accidents and reiterated its request to be kept informed on the measures taken as well as on the trend in the number of road accidents, domestic accidents and accidents during leisure time (Conclusions 2017).

The report does not contain the information on any of these subjects. The Committee thus considers that it has not been established that adequate measures were taken to prevent accidents.

Covid-19

The Committee asked States Parties to evaluate the adequacy of measures taken to limit the spread of the Covid-19 virus in the population (testing and tracing, physical distancing and self-isolation, provision of surgical masks, disinfectant, etc.).

The report does not address this question.

The Committee recalls that States Parties must take measures to prevent and limit the spread of the virus, including testing and tracing, physical distancing and self-isolation, the provision of adequate masks and disinfectant, as well as the imposition of quarantine and 'lockdown' arrangements. All such measures must be designed and implemented having regard to the current state of scientific knowledge and in accordance with relevant human rights standards (Statement of interpretation on the right to protection of health in times of pandemic, 21 April 2020). Furthermore, access to healthcare must be ensured to everyone without discrimination. This implies that healthcare in a pandemic must be effective and affordable to everyone, and that groups at particularly high risk, such as homeless persons, persons living in poverty, older persons, persons with disabilities, persons living in institutions, persons detained in prisons, and persons with an irregular migration status must be adequately protected by the healthcare measures put in place (Statement of interpretation on the right to protection of health in times of pandemic, 21 April 2020).

Conclusion

The Committee concludes that the situation in Malta is not in conformity with Article 11§3 of the Charter on the grounds that it has not been established that:

- adequate measures were taken to overcome environmental pollution;
- efficient immunisation and epidemiological monitoring programmes are in place;
- adequate measures were taken to prevent alcohol consumption;
- adequate measures were taken to prevent accidents.

Article 12 - Right to social security

Paragraph 1 - Existence of a social security system

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

Risks covered, financing of benefits and personal coverage

In its previous conclusion (Conclusions 2017) the Committee asked for information on the percentage of insured persons, out of the total active population, for each branch of income-replacement benefits (sickness, unemployment benefits, pensions, and work accidents or occupational diseases). In reply it notes from the report that Malta's social security system is a mandatory one and all active population is insured and therefore covered for each of the branches available under Malta's system.

Adequacy of the benefits

According to Eurostat data, the poverty level, defined as 50% of the median equivalised income stood at € 7,667 per year or € 640 per month in 2019. 40% of the median equivalised income amounted to € 512 per month.

In its previous conclusion (Conclusions 2017), the Committee found that the minimum levels of sickness, unemployment and disability benefits were inadequate. The levels of sickness and unemployment benefits for a single person fell below 40% of the median equivalised income and the situation was therefore not in conformity with the Charter.

The Committee notes from the report in this regard that sickness benefit (SB) and unemployment benefits (UB) are not earnings related. Fixed rates are paid according to marital status. However the SB or UB rates of claimants who satisfy the means test applicable for non-contributory assistances are increased up to €108.26 per week plus an additional €8.15 per week is paid for every other eligible member in the same household. Furthermore, when on SB or UB, a person is also eligible for supplementary allowance (SPA) and energy benefit (EB). According to the report, single person who satisfies means test receives €108.26 + €4.57 (SPA) + €3.83 (EB), or a total of €116.66 as sickness benefit.

The Committee also notes from MISSOC that flat-rate sickness benefit (*Benefiċċju għal Mard*) is paid in accordance with the number of days worked in a normal week up to a maximum of six days. This rate for a single person stood at € 14.25 per day in 2019.

As regards unemployment benefit, according to MISSOC a flat rate for single persons stood at €8.41 per day. The rate does not vary under any condition. Benefit is paid weekly covering 6 days of entitlement.

The Committee thus notes that a single person received € 85,5 per week in sickness benefit and € 50.46 in unemployment benefit.

The Committee notes that in both cases, according to the information provided by the report and by MISSOC, the monthly amount that can be obtained by a single person as income-replacement benefits, in the event of sickness or unemployment, falls below 40% of the median equivalised income.

The Committee notes that the report further provides information concerning additional top up benefits that can be obtained through social assistance system.

The Committee recalls in this regard that with a view to guaranteeing effective protection of all members of society against the occurrence of social and economic risks, States must ensure the maintenance of their social security systems. Social security systems must be maintained at a sufficiently extensive and compulsory level. Any modifications to the system should not transform it into a basic social assistance system (Statement of Interpretation, Conclusions XIV-1).

The Committee is aware of the fact that in some situations the minimum level of social security benefits that can be obtained under the contributory system on the basis of the length and amount of contributions paid, may be topped up with non-contributory benefits under the social assistance system. The aim of such top ups is often to ensure that the total income obtained through contributory social security system does not fall short of the level of guaranteed income as established by legislation.

However, the Committee recalls that where the minimum level of an income-replacement benefit examined under Article 12§1 of the Charter, falls below 40% of the median equivalised income (or the poverty threshold indicator), the Committee will not consider that its aggregation with other social assistance benefit can bring the situation into conformity. Where an income-replacement benefit stands between 40% and 50% of the median equivalised income, the Committee will also take into account social assistance benefits, where applicable.

Therefore, the Committee considers that the minimum levels of sickness and unemployment benefits paid to a single person are inadequate.

As regards disability benefit, in its previous conclusion the Committee considered that its level was inadequate as the minimum amount of this benefit granted in case of a permanent incapacity, preventing the exercise of suitable full-time or part-time employment, together with the minimum (non-contributory) national pension fell below 40% of the median equivalised income.

The Committee now notes from the report that the National Minimum disability Pension paid to a single person stood at € 104.33 per week. It also notes that persons eligible for disability pension rates are also in receipt of a service pension. In addition, persons eligible for National Minimum Disability Pension (NMIP) rates who do not have any other income are automatically eligible for supplementary allowance and energy benefit, and if in receipt of the lowest single rate – €104.33- are also eligible to an increase through the non-contributory scheme. Furthermore, all persons in receipt of the disability benefit also receive a special bonus of €3.12 per week, a six-monthly bonus of €135.10 and a cost of living bonus with a minimum of €1.16 and a maximum of €12.80 per week.

The Committee asks the next report to indicate what is the total amount of benefit that a single person with a permanent incapacity to work may obtain per month. In the meantime, it reserves its position as to the adequacy of disability benefit.

Conclusion

The Committee concludes that the situation in Malta is not in conformity with Article 12§1 of the Charter on the ground that the minimum levels of sickness and unemployment benefits are inadequate.

Article 12 - Right to social security

Paragraph 3 - Development of the social security system

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

The Committee recalls that States were asked to reply to two targeted questions for Article 12§3 of the Charter as well as, where applicable, the previous conclusions of non-conformity or deferral (see the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Health, social security and social protection”).

In its previous conclusion, the Committee found that the situation in Malta was in conformity with Article 12§3 of the Charter (Conclusions 2017). It will therefore restrict its consideration to the Government’s replies to the two targeted questions, namely:

- social security coverage, and its modalities, provided to persons employed by digital platforms or whose work is managed via such platforms; and
- any impact of the Covid-19 crisis on social security coverage, and any specific measures taken to compensate for or alleviate any possible negative impact.

The Committee wishes to point out that it will take note of the reply to the second question for information purposes only, as it relates to developments that occurred outside the reference period (i.e. after 31 December 2019). In other words, the information referred to in the Covid-19 section below will not be assessed for the purposes of Charter compliance in the current reporting cycle.

Platform workers

The Committee recalls that it has posed a targeted question to all States on social security cover for persons employed or whose work is managed by digital platforms. The emergence of these new forms of employment has had a negative impact on certain rights of these workers, as explained in the General Introduction. In matters of social security, compliance with Article 12§3 of the Charter requires that the existing social security systems be adapted to the specific situation and needs of the workers concerned, in order to guarantee that they enjoy the social benefits included within the scope of Article 12§1. The Committee is keenly aware that there are significant gaps in the social coverage of workers in new forms of employment such as platform workers. It considers that the States Parties are under an obligation to take all the necessary measures to address these shortcomings.

In particular States Parties must take steps to ensure that all workers in new forms of employment have an appropriate legal status (employee, self-employed or other category) and that this status is in line with the actual situation thus avoiding abuse (such as the use of “bogus” or “false” self-employed status to circumvent the applicable social security regulations) and conferring adequate social security rights as guaranteed by Article 12 of the Charter on the platform workers.

The Committee notes that the Government has not provided any information regarding the social security coverage of digital platform workers. The Committee therefore reiterates its question. It asks for information in the next report on the number of digital platform workers (as a percentage of the total number of workers), their status (employees, self-employed and/or other category), the number/percentage of these workers by status and their social security protection (by status). In the meantime, the Committee reserves its position on this point.

Covid-19

In response to the second question, the Government states that the Covid-19 crisis had no negative impact on social security coverage in Malta; all benefits continued to be paid at the

due rates. Moreover, three new benefits were introduced in 2020 to specifically target: a) parents who had to stay at home to look after children following the closure of schools and for whom remote working was not possible; b) vulnerable workers who had to stay at home due to their medical condition, as instructed by the Ministry of Health; and c) workers with disabilities who had to stay at home, as instructed by the Ministry of Health. In addition, the unemployment benefit rates for people who lost their jobs due to Covid-19 were increased to match the rates for the three benefits mentioned above.

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 Malta.

The Committee recalls that Malta has not accepted Article 12.4b of the Charter.

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

Right to equal treatment

The Committee recalls that the guarantee of equal treatment within the meaning of Article 12§4 requires States Parties to remove all forms of discrimination against nationals of other States Parties from their social security legislation (Conclusions XIII-4 (1996), Statement of Interpretation on Article 12§4). Both direct and indirect discrimination should be eliminated. National legislation cannot reserve a social security benefit to nationals only or impose extra or more restrictive conditions on foreigners. Nor may national legislation stipulate eligibility criteria for social security benefits which, although they apply without reference to nationality, are harder for foreigners to comply with than nationals, and therefore affect them to a greater degree. However, pursuant to the Charter's Appendix legislation may require the completion of a period of residence for non-contributory benefits. In this respect, Article 12§4a requires that any such prescribed period of residence be reasonable. The Committee considers that the right to equal treatment covers both equal access to the social security system and equal conditions for entitlement to social security benefits.

The Committee notes from the report in this respect that Malta's social security system is mandatory with everyone who is gainfully occupied. Therefore, all gainfully occupied persons, including third country nationals have coverage to all benefits under the contributory scheme, provided that the minimum contribution conditions are satisfied.

Equal treatment is applied to all persons who through their residency, employment and payment of social security contributions are covered for benefits under the contributory scheme and also the non-contributory scheme.

The Committee understands that equal treatment is guaranteed as regards access to the social security system. It asks whether equal treatment of nationals of States Parties lawfully resident in Malta is also guaranteed as regards conditions for entitlement to social security benefits.

As regards equal treatment in respect of family benefits, the Committee recalls that the purpose of child benefits is to compensate the costs of maintenance, care and education of children. Such costs primarily occur in the State where the child actually resides.

The Committee further recalls that child benefits are covered by different provisions of the Charter, and in particular by Article 12§1 and Article 16 of the Charter. Under Article 12§1 States Parties have an obligation to establish and maintain a social security system including a family benefits branch. Under Article 16 States Parties are required to ensure the economic protection of the family by appropriate means. The primary means should be child benefits provided as part of social security, available either universally or subject to a means-test. States Parties have a unilateral obligation to pay child benefits in respect of all children resident in their territory on an equal footing, whether they are nationals or have moved from another State Party.

The Committee is aware that States Parties that are also EU Member States, on the basis of the EU legislation on coordination of the social security system are obliged to apply coordination rules which to a large extent prescribe exportability of child benefits and family allowances. When the situation is covered by the Charter, and the EU legislation does not apply, the Committee has regard to its interpretation according to which the payment of child

benefits to all residing children, as a starting point, is a unilateral obligation for all States Parties. The Committee decides no longer to examine the issue of exportability of child benefits under Article 12§4a.

Under Article 12§4a of the Charter the Committee will only examine whether child benefits are paid to children, having moved from another State Party, on an equal footing with nationals, thus ensuring equal treatment of all resident children. Under Article 16 the Committee will examine equal treatment of families as regards access to family benefits and whether the legislation imposes length of residence requirement on families for entitlement to child benefit.

The Committee notes from the report that a total of 1,830 non-EU nationals residing in Malta received family benefits. The Committee understands that Malta applies child residence requirement.

Right to retain accrued benefits

The Committee recalls that old-age benefit, disability benefit, survivor's benefit and occupational accident or disease benefit acquired under the legislation of one State according to the eligibility criteria laid down under national legislation should be maintained (exported) irrespective of whether the beneficiary moves between the territories.

In its previous conclusion the Committee considered that it had not been established that the right to maintenance of accrued rights was guaranteed to nationals of all other States Parties. More specifically, the Committee asked Malta to provide a concrete example or proof illustrating that the Maltese legislation guarantees in an effective way the retention of accrued rights relating to invalidity, old age benefit and survivor's benefits. It asked for concrete proofs of exportability of these benefits to States Parties which are not member of the EU or the EEA irrespective of the nationality of the recipient.

The Committee notes from the report that in 2019 a total of 7,303 foreigners not residing in Malta received a pension from Malta under the contributory scheme. Among them 454 were residing in EU member states and 6,849 were residing in the rest of the world.

The Committee asks what is the legal basis for exportability of old age, disability and survivor's benefits and the international coordination in the social security field with non-EEA States. More specifically, it asks whether such coordination is ensured through bilateral agreements.

Conclusion

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

Article 13 - Right to social and medical assistance

Paragraph 1 - Adequate assistance for every person in need

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

The Committee notes that for the purposes of the present report, States were asked to reply to the specific targeted questions posed to States for this provision (questions included in the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Health, social security and social protection”) as well as previous conclusions of non-conformity or deferrals.

Therefore it will focus on the Government’s replies to the targeted questions, namely about measures taken to ensure that the right to social and medical assistance is ensured and any previous deferrals or non-conformities.

The Committee wishes to point out that it will take note of the information provided in reply to the question relating to Covid-19 for information purposes only, as it relates to developments outside the reference period (i.e. after 31 December 2019). In other words, the information referred to in the Covid-19 section will not be assessed for the purposes of Charter compliance in the current reporting cycle.

The previous conclusion (2017) considered that the situation in Malta was not in conformity with Article 13§1 of the Charter on the grounds that: the level of social assistance paid to a single person without resources is not adequate; it has not been established that residence permits cannot be withdrawn before their legal expiry on the sole ground that the person concerned is in need.

General legal framework, types of benefits and eligibility criteria

The report does not contain general information on developments during the reporting cycle but refers to previous questions asked in the former Conclusion of 2017.

As regards the question whether, in case the person concerned refuses a job offer after three months, he/she will lose his/her social assistance in its entirety, the report indicates that, in accordance with the provisions of Article 30 of the Social Security Act, payments under such scheme are dependent on the registration for employment at Jobsplus. Hence if there is no registration or the person is taken off the list, it will result in the termination of the payment of the assistance. Even if one the beneficiary has the assistance terminated, other eligible members in his household have the option to refer their case to the Social Assistance Board established by virtue of Article 129 of the Social Security Act. The Social Assistance board will determine whether in the particular circumstances of each case, assistance should be reissued and paid in respect of the other eligible household members only and will also determine the amount of such assistance and to whom it should be paid. MISSOC further states that failure to comply with these conditions of registration with the public employment services may result in the total loss of the benefits for a period of 6 months.

Therefore, according to the information submitted, those whose rights are revoked do not have any other specific means of subsistence. The Committee therefore considers that the situation is not in conformity with the Charter in this respect.

Concerning *medical assistance*, there is no information. The Committee asks the next report to provide updated information on medical assistance.

Levels of benefits

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

- Basic benefit: according to the MISSOC database (data up to 31 December 2019), the monthly social assistance benefit in 2019 amounted to €470.39 for a single person.
- Additional benefits: the Committee notes that the report states that the beneficiary also receives €3.12 and €5.20 per week as bonuses, and additional benefits in the form of a supplementary allowance of €6.50 per week and another €4.40 as energy benefit to alleviate water and electricity bills is paid to the head of household who is in receipt of any social assistance.
- the Poverty threshold, defined as 50% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value was estimated at €640 per month in 2019.

The report indicates that the total amount paid to social assistance beneficiaries on an annual basis in 2021 should reach €6,697, approximately €558 per month, which is under the poverty threshold.

The Committee therefore considers that the level of social assistance is not adequate on the basis that the total assistance that can be granted falls below the poverty threshold.

Right of appeal and legal aid

The Committee notes that no targeted questions were asked as regards the right of appeal and legal aid. It asks that the next report provide for updated information on the right to appeal and legal aid.

Personal scope

The specific questions asked in relation to Article 13§1 this year do not include an assessment of assistance to nationals of States parties lawfully resident in the territory. Therefore, this particular issue will only be assessed if there was a request of information or a non-conformity in previous cycle.

Foreign nationals lawfully present in the territory

In its previous conclusion (Conclusion 2017), the Committee considered that the situation was not in conformity with the Charter as it had not been established that residence permits cannot be withdrawn on the sole ground that the person concerned is in need.

The report notes that third country nationals who come to Malta with a working permit return to their country once it expires. Other third country nationals who come to Malta due to family relationships and who may also have their work permit expired are allowed to remain in Malta and social assistance is duly issued. In the case that work/residence permits are terminated before their expiry date because the employer no longer requires their services, the workers are allowed to remain in Malta for a temporary period allowing them to apply for a new work/residence permit. However, according to MISSOC, temporary residents are excluded from social assistance. The report states that claims for social and medical assistance for nationals of other States Parties lawfully resident within their territory are treated on an equal footing. Any claim for such assistances that is rejected by the Department for Social Security may be appealed under the provisions of Article 108 of the Social Security Act (318). Such an appeal may be lodged with the office of the Umpire which is established by virtue of Article 107 of the Social Security Act. The Committee asks for further clarification concerning access of lawfully temporary residents to social assistance. Pending receipt of the information requested, it reserves its position on this point.

Foreign nationals unlawfully present in the territory

The Committee recalls that persons in an irregular situation must have a legally recognised right to the satisfaction of basic human material need (food, clothing, shelter) in situations of

emergency to cope with an urgent and serious state of need. It likewise is for the States to ensure that this right is made effective also in practice (European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, §187).

The report states that decisions on emergency social and medical assistance to persons unlawfully present in Malta are determined on a case-by-case basis. It does not give any further information or reply to the previous questions asked in 2015 and 2017. The Committee therefore concludes that it has not been established that access to emergency social and medical assistance to foreign nationals unlawfully present in the territory is guaranteed and that the situation is not in conformity with the Charter.

Medical and social assistance during the Covid-19 pandemic

The report refers to certain measures taken to alleviate Covid-19 pandemic under Article 14 of the Charter. Shelter for homeless was provided and the State Funded Food Distribution (SFFD), which entails the food packages financed by the State, were given to beneficiaries in their homes in order to lessen the presence of larger groups of people together in the centres where food distribution normally takes place.

The Committee asks the next report to produce detailed information about specific measures taken as regards the Covid-19 pandemic as regards medical and social assistance.

Conclusion

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

- means of subsistence are not guaranteed to persons in need whose social assistance is withdrawn as penalty for having refused a job offer;
- the level of social assistance paid to a single person without resources is not adequate;
- it has not been established that foreign nationals unlawfully present in the territory have a right to emergency social and medical assistance.

Article 13 - Right to social and medical assistance

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

The Committee notes that no targeted questions were asked under this provision. As the previous conclusion found the situation to be in conformity there was no examination of the situation in the current cycle.

Article 13 - Right to social and medical assistance

Paragraph 3 - Prevention, abolition or alleviation of need

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

The Committee recalls that Article 13§3 concerns services offering free personal assistance and counselling as may be required to prevent, to remove, or to alleviate personal or family want. It further recalls that, for the purposes of the present report, States were asked to reply to targeted questions, as well as, where applicable, previous conclusions of non-conformity or deferrals (see the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the scope of the thematic group “Health, social security and social protection”). However, no targeted questions were posed in respect of Article 13§3 of the 1961 Charter. The Committee deferred its previous conclusion (Conclusions XXI-2 (2017)). It will therefore limit its examination to the Government’s replies to its previous request for relevant complementary information.

The Committee has previously considered that it needed a confirmation that the various types of services mentioned in the previous report were in principle available free of charge to persons in receipt of social assistance/unemployment assistance. It also requested updated information on services such as advice and personal help, including on the number of beneficiaries. The Committee emphasised that this information was necessary to fully assess the situation and to establish that the situation is in conformity with the Charter.

The report does not contain the information on any of these subjects. The Committee thus considers that it has not been established that persons in need can benefit from free counselling and personal assistance services.

Conclusion

The Committee concludes that the situation in Malta is not in conformity with Article 13§3 of the Charter on the ground that it has not been established that those in need may receive help and personal assistance services free of charge.

Article 13 - Right to social and medical assistance

Paragraph 4 - Specific emergency assistance for non-residents

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

The Committee recalls that for the purposes of the present report States were asked to reply to targeted questions, as well as, where applicable, previous conclusions of non-conformity or deferrals (see the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Health, social security and social protection”). However no targeted questions were posed in respect of Article 13§4. The Committee deferred its previous conclusion in 2017. It will therefore restrict its consideration to the Government’s replies to its previous request for relevant complementary information.

The Committee also refers to its conclusion adopted in 2017 under Article 13§1 (personal scope) and recalls that Article 13§4 only covers emergency social and medical assistance for nationals of States Parties lawfully present (but not resident) in the territory.

Finally, 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, in its conclusion under Article 13§1, considered that it has not been established that access to emergency social assistance to foreign nationals unlawfully present in the territory is guaranteed and that the situation is not in conformity with the Charter. However, foreigners lawfully present can access social and medical assistance given that they satisfy the provisions emanating from the Social Security Act. It is however not detailed if foreigners lawfully present but without residence who are in need can access emergency social and medical assistance and under which circumstances. Pending receipt of this information, the Committee reserves its position on this point.

Conclusion

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

Article 14 - Right to benefit from social welfare services

Paragraph 1 - Promotion or provision of social services

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

The Committee recalls that Article 14§1 guarantees the right to benefit from general social welfare services. It notes that for the purposes of the present report, States were asked to reply to the specific targeted questions posed to States for this provision (questions included in the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Health, social security and social protection”) as well as previous conclusions of non-conformity or deferrals.

Therefore, it will focus on the Government’s replies to the targeted questions, namely how and to what extent the operation of social services was maintained during the COVID-19 crisis and whether specific measures were taken in view of possible similar crises arising in the future. The Committee wishes to point out that it will take note of the information provided in reply to the question relating to COVID-19 for information purposes only, as it relates to developments outside the reference period (i.e. after 31 December 2019). In other words, the information referred to in the COVID-19 section will not be assessed for the purposes of Charter compliance in the current reporting cycle.

In the previous conclusion (Conclusions 2017) the Committee found the situation to be in conformity with the Charter. No changes have been reported and the Committee reiterates its conclusion in this respect.

In reply to the targeted question, the report provides that at least some social services continued during the pandemics. In March 2020, the first aim was to provide the essential services to vulnerable people, such as domestic violence services, residential homes, drug rehabilitation services, shelters homeless people, etc. Some services were temporarily shifted to online access. Families determined to be at risk as a result of the pandemic were given the necessary aid in order to meet their needs. Furthermore, food packages financed by the State were given to beneficiaries in their homes in order to lessen the presence of larger groups of people together in the centres where food distribution normally takes place. A loneliness helpline was set up by FSWS in order to be able to address various issues that people are facing during this time of social isolation due to the Covid-19 pandemic.

The report does not contain information on any specific measures taken in anticipation of similar crises in the future.

Conclusion

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

Article 14 - Right to benefit from social welfare services

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

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

The Committee recalls that Article 14§2 requires States Parties to provide support for voluntary associations seeking to establish social welfare services. The “individuals and voluntary or other organisations” referred to in paragraph 2 include the voluntary sector (non-governmental organisations and other associations), private individuals, and private firms.

The Committee further notes that for the purposes of the current examination, States were asked to reply to the specific targeted questions posed to States in relation to this provision (questions included in the appendix to the letter of 3 June 2020, in which the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the scope of the thematic group “Health, social security and social protection”) as well as previous conclusions of non-conformity or deferrals. States were therefore requested to provide information on user involvement in social services (“co-production”), in particular on how such involvement is ensured and promoted in legislation, in budget allocations and decision-making at all levels, as well as in the design and delivery of services in practice. Co-production is understood here to mean that social services work together with users of the services on the basis of fundamental principles, such as equality, diversity, accessibility and reciprocity.

In its previous conclusion (Conclusions 2017), the Committee found the situation to be in conformity with the Charter.

In reply to the targeted question, the report provides that care-plans are not imposed but agreed to by service users, being an example of a co-production in practice, since the care-plans are not a one-size-fits-all instrument but modelled on the particular needs of the individual. This is especially the case of the Home-Based Family Therapy Service (HBTS) which is a service for multi-stressed families which aims to achieve family preservation.

The very general information of the provided example does not enable the Committee to make a comprehensive assessment of the situation from the angle of all Article 14§2 requirements. Therefore, it requests that the next report provide full information on user involvement in social services, in particular, how the user involvement in various social services is fostered in legislation and other decision-making, how are general principles implemented and whether any practical measures to support it, including budgetary, have been adopted or envisaged.

Conclusion

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

Article 23 - Right of the elderly to social protection

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

The Committee notes that for the purposes of the present report, States were asked to reply to the specific targeted questions posed to States for this provision (questions included in the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Health, social security and social protection”) as well as previous conclusions of non-conformity or deferrals.

Therefore, it will focus on the Government’s replies to the targeted questions, namely about measures taken to ensure that the social and economic rights of older persons are respected and Covid-19 and any previous deferrals or non-conformities.

The Committee wishes to point out that it will take note of the information provided in reply to the question relating to Covid-19 for information purposes only, as it relates to developments outside the reference period (namely, after 31 December 2019). In other words, the information referred to in the Covid-19 section will not be assessed for the purposes of Charter compliance in the current reporting cycle.

The previous conclusion was one of non-conformity on the grounds that there was no adequate legal framework prohibiting discrimination on grounds of age during the reference period (Conclusions 2017).

Autonomy, inclusion and active citizenship

Legislative framework

The Committee recalls that Article 23 of the Charter requires State Parties to undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular to enable older persons to remain full members of society for as long as possible. The expression “full members of society” used in Article 23 requires that older persons must suffer no ostracism on account of their age. The right to take part in society’s various fields of activity should be ensured to everyone active or retired, living in an institution or not.

The Committee takes due account of contemporaneous definitions of ageism which refer to the stereotypes, prejudices and discrimination directed towards other or oneself based on age (see for example WHO report on Ageism, 2021, p. XIX) As the World Health Organisation has noted, “... ageism has serious and far-reaching consequences for people’s health, well-being and human rights“(WHO report on Ageism, 2021, p. XVI).

The COVID-19 crisis has exposed and exacerbated a lack of equal treatment of older persons. This has included in the healthcare context, where there have been instances of rationing of scarce resources (e.g. ventilators) based on stereotyped perceptions of quality of life, vulnerability and decline in old age.

Equal treatment calls for an approach based on the equal recognition of the value of older persons’ lives in all the areas addressed by the Charter.

Article 23 of the Charter requires the existence of an adequate legal framework for combating age discrimination in a range of areas beyond employment, namely in access to goods, facilities and services, such as insurance and banking products, allocation of resources and facilities. Discrimination against older persons in terms of social rights enjoyment, is also contrary to Article E.

The overall emphasis in the Charter on using social rights to underpin personal autonomy and respect the dignity of older persons and their right to flourish in the community requires a commitment to identifying and eliminating ageist attitudes and those laws, policies and

other measures which reflect or reinforce ageism. The Committee considers that States Parties, in addition to adopting comprehensive legislation prohibiting discrimination on grounds of age, must take a wide range of measures to combat ageism in society. Such measures should include reviewing (and as necessary amending) legislation and policy for discrimination on grounds of age, adopting action plans to ensure the equality of older persons, promoting positive attitudes towards ageing through activities such as society-wide awareness campaigns, and promoting inter generational solidarity.

Further Article 23 requires that States parties provide for a procedure of assisted decision making.

The Committee previously found the situation not to be in conformity with the Charter on the grounds that there was no adequate legal framework prohibiting discrimination on grounds of age during the reference period (Conclusions 2017). It noted the preparation of legislation “the Commissioner for Older Persons Act” and asked for further information on the adoption and content of the legislation in particular as regards the prohibition of discrimination and assisted decision making.

According to the report the Commissioner for Older Persons Act (Chapter 553 of 2016) was ratified by Parliament in January 2016 and entered into force in October 2016 (by virtue of L.N. 339 of 2016), which establishes the position of a Commissioner for Older Persons.

Among the various functions of the Commissioner as outlined in the Act are the protection and the advocacy of the human rights and interests of older persons, such as:

- promoting and advocating the human rights and interests of older persons,
- promoting opportunities for older persons;
- eliminating discrimination against older persons;
- promoting the protection of older persons from the various forms of abuse and exploitation;
- to keep under review any legislation relating and affecting the interests of older persons.

The Act also provides the Commissioner with the facility to carry out an Older Persons Impact Statement relating to decisions or policy proposals affecting older persons. This document aims to set out the probable impact on older persons of such decision or policy proposal.

The Committee notes that the Commissioner may carry out an investigation for any purpose connected with the execution of their duties either on the basis of a written complaint made to the Commissioner by any person or on the Commissioner’s own motion, and may make recommendations.

However the Committee notes that whilst the Commissioner is mandated to eliminate discrimination against older persons, the legislation does not explicitly prohibit discrimination on grounds of age in access to goods, facilities and services. The Committee therefore reiterates its previous conclusion of non-conformity on this ground.

As regards assisted decision making the report refers to the Personal Autonomy Bill which, according to the report, when adopted would replace the current system of interdiction, incapacitation or guardianship, a substituted decision-making regime which is currently the existing framework regulating legal capacity under Maltese law – with a much more flexible system, in line with international standards such as those required by the United Nations Convention on the Rights of persons with disabilities. It will amend existing legislation and be based on the concept of legal equality, and introduce supported decision-making and co-decision-making procedures. A public consultation will be launched, ensuring that the preferences of persons such as persons with intellectual disabilities and persons with dementia, are taken into account.

The Committee asks to be kept informed of the progress of the Bill.

The Committee recalls that there should be a national legal framework related to assisted decision making for older persons guaranteeing their right to make decisions for themselves. Older persons must not be assumed to be incapable of making their own decisions just because they have a particular medical condition or disability.

States Parties must take measures to replace regimes of substituted decision-making by supported decision-making, which respects the person's autonomy, will and preferences. These may be formal or informal.

Older persons may need assistance to express their will and preferences, therefore all possible ways of communicating, including words, pictures and signs, should be used before concluding that they cannot make the particular decision on their own.

In this connection, the national legal framework must provide appropriate safeguards to prevent the arbitrary deprivation of autonomous decision making by older persons. It must be ensured that any person acting on behalf of older persons interferes to the least possible degree with their wishes and rights (Statement of Interpretation 2013).

Prevention of abuse of older persons

As regards the prevention of the abuse of older people the report states that a Bill on the Protection of adults in situations of vulnerability has been drafted. Once adopted, the Act will have the effect of ratifying the 2000 Hague Convention on the International Protection of Adults by Malta. It will create a dedicated office to investigate and process inter alia, complaints of abuse of older persons. A public consultation on the proposals will be carried out. The Committee also notes that one of the functions of the Commissioner for Older Persons is to promote the prevention of abuse of older persons.

The Committee asks to be kept informed about the adoption of the proposed legislation as well on other measures taken to combat abuse of older persons including measures to raise awareness of the need to eradicate abuse and neglect of older persons (beyond the institutional care context). It also asks whether data has been collected which would indicate the prevalence abuse of older persons.

Independent living and long term care

The Committee asks whether steps have been taken to move away from the institutionalisation of older persons and adopt a long term care and support in the community model. The Committee recalls that Article 23 provides that measures should be taken to enable older persons to lead independent lives in their familiar surroundings therefore it considers that older persons requiring long term care should be able to choose their living arrangements. In particular, this requires states to make adequate provision for independent living, including housing suited to their needs and state of health, as well as the necessary resources and supports needed to make independent living possible.

Institutionalisation is a form of segregation, often resulting in a loss of autonomy, choice and independence. The Covid-19 pandemic has put the spotlight on the shortcomings of institutionalised care. The Committee refers in this respect to its Statement on Covid-19 and social rights (adopted March 2021) where it stated that enabling older persons to remain in their familiar surroundings as required by Article 23 of the Charter has become even more important in view of the heightened risk of contagion in the congregated settings of nursing homes and other long-term institutional and residential facilities and to the human rights-based argument for investment in the community to give reality to the right to community living is now added a public health argument in favour of moving away from residential institutions as an answer to long term care needs.

The Committee asks the next report to provide updated information on the progress made in providing care in the community, it asks in particular how many older persons reside in institutions residential care and trends in the area.

Services and facilities

The report refers to a National Strategy for active aging and states that older persons are to have greater control over the identification of the type of support they require and more choice about and influence over the services offered. It further states that older persons are provided with greater freedom in choosing the care they want. Older persons are empowered through improved access to comprehensive information, a choice from a range of options and the right to redress any perceived injustices and discrimination.

The Committee asks the next report to provide updated information on the range of services and facilities available to older persons, including long term care, in particular those enabling them to remain active members of their community and to remain in their home as well as information on the costs of such services. It also asks whether there is an adequate supply of care services, including long term care services and whether there are waiting lists for services.

The Committee asks what support is available for informal carers.

The Committee previously requested the next report to provide further information on the complaint procedures and remedies available following a denial of services or complaints about the quality of services (Conclusions 2017).

According to the report the Active Ageing and Community Care (AACC) service has established an Audit, Quality Assurance and Compliance Unit to monitor and assess services on a regular basis through scheduled and surprise visits and through surveys on services.

The AACC has also devised a Standard Operating Procedure (SOP) setting out complaint procedures and remedies.

The Committee notes the information provided in the report on the complaints system and the time frame for the handling of complaints.

The Committee notes that many services (and information about services) are increasingly accessible online. Digitalisation provides opportunities for older persons. However older persons may have more limited access to the internet than other groups and may lack the necessary skills to use it. Therefore the Committee asks what measures have been taken to improve the digital skills of older persons, ensure the accessibility of digital services for older persons, and ensure non-digital services are maintained.

Housing

The Committee previously asked whether the needs of older persons are taken into account in national or local housing policies and to what extent dwellings occupied by elderly persons complied with standards concerning safety, adequate living conditions and basic amenities (Conclusions 2017).

According to the report the Housing Authority is in the process of delivering two residential complexes in Valletta which are specifically designed for the needs of older residents who may still live independently but would benefit from living in a residence with other older residents and share communal spaces with them. The Housing Authority is also designing a major residential project earmarked for inter-generational living. This project will aim to encourage older persons to continue living with their relatives, whilst also enjoying the support of a home for older person situated in an adjacent property.

The Housing Authority is in the process of installing 109 lifts in blocks allocated for social housing to ensure they remain accessible inter alia for older persons.

In response to the Committee's previous question as to whether elderly persons were treated on an equal footing as regards access to social housing (Conclusions 2017), the report states that older persons who require social housing are given preference over other groups. Any units which become available for social housing and are accessible are earmarked almost exclusively for elderly and disabled persons. When no such units are available, older persons are allocated other units and are then given a grant to carry out works to make the property accessible.

The Committee noted previously that the report stated that the supply meets the demand for social housing for older persons but requested more detailed information or national statistical data in support of this claim (Conclusions 2017) According to the report there are 201 older (60+) persons on the waiting for social housing. This amount represents 0.16% of this age group.

The report states that financial assistance is available to make properties safe and accessible.

The Committee asks the next report to provide updated information on how the needs of older persons are taken into account in national or local housing policies and strategies as well as information on the supply of sheltered/supported housing and the range of accommodation options for older persons. It also reiterates its request for information on assistance for the adaptation of housing .

Health care

The Committee asks that the next report provide more complete information on healthcare programmes specifically designed for older persons.

The Committee recalls that the pandemic has had devastating effects on older persons' rights, in particular their right to protection of health (Article 11 of the Charter), with consequences in many cases for their rights to autonomy and to make their own decisions and life-choices, their right to continue to live in the community with adequate and resilient supports to enable them to do so, as well as their right to equal treatment in terms of Article E when it comes to the allocation of health care services including life-saving treatments (e.g., triage and ventilators). Whether still living independently or not, many older persons have had their services removed or drastically reduced. This has served to heighten the risk of isolation, loneliness, hunger and lack of ready access to medication.

Further the Covid-19 crisis has exposed examples of a lack of equal treatment of older persons, too much space was allowed for implicit judgments about the 'quality of life' or 'worth' of lives of older persons when setting the boundaries for such triage policies.

The Committee asks whether decisions around the allocation of medical resources may be made solely on the basis of age and asks whether triage protocols have been developed and followed to ensure that such decisions are based on medical needs and the best scientific evidence available.

Institutional care

The Committee refers to its statement above on the importance of moving away from institutional care and towards care in the community.

In its previous conclusion (Conclusions 2017), the Committee took note of the National Minimum Standards for Care Homes adopted in 2015. It noted that legislation was envisaged to underpin the guidelines. Further an independent authority responsible for the implementation of the said standards and the licensing of care homes for older persons was to be established. The Committee wished to be informed of the progress made in this field.

The Committee also previously requested information on how the rights of older persons are safeguarded in residential facilities – in particular, the right to appropriate care and services, the right to privacy, the right to personal dignity, the right to maintain personal contacts and

the right to participate in decisions concerning living conditions in their institution (Conclusions 2017).

According to the report the Social Care Standards Authority (SCSA) was established through Chapter 582 of the Laws of Malta, as an independent body to regulate social welfare services, including services for older persons in May 2018. It licences and inspects residential facilities and ensures that the Regulations for Residential Homes for Older Persons are implemented.

The Committee asks in this respect whether the above mentioned regulations are National Minimum Standards for Care Homes now on a legislative basis, and whether the Social Care Standards Authority also licences and inspects private residential facilities.

According to the report in 2020 (outside the reference period), the SCSA conducted over 2,000 inspections both in a physical as well as virtual manner due to the Covid-19 pandemic.

In its capacity as regulator, the SCSA has created new Social Regulatory Standards based upon quality and performance indicators in order to qualitatively measure the quality of the services being provided. These standards are based on the principles of person-centred care, dignity, physical and mental wellbeing, privacy, equality, self-fulfilment, autonomy and empowerment. The Social Care Standards Authority will monitor the implementation of these standards when inspecting residential institutions. The Committee asks whether these standards will have a legislative basis.

The Social Care Standards Authority will launch its Social Regulatory Standards for Active Ageing Centres as well as for services dealing with Dementia in 2021.

According to the report the Commissioner has signed a Memorandum of Understanding (MoU) with the SCSA establishing a collaboration. Through this MoU, the parties agreed to co-operate in the field of social welfare services, particularly through the exchange of information acquired in the course of carrying out duties entrusted by law with the aim of protecting and promoting the rights and best interests of older persons.

The Committee recalls that there is an overall emphasis in the Charter on using social rights to underpin personal autonomy and respect the dignity of older persons resulting in a pressing need to re-invest in community-based supports as an alternative to institutions. Where during the period of transition towards deinstitutionalisation, institutionalisation is unavoidable, Article 23 requires that living conditions and care be adequate and that the following basic rights are respected: the right to autonomy, the right to privacy, the right to personal dignity, the right to participate in decisions concerning the living conditions in the institution, the protection of property, the right to maintain personal contact (including through internet access) with persons close to the older person and the right to complain about treatment and care in institutions. This also applies in the Covid-19 context.

Due to the specific Covid-19 related risks and needs in nursing homes, States Parties must urgently allocate sufficient additional financial means towards them, organise and resource necessary personal protective equipment and ensure that nursing homes have at their disposal sufficient additional qualified staff in terms of qualified health and social workers and other staff in order to be able to adequately respond to Covid-19 and to ensure that the above mentioned rights of older people in nursing homes are fully respected.

Adequate resources

When assessing adequacy of the resources of older persons under Article 23, the Committee recalls that it takes into account all social protection measures guaranteed to older 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 older persons. These resources will then compared with median

equivalised income. The Committee will also take into consideration relevant indicators relating to at-risk-of-poverty rates for persons aged 65 and over.

The Committee previously found that the situation was in conformity with the Charter in this respect (Conclusions 2017).

The Committee notes from MISSOC that in July 2019 the minimum pension amounted to €150 per week for a single person and to €154 for a married couple (corresponding respectively to approximately €650 and €667 per month) who have a contribution average of 50 weeks per year. For persons with a lower contribution average, the rate is reduced proportionately.

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 to be €640 per month in 2019. The Committee notes that the rates of the minimum pension are above this. It also asks for updated information on supplementary benefits that older persons maybe entitled to such as the Senior Citizen Grant.

Malta also grants a non-contributory pension to insured persons aged 60 and over who do not satisfy the contribution conditions. The Committee asks the next report to provide updated information on the amount of this pension.

Covid-19

The Committee asked a targeted question on measures taken to protect the health and well being of the older persons in the context of Covid-19. The report provides no information on this apart from the information on the increase in the inspection of residential facilities some of which took place on line.

The Committee refers to the section on older persons in its statement on Covid-19 and Social Rights (March 2021) (and to sections cited above). It recalls Article 23 requires that older persons and their organisations be consulted on policies and measures that concern them directly, including on ad hoc measures taken with regard to the current crisis. Planning for the recovery after the pandemic must take into account the views and specific needs of older persons and be firmly based on the evidence and experience gathered in the pandemic so far.

Conclusion

The Committee concludes that the situation in Malta is not in conformity with Article 23 of the Charter on the ground that there is no legal framework prohibiting discrimination on grounds of age outside of employment.