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European Social Charter (REVISED)

European Committee of Social Rights

Conclusions 2023

AUSTRIA

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, the Committee, the national reports as well as the Statement of interpretation on Article 17 adopted by the Committee during the supervision cycle can be found in the General Introduction to all Conclusions.

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 requested from the States Parties concerned the following provisions of the thematic group IV " Children, families and migrants ":

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection of maternity (Article 8),
- the right of the family to social, legal and economic protection (Article 16),
- the right of mothers and children to social and economic protection (Article 17),
- the right of migrant workers and their families to protection and assistance (Article 19),
- the right of workers with family responsibilities to equal opportunity and treatment (Article 27),
- the right to housing (Article 31).

The reference period was from 1 January 2018 to 31 December 2021.

The following chapter concerns Austria, which ratified the Revised European Social Charter on 20 May 2011. The deadline for submitting the 11th report was 31 December 2022 and Austria submitted it on 3 January 2023.

The Committee recalls that Austria was asked to reply to the specific targeted questions posed under various provisions (questions included in the appendix to the letter, 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 the previous conclusions of non-conformity, deferral and conformity pending receipt of information (Conclusions 2019).

In addition, the Committee recalls that no targeted questions were asked under certain provisions. If, in its previous conclusion (Conclusions 2019), the Committee concluded that the situation was in conformity, there was no examination in 2023.

The comments of the Federal Chamber of Labour and the United Nations High Commissioner for Refugees (UNHCR) on the 11th report were registered on 3 January and 14 July 2023 respectively.

Austria has not accepted the following provisions from the above-mentioned group: 7§6, 19§4, 19§8, 19§10, 19§11, 27§3, 31§§1-3.

The conclusions relating to Austria concern 27 situations and are as follows:

– 19 conclusions of conformity: Articles 7§§1-3, 7§7-9, 8§§1-5, 19§1, 19§3, 19§5, 19§7, 19§9, 19§12, 27§§1-2.

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

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

Article 7 - Right of children and young persons to protection

Paragraph 1 - Prohibition of employment under the age of 15

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

The Committee recalls that for the purposes of the present report, States were asked to reply to targeted questions for Article 7§1 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Children, families and migrants”).

The Committee notes that it has previously considered that the situation in Austria was in conformity with Article 7§1 of the Charter.

The Committee has observed that many states’ legislation is in conformity with the Charter regarding the minimum age for employment. Nevertheless, the Committee is concerned about the situation in practice. There are data that suggests that in many countries there are significant numbers of children working illegally. However, there are few official data on the extent of the problem. Therefore, as targeted questions to the States, the Committee asked for information on the measures taken by the authorities (e.g. Labour Inspectorates and social services) to detect child labour, including children working in the informal economy. It also asked for information on the number of children actually working, as well as on measures taken to identify and monitor sectors where it is strongly suspected that children are working illegally.

The District Administration Authorities are jointly responsible for monitoring compliance with the provisions of the act, in collaboration with the Labour Inspectorates, municipal authorities and school administrations. Teachers, physicians and agents of youth welfare organisations who observe any instances of child labour are required to inform the District Administration Authority responsible (Section 9 KJBG). Section 17 Para. 3 of the Labour Inspection Act (Arbeitsinspektionsgesetz, ArbIG) requires that at every Labour Inspectorate at least one labour inspector responsible for child labour and youth protection is to be appointed, with the duty of monitoring compliance with regulations to protect children and young persons.

In 2020, the Labour Inspectorate identified three cases of violations of child labour provisions. Four violations were identified in 2019 and three in 2018.

In general, violations of the Employment of Children and Young People Act (Kinder- und Jugendlichenbeschäftigungsgesetz, KJBG) are punishable by initial fines of € 72 to € 1090, and €218 to € 2180 after repeated offences (Section 30 KJBG). Unless an offence or violation is subject to a higher fine under another law, the District Administration Authority is the competent body for imposing fines.

In the capacity of a supervisory authority, the Labour Inspectorates play an important role in helping to combat human trafficking in the form of labour exploitation or social security fraud. The Labour Inspectorate is authorised and required to report as soon as possible any well-founded suspicion of such cases to the authorities responsible. The authorities responsible for combating human trafficking/labour exploitation, wage and social dumping, and social security fraud are: the police, the Competence Centre for Anti-Wage and Social Dumping (CWSD Competence Centre), the finance police and health insurance institutions.

According to the report, the Agriculture and Forestry Inspections have not reported any violations regarding the prohibition of child labour during the period under review.

Conclusion

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

Article 7 - Right of children and young persons to protection

Paragraph 2 - Prohibition of employment under the age of 18 for dangerous or unhealthy activities

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

The Committee recalls that no targeted questions were asked for Article 7§2 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Children families and migrants” thematic group).

In its previous conclusion the Committee found that the situation in Austria was in conformity with the Charter. The Committee reiterates its previous finding of conformity.

Conclusion

The Committee concludes that the situation in Austria is in conformity with Article 7§2 of the Charter.

Article 7 - Right of children and young persons to protection

Paragraph 3 - Prohibition of employment of children subject to compulsory education

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

The Committee recalls that no targeted questions were asked for Article 7§ 3 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Children families and migrants” thematic group).

In its previous conclusion the Committee found that the situation in Austria was in conformity with the Charter. The Committee reiterates its previous finding of conformity.

Conclusion

The Committee concludes that the situation in Austria is in conformity with Article 7§3 of the Charter.

Article 7 - Right of children and young persons to protection

Paragraph 4 - Working time

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

The Committee recalls that no questions were asked for Article 7§4 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Children, families and migrants” thematic group).

The Committee recalls that Article 7§4 requires that the working hours of persons under 18 years of age are limited in accordance with the needs of their development, and particularly with their need for vocational training.

In its previous conclusion, the Committee found that the situation in Austria was in conformity with Article 7§4 of the Charter, pending receipt of the information requested (Conclusions 2019).

The Committee recalls that in its Conclusions 2015, it noted that the working time of young workers under the age of 18 should not exceed 8 hours per day and 40 hours per week pursuant to the Act on the Employment of Children and Young Persons (*KJBG*) and found the situation to be in conformity with the Charter. In its previous conclusion (Conclusions 2019), the Committee requested information on the exact maximum working time that persons of at least 15 years of age and under 16 years old who were no longer subject to compulsory education were allowed to perform.

The report specifies in reply that young people from 15 but under 18 years of age generally fall under the *KJBG* Act. The protection regulations set out in the *KJBG* also apply to minors under the age of 15 if they have already completed compulsory schooling.

The Committee recalls that the number of hours that a person under 16 years of age may work will be, consistent with Article 7§4, less than that permitted for adults. Thus, a forty-hour week of eight hours a day is excessive, unless time is allowed off during working hours for vocational study (Conclusions XI-1 (1991), Netherlands). Accordingly, the situation in Austria is not in conformity with Article 7§4 of the Charter in this respect.

In its previous conclusion, the Committee further asked about the maximum working time for persons under 18 years of age employed in private households, minimum rest periods and rest breaks. It also requested concrete data on the violations of the regulations regarding working time for young persons employed in private households and sanctions applied in practice against the employers.

The report indicates that in domestic employment, persons under 18 residing in their employers' households must not work more than 100 hours during any two calendar weeks, while being allowed breaks amounting to a total of at least three hours per working day, with at least two uninterrupted 30-minute breaks allowed for taking main meals. They are entitled to a rest period of at least 12 hours that includes the hours between 8 pm and 7 am. Persons not residing in their employers' households must not work more than 80 hours during any two calendar weeks. If they work each day for more than 4.5 hours, they are entitled to one or more breaks, between 20 and 60 minutes, depending on their daily working hours. They are entitled to a rest period of at least 15 hours that includes the hours between 8 pm and 7 am. The Committee notes that the limit of 100 hours during any two calendar weeks for persons under 18 residing in their employers' households is excessive and not in conformity with Article 7§4 of the Charter.

The report provides no information on monitoring of the implementation of regulations regarding working time for young persons employed in private households and on sanctions applied in practice against the employers.

Finally, the Committee previously asked information on the monitoring of the implementation of rules concerning working time for young persons who are not subject to compulsory education (Conclusions 2019). The Committee does not provide the information requested.

Due to the failure to provide the requested information, the Committee concludes that the situation in Austria is not in conformity with Article 7§4 of the Charter.

Conclusion

The Committee concludes that the situation in Austria is not in conformity with Article 7§4 of the Charter on the grounds that:

- the permissible working hours of young persons between the ages of 15 and 16 are excessive;
- the permissible working hours for persons under 18 residing in their employers' households is excessive.

Due to the failure to provide the information listed below the Committee concludes that the situation in Austria is not in conformity with Article 7§4 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Austria of their reporting obligations under Article C of the Charter.

Missing information:

- on monitoring of the implementation of regulations regarding working time for young persons employed in private households and on sanctions applied in practice against the employers;
- on monitoring of the implementation of rules concerning working time for young persons who are not subject to compulsory education.

Article 7 - Right of children and young persons to protection

Paragraph 5 - Fair pay

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

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to targeted questions for Article 7§5 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Children, families and migrants”).

In its previous conclusion, the Committee found that the situation in Austria was in conformity with Article 7§5 of the Charter (Conclusions 2019). The assessment of the Committee will therefore concern the information provided in the report in response to the targeted questions.

Fair remuneration for young workers and apprentices

As regards the wages of young workers, the report indicates that in Austria, minimum wage schemes and collective agreements ensure that employees who are particularly vulnerable to exploitation are fairly paid. The minimum wage scheme does not specify any different minimum wages for persons under 18. The report provides by way of example wages for young workers in various sectors which confirms that workers in the 1st year after qualification receive the same or higher wage than respective semi-skilled or even skilled workers. The amounts range from 1,556 EUR in the food industry to 2,982 EUR in the building industry. The Committee notes from the Eurostat that average earnings in 2020 in Austria stood at 2,752 EUR per month. Consequently, according to the report, these amounts are significantly higher than the threshold of 50% of the net average wage.

As regards remuneration of apprentices, the report states that collective agreements generally specify wage in levels based on job type rather than age. Because they are in a training relationship, apprentices (usually below 18 years of age) receive apprenticeship pay (previously referred to as apprenticeship allowance). They are entitled to such pay while attending occupational school and working in their vocations as well as during the final examination period. The pay level is increased with every apprenticeship year completed.

The report provides detailed figures comparing apprentices' allowances – broken down by branch, by year of apprenticeship and by Land – with relevant adult workers starting or lowest wages. These figures show that, overall, apprentices receive more than one third of an adult worker's starting or lowest wage at the beginning of their apprenticeship and more than two thirds at the end, which satisfies the requirements of the Charter. However, according to the report, in the agriculture and forestry the Collective Agreement for Farming Operations in Lower Austria stipulates a minimum wage for farm workers of EUR 1,334.47 (EUR 1,125.03 net). Apprentices receive EUR 634.14 (EUR 538.26 net) monthly as apprenticeship pay in the first year. The Collective Agreement for Agricultural Estates in Vienna, Lower Austria and Burgenland stipulates an internship wage level of EUR 750 (EUR 636.60 net).

Referring to the Eurostat average net earnings which in 2020 stood at EUR 2,752 per month, the Committee notes that the minimum net wage that has been indicated by the report for agriculture and forestry workers in Lower Austria stood at EUR 1,125.03 net or 41% in the average net earnings. The minimum wage and, accordingly, the monthly apprenticeship pay cannot be considered as ensuring a decent standard of living and, therefore, the situation is not in conformity with Article 7§5. The Committee further notes that in its conclusion under Article 4§1 (see Conclusions 2022) it concluded that the minimum wage for agriculture and forestry workers in Styria was not in conformity with Article 4§1 of the Charter, as it stood at € 1,182 net or 43% in the average net earnings. The report does not provide information on the situation of apprentices pay in Styria.

Fair remuneration in atypical jobs

For the present monitoring cycle, the Committee requested updated information on net minimum wages and allowances payable to persons under 18 years of age. In particular, it asked for information on measures taken to ensure that fair remuneration is guaranteed to young workers:

- i) in atypical jobs (part-time work, temporary work, fixed-term work, casual and seasonal work, self-employed people, independent workers and homeworkers.)
- ii) in the gig or platform economy and
- iii) having zero hours contracts.

The report refers to a general principle that most employment relationships are governed by collective agreements that stipulate minimum wages or salaries, i.e. the minimum amounts of remuneration permitted under law. Where in the exceptional case no collective agreement applies, the amount of remuneration is governed by the employment contract between the employer and the employee, to which both parties to the contract must consent. If the contract does not stipulate either the amount or that the work will not be remunerated, pursuant to Section 1152 of the Austrian General Civil Code, the employer is liable to appropriately remunerate the employee, i.e. based on common practice. What is appropriate or common practice in a sector where no collective agreement exists is ultimately subject to review by a court.

Enforcement

In the context of the present monitoring cycle the Committee also requested information on measures taken to ensure that this right of young persons to fair pay is effectively enforced (e.g., through Labour Inspectorates and similar enforcement authorities, trade unions).

The report states that remuneration claims in Austria must be asserted before a court of law. Members of the Chamber of Labour receive legal advice and representation in court when seeking to enforce claims based on employment law. The Chamber of Labour has been set up as a body under law to represent the interests of employees, who are compulsory members of the Chamber. Apart from that, the Austrian Trade Union Federation also offers its members support in enforcing their claims.

Besides the option of enforcing remuneration claims in court, the Anti-Wage and Social-Dumping Act ensures equal remuneration conditions for employees working in Austria. Administrative authorities are required to verify remuneration levels and impose penalties of up to EUR 400,000, regardless of the number of employees involved in the case, on employers not meeting minimum levels. The amount of the fine depends on the total amount of remuneration withheld from employees. Employees can also claim any outstanding remuneration in court while still in employment.

Conclusion

The Committee concludes that the situation in Austria is not in conformity with Article 7§5 of the Charter on the ground that the allowances paid to apprentices in some Laender are not appropriate.

Article 7 - Right of children and young persons to protection

Paragraph 7 - Paid annual holidays

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

The Committee recalls that no targeted questions were asked for Article 7§7 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Children, families and migrants” thematic group).

In its previous conclusion, the Committee found that the situation in Austria was in conformity with Article 7§7 of the Charter (Conclusions 2019). Therefore, the Committee reiterates its previous conclusion.

Conclusion

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

Article 7 - Right of children and young persons to protection

Paragraph 8 - Prohibition of night work

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

The Committee recalls that no targeted questions were asked for Article 7§8 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Children, families and migrants” thematic group).

In its previous conclusion, the Committee found that the situation in Austria was in conformity with Article 7§8 of the Charter (Conclusions 2019). Therefore, the Committee reiterates its previous conclusion.

Conclusion

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

Article 7 - Right of children and young persons to protection

Paragraph 9 - Regular medical examination

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

The Committee recalls that no targeted questions were asked for Article 7§9 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Children, families and migrants” thematic group).

In its previous conclusion, the Committee found that the situation in Austria was in conformity with Article 7§9 of the Charter (Conclusions 2019). Therefore, the Committee reiterates its previous conclusion.

Conclusion

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

Article 7 - Right of children and young persons to protection

Paragraph 10 - Special protection against physical and moral dangers

The Committee takes note of the information contained in the report submitted by Austria and in the comments of the Federal Chamber of Labour.

The Committee recalls that for the purposes of the present report, States were asked to reply to targeted questions for Article 7§10 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Children, families and migrants”).

Previously, the Committee deferred its conclusion (Conclusions 2019). The assessment of the Committee will therefore concern the information provided by the Government in response to the conclusion of deferral and the targeted questions.

Protection against sexual exploitation

The Committee previously asked whether the Austrian legislation on child pornography was compliant with the standards established by the Lanzarote Convention on the Protection of children against sexual exploitation. It also asked that the next report provide updated information on action taken to ensure that adequate measures can be taken to address ‘sexting’ that is non-consensual and/or that constitutes sexual exploitation (Conclusions 2019).

In the targeted questions, the Committee asked for updated information on measures taken to strengthen the protection of children, including migrant, refugee, and displaced children, from sexual exploitation and abuse (in particular, in response to the risks posed by the Covid-19 pandemic) during the reference period, including information on the incidence of such abuse and exploitation.

The report states that the Austrian Criminal Code defines what is a pornographic image of a minor aged 14 or above.

The Committee notes from other sources (Lanzarote Committee Implementation Report addressing the challenges raised by child self-generated sexual images and/or videos of 10 March 2022) that Austrian legislation complies with the standards established by the Lanzarote Convention and that sharing self-generated material of sexual nature with individuals other than those participating and consenting in the exchange is a criminal offence under national criminal law.

In reply to the targeted question, the report states that with the 2019 Austrian Protection Against Violence Act, which entered into force on 1 January 2020, protection from violent crimes and sexual offences, especially for the purpose of sexual exploitation, was strengthened. The minimum term of imprisonment for rape was increased from one year to two years. In addition, it is no longer possible to suspend the full term of prison sentence. An occupational ban must be imposed for an indefinite period if there is a risk that a perpetrator may commit similar offences. The rights of particularly vulnerable victims have been extended. They relate to the questioning of witnesses, for example.

Protection against the misuse of information technologies

Previously, the Committee requested information on any new measures adopted in law and practice to combat the sexual exploitation of children through the use of internet technologies (Conclusions 2019).

In the targeted question, the Committee asked for information on the protection of children from all forms of violence, exploitation and abuse in the digital environment, in particular sexual exploitation and abuse and solicitation for sexual purposes (grooming).

The report mentions the Hate on the Internet Combat Act, which entered into force on 1 January 2021 and made it significantly easier for victims of hate on the Internet to enforce their rights.

In reply to the targeted question, the report states that there are several rights and measures of protection of child victims in criminal proceedings. Due to the failure to provide the requested information on the protection of children from grooming, the Committee concludes that the situation in Austria is not in conformity with Article 7§10 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Austria of their reporting obligations under Article C of the Charter.

Protection from other forms of exploitation

In its previous conclusion, the Committee asked Austria to comment on the findings in the Report by the OSCE Acting Co-ordinator for Combatting Trafficking in Human Beings following the official visit to Austria on 19-23 November 2018 and 14 January 2019 that there was no basic data on child trafficking in Austria and that the statistics provided by public bodies did not reflect the extent of the problem. The Committee also asked to comment on measures taken to address this problem. The Committee asked that the next report provide information on the extent of the problem of child trafficking and the results of the action plan. It also asked for information on the measures taken to protect and assist children in vulnerable situations, with particular attention to street children and children at risk of child labour, including those in rural areas (Conclusions 2019).

In reply, the report states that within the Federal Chancellery, a Working Group on Child Trafficking has been set up under Division VI – Family and Youth. This Division publishes a brochure with information aimed at people working for the police or asylum and immigration authorities, child and youth welfare services or in other areas, advising on the action that can be taken to help children affected by the issue. In 2021, the Working Group on Child Trafficking drafted a plan for a federal institution for victims of child trafficking to ensure the protection of future victims as well as shelter and care in special facilities.

The report further states that every year the Federal Ministry of Interior publishes statistics that includes the number of identified victims of human trafficking. In 2018, there were eight children identified as having been trafficked, in 2019 – 14 and in 2020 – 10. There might be more victims, and the authorities are working on how to improve the data.

In its comments, the Federal Chamber of Labour states that workshops in schools are needed to raise awareness of sexual harassment among students and teachers.

Covid-19

In the context of the Covid-19 pandemic, the Committee asked for information on the impact of the pandemic on the monitoring of the exploitation and abuse of children, as well as measures taken to strengthen the monitoring mechanisms.

The Committee recalls that Article 7§10 of the Charter guarantees protection against sexual and other exploitation of children as well as protection against the misuse of information technology and social media (for the purposes of online bullying, child pornography, grooming, harassment, etc.), which is particularly pertinent in view of the acceleration of digitalisation and online activity brought about by the pandemic (Statement on Covid-19 and social rights, 24 March 2021).

The report states that during the Covid-19 pandemic, the prosecution of perpetrators and access to justice for all victims were guaranteed at all times. The protection provided by the protection orders remained unchanged during the pandemic; there were and are no restrictions in the court system in this regard. Persons in quarantine could file an application for a protection order via the police.

Conclusion

Due to the failure to provide the information listed below, the Committee concludes that the situation in Austria is not in conformity with Article 7§10 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Austria of their reporting obligations under Article C of the Charter.

List of questions/Information missing: on the protection of children from grooming.

Article 8 - Right of employed women to protection of maternity

Paragraph 1 - Maternity leave

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

The Committee recalls that no targeted questions were asked in relation to Article 8§1 of the Charter, only a question in relation to Covid-19. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the thematic group "Children, families and migrants").

As the previous conclusion found the situation in Austria to be in conformity with the Charter (Conclusions 2019), there was no examination of the situation in 2023. Therefore, the Committee reiterates its previous conclusion.

Covid-19

In the context of the Covid-19 crisis, the Committee asked all States to provide information on whether the Covid-19 crisis had an impact on the right to paid maternity leave.

According to the report, the Covid-19 crisis had no impact on the absolute prohibition of employment applicable during the eight weeks before and after childbirth, as accorded under the Maternity Protection Act (*Mutterschutzgesetz, MSchG*) 1979, Federal Law Gazette No. 221/1979, most recently amended by Federal Law Gazette I No. 87/2022 and the Agricultural Labour Act (*Landarbeitsgesetz, LAG*) 2021, Federal Law Gazette I No. 78/2022, most recently amended by Federal Law Gazette I No. 115/2022.

During the Covid-19 crisis, an exemption from work for pregnant women from the 14th week of pregnancy, where the work required physical contact and no alternative work was available, was introduced.

Those women were exempted from work and received continued remuneration from their employers (Section 3a MSchG 1979).

Conclusion

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

Article 8 - Right of employed women to protection of maternity

Paragraph 3 - Time off for nursing mothers

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

The Committee recalls that no targeted questions were asked for Article 8§3 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the thematic group "Children migrants and families").

As the previous conclusion found the situation in Austria to be in conformity with the Charter, there was no examination of the situation in 2023.

Therefore, the Committee reiterates its previous conclusion.

Conclusion

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

Article 8 - Right of employed women to protection of maternity

Paragraph 4 - Regulation of night work

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

The Committee recalls that for the purposes of the present report, States were asked to reply to targeted questions in relation to Article 8§4 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Children, families and migrants”).

In its previous conclusion, the Committee concluded that the situation was in conformity with Article 8§4 of the Charter (Conclusions 2019). The assessment of the Committee will therefore concern the information provided by the Government in response to the targeted question.

In its targeted question the Committee asked for confirmation that no loss of pay results from the changes in the working conditions or reassignment to a different post and that in the case of exemption from work related to pregnancy and maternity, the woman concerned is entitled to paid leave.

According to the report Section 6 Para. 1 of the Maternity Protection Act (*Mutterschutzgesetz, MSchG*) 1979, as amended prohibits pregnant or nursing mothers from working at night. They must not work between 8 pm and 6 am (unless the conditions for one of the exceptions under law, such as theatre performances, apply). Where it is necessary to rearrange working conditions in response to a pregnancy (e.g. discontinuing night shifts), a pregnant employee is entitled to remuneration equal to the average amount received during the 13 weeks prior to altering the conditions, in accordance with Section 14 of the *MSchG*.

Likewise Section 174 Para. 1 of the Agricultural Labour Act (*Landarbeitsgesetz, LAG*) 2021, as amended prohibits expecting or nursing mothers employed in agriculture from working at night. They must not work between 7 pm and 5 am. Where it is necessary to rearrange working conditions in response to a pregnancy, a pregnant employee is entitled to remuneration equal to the average amount received during the 13 weeks prior to altering the conditions, in accordance with Section 180.

In the case of Federal Government employees, if due to the prohibition of night work reassignment to a different post is necessary the same provisions apply as in the case of private sector employees (Section 14 *MSchG*) in relation to continued remuneration.

Conclusion

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

Article 8 - Right of employed women to protection of maternity

Paragraph 5 - Prohibition of dangerous, unhealthy or arduous work

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

The Committee recalls that for the purposes of the present report, States were asked to reply to targeted questions in relation to Article 8§5 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Children, families and migrants”).

In its previous conclusion, the Committee concluded that the situation in was in conformity with Article 8§5 of the Charter (Conclusions 2019). The assessment of the Committee will therefore concern the information provided by the Government in response to the targeted question.

In its targeted question the Committee asked for confirmation that no loss of pay results from the changes in the working conditions or reassignment to a different post and that in the case of exemption from work related to pregnancy and maternity, the woman concerned is entitled to paid leave and women concerned retain the right to return to their previous employment once their condition permits.

The report states that pregnant or nursing mothers not permitted to work due to the unsuitability of the workplace (Section 4 of the Maternity Protection Act (*Mutterschutzgesetz, MSchG*) 1979, as amended and Section 171 of the Agricultural Labour Act (*Landarbeitsgesetz, LAG*) 2021, as amended) are entitled to remuneration equalling the average amount received during the 13 weeks prior to the change, in accordance with Section 14 of the MSchG and Section 180 of the LAG 2021.

Further according to the report women retain the right to return to their previous employment at the end of the protected period.

Conclusion

The Committee concludes that the situation in Austria is in conformity with Article 8§5 of the Charter.

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

The Committee takes note of the information contained in the report submitted by Austria and the comments by the Federal Chamber of Labour (*Bundesarbeitskammer*, BAK).

The Committee recalls that for the current reporting cycle, States were asked to respond to several targeted questions for Article 16 of the Charter as well as, where applicable, previous conclusions of non-conformity, deferral or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the Charter's implementation in respect of the provisions relating to the "Children, family and migrants" thematic group).

In its previous conclusion (Conclusions 2019), the Committee found that the situation in Austria was not in conformity with Article 16 of the Charter on the ground that the length of residence required for receipt of housing allowances in certain *Länder* was excessive.

The Committee's assessment will therefore relate to the information provided in the report in response to the conclusion of non-conformity, and to the targeted questions.

Legal protection of families

Domestic violence against women

The Committee notes firstly that Austria has ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), which entered into force in Austria in August 2014.

In its previous conclusion (Conclusions 2019), the Committee asked the next report to provide updated information on domestic violence against women and related convictions, the implementation of measures and their impact on reducing domestic violence against women, also in the light of the recommendations made by the Council of Europe's Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) in its first evaluation report on Austria.

In addition, among the targeted questions that it raised, the Committee asked for updated information on measures taken to reduce all forms of domestic violence against women, including information on incidence and conviction rates.

In its report, the Government states that the fight against gender-based violence has been high on its political agenda. Austria has sent a clear signal by drastically increasing the "women's" budget in recent years (from €10.2 million in 2019 to €14.7 million in 2021). Most of this budget is allocated to measures to combat violence against women and girls. Additional financial resources amounting to €24.6 million were allocated by the Minister for Women, the Minister of the Interior and the Minister of Justice to the fight against violence and victim protection in 2021 (known as the "Violence Protection Package 2021").

The report indicates the numerous measures taken in recent years to prevent and combat domestic violence. In particular, it provides detailed information on the introduction and expansion of counselling, awareness-raising and information services, on research studies carried out and on changes made to the legal framework.

As regards changes to the legal framework, the Protection Against Violence Act 2019 introduced numerous stricter penalties (e.g. for the offences of continued use of violence and rape), broadened the group of victims of domestic violence and improved the existing system of protection orders and victims' rights. In addition, the "Guidelines for the Prosecution of Domestic Violence" for public prosecutor's offices was adopted in 2019 (and amended in 2020). The third edition of this decree (Decree 2021-0.538.674, "Police Guideline governing the Criminal Prosecution of Offences in the Immediate Social Environment") entered into force in October 2021; for the first time, it provides for a uniform, country-wide definition of "violence in the social environment".

As regards incidence and conviction rates, the Government refers to the website of the national co-ordinating body for the Istanbul Convention, which is responsible for preparing data (<http://www.coordination-vaw.gv.at/daten/>). It explains that in Austria, there is no standard definition of the term “domestic violence”; elements of domestic violence can refer to a number of offences enumerated in the Criminal Code (e.g. criminal offences against life and limb, offences restricting freedom and offences violating an individual’s sexual integrity). From the current data, therefore, it is not possible to determine, for each specific offence, the number of cases involving crimes committed within the immediate social environment (and specifically in the context of a partner relationship). Future annual evaluations could utilise the definition of family (FAM) offences first standardised in late 2021 (through Decree 2021-0.538.674, see above), i.e. “violence in the immediate social environment or criminal offences committed within the family”.

The BAK points out that one in five women over the age of 15 in Austria is exposed to physical or sexual violence. During the reference period, 140 women were victims of femicide (usually perpetrated by (ex-)partners or family members). Crime statistics show a massive increase in barring orders (from 8 076 in 2018, the number rose to 13 690 in 2021, an increase of about 70%); the same applies to calls received by the women’s hotline (*Frauenhelpline*). These figures must be seen in the context of the very small budget for protection against violence. In relative terms, the “women’s” budget increased significantly from 2018 to 2021, but it started from a very low base and is still far too small. Austrian anti-violence groups are calling for the anti-violence budget to be increased to €228 million; they are also calling for 3 000 new posts to be created in this area (at present there is one counsellor for every 330 women and children affected by violence).

Social and economic protection of families

Childcare facilities

In its previous conclusion (Conclusions 2019), the Committee noted that the federal government had decided to continue sharing in the costs of expanding basic childhood education and childcare programmes, with a view to meeting the target for children under three years adopted by the European Council in Barcelona in 2002 (i.e. to provide childcare for at least 33% of children in this age group). The Committee took note of the data provided, also in respect of *Länder*, and asked the next report to provide updated information on this issue.

The report states (under Article 27 of the Charter) that it has extended its contribution towards expansion of elementary education programmes, non-contributory nursery schools and early language learning support until the end of August 2027 and that it has increased this contribution from €142.5 million to €200 million per year. The aim is to further increase the number of small children attending childcare facilities and ensure that the Barcelona target is exceeded.

Family benefits

Equal access to family benefits

In a targeted question, the Committee asked whether a length of residence requirement was imposed on nationals of other States Parties lawfully resident in the country for eligibility to family benefits.

In reply, the report states that there is no length-of-residence requirement.

Level of family benefits

Among the targeted questions that it raised, the Committee asked for information about the amounts paid in family benefit as well as the median equivalised income for the reference period. It also asked whether family or child benefits were subject to a means-test and, if so, what percentage of families were covered.

The Committee points out that family benefit must be such as to provide a significant number of families with sufficient extra income. Adequacy is assessed with respect to the monthly median equivalised net income as calculated by Eurostat.

The Committee notes from Eurostat data (published on 17 March 2023) that the annual median equivalised income stood at €2 286 in 2021.

The Government states that family benefits are not subject to a means-test. The level of these benefits varies according to the child's age. In 2021, the amount per child and per month ranged from €114 for a child aged between 0 and 2 years to €165.10 for a child aged 19 years or older.

For each additional child, the monthly family allowance attracted a supplement; the supplement varied according to the number of children. There was an extra supplement of €155.90 per month for children with significant disabilities.

The Committee notes that the family allowance paid for a child aged 0-2 years represents approximately 5% of the median equivalised income. This percentage is higher when supplements are taken into account and also higher for older children.

In its previous conclusion, the Committee asked the next report to explain whether childcare benefit (*Kinderbetreuungsgeld*) and family benefit were complementary.

The Government report does not provide any information on this point. The Committee notes, however, that under the terms of the law on childcare benefit, this benefit is paid out as a supplement to family benefit.

Measures in favour of vulnerable families

Among the targeted questions that it raised, the Committee asked what measures had been taken to ensure that vulnerable families could meet their energy needs, in order to ensure their right to adequate housing (which includes access to essential services).

In reply, the report states that, in all *Länder*, vulnerable individuals and families can apply for a heating allowance. This annual benefit is intended to compensate for the additional financial burden arising from heating bills. The amount varies from one *Land* to another (in 2021-2022, from €150 in Lower Austria to €500 in Vienna). The benefit is means-tested (i.e. payable to those whose income is below the threshold). The Government also mentions various other measures taken by the *Länder*. For example, in Upper Austria, vulnerable families are eligible for social assistance and this covers, *inter alia*, housing needs (including heating and electricity).

In a targeted question, the Committee asked whether, in cases where specific temporary measures had been taken to financially support families during the Covid-19 pandemic, they would or were expected to be maintained or withdrawn and, if they had been withdrawn, what effect this was expected to have on vulnerable families.

In reply, the report mentions various measures taken at federal and *Land* level. Among the measures taken at federal level were the setting-up of two Funds: the Corona Family Hardship Fund which provided support for families affected by unemployment or reduced working hours as a result of the pandemic (*Corona-Familienhärtefonds*, approximately €132 million) and the Family Crisis Fund for families who were already receiving unemployment benefit before the pandemic, i.e. on 28 February 2020, and for families receiving social assistance or minimum income support (*Familienkrisenfonds*, €30 million). As the situation in Austria is stable again, these funds no longer exist.

In addition, the federal Ministry of Social Affairs introduced a “housing umbrella” (*Wohnschirm*) to help tenants who were no longer able to meet rental payments, for example as a result of unemployment or temporarily reduced working hours, and who were at risk of losing their homes. The “housing umbrella” covers rent payments that became due after 1 March 2020 and were not met because of the Covid-19 pandemic. This scheme supplements existing other rent-related support provided at *Länder*, city and municipal levels.

The federal Ministry of Social Affairs has earmarked an additional €24 million for the period 2021-2023 to tackle the impact of poverty in the wake of the pandemic. In addition, an “energy umbrella” (*Energieschirm*) is being considered.

Housing for families

In a targeted question, the Committee asked States Parties which have not accepted Article 31 of the Charter to provide updated information on the availability of adequate affordable housing for families.

In reply, the Government refers to its previous report for a general overview; it also provides examples of specific measures taken in some *Länder*. These include programmes for the construction of social housing and low-rent housing, legislation/regulation to limit rental and construction costs, the establishment of a non-profit housing system, a legal framework for the allocation of social housing and non-profit housing, the award of grants for the construction, purchase and renovation of housing, and the provision of housing allowances.

The BAK points to a number of problems - including the size of housing units and the level of rents. In particular, in urban areas, some 7% of families live in overcrowded conditions because of the shortage of larger units. In addition, access to housing is under increasing pressure in Austria due to the significant and disproportionate rise in rents: between 2008 and 2021, rents rose by 54% across the country as a whole and by 67% in Vienna (compared with inflation of around 26% over the same period). A reform of the tenancy legislation with clear upper limits for rents is long overdue.

In its previous conclusion, the Committee found that the situation was not in conformity on the ground that in the *Länder* of Lower Austria and Vienna, nationals of non-EEA States Parties were eligible for housing allowance only after completion of a residence period of five years in Austria, which was deemed manifestly excessive (Conclusions 2019).

The Government report indicates that the situation has not changed.

The BAK asserts that other *Länder* (not only Lower Austria and Vienna) restrict eligibility for housing assistance. For example, in Upper Austria, third-country nationals must prove, among other things, a minimum of five years of residence. In Vorarlberg, the qualifying period is ten years.

The Committee reiterates its conclusion of non-conformity in this regard.

In its previous conclusion (Conclusions 2019), the Committee asked the next report to clarify whether persons granted refugee status who were no longer entitled to basic welfare support were eligible for housing benefits and social housing in all the *Länder*, irrespective of their length of residence in Austria. The Committee also asked for further information in the next report on the housing situation of refugees families, including figures and statistics. Pending receipt of the information requested, the Committee reserved its position on this point.

In reply, the Government refers to its previous report; it also provides details of the situation in four *Länder* (Salzburg, Styria, Lower Austria and Vorarlberg). It appears from this information that in terms of access to housing, the same conditions apply to refugees as to Austrian citizens.

The BAK states that in terms of housing support and access to social housing, refugees generally have the same rights as Austrian citizens. However, in practice, there are barriers

that specifically affect refugees (such as the requirement to have lived at the same address for several years, or to have an income).

In its previous conclusion, the Committee asked the next report to continue to provide information on the housing situation of Roma families, including on the outcome and assessment of the National Roma Integration Strategy up to 2020. It also asked for further information on how many Roma families lived in settlements and whether legal stopping places existed.

The Government's report does not provide the requested information. The Committee notes, however, from the federal Chancellery website, that the national strategy for Roma inclusion in Austria was assessed in 2021-2022 by a team from the Institute of Sociology of the University of Vienna (SENSIRO study). In addition, following the adoption of the EU Roma strategic framework for equality, inclusion and participation 2020-2030, Austria has developed a strategy for further Roma inclusion.

The SENSIRO study mentions that the National Roma Integration Strategy up to 2020 paid little attention to housing and that it is important that this area not be neglected.

Conclusion

The Committee concludes that the situation in Austria is not in conformity with Article 16 of the Charter on the ground that the length of residence required for receipt of housing allowances in certain *Länder* is excessive.

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

Paragraph 1 - Assistance, education and training

The Committee takes note of the information contained in the report submitted by Austria and in the comments by the Federal Chamber of Labour and the United Nations High Commissioner for Refugees (UNHCR).

The Committee recalls that for the purposes of the present report, States were asked to reply to targeted questions for Article 17§1 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Children, families and migrants”).

The Committee also recalls that in the General Introduction to Conclusions 2019, it posed general questions under Article 17§1 and asked States to provide, in the next report, information on measures taken to reduce statelessness; to facilitate birth registration, particularly for vulnerable groups, such as Roma, asylum seekers and children in an irregular migration situation; to reduce child poverty; combat discrimination and promote equal opportunities for children from particularly vulnerable groups; and on the extent to which child participation is ensured in work directed towards combatting child poverty and social exclusion.

In its previous conclusion, the Committee concluded that the situation in Austria was not in conformity with Article 17§1 of the Charter on the ground that the maximum length of pre-trial detention was excessive (Conclusions 2019). The assessment of the Committee will therefore concern the information provided by the Government in response to the conclusion of non-conformity, the targeted questions and the general questions.

The legal status of the child

In the general questions, the Committee asked for information on measures taken by the State to reduce statelessness (e.g., ensuring that every stateless migrant child is identified, simplifying procedures to ensure the acquisition of nationality, and taking measures to identify those children who were not registered at birth). It also asked for information on measures taken by the State to facilitate birth registration, particularly for vulnerable groups, such as Roma, asylum seekers and children in an irregular migration situation.

The report states that Austria is signatory to the Convention on the Reduction of Statelessness.

The report further states that any birth in Austria must be recorded at the registry office. A birth certificate is issued for every birth registered, regardless of whether the individual concerned is an Austrian citizen, a foreign national or a stateless person. Births of stateless persons abroad are also recorded if those persons have their residence in Austria. The same applies to persons entitled to asylum.

The Committee takes note of the recommendation of the Committee on the Rights of the Child in the Concluding observations on the combined fifth and sixth periodic reports of Austria (6 March 2020). The recommendation advises that the scope of the Austrian Citizenship Act be expanded in order to automatically grant nationality at birth to children born on Austrian territory who would otherwise be stateless or, as a minimum, that Article 14(1)(5) of the Act be brought in line with the 1961 Convention on the Reduction of Statelessness to extend the period during which stateless persons may apply for nationality from two years to three years.

Child poverty

In the general questions, the Committee asked for information on measures to reduce child poverty (including non-monetary measures such as ensuring access to quality and affordable services in the areas of health, education, housing, etc.); to combat discrimination and promote equal opportunities for children from particularly vulnerable groups, such as ethnic minorities, Roma children, children with disabilities and children in care. It also asked for information on the extent to which child participation is ensured in work directed towards combatting child poverty and social exclusion.

The report provides information on measures taken with regard to individual *Länder*. In Vienna there are various services, such as advice on parenting-related issues and advice for parents whose objective is to identify interaction disorders early and to strengthen parenting skills. These preventive services are aimed in particular at families with limited social and/or financial resources. In Upper Austria, the key instrument to combat child poverty is a social assistance benefit; there is also an additional allowance for single parents. In 2020, a study was commissioned as a first step towards planning measures to offset and combat child poverty. Upper Austria offers diverse forms of support for children with disabilities, such as personal assistance and mobile care as well as an extensive range of treatments, including combined treatment programmes comprising both educational and therapeutic aspects. For children from particularly vulnerable groups, the emphasis is on integrated sports and integration classes at schools. In Vorarlberg, a family supplement provides financial support for families with small children. Children and young people are involved in subjects that concern them.

In its comments, the Federal Chamber of Labour states that structural problems exist for children in poverty because the changes in the social security system reduced the financial support for people experiencing poverty.

The Committee notes from EUROSTAT that 22.8% of children in Austria in 2021 were at risk of poverty or social exclusion, that being a slight increase in comparison with 2018, when the percentage was 21.6%. The Committee notes that the 2021 rate is lower than the EU average of 24.4%.

The prevalence of child poverty in a State Party, whether defined or measured in either monetary or multidimensional terms, is an important indicator of the effectiveness of state efforts to ensure the right of children and young persons to social, legal and economic protection under Article 17 of the Charter. Consistent with its approach in relation to the conceptualisation and measurement of poverty adopted by the Committee in terms of Article 30, the Committee's consideration of child poverty for the purposes of Article 17 reflects an understanding of both income and multi-dimensional understandings of poverty (Statement of interpretation, 2013, Article 30). This understanding is reflected in the indicators and elements the Committee takes into account when assessing State Party compliance with Article 17. For the States that have not accepted Article 17, child poverty will be addressed under Article 30.

The EUROSTAT data and the EU-27 rate of children at risk of poverty or social exclusion is used as key point of reference and indicator of state compliance with Charter rights by the Committee. The Committee will also have regard to disimprovement in terms of the rate of children at risk of poverty or social exclusion in a State Party. Furthermore, the Committee also takes into account non-monetary measures adopted at reducing child poverty and social exclusion such as ensuring access to quality and affordable services in the areas of health, education and housing. When assessing State conformity with Article 17, the Committee will also take into account the extent to which child participation is ensured in work directed towards combatting child poverty and social exclusion.

Right to assistance

The Committee previously requested further information on accommodation facilities for migrant children whether accompanied or unaccompanied, including measures taken to ensure that children are accommodated in appropriate settings. It also requested further information on the assistance given to unaccompanied children, in particular to protect them

from exploitation and abuse. It also asked for information as to whether children in an irregular migration situation, accompanied by their parents or not, could be detained and if so, under what circumstances. Finally, it also asked whether Austria used bone testing to assess age and, if so, in what situations. If the answer was positive, the Committee asked what potential consequences such testing could have (Conclusions 2019).

In the targeted question, the Committee asked for information on any measures adopted to protect and assist children in crisis situations and emergencies.

Due to the failure to provide requested information on whether Austria uses bone testing to assess age and, if so, in what situations and what potential consequences such testing could have, the Committee concludes that the situation in Austria is not in conformity with Article 17§1 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Austria of their reporting obligations under Article C of the Charter.

The Committee notes from other sources (reply by Austria to the 2020 Questionnaire of the Special Rapporteur on the human rights of migrants: Ending the detention of migrant children and seeking adequate reception and care for them) that minors below the age of 14 may not be held in detention pending deportation. Minors between 14 and 16 may only be detained if they are provided with accommodation and care appropriate for their age and level of development. For minors between 14 and 18, more lenient measures have to be applied unless it is impossible to do so. Moreover, asylum seekers receive basic care, which includes suitable accommodation, food, pocket money, medical care, counselling and social support and other issues.

In its comments, the UNHCR states that, in 2021, it issued a press release calling on the Federal Government and the provinces to find a joint solution to facilitate the reception of asylum seekers in Austria because at the time, the federal care facilities were at their capacity limits and adequate care and support for asylum seekers were hardly possible in many places. The Government did not provide a response.

In reply to the targeted question, the report states that in Upper Austria, counselling offices work very closely with the child and youth welfare services team, which then takes over case management and plans next steps with the family. Assistance for families in difficulty means the provision of individual services on a case-by-case basis. Moreover, mobile support for families without removing the child from their family is provided, as well as full care for foster families, crisis foster care and residential crisis support. Emergency accommodation is available for young people. In Vorarlberg, the authorities provide residential care for expectant mothers and mothers with children in emergency situations as well as for children and young people in such situations. In Tyrol, mobile services, day care services and residential services are provided. In Vienna, mobile parenting support services and residential socio-pedagogical services have been developed, and a specialised crisis centre was created.

The report further states that regular discussions are held with civil society and representatives of the competent authorities at events organised by the National Roma Contact Point as part of the Roma dialogue platform. The current National Roma Strategy sets out seven priorities, including education, the empowerment of Roma youth and combatting anti-gypsyism. A regular dialogue is held between key stakeholders and members of Roma civil society.

Rights of children in public care

In its previous conclusion, the Committee noted that there were more children in institutions than in foster care and asked to be kept informed on the measures taken to increase foster care and reduce the number of children in institutional care, as well as trends in the area (Conclusions 2019).

Due to the failure to provide requested information on measures taken to increase the number of children in foster care and reduce the number of children in institutional care, the Committee concludes that the situation in Austria is not in conformity with Article 17§1 of the Charter. The

Committee considers that this failure to provide information amounts to a breach by Austria of their reporting obligations under Article C of the Charter.

Children in conflict with the law

The Committee previously concluded that the situation in Austria was not in conformity with Article 17§1 of the Charter on the ground that the pre-trial detention of a child for up to one year even in exceptional cases was excessive. It asked to be kept informed about the trends in detention periods and about the maximum period a child could be detained post-conviction. It also asked whether children could be subject to solitary confinement, and if so, for how long and under what circumstances, as well as when and under what circumstances children could be detained with adults (Conclusions 2019).

The Committee notes that under the Juvenile Justice Act, if a child committed an offence after reaching the age of 16, the sentence of one to 15 years can be imposed. Otherwise, the sentence is between one and 10 years.

Due to the failure to provide requested information on whether children can be subject to solitary confinement, for how long and under what circumstances and when children can be detained with adults, the Committee concludes that the situation in Austria is not in conformity with Article 17§1 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Austria of their reporting obligations under Article C of the Charter.

The Committee reiterates its conclusion of non-conformity on the ground that the length of pre-trial detention of children is excessive. The Committee recalls that it has previously found that eight-month period and a seven-month period of pre-trial detention were not in conformity with the Charter (Conclusions XX-4, 2015, Denmark, Conclusions 2019, Slovak Republic). The Committee considers that, in order to be in conformity with the Charter, the pre-trial detention of children should not exceed six months.

Conclusion

The Committee concludes that the situation in Austria is not in conformity with Article 17§1 of the Charter on the ground that the length of pre-trial detention of children is excessive.

Due to the failure to provide the information listed below, the Committee concludes that the situation in Austria is not in conformity with Article 17§1 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Austria of their reporting obligations under Article C of the Charter.

List of questions/Information missing:

- whether Austria uses bone testing to assess age and, if so, in what situations and what potential consequences such testing could have;
- on the measures taken to increase the number of children in foster care and reduce the number of children in institutional care;
- whether children can be subject to solitary confinement; if so, for how long and under what circumstances;
- under what circumstances children can be detained with adults.

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

Paragraph 2 - Free primary and secondary education - regular attendance at school

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

The Committee recalls that for the purposes of the present report, States were asked to reply to targeted questions for Article 17§2 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Children, families and migrants”).

The Committee also recalls that in the General Introduction to Conclusions 2019, it posed general questions under Article 17§2 and asked States to provide, in the next report, information on measures taken to introduce anti-bullying policies in schools; and on measures taken to facilitate child participation across a broad range of decision-making and activities related to education.

In its previous conclusion, pending receipt of the information requested, the Committee concluded that the situation in Austria was in conformity with Article 17§2 of the Charter (Conclusions 2019). The assessment of the Committee will therefore concern the information provided by the Government in response to the conclusion of conformity pending receipt of information, the targeted questions and the general questions.

Enrolment rates, absenteeism and drop out rates

In the previous conclusion, the Committee noted that the net enrolment rates for primary and secondary education were lower than rates in other European countries and asked the Government to comment on these rates. It also asked that the next report provide information on the number of fines imposed for non-compliance with the compulsory education obligation. It also asked for updated information on enrolment rates, absenteeism and drop-out rates as well as information on measures taken to address issues related to these rates (Conclusions 2019).

The report states that fines for non-compliance with the compulsory education obligation are difficult to define because in Austria they are not imposed by the schools or school authorities, but only reported by them to the district administrative authorities. The school administration does not know whether the district administrative authorities actually impose fines in specific cases or whether they issue a warning.

The report also states that in 2020, the total net enrolment rate in primary education was 99.74% and in secondary education – 98.78%. The Committee notes from other sources (UNESCO database) that the net enrolment rate in primary education in 2021 was 99.05%, in lower secondary education – 98.96% and in upper secondary education – 93.51%.

Vulnerable groups

The Committee notes that where the States have accepted Article 15§1 of the Charter, the right to education of children with disabilities is dealt with under that provision.

The Committee previously asked to be kept informed of measures taken to improve educational outcomes for Roma and migrant children, including information on enrolment, drop out and completion rates. It also asked what happened to those children still subject to compulsory schooling who were not admitted to a lower academic secondary school (Conclusions 2019).

The report states that the learning support service is provided by Roma Service, free tutoring is provided by the City of Vienna, an individual learning support is provided by Romano Centro, the Romblog project aims to teach Roma young people media skills and the Rombus project

provides advice and intensive learning support. The current Roma Strategy (2017) provides for the following measures in the field of education: make early childhood education mandatory in the last year of kindergarten, expand language support, improve the school entry phase, expand cooperation between kindergartens and elementary schools, extend schooling to the whole day, offer learning assistance programmes, make use of Roma school mediators, offer bilingual education, develop educational counselling. Special attention is also paid to combatting prejudice, racism, discrimination and xenophobia.

The report states that information on enrolment, dropout and graduation rates of Roma children is not available, as the ethnic affiliation of members of ethnic groups and minorities in Austria is not collected for historical reasons, as well as for reasons of international law and data protection.

The Committee recalls that the gathering and analysis of statistical data (with due safeguards for privacy and against other abuses) is indispensable for the formulation of a rational policy aiming at the protection of particularly vulnerable groups or at reducing a particular phenomenon (see, *mutatis mutandis*, ERRC v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005, §23; ERRC v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, p. 27; Conclusions 2005, France, Article 31§2, p.268). The Committee concludes that the situation in Austria is not in conformity with Article 17§2 of the Charter on the ground that no statistical data is collected on enrolment and drop out rates of Roma children.

The voice of children in education

In the general questions, the Committee asked what measures have been taken by the State to facilitate child participation across a broad range of decision-making and activities related to education (including in the context of children's specific learning environments).

The report states that the participation of young people in social and democratic processes should be promoted and that this is why the Austrian Youth Strategy was established. It ensures that young people are given the necessary instruments and expertise for participation. The report describes youth goals and measures to implement them.

Anti-bullying measures

In the general questions, the Committee asked what measures have been taken to introduce anti-bullying policies in schools, i.e. measures relating to awareness raising, prevention and intervention.

The report states that the Federal Ministry of Education, Science and Research propagates the approach of zero tolerance against bullying or violence. Where bullying occurs, a consistent response is required. Thus, close cooperation between schools and the psychosocial support system is fostered. The initiative "School as a well-being zone" was launched in 2020/2021, and it aims to make the school environment safe for everyone involved. The activities range from teachers' qualifications, strengthening the emotional and social competences of pupils through appropriate measures in the classroom to a targeted use of the multi-professional support system.

Covid-19

In the context of the Covid-19 crisis, the Committee asked the States Parties to provide information on measures taken to address the effects of the Covid-19 pandemic on the education of children (including in particular disabled children, Roma and Traveller children, children with health issues and other vulnerable children).

The Committee recalls that under Article 17§2 of the Charter equal access to education must be ensured for all children during the Covid-19 crisis. In this respect, particular attention should be paid to vulnerable groups such as children from minorities, children seeking asylum,

refugee children, children with disabilities, children in hospital, children in care, pregnant teenagers, children deprived of their liberty (Statement on Covid-19 and social rights, 24 March 2021).

The report states that in order to compensate for any learning deficits, all schools have been and will be provided with additional support lessons; supplementary lessons were made possible in 2020/2021 during the semester break and the summer courses were introduced. Longer phases of distance learning were available.

Conclusion

The Committee concludes that the situation in Austria is not in conformity with Article 17§2 of the Charter on the ground that no statistical data is collected on enrolment, drop out rates of Roma children.

Article 19 - Right of migrant workers and their families to protection and assistance
Paragraph 1 - Assistance and information on migration

The Committee takes note of the information contained in the report submitted by Austria and in the comments submitted by the Federal Chamber of Labour (BAK).

The Committee recalls that no targeted questions were asked for Article 19§1 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Children, families and migrants” thematic group).

The Committee deferred its previous conclusion pending receipt of the information requested (Conclusions 2019).

The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of deferral.

Change in policy and the legal framework

In its previous conclusion, the Committee took note that the Recognition and Assessment Act (Anerkennungs- und Bewertungsgesetz, AuBG) entered into force on 12 July 2016. The Act set out the procedures and conditions for recognition and assessment of professional qualifications obtained abroad for migrant workers. The Committee asked for information on the implementation of this Act and the results achieved (Conclusions 2019).

The report indicates that since 2016, the Federal Ministry of Labour has had a statutory duty under Section 5§1 of the AuBG to establish a nationwide advisory service and set up advice centres on matters concerning recognition, evaluation and assessment of diplomas and qualifications obtained abroad. The statutory objective of these contact points is to give information and advice in various languages to migrants and to provide support in procedures relating to recognition and assessment of qualifications acquired outside Austria. Advice on recognition of qualifications is provided by four established organisations operating at five main locations across Austria, and via regional consultation days, which have been expanded over recent years. Advisory services are now also provided over the telephone and via video.

The report provides statistics on the number of persons assisted by the AST contact points during the reference period (2018-2021) across Austria and by region. For example, in 2021, advice was provided to 6,699 individuals. According to the same data, in 2021, the most frequent countries of origin (by nationality) were Syria, Romania, Bosnia and Herzegovina and Hungary. The report adds that overall, the advice on recognition of qualifications provided by the AST contact points was rated extremely highly: over 90% of those questioned were satisfied or very satisfied with the advice they received and the skills of their advisors.

Measures against misleading propaganda relating to emigration and immigration

In its previous conclusion, the Committee requested that the next report provide detailed information on the measures taken to combat hate speech and racist and xenophobic discourse (Conclusions 2019).

The report indicates that a comprehensive national legislative package against "hate on the net" entered into force on 1 January 2021, which aims to further improve measures against incitement and hate crime on the internet and in social media. It further states that the Hate on the Net Combat Act (HiNBG) entered into force on 1 January 2021.

The report lists other measures taken in this field such as amendments brought to the Criminal Code (StGB) including an extension of hate speech (Section 283 StGB) by including insults that offend human dignity and are directed against individual members of vulnerable groups; and to the Code of Criminal Procedure (StPO) like extending the psycho-social and legal

support in criminal proceedings to include victims of hate on the internet as well as minor witnesses of family violence. An amendment of the Ordinance governing the implementation of the Public Prosecution Act (DV-StAG) set out that as of 1 January 2017 public prosecutor's offices shall have specialised units/prosecutors for the prosecution of hate crimes and offences related to the law banning National Socialist activities when appropriate (Section 4(3) DV-StAG).

The report provides detailed information on other measures taken to combat hate speech such as: (i) the Decree "Information and deletion requests to Facebook, Instagram, WhatsApp and Google" of 16 February 2022; establishment of a SPOC ("Single Point of Contact"): the trial operation of the Central Enquiry Office for Social Media & Online Service Providers (ZASP) at the Federal Ministry of the Interior/Federal Criminal Police Office, which has been in place since 1 September 2020, was rolled out to full nationwide operation on 15 February 2022; (ii) the project "Dialogue instead of Hate" aimed to raise awareness among perpetrators of hate postings; (iii) the seminar "Violence and Hate Crimes on the Internet" which focused on the practical investigative work of judges, public prosecutors and police investigators working in this area.

In its previous conclusion, the Committee welcomed the adoption of the Integration Act of 2017 and asked for further information on its implementation in the next report (Conclusions 2019).

The report indicates that, during the reporting period, the Integration Act covered the following target groups: persons entitled to asylum or subsidiary protection and other legally residing third-country nationals. The Federal Minister in charge of integration matters must provide German courses for persons entitled to asylum or subsidiary protection from the age of 15 that enable them to become literate in the Latin script, if required, and reach a language level of at least B1 pursuant to the CEFRL (until 2019 up to level A2). The Integration Act also foresees a mandatory integration declaration. By signing this, persons covered under this Act agree to subscribe to the core values of Austria's legal system and society and commit to complete language training and an orientation course of eight hours.

The Committee asked that the next report provide further information on the adoption and implementation of the revised Roma Strategy (Conclusions 2019).

The report indicates that the National Roma Strategy was updated in 2017 in line with the guidelines set out in the EU Roma strategic framework for equality, inclusion and participation for 2010-2020. The report adds that the national strategy was being evaluated by a study team from the University of Vienna at the time of drafting the report. The report further provides information on other measures taken such as the Conference on Antigypsyism organised by the National Roma Contact Point in 2018 and the awareness raising activities held through the Roma Dialogue Platform. It indicates that the 29th dialogue platform was dedicated to combatting hate crime, and it was noted that since 1 November 2020, hate crimes have been documented by victim group and police officers have received comprehensive training on recognising, investigating and recording hate crimes.

Conclusion

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

Article 19 - Right of migrant workers and their families to protection and assistance
Paragraph 2 - Departure, journey and reception

The Committee takes note of the information contained in the report submitted by Austria and in the comments submitted by the Federal Chamber of Labour (BAK).

The Committee recalls that no targeted questions were asked for Article 19§2 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Children, families and migrants” thematic group).

In its previous conclusion, the Committee concluded that the situation in Austria was in conformity with Article 19§2 of the Charter, pending receipt of the information requested (Conclusions 2019).

The assessment of the Committee will therefore concern the information provided in the report in response to the questions raised in its previous conclusion.

Immediate assistance offered to migrant workers

In its previous conclusion, the Committee asked for information on assistance, financial or otherwise, available to migrant workers in emergency situations (Conclusions 2019). The Committee asked what obligations in this respect are borne by the public authorities, the Laender and the municipalities (Conclusions 2019).

The report does not provide the requested information.

The Committee recalls that this provision obliges States to adopt special measures for the benefit of migrant workers, beyond those which are provided for nationals to facilitate their departure, journey and reception (Conclusions III (1973), Cyprus). Reception means the period of weeks which follows immediately from their arrival, during which migrant workers and their families most often find themselves in situations of particular difficulty (Conclusions IV, (1975) Statement of Interpretation on Article 19§2). It must include not only assistance with regard to placement and integration in the workplace, but also assistance in overcoming problems, such as short-term accommodation, illness, shortage of money and adequate health measures (Conclusions IV (1975), Germany). The Charter requires States to provide explicitly for assistance in matters of basic need or demonstrate that the authorities are adequately prepared to afford it to migrants, when necessary (Conclusions XX-4 (2015), Poland).

The Committee notes on the website of the Federal Chancellery that the Austrian Integration Fund (ÖIF) aims at providing language, professional and social integration of asylum beneficiaries and migrants on the basis of their respective rights and obligations in Austria. The Federal Chancellery is responsible for integration and is also Austria’s representative at the European Integration Network. At the local level, municipalities organise or support integration activities, such as intercultural events and language classes. To facilitate the integration process, ÖIF offers starting aid for integration in the form of financial support in the areas language, education and employment. This includes financing German language classes (literacy, various levels), supporting professional training and further education (for example driving licence), recognition of qualifications or sponsoring school activities (tutoring).

The report does not provide information on assistance available to migrant workers in emergency situations, in particular in response to their needs of food, clothing and shelter, upon reception or demonstrate that the authorities are adequately prepared to afford it to migrants when necessary. Due to the failure to provide the above mentioned information, the Committee concludes that the situation in Austria is not in conformity with Article 19§2 of the

Charter. The Committee considers that this failure to provide information amounts to a breach by Austria of their reporting obligations under Article C of the Charter.

Conclusion

Due to the failure to provide the information listed below the Committee concludes that the situation in Austria is not in conformity with Article 19§2 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Austria of their reporting obligations under Article C of the Charter. List of information missing:

- information on assistance, financial or otherwise, available to migrant workers in emergency situations, in particular in response to their needs of food, clothing and shelter, upon reception.

Article 19 - Right of migrant workers and their families to protection and assistance
Paragraph 3 - Co-operation between social services of emigration and immigration states

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

The Committee recalls that no targeted questions were asked for Article 19§3 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Children, families and migrants” thematic group).

As the previous conclusion found the situation in Austria to be in conformity with the Charter (Conclusions 2019), there was no examination of the situation in 2023 on this point. Therefore, the Committee reiterates its previous conclusion.

Conclusion

The Committee concludes that the situation in Austria is in conformity with Article 19§3 of the Charter.

Article 19 - Right of migrant workers and their families to protection and assistance
Paragraph 5 - Equality regarding taxes and contributions

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

The Committee recalls that no targeted questions were asked for Article 19§5 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Children, families and migrants” thematic group).

As the previous conclusion found the situation in Austria to be in conformity with the Charter (Conclusions 2019), there was no examination of the situation in 2023 on this point. Therefore, the Committee reiterates its previous conclusion.

Conclusion

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

Article 19 - Right of migrant workers and their families to protection and assistance
Paragraph 6 - Family reunion

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

The Committee points out that no targeted questions were asked in relation to Article 19§6 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current report cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Children families and migrants” thematic group).

In the previous conclusion (Conclusions 2019), the Committee concluded that the situation in Austria was not in conformity with Article 19§6 on the grounds that:

- age threshold of 21 which is above the age at which a marriage may be legally recognised in the host state is an undue hindrance to family reunion;
- the fact that certain categories of sponsored family member need to prove knowledge of the German language hinders family reunion;
- requirement to pay fees for the necessary language tests and language courses may impede rather than facilitate family reunion, and that
- families may be required to wait for more than a year before being granted reunion under the quota system, a delay which is excessive.

In the present conclusion, the assessment of the Committee will therefore concern the information provided by the Government in response to the previous conclusion of non-conformity.

Scope

In its previous conclusion (Conclusions 2019), the Committee recalled that Austria was previously found to be in violation of the Charter on the ground that the age limit of 21 for family reunion of married couples who were not nationals of an EEA member state did not facilitate family reunion (Conclusions 2015). In conclusions 2019, the Committee noted that the limit had remained valid during the previous reference period and had been set, according to the previous report, to ensure the maturity necessary to refuse to enter into a forced marriage or to choose to move to another country with a spouse. The Committee therefore considered that raising the age threshold above the age at which a marriage may be legally recognised in the host state is an undue hindrance to family reunion.

In reply, the report refers to the information provided in previous reports and indicates that although there is a plan to change legislation regarding the age threshold, the situation has not changed during the reference period, and that the age threshold remained the same. Therefore, the Committee reiterates that the situation in Austria is not in conformity with the Charter in this respect.

In its previous conclusion, the Committee took note from the Settlement and Residence Act that minor children were fully allowed for a family reunion, but that adult children were excluded. The Committee asked the next report to confirm that this is the case and to provide a full description of the scope of the right to family reunion.

The report does not provide any answer to the Committee’s questions and requests for information.

The Committee recalls that for the purposes of the application of Article 19§6 of the Charter, whatever the age of majority in the various Contracting States, a dependent child of a foreign worker is considered to be a member of his family if under the age of 21 (Conclusions V, Statement of Interpretation on Article 19§6). In the absence of any clarification in this respect, the Committee concludes that the situation is not in conformity with Article 19§6 of the Charter on the ground that adult dependent children are excluded from the scope of family reunion.

Conditions governing family reunion

In its previous conclusion (Conclusions 2019), the Committee recalled that in Conclusions 2015, it had found that the language requirements, namely the fact that certain categories of sponsored family member needed to prove knowledge of the German language at level A1 on the Common European Framework, hindered the right to family reunion. In Conclusions 2019, as the situation had not changed during the previous reference period, the Committee reiterated its finding of non-conformity on this point.

In the Previous conclusion (Conclusions 2019), the Committee further noted that in Austria a set fee of 130 EUR applied for candidates sitting the language proficiency examination. In addition, migrants must attain A2 level proficiency within two years of obtaining the residence title, and while foreigners can receive up to 50% reimbursement for their language courses, the amount cannot exceed 750 EUR. Recalling that states are required to provide classes in the national language for migrants and members of their families free of charge under Article 19§11, the Committee concluded that the requirement to pay fees for the language tests and language courses may impede rather than facilitate family reunion, and therefore was contrary to Article 19§6 of the Charter.

In reply, the report provides information on the Integration Agreement which is obligatory for third country nationals legally resident in Austria based on specific residence permits according to the Settlement and Residence Act: The Integration Agreement consists of two modules. The first module requires foreigners to achieve A2 level proficiency within two years of obtaining their specific residence title. Individual circumstances can provide for an extension for another twelve months. According to the report, the second module is a prerequisite for permanent residence and requires foreigners to achieve B1 level proficiency.

The report also indicates, concerning both models, that exemptions are made from the requirement of passing the tests for health-related reasons. Also, applicants who did not pass the A2 or B1 proficiency tests under the above-mentioned modules, can fulfill the obligation by submitting proof of domestic or foreign school-leaving certificates, university qualifications, proof of school attendance in Austria etc. Finally, the report confirms the previous finding that in order to support language acquisition, family members can be reimbursed with 50% of the course fees up to a maximum of € 750.

The Committee understands that the law and practice with regard to language requirements, which the Committee found to be in breach of Article 19§6 of the Charter in the previous conclusion (Conclusions 2019), have not changed during the reference period. The Committee reiterates its previous finding that the stringent language and integration tests (of A1 level) to be allowed to enter the country or pass these tests once they are in the country to be granted leave to remain, discourages applications for family reunion and therefore constitutes a condition likely to prevent family reunion rather than facilitate it. The situation is therefore not in conformity with Article 19§6 in this respect.

The Committee also concludes, on the basis of the information provided in the report, that the requirement to pay fees for the language tests and language courses may impede rather than facilitate family reunion. The Committee therefore reiterates its previous finding of non-conformity on this point.

In the previous conclusion (Conclusions 2019), the Committee reiterated its request for information on how the level of means is calculated and on whether social benefits are included in the calculation of the financial means of the sponsor.

In reply, the report refers to an official brochure on maintenance requirements (*Unterhaltsbroschüre*) for detailed information. The Committee notes from this brochure, that in order to fulfill the adequate means requirement, the third-country national must have a fixed and regular income enabling him/her to meet his/her livelihood without resorting to welfare aid. In 2023, this standard income rate amounted to € 1,110.26 for singles, € 1,751.56 for married couples and an additional € 171.31 for each child.

The Committee recalls that social benefits should not be excluded from the calculation of the necessary financial means (Conclusions 2011, Statement of Interpretation on Article 19§6). The Committee considers that the requirement in Austria that the sponsor should have sufficient financial means which must allow them to live without having to claim any social benefits, is not in conformity with Article 19§6 of the Charter.

The Committee further recalls that in Conclusions 2015, it took note that the quota system continued to apply to certain categories of application for family reunion, although according to the information provided by the Government, the vast majority of applications are not subject to the quota system. The Committee noted, in Conclusions 2015, that under the domestic regulations concerning family reunion, either the quota of the year when the application is filed, or the quota of the following year can be referred to when granting a residence title connected with quota-based family reunion. This means that a waiting period of three years is not generally applicable, but after expiry of three years at the latest the quota requirement ceases to apply. However, the Committee concluded (Conclusions 2015) that the situation in Austria was not in conformity with Article 19§6 of the Charter because families may still be required to wait in excess of the one-year residence requirement allowed under the Charter, as a result of the quota system in force in Austria.

In the previous conclusion (Conclusions 2019), as the situation remained unchanged during the previous reference period, the Committee reiterated its conclusion of non-conformity on this point. The Committee considers that the current report does not provide any further information on the application of quotas for family reunion. It considers that the fact that the applicants for family reunion, in addition to the material conditions such as financial means, accommodation and stringent language requirements, are also subject to the annual quota on family reunification cannot be considered as in conformity with the State's commitment under Article 19§6 to "facilitate as far as possible" the family reunion. The quota system may result in that families are required to wait in excess of the one-year residence requirement allowed under the Charter. The Committee therefore reiterates its previous conclusion that the situation is not in conformity with the Charter in this respect.

In its previous conclusion (Conclusion 2019), the Committee recalled that once a migrant worker's family members have exercised the right to family reunion and have joined him or her in the territory of a State, they should have an independent right to stay in that territory (Conclusions XVI-1 (2002), Article 19§8, Netherlands). The Committee asked the next report to confirm whether a family member would be expelled if the sponsoring member's residence permit expires and if so, under which circumstances.

In reply, the report states that family members of migrant workers who have a right of settlement have an independent right of residence according to Section 27 of the Settlement and Residence Act (Niederlassungs- und Aufenthaltsgesetz, NAG). The report indicates that if the requirements for family reunification no longer exist, a residence permit must be issued to the family member; this residence permit corresponds to the previous purpose of residence, provided that no impediment exists and the general granting requirements for the issuance of residence permits are fulfilled. For vulnerable groups, such as victims of domestic violence, the general granting requirements are not to be checked and an autonomous residence permit is granted in any case. Therefore, the Committee finds the situation in Austria in conformity with the Charter in this regard.

Conclusion

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

- age threshold of 21 which is above the age at which a marriage may be legally recognised in the host state is an undue hindrance to family reunion;
- adult dependent children are excluded from the scope of family reunion;
- the fact that certain categories of sponsored family member need to prove knowledge of the German language hinders the right to family reunion;

- requirement to pay fees for the necessary language tests and language courses may impede rather than facilitate family reunion;
- social benefits are excluded from the calculation of sufficient financial means for family reunion;
- families may be required to wait for more than a year before being granted reunion under the quota system, a delay which is excessive.

Article 19 - Right of migrant workers and their families to protection and assistance
Paragraph 7 - Equality regarding legal proceedings

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

The Committee points out that no targeted questions were asked in relation to Article 19§7 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Children families and migrants” thematic group).

In the previous conclusion (Conclusions 2019), the Committee found the situation in Austria to be in conformity with Article 19§7 of the Charter without raising any specific question.

Since no targeted questions were asked under Article 19§7, and the previous conclusion found the situation in Austria to be in conformity with the Charter without requesting any information, there was no examination of the situation in 2023.

Conclusion

The Committee concludes that the situation in Austria is in conformity with Article 19§7 of the Charter.

Article 19 - Right of migrant workers and their families to protection and assistance
Paragraph 9 - Transfer of earnings and savings

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

The Committee points out that no targeted questions were asked in relation to Article 19§9 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Children families and migrants” thematic group).

In the previous conclusion (Conclusions 2019), the Committee found the situation in Austria to be in conformity with Article 19§9 of the Charter without raising any specific question.

Since no targeted questions were asked under Article 19§9, and the previous conclusion found the situation in Austria to be in conformity with the Charter without requesting any information, there was no examination of the situation in 2023.

Conclusion

The Committee concludes that the situation in Austria is in conformity with Article 19§9 of the Charter.

Article 19 - Right of migrant workers and their families to protection and assistance
Paragraph 12 - Teaching mother tongue of migrant

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

The Committee points out that no targeted questions were asked in relation to Article 19§12 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Children families and migrants” thematic group).

In the previous conclusion (Conclusions 2019), the Committee found the situation in Austria to be in conformity with Article 19§12 of the Charter without raising any specific question.

Since no targeted questions were asked under Article 19§12, and the previous conclusion found the situation in Austria to be in conformity with the Charter without requesting any information, there was no examination of the situation in 2023.

Conclusion

The Committee concludes that the situation in Austria is in conformity with Article 19§12 of the Charter.

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

Paragraph 1 - Participation in working life

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

The Committee recalls that no targeted questions were asked for Article 27§1 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral, or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Children families and migrants” thematic group).

As the previous conclusion (Conclusions 2019) found the situation in Austria to be in conformity with Article 27§1 of the Charter, there was no examination of the situation in 2023 on this point. Therefore, the Committee reiterates its previous conclusion.

Covid-19

In the context of the Covid-19 crisis, the Committee asked all States to provide information on whether the Covid-19 crisis had an impact on the rights of workers with family responsibilities to equal opportunities and treatment, in particular on the possibilities to work remotely and its consequences.

According to the report, in 2021, a package of measures established the statutory framework and brought legal clarity related to working from home. The Federal Ministry of Labour and Economy commissioned a study to determine whether the additional burden of the employees who are taking care of family members while working from home would be sustainable. The time saved by employees who do not need to travel between home and work is beneficial in terms of reconciling work and family responsibilities.

Equal opportunities, equal treatment, and equal access to work from home were provided to men and women.

According to the Employment Contract Law Adaptation Act (AVRAG), working from home must be voluntarily and mutually agreed between the parties to the employment contract which was also amended by rules concerning the provision of digital equipment and payment of costs by the employer. In addition, Labour Constitution Act (ArbVG), allowed for the arrangements for working from home to be laid down in a company-specific voluntary works agreement, and by Workers’ Protection Act (ASchG), it was prohibited the representatives of the Labour Inspectorate to enter an employee’s private residence. In case the employment is subject to social security contributions and exceeds the marginal earnings threshold, the employees are fully covered for health, accident, and pension, while accidents occurring at the employee’s home at the time or in circumstances relating to the insured occupation (when an employee is carrying out work at home) are deemed accidents at work.

The statutory provisions related to remote working in the public sector (section 36a of the Civil Service Act (BDG) and section 5c of Contractual Public Employees Act (VBG), were amended as well by the Federal Public Sector Employment Amendment Act of 2020 and of 2021. The amendments concerned the scope of the rule regarding ad hoc remote working to permit working from home to be ordered or agreed upon for an extended period where circumstances so require (to contain the spread of Covid-19) and to deviate from the principle that the technical and other equipment required for the remote working must be provided by the Federal Government so that if it is provided by the employees themselves, they must be compensated for additional costs in accordance with the provisions regarding expenses set out in Section 20 of the Salary Act (GehG).

The Committee took note of the study conducted in 2020, according to which women were disadvantaged when working from home and taking care of their children during the Covid-19

crisis, regarding their time management, work performance, career advancement, and consequently payment.

Conclusion

The Committee concludes that the situation in Austria is in conformity with Article 27§1 of the Charter.

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

Paragraph 2 - Parental leave

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

The Committee recalls that no targeted questions were asked for Article 27§2 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral, or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Children families and migrants” thematic group).

As the previous conclusion (Conclusions 2019) found the situation in Austria to be in conformity with Article 27§2 of the Charter, there was no examination of the situation in 2023 on this point. Therefore, the Committee reiterates its previous conclusion.

Covid-19

In the context of the Covid-19 crisis, the Committee asked all States to provide information on whether the Covid-19 crisis had an impact on the rights of workers with family responsibilities to parental leave.

According to the report, the Covid-19 crisis had no impact on the right to parental leave.

Conclusion

The Committee concludes that the situation in Austria is in conformity with Article 27§2 of the Charter.