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European Social Charter (REVISED)

European Committee of Social Rights

Conclusions 2023

GERMANY

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 Germany, which ratified the Revised European Social Charter on 29 March 2021. The deadline for submitting the 1st report was 31 December 2022 and Germany submitted it on 24 February 2023.

The Committee recalls that Germany 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 German Trade Union Confederation (*Deutscher Gewerkschaftsbund – DGB*) on the 1st report were registered on 30 June 2023.

Germany has not accepted the following provisions from the above-mentioned group: 7§1, 31§§1-3.

The conclusions relating to Germany concern 32 situations and are as follows:

- 19 conclusions of conformity: Articles 7§2, 7§4, 7§§6-7, 7§§9-10, 8§§3-5, 17§2, 19§§1-5, 19§7, 19§8, 19§11, 27§2.
- 13 conclusions of non-conformity: Articles 7§3, 7§5, 7§8, 8§§1-2, 16, 17§1, 19§6, 19§9, 19§10, 19§12, 27§1, 27§3.

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

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 Germany.

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 (Conclusions 2019) the Committee found that the situation in Germany was in conformity with the Charter. The Committee reiterates its previous finding of conformity.

Conclusion

The Committee concludes that the situation in Germany 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 Germany and in the comments provided by the German Trade Union Confederation (*Deutscher Gewerkschaftsbund – DGB*)

The Committee recalls that no targeted questions were asked in relation to Article 7§3 of the Charter. For this reason, only States in relation to which the previous conclusion had been one 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 (Conclusions 2019) the Committee deferred its conclusion.

In reply to the Committee's question concerning the type of agricultural work that children are allowed to perform, the report states that the type of agricultural work that children over the age of 13 may perform on family farms with the consent of their legal guardian is determined in accordance with Section 2 (1) no 3 of the Protection Against Child Labour Ordinance, read in conjunction with Section 5 (3) of the Act on the Protection of Young People at Work. This means that the jobs permitted in agricultural households are mainly activities in the household and garden, errands, looking after children or other members of the household, looking after domestic animals and shopping. On farms, children over the age of 13 and young people subject to full-time compulsory schooling may only be employed in harvesting and cultivating fields, in the direct sale of agricultural products and in caring for animals. Work in agricultural households or on farms may also not be physically strenuous due to unsuitable posture. Dangerous tasks are also not allowed, especially working on machinery or looking after animals, where children over the age of 13 and young people subject to full-time compulsory schooling are unable to recognise the risks or how to avoid them due to a lack of safety awareness or of experience.

If children and young people subject to compulsory schooling are found to be employed at a workplace, the legality of their employment is also checked. The Committee takes note of the numbers of workplaces inspected and the numbers of violations recorded during the reference period.

The Committee also notes from the comments provided by the German Trade Union Confederation (*Deutscher Gewerkschaftsbund – DGB*) regarding enforcement, that the Government refers to several examples of inspection visits, one being ‘661 farms were visited during inspections in North Rhine-Westphalia in the reporting period’, which would amount to 165 visits per year. Given there are 33 630 farms in the federal State, the corresponding percentage would only be 0.5%. In other Länder, this rate could be even lower, not to mention that it is not clear whether the so-called ‘audits’ can be considered to be real inspections. If they are not, the percentage would be even lower.

The Committee notes from the report that Section 5 (1) of the Act on the Protection of Young People at Work and Section 1 of the Ordinance on the Protection Against Child Labour (*Kinderarbeitsschutzverordnung, KindArbSchV*) prohibit the employment of children subject to full-time compulsory education, i.e. young people under 15 years of age. This is even during holidays, with the narrow exception of internships in line with Section 5 (2) first sentence, point 2, and parental permission for light work under Section 5 (3) of the Act on the Protection of Young People at Work. Only young people between 15 and 18 years of age who are still subject to compulsory schooling, are covered by another exemption, that of Section 5 (4) of the Act on the Protection of Young People at Work, according to which these young people may be employed for four weeks per calendar year during school holidays.

There are further legal restrictions on employment opportunities in the context of internships for young people under 18 subject to compulsory schooling that are organised and supervised

by schools. These interns may only carry out appropriate light work for a maximum of seven hours a day and a maximum of 35 hours a week (Section 5 (2), second sentence read in conjunction with Section 7, first sentence, point 2, first sentence and Section 2 (3) of the Act on the Protection of Young People at Work). These internships are also closely supervised by the educational establishment in question, ensuring that the demands placed on the young people are not too high and that they are protected from dangers in the workplace with regard to their development.

The Committee recalls that children under the age of 15 and those who are subject to compulsory schooling can only carry out “light” work. Work considered to be “light” in nature ceases to be so if it is performed for an excessive duration. States are therefore required to specify the conditions for carrying out “light work” and, in particular, the maximum permitted duration of such work. The Committee considers that children under the age of 15 and those who are subject to compulsory schooling should not perform light work for more than 6 hours per day and 30 hours per week during school holidays in order to avoid any risk that the execution of such work might represent for their health, moral well-being, development or education (Statement of Interpretation on Articles 7§1 and 7§3, 2015).

The Committee therefore considers that the situation is not in conformity with Article 7§3 of the Charter on the ground that young people under 18, still subject to compulsory schooling, are allowed to perform light work for up to a maximum of seven hours a day and 35 hours a week, which is excessive and may deprive them of the full benefit of education.

Conclusion

The Committee concludes that the situation in Germany is not in conformity with Article 7§3 of the Charter on the ground that the duration of light work performed by children still subject to compulsory schooling is excessive and may deprive them of the full benefit of education.

Article 7 - Right of children and young persons to protection

Paragraph 4 - Working time

The Committee takes note of the information in the report submitted by Germany. It also takes notes of comments provided by the German Trade Union Confederation (Deutscher Gewerkschaftsbund – DGB).

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.

The Committee deferred its previous conclusion pending receipt of the information requested on supervision labour inspection and monitoring activities (Conclusions 2019).

In its previous conclusion, the Committee noted that there was very limited information provided on monitoring and on activities and findings of the authorities in relation to working time of young workers under the age of 18 who are no longer subject to compulsory schooling. It requested up-to-date information on the monitoring activities of the labour inspectorate in this field, including the number of violations detected and the sanctions imposed in practice on the employers in cases of violations. It also asked for the number of children under 16 years of age no longer subject to full-time compulsory education actually in employment.

The report provides that workplace inspections document whether young people or children are employed and whether implementation of the Act on the Protection of Young People at Work in the workplace is respected. Implementation of workplace agreements that allow for a different distribution of working time is monitored through workplace audits and ad hoc reactive inspections. These inspections are conducted independently of specific occasions or in response to complaints. As regards handling of violations: if a workplace inspection reveals that working hours are regulated differently from what is permitted by the Act, the employer is required to provide reasons. Access to collective and workplace agreements is requested, and a review is conducted to ensure compliance with legal requirements. The Committee notes in this respect, a comment provided by the German Trade Union Confederation that the number of inspections has recently declined. The Committee considers, however, that the supervision does not fall below the requirements of Article 7§4 of the Charter.

Conclusion

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

Article 7 - Right of children and young persons to protection

Paragraph 5 - Fair pay

The Committee takes note of the information contained in the report submitted by Germany. It also notes comments submitted by the German Trade Union Confederation (Deutscher Gewerkschaftsbund – DGB).

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 considered that the situation in Germany was not in conformity with Article 7§5 of the 1961 Charter on the ground that apprentices do not enjoy a right to appropriate allowances (Conclusions XXI-4 (2019)).

Fair remuneration for young workers and apprentices

The Committee recalls that apprentices may be paid lower wages, since the value of the on-the-job training they receive is taken into account. However, the apprenticeship system must not be used to circumvent the payment of fair wages to young workers. Accordingly, the term should not last too long and, as skills are acquired, the allowance should be gradually increased throughout the contract period, starting from at least one-third of the adult starting wage or minimum wage at the commencement of the apprenticeship to at least two-thirds at the end.

The Committee recalls that young worker’s wage may be less than the adult starting wage, but any difference must be reasonable and the gap must close quickly. For 15/16 year-olds, a wage of 30% lower than the adult starting wage is acceptable. For 16/18 year-olds, the difference may not exceed 20%. The adult reference wage must in all cases be sufficient to comply with Article 4§1 of the Charter. If the reference wage is too low, even a young worker’s wage which respects these percentage differentials is not considered fair.

In its previous conclusion (Conclusions XXI-4 (2019)), the Committee noted that in some sectors apprentices at the beginning of their apprenticeship may receive more than one third of the adult starting wage, while at the end of the apprenticeship the allowance is lower than the required two thirds under Article 7§5 of the 1961 Charter.

The report provides that according to Section 22 (2) of the Minimum Wage Act, however, persons who have not yet reached the age of 18 and have not completed vocational training as well as persons employed for their vocational training according to Section 22 (3) alternative 1 of the Minimum Wage Act are excluded from the statutory minimum wage entitlement. The minimum wage does apply without exceptions for minors who have completed vocational training, though. For young people who have not completed vocational training working as employees, the case law of the labour courts in connection with Section 138 of the Civil Code has established a threshold of two-thirds of the (collectively agreed) wage usually paid in the industry and economic region concerned.

The report further states that, during the reporting period, Germany significantly improved the situation of young people in vocational training by introducing a minimum training remuneration. Since the amendment of the Vocational Training Act, apprentices have been protected in training relationships in which the training workplace is not bound by collective agreements and in external vocational training with the statutory minimum remuneration as the lower limit. Collectively agreed training remuneration and wages are set in selected collective bargaining areas. As regards public sector apprentices, the report indicates that the "Collective Agreement for Public Sector Trainees (TVAöD)" of 13 September 2005 (most recently amended by collective agreement No.6 of 29 April 2016) gives public sector trainees

the right to negotiate independently. The TVAöD covers basically all public sector occupations requiring training and is supplemented by specific regulations. The regulations on apprentices' pay are also found there. The report states that training remuneration in the public service is above average.

The Committee notes from the information on different economic sectors contained in the report that apprentices at the beginning of an apprenticeship could receive more than one third of the adult starting wage in most sectors (with the exception of construction, painting and decorating sectors throughout Germany and private transport industry in Thuringia) which is in conformity with Article 7§5 of the 1961 Charter, while at the end of the apprenticeship the allowance is lower than the required two thirds under Article 7§5 of the 1961 Charter. The Committee also notes comments by the German Trade Union Confederation (Deutscher Gewerkschaftsbund – DGB) that the fair pay of young workers and apprentices is a long-standing issue and that compared to the minimum wage the training remuneration is extremely low. According to the DGB, the legislation does not provide for 'fair wage' or 'appropriate allowances', at least not for young workers under the age of 18.

The Committee recalls that under Article 7§5, the allowance paid to apprentices must be at least one third of an adult's starting wage or minimum wage at the beginning of their apprenticeship and reach at least two thirds by the end (Conclusions 2006, Portugal). The Committee accordingly considers that the situation in Germany has not changed as regards the level of allowance paid to apprentices. It thus reiterates its conclusion of non-conformity.

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 states that for employment relationships subject to minimum wage according to the principles set out above, the minimum wage also applies to atypical forms of employment such as part-time employment, temporary work, fixed-term work and casual and seasonal work. The minimum wage also applies to workers in the platform economy if they are employees. In order to protect workers and to ensure socially acceptable working conditions, Section 12 of the Part-time and Fixed-term Employment Act restricts the free establishment of flexible working time arrangements in the case of work on call in several respects. Section 12 of the Part-time and Fixed-term Employment Act stipulates, for example, that employers must give four days' notice of the placement of working hours and that a specific duration of daily and weekly working hours must be specified. In the absence of a stipulation of the duration of the working time, a legal fiction applies in line with Section 12 (1) of the Part-time and Fixed-term Employment Act. Concluding zero-hour employment contracts is not possible under the legal framework.

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 compliance with the statutory minimum wage is monitored by the authorities of the customs administration, in particular the Federal Customs Administration unit responsible for enforcing the law on illegal employment and benefit fraud.

Conclusion

The Committee concludes that the situation in Germany is not in conformity with Article 7§5 of the Charter on the ground that allowances paid to apprentices at the end of the apprenticeship in some sectors are too low.

Article 7 - Right of children and young persons to protection

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

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

The Committee recalls that no questions were asked for Article 7§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 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§6 requires that time spent on vocational training by young people during normal working hours must be treated as part of the working day (Conclusions XV-2 (2001), Netherlands). Such training must, in principle, be done with the employer’s consent and be related to the young person’s work. Training time must thus be remunerated as normal working time, and there must be no obligation to make up for the time spent in training, which would effectively increase the total number of hours worked (Conclusions V (1977), Statement of Interpretation on Article 7§6). This right also applies to training followed by young people with the consent of the employer and which is related to the work carried out, but which is not necessarily financed by the latter.

As the previous conclusion found the situation in Germany to be in conformity with the 1961 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 Germany is in conformity with Article 7§6 of the Charter.

Article 7 - Right of children and young persons to protection

Paragraph 7 - Paid annual holidays

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

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 Germany was in conformity with Article 7§7 of the 1961 Charter (Conclusions XXI-4 (2019)). Therefore, the Committee reiterates its previous conclusion.

Conclusion

The Committee concludes that the situation in Germany 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 Germany.

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 concluded that the situation in Germany was in conformity with Article 7§8 of the 1961 Charter, pending receipt of the information requested (Conclusions XXI-4 (2019)).

The Committee asked for data on the number of young workers involved in night work (in the evening or early morning) in certain sectors. In doing so, the Committee referred to legal provisions under national law to the effect that, as a general rule, young people may not be employed between 8 p.m. and 6 a.m. However, at the same time, Section 14 of the Act on the Protection of Young People at Work provided an exhaustive list of activities and sectors where it was permissible for young people to be employed in the evening after 8 p.m. (but not later than 11.30 p.m.) or in the morning before 6 a.m. (but not earlier than 5 a.m.) (see Conclusions XX-4 (2015) and XXI-4 (2019)).

The report reiterates that the Länder do not hold data on the number of young people employed in night work in specific sectors. However, the report refers to the comprehensive monitoring system in place, as evidence that the prohibition of night work is widely complied with and that violations are rare. For instance, the report notes that 3,335 companies nationwide were inspected by Länder-level supervisory authorities in 2019, to verify compliance with the provisions concerning the protection of young workers more broadly; 2,184 workplaces in 2020; and 2,225 workplaces in 2021. These controls yielded very few violations of the prohibition of night work for young workers, including, for example, one out of 190 violations in Hesse, one out of 31 violations in Brandenburg, one out of 15 violations in Berlin, all of which were sanctioned with fines. The report further notes that targeted inspections concerned sectors such as bakeries, restaurants, butcher shops, sales shops and livestock agriculture, where young people were susceptible to be employed in night work, which similarly resulted in a low number of violations.

However, the Committee considers that a lack of clarity subsists regarding the national standards applying to night work for young workers, as opposed to the monitoring arrangements in place. In that sense, the Committee recalls that derogations from the prohibition of night work under Article 7§8 of the Charter can be made as regards certain occupations in very limited cases, if they are explicitly provided in domestic law, necessary for the proper functioning of the economic sector, and if the number of young workers concerned is low (Conclusions XVII-2 (2005), Malta).

Due to the failure to provide requested information on the number of young workers under 18 years of age involved in night work (in the evening or early morning) in certain economic sectors, as provided for in Section 14 of the Act on the Protection of Young People at Work; showing that these exemptions are necessary for a proper functioning of the relevant economic sector, the Committee concludes that the situation in Germany is not in conformity with Article 7§8 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Germany 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 Germany is not in conformity with Article 7§8 of the Charter. The Committee

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

List of questions/Information missing:

- the number of young workers under 18 years of age involved in night work (in the evening or early morning) in certain economic sectors, as provided for in Section 14 of the Act on the Protection of Young People at Work;
- information showing that these exemptions are necessary for a proper functioning of the relevant economic sector.

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 Germany.

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 Germany was in conformity with Article 7§9 of the 1961 Charter (Conclusions XXI-4 (2019)). Therefore, the Committee reiterates its previous conclusion.

Conclusion

The Committee concludes that the situation in Germany 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 Germany.

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”).

In its previous conclusion, the Committee concluded that the situation in Germany was in conformity with Article 7§10 of the Charter (Conclusions XXI-4). The assessment of the Committee will therefore concern the information provided by the Government in response to the targeted questions.

Protection against sexual exploitation

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, with the Act to Combat Sexual Violence against Children of 16 June 2021, the basic offence of child abuse has been made a felony. In addition, the overall range of penalties has been made more severe. The law of criminal procedure has also been amended and the range of possible investigative means in criminal procedures has been expanded. Moreover, the distribution and possession of instructions for the sexual abuse of children was made a criminal offence.

The report further states that, as of October 2020, persons who have been convicted of certain offences against sexual self-determination, are prohibited from employing, supervising, instructing or training children.

Protection against the misuse of information technologies

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 states that the Young Persons Protection Act was reformed in May 2021. It now includes an obligation for service providers to provide effective and structural preventive measures to protect against damage to the personal integrity of children and young people, in such cases as cyberbullying, cybergrooming or other types of sexual exploitation. Possible measures include the provision of technical means for age verification, reporting and complaint functions, functions for age-appropriate guidance and limitation of media use by parents as well as age-appropriate default settings.

The report also states that the network “No grey areas on the internet” focuses on cybergrooming, cyberbullying, sexual harassment in forums, social media and chats, the misuse of self-generated sexting content.

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 as soon as the first lockdown started, various support services were extended or established and they included counselling services provided by telephone or online. Moreover, a programme “Catching up after Corona for children and young people” was adopted in 2021 to help children and young people to make up for what they had missed.

Conclusion

The Committee concludes that the situation in Germany is in conformity with Article 7§10 of the Charter.

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 Germany.

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").

In its previous conclusion (Conclusions XXI-4 (2019), the Committee found that the situation in Germany was in conformity with Article 8§1 of the Charter pending receipt of information on the right to any kind of benefits for the employed women who did not qualify for maternity benefit during maternity leave and on whether interruptions in the employment record were taken into account in the determination of maternity benefits.

This is the first examination of the situation in Germany under the Revised Charter.

Right to maternity leave

The Committee had previously concluded that the situation in Germany was in conformity with the Charter on this point. Therefore, there was no examination of the situation in 2023 and the Committee reiterates its previous conclusion.

Right to maternity benefits

The Committee had previously concluded that the situation in Germany was in conformity with the Charter on the maternity benefits, pending receipt of information on the right to any kind of benefits for the employed women who did not qualify for maternity benefit during maternity leave and on whether interruptions in the employment record were considered when determining maternity benefits (Conclusions XXI-4). There is no information on this aspect in the report but, according to MISSOC, all women qualify for the benefit. Co-insured spouses and daughters of insured persons in low-income employment, as well as female employees not affiliated to a statutory sickness fund, can still receive maternity benefit which is financed by the Federal Government.

Due to the failure to provide the requested information on whether interruptions in the employment record are taken into account when determining maternity benefits, the Committee concludes that the situation in Germany is not in conformity with Article 8§1 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Germany of their reporting obligations under Article C of the Charter.

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.

The Government indicated that the Covid-19 crisis had no impact on the right to benefits under maternity protection law during the periods of protection according to Sections 19 and 20 of the Maternity Protection Act (*Mutterschutzgesetz*). During the periods of protection, women did not receive lower benefits as a result of short-time work.

Conclusion

Due to the failure to provide the information listed below, the Committee concludes that the situation in Germany is not in conformity with Article 8§1 of the Charter. The Committee

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

Information missing:

- whether interruptions in employment are taken into account for the purpose of calculating maternity benefits.

Article 8 - Right of employed women to protection of maternity

Paragraph 2 - Illegality of dismissal during maternity leave

The Committee takes note of the information contained in Germany's report.

The Committee recalls that no targeted questions were asked in relation to Article 8§2 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").

The Committee notes that this is the first examination of the situation under Article 8§2 of the Revised Charter.

Prohibition of dismissal

According to the report, Section 17 of the Maternity Protection Act provides that an employer may not dismiss a woman during her pregnancy, until the expiry of four months after a miscarriage after the twelfth week of pregnancy, and until the end of her period of protection after childbirth, but at least up until the expiry of four months after childbirth if the employer is aware of the pregnancy, the miscarriage or birth of a child at the time of the dismissal or if the information is communicated to them within two weeks after receipt of the notice of dismissal.

Preparatory measures taken by the employer with a view to dismissing a woman are also unlawful.

The *Länder* are responsible for enforcing the Maternity Protection Act. The supreme *Land* authority responsible for occupational safety and health or the body designated by it may exceptionally declare dismissal permissible in special cases not connected with the condition of the woman during pregnancy, after a miscarriage after the twelfth week of pregnancy or after childbirth.

If notice of dismissal has been given, the pregnant woman can have recourse to the labour court.

The Committee points out that this provision does not establish an absolute prohibition. It allows for exceptions in certain cases, in particular when the employee has committed a fault justifying the termination of the employment contract, when the company ceases trading or when the term provided for in the employment contract has expired (Statement of Interpretation on Article 8§2 1996).

Redress in case of unlawful dismissal

The report does not provide information on the remedies available in the event of unlawful dismissal.

In cases of unlawful dismissal, domestic law must provide for adequate and effective remedies. In the case of dismissal contrary to this provision, the reinstatement of the woman should be the rule. Exceptionally, if this is impossible (e.g. where the enterprise closes down) or the woman concerned does not wish it, adequate compensation must be ensured. Compensation should be sufficient to deter the employer and compensate the employee. Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive are proscribed. Moreover if there is a ceiling on compensation for pecuniary damage, the victim must be able to seek unlimited compensation for non-pecuniary damage through other legal avenues (Statement of Interpretation on Article 8§2, 2011).

Due to the failure to provide the information on remedies , the Committee concludes that the situation in Germany is not in conformity with Article 8§2 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Germany of their reporting obligations under Article C of the Charter.

Covid-19

The Committee asked whether the Covid-19 crisis had had an impact on the possibility of dismissing pregnant employees and those on maternity leave; it also asked whether there had been any exceptions to the ban on dismissal during pregnancy and maternity leave during the pandemic.

Th report states that the Covid-19 crisis has had no impact on the possibility of dismissing pregnant employees and those on maternity leave, or on the exceptions to the ban on dismissal during pregnancy and maternity leave.

Conclusion

Due to the failure to provide the information listed below the Committee concludes that the situation in Germany is not in conformity with Article 8§2 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Germany of their reporting obligations under Article C of the Charter.

Information missing:

- remedies available in the event of unlawful dismissal.

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 Germany.

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, families and migrants”).

As the previous conclusion found the situation in Germany to be in conformity with the 1961 Charter (Conclusions XXI-4 (2019) there was no examination of the situation in 2023.

Therefore, the Committee reiterates its previous conclusion.

Conclusion

The Committee concludes that the situation in Germany 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 Germany.

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”).

This is the first examination of the situation in Germany under Article 8§4 of the Revised Charter therefore the assessment of the Committee will therefore concern the information provided by the Government in the report and 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 5 of the Maternity Protection Act, an employer may not have a pregnant or breastfeeding woman work between 8pm and 6am. The Länder are responsible for enforcing the regulation. On a case-by-case basis, the competent supervisory authority may grant exemptions.

In particularly justified cases, the supervisory authority may grant exemptions from the ban on night work between 10pm and 6am if the woman expressly declares her willingness to do so, if there is no medically certified reason to stop her working and, in particular, no risk to the pregnant woman or her child from working.

A pregnant or breastfeeding woman who is not allowed to work at all or in part because work is prohibited while pregnant or breastfeeding or because risks cannot be eliminated is entitled to take leave and receive maternity protection pay (*Mutterschutzlohn*) from her employer. Maternity protection pay is calculated as the average earnings of the last three calendar months prior to the start of pregnancy.

Conclusion

The Committee concludes that the situation in Germany 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 Germany.

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”).

This is the first examination of the situation in Germany under Article 8§5 therefore the assessment of the Committee will therefore concern the information provided by the Government in the report and 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.

According to the report an employer must organise the working conditions of a pregnant or breastfeeding woman in such a way that any risks to the woman’s health or that of her (unborn) child are eliminated. If the employer is unable to eliminate risks to the pregnant or breastfeeding woman either by protective measures (modification of working conditions) or by a change of workplace, the employer may not continue to have the pregnant or breastfeeding woman perform work (Section 13 (1) No. 3 of the Maternity Protection Act).

A list of inadmissible activities and working conditions for pregnant women is laid down in Section 11 of the Maternity Protection Act. According to Section 11 (4) sentence 2 No. 3 of the Maternity Protection Act, pregnant women may not perform work in underground mines. This applies also to breastfeeding women (Section 12 (4) sentence 2 No. 2 of the Maternity Protection Act).

A mandatory period of protection including an absolute ban on work applies after childbirth (Section 3 (2) of the Maternity Protection Act). Normally, this period ends eight weeks after the child’s birth. It can be extended to twelve weeks.

The Committee notes from the report under Article 8§4 that a pregnant or breastfeeding woman who is not allowed to work at all or in part because work is prohibited while pregnant or breastfeeding or because risks cannot be eliminated is entitled to take leave and receive maternity protection pay (*Mutterschutzlohn*) from her employer. Maternity protection pay is calculated as the average earnings of the last three calendar months prior to the start of pregnancy.

The Committee notes that at the end of the protected period a woman has the right to return to her previous post.

Conclusion

The Committee concludes that the situation in Germany 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 Germany.

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 XXI-4 (2019)), the Committee found that the situation in Germany was in conformity with Article 16 of the Charter, pending receipt of the information requested.

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

Legal protection of families

Rights and obligations, dispute settlement

- **Mediation services**

In its previous conclusion (Conclusions XXI-4 (2019)), the Committee noted that a reform of non-contentious jurisdiction was ongoing and asked again for information on mediation costs.

Due to the failure to provide requested information, the Committee concludes that the situation in Germany is not in conformity with Article 16 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Germany of their reporting obligations under Article C of the Charter.

Domestic violence against women

The Committee notes firstly that Germany has ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), which entered into force in Germany in February 2018.

In its previous conclusion, the Committee asked to provide comprehensive and updated information on preventive measures (training, awareness-raising, rehabilitation...) and their impact on reducing domestic violence against women, on the existence of helplines, shelters or emergency centres, on the effective implementation of restraining orders and the prosecution of domestic violence against women or the implementation of integrated policies involving all levels of government and all relevant agencies and institutions.

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.

The report states that by ratifying the Istanbul Convention, Germany committed itself at all levels of the state to do its utmost to combat violence against women and domestic violence, to provide protection and support for victims and to bring violence to an end. According to the report, the Federation, the *Länder* and the local authorities are equally committed to taking action in this area. Because of the federal system, the *Länder* are, as a rule, responsible for establishing, developing, and funding assistance and support structures for women who are victims of violence.

The report adds that the Federal Government intends, during the new legislative period to significantly advance the protection of women and the implementation of the Istanbul Convention at the federal level.

In particular, there are plans to set up an independent reporting body on gender-based violence and human trafficking. Since February 2020, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth has been funding a project by the German Institute for Human Rights to develop a plan for independent bodies to report on gender-based violence and human trafficking. Further projects include the establishment of a public coordinating body and the development of an inter-ministerial political strategy to prevent and combat violence.

The report indicates that the federal programme “Working together to prevent violence against women” (“*Gemeinsam gegen Gewalt an Frauen*”) was launched to support the *Länder* in their efforts to establish a nationwide network of assistance services. In the framework of this programme, funds are available: (1) for innovative projects to reach women victims of violence and their children and to provide them with targeted support, and (2) for financing building measures to expand the capacity of and access to women’s shelters and specialised counselling centres.

According to the report, the Federal Criminal Police Office has published on an annual basis since 2015 specific evaluations of crime statistics on violence in relationships. From 2023, these assessments will be expanded to include information on domestic violence. However, the Committee observes that the report does not contain any figures on the incidence of violence.

The report indicates that there are no data available on convictions in the context of domestic violence.

Social and economic protection of families

Childcare facilities

In its previous conclusions (Conclusions XXI-4 (2019)), XX-4 (2015), XIX-4 (2011)), the Committee asked for updated information on whether childcare facilities were available, affordable and of good quality (ratio of staff to children, staff training, suitable premises and cost of childcare to parents, etc.). The Committee recalls that it pointed out that, should the necessary information not be provided in the next report, nothing would enable the Committee to establish that the situation in Germany is in conformity with Article 16 of the Charter in this respect.

Due to the failure to provide requested information, the Committee concludes that the situation in Germany is not in conformity with Article 16 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Germany of their reporting obligations under Article C of the Charter.

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 response, the report indicates that there are no uniform regulations on the required length of residence in Germany for the various groups of nationals of other States Parties.

The report adds that nationals of other States Parties can claim child benefits if they:

- are nationals of a member state of the European Union, the European Economic Area or Switzerland,
- are nationals of one of the following states: Algeria, Bosnia-Herzegovina, Kosovo, Morocco, Montenegro, Serbia, Tunisia or Turkey and, in addition, hold a job

- subject to compulsory social insurance contributions or are in receipt of unemployment benefits or sickness benefits in Germany;
- hold a valid settlement or residence permit that allows them to work in Germany or belong to the group of incontestably recognized refugees and persons entitled to asylum.

The Committee notes from MISSOC that in general, persons who live in Germany or are liable to income tax without limitations are entitled to receive child benefits.

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 monthly median equivalised income stood at € 2,079 in 2021.

The report indicates that there are different forms of financial support and relief for families. Some of them are means-tested (for example, basic income support, child supplement, housing allowance), others are not (child benefit, tax relief measures, family-related elements in the social insurance systems).

According to the report, child benefit is the main financial support for families. The amount depends on the number of children: €219 for the first and second children; € 225 for the third child, and € 250 for the fourth and each subsequent child.

In addition to child benefit, parents are entitled to a supplement of € 229 for their children (aged under 25). In November 2022, child supplements were paid to 790,000 children. A family receiving child supplements is also entitled to education and participation benefits and may be exempt from child day-care costs. The report specifies that the child supplement is index-linked. It is calculated taking into account the current cost of living and the amount of child benefit, which means, according to the report, that it increases automatically if necessary.

As from 1 January 2023 (outside the reference period), child benefit is fixed at €250 euros per month per child regardless of parental income with additional benefits for lower-income families.

The Committee observes that the child benefit amounted to 8.3% of the median equivalised income in 2021. The Committee also observes that in addition to this benefit, families on low-income receive other benefits. The Committee considers that child benefits constitute a significant income supplement. Therefore, the situation is in conformity with the Charter on this point.

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 response, the report indicates that special measures were taken in view of the strong energy price increases in 2022 (outside the reference period).

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 response, the report states that the child supplement was adjusted several times to simplify and speed up the provision of support to eligible families during the covid-19. These simplifications have been maintained.

Housing for families

In its previous conclusion (Conclusions XXI-4 (2019)), the Committee asked for detailed information and figures (demand and supply) on the various types of housing support for vulnerable families, including social housing and housing allowances.

In response, the report states that there are no statistics available at the federal level on support for social housing, and the annual reports of the *Länder* do not contain any specific data on housing support for vulnerable families. Housing allowances are granted as a rent subsidy to households with low incomes (just above the level of basic income support).

In its previous conclusion, the Committee also asked whether the offer of emergency accommodation (shelters or other centres) matched demand.

In reply, the report indicates that the local authorities are responsible for the provision of emergency accommodation for homeless persons, but there are no statistics on the number of places in emergency accommodation.

In its previous conclusion, the Committee asked what specific measures were taken to protect vulnerable families, such as Roma families and single-parent families. In addition, it asked to indicate the measures taken to ensure that refugee families have adequate housing and whether, in practice, they had access to social housing schemes and housing allowances once they have left the reception centres (with any figures and statistics available on this issue).

In addition, 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 and affordable housing for families.

In response, the report indicates that social housing benefits households (including asylum-seekers who have been recognised as refugees) who are unable to provide themselves with adequate housing on the market and need support in accordance with the provisions of *Länder* law. Upon application, these households receive a certificate of eligibility for subsidised housing that entitles them to rent subsidised housing, if available. If more than one holder of such a certificate applies for the same subsidised home, the decision as to who is to be the tenant generally rests with the landlord. In cases where a special need for assistance is identified, the landlord's freedom of decision may be limited by the competent authority. The report adds that housing allowances are also provided in the form of a rent subsidy to low-income households (just above the level of basic income support). Most recipients of the housing allowance are pensioners and families (especially single parents).

Conclusion

Due to the failure to provide the information listed below, the Committee concludes that the situation in Germany is not in conformity with Article 16 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Germany of their reporting obligations under Article C of the Charter.

Information missing:

- mediation costs;
- childcare facilities that are available, affordable and of good quality (ratio of staff to children, staff training, suitable premises and cost of childcare to parents).

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 Germany.

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, pending receipt of the information requested, the Committee concluded that the situation in Germany was in conformity with Article 17§1 of the Charter (Conclusions XXI-4). 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.

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 Germany ratified the UN Convention relating to the Status of Stateless Persons and the UN Convention on the Reduction of Statelessness.

The report provides no information on measures taken by the State to facilitate birth registration, particularly for vulnerable groups. The Committee notes from other sources (UN Human Rights Council Working Group on the Universal Periodic Review, thirtieth session, 7-18 May 2018) that there were practical difficulties in Germany in obtaining birth certificates for newborn babies with irregular residence status. It also notes from other sources (UN Committee on the Rights of the Child, Concluding observations on the combined fifth and sixth periodic reports of Germany, 13 October 2022) that some children, in particular children whose parents are not able to present documentation providing their identity or nationality, receive a certified register printout, instead of a birth certificate, which restricts their access to certain services. The Committee expresses concern about this situation.

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.

The report states that, depending on their respective income, households with children may need support. In this case, they receive a housing entitlement certificate allowing them to rent a social housing apartment. They can also receive benefits to secure their livelihood, including benefits for accommodation, food, personal hygiene and health services.

Due to the failure to provide requested information on measures taken 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, the Committee concludes that the situation in Germany 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 Germany of their reporting obligations under Article C of the Charter.

The Committee notes from EUROSTAT that 23.7% of children in Germany in 2021 were at risk of poverty or social exclusion, a significant increase in comparison with 2018, when the percentage was 17.5%. The Committee notes that the 2020 rate is still slightly lower than the EU average of 24.4% but expresses concern about the sharp increase of the rate of children at poverty or social exclusion.

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 asked what assistance was provided to children in an irregular migration situation and what measures had been taken to ensure that children in an irregular migration situation were not discouraged from requesting assistance. The Committee considered that if this information was not provided in the next report, there would be nothing to establish that the situation in Germany was in conformity with Article 17§1 of the Charter. It also asked whether children in an irregular migration situation accompanied by their parents or not, could be detained and if so, under what circumstances. It also requested information on accommodation facilities for children in an irregular migration situation. Finally, it asked whether Germany used bone testing to assess age and, if so, in what situations, and what potential consequences such testing could have (Conclusions XXI-4).

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

The report states that for their own protection, unaccompanied minors are not given accommodation in reception facilities or shared accommodation. Accommodation, further care

and pedagogical support are provided. Such children can be placed with a suitable person, in a proper facility or in another adequate form of housing.

The report further states that since 2016, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth have been working to protect children and other vulnerable persons in refugee accommodation. Guidelines on the minimum standards for the protection of refugees in refugee accommodation have been set.

The report states that the age assessment of minors is carried out on the basis of a three-stage procedure: inspection of identity papers, in-person assessment by a qualified professional and medical assessment in case of doubts. The medical assessment has to be carried out using the least invasive and, as far as possible, most reliable methods. Measurement of hands or collarbone, dental maturity can be used.

In reply to the targeted question, the report states that when confinement began, various support services were established and expanded. They included counselling services. The report further provides that children's and youth camps, open events, youth encounters and extracurricular educational offers can help children affected by the Covid-19 pandemic.

Rights of children in public care

The Committee previously asked for information on the number of children in the care of the State, the number placed in institutions and the number placed in foster families, as well as information on the trends in the area. The Committee considered that if this information was not provided in the next report, there would be nothing to establish that the situation in Germany was in conformity with Article 17§1 of the Charter. It also asked for information on measures to support families so as to ensure that the placement of children outside the home was always in the best interest of the child and a measure of last resort (Conclusions XXI-4).

The report states that legal guardians are entitled to help in raising a child or young person if their best interests are not ensured. Assistance is based on the needs of the child. The principle of proportionality applies and it ensures that family-preservation services take precedence over out-of-home placements if they are equally suitable for meeting the child's needs.

The report further provides information about the number of children in institutions and foster families. In 2018, 94,978 children were in institutions, in 2019 – 93,752, in 2020 – 90,708 and in 2021 – 89,665. It is not clear from the information provided how many children were placed in foster families. It also notes from other sources (UN Committee on the Rights of the Child, Concluding observations on the combined fifth and sixth periodic reports of Germany, 13 October 2022) that the number of children living in alternative care facilities, in particular in closed institutions, is increasing, and the placement of children in alternative care is carried out without a proper assessment of their best interests.

The Committee concludes that the situation in Germany is not in conformity with Article 17§1 of the Charter on the ground that measures taken to reduce institutionalisation of children are insufficient.

Children in conflict with the law

The Committee previously asked for information on the length of pre-trial detention. It also asked whether children could be placed in solitary confinement, for how long and under what circumstances (Conclusions XXI-4).

Due to the failure to provide requested information on whether children can be subject to solitary confinement, for how long and under what circumstances, the Committee concludes that the situation in Germany 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 Germany of their reporting obligations under Article C of the Charter.

Conclusion

The Committee concludes that the situation in Germany is not in conformity with Article 17§1 of the Charter on the ground that the measures taken to reduce institutionalisation of children are insufficient.

Due to the failure to provide the information listed below, the Committee concludes that the situation in Germany 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 Germany of their reporting obligations under Article C of the Charter.

List of questions/Information missing:

- on measures taken 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;
- whether children can be subject to solitary confinement, for how long and under what circumstances.

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 Germany.

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.

The Committee notes that Germany ratified the revised European Social Charter on 29 March 2021 and accepted Article 17§2, which does not exist under the 1961 European Social Charter. This is therefore the first time that the Committee will be examining whether Germany’s situation is in conformity with Article 17§2 of the Charter.

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.

General legal framework and measures taken to implement it

The report states that responsibility for education in Germany is determined by the federal structure and the Länder have the right to enact laws in the area of education. Detailed regulations are established in the constitutions of the Länder. However, the Länder bear joint responsibility for the State as a whole. The “Länder agreement on the common basic structure of the school system and the national responsibility of the Länder in central questions of education policy”, which came into force on 9 February 2021, is the main basis for the common framework of the education system in Germany.

The report further states that, in order to implement the right to education, there is free, full-time, compulsory education which lasts nine years (10 years in five Länder). The subsequent compulsory vocational schooling lasts three years.

The report states that a number of initiatives have been launched in the school sector: “School makes you strong” in 2021 aimed at improving educational opportunities for socially disadvantaged pupils; the legal entitlement to all-day care in primary school; the “Catching up after Corona” action programme.

Enrolment rates, absenteeism and drop out rates

The report states that Germany aims to reduce the proportion of pupils who do not develop a minimum level of skills by the end of their schooling and therefore do not receive a school-leaving certificate. Since 2006, when the initiative was launched, the proportion of pupils who left school without a lower secondary school leaving certificate has fallen steadily, before rising slightly but without reaching the level of 2006. Between 2018 and 2020, the proportion of those leaving compulsory education without a lower secondary school leaving certificate fell from 6.8% to 5.9%.

The Committee notes from other sources (UNESCO database) that the enrolment rates in 2021 were as follows: 98.54% in primary education, 99.33% in lower secondary education and 89.44% in upper secondary education.

Costs associated with education

In the targeted questions, the Committee asked for information on measures taken to ensure that state allocation of resources to private education did not negatively impact on the right of all children to access free, quality public education.

The report states that regulations on State funding for alternative schools are laid down in the respective laws of the Länder. Alternative schools are independently run schools that correspond to public schools in terms of organisational form, tasks and teaching content, and where compulsory can be satisfied.

The report states that at primary school level, the establishment of independently run schools is possible under very strict conditions. At secondary school level, two categories of independently run schools can be distinguished – those that substitute for public schools and supplementary schools. Alternative schools have to be approved by the State.

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 also states that the rights and forms of pupil participation in school life are regulated in greater detail in school laws on representation. Pupils elect class or level representatives who form the Pupils' parliament. In addition, most school laws provide for general assemblies at school or class levels, during which an exchange of opinions, a debate or a discussion between all the pupils in a school can take place. Primary schools offer pupils a variety of active forms of participation and involvement at class and school levels. The "Together for quality: children's participation in all-day activities" programme, which is currently in its modelling phase, aims to promote structures for children's participation throughout the school day.

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 reporting procedures for incidents of violence have been developed, independent complaints officers have been appointed. Since 2018, the "Respect Coaches" prevention programme has aimed to reduce prejudice and promote tolerance in social interactions.

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 different strategies are being pursued in the 16 Länder to address the effects of the Covid-19 pandemic. Hygiene and protection measures were taken, pedagogical and psycho-social support was provided. In some cases, special measures for groups of pupils

with special needs have been or are being arranged, such as for school-leaving classes and special needs schools. A key contribution is made by the joint action programme “Catching up after Corona” which aims to close the pandemic-related learning gaps and improve children’s social lives.

Conclusion

The Committee concludes that the situation in Germany is in conformity with Article 17§2 of the Charter.

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

Paragraph 1 - Assistance and information on migration

The Committee takes note of the information contained in the report submitted by Germany and in the comments submitted by the German Trade Union Confederation (Deutscher Gewerkschaftsbund – DGB).

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).

In its previous conclusion (Conclusions XXI-4 (2019)), the Committee deferred its conclusion, pending receipt of the information requested.

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 asked that the next report provide up-to-date information on the framework for immigration and emigration, and any new or continued policy initiatives (Conclusions XXI-4 (2019)).

The report indicates that under the reference period, new labour migration regulations were set out in the Skilled Immigration Act which entered into force on 1 March 2020. They facilitate access of skilled labour with a degree in a training occupation and improves the prospects for skilled labour from other countries. The report further provides detailed information on the access to the labour market of the skilled labour (persons with a university degree or a qualified vocational training degree), the EU Blue Card system, and the dual training system. The Skilled Immigration Act has also improved the opportunities for new apprentices to obtain a residence permit for the purpose of taking part in qualification measures in Germany. It introduced a regulation under which IT specialists can obtain a residence permit in the event of extensive professional experience, regardless of an official degree.

It is reported that since the enactment of the Skilled Immigration Act, it is also possible for immigrants to come to Germany if they have completed vocational training in a vocational occupation abroad. This requires that the foreign qualification has been recognized by the competent body in Germany, that the immigrants can earn their own living during their residence in Germany and that their German language skills are sufficient for the job they applied for (Section 20 (1) of the Residence Act).

Measures against misleading propaganda relating to emigration and immigration

The Committee recalls that under Article 19§1 of the Charter, States Parties must take measures to prevent misleading propaganda relating to immigration and emigration (Conclusions XIV-1 (1998), Greece). Such measures should prevent the communication of misleading information to nationals leaving the country and act against false information targeted at migrants seeking to enter (Conclusions 2019, Estonia). The Committee stresses the importance of promoting responsible dissemination of information, and of deterring the promulgation of discriminatory views. It considers that in order to combat misleading propaganda, there must be an effective system to monitor discriminatory, racist or hate-inciting speech, particularly in the public sphere (Conclusions 2019, Albania).

In its previous conclusion, the Committee asked for information on any further evaluation or update of the Action Plan against racism (Conclusions XXI-4 (2019)).

The report indicates that the National Action Plan against Racism (NAP-R), initially issued in 2008, was expanded and relaunched in 2017. The National Action Plan Against Racism focuses on measures regarding human rights policy, protection against discrimination and prosecution of crimes, diversity in working life, training and further training as well as the strengthening of intercultural and social competences at work, racism and hatred on the internet. The drafting of the National Action Plan Against Racism of the Federal Government was the result of interministerial cooperation. Civil society was involved through a consultation process and Position papers from numerous civil society initiatives and NGOs were integrated into the drafting of the National Action Plan Against Racism.

Conclusion

The Committee concludes that the situation in Germany 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 Germany.

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 (Conclusions XXI-4 (2019)), the Committee considered that the situation in Germany was in conformity with Article 19§2 of the 1961 Charter, pending receipt of the information requested.

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

Services during the journey

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

In its previous conclusion, the Committee noted that no large scale recruitment of migrant workers had been reported in the reference period (Conclusions XXI-4(2019)). It asked what requirements for ensuring medical insurance, safety and social conditions were imposed on employers, shall such recruitment occur, and whether there was any mechanism for monitoring and dealing with complaints, if needed (Conclusions XXI-4(2019)).

The report indicates that in January 2020, the Federal Employment Agency concluded a placement agreement regulating the administrative and selection procedures for the purpose of seasonal work with the public employment services of Georgia (for 5,000 workers) and in July 2021 with the Republic of Moldova (for 500 workers). Agreements concluded with the Federal Employment Agency always include clear responsibilities for employers and also information on the social insurance system. By taking up employment subject to mandatory social insurance contributions in Germany, workers are subject to compulsory coverage in the statutory health insurance, as stipulated in Section 5 (1) of Book V of the Social Code (Sozialgesetzbuch Fünftes Buch, SGB V). If a legal dispute arises with the health insurance funds, action may be brought before the Social Court.

Conclusion

The Committee concludes that the situation in Germany is in conformity with Article 19§2 of the Charter.

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

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

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 Germany to be in conformity with the Charter (Conclusions XXI-4(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 Germany is in conformity with Article 19§3 of the Charter.

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

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

The Committee takes note of the information contained in the report submitted by Germany and in the comments submitted by the German Trade Union Confederation (Deutscher Gewerkschaftsbund – DGB).

The Committee recalls that no targeted questions were asked for Article 19§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).

In its previous conclusion (Conclusions XXI-4 (2019)), the Committee deferred its conclusion, pending receipt of the information requested.

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

Remuneration and other employment and working conditions

The Committee recalls that States are obliged to eliminate all legal and de facto discrimination concerning remuneration and other employment and working conditions, including in-service training, promotion, as well as vocational training (Conclusions VII (1981), United-Kingdom).

In its previous conclusion, the Committee asked that the next report provide additional information on any practical measures taken to implement the legislative framework, such as awareness-raising measures or training for employees (Conclusions XXI-4 (2019)).

The report provides detailed information on the counselling on labour and social issues available for all third-country nationals residing in Germany, and workers from other EU Member States through the information and counselling services “Fair Integration” and “Fair Mobility”. Information is also provided on the trainings and awareness-raising activities provided to the staff of the Federal Employment Agency related to discrimination, diversity, intercultural qualifications or equal opportunities. Staff and managers of the Federal Employment Agency are supported in becoming aware of their unconscious bias and to adapt their conduct accordingly. This was also published as a best-practice example by the Diversity Charter.

Monitoring and judicial review

The Committee recalls that it is not enough for a government to demonstrate that no discrimination exists in law alone but also that it is obliged to demonstrate that it has taken adequate practical steps to eliminate all legal and de facto discrimination concerning the rights secured by Article 19§4 of the Charter (Conclusions III (1973), Statement of interpretation).

In particular, the Committee considers that in order to monitor and ensure that no discrimination occurs in practice, States Parties should have in place sufficient effective monitoring procedures or bodies to collect information, for example disaggregated data on remuneration or information on cases in employment tribunals (Conclusions XX-4 (2015), Germany). The Committee further recalls that under Article 19§4(c), equal treatment can only be effective if there is a right of appeal before an independent body against the relevant administrative decision (Conclusions XV-1 (2000) Finland). It considers that existence of such review is important for all aspects covered by Article 19§4.

In its previous conclusion, the Committee asked for comprehensive information on the functioning and competences of the monitoring and anti-discrimination bodies, as well as on all avenues of appeal or review as regards the aspects covered by this provision of the Charter. The Committee considered that if the requested information was not provided in the next

report, there would be nothing to establish that the situation is in conformity with the 1961 Charter (Conclusions XXI-4 (2019)).

The report indicates that workers have the right to bring a complaint before the competent bodies of the establishment, company or public authorities (Section 13 of the General Act on Equal Treatment) if they think they are discriminated on the grounds of race or ethnic origin, gender, religion or belief, disability, age or sexual orientation in connection with their employment relationship. The complaint must be investigated and the result communicated to the person concerned. Furthermore, persons concerned may claim damages or compensation from the employer with the labour courts (Section 15 of the General Act on Equal Treatment in conjunction with Section 61 b of the Labour Courts Act).

The report further indicates that the Federal Anti-Discrimination Agency (ADS) provides discrimination victims with independent support and advice regarding the options available under the General Act on Equal Treatment, such as information about the rights set out in the General Act on Equal Treatment or advice on what actions are possible in the framework of legal regulations governing protection against discrimination. The ADS can also procure counselling provided by other agencies and it can help to facilitate an amicable settlement between the parties (see Section 27 (2) of the General Act on Equal Treatment).

The report also adds that the Independent Federal Anti-Discrimination Commissioner is the head of the Federal Anti-Discrimination Agency (Section 25 (3) of the General Act on Equal Treatment). The Independent Federal Anti-Discrimination Commissioner is independent in the exercise of their duties and only subject to the law (Section 26 (1) sentence 2 of the General Act on Equal Treatment).

Conclusion

The Committee concludes that the situation in Germany is in conformity with Article 19§4 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 Germany.

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 Germany to be in conformity with the Charter (Conclusions XXI-4(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 Germany 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 Germany.

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 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 considered that the situation in Germany was not in conformity with Article 19§6 of the Charter on the grounds that:

- the requirement for migrant workers to hold a temporary residence title for two years in certain circumstances before being entitled to family reunion is too restrictive;
- the requirements to prove language proficiency for family reunion of children over 16 wishing to move to Germany present an obstacle to family reunion;
- spouses do not enjoy an independent right of residence in case of expulsion of a migrant worker.

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

This provision obliges States Parties to allow the families of migrants legally established in their territory to join them. The worker’s children entitled to family reunion are those who are dependent and unmarried, and who fall under the legal age of majority in the receiving State. “Dependent” children are understood as being those who have no independent existence outside the family group, particularly for economic or health reasons, or because they are pursuing unpaid studies (Conclusions VIII (1984) Statement of Interpretation on Article 19§6).

The Committee has already assessed the scope of the right to family reunion in Germany in its previous conclusions (Conclusions 2019) and found the situation to be in conformity with the Charter. No changes have been reported in this respect.

Conditions governing family reunion

In the previous conclusions (Conclusions 2015 and 2019), the Committee noted, as regards the condition of length of residence, that the requirement of having held a residence permit for two years applies in restricted cases: in the case of new marriages, the principal person with residence entitlement needs to be in possession of a residence permit for two years before arranging for a spouse to join him or her. If the principal person entitled is already married, this minimum period does not apply. The Committee considered (Conclusions 2019) that the maximum period of one year must apply without discrimination to all migrants and their families regardless of their specific situations, save for legitimate intervention in cases of forced marriage or fraudulent abuse of migration rules. It concluded that the situation in Germany was not in conformity with the Charter because the requirement to hold a temporary residence title for two years in certain circumstances was too restrictive.

The report does not provide any information in this respect and refers to the information provided in the previous report. The Committee therefore reiterates its conclusion of non-conformity in this respect.

As regard the language requirement, the Committee took note previously (Conclusions 2019) that between the ages of 16 and 18, children must provide evidence of their proficiency in German unless they are relocating their residence to Germany together with both parents or one parent (either a parent possessing the sole right of care and custody or a sole surviving parent) or unless there are other grounds to believe they will be able to integrate in Germany. The Committee thus reiterated its conclusion of non-conformity.

The report does not provide any information in this respect and refers to the information provided in the previous report. The Committee therefore reiterates its conclusion of non-conformity in this respect.

Moreover, the Committee previously noted (Conclusions 2019) that the minimum period for which a marriage must exist before a spouse who subsequently migrates to Germany can obtain an independent residence permit was increased from two to three years. It also took note that in general, family members only have an accessory right of residence and if the principal residence entitlement ceases to exist, the same is true of the right of residence of the family member who immigrated for the purpose of a family reunion. An independent right of residence can be obtained only in the event of the termination of marital cohabitation. Children, however, can receive an independent right of residence, which does not depend on their parents.

Recalling that for as long as a migrant workers' family members hold a right of residence it must not be possible to remove them, even if the migrant worker has personally lost this right, except where they endanger national security or offend against public interest or morality (Conclusions XVI-1 (2002), Netherlands, Article 19§8, Conclusions 2015, Statement of interpretation on Articles 19§6 and 19§8), the Committee concluded that this lack of independent right to stay was not in conformity with the Charter.

The report does not provide any information in this respect and refers to the information provided in the previous report. The Committee therefore reiterates its conclusion of non-conformity in this respect.

Remedy

The Committee recalls that restrictions on the exercise of the right to family reunion should be subject to an effective mechanism of appeal or review, which provides an opportunity for consideration of the individual merits of the case consistent with the principles of proportionality and reasonableness (Conclusions 2015, Statement of Interpretation on Article 19§6).

In the previous conclusion (Conclusions 2019), the Committee requested the next report to provide a comprehensive information on the existing remedies and it reserved its position on this point.

The report does not provide any information as to whether the exercise of the right to family reunion is subject to an effective mechanism of appeal or review before an independent body. The Committee therefore concludes that the situation is not in conformity with the Charter due to the failure to provide the required information. The Committee considers that this failure to provide information amounts to a breach by Germany of their reporting obligations under Article C of the Charter.

Conclusion

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

- the requirement for migrant workers to hold a temporary residence title for two years in certain circumstances before being entitled to family reunion is too restrictive;

- the requirements to prove language proficiency for family reunion of children over 16 wishing to move to Germany present an obstacle to family reunion;
- spouses do not enjoy an independent right of residence in case of expulsion of a migrant worker.

Due to the failure to provide the information listed below, the Committee concludes that the situation in Germany is not in conformity with Article 19§6 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Germany of their reporting obligations under Article C of the Charter. Information missing:

- on whether the exercise of the right to family reunion is subject to an effective mechanism of appeal or review.

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

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

The Committee 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 Germany 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 Germany 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 Germany is in conformity with Article 19§7 of the Charter.

Article 19 - Right of migrant workers and their families to protection and assistance
Paragraph 8 - Guarantees concerning deportation

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

The Committee points out that no targeted questions were asked in relation to Article 19§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 the previous conclusion (Conclusions 2019), the Committee deferred its conclusions pending receipt of the information requested. 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 deferral.

In the previous conclusion (Conclusions 2019), the Committee took note that the provision of the Residence Act and the Free Movement Act with regard to the expulsion of non-EU nationals had been revised and that long term homelessness and claims for social assistance were no longer listed among grounds for expulsion from Germany. The Committee considered, in conclusions 2019, that the revised regulation as a whole meets the requirements of reasonableness and proportionality under Article 19§8 but requested a comprehensive description of the legal framework in this regard.

In reply, the report indicates that Section 53 *et seq.* the Residence Act allows the expulsion, only if the public interest in the expulsion outweighs the person’s wish to remain in the territory. According to the report, a case-by-case assessment is therefore required by the law. Facts backing up the public interest to expel a foreigner are set out in the list provided in Section 54 of the Residence Act, which includes only facts that may be subsumed under the term that “they endanger national security or offend against public interest or morality.

Conclusion

The Committee concludes that the situation in Germany is in conformity with Article 19§8 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 Germany.

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 XXI-4 (2019)), the Committee found the situation in Germany to be in conformity with Article 19§9 of the Charter and raised a question. The assessment of the Committee in the present conclusion will therefore concern the information provided in response to its previous question.

In the previous conclusion (Conclusions XXI-4 (2019)), the Committee, referring to its Statement of Interpretation on Article 19§9 (Conclusions 2011), asked whether there were any restrictions on the transfer of the movable property of migrant workers. It also requested the next report to provide an up-to-date description of the legal framework, specifying restrictions, if any, on the right of migrants to transfer earnings and savings, either during their stay or when they leave their host country.

The report refers to the previous reports and does not provide any other answer to the Committee’s previous questions and request for information. The previous reports do not provide the requested information on restrictions on the transfer of the movable property of migrant workers.

The Committee concludes that the situation in Germany is not in conformity with Article 19§9 of the Charter due to the failure to provide the information on whether there were any restrictions on the transfer of the movable property of migrant worker; up-to-date description of the legal framework, specifying restrictions, if any, on the right of migrants to transfer earnings and savings, either during their stay or when they leave their host country. The Committee considers that this failure to provide information amounts to a breach by Germany of their reporting obligations under Article C of the Charter.

Conclusion

The Committee concludes that the situation in Germany is not in conformity with Article 19§9 of the Charter due to the failure to provide the information listed below. The Committee considers that this failure to provide information amounts to a breach by Germany of their reporting obligations under Article C of the Charter. List of questions/Information missing:

- whether there were any restrictions on the transfer of the movable property of migrant worker;
- up-to-date description of the legal framework, specifying restrictions, if any, on the right of migrants to transfer earnings and savings, either during their stay or when they leave their host country.

Article 19 - Right of migrant workers and their families to protection and assistance
Paragraph 10 - Equal treatment for the self-employed

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

On the basis of the information in the report the Committee notes that there continues to be no discrimination in law between migrant employees and self-employed migrants in respect of the rights guaranteed by Article 19.

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

The Committee has found the situation in Germany not to be in conformity with Articles, 19§6, 19§9 and 19§12 of the Charter. Accordingly, for the same reasons as stated in the Germany is not in conformity with Article 19§10 of the Charter.

Conclusion

The Committee concludes that the situation in Germany is not in conformity with Article 19§10 of the Charter as the grounds of non-conformity under Articles 19§6, 19§9 and 19§12 apply also to self-employed migrants.

Article 19 - Right of migrant workers and their families to protection and assistance
Paragraph 11 - Teaching language of host state

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

The Committee points out that no targeted questions were asked in relation to Article 19§11 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 Germany ratified the Revised Social Charter on 29 March 2021. This means that this is the first time the Committee will be examining the implementation of Article 19§11 of the Charter in Germany.

The Committee recalls that the teaching of the national language of the receiving state is the main means by which migrants and their families can integrate into the world of work and society at large. States should promote and facilitate the teaching of the national language to children of school age, as well as to the migrants themselves and to members of their families who are no longer of school age (Conclusions 2002, France).

Article 19§11 requires that States shall encourage the teaching of the national language in the workplace, in the voluntary sector or in public establishments such as universities. It considers that a requirement to pay substantial fees is not in conformity with the Charter. States are required to provide national language classes free of charge, otherwise for many migrants such classes would not be accessible (Conclusions 2011, Norway).

The report indicates that the integrated language programme in Germany comprises modules for different target groups including the integration courses and job-related language courses, not only an offer for new immigrants, but also for persons with a need for special language training who have lived in Germany for some time already.

Concerning the integration courses (regulated under the Residence Act), the report indicates that these courses aim to teach language skills as well as to provide information about the legal system, culture, and history of Germany, and are intended to enable course participants (foreigners living lawfully in the federal territory on a permanent basis, including on the basis of a temporary residence permit) to live an independent life. There are also special integration courses for illiterate persons, youth, parents, or participants with a disability.

According to the report, in accordance with the provisions of the Integration Course Ordinance, participants have to make a co-payment to the Federal Office for Migration and Refugees of an amount of € 2.20 per teaching unit during the reference period. The report indicates that it is possible to exempt participants from the obligation to make co-payments insofar as this would amount to undue hardship for the participant concerned because of the personal circumstances and the economic situation. The participants who have not been exempted from the obligation of making co-payments, can get a refund of half of the co-payment if they successfully complete the integration course within two years.

As to the job-related languages courses, the report indicates that these courses aim to provide language skills for work environment and to prepare foreign nationals for long-term integration into training and work. According to the report, there are also special job-related language courses for defined groups of occupations. German citizens with a migration background, EU citizens and migrants from third countries may participate in job-related language courses.

According to the report, access to job-related language courses is free of charge up to a taxable annual income of € 20,000. The co-payment by participants was € 2,32 per teaching unit during the reference period. The participants may reclaim the reimbursement of half amount of the co-payment if they complete the language course within two years.

The report indicates that both language training programmes are administered by the Federal Office for Migration and Refugees. The Federal Ministry of the Interior and Community, the Federal Ministry of Labour and Social Affairs and the Federal Office for Migration and Refugees regularly share their views on how to develop the integrated language programme further.

Concerning statistical data on language training programmes, the report refers to the official web page of the Federal office for Migration and Refugees which contain annually published statistics on integration and job-related language courses.

Conclusion

The Committee concludes that the situation in Germany is in conformity with Article 19§11 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 Germany.

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).

The Committee recalls that Germany ratified the Revised Social Charter on 29 March 2021. This means that this is the first time the Committee will be examining the implementation of Article 19§12 of the Charter in Germany.

The report states that no information is available with regard to the implementation of Article 19§12 of the Charter. The Committee therefore concludes that the situation is not in conformity with the Charter.

Conclusion

The Committee concludes that the situation in Germany is not 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 Germany and observations submitted by the German Trade Union Confederation (Deutscher Gewerkschaftsbund – DGB).

The Committee recalls that no targeted questions were asked in relation to 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).

This is the first examination of the situation in Germany under Article 27§1. The Committee's assessment will therefore concern the information provided by the Government in the report.

Employment, vocational guidance and training

According to the report, the Government designed various strategies to support the pension entitlements of persons raising children, to promote the labour force participation rate of parents by improving the reconciliation of work and family life and family-friendly working conditions and to increase the labour force participation rate of women.

Germany invests in active labour market policies aimed at assisting unemployed individuals, including those with family responsibilities, to find work. These policies include job placement services, subsidised employment initiatives, and support for reintegration into the labour market. An extensive network of public employment agencies, such as the Federal Employment Agency (Bundesagentur für Arbeit), plays a key role in delivering these services. Germany also offers various training opportunities (vocational training programs, apprenticeships, and adult education courses) to enhance the employability of job seekers, including those with family responsibilities, by improving their skills and qualifications.

Conditions of employment, social security

The report states that under German legislation, employees have the right to request flexible working arrangements, such as part-time work or flexible working arrangements, parental leave provisions, and financial support for families, such as child benefits and parental allowances to balance work and family responsibilities effectively. German labour legislation prohibits discrimination based on family responsibilities. Employers may not treat employees unfairly or unfavourably due to their family status, including their responsibilities as caregivers.

Regarding the social security provisions related to workers with family responsibilities, the report describes the rights of parents during child-raising periods established by Pension law in the framework of the statutory pension insurance system. For raising of children born from 1992 onwards, the parent who raises the child is entitled to a child-raising period of three years per child (two and a half years for children born before 1992). These periods are credited on the basis of 100% of the average income (i.e. one earnings point per year) and in addition to contribution periods up to the contribution assessment ceiling. The contributions for child-raising periods are borne by the Federation. In addition, parents are credited “parental periods” up to a child's 10th birthday. These periods are accounted for in the qualifying period of 35

years. For a person raising a child, the monthly pension amount earned from one year of child-raising is currently around 36 euros. Having raised a child born from 1992 onwards thus results in a total pension income of around 108 euros per child.

Other options of support are also available during periods of family responsibilities. More specifically, under the Pension law, the pension entitlements of workers who worked part-time during the child-raising periods and therefore earned below average during that time, are upvalued in the pension calculation after the completion of 25 years of work. This applies to periods from 1992 onwards. In these cases, the individually earned income is increased by 50% to 100 % of the average income, i.e. to a maximum of one third of an earnings point per year. When raising children in need of long-term care, the period which is taken into account is even upvalued to include the time until the child's 18th birthday.

Persons with family responsibilities who simultaneously raise two or more children under the age of 10 and are thus unable to take up even part-time employment, do not benefit from an upvaluation of their contribution periods. As compensation, they are granted a credit of earning points after the child-raising period to be taken into account under Pension law has expired. This includes parental periods and applies to periods from 1992 onwards. The credit corresponds to the highest possible child-related upvaluation of contribution periods of gainfully employed child-raising persons (i.e. one third of an earnings point per year).

Germany also provides unemployment benefits (Arbeitslosengeld) and social assistance (Sozialhilfe) to support unemployed individuals, including those with family responsibilities. Unemployment benefits are available to individuals who have contributed to the social security system and meet certain eligibility criteria. Social assistance is available to individuals and families with limited financial resources, providing basic support for living expenses.

Child day care services and other childcare arrangements

According to the report, increasing the number of child day-care facilities and improving their quality is a central concern of the Federal Government. The Federal Government, Länder and municipalities share the aim of establishing a demand-oriented and good quality supply of childcare places throughout Germany. With the entry into force of the Child Day-Care Promotion Act, the legal entitlement to a childcare place from the child's first birthday was enshrined in law.

The Länder and municipalities are responsible for implementing the entitlement to a day-care place at the local level. More specifically, they are responsible for the provision and financing of childcare places, either in all-day nurseries or by private childcare providers. This is established by Book VIII of the Social Code and the childcare laws of the Länder. The districts and cities act within the framework of local self-government and are subject to the supervision by competent Land authorities.

The Committee notes that the report provides further information related to the expansion of child day-care services in Germany as well as a study containing statistical data regarding the number of children accommodated in child day-care centres according to age and in relation to the demand for child day-care services (percentage).

The Committee also notes observations submitted by the German Trade Union Confederation (Deutscher Gewerkschaftsbund – DGB) in relation to the report. In particular, it notes the estimation that despite several measures taken by the competent authorities, child-care facilities are still not sufficient and that there is still a need for about 372,000 professionals in early education (educators and childhood educators) until 2025 to be able to meet demands

for child day-care services. The Committee notes that the Government did not respond to these observations.

As regards child day care services and other childcare arrangements, the Committee refers to its conclusion under Article 16 of the Charter where it considered that due to the failure to provide the information on available, affordable and good quality childcare facilities (ratio of staff to children, staff training, suitable premises and cost of childcare to parents, etc.) the situation in Germany is not conformity with Article 16 of the Charter. The Committee considered that this failure to provide information amounts to a breach by Germany of their reporting obligations under Article C of the Charter. Therefore, the Committee concludes that, as regards child day care services and other childcare arrangements, the situation in Germany is not in conformity with Article 27§1, either.

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.

In its reply, the report states that during Covid-19 crisis, working from home increased in order to reduce person-to-person contacts at work. In total, 41 percent of companies expanded or introduced working from home during the pandemic. Although this was implemented out of necessity, most enterprises continued this practice. The attitude towards work from home changed. Enterprises recognised the benefits in terms of managing family life and career that working from home offers. For example, working from home eliminates commuting time and allows for longer working hours.

Conclusion

Due to the failure to provide the information listed below, the Committee concludes that the situation in Germany is not in conformity with Article 27§1 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Germany of its reporting obligations under Article C of the Charter.

List of questions/information missing:

- on available, affordable and good quality childcare facilities (ratio of staff to children, staff training, suitable premises and cost of childcare to parents, etc.).

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 Germany.

The Committee recalls that no targeted questions were asked in relation to 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).

This is the first examination of the situation in Germany under Article 27§2. The Committee's assessment will therefore concern the information provided by the Government in the report.

Entitlement to the parental leave

According to information provided in MISSOC tables (published in 2023), all parents have the right to take parental leave to care for their children. This leave allows for a temporary reduction in working hours or a pause in employment altogether. The *Bundeselterngeld- und Elternzeitgesetz* (BEEG) governs parental leave and provides certain entitlements and protections for employees during this time. Moreover, according to MISSOC tables, Parental leave in Germany is individually available to each parent and it cannot be split or transferred between parents. Also, both parents are entitled, in principle, to a total basic parental allowance of 14 monthly amounts, which are granted for each month of the child's age in months. The minimum period considered for allowances is two months. One parent may receive a maximum of 12 payments of parental allowance.

Definition, duration and conditions

After the period of maternity leave, all parents are entitled to three years of parental leave. According to MISSOC tables (published in 2023), **maternity leave** (*Mutterschaftsurlaub*) is granted 6 weeks before and 8 (or 12 weeks for premature births in medical terms or multiple births) weeks after delivery, while 24 months out of three years of parental leave may be claimed without the consent of the employer after the child turns three and until the child reaches the age of eight. **Parental leave** (*Elternzeit*) can be taken part-time and with interruptions. Parents who are entitled to parental leave can work for up to 32 hours per week and each parent can divide their entire parental leave into three time periods.

Remuneration

The report provides information on financial benefits (Elterngeld), provided to parents during parental leave to compensate for lost income and more specifically on parental allowance, basic parental allowance, parental allowance plus, and partnership bonus.

Parental allowance is paid according to the Federal Parental Allowance and Parental Leave Act (*Bundeselterngeld- und Elternzeitgesetz*, BEEG) which entered into force on 1 January 2007 and replaced the Federal Child-Raising Allowances Act (*Bundeserziehungsgeldgesetz*, BErzGG). Parental allowance is paid to mothers and/or fathers who live together with their children in a common household, who care for and raise their children themselves, and who do not work at all or in part-time jobs (up to 32 hours per week) during this period of time.

A basic parental allowance is paid for a maximum of 12 months of the child's life. Both parents can divide this time between them. A parent may receive a basic parental allowance for a minimum of two and a maximum of twelve months. An additional two months ("partner months") can be paid if both parents apply for parental allowance and one of them has a lower income after the child's birth than before. Single parents who have lower income after the birth of their child can also receive so called "partner months".

Parents are able to choose between basic parental allowance and parental allowance "Plus". Parental allowance "Plus" was introduced on 1 July 2015. With parental allowance "Plus", parents can extend the period of receipt. One parental allowance month becomes two parental allowance "Plus" months. That is why the amount of parental allowance "Plus" is only half the amount of the basic allowance. If parents work part-time after their child's birth, the monthly parental allowance "Plus" may reach the same amount as the monthly basic parental allowance plus their own income.

In case mothers and fathers decide to work part-time at the same time (two, three, or four months in parallel and between 24 and 32 hours per week), they both receive four additional parental allowance "Plus" months, which are called «partnership bonuses».

The Federal Parental Allowance and Parental Leave Act is implemented on behalf of the Federal Government in accordance with Article 104a (3) sentence 2 of the Basic Law. The federal supervision covers the legal requirements and the application in practice (in accordance with Article 85 (3) and (4) of the Basic Law). In order to ensure uniform administrative practice throughout the country, the Federal Government and the Länder agreed to implement the Act in such a way that the guidelines are observed in administrative practice, that the Federal Government and the Länder are to be equally involved in the event of a change in practice, and that the Federal Ministry for Family Affairs, Senior Citizens, Women, and Youth is to be involved in appeal proceedings. The guidelines related to the Federal Parental Allowance and Parental Leave Act are continuously updated and statistical data is available.

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, as a result of the Covid-19 pandemic, an increasing number of parents were no longer able to meet the requirements for parental allowance. Parents were affected by short-time work or unpaid leave and fell into economic hardship. Expectant parents feared disadvantages in the subsequent calculation of parental allowance if they had to enter short-time work or were released from work due to the Covid-19 pandemic. The aim was to further effectively support the families concerned with parental allowance. To this end, several measures were taken.

Parents working in essential occupations were needed during the pandemic. If they were unable to take their parental allowance months between 1 March and 31 December 2020, they could defer them until June 2021. The months taken later did not have a negative impact on the amount of parental allowance if they had another child.

These months could be excluded from the calculation of parental allowance. This regulation expired on 31 December 2020. Parents did not lose their partnership bonus (an additional benefit for mothers and fathers simultaneously working part-time to share their child-raising responsibilities), if they worked more or less than planned due to the Covid-19 pandemic. The information provided at the time of application for the partnership bonus was applicable if all or part of the bonus was received between 1 March 2020 and 23 September 2022.

Expectant parents who had pandemic-related losses of income between 1 March 2020 and 23 September 2022 could exclude these losses from the calculation of parental allowance if they wished. This means that these months were skipped, and instead the income from the previous months was taken into account for the calculation of parental allowance.

Income replacement benefits, for example, short-time work allowance or child sickness benefit, did not reduce the parental allowance of parents who worked part-time while receiving parental allowance. This was ensured by the parental allowance regulations according to which the amount of parental allowance for parents working part-time did not change if they received income replacement benefits. The Covid-19-related special regulation for the receipt of income replacement benefits was put on a permanent footing for all parents.

Conclusion

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

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

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

The Committee takes note of the information contained in the report submitted by Germany and observations submitted by German Trade Union Confederation (Deutscher Gewerkschaftsbund – DGB).

The Committee recalls that no targeted questions were asked in relation to Article 27§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).

This is the first examination of the situation in Germany under Article 27§3. The Committee's assessment will therefore concern the information provided by the Government in the report.

Protection against dismissal

According to the report, as a general rule, an employer must not dismiss an employee because he or she lawfully exercises a right related to family responsibilities. Under Section 612a in conjunction with Section 134 of the Civil Code (Bürgerliches Gesetzbuch - BGB), such so-called disciplinary or retaliatory dismissal is prohibited and invalid. Furthermore, within the scope of the Protection against Dismissal Act (Kündigungsschutzgesetz - KSchG), dismissals must be socially justified by person-related, behavioural or operational reasons (cf. Sections 1 and 23 of the Protection Against Dismissal Act).

The Committee also notes observations submitted by the German Trade Union Confederation (Deutscher Gewerkschaftsbund – DGB) in relation to the report. In particular, it notes specific provisions governing the protection against dismissal recalled by DGB, i.e. Section 18 Protection against Dismissal and Section 19 Termination at the end of parental leave established by Parental Allowance and Parental Leave Act (Bundeselterngeld- und Elternzeitgesetz - BEEG) and Section 5 Protection against dismissal of Nursing Care Leave Act (Pflegezeitgesetz - PflegeZG).

Effective remedies

Employees who believe they have been unlawfully dismissed may bring their case before the Labour Court (cf. Section 4 of the Protection against Dismissal Act). In case of an unlawful dismissal, the employer has an obligation to continue the employment relationship, to retroactively pay any unpaid salary or wages and a full compensation for the damages suffered by the employee.

Employees may apply for the termination of the employment relationship and compensation if they cannot be expected to continue the employment relationship (cf. Section 9 (1) sentence 1 of the Protection against Dismissal Act) even though the dismissal has been declared unlawful by the court. If there are reasons why further cooperation between the employer and the employee cannot be expected, the employer may also apply for the termination of the employment relationship (cf. Section 9 (1) sentence 2 of the Protection against Dismissal Act).

The severance pay determined by the court has the purpose of compensating employees for the socially unjustified loss of employment. The severance pay serves as an equivalent for the continuation of the employment relationship. The amount of the severance pay is to be

determined by the court after due consideration of the circumstances of the individual case. The statutory maximum amount of severance pay is 12 monthly wages. For employees over 50 or 55 years of age and where the employment relationship lasted either 15 or 20 years, the severance pay equals 15 or 18 monthly wages.

In addition, Sections 9 and 10 of the Protection Against Dismissal Act apply only to the severance pay to be determined by the court and individual agreements. Court settlements or out-of-court termination agreements may exceed the maximum limit set out in Section 10 of the Protection against Dismissal Act.

The Committee recalls that if there is a ceiling on compensation for pecuniary damage, the victim must be able to seek unlimited compensation for non-pecuniary damage through other legal avenues (e.g. anti-discrimination legislation), and the courts competent for awarding compensation for pecuniary and non-pecuniary damage must decide within a reasonable time (Conclusions 2011, Statement of Interpretation on Articles 8§2 and 27§3, see also *Confederazione Generale Italiana del Lavoro (CGIL) v. Italy*, Complaint No. 158/2017, decision on the merits of 11 September 2019, §96).

The Committee notes that the report does not provide information on non-pecuniary damages. Due to the failure to provide the requested information, the Committee concludes that the situation in Germany is not in conformity with Article 27§3 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Germany of its reporting obligations under Article C of the Charter.

As regards effective remedies, the Committee refers to its conclusion under Article 8§2 of the Charter where it considered that the situation in Germany is not in conformity due to failure to provide the information on remedies available in the event of unlawful dismissal. Therefore, the Committee concludes that, as regards effective remedies, the situation in Germany is not in conformity with Article 27§3, either.

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 prohibition of dismissal on the ground of family responsibilities and whether there were any exceptions to the prohibition of dismissal on the ground of family responsibilities during the pandemic and
- whether a ceiling on compensation for unlawful dismissals was applied on the ground of family responsibilities during the Covid-19 crisis.

In its reply, the reports states there were no derogations or exceptions with regard to compensation for unlawful dismissals on the ground of family responsibilities due to the Covid-19 pandemic.

Conclusion

Due to the failure to provide the information listed below, the Committee concludes that the situation in Germany is not in conformity with Article 27§3 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Germany of its reporting obligations under Article C of the Charter.

List of questions/information missing:

- whether persons with family responsibilities have the right to unlimited compensation for non-pecuniary damages that occurred due to an unlawful dismissal.