



March 2024

## **European Social Charter (REVISED)**

European Committee of Social Rights

Conclusions 2023

**MALTA**

*This text may be subject to editorial revision.*

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

Information on the Charter, 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 Malta, which ratified the Revised European Social Charter on 27 July 2005. The deadline for submitting the 16th report was 31 December 2022 and Malta submitted it on 20 April 2023.

The Committee recalls that Malta was asked to reply to the specific targeted questions posed under various provisions (questions included in the appendix to the letter, 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.

Malta has not accepted the following provisions from the above-mentioned group: 8§3, 19§§1-12, 27§1, 31§§1-3.

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

- 3 conclusions of conformity: Articles 8§1, 17§2, 27§3.
- 16 conclusions of non-conformity: 7§§1-10, 8§2, 8§§4-5, 16, 17§1, 27§2.

Conclusions and reports are available at [www.coe.int/socialcharter](http://www.coe.int/socialcharter).

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 1 - Prohibition of employment under the age of 15*

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

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

The Committee has observed that many States’ legislation is in conformity with Article 7§1 of the Charter regarding the minimum age for employment. Nevertheless, the Committee is concerned about the situation in practice. There are data that suggest that in many countries there are significant numbers of children working illegally. However, there are few official data on the extent of the problem. Therefore, as targeted questions to the States, the Committee asked for information on the measures taken by the authorities (e.g. Labour Inspectorates and social services) to detect child labour, including children working in the informal economy. It also asked for information on the number of children actually working, as well as on measures taken to identify and monitor sectors where it is strongly suspected that children are working illegally.

In the previous conclusion (Conclusions 2019) the Committee found that the situation in Malta was not in conformity with the Charter on the following grounds:

- the prohibition of employment of children under the age of 15 does not apply to children employed in occasional or short-term work involving domestic service in a private household or work in a family undertaking;
- the duration of working time for children under the age of 15 is excessive and therefore cannot be regarded as light.

The Committee notes that the report fails to provide information concerning these findings of non-conformity. Therefore, the Committee reiterates its previous findings.

### *Conclusion*

The Committee concludes that the situation in Malta is not in conformity with Article 7§1 of the Charter on the grounds that:

- The prohibition of employment of children under the age of 15 does not apply to children employed in occasional or short-term work involving domestic service in a private household or work in a family undertaking;
- the duration of working time for children under the age of 15 is excessive and therefore cannot be regarded as light.

## **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 Malta.

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 deferred its conclusion. The Committee recalled that in application of Article 7§2, domestic law must set 18 as the minimum age of admission to prescribed occupations regarded as dangerous or unhealthy. There must be an adequate statutory framework to identify potentially hazardous work, which either lists such forms of work or defines the types of risk (physical, chemical, biological) which may arise in the course of work (Conclusions 2006, France). However, if such work proves absolutely necessary for their vocational training, they may be permitted to perform it before the age of 18, but only under strict, expert supervision and only for the time necessary (Conclusions 2006, Norway). The Committee asked for information on the statutory framework to identify potentially hazardous work, which either lists such forms of work or defines the types of risk (physical, chemical, biological) which may arise in the course of work.

The Committee notes that the report does not provide this information. Due to the failure to provide the requested information, the Committee concludes that the situation in Malta is not conformity with Article 7§2 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Malta 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 Malta is not conformity with Article 7§2 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Malta of their reporting obligations under Article C of the Charter.

The information missing is as follows:

- statutory framework regulating prohibition of employment of children in potentially hazardous work.

## **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 Malta.

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

In its previous conclusion (Conclusions 2019), the Committee found that the situation was not in conformity with Article 7§3 of the Charter on the ground that, during the school holidays, the daily and weekly duration allowed for the exercise of light work by children still subject to compulsory education was excessive and, therefore such work could not be qualified as light.

The Committee notes that the report does not provide any information regarding this finding of non-conformity. Therefore, the Committee reiterates its previous finding.

### *Conclusion*

The Committee concludes that the situation in Malta is not in conformity with Article 7§3 of the Charter on the ground that the daily and weekly duration of light work permitted for children subject to compulsory education during school holidays 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 contained in the report submitted by Malta.

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

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

In its previous conclusion, the Committee considered that the situation in Malta was not in conformity with Article 7§4 of the Charter on the ground that the daily and weekly working time for children under the age of 16 was excessive (Conclusions 2019). The Committee noted that in Malta a limit of eight hours per day and 40 hours per week were established with respect to the work performed by children of 14-16 years of age under a combined work, or training scheme or an in-plant work-experience scheme.

The report provided no information in reply to the finding of non-conformity. The Committee considers that the situation has not changed and reiterates its previous conclusion.

### *Conclusion*

The Committee concludes that the situation in Malta is not in conformity with Article 7§4 of the Charter on the ground that the daily and weekly working time for children under the age of 16 is excessive.

## **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 Malta.

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”).

The Committee deferred its previous conclusion pending receipt of the information requested (Conclusions 2019). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of deferral and to the targeted questions.

### ***Fair remuneration for young workers and apprentice***

In its previous conclusion (Conclusions 2019) the Committee requested information on the minimum wage/starting wage of young workers and adult workers calculated net. The Committee underlined that it requested information on the net values, that is, after deduction of taxes and social security contributions, in order to assess the situation.

The report does not provide the requested information.

Due to the failure to provide the information, the Committee concludes that the situation in Malta is not in conformity with Article 7§5 of the Charter.

The Committee notes that in its Conclusions 2022 on Malta on Article 4§1 concluded that the situation in Malta was not in conformity with Article 4§1 of the Charter on the ground that the minimum wage did not ensure a decent standard of living.

The Committee further recalls that apprentices may be paid lower wages, since the value of the on-the-job training they receive must be taken into account. However, the apprenticeship system must not be deflected from its purpose and be used to underpay young workers. Accordingly, the terms of apprenticeships should not last too long and, as skills are acquired, the allowance should be gradually increased throughout the contract period: starting from at least one-third of the adult starting wage or minimum wage at the commencement of the apprenticeship, and arriving at least at two-thirds at the end (cf. Conclusions Portugal, 2006).

In its conclusions 2019 the Committee noted information on the Maintenance Grant (stipend) on the first and second year of apprenticeship and asked if the Maintenance Grant and the Students Maintenance Grant were awarded through all year of the apprenticeship.

The report does not provide the requested information.

Due to the failure to provide the information, the Committee concludes that the situation in Malta is not in conformity with Article 7§5 of the Charter.

### ***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 does not provide the requested information.

Due to the failure to provide the information, the Committee concludes that the situation in Malta is not in conformity with Article 7§5 of the Charter.

### **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 does not provide the requested information.

Due to the failure to provide the information, the Committee concludes that the situation in Malta is not in conformity with Article 7§5 of the Charter.

### *Conclusion*

Due to the failure to provide the information listed below the Committee concludes that the situation in Malta is not in conformity with Article 7§5 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Malta of their reporting obligations under Article C of the Charter.

Missing information:

- information on the net minimum wage/starting wage of young workers and adult workers;
- information on maintenance grants for the first and second year of apprenticeship;
- information on measures taken to ensure that fair remuneration is guaranteed to young workers in atypical jobs;
- information on measures taken to ensure that this right of young persons to fair pay is effectively enforced.



## **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 Malta.

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.

In the previous conclusion, the Committee found the situation in Malta to be in conformity with the Charter, pending receipt of information on the activities of the Department of Industrial and Employment Relations (DIER), its findings and sanctions in relation to the obligation of employers to provide remuneration for training time as for the normal working time. The report does not provide any information in this respect. Due to the failure to provide the requested information, the Committee concludes that the situation in Malta is not in conformity with Article 7§6 of the Charter.

### *Conclusion*

Due to the failure to provide the information listed below the Committee concludes that the situation in Malta is not in conformity with Article 7§6 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Malta of their reporting obligations under Article C of the Charter.

List of questions:

- activities of the Department of Industrial and Employment Relations (DIER), its findings and sanctions in relation to the obligation of employers to provide remuneration for training time as for the normal working time.

## **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 Malta.

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 concluded that the situation in Malta was in conformity with Article 7§7 of the Charter, pending receipt of the information requested (Conclusions 2019).

The Committee asked for information on the number and nature of violations detected, as well as on the sanctions imposed for breach of the regulations regarding paid annual holidays of young workers under the age of 18. The report does not provide the requested information.

Due to the failure to provide requested information on the number and nature of violations detected, as well as the sanctions imposed for breach of the regulations regarding paid annual holidays of young workers under 18 years of age, the Committee concludes that the situation in Malta is not in conformity with Article 7§7 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Malta 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 Malta is not in conformity with Article 7§7 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Malta of their reporting obligations under Article C of the Charter.

List of questions/Information missing:

- the number and nature of violations detected, as well as the sanctions imposed for breach of the regulations regarding paid annual holidays of young workers under 18 years of age.

## **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 Malta.

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 Malta was not in conformity with Article 7§8 of the Charter on the ground that it had not been established that the exceptions to the prohibition of night work in some economic sectors were justified and did not concern their proper functioning (Conclusions 2019).

The Committee asked for information showing that the exceptions to the prohibition of night work in health care, culture, sports, advertising, shipping, and fisheries were necessary for a proper functioning of the relevant economic sector and that the number of young workers concerned was low (Conclusions 2019, but also 2001, 2005, 2011, 2015 and 2017). The report does not provide the requested information.

The Committee asked for information on the number and nature of violations detected as well as on sanctions imposed for breach of the regulations regarding prohibition of night work for young workers under the age of 18 (Conclusions 2019, but also 2015). The report does not provide the requested information. In view of the longstanding failure to provide essential information for assessing compliance under Article 7§8 of the Charter, the Committee concludes that the situation in Malta is not in conformity with Article 7§8 of the Charter on the ground that the legal prohibition on night work does not apply to the great majority of young workers under 18 years of age.

### *Conclusion*

The Committee concludes that the situation in Malta is not in conformity with Article 7§8 of the Charter on the ground that the legal prohibition on night work does not apply to the great majority of young workers under 18 years of age.

## **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 Malta.

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).

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

The Committee asked for information on the number and nature of the violations detected, as well as on the sanctions imposed on employers for breach of the regulations regarding the regular medical examinations of young workers under 18 years of age. The report notes that, while the specific information requested is not currently available, work on the development of a system that would collect such information is underway. Accordingly, it is anticipated that the Occupational Health and Safety Authority would be able to retrieve such data electronically within 18 months from the submission of the report under examination.

Due to the failure to provide requested information on the number and nature of the violations detected, as well as on the sanctions imposed on employers for breach of the regulations regarding the regular medical examinations of young workers under 18 years of age, the Committee concludes that the situation in Malta is not in conformity with Article 7§9 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Malta 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 Malta is not in conformity with Article 7§9 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Malta of their reporting obligations under Article C of the Charter.

List of questions/Information missing:

- on the number and nature of the violations detected, as well as on the sanctions imposed on employers for breach of the regulations regarding the regular medical examinations of young workers under 18 years of age.

## **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 Malta.

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 Malta was not in conformity with Article 7§10 of the Charter on the ground that it had not been established that children were adequately protected against sexual exploitation (Conclusions 2019). The assessment of the Committee will therefore concern the information provided by the Government in response to the conclusion of non-conformity and the targeted questions.

#### ***Protection against sexual exploitation***

The Committee previously concluded that the situation in Malta was not in conformity with Article 7§10 of the Charter on the ground that it had not been established that children were adequately protected against sexual exploitation. It also sought confirmation that legislation protected all children under the age of 18 against all forms of sexual exploitation. It also asked for information on measures taken to address the problem, such as the adoption of a National Action Plan (Conclusions 2019).

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

As the report provides no information related to the previous conclusion of non-conformity, the Committee reiterates it on the ground that children are not adequately protected against sexual exploitation.

Due to the failure to provide the requested information on whether legislation protects all children under the age of 18 against all forms of sexual exploitation and on the measures taken to address the problem, such as the adoption of a National Action Plan, the Committee concludes that the situation in Malta is not in conformity with Article 7§10 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Malta of their reporting obligations under Article C of the Charter.

#### ***Protection against the misuse of information technologies***

The Committee previously asked whether internet service providers had an obligation to remove or prevent access to illegal material which they were aware of and considered that if this information was not provided in the next report, there would be nothing to establish that the situation in Malta was in conformity with Article 7§10 of the Charter (Conclusions 2019). In the targeted question, the Committee asked for information on the protection of children from all forms of violence, exploitation and abuse in the digital environment, in particular sexual exploitation and abuse and solicitation for sexual purposes (grooming).

The report does not provide the information requested; the Committee therefore considers that the situation in Malta is not in conformity with Article 7§10 of the Charter on the ground that internet service providers do not have an obligation to remove or prevent accessibility to illegal material.

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

### ***Protection from other forms of exploitation***

The Committee previously asked for information on measures taken to protect and assist children in vulnerable situations, with particular attention to children in street situations and children at risk of child labour, including those in rural areas. The Committee considered that if this information was not provided in the next report, there would be nothing to establish that the situation in Malta was in conformity with Article 7§10 of the Charter. The Committee also asked for information on measures taken to prevent child trafficking and assist child victims (Conclusions 2019).

The report does not provide the information requested. The Committee therefore considers that the situation in Malta is not in conformity with Article 7§10 of the Charter on the ground that children in vulnerable situations are not adequately protected.

The report provides no information on measures taken to prevent child trafficking. The Committee notes from other sources (GRETA Evaluation Report, Third evaluation round, GRETA (2021)10, 10 November 2021) that in 2018, the Maltese authorities formally identified a child victim of trafficking for the first time; in 2020, three child victims of trafficking were identified. There is an online system for reporting child pornography as well as a helpline to deal with calls received. Several awareness-raising activities were conducted as part of a national education campaign.

### ***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 does not provide the information requested.

### ***Conclusion***

The Committee concludes that the situation in Malta is not in conformity with Article 7§10 of the Charter on the grounds that:

- children are not adequately protected against sexual exploitation;
- internet service providers do not have an obligation to remove or prevent accessibility to illegal material;
- children in vulnerable situations are not adequately protected.

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

List of questions/Information missing:

- whether legislation protects all children under the age of 18 against all forms of sexual exploitation and on the measures taken to address the problem, such as the adoption of a National Action Plan;
- 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).

## **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 Malta.

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

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

### ***Covid-19***

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

The report provides no information on this point.

### *Conclusion*

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



**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 the report submitted by Malta.

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”).

In its previous conclusion (Conclusions (2019)), the Committee had concluded that the situation was in conformity with Article 8§2 of the Charter pending information on the objective reasons ("just and sufficient cause") for which it is possible to terminate an employee's contract during pregnancy or maternity leave.

***Prohibition of dismissal***

In its previous conclusion (Conclusions 2019), the Committee requested information on dismissals for "just and sufficient cause" and the circumstances in which employees may have their contracts terminated during pregnancy or maternity leave.

The report contains no information on this point. Due to the failure to provide the requested information the Committee concludes that the situation in Malta is not conformity with Article 8§2 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Malta of their reporting obligations under Article C of the Charter.

***Redress in case of unlawful dismissal***

The Committee had previously concluded that the situation in Malta 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 of conformity.

***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.

The report does not contain any information on this point.

*Conclusion*

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

Information missing:

- the objective reasons ("just and sufficient cause") for which it is possible to terminate an employee's contract during pregnancy or maternity leave.

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 4 - Regulation of night work*

The Committee notes that no information on Article 8§4 was contained in the report submitted by Malta.

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

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

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

The report provides no information in response to the targeted question.

However the Committee notes from previous conclusions (Conclusions 2015) and from the Protection of Maternity (Employment) Regulations and Legal notice No 439 2003 as amended that where a pregnant woman or woman who is breastfeeding is unable to perform night work for reasons relating to health and safety an employer must transfer her to day time work. If this is not feasible the employee must be given special maternity leave.

If the employee is transferred to daytime work she shall continue to receive wages not less favourable than those stipulated in her contract of employment. However during the special maternity leave the employee receives a special allowance equivalent to the rate of sickness benefit payable in terms of the Social Security Act.

The Committee recalls that it has stated in the case a woman cannot be employed in her workplace due to health and safety concerns and as a result, she is transferred to another post or, should such transfer not be possible, she is granted leave instead, States Parties must ensure that during the protected period, she is entitled to her average previous pay or provided with a social security benefit corresponding to 100% of her previous average pay. The Committee notes that this is not the case in Malta if the woman is obliged to take special maternity leave. She receives only an allowance equivalent to the rate of sickness benefit. It therefore, considers that the situation is not in conformity on this point.

The Committee notes that according to the regulations at the end of the special maternity leave the employee shall be entitled to return to the same job or when this is no longer possible for a valid reason, to equivalent or similar work which is consistent with her original contract of employment.

### *Conclusion*

The Committee concludes that the situation in Malta is not in conformity with Article 8§4 of the Charter on the ground that pregnant women, women who have recently given birth or are nursing, who cannot perform night work and cannot be offered suitable alternative employment and are obliged to take leave are not entitled to 100% of their previous salary.

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 5 - Prohibition of dangerous, unhealthy or arduous work*

The Committee notes that no information on Article 8§5 was contained in the report submitted by Malta.

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

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

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

The report provides no information in response to the targeted question.

However the Committee notes from previous conclusions (Conclusions 2015) and from the Protection of Maternity (Employment) Regulations Legal notice No 439 as amended that no pregnant employees, employees who have recently given birth or are nursing shall be required by the employer to perform any work which may endanger their health and safety, the safety or viability of their pregnancy or the health of their child, as the case may be. Accordingly, before assigning work to any pregnant or nursing worker or to a worker who has recently given birth, the employer must assess the hazards that the worker is likely to be exposed to and shall take appropriate action.

If the results of this risk assessment reveals a risk to health or safety, to the pregnancy, or to the child, the employer shall take the necessary steps to remove the worker from such exposures, either by temporarily adjusting the working conditions, and/or the working hours, or by assigning the worker to another job which is both suitable in relation to her and appropriate for her to do in the circumstances, under such terms and conditions of employment which are not less favourable than those stipulated in her contract of employment. If it is not possible to adjust the working conditions and/or working hours or to assign the worker to another post, a special maternity leave shall be granted.

Further if the employee is transferred to another post she shall continue to receive wages no less favourable than those stipulated in her contract of employment. However, during the special maternity leave the employee receives a special allowance equivalent to the rate of sickness benefit payable in terms of the Social Security Act.

The Committee recalls that it has stated in the case a woman cannot be employed in her workplace due to health and safety concerns and as a result, she is transferred to another post or, should such transfer not be possible, she is granted leave instead, States Parties must ensure that during the protected period, she is entitled to her average previous pay or provided with a social security benefit corresponding to 100% of her previous average pay. The Committee notes that this is not the case in Malta if the woman is obliged to take special maternity leave. She receives only an allowance equivalent to the rate of sickness benefit. Therefore it considers that the situation is not in conformity on this point.

The Committee notes that, according to the Regulations, at the end of the special maternity leave, the employee shall be entitled to return to the same job or when this is no longer

possible for a valid reason, to equivalent or similar work which is consistent with her original contract of employment.

*Conclusion*

The Committee concludes that the situation in Malta is not in conformity with Article 8§5 of the Charter on the ground that pregnant women, women who have recently given birth or are nursing, whose ordinary employment has been deemed unsuitable due to their condition and who cannot be offered suitable alternative employment and are obliged to take leave are not entitled to 100% of their previous salary.

## **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 Malta.

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

In its previous conclusion (Conclusions 2019), the Committee found that the situation in Malta was not in conformity with Article 16 of the Charter because nationals of other States Parties to the Charter residing in Malta who did not hold long-term residence status were not entitled to equal treatment with regard to access to housing allowances (rent subsidy).

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

### ***Legal protection of families***

#### ***Domestic violence against women***

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

In its previous conclusion (Conclusions 2019), the Committee asked for full and up-to-date information on all aspects of domestic violence against women and related convictions, the use of restraining orders, the implementation of measures (described in the report) and their impact on reducing such cases of violence. Pending receipt of this information, it reserved its position on this point.

Furthermore, in one of its targeted questions, 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 Committee notes that the Gender-Based Violence and Domestic Violence Strategy and Action Plan – VISION 2020 – were launched in 2017, and that the Gender-Based Violence and Domestic Violence Act (Chapter 581) came into force in 2018. Article 22 of this law provides that the Istanbul Convention forms an integral part of Maltese legislation.

The Government states that the Foundation for Social Welfare Services (FSWS) acts through the Appogg Agency to prevent gender-based and domestic violence (through measures such as awareness-raising campaigns in the local media and on social media, and community education sessions including training for students).

Appogg also provides victim support and protection services including "safety planning" for each victim, safe accommodation, psycho-social support and accompaniment to court hearings. It also provides support for perpetrators of intimate partner abuse including programmes to address abusive attitudes and behaviours by men towards their female partners.

The Government states that under the Gender-Based Violence and Domestic Violence Act, an assessment to evaluate and identify risk factors must be carried out whenever anybody reports domestic violence or gender-based violence to the police. In 2019 the FSWS set up a risk assessment service (through Appogg), which operates round the clock. Assessors are trained in the Domestic Abuse, Stalking and Honour Based Violence Risk Checklist (DASH 2009), which was developed in the UK.

Following a victim's report, the specialised Gender-Based Violence and Domestic Violence Police Unit (GBVDV) forwards a risk assessment request to Appogg. The assessment is used to determine which support and protection services the victim needs (see above). It is also submitted to the GBVDV for their investigation and for consideration of the level of protection to be provided.

The Government provides data on cases referred to the FSWS's domestic violence unit and on Ghabex cases (at FSWS emergency shelters). These are divided into four categories: new cases opened, "recontact" cases opened, cases closed and total cases processed. These data show that during the reference period, the number of cases referred to the FSWS's domestic violence unit increased in each of the four categories (for instance, total cases processed rose from 1 007 in 2018 to 2 462 in 2021). The Committee notes that these data are incomplete. In particular, they give no information on the type of domestic violence or on cases dealt with by the police, restraining orders issued or convictions. Due to the failure to provide requested information, the Committee concludes that the situation in Malta is not in conformity with Article 16 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Malta of their reporting obligations under Article C of the Charter.

## ***Social and economic protection of families***

### ***Childcare facilities***

In its previous conclusion, the Committee reiterated that States Parties were required to ensure that childcare facilities were available, affordable and of good quality (coverage with respect to the number of children aged 0-6, ratio of staff to children, staff training, suitable premises and cost of childcare for parents, etc.) and asked for comprehensive and up-to-date information in the next report on all these points.

In reply, the Government refers to two important documents, the National Standards for Early Childhood Education and Care (ECEC) Services (0-3 years) and the National Policy Framework for Malta and Gozo for Early Childhood Education and Care (0-7 years), both of which were published in October 2021. It states that these documents are intended to ensure quality ECEC services and provide information on measures taken for their implementation (assessment and supervision of establishments and goals, quality control exercises, and training and professional development sessions for the staff of care and education facilities).

The Committee also notes from the government website that under the Free Childcare Scheme introduced in 2014, childcare is free of charge (at registered facilities) for parents who work or study until the child is old enough to attend nursery school. According to Eurostat, in Malta in 2021, 24% of children under the age of three and 86% of children between the ages of three and five attended formal childcare facilities; the equivalent figures for 2022 (outside the reference period) were 43% and 91% respectively.

### ***Family benefits***

#### ***Equal access to family benefits***

In its previous conclusion, the Committee asked whether nationals of States Parties to the Charter (other than EU nationals) were entitled to family allowances only after residing in Malta for five years or, if this was not so, what the length of residence requirement was. Pending receipt of this information, it reserved its position on this point (Conclusions 2019).

In addition, in a targeted question, the Committee asked whether nationals of other States Parties lawfully resident in the country had to meet a length of residence requirement to be entitled to family benefits.

The Committee points out that states must ensure that foreign nationals of other States Parties who are lawfully resident or regularly working on their territory are treated equally with regard to family benefits.

In its report the Government states that the length of residence requirement is five years. However, this waiting period does not apply to persons with an employment permit working in Malta, refugees, or persons from a Council of Europe member state.

### ***Level of family benefits***

In its previous conclusion, the Committee asked for information and statistical data on the percentage of the total number of families with children who received child allowances amounting to less than 5% of the median equivalised income. Pending receipt of this information, it reserved its position on this point (Conclusions 2019).

Furthermore, in its targeted questions, the Committee asked for information on the amounts of family benefit paid and the median equivalised income for the reference period. It also asked if family or child benefits were means tested 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 in relation 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 €1,420 in 2021.

In its report, the Government states that households with an annual income of less than €25,924 receive means-tested child benefit while those whose annual income exceeds this amount are paid a flat-rate benefit. Of about 41,700 eligible households, about 13,300 (31.8%) receive means-tested benefits and about 28,400 the flat rate. Child supplement is also paid to all households in receipt of child allowance.

The amount of the means-tested child benefit ranges from €450 per year per child (€37.50 per month) to €1,252.16 per year per child (€104.35 per month). The flat-rate child benefit amounts to €450 per year per child.

Annual child supplement is €160 per child for families eligible for means-tested child benefit (€13.35 per month) and €140 per child for families receiving the flat rate (€11.65 per month).

The Committee notes that for families receiving the minimum means-tested benefit and the flat-rate benefit (about 70%), the amount of family/child benefit received (i.e. child benefit plus child supplement) amounts to about 3.5 to 3.6% of the median equivalised income.

The Committee considers that the situation is not in conformity with Article 16 of the Charter on the ground that family benefits do not constitute a sufficient income supplement for a significant number of families.

### ***Measures in favour of vulnerable families***

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

In its report, the Government states that the social security scheme provides an “energy benefit” for vulnerable persons or families to mitigate problems caused by electricity costs. The amount of the benefit varies according to the size and income of households. Persons in receipt of social assistance are automatically eligible for energy benefit while persons whose state of health requires the use of certain types of electric equipment receive a much larger amount (“humanitarian energy benefit”).

In its targeted questions, the Committee asked whether, in cases where specific temporary measures had been taken to financially support vulnerable 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.

The report does not provide any information in this respect.

### ***Housing for families***

In its previous conclusion, the Committee considered that the residence requirement of five years to obtain long-term residence status and hence become eligible to the rent subsidy scheme was clearly excessive, and in breach of Article 16. In this connection, the Committee asked for an explanation in the next report as to how equal treatment with regard to access to housing allowances/benefits was guaranteed in law or in practice for nationals of States Parties to the Charter who did not hold long-term residence status (Conclusions 2019).

The Government's report does not provide the information requested. The Committee therefore reiterates its previous conclusion of non-conformity on this point.

In its previous conclusion, the Committee asked for information on legislation on forced evictions for reasons other than public interest such as insolvency or wrongful occupation. Due to the failure to provide requested information, the Committee concludes that the situation in Malta is not in conformity with Article 16 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Malta of their reporting obligations under Article C of the Charter.

In its previous conclusion, the Committee asked for information on measures taken to improve migrant families' access to affordable housing and to eradicate the discrimination that they might face in this field. Due to the failure to provide requested information, the Committee concludes that the situation in Malta is not in conformity with Article 16 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Malta of their reporting obligations under Article C of the Charter.

The Committee also asked for comprehensive and up-to-date information (including figures and statistics) on the housing situation of refugee families and on measures taken to provide them with adequate housing; pending receipt of the information requested, it reserved its position on this point (Conclusions 2019). Due to the failure to provide requested information, the Committee concludes that the situation in Malta is not in conformity with Article 16 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Malta of their reporting obligations under Article C of the Charter.

Furthermore, in a targeted question, the Committee asked States Parties which had not ratified Article 31 of the Charter to provide updated information on the availability of adequate affordable housing for families. Due to the failure to provide requested information, the Committee concludes that the situation in Malta is not in conformity with Article 16 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Malta of their reporting obligations under Article C of the Charter.

### ***Conclusion***

The Committee concludes that the situation in Malta is not in conformity with Article 16 of the Charter on the grounds that:

- family benefits do not constitute a sufficient income supplement for a significant number of families;
- nationals of other States Parties to the Charter residing in Malta who do not hold long-term residence status are not entitled to equal treatment with regard to access to housing allowances (rent subsidy).

Due to the failure to provide the information listed below, the Committee concludes that the situation in Malta is not in conformity with Article 16 of the Charter. The Committee considers



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

Missing information:

- statistics on domestic violence, particularly incidence and conviction rates, and use of restraining orders;
- legislation on forced evictions (from homes) for reasons other than public interest;
- availability of adequate affordable housing for families;
- measures taken to improve migrant families' access to affordable housing and to eradicate the discrimination that they might face in this field; and
- the housing situation of refugee families and measures taken to provide them with adequate housing.

## **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 Malta.

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 Malta was in conformity with Article 17§1 of the Charter (Conclusions 2019). The assessment of the Committee will therefore concern the information provided by the Government in response to the conclusion of conformity pending receipt of information, the targeted questions and the general questions.

### ***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.

Due to the failure to provide requested information on measures taken to reduce statelessness; on measures taken to facilitate birth registration, particularly for vulnerable groups, such as Roma, asylum seekers and children in an irregular migration situation, the Committee concludes that the situation in Malta 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 Malta of their reporting obligations under Article C of the Charter.

### ***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 provides some information on measures taken in education. The Committee will examine them under Article 17§2 of the Charter.

Due to the failure to provide requested information on measures taken to reduce child poverty, 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 Malta 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 Malta of their reporting obligations under Article C of the Charter.

The Committee notes from EUROSTAT that 23.2% of children in Malta in 2021 were at risk of poverty or social exclusion, a decrease in comparison with 2018, when the percentage was 23.3%. The Committee notes that the 2021 rate is slightly lower than the EU average of 24.4%.

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

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

### ***Right to assistance***

The Committee previously asked what consideration had been given to alternatives to detention to ensure that all unaccompanied children were accommodated in appropriate facilities and were never accommodated with adults. Finally, it asked whether Malta used bone testing to assess age, if so, in what situation and what potential consequences such testing could have (Conclusions 2019).

Due to the failure to provide requested information on measures taken to find alternatives to detention for children in an irregular migration situation; on accommodation facilities; whether Malta uses bone testing to assess age and, if so, in what situations and what potential consequences such testing could have, the Committee concludes that the situation in Malta 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 Malta of their reporting obligations under Article C of the Charter.

### ***Rights of children in public care***

In its previous conclusion, the Committee asked to be kept informed of the number of children removed from their families, the total number in care, the number placed in foster care and in institutions as well as trends in the area (Conclusions 2019).

Due to the failure to provide requested information on the number of children removed from their families, the total number in care, the number placed in foster care, the Committee concludes that the situation in Malta 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 Malta of their reporting obligations under Article C of the Charter.

### ***Children in conflict with the law***

The Committee previously asked about the maximum length of pre-trial detention and maximum prison sentence that can be imposed on a child. It also asked whether children could be placed in solitary confinement and, if so, under what circumstances and for how long. It also requested information on whether children were held with adults in detention facilities (Conclusions 2019).

Due to the failure to provide requested information on the maximum length of pre-trial detention and maximum prison sentence that can be imposed on a child; whether children can be subject to solitary confinement, for how long and under what circumstances; whether children are held with adults in detention facilities, the Committee concludes that the situation in Malta 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 Malta 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 Malta 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 Malta of their reporting obligations under Article C of the Charter.

List of questions/Information missing:

- on measures taken to reduce statelessness;
- on measures taken to facilitate birth registration, particularly for vulnerable groups, such as Roma, asylum seekers and children in an irregular migration situation;
- on measures taken to reduce child poverty;
- on measures 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;
- measures taken to find alternatives to detention for children in an irregular migration situation;
- on measures taken to ensure that unaccompanied children are accommodated in appropriate facilities and never with adults;
- whether Malta uses bone testing to assess age and, if so, in what situations and what potential consequences such testing could have;
- on the number of children removed from their families, the total number in care, the number placed in foster care;
- on the maximum length of pre-trial detention of children;
- on the maximum length of prison sentence that can be imposed on a child;
- whether children can be subject to solitary confinement, for how long and under what circumstances;
- whether children are held with adults in detention facilities.

## **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 Malta.

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

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

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

### ***Enrolment rates, absenteeism and drop out rates***

In the previous conclusion, the Committee asked to be informed about the content and impact of the Addressing Attendance in Schools Policy and the new Education Act, as well as the management information system for recording absenteeism. It also asked for information on enrolment rates, absenteeism and drop out rates, as well as on measures taken to address the issues related to these rates (Conclusions 2019).

The report states that Malta has succeeded in reducing its early drop out rate from education and training since 2010, with a decrease of 10.7%. To tackle this issue, Malta implemented several initiatives, strengthened vocational education and training, as well as psychosocial services for students and teachers.

The report further states that all schools record the daily attendance of all pupils on an electronic portal, and parents are notified when a pupil is absent. If a pupil misses more than three days of school in a month without valid justification, the parents/legal guardians will be notified in writing. Schools are expected to regularly monitor the attendance of all pupils and intervene accordingly. If their interventions are ineffective, they refer the pupil to the school social worker, who assesses the situation and draws up an action plan in collaboration with the school Senior Management Team.

The report provides no information on enrolment rates. The Committee notes from other sources (UNESCO database) that the enrolment rates in 2021 were as follows: 94.93% in primary education and 98.81% in lower secondary education and 90.79% in upper secondary education.

### ***Vulnerable groups***

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

In the previous conclusion, the Committee asked for updated information on the situation of children in irregular migration situations in relation to the right to education, the barriers they face, and the steps taken to identify and address them (Conclusions 2019).

The report states that the Migrant Learners Unit of the Maltese Ministry for Education, Sport, Youth, Research and Innovation provides a course to these migrant learners who do not understand English and Maltese. This Unit also coordinates the transition from one school level to another. Migrants can benefit from the services of a team of Community Liaison Workers. Migrant students continue to be supported in the same ways as national students with the provision of teaching and learning materials delivered to their homes as well as through the provision of access, where possible, to internet and digital equipment.

The report states that Scheme 9 started in the 2016/2017 school year; this is a national budgetary measure intended to ameliorate the lives of primary, middle and secondary school pupils aged three to 16 from the most disadvantaged family and cultural backgrounds.

The report further states that Malta's inclusion policy ("A Policy on Inclusive Education in Schools: Route to Quality Inclusion") was first published in 2019 and revised in 2022.

### ***Anti-bullying measures***

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

The report states that the aim of the MOSAIC project is to strengthen the competences of teachers and school staff to promote diversity, empathy and inclusion in schools and to support schools by facilitating the integration of migrant students through the Educational Platform.

The report also indicates that, with regard to bullying, there is a policy on the subject entitled the "Managing Behaviour and Addressing Bullying Behaviours in Schools Policy".

### ***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 schools were closed and distance learning was facilitated through IT infrastructure, educational software, and online training materials. Literacy and reading programmes were shifted online and on television. In 2021, a virtual school was opened for vulnerable pupils, a summer catch-up educational programme was launched.

### ***Conclusion***

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

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

### *Paragraph 2 - Parental leave*

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

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).

In its previous conclusion, the Committee considered that the situation in Malta was not in conformity with Article 27§2 of the Charter on the ground that no compensation or remuneration is provided for parental leave. (Conclusions 2019). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity.

### ***Remuneration***

The Committee previously considered that the situation in Malta was not in conformity with Article 27§2 of the Charter on the ground that no compensation or remuneration is provided for parental leave (Conclusions 2019).

The Committee recalls that the remuneration of parental leave plays a vital role in the take up of childcare leave, in particular for fathers or lone parents (Conclusions 2011, Armenia); States must ensure that an employed parent is adequately compensated for his/her loss of earnings during the period of parental leave; the modalities of compensation is within the margin of appreciation of the States Parties and may be either paid leave (continued payment of wages by the employer), a social security benefit, any alternative benefit from public funds or a combination of such compensations; regardless of the modalities of payment, the level must be adequate (Conclusions 2015, Statement of Interpretation on Article 27§2); unpaid parental leave is not in conformity with Article 27§2 (Conclusions 2019, Ireland, Malta).

The Committee notes that the report does not provide any information on the remuneration of parental leave. It, therefore, reiterates its previous conclusion.

### ***Covid-19***

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

The report does not provide any information on whether the Covid-19 crisis had had an impact on the right to parental leave.

### *Conclusion*

The Committee concludes that the situation in Malta is not in conformity with Article 27§2 of the Charter on the ground that no compensation or remuneration is provided for parental leave.

## **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 Malta.

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

As the previous conclusion (Conclusions 2019) found the situation in Malta to be in conformity with Article 27§3 the Charter, there was no examination of the situation in 2023 on this point. Therefore, the Committee reiterates its previous conclusion.

### **Covid-19**

In the context of the Covid-19 crisis, the Committee asked all States to provide information on

- whether the Covid-19 crisis had an impact on the 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.

The report does not provide any information on whether the Covid-19 crisis had an impact on the rights protected under Article 27§3.

### *Conclusion*

The Committee concludes that the situation in Malta is in conformity with Article 27§3 of the Charter.