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EUROPEAN SOCIAL CHARTER

European Committee of Social Rights

Conclusions XXII-2 (2021)

DENMARK

This text may be subject to editorial revision.

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

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

The following chapter concerns Denmark, which ratified the 1961 European Social Charter on 3 March 1965. The deadline for submitting the 40th report was 31 December 2020 and Denmark submitted it on 27 April 2021.

The Committee recalls that Denmark was asked to reply to the specific targeted questions posed under various provisions (questions included in the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter). The Committee therefore focused specifically on these aspects. It also assessed the replies to all findings of non-conformity or deferral in its previous conclusions (Conclusions XXI-2 (2017)).

In addition, the Committee recalls that no targeted questions were asked under certain provisions. If the previous conclusion (Conclusions XXI-2 (2017)) found the situation to be in conformity, there was no examination of the situation in 2020.

Comments on the 40th report by Amnesty International were registered on 1 July 2021. The reply from the Government to Amnesty International comments was registered on 24 August 2021.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report concerned the following provisions of the thematic group II "Health, social security and social protection":

- the right to safe and healthy working conditions (Article 3);
- the right to protection of health (Article 11);
- the right to social security (Article 12);
- the right to social and medical assistance (Article 13);
- the right to benefit from social welfare services (Article 14);
- the right of elderly persons to social protection (Article 4 of the Additional Protocol).

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

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

The conclusions relating to Denmark concern 12 situations and are as follows:

– 7 conclusions of conformity: Articles 3§1, 11§1, 11§2, 11§3, 12§2, 12§3 and 14§1.

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

In respect of the other two situations related to Articles 3§2 and 14§2, the Committee needs further information in order to examine the situation.

The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Denmark under the 1961 Charter.

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

- the right to just conditions of work (Article 2);
- the right to a fair remuneration (Article 4);
- the right to organise (Article 5);
- the right to bargain collectively (Article 6);
- the right to information and consultation (Article 2 of the Additional Protocol);
- the right to take part in the determination and improvement of the working conditions and working environment (Article 3 of the Additional Protocol).

The deadline for submitting that report was 31 December 2021.

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

Article 3 - Right to safe and healthy working conditions

Paragraph 1 - Safety and health regulations

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

The Committee recalls that for the purposes of the present report, States were asked to reply to targeted questions for Article 3§1 of the 1961 Charter as well as, where applicable, previous conclusions of non-conformity or deferrals (see the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Health, social security and social protection”).

In its previous conclusion, pending receipt of the requested information, the Committee concluded that the situation in Denmark was in conformity with Article 3§1 of the 1961 Charter (Conclusions XXI-2 (2017)). The assessment of the Committee will therefore only concern the information provided by the Government in response to the targeted question.

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

Content of the regulations on health and safety at work

The Committee previously found the situation to be in conformity in this respect (Conclusions XXI-2 (2017)).

In its targeted question on Article 3§1, the Committee asked for detailed information on the regulatory responses adopted to improve occupational safety and health in connection with known and also evolving or new situations such as in the digital and platform economy by, for example, strictly limiting and regulating electronic monitoring of workers, by recognising a right to disconnect, right to be unavailable outside agreed working and standby time, mandatory digital disconnection from the work environment during rest periods. It also requested information on regulations adopted in response to emerging occupational risks.

In response, the report states that the Working Environment Act (No. 674/2020) applies to all sectors of industry and that it applies to ships insofar as loading and off-loading and shipyard work is concerned. The aim of the Working Environment Act is to create a safe and healthy working environment, which is always in accordance with the technical and social developments in the society. The Working Environment Act covers both physical and psychological working environment, including bullying, sexual harassment, heavy lifting and sitting positions. This act entails obligations for the employer that are binding and non-compliance with those obligations can result in punishment.

The Act on Safety at Sea (No. 627/2002) and separate orders cover all employment on board new and existing ships registered in Denmark and Greenland and cover both physical and psychological working environment. Two occupational health services have been established – one for shipping in general and one for fisheries, both of those services implemented a large number of projects and initiatives in the area of working environment, safety and health for the maritime industry, such as targeted campaigns, events and other initiatives to ensure a safe and healthy working environment at sea.

Since July 2018, Denmark has had a regulation about the Danish Working Environment Authority‘s access to interview employees alone. Those interviews are planned with the employer but are carried out without the employer‘s or the representatives’ presence.

The report mentions the Executive order on psychological work environment that entered into force on 1 November 2020 and the guidelines on the working environment of pregnant and breastfeeding women with a section on night work that were updated in September 2020. The Committee notes that the act and the guidelines are outside of the reference period for the purposes of the present reporting cycle.

The report also states that electronic monitoring of employees is not subject to regulation by specific laws but is regulated in agreements between the social partners, as well as in the Data Protection Regulation. Executive Order No. 1108/1992 on work at screen terminals provides that employers may not apply quantitative or qualitative monitoring in programmes used for screen work without the knowledge of the employees.

The report states that there are no specific legal provisions in Denmark on "digital detox." The technological development and increasing digitalisation has increased pressure on privacy and protection of personal data because work tools such as smartphones, computers, tablets and GPS allow employers to monitor and control employees in the workplace. In this context, the Personal Data Act has set a general framework for the way the employer monitors the employee‘s personal data. In 2018 this act was replaced by the EU General Data Protection Regulation. Furthermore, data protection rules and the digital monitoring of the employees are regulated in agreements between social partners. In general, the employer must always inform the employee that he or she is being monitored.

The Committee notes that the report provides no information as to regulatory responses to newly recognised forms of professional injury or illness and asks the next report to contain this information.

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

The Committee considers that, consistent with States Parties’ obligations in terms of Article 3§1, in order to protect the physical and mental health of persons teleworking or working remotely and to ensure the right of every worker to a safe and healthy working environment, it is necessary to enable fully the right of workers to refuse to perform work outside their normal working hours (other than work considered to be overtime and fully recognised accordingly) or while on holiday or on other forms of leave (sometimes referred to as the "right to disconnect").

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

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

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

Protection against hazardous substances and agents

The Committee previously found the situation to be in conformity in this respect (Conclusions XXI-2 (2017)).

The report provides information about chemical agents at work. It states that the European Commission agreed on the fourth list on indicative occupational exposure limit values in January 2017 and that Denmark agreed on reducing the indicative occupational exposure limit values for 16 of the chemical agents and introducing three new indicative occupational exposure limit values in the Danish regulation. The report states that Denmark also agreed to establish a short-term exposure limit value in relation to a reference period of 1 minute for one chemical agent instead of 15 minutes.

Finally, the report states that in 2019 the executive order on carcinogens and mutagens was amended to implement Directive (EU) 2017/2398 of the European Parliament and of the Council of 12 December 2017 amending Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work and a national provision regarding prohibition of recirculation on building sites of local exhaust air from work processes was amended to allow for recirculation as long as the air is effectively cleaned.

Personal scope of the regulations

The Committee previously found the situation to be in conformity in this respect (Conclusions XXI-2 (2017)).

Covid-19

In the context of the Covid-19 crisis, the Committee recalls that it requested information in the targeted questions under Article 3§1 of the 1961 Charter on the protection of frontline workers.

In response, the report states that to protect staff working with the treatment or care of patients with suspected or detected Covid-19 infection, the State Institute for Vaccines and Epidemiology has issued specific national guidelines for infection prevention and control. The guidelines describe the requirements for personal protective equipment, hygiene and cleaning in situations with suspected or detected Covid-19.

The report also states that the Danish Health Authority has issued national guidelines regarding the use of personal protective equipment in the healthcare, elderly care and social sector, which are aimed at preventing asymptomatic/pre-symptomatic infection. These guidelines state that in care and treatment situations with close contact (closer than 1 or 2 meters) either a surgical mask or a face shield must be used by staff and patients when possible. It is the employer's responsibility to ensure that protective equipment is available to staff and that the staff is trained in using it correctly.

In accordance with the Danish Working Environment Act, the employer must continuously assess risks that the employees may be exposed to and to take measures that can prevent the risk of Covid-19 infection as effectively as possible. The Danish Working Environment Authority developed guidance materials based on the guidelines issued by the Danish Patient Safety Authority in order to reduce the risk of an employee to be exposed to Covid-19. The Danish Working Environment Authority has developed FAQ's on its website in relation with personal protective equipment.

The National Police issued an action card for operational police personnel in connection with the Covid-19 situation. This card comprises a number of precautionary measures, including general measures to be considered when police personnel is in contact with persons. The general measures include instructions to keep hand hygiene, safe distance, to use facemasks, to avoid close physical contact and to sneeze/cough in the sleeve. The specific measures include the police personnel wearing facemasks in public areas if required by the authorities.

Conclusion

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

Article 3 - Right to safe and healthy working conditions

Paragraph 2 - Enforcement of safety and health regulations

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

The Committee recalls that for the purposes of the present report States were asked to reply to targeted questions for Article 3§2 of the 1961 Charter as well as, where applicable, previous conclusions of non-conformity or deferrals (see the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Health, social security and social protection”).

In its previous conclusion (Conclusions XXI-2 (2017)), the Committee concluded that the situation in Denmark was in conformity with Article 3§2 of the 1961 Charter.

Assessment of the Committee will therefore concern the information provided by the Government in response to the targeted questions.

Accidents at work and occupational diseases

The Committee previously examined (Conclusions XX-2 (2017)) the situation regarding accidents at work and occupational diseases. Taking note that the total number of recognised industrial accidents decreased during the reference period and that the incidence rates of fatal accidents were below the EU average, the Committee concluded that the situation in Denmark was in conformity with Article 3§2 of the 1961 Charter. The targeted questions with regard to accidents at work and occupational diseases concerned statistical data on prevalence of work-related death, injury and disability, as well as on epidemiological studies conducted to assess the long(er)-term health impact of new high-risk jobs and also as regards the victims of harassment at work and poor management.

According to the data provided by the report, the total number of work accidents during the reference period (42,014 in 2016 and 42,709 in 2019) as well as the incidence rates of those accidents (1,524 in 2016 and 1,476 in 2019) remained stable. In addition, there is a slight increase in the number of serious accidents (i.e. resulting in the loss of body parts, bone fractures and injuries to several body parts) (from 5,511 in 2016 to 5,894 in 2019).The Committee notes that manufacturing and the supply industry, wholesale and retail, building and construction are among the sectors with the highest number of work accidents in Denmark.

According to the same data, the number of fatal accidents at work was 33 in 2016 and 36 in 2019. The data shows that those figures have remained rather stable since the previous reference period (40 in 2012 and 30 in 2015). The Committee takes note of the figures provided in the report concerning the number of reported accidents at work broken down by type of injury and year of reporting. It notes that 42% of all reported accidents result in dislocations, sprains, or strains.

The EUROSTAT data confirms the trend concerning fatal accidents at work (30 in 2019 and 2018, 24 in 2017 and 29 in 2016). The Committee notes that according to the same data, the incidence rates of fatal accidents at work in Denmark (1.89 in 2018, 1.27 in 2017 and 1.92 in 2016) remain well below the average rates in the EU-27 during the same period (2.21 in 2018, 2.25 in 2017 and 2.29 in 2016).

According to EUROSTAT data, the number of non-fatal accidents at work resulting in the incapacity for work of the employee for more than 4 calendar days also remained stable (29,807 in 2017 and 30,670 in 2019). The Committee notes that the incidence rates of such accidents are close to the average rates in the EU-27 (in 2018, 1770 in Denmark and 1768.93 in the EU; in 2017, 1614.36 in Denmark and 1800 in the EU).

According to the report, there is a decrease in the number of reported occupational diseases (from 20,127 in 2016 and 18,869 in 2017 to 17,184 in 2019) and in their standardised incidence rates (from 695 in 2016 and 652 in 2017 to 594 in 2019). The Committee notes from the figures provided in the report that in 2019, the manufacturing and supply industry, and the wholesale and retail sector appear as the sectors with the highest number of occupational diseases in Denmark. Those figures also indicate that 32% of the reported occupational diseases are musculoskeletal diseases and 24% concern mental illnesses.

In reply to the targeted question raised by the Committee concerning epidemiological studies conducted to assess the longer-term health impact of new high-risk jobs and the victims of harassment at work and poor management, the report gives detailed information with regard to seven studies that examined and assessed the linkage between offensive behaviors and health outcomes; physical violence at work and the risk of health-related absence from work; the association between work-related stressors (including negative social relations at the workplace) perceived stress and the risk of dementia; the relationship between work-related straining and long-lasting psychosocial exposure and stress disorders; causal association between psychosocial factors at work and depressive disorders and epidemiological evidence linking work-related exposure to violence and threats of violence with risk of, mental disorders and mental ill health symptoms.

Activities of the Labour Inspectorate

The Committee previously examined (Conclusions XX-2 (2017)) the situation regarding the activities of the Labour Inspectorate and concluded that the situation in Denmark was in conformity with Article 3§2 of the 1961 Charter. The targeted questions with regard to the activities of the Labour Inspectorate concerned the organisation of the Labour Inspectorate, and the trends in resources allocated to labour inspection services, including human resources; number of health and safety inspection visits by the Labour Inspectorate and the proportion of workers and companies covered by the inspections, as well as the number of breaches to health and safety regulations and the nature and type of sanctions; whether inspectors are entitled to inspect all workplaces, including residential premises, in all economic sectors.

The report indicates that the Danish Working Environment Authority (DWEA) is an agency under the auspices of the Ministry of Employment. DWEA is present throughout Denmark and consists of a Working Environment Advisory Center and three regional inspection centres. It is responsible for supervising whether acts and rules in the field of safety and health at work are observed, through inspection visits and guidance of the enterprises and their safety organisations, with a view to making the enterprises capable of solving their own tasks in relation to the working environment.

The total number of employees in the DWEA was 645 (304 inspectors) in 2016 and 592 (247 inspectors) in 2019. According to the report, there is a decrease in the number of inspection visits performed by the DWEA (48,100 visits in 2016, 41,000 in 2017 and 36,300 in 2019). Those visits include risk-based inspections, the additional visits for risk-based inspections and detailed inspections. The number of enterprises visited by the DWEA were 24,251 in 2016, 19,466 in 2018 and 18,425 in 2019.

The report also explains that DWEA inspects companies and offers guidance on health and safety conditions in Denmark. Inspections and guidelines are based on the Danish Working Environment Act. Inspections are often carried out without prior notice. If the DWEA discovers, during an inspection, that a company is in breach of the legal requirements, it will serve a notice requiring the company to ensure that the law is upheld. In certain circumstances, DWEA can also prohibit further work until the health and safety issue has been resolved. DWEA has the option of issuing fines if there is a violation of clear and universally known regulations. DWEA can re-visit following an inspection to check that a company has complied with the improvement notice from the previous visit. Inspections

always take place in combination with dialogue and guidance to ensure that companies understand why the DWEA has determined that health and safety regulations have been breached and how to work on resolving the issues.

The report does not provide information with regard to the targeted question on the proportion of workers and companies covered by the inspections nor on the number of breaches to health and safety regulations and the nature and type of sanctions imposed. The Committee reiterates its request for information in these regards. It considers that if the requested information is not provided in the next report, there will be nothing to establish that the activities of the Labour Inspectorate are effective in practice.

Conclusion

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

Article 3 - Right to safe and healthy working conditions

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

The Committee notes that no targeted questions were asked under Article 3§3 of the 1961 Charter. As the previous conclusion found the situation in Denmark to be in conformity with the Charter, there was no examination of the situation in 2021.

Article 11 - Right to protection of health

Paragraph 1 - Removal of the causes of ill-health

The Committee takes note of the information contained in the report submitted by Denmark. It also takes note of the comments submitted by Amnesty International on 1 July 2021 and of the Government's reply to these comments submitted on 24 August 2021.

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

In its previous conclusion, the Committee concluded that the situation in Denmark was in conformity with Article 11§1 of the 1961 Charter, pending receipt of the information requested (Conclusions XXI-2(2017)). The assessment of the Committee will therefore only concern the information provided by the Government in response to the targeted questions.

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

Measures to ensure the highest possible standard of health

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

With regard to life expectancy, the report indicates that life expectancy at birth (average for both men and women) was 81.3 years in 2019 compared to 80.8 years in 2016. The report states that, at the time of drafting, there was no statistical data available in Denmark on life expectancy across the country and different population groups at the required disaggregated level.

The report indicates that the death rate (number of deaths per 1,000 individuals) has not varied much during the reference period: 9.3 in 2016 and 2017; 9.6 in 2018 and 9.3 in 2019.The main cause of premature death in 2019 was cancer followed by heart diseases and respiratory system diseases.

Data provided by the National Institute of Public Health and the Council for socially marginalised people shows that the death rate among socially marginalised men is almost seven times the death rate of men in the general population, while the death rate among socially marginalised women is more than eight times the death rate of women in the general population. The excess mortality is highest for both men and women in the age group of 16-24 years. Moreover, the data shows, for both men and women, substantial excess mortality for deaths related to alcohol or substance abuse.

The Committee notes that, however, the data on socially marginalised people provided in the report refers to the period 2007-2014 which is outside the reference period. It asks for updated information on death rates and the prevalence of particular diseases among

relevant groups – such as socially marginalised people compared to the general Danish population.

Access to healthcare

In a targeted question, the Committee asked for information about sexual and reproductive healthcare services for women and girls (including access to abortion) and statistical information about early (underage or minor) motherhood, as well as child and maternal mortality (as a targeted question). It also asked for information on policies designed to remove as far as possible the causes for the anomalies observed (premature death; preventable infection by blood borne diseases; etc.).

The report indicates that according to Section 92 of the Health Act, women in Denmark have the right to legally induced abortions before the end of the 12th week of pregnancy. A woman seeking to have a legally induced abortion has the right to receive professional advice before she makes a final decision. Counselling aims to support the woman in her decision; it must provide information about the support available during pregnancy and after the child is born.

According to Section 93 of the Health Act, women in Denmark have the right to legally induced abortion even after the end of the 12th week of pregnancy, if the procedure is necessary to avert a risk to her life or a serious deterioration of her physical or mental health. This risk is based solely or principally on circumstances of a medical character. After the end of the 12th week of pregnancy, women in Denmark may be granted authorisation for abortion from the local abortion council. The report further provides information on the procedure and the conditions in which an abortion can be authorised after the end of the 12th week of pregnancy. The Committee asks for information on the costs of abortion.

The report also provides information on access to assisted reproduction treatment (fertility treatment) which is offered to women and couples, who have been trying to conceive for more than a year.

The Committee asks for information about sexual and reproductive healthcare services for women and girls (other than abortion and assisted reproduction treatment). It also asks whether girls and women have access to modern contraception and information on the proportion of the cost of contraceptives that is not covered by the State (in cases where the cost is not fully reimbursed by the State).

The statistical data provided in the report shows that early (underage or minor) motherhood has declined from 1.1 (number of births under the age of 18 per 1,000 live births) in 2016 to 0.6 births in 2019.

The report provides also statistical data on infant mortality, child mortality and maternal mortality. According to Statistics Denmark, the infant mortality rate (number of deaths of children under one year of age per 1,000 live births) was 3.7 in 2018 compared to 3.1 in 2016. The Committee notes that the EU-28 average of infant mortality was 3.5 in 2018. While noting the increasing trend in the rate of infant mortality during the reference period, the Committee asks for information on the measures taken to reduce infant mortality.

The report indicates that according to OECD statistics, the maternal mortality rate (maternal deaths per 1,000 live births) was 3.2 in 2016 and 1.6 in 2017 and 2018. The Committee notes that according to World Bank data, the maternal mortality rate in Denmark (number of deaths per 100,000 live births) was 4 in 2017 while the EU average was 6 in 2017.

The Committee refers to its general question as regards the right to protection of health of transgender persons in the general introduction. The Committee recalls that respect for physical and psychological integrity is an integral part of the right to the protection of health guaranteed by Article 11. Article 11 imposes a range of positive and negative obligations, including the obligation of the state to refrain from interfering directly or indirectly with the enjoyment of the right to health. Any kind of unnecessary medical treatment can be

considered as contrary to Article 11, if accessing another right is contingent upon undergoing that treatment (Transgender Europe and ILGA Europe v. Czech Republic, Complaint No. 117/2015, decision on the merits of 15 May 2018, §§74, 79, 80).

The Committee recalls that state recognition of a person's gender identity is itself a right recognised by international human rights law, including in the jurisprudence of the European Court of Human Rights, and is important to guaranteeing the full enjoyment of all human rights. It also recalls that any medical treatment without free informed consent (subject to strict exceptions) cannot be compatible with physical integrity or with the right to protection of health. Guaranteeing free consent is fundamental to the enjoyment of the right to health, and is integral to autonomy and human dignity and the obligation to protect the right to health (Transgender Europe and ILGA Europe v. Czech Republic, Complaint No. 117/2015, decision on the merits of 15 May 2018, §§78 and 82).

The Committee invites states to provide information on the access of transgender persons to gender reassignment treatment (both in terms of availability and accessibility). It asks whether legal gender recognition for transgender persons requires (in law or in practice) that they undergo sterilisation or any other medical requirements which could impair their health or physical and psychological integrity. The Committee also invites states to provide information on measures taken to ensure that access to healthcare in general, including sexual and reproductive healthcare, is provided without discrimination on the basis of gender identity.

In a targeted question, the Committee asked for information on measures to ensure informed consent to health-related interventions or treatment (under Article 11§2). The report indicates that the right to consent to medical treatment is legally protected by Article 15 of the Health Act ("informed consent"). Informed consent includes both the right to be informed about the proposed medical treatment and the right of the patient to either accept or refuse such treatment based on information provided by a healthcare professional (e.g., information about the development of the disease, the benefits and difficulties of the recommended treatment and the consequences of refusing the treatment). The report emphasises that treatment can only be provided if consent is given by a person who is able to make a voluntary and informed decision. In most situations, informed consent can be given either orally or in writing and – depending on the circumstances – also as tacit consent. However, in the case of treatment involving a specific genetic analysis, consent must be in writing; in addition, the decision on secondary outcomes must be stated. In the case of a serious medical procedure (e.g., surgery), written consent may also be required.

The Committee takes note of the comments by Amnesty International referring to the issues faced by children with variations of sex characteristics, as documented in the Amnesty International 2017 report *First Do No Harm: Ensuring the right of children with variations of sex characteristics in Denmark and Germany.* With regard to informed consent, Amnesty International states that parents or legal guardians have the responsibility to make medical decisions on behalf of children too young to give consent on their own. The same report also states that intersex individuals and activists have reported to Amnesty International that the information provided to them and to parents is often not sufficient for them to make an informed decision. Based on the interviews Amnesty conducted, parents often feel that information on the specific surgeries and whether this is emergency treatment is insufficient.

The Committee notes that according to the reply submitted by the Government, all medical interventions require the patients' informed consent. In Denmark a person is able to give their informed consent at age 15. Until the person turns 15 the required informed consent is given by the parents. No matter the age, the preferences of the person under 15 should always be taken into account. The Government further states that the patient's consent therefore must be given on the basis of adequate information from the healthcare professional, and the patient can at any time revoke his consent. In accordance with Danish law, the information should include information on relevant prevention, treatment and care

options, including information on other treatment options and information on the consequences of no treatment being initiated. The information should be more comprehensive when the treatment poses a close risk of serious complications and side effects.

Covid-19

In the context of the Covi-19 crisis, the Committee asked the States Parties to evaluate the adequacy of measures taken to limit the spread of virus in the population as well as the measures taken to treat the ill (under Article 11§3).

For the purposes of Article 11§1, the Committee considers information focused on measures taken to treat the ill (sufficient number of hospital beds, including intensive care units and equipment, and rapid deployment of sufficient numbers of medical personnel). Given the lack of such information in the report, the Committee reiterates its request.

The Committee recalls that during a pandemic, States Parties must take all necessary measures to treat those who fall ill, including ensuring the availability of a sufficient number of hospital beds, intensive care units and equipment. All possible measures must be taken to ensure that an adequate number of healthcare professionals are deployed (Statement of interpretation on the right to protection of health in times of pandemic, 21 April 2020).

The Committee recalls that access to healthcare must be ensured to everyone without discrimination. This implies that healthcare in a pandemic must be effective and affordable to everyone, and States must ensure that groups at particularly high risk, such as homeless persons, persons living in poverty, older persons, persons with disabilities, persons living in institutions, persons detained in prisons, and persons with an irregular migration status are adequately protected by the healthcare measures put in place. Moreover, States must take specific, targeted measures to ensure enjoyment of the right to protection of health of those whose work (whether formal or informal) places them at particular risk of infection (Statement of interpretation on the right to protection of health in times of pandemic, 21 April 2020).

During a pandemic, States must take all possible measures as referred to above in the shortest possible time, with the maximum use of financial, technical and human resources, and by all appropriate means both national and international in character, including international assistance and cooperation (Statement of interpretation on the right to protection of health in times of pandemic, 21 April 2020).

Conclusion

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

Article 11 - Right to protection of health

Paragraph 2 - Advisory and educational facilities

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

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

In its previous conclusion, the Committee found that the situation in Denmark was in conformity with Article 11§2 of the Charter, pending receipt of the information requested (Conclusions XXI-2 (2017)).

Health education and awareness raising

In its targeted questions, the Committee asked for information about health education (including sexual and reproductive health education) and related prevention strategies (including through empowerment that can serve as a factor in addressing self-harm conducts, eating disorders, alcohol and drug use) in the community, on a lifelong or ongoing basis, and in schools.

As regards health education in schools, the report indicates that "Health, Sexuality and Family Education" is a mandatory subject in primary and lower secondary schools. The aim is to develop the pupils' competencies to promote health and well-being with a focus on different issues, such as sexual rights, norms, and diversity in gender and families. According to the report, schoolchildren should understand the importance of lifestyle and living conditions for health and well-being, and the relationship between health, sexuality and family life.

The Committee takes note of an evaluation of that subject carried out by the Ministry of Children and Education in January 2019 which showed challenges with the teaching in the subject. In 2019, the political parties behind the Agreement on the Danish Public School agreed on the importance of teaching different sexualities, rights, norms and boundaries as part of the pupils' development and education. Thus, it has been agreed to discuss measures to strengthen the teaching of the subject.

The report also provides information on other compulsory subjects related to a healthy diet and sport. For instance, "Cooking and food knowledge" enables pupils to acquire skills and knowledge of food, taste, health, cooking and meals and to develop skills that help them choose and evaluate their own taste and food choices. Physical education, a compulsory subject in primary and lower secondary schools, aims to develop pupils' physical, sporting, social and personal qualities by making them aware of the importance of sport for health and well-being.

The report does not contain any information about health education and related prevention strategies (including through empowerment that can serve as a factor in addressing self-harm conducts, eating disorders, alcohol and drug use) in the community, on a lifelong or ongoing basis. Therefore, the Committee reiterates its question.

In its targeted questions, the Committee also asked for information about awareness-raising and education with respect to sexual orientation and gender identity (SOGI) and to gender-based violence. In response, the report indicates that several initiatives have been launched during the reference period. The Committee notes from the report that the government has carried out an evaluation of health and sex education as well as family education, and launched a preliminary study on monitoring the well-being of LGBTI pupils; it created

guidance materials for schools and upper-secondary education institutions concerning the potential challenges faced by, for example, LGBTI children or children of LGBTI parents. In addition, the government supports projects carried out by civil societies to improve the well-being and safety of young LGBTI students, especially in vocational education institutions, and to combat discrimination and stigmatisation of LGBTI pupils in elementary schools.

With regard to gender-based violence, the Committee takes note of the various initiatives undertaken to raise awareness and promote education on this issue (campaign on violence between intimate partners among young people; campaign on digital violence and harassment among young people; campaign on rape, etc.).

Counselling and screening

In its previous conclusion, the Committee found that the situation in Denmark was in conformity with Article 11§2 with respect to counselling and screening services available to pregnant women and children (Conclusions XXI-2 (2017)). It reiterates its request for updated information on this point.

In regard to measures to combat pseudoscience, the report indicates that there are no specific initiatives, but health authorities are constantly striving to provide the public with clear, transparent and factual information.

Conclusion

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

Article 11 - Right to protection of health

Paragraph 3 - Prevention of diseases and accidents

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

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

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

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

In its previous conclusion, the Committee found that the situation in Denmark was in conformity with Article 11§3 of the 1961 Charter (Conclusions 2017).

Healthcare services in places of detention

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

The report details the healthcare arrangements in prisons, including with respect to initial screening procedures, access to information, confidentiality, staffing and access to specialist care. The report states that healthcare in prison is provided based on the principle of equivalence with that available in the community. The report also presents information regarding access to mental healthcare in prison, including with respect to screening arrangements and access to specialised inpatient facilities.

Community-based mental health services

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

The report presents general information about the structure of mental healthcare provision in Denmark, comprising child and adolescent psychiatry, adult psychiatry, inpatient units, outpatient clinics, psychiatric emergency wards, specialist practitioners and psychologists, working in partnership with social services. During the past ten years, there has been a sustained focus on developing and improving psychiatric care and services for people with mental disorders at the national level. An expert committee was tasked with identifying essential challenges and focus areas. Several action plans and a national research strategy

were published. In 2018, the Danish Government presented 38 recommendations on the development and improvement of psychiatric care in Denmark, referring to, among others, reducing increased morbidity and mortality, combating prejudices about mental disorders, promoting early interventions and improving the quality of services. These recommendations will form the basis for a 10-year mental health plan setting the long-term direction of mental healthcare in Denmark, focusing on prevention and cross-sectoral coordination. The report also presents an overview of ancillary support available at the municipal level to people with mental health problems, including personal assistance, social activities, accessible accommodation or counselling, allocated based on individual need assessment.

The Committee notes that Denmark has regularly received criticism in relation to the overreliance on coercive measures in its psychiatric institutions, including from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (2019), the Commissioner for Human Rights (2014), the Committee on Economic, Social and Cultural Rights (2019), the Human Rights Committee (2016), or the Committee against Torture (2015).

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

The Committee asks for information on measures taken with a view to reducing the use of coercion in psychiatric hospitals and promoting voluntary measures in mental healthcare and support.

Drug abuse prevention and harm reduction

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

The report notes that a range of harm reduction responses are available, including needle and syringe programmes, drug consumption rooms, take-home naloxone programmes and heroin-assisted treatment, as well as opioid substitution treatment. Doctors were instructed to provide prompt withdrawal treatment. The report also describes awareness raising measures as to the risk of overdose, and first aid training programs.

Healthy environment

In a targeted question, the Committee asked for information on the measures taken to prevent exposure to air, water or other forms of environmental pollution, including proximity to active or decommissioned (but not properly isolated or decontaminated) industrial sites

with contaminant or toxic emissions, leakages or outflows, including slow releases or transfers to the neighbouring environment, nuclear sites, mines, as well as on the measures taken to address the health problems of the populations affected, and to inform the public, including pupils and students, about general and local environmental problems.

The report notes that Denmark has implemented all relevant European Union legislation seeking to prevent and reduce emissions from industrial plants, including livestock farms, and to control major accident hazards. The report also presents information regarding river basin management planning cycles and air pollution control measures.

Immunisation and epidemiological monitoring

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

The report notes that the Danish Medicines Agency decided to shorten the review time for applications for Covid-19 medicine trials. In 2018, the Danish Government founded Trial Nation, intended as a single, national platform fostering cooperation between global companies, patient organisations and clinical researchers with a focus on clinical research in infectious diseases, immune modulation, and vaccine trials.

Covid-19

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

The report describes in some detail the preventative measures against Covid-19 taken in the State Party. Denmark has the capacity to PCR-test up to 200,000 people daily, or approximately 23% of the population weekly, and to sequence more than 90% of all positive tests. A tracing and isolation system is in place, with local authorities required to ensure accommodation facilities where isolation cannot be done at home. The report also refers to lockdowns, restricting public gatherings, and the vaccination drive.

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

Conclusion

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

Article 12 - Right to social security

Paragraph 1 - Existence of a social security system

The Committee notes that no targeted questions were asked under this provision. As the previous conclusion found the situation to be in conformity there was no examination of the situation in 2021.

Article 12 - Right to social security

Paragraph 2 - Maintenance of a social security system at a satisfactory level at least equal to that necessary for the ratification of the International Labour Convention No. 102

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

The Committee recalls that Denmark ratified the European Code of Social Security on 16 February 1973 and has accepted Parts II to IX.

The Committee notes from Resolution CM/ResCSS(2020)4 of the Committee of Ministers on the application of the European Code of Social Security by Denmark (period from 1 July 2018 to 30 June 2019) that the law and practice in Denmark continue to give full effect to Parts II, III, V, VII, VIII and IX of the Code and that they also ensure the application of Part IV, subject to removing any residence condition as regards entitlement to contributory unemployment benefits, and Part VI, subject to extending the scope of periodical payments in case of permanent injury or death resulting from an employment injury. In so doing, Denmark maintains a social security system that meets the requirements of ILO Convention No. 102.

Conclusion

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

Article 12 - Right to social security

Paragraph 3 - Development of the social security system

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

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

In its previous conclusion, the Committee found that the situation in Denmark was in conformity with Article 12§3 of the 1961 Charter (Conclusions XXI-2 (2017)). It will therefore restrict its consideration to the Government's replies to the two targeted questions, namely:

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

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

Platform workers

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

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

In its report, the Government states that Denmark's unemployment insurance scheme operates on a voluntary basis. Any resident of Denmark aged 18 or over may join one of the approved unemployment insurance schemes up until two years before they become eligible for a general state pension. To qualify for unemployment benefits, people must have belonged to one of the schemes for at least 12 months and met a minimum working income level requirement (set at DKK 240,000, or approximately € 32,000, in 2020) in the three years preceding unemployment. Following a reform that came into force in 2018 (Agreement on the unemployment benefit scheme for the labour market of the future), all types of paid work are considered equal, i.e. income can come from salaried employment, self-employment or freelance work, or a combination of these different types of employment. The Government also states that people working through digital platforms are entitled to sickness benefits if they meet the conditions in the Law on Sickness Benefits, including the work

requirements for employees or self-employed persons. For example, to be entitled to sickness benefits paid by the employer during the first 30 days of illness, the employee must have worked for that employer for at least 74 hours in the eight weeks before taking sick leave.

Other sources (e.g. Platform Work and the Danish Model – Legal Perspectives, Natalie Videbæk Munkholm and Christian Højer Schjøler, NJCL 2018/1, pp. 117-145) indicate that, besides the reform of the unemployment benefit system that came into force in 2018 (which aimed, among other things, to make unemployment benefits more accessible to the self-employed and workers with more than one job or non-standard jobs), additional changes took place during the reference period. In particular, a series of agreements were concluded between trade unions and platform companies from 2018.

The Committee takes note of this information, which is useful but does not give it a full picture of the social security coverage of digital platform workers. The Committee asks for updated and detailed information in the next report on the number of digital platform workers (as a percentage of the total number of workers), their status (employees, self-employed and/or other category), the number/percentage of these workers by status and their social security protection (by status).

Covid-19

In response to the second question, the Government provides a list of 67 economic measures taken to tackle the pandemic's economic and financial impact. These measures include:

- extending the period of entitlement to sickness benefits (adding an additional three months for persons whose entitlement to those benefits expired between 9 March 2020 and 28 February 2021) and unemployment benefits (e.g. benefits received between 1 March and 31 August 2020 do not count towards the total benefit entitlement period, i.e. two years);
- widening access to sickness benefits (by adding employees who cannot come to work because they or their relatives are at high risk from Covid-19 infection owing to their health) and to parental leave (providing economic support for parents who have to stay at home to care for children who cannot go to school because of Covid-19);
- relaxing the eligibility requirements for unemployment benefits (temporarily waiving the insurance fund membership requirement for self-employed workers) and social assistance (extending the period for meeting the 225-hour work annual requirement by four months, from November 2020 to February 2021 inclusive);
- paying a special allowance to unemployed persons, students and pensioners who had already received public welfare benefits;
- introducing a temporary compensation scheme for self-employed workers and freelancers whose turnover has dropped by more than 30% or who are required to close as a result of Covid-19, as well as for artists whose income has decreased by more than 30% as a result of Covid-19.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Denmark is in conformity with Article 12§3 of the 1961 Charter.

Article 12 - Right to social security

Paragraph 4 - Social security of persons moving between States

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

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

Right to equal treatment

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

In its previous conclusion (Conclusions 2009, 2013, 2017) the Committee considered that equal treatment as regards access to the social security system was not guaranteed for nationals of non-EEA States Parties, as long as Council Regulation No. 859/03 (extending the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality) was not applied in Denmark. The situation was therefore not in conformity with the Charter on this point. The Committee notes from the report in this respect that EU Regulation no. 1231/10 extending EU Regulation No. 883/04 to also apply to third country nationals does not apply to Denmark. This is due to the fact that Denmark has laid down a legal reservation in relation to the statutory basis of the Treaty. The only way to broaden the scope for an easier access in relation to nationals of States not covered by EU law in relation to this issue is to enter into bilateral agreements with individual countries. Denmark has entered into such agreements with a number of Council of Europe Member States, and continues to evaluate potential agreements. The conclusions of such agreements will often have many implications, both financial and administrative and will need to be in mutual interest, as, for example, the number of persons covered. The Committee asks the next report to provide detailed information about whether nationals of all State Parties lawfully employed in Denmark have equal access to statutory social insurance system.

As regards equal conditions for entitlement to social security benefits, in its previous conclusion (Conclusions 2017) the Committee considered that the situation was not in conformity with the Charter on the ground that the ten-year residence requirement imposed on nationals of States Parties not covered by EU regulations or bound by bilateral agreement with Denmark for entitlement to an early retirement pension for persons with disabilities or to ordinary old-age pensions was excessive. It notes from the report in this regard that in Denmark, social security coverage is to a great extent tax financed and based on the principle of universalism. This is also the case for the scheme on old age and early retirement pension. The main rule is that the right to receive pension will require a Danish citizenship, as the entitlement is earned based on the number of years in which a person has been resident in Denmark. It is irrelevant whether the person concerned has worked or paid taxes in Denmark. The Danish rules of eligibility for old age and early retirement pension do

not have requirements regarding contributions. The citizen requirement is subject to a number of exceptions: •

- the person concerned is covered by EU Regulation No. 883/04 on coordination of social security systems. •
- the person has another nationality – from a country that has a bilateral agreement with Denmark. •
- the person is a refugee that has received a residence permit in accordance with the provisions in the Danish Aliens Act. •
- the person has had residence in the Kingdom of Denmark for at least 10 years between the age of 15 and the age granting old age pension.

The Committee thus notes that the situation which it has previously considered not to be in conformity with the Charter has not changed. Therefore, it reiterates its previous finding of non-conformity on the ground that the ten-year residence requirement imposed on nationals of States Parties not covered by EU regulations or bound by bilateral agreement with Denmark for entitlement to an early retirement pension for persons with disabilities or to ordinary old-age pensions is excessive.

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

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

The Committee is aware that States Parties that are also EU Member States, on the basis of the EU legislation on coordination of the social security system are obliged to apply coordination rules which to a large extent prescribe exportability of child benefits and family allowances. When the situation is covered by the Charter, and the EU legislation does not apply, the Committee has regard to its interpretation according to which the payment of child benefits to all residing children, as a starting point, is a unilateral obligation for all States Parties. The Committee decides no longer to examine the issue of exportability of child benefits under Article 12§4a.

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

The Committee asks whether child benefit is paid in respect of all resident children.

Right to retain accrued rights

The Committee recalls that old-age benefit, disability benefit, survivor's benefit and occupational accident or disease benefit acquired under the legislation of one State according to the eligibility criteria laid down under national legislation should be maintained (exported) irrespective of whether the beneficiary moves between the territories. The Committee asks what is the legal basis for exportability of old age, disability and survivor's benefits and the international coordination in the social security field with non-EEA States.

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

The Committee recalls that under Article 12§4b there should be no disadvantage in terms of accrual of rights for persons who move to another State for employment in instances in which they have not completed the period of employment or insurance necessary under national legislation to confer entitlement and determine the amount of certain benefits. Implementation of the right to maintenance of accruing rights requires, where necessary, the accumulation of employment or insurance periods completed in another territory for the purposes of the opening, calculation and payment of benefits. In the case of long-term benefits, the pro–rata approach should also be employed. States may choose between the following means in order to ensure maintenance of accruing rights: bilateral or multilateral agreement or, unilateral, legislative or administrative measures. States that have ratified the European Convention on Social Security are presumed to have made sufficient efforts to guarantee the retention of accruing rights. The Committee asks how the maintenance of accruing rights is ensured.

Conclusion

The Committee concludes that the situation in Denmark is not in conformity with Article 12§4 of the 1961 Charter on the ground that the ten-year residence requirement imposed on nationals of States Parties not covered by EU regulations or bound by bilateral agreement with Denmark for entitlement to an early retirement pension for persons with disabilities or to ordinary old-age pension is excessive.

Article 13 - Right to social and medical assistance

Paragraph 1 - Adequate assistance for every person in need

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

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

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

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

The previous conclusion considered that the situation in Denmark was not in conformity with Article 13§1 of the 1961 Charter on the following grounds: the levels of social assistance (*kontanthjælp*) paid to persons under 30 years of age and of integration allowance paid to single persons are not adequate; nationals of States Parties can have their residence permit withdrawn on the sole ground of being in receipt of social assistance for more than six months, unless they had resided in Denmark for more than seven years.

General legal framework, types of benefits and eligibility criteria

The Committee notes from the report a cap on social assistance was introduced in 2016 by the former government of Denmark. The cap on social assistance is a limit to how much a person can receive overall in social assistance, special housing benefit for people on social assistance and the general housing benefit. The limit is individual and depends among other things on age, whether a person is a provider of children, married/cohabiting or single and varies with the level of social assistance that a person is receiving. The cap does not reduce the level of social assistance of individuals, but can reduce housing benefit and/or special housing benefit with amounts that are higher than the individual limit. Benefits regarding children are not a part of the cap on social assistance and can be received regardless of the individual limit.

The government intends to abolish the cap on social assistance and find a balance between incentives to find work and getting adequate financial support when in need within the system of social benefits. For this purpose, a Commission on Social Benefits to make recommendations on a new system for social benefits has been set up and recommendations are awaited in the spring of 2021.

The Committee further takes note that a range of supplements is available to persons receiving social assistance. As a supplement to persons who fulfil the conditions to receive social assistance and are in a particularly difficult situation due to high housing costs and/or many children it is possible to receive special supplementary housing benefit within the social assistance system. In the event that the social assistance recipients are not able to pay for i.e. necessary medicines, treatments and dental treatments, they can receive additional cash support from the municipal authority for those particular expenses. Recipients of social assistance are also eligible for other benefits given unemployed and employed persons such as housing benefits and benefits regarding children.

Levels of benefits

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

- Basic benefit: according to MISSOC, social assistance *(kontanthjælp)* can be received from 30 years old to retirement age (from 18 years old in case of having completed vocational education); and integration benefits *(integrationsydelse):* from 18 years old to retirement age. According to the report, in 2019 the basic amount of social assistance for persons under 30 years living alone and without their parents was DKK 7,363, approximately €990,15 (half if they reside with one or both parents). According to MISSOC, that amount was DKK 6,259 (€838) per month. The basic amount for a person under 30 years with at least one child was € 1,173; basic amount for person of 30 years or more was DKK 11,423, so € 1,530 per month. Integration benefits constituted a monthly amount of DKK 8,498 (€ 1,138) for married or cohabitant persons with dependent children; DKK 6,072 (€813) for single persons without children.
- Additional benefits: according to MISSOC individual housing benefit *(individuel boligstøtte*) is granted after an objective calculation based on the housing expenditure, the income of the household, the area of the dwelling and the composition of the household. In the former conclusions cycle, the Committee had asked the report for a specific information on the average of this amount. This amount is not indicated in the report.
- Poverty threshold (defined as 50% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value): it was estimated at € 1,254 in 2019 according to Eurostat.

In its previous conclusion the Committee considered that the situation was not in conformity with the Charter on the ground that social assistance (*kontanthjælp)* paid to persons under 30 years of age and of integration allowance *(uddannelseshjælp)* paid to single persons were not adequate. The Committee had further requested information on the average amount of additional benefits that would be paid to all single persons without resources, in receipt of social assistance.

The report refers to the fact that benefits are DKK 15,510 per month, approximately € 2,085 (i.e. 80% of the maximum unemployment insurance benefit) for persons of 30 years or more with dependent children ('providers'), and DKK 11,423, approximately €1,536 (i.e. 60% of the maximum unemployment insurance benefit) for persons of 30 years or more without children ('non-providers'), minus any income. For married couples the benefit amount depends on the income and savings of both spouses regardless that only one of the spouses have applied for social assistance. There is no indication about the amount paid to those under 30 years of age in average.

The Committee notes that, according to the report, the poverty threshold equal to 50% of the median equivalised income should be sligtly different than the one included in Eurostat and a bit lower. The reason for this, according to the Government, is that the national definition of family is narrower.

The Committee recalls that assistance is appropriate where the monthly amount of assistance benefits – basic and/or additional – paid to a single person living alone is not manifestly below the poverty threshold, i.e. 50% of the median equivalised income.

The Committee considers therefore that the levels of social assistanc and of integration allowance paid to single persons are not adequate on the basis that the total amount that can be obtained falls below the poverty threshold.

Right of appeal and legal aid

In its previous conclusion, the Committee requested updated information regarding right of appeal and legal aid. There is no information provided. The Committee reiterates its request and asks the next report to provide specific information on the right to appeal and legal aid. If this information is not provided in the next report, there will be nothing to establish that the situation is conformity with the Charter.

Personal scope

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

Foreign nationals lawfully present in the territory

In its former cycle of Conclusions in 2017, the Committee had considered that the situation in Denmark was not in conformity with the Charter as there was the possibility of revoking a residence permit on the sole ground that the person concerned has been in receipt of social assistance for more than six months while his/her residence permit is still valid, unless they had resided in Denmark for more than seven years.

The Committee notes that the report reiterates its previous explanations and states that, as a main rule, residence permits for the purpose of work, studies and family reunification are granted on the condition that the applicant is self-supportive. If this condition is no longer met, the Danish immigration authorities may – based on an individual assessment – revoke or refuse to extend the residence permit in accordance with the Danish Aliens Act, though these cases remain rare. In practice, it is only possible to repatriate nationals from the Nordic countries, who have resided in Denmark for less than three years, with legal base in the Danish Act on Social Assistance.

The Committee reiterates its previous conclusion of non-conformity in this respect, as the possibility of revoking a residence permit on the sole ground that the person concerned has been in receipt of social assistance for more than six months while his/her residence permit is still valid, is contrary to the Charter.

Foreign nationals unlawfully present in the territory

The Committee recalls that persons in an irregular situation must have a legally recognised right to the satisfaction of basic human material need (food, clothing, shelter) in situations of emergency to cope with an urgent and serious state of need. It likewise is for the States to ensure that this right is made effective also in practice (European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, §187).

The report states that all residents in Denmark have access to public healthcare services e.g. hospital treatment, services in the primary health care sector, i.e. treatment by GP's and specialist practitioners, and municipal health services such as home nursing and dental care to children and youths under the age of 18. Most of the services are free of charge. Asylum seekers and foreign nationals without legal residence in Denmark are not covered by the national health insurance system. Instead, as a starting point, expenses for healthcare to asylum seekers and foreign nationals without legal residence in Denmark are covered by the Immigration Service.

All non-residents under temporary stay in Denmark are entitled to emergency hospital treatment in case of accident, sudden illness and birth or aggravation of chronic disease. They are also entitled to the subsequent non-emergency hospital treatment in cases, where

it is not considered reasonable to refer the person to treatment in their home country. Non-residents in Denmark are charged payment for these. However, in case of emergency no persons are denied emergency hospital treatment in the public healthcare system with reference to payment claims. No payment is charged for births and for treatments of children under the age of 18. Regions can provide the emergency hospital treatment free of charge, when a region considers it reasonable, e.g. treatment of unregistered migrants, homeless persons and persons who obviously are unable to pay.

The Committee considers that the situation in this respect is in conformity with the Charter.

Medical and social assistance during the Covid-19 pandemic

The Committee takes note that the report refers to a number of steps taken to ensure social and medical assistance for foreigners without legal stay or residence during the Covid-19 pandemic. If the authorities encounter an alien without legal stay who is diagnosed with Covid-19, the authorities will contact the Danish Immigration Service to clarify whether the alien is entitled to accommodation and defrayal of expenses by the Danish Immigration Service. The Danish Immigration Service is currently operating two quarantine centres in order to accommodate aliens diagnosed with Covid-19 who are entitled to accommodation and defrayal of expenses by the Danish Immigration Service. Transportation of the aliens is offered from their reception or accommodation centre to the relevant quarantine centre. For aliens without legal stay who are tested negative of Covid-19, the Danish Immigration Service will also – based on a request from the Danish authorities – clarify whether the alien is entitled to accommodation and defrayal of expenses by the Danish Immigration Service. The Danish Immigration Service does not offer accommodation or health treatment outside the reception and accommodation centres.

In an annex to the report, there is a reference to other measures taken, for example, prolonged access to unemployment benefits, increased aces to sickness benefits, economic support for parents of children affected by Covid-19, etc. The Committee asks the next report to produce further information on social assistance and specific measures taken during the Covid-19 pandemic.

Conclusion

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

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

Article 13 - Right to social and medical assistance

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

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

Article 13 - Right to social and medical assistance

Paragraph 3 - Prevention, abolition or alleviation of need

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

Article 13 - Right to social and medical assistance

Paragraph 4 - Specific emergency assistance for non-residents

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

Article 14 - The right to benefit from social welfare services

Paragraph 1 - Promotion or provision of social services

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

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

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

In the previous conclusion (Conclusions XXI-2) the Committee found the situation to be in conformity with the Charter. The report does not indicate any changes to the organisation of social services.

As regards the targeted questions, the report provides that during the COVID-19 pandemic Denmark was partially closed down in March 2020, the social area was main-tained as a critical function. This continues to apply. It means, among other things, that all 24-hour services, placement institutions for children and young people and housing services for adults are maintained. People with disabilities or special social problems must continue to have the necessary help. The same applies to placed children and young people who will not be repatriated from, for example, a place of residence. The municipalities continue to have an obligation to support vulnerable children and young people, and ensure that they receive the help and support they need. Entailing that the municipality has a duty to respond quickly to notifications of, for example, domestic violence. In spring 2020, the municipalities set up emergency shelters and isolation places for the homeless, when, for example, assembly bans and health pro-fessional guidelines required more places. In November 2020, the government and a broad majority of the parliament adopted an agreement focused on combatting loneliness during the Covid-19 pandemic. 50 mio. DKR. was allocated for this purpose. The target groups were vulnerable children, adults and people with disabilities. In February 2021 the Danish Parliament adopted an aid package aimed at securing vulnerable people during the prolonged Covid-19 restrictions. The aid package amounts to 27 mio. DKR, which is distributed to organisations working with the abovementioned target groups.

As regards future epidemics, the Minister of Social Affairs and the Interior has established three new partnerships that can help to create security throughout the reopening of society and counteract loneliness, vulnerability and mental dis-satisfaction in vulnerable groups. The new partnerships were also established in order to gather experience from the Covid-19 crisis. The partnerships are composed of key players in the field, and are based on three key target groups: vulnerable children, vulnerable adults and people with disabilities. The partnerships are to use the experience obtained during Covid-19 in order to help the Danish authorities to be ready and able to counteract should a similar crisis occur.

Conclusion

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

Article 14 - The right to benefit from social welfare services

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

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

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

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

The Committee has previously found the situation to be in conformity with the Charter (Conclusions 2013). No changes have been reported and the Committee upholds its positive conclusion in this regard.

As regards the user involvement, the report provides that proposed legislation undergo public hearing before being presented in parliament and that affected associations, organizations, and others are asked to provide written com-ments to the proposed legislation. The comments as well as the associations and or-ganizations are then made public through the internet. Interested citizens, companies, organizations, etc. can thus see which proposals are under way, which organizations are consulted and which responses have been sub-mitted. The report also makes a reference to the information provided under Article 13.1 on establishment of partnership agreements, related to measures taken to ensure social and medical assistance in the context of Covid-19 and framework concerning persons without residence permit.

The information provided does not comprehensively reply to the targeted question on the user involvement in social services. The Committee recalls its request and asks the exhaustive information to be provided in the next report, in particular, on how the user involvement is fostered in legislation and other decision-making at all levels, and whether any practical measures to support it, including budgetary, have been adopted or envisaged.

Conclusion

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

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

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

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

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

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

The previous Conclusion was deferred (Conclusions XXI-2 (2017)) pending information on the existence of non-discrimination legislation or case law prohibiting discrimination on grounds of age outside the employment sphere.

Autonomy, inclusion and active citizenship

Legislative framework

The Committee recalls that Article 4 of the 1988 Additional Protocol to the 1961 Charter requires State Parties to undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular to enable older persons to remain full members of society for as long as possible. The expression "full members of society" used in Article 4 of the Additonal Protocol requires that older persons must suffer no ostracism on account of their age. The right to take part in society's various fields of activity should be ensured to everyone active or retired, living in an institution or not.

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

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

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

Article 4 of the 1988 Additonal Protocol of the Charter requires the existence of an adequate legal framework for combating age discrimination in a range of areas beyond employment, namely in access to goods, facilities and services, such as insurance and banking products, allocation of resources and facilities. Discrimination against older persons in terms of social rights enjoyment, is also contrary to the Preamble.

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

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

Article 4 of the 1988 Additional Protocol further requires that States Parties provide for a procedure of assisted decision making.

With regard to age-based discrimination, the Committee previously noted that there was no general legislation prohibiting discrimination on grounds of age in access to goods, services and facilities, however it noted that according to the report the principle of non-discrimination is a basic element of public law in Denmark; Danish legislation contains in this regard general provisions to combat discrimination outside the labour market. It requested information on case law on age discrimination outside of employment which would protect older persons from discrimination. Meanwhile, it reserved its position on this issue (Conclusions XXI-1, 2017).

According to the current report there is no legislation prohibiting discrimination on grounds of age outside the labour market. Therefore the Committee concludes that the situation is not in conformity with the Charter on this point.

The Committee previously asked whether consideration had been given to establishing a mechanism which would allow older persons to appoint a trusted third party of their own choice to assist with their decisions. The Committee noted that Denmark adopted an Act on Continuing powers of attorney in May 2016 and asked the next report to provide more information on this subject (Conclusions XXI-2, 2017).

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

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

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

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

The Committee asks the next report to provide information on assisted decision making procedures.

Prevention of abuse of older persons

The Committee previously wished to receive more information on measures taken to combat the abuse of older persons. It asked what was done at local level by the municipalities to evaluate the extent of abuse of older persons in institutions, at home or in private care facilities in their area, whether they run awareness raising campaigns and have taken any specific measures to combat this problem (Conclusions XXI-2 2017).

In response the report states that the Government has allocated 60 million DKK (approximately €80 million) in the period 2019- 2022 for a national action plan to prevent and

reduce extroverted behavior in elderly care, for example among elderly with dementia, for the benefit of both the elderly and employees. The Committee considers that this information is not sufficient for it to assess the situation.

The Committee asks for updated information to be provided in the next report, on measures taken to combat abuse of older persons (beyond the institutional care context), such as measures to raise awareness of the need to eradicate older abuse and neglect, and any legislative or other measures. It also asks whether data has been collected which would indicate the prevalence of older abuse.

Independent living and long term care

The Committee asks whether steps have been taken to move way from the institutionalisation of older persons and adopt a long term care and support in the community model. The Committee recalls that Article 4 of the 1988 Additional Protocol provides that measures should be taken to enable older persons to lead independent lives in their familiar surroundings therefore it considers that older persons requiring long term care should be able to choose their living arrangements. In particular, this requires States Parties to make adequate provision for independent living, including housing suited to their needs and state of health, as well as the necessary resources and supports needed to make independent living possible.

Institutionalisation is a form of segregation, often resulting in a loss of autonomy, choice and independence. The Covid-19 pandemic has put the spotlight on the shortcomings of institutionalised care. The Committee refers in this respect to its Statement on Covid-19 and social rights (adopted March 2021) where it stated that enabling older persons to remain in their familiar surroundings as required by Article 4 of the 1988 Additional Protocol has become even more important in view of the heightened risk of contagion in the congregated settings of nursing homes and other long-term institutional and residential facilities and to the human rights-based argument for investment in the community to give reality to the right to community living is now added a public health argument in favour of moving away from residential institutions as an answer to long term care needs.

The Committee notes that Denmark has given explicit policy priority to community care over residential care, promoting older people’s living in their own home. Therefore, relatively few older persons are in long-term care institutions. Since the law on dwellings for older people from 1987, no new nursing homes have been constructed, and instead a varied range of dwellings adapted for older persons have been developed. People in need for care living in their own home or in special dwellings for the elderly are eligible to receive home nursing, home care and practical help.

The various forms of long-term care services offered under Danish legislation include care in conventional nursing homes (care homes), in modern close-care accommodations (subsidized housing for older people with care facilities and associated care staff) and at home. In modern close-care accommodations housing areas are separated from care services areas. Residents have to pay a monthly rent corresponding to the costs of running the housing estate, but they have access to receive benefits depending on income.

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

Services and facilities

The Committee previously noted that the municipalities are obliged to propose several service providers for the same service. Home help services are provided free of charge by the municipalities. The Committee asked whether, given the free choice offered to the elderly, a service provided by a public service provider which is initially free of charge continues to be so when provided by a private service provider. It also asked whether the

cost of the service to be paid by the older persons remain the same irrespective of whether it is provided by a public or a private service provider (Conclusions XXI-2, 2017).

The Committee notes from the report that the Consolidation Act on Social Services Act No.114 of 30 August 2018 provides that everyone is entitled to services free of charge if they are in need. There is an exemption regarding food service “meals-on-wheels” where the municipality can charge for the service up to a fixed amount. Older people, who receive home care services, have the freedom to choose between different providers but the services are still free of charge (except for food services). Social care services are generally financed though taxes. It is the municipalities who decide on the level of assistance to be provided based on individual need.

According to the report the Danish Patient Safety Authority has and will in the period 2018-2021 perform supervision of nursing homes and delivered home care (*ældretilsyn*). These supervision visits are in addition to the yearly supervision visits carried out by the municipalities. Consideration is being given to making such supervision permanent.

As regards “preventive home visits” carried out by the municipalities in order to identify the need for individual assistance and assess wellbeing the report states that the relevant legislation was amended in 2019 to oblige the municipalities to offer preventative home visits to all those over 70 years of age who live alone. Visits to all those between 75 and 80 are mandatory. Persons of between 65 and 70 years of age who are at risk are also offered visits.

The report provides information on rehabilitation services offered to older persons by municipalities, since 2017 an increased emphasis has been put on rehabilitation (rather than care).

The Committee asks whether there is an adequate supply of care services, including long term care services and whether there are waiting lists for services.

The Committee asks what support is available for informal carers.

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

Housing

The report states that the municipalities are responsible for ensuring that a sufficient supply of housing is available for older people in need of this. The housing and planning authorities are in charge of promoting housing for older persons and other groups with special housing needs. The Government supports the establishment of sheltered housing for elderly people. The Committee asks whether the supply of sheltered/supported housing matches demand .

Health care

According to the report in 2019 the Danish government allocated 244.5 million DKK (€32 836 350) in the period 2020-2023 for the continuation and follow up of a part of the initiatives from The National Action Plan on Dementia 2025.

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

The Committee notes that the pandemic has had devastating effects on older persons’ rights, in particular their right to protection of health (Article 11 of the Charter), with consequences in many cases for their rights to autonomy and to make ther own decisions and life-choices, their right to continue to live in the community with adequate and resilient supports to enable them to do so, as well as their right to equal treatment when it comes to

the allocation of health care services including life-saving treatments (e.g., triage and ventillators). Whether still living independently or not, many older persons have had their services removed or drastically reduced. This has served to heighten the risk of isolation, loneliness, hunger and lack of ready access to medication.

Further the Covid-19 crisis has exposed examples of a lack of equal treatment of older persons, such as in medical care where rationing of scarce resources (e.g. ventilators) has sometimes been based on stereotyped perceptions of vulnerability and decline in old age. Too much space was allowed for implicit judgments about the 'quality of life' or 'worth' of lives of older persons when setting the boundaries for such triage policies.

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

Institutional care

The report states that from December 2019 it has been an obligation for all nursing homes providing care to older persons to register on the digital overview of nursing homes (*Plejehjemsoversigten*). The purpose of this overview is to provide an overall access to information on all nursing homes focusing on older persons as well as to support the free choice of nursing homes.

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

The Committee considers that the overall emphasis in the Charter on personal autonomy and respect for the dignity of older persons, results in a pressing need to re-invest in community-based supports as an alternative to institutions. Where, in the transition period, institutionalisation is unavoidable, Article 4 of the 1988 Additional Protocol requires that living conditions and care be adequate and that the following basic rights are respected: the right to autonomy, the right to privacy, the right to personal dignity, the right to participate in decisions concerning the living conditions in the institution, the protection of property, the right to maintain personal contact (including through internet access) with persons close to the older person and the right to complain about treatment and care in institutions. This also applies in the Covid-19 context.

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

Adequate resources

When assessing the adequacy of the resources of older persons under Article 4 of the 1988 Additional Protocol, the Committee takes into account all social protection measures guaranteed to older persons and aimed at maintaining an income level which allows them to lead a decent life and participate actively in public, social and cultural life. In particular, the Committee examines pensions, contributory or non-contributory, and other complementary cash benefits available to older persons. These resources are then compared with median equivalised income.

The Committee refers to its previous conclusion for details of the Danish pension system and welfare assistance available to older persons (Conclusions XXI-2, 2017)

The Committee previously noted that the amount of the state pension, pension supplements, allowances and other services granted to pensioners ensure the adequacy of older persons'

resources was in accordance with Article 4 of the 1988 Additional Protocol (Conclusions XXI-2 ,2017).

The Committee notes from MISSOC that in 2019 the basic amount of the old age pension was DKK 6,327 (€847) per month and the pension supplement was DKK 6,923 (€927) per month for a single person. In certain cases a supplementary pension is payable.

The poverty threshold, defined as 50% of median equivalised income and calculated on the basis of the Eurostat at-risk-of-poverty threshold value, was estimated at €15,052 per month in 2019. The Committee notes therefore the level of the old age pension is in conformity with the requirements of the Charter.

The Committee asks for updated information on benefits payable to those not entitled to the old age pension.

Covid-19

The Committee asked a targeted question on measures taken to protect the health and well-being of older persons in the context of a pandemic crisis such as Covid-19.

The report provides information on measures taken to protect and assist older persons during the Covid-19 pandemic. A temporary possibility of re-allocation of resources so that the municipality could reduce the long term care if – and only if – the resources were needed to care for people with Covid-19. The municipality also had to asses each person individually to make sure that the person could manage without the help. This reallocation of resources has been lifted and the municipality must follow the normal rules regarding long term care.

The municipality also had to consider if recipients of care who temporarily received less care than normal needed extra practical help to clean their home.

Staff in nursing homes and in home care were regularly tested for Covid-19.

Local authorities were given the opportunity to prioritise funds for older people in care homes, and in their own homes .

The Committee refers to the section on older persons in its statement on Covid-19 and Social Rights (March 2021) (and to sections cited above). It recalls Article 4 of the 1988 Additional Protocol requires that older persons and their organisations be consulted on policies and measures that concern them directly, including on ad hoc measures taken with regard to the current crisis. Planning for the recovery after the pandemic must take into account the views and specific needs of older persons and be firmly based on the evidence and experience gathered in the pandemic so far.

Conclusion

The Committee concludes that the situation in Denmark is not in conformity with Article 4 of the 1988 Additional Protocol to the 1961 Charter on the ground that there is no legislation prohibiting discrimination on grounds of age outside of employment.