



March 2023

## **EUROPEAN SOCIAL CHARTER**

European Committee of Social Rights

Conclusions XXII-4 (2023)

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

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report requested from the States Parties concerned the following provisions of the thematic group IV " Children, families and migrants ":

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

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

The 1961 European Social Charter was ratified by Denmark on 3 March 1965. The deadline for submitting the 42nd report was 31 December 2022 and Denmark submitted it on 22 December 2022.

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, whereby the Committee requested a report on the implementation of the Charter). The Committee therefore focused specifically on these aspects. It also assessed the replies to the previous conclusions of non-conformity, deferral and conformity pending receipt of information (Conclusions 2019).

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

Denmark has not accepted the following provisions from the above-mentioned group: 7§§1-10, 8§§2-4, 19§§1-10.

The conclusions relating to Denmark concern 3 situations and are as follows:

- 1 conclusion of conformity: Article 8§1.
- 2 conclusions of non-conformity: 16, 17.

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

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

### *Paragraph 1 - Maternity leave*

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

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

In its previous conclusion (Conclusions XXI-4 (2019)), the Committee found that the situation in Denmark was in conformity with Article 8§1 of the 1961 Charter, pending receipt of the information on whether there was any kind of compensation for employed women who did not qualify for maternity benefit during maternity leave; whether maternity benefits could also be combined with other benefits; and clarifying what categories of employees (and their percentage in each category) were not entitled to compensation during maternity leave (from their employer and/or in the form of maternity benefits) amounting to at least 70% of their basic salary.

### ***Right to maternity leave***

The Committee had previously concluded that the situation in Denmark was in conformity with the 1961 Charter on this point. Therefore, there was no examination of the situation in 2023 and the Committee reiterates its previous conclusion.

### ***Right to maternity benefits***

In its previous conclusion, the Committee asked if a worker who was not receiving maternity benefit might still be entitled to compensation from the employer during maternity leave corresponding to at least 70% of her basic salary. It also asked what categories of employees (and their percentage in each category) were not entitled to compensation during their maternity leave (from their employer and/or in the form of maternity benefits) corresponding to at least 70% of their basic salary.

In reply, the report states that the public sector is fully covered by collective agreements and employed women in the public sector thus have the right to their ordinary pay during maternity leave. The collective agreement coverage in the private sector is approximately of 73% and women covered by these agreements have the right to their salary during maternity leave. In addition, many women employed on individual contracts in the private sector are also entitled to their salary during maternity leave.

There are no statistical data available regarding the amount of pay that employees are entitled to during maternity leave according to the collective agreements or individual employment contracts in the private sector. In some cases, the employees receive their full salary during the leave, while in other cases they receive a partial salary.

During maternity leave, if an employee does not receive their previous salary, they may be entitled to maternity leave benefits if they fulfil certain conditions. If an employee has worked in Denmark for the previous four whole months, they will receive maternity leave benefits if they meet the following criteria: the employee is in employment the day before the leave starts or on the first day of the leave; the employee has worked at least 160 hours within the last four whole months before the leave; the employee has worked at least 40 hours per month for at least three of those four months.

The Committee recalls that, under Article 8§1, the level of income-replacement benefits should be fixed so as to stand in reasonable proportion to the previous salary (these shall be equal

to the previous salary or close to its value, and not be less than 70% of the previous wage) and it should never fall below 50% of the median equivalised income (Statement of Interpretation on Article 8§1, Conclusions 2015). If the benefit in question stands between 40% and 50% of the median equivalised income, other benefits, including social assistance and housing, will be taken into account. On the other hand, if the level of the benefit is below 40% of the median equivalised income, it is manifestly inadequate and its combination with other benefits cannot bring the situation into conformity with Article 8§1.

According to Eurostat data, the median equivalised income in 2022 was €33,260 a year or €2,771.6 a month. 50% of the median equivalised income amounted to €16,630 a year, or €1,385.8 per month. According to the MISSOC database and the report, maternity benefits will be calculated according to the employee's hourly wage and how many hours of leave the employee takes per week. There is no minimum level of maternity benefits is set, but there a maximum amount of maternity benefits, which amounts to €600.32 weekly in 2022 for a person who works 37 hours a week. Even if this amount is, in itself, above the median equivalised income, it can be cumulated with the social assistance benefit and/or the salary received. Therefore, the Committee considers that the situation is in conformity with the 1961 Charter on this point.

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

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

The report indicates that the right of employed women to paid maternity leave, as set out by the social partners in collective agreements or in individual contracts, was not affected by the Covid-19 crisis.

### *Conclusion*

The Committee concludes that the situation in Denmark is in conformity with Article 8§1 of the 1961 Charter.

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

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

The Committee recalls that for the current reporting cycle, States were asked to respond to several targeted questions for Article 16 of the 1961 Charter as well as, where applicable, previous conclusions of non-conformity, deferral or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the Charter's implementation in respect of the provisions relating to the "Children, family and migrants" thematic group).

The Committee deferred its previous conclusion pending receipt of the information requested on equal access to family benefits and housing for families (Conclusions XXI-4 (2019)).

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

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

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

First of all, the Committee notes that Denmark has ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) and that it came into force in Denmark in August 2014.

In its previous conclusion (Conclusions XXI-4 (2019)), the Committee asked for updated information in the next report on domestic violence against women and related convictions, the use of restraining orders, the implementation of measures and their impact on reducing violence, particularly in the light of the recommendations made by the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) in its first baseline evaluation report.

Furthermore, in its targeted questions, the Committee asked for updated information on measures taken to reduce all forms of domestic violence against women including information on incidence and conviction rates.

The report states that according to data from the police case management system POLSAS, there were 485 reports to the police, 201 formal charges and 164 convictions for domestic violence in 2019, while in 2020 there were 471 reports, 227 charges and 157 convictions, and in 2021, 505 reports, 202 charges and 166 convictions. These data relate only to cases in which the victim was a woman and had the same address as the perpetrator when the offence was reported to the police.

The number of requests for exclusion orders, restraining orders and removal orders rose from 1 200 in 2019 to 1 350 in 2021. Over the same period, the number of orders issued fell from 568 to 508. These data make no distinction between genders.

As part of a plan to provide "Better help for victims of stalking" (August 2021), police processing of restraining orders has been improved through measures including the establishment of specialised teams who focus specifically on cases for which such orders may be needed. In addition, the process of digitising the procedure has begun with a view to accelerating it. A four-week time limit within which restraining orders can be contested has also been added to the law. This measure provides more security for victims as persons covered by the order can no longer have it overturned once the four weeks are up.

As to the implementation of the measures referred to in Denmark's previous report, the Government states that a panel of experts was appointed in 2018 to make recommendations in the area of sexual assault and abuse. They made six recommendations, all of which were followed up on. As a result, (1) a list of mandatory case handling stages was drawn up and included in police guidelines in 2019; (2) the skills and knowledge of police officers and

prosecutors in relation to violence in close relationships, stalking, rape and so-called honour-related crimes were improved (for example, new continuing education and further training courses were introduced); (3) Article 745e of the Administration of Justice Act was amended in February 2022 to expand the possibility for rape victims to be heard by video.

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

### ***Family benefits***

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

The Committee deferred its previous conclusion pending receipt of more detailed information on family benefits to which foreign nationals had access without meeting any length of residence requirement. It also asked for proof from the Government that these benefits were available without such a requirement having been met (Conclusions XXI-4 (2019)).

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

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

It also considered that Article 16 rules out length of residence requirements for contributory benefits, but States may apply a length of residence requirement for non-contributory benefits on condition that the length is not excessive. The proportionality of such length of residence requirements is examined on a case-by-case basis having regard to the nature and purpose of the benefit. A six-month requirement is reasonable and therefore in conformity with Article 16; however, a twelve-month or, even more so, a three-to-five-year requirement is excessive and hence in violation of Article 16 (Conclusions XVIII-1 (2006), Denmark).

In response, the report indicates that temporary child allowance is paid regardless of residence status. Persons must, however, be eligible for one of the social assistance benefits to be entitled to this allowance.

The Government does not mention any other family benefits which are paid without a residence requirement. Family or “child and youth” allowance (*børne- og ungeydelsen*) is paid subject to residence or employment status: at least one of the persons who has custody of the child must have resided or worked in Denmark for at least 6 months in the last 10 years prior to the payment period. Benefit entitlement is however acquired progressively every six months (i.e. the amount increases from 8.3% of the full benefit after six months of residence or employment to 91.7% after 66 months) so that entitlement to full benefit is acquired only after six years of residence or employment in the ten years prior to the payment period. This rule applies to Danish nationals, foreign nationals and refugees granted a residence permit or a humanitarian residence permit. For persons covered by Regulation (EC) No. 883/2004 of the European Parliament and of the Council of 29 April 2004 on the co-ordination of social security systems, periods spent in other member states must, under the existing rules, be included in the calculation of the accrued period as if these were periods spent in Denmark.

Child allowance (*børnetilskud*) is subject to residence in Denmark for foreign nationals (apart from nationals of the EU/EEA and Swiss nationals, who may claim this right on the basis of EU law, and from some categories of refugee). Nationals of other States Parties are required to have resided for one or three years in Denmark depending on the type of benefit. In addition, as with family allowance, entitlement to full benefit is acquired only after six years of residence or employment in the ten years prior to the payment period.

The Committee considers that the situation in Denmark is not in conformity with Article 16 of the 1961 Charter on the grounds that the length of residence requirement is excessive (i) for

entitlement to family allowance and (ii) for entitlement to child allowance for nationals of certain States Parties (non-EU/EEA) lawfully resident in the country.

### **Level of family benefits**

In its targeted questions, the Committee asked for information on the amounts of family benefits paid and the median equivalised income for the reference period. It also asked if family benefits were means tested and if so, what percentage of families were covered.

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

The Committee notes from Eurostat data (published on 17 March 2023) that the monthly median equivalised income stood at €2,674 in 2021.

The report states that there are several types of child/family benefit. They include family or “child and youth” allowance (*børne- og ungeydelsen*, i.e. for children and young people under the age of 18), child allowance (*børnetilskud*) and temporary child allowance. They are all tax-free.

According to the information published on the Ministry of Finance’s website, the amount of family allowance varies according to the age of the child; in 2021, it was DKK 1 543 (about €207 at the exchange rate of 24 August 2023) per month and per child for the 0-2 age group, DKK 1,222 (about €164) for the 3-6 age group and DKK 961 (about €129) for the 7-17 age group.

The amount does also depend on income: it is reduced by 2% if income exceeds a certain upper limit (DKK 818 300, which was about €109 800, in 2021).

As to the percentage of families covered, the Government states that in 2022, of 1.13 million children, 94.4% (about 1.08 million) received full family allowance.

The Committee notes that in 2021, amounts of full family allowance came to about 4.8%, 6.1% and 7.7% of median equivalised income depending on the age of the child (7-17, 3-6 or 0-2) and that the proportion of children or young people for whom family allowances were paid was very high. It also notes that other benefits (for example child allowance, *børnetilskud*) may be paid in addition to family allowance.

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

In its targeted questions, the Committee asked what measures had been taken to ensure that vulnerable families could afford their energy bills so that their right to adequate housing (which includes access to essential services) was respected.

In response, the report states that between 2018 and 2021, there were no specific subsidies for energy costs. However, some general social policy measures made it possible to provide financial support for energy-related needs. Among these were “additional cash support”, “heating supplement” and “special supplementary housing benefit”.

In one of its targeted questions, the Committee also asked if it was planned to maintain or discontinue any special temporary measures that were introduced to support vulnerable families financially during the Covid-19 pandemic and, if they were discontinued, what effect this would have on such families.

In reply, the report states that child allowance and temporary child allowance were not changed because of the Covid-19 pandemic.

## ***Housing for families***

In one of its targeted questions, the Committee asked for updated information on the availability of adequate affordable housing for families.

In reply, the report states that there are about 627,000 social housing units in Denmark, which is about 21% of total dwellings. About 500,000 of these are family homes and most are of a high quality. Local authorities assess local social housing needs and decide on this basis to make commitments – and provide financial support – for the construction of new housing.

The social housing sector is regulated so as to keep rents relatively low. Furthermore, to ensure that persons on low incomes have access to decent housing, they are entitled to individual housing benefit. At the beginning of 2022, 60% of households in the social housing sector were receiving housing benefit, 50,000 of which included children. Housing benefit covers 40 to 60% of rent on average depending on the composition of the household.

In describing the measures taken during the reference period, the Government states that in 2019, in order to encourage municipalities to commit to the construction of small affordable dwellings, it decided to lower the base capital required for projects with an average home size of less than 90 m<sup>2</sup>. Between 2019 and 2021, local authorities supported about 5 300 family homes on the basis of this new regulation, accounting for about two-thirds of all family homes.

Furthermore, in November 2021, the Government received support from the Danish Parliament for a political agreement to set up a new fund supporting mixed cities. The aim was to finance the creation of affordable family housing, targeting low-income families in particular. A large share of the new housing will be constructed in big cities, where there is currently a housing shortage and it is expensive to build new social housing.

In its previous conclusion, the Committee asked for more detailed information in the next report on all the aspects of the legal framework providing protection against eviction such as the obligation to fix a reasonable notice period before eviction, access to legal remedies and legal aid and compensation in the event of illegal eviction (Conclusions XXI-4 (2019)).

The Committee points out that to comply with the Charter, legal protection of persons liable to be evicted must be prescribed by law and include certain obligations such as an obligation to fix a reasonable notice period before eviction, prohibition on carrying out evictions at night or during the winter and access to legal remedies.

In its report, the Government states that the owner can terminate a rent agreement for non-payment of rent. He or she must send a written demand (or reminder) to the tenant on the third business day after the last due date for rent and the tenant then has 14 days to settle the arrears. If the tenant fails to meet this deadline, the rent agreement is terminated, and he/she must immediately vacate the tenancy.

Owners may not evict tenants themselves. If a tenant fails to move voluntarily after termination of an agreement, the owner must apply to the enforcement court. In the social housing sector, the law provides that owners are required to inform municipalities when a case of rent arrears is referred to the enforcement court.

Under the relevant social legislation, the municipality has various options where it comes to assisting tenants facing eviction (advice on the possibility of obtaining housing support; help with payment of arrears; help with managing finances, etc.). When they receive notification from the owner or the courts that eviction proceedings are under way and there are children or young people under the age of 18 in the household, municipalities must immediately address the issue of assistance. The same applies if the municipality has information that the tenant is in need of assistance.

The Government adds that there are no specific rules on compensation for unlawful eviction. Cases regarding unlawful eviction follow the general principles of compensation law.

In its previous conclusion the Committee asked for information in the next report on access for refugee families to housing in practice (Conclusions XXI-4 (2019)).

The Government states that municipal authorities are responsible for housing refugees. When a refugee is granted a residence permit, the Danish Immigration Service decides which municipality they must live in. Refugees may be assigned to a specific municipality on the basis of personal circumstances (e.g. a job offer, health reasons, strong family ties). To foster integration and combat the development of parallel societies in some areas, housing should not in principle be assigned in vulnerable neighbourhoods.

The municipality to which a refugee is assigned must provide temporary accommodation; it may offer permanent housing but is not obliged to do so. If the refugee is accompanied by his or her family, they will be assigned to the same municipality, which must offer them housing enabling them to live together.

The authorities in the municipality to which they are assigned are required to provide all refugees over the age of 18 with an integration programme. It must be a minimum length of one year and a maximum length of five. On completion of the programme, refugees may settle in a municipality of their choice without any impact on their social benefits.

### *Conclusion*

The Committee concludes that the situation in Denmark is not in conformity with Article 16 of the 1961 Charter on the grounds that:

- the length of residence requirement for entitlement to family allowance (*børne- og ungedelsen*) is excessive;
- the length of residence requirement for nationals of certain States Parties (non-EU/EEA) lawfully resident in the country to be entitled to child allowance (*børnetilskud*) is excessive.

## **Article 17 - Right of mothers and children to social and economic protection**

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 17 of the 1961 Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the 1961 Charter in respect of the provisions falling within the thematic group “Children, families and migrants”).

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

In its previous conclusion, the Committee concluded that the situation in Denmark was not in conformity with Article 17 of the 1961 Charter on the grounds that the maximum length of pre-trial detention was excessive, and children could be placed in solitary confinement for up to four weeks (Conclusions XXI-4). The assessment of the Committee will therefore concern the information provided by the Government in response to the conclusion of non-conformity, the targeted questions and the general questions.

### ***The legal status of the child***

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

The report states that generally a child acquires Danish citizenship by birth if the child has a Danish parent. Additionally, a child may acquire Danish citizenship by marriage of the child’s parents, if one of the parents is Danish, or by adoption under certain circumstances. Naturalisation is an exclusive prerogative of the Danish Parliament.

The report further states that the management of vital records including birth registration is under the general responsibility of the Ministry of Ecclesiastical Affairs. Birth certificates of all persons born in Denmark are issued in the parish church in which the child was born, and not by the Danish Immigration Service. However, the latter issues personal identification numbers to children, who are born to asylum seekers in Denmark.

### ***Child poverty***

Previously, the Committee asked for information on rates of child poverty (Conclusions XXI-4).

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

The report states that creating equal opportunities for all children has been a key priority for successive Danish Governments. It is possible to receive child allowance and it is subject to certain conditions. Temporary child allowance is a temporary tax-free supplement targeting families receiving the lowest social assistance. Child and youth allowance is a tax-free benefit paid to every family with children in Denmark. It is also possible to receive special support for housing and help with individual expenses, as well as subsidies for medicine. This applies to all children.

The report further states that in 2018, plans in the five regions of Denmark were initiated with the purpose of testing an advanced regional function in the field of child and youth psychiatry. Municipalities are responsible for ensuring that children and young people have a healthy growth, and they shall provide all children and young people with health guidance, assistance and functional examination by a child nurse until the end of school, free of charge. Child nurses also focus on support, investigation and follow-up of children and adolescents at risk. With regard to general practitioners, children have access to free treatment. In Denmark, the emphasis is also on early detection and prevention of mental disorders.

The report states that children have equal access to Early Childhood Education and Care (ECEC) facilities until they reach school age and the purpose of it is to prevent social exclusion through the general work of supporting children, including children in vulnerable situations. In 2018, it was decided to intensify efforts towards children from socially vulnerable families during their first years of life through the distribution of funds for the employment of more pedagogical staff in the ECEC. Since 2018, all ECEC facilities must also ensure that they accept a maximum of 30% of children from vulnerable areas. Moreover, since that same year, children from vulnerable areas must be enrolled in a mandatory learning programme in a day-care centre 25 hours a week.

The report also states that one of the main initiatives is the new Children's Act which will provide vulnerable children with a number of new rights that aims to ensure that the voice of the child will be in the forefront in cases regarding special support. The Committee notes that the Children's Act has not yet been adopted.

The report states that the National Council for Children in Denmark works to safeguard rights of children and young people in Denmark. It takes children's views on board in their work and approximately 2,500 children from across the country are a part of the National Council's Children's Panel. Young people are involved in the preparation of the reform "Children First" and work towards future Children's Act.

The Committee notes from EUROSTAT that in 2021, 14% of children in Denmark were at risk of poverty or social exclusion, while in 2018 the percentage was 15.4%. The Committee notes that this percentage is significantly lower than the EU average (24.4% in 2021).

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

The EUROSTAT data and the EU-27 rate of children at risk of poverty or social exclusion is used as key point of reference and indicator of state compliance with Charter rights by the Committee. The Committee will also have regard to disimprovement in terms of the rate of children at risk of poverty or social exclusion in a State Party. Furthermore, the Committee also takes into account non-monetary measures adopted at reducing child poverty and social

exclusion such as ensuring access to quality and affordable services in the areas of health, education and housing. When assessing State conformity with Article 17, the Committee will also take into account the extent to which child participation is ensured in work directed towards combatting child poverty and social exclusion.

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

Previously, the Committee asked what measures had been taken to provide alternatives to detention for children in an irregular migration situation, to ensure that all unaccompanied children were accommodated in appropriate facilities and were never accommodated with adults, and to ensure that siblings were kept together. It also asked what measures had been taken to ensure that unaccompanied children were protected from exploitation and abuse. It also asked whether Denmark carried out bone testing and, if so, what potential consequences it could have (Conclusions XXI-4).

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

In reply to the questions asked in previous conclusions, the report states that the care of persons in the Danish asylum system is generally the responsibility of the Danish Immigration Service. The Immigration Service considers unaccompanied minors as a particular vulnerable group that requires special care. Even though there is no legislation explicitly prohibiting the use of detention of children in Denmark by the immigration authorities, detention of unaccompanied minors does not take place in the reception and accommodation system. Moreover, Section 37(10) of the Danish Aliens Act states that unaccompanied minors may not be detained in prison.

The report further states that unaccompanied minors are not accommodated together with adults and they are generally accommodated together with other minors of the same age group and gender. If the behaviour of an unaccompanied minor arouses suspicions, the employees of specialised accommodation facilities have an obligation to report their concerns to the social authorities.

The Committee notes from other sources (the Council of Europe Handbook on the protection of children against sexual exploitation and sexual abuse in crisis and emergency situations) that when an unaccompanied minor asylum seeker in Denmark is considered a potential victim of trafficking in human beings, this will be examined, and a decision will be made as soon as possible due to the minor's vulnerability.

With regard to bone testing, the report states that when a child applies for asylum in Denmark, the Danish Immigration Service, as part of the asylum process, can ask them to consent to an age assessment. This is the case if the child cannot document their age and appears older than the age stated. The child is always represented by an adult in the asylum interview. Danish legislation does not specify which methods can be used for an age assessment. However, the examination is carried out on the basis of a somatic examination/medical examination, an X-ray examination of teeth, X-ray of the left wrist and a physical medical examination. The Committee notes that it has already stated that the use of bone testing to determine the age of unaccompanied foreign minors is inappropriate and unreliable (European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France, Complaint No. 114/2015, decision on the merits of 24 January 2018, §113). In these circumstances, the Committee considers that the situation in Denmark is not in conformity with Article 17 of the 1961 Charter on the ground that bone testing is used to assess the age of children in irregular migration situation.

In reply to the targeted question, the report states that in relation to Covid-19, in 2020, 13.5 million Danish kroner (approximately 1.8 million euros) were allocated to a number of organisations providing advice and practical help to vulnerable children and their families, there was an agreement to ensure that socially vulnerable children, among others, could get

through Covid-19 as best as possible. Summer activities were planned, additional means to combat loneliness were introduced, extra Christmas aid for vulnerable families was distributed. In 2021, an aid package was distributed to vulnerable children and an initiative was launched regarding the learning and well-being of schoolchildren after Covid-19.

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

In its previous conclusion, the Committee asked to be kept informed of all trends in this area and of all measures taken to reduce the number of children in institutional care (Conclusions XXI-4).

The report states that the “Children First” reform aims to ensure that vulnerable children receive the right help earlier than at present. Under Danish law, the social measures taken in each case must always be based on an individual professional assessment of the child’s needs. The reform entails, among other things, an initiative supporting the spread of “family houses” to all Danish municipalities to strengthen early and preventive measures for vulnerable children and families.

The report states that over the past years, the number of children placed in care has been decreasing in Denmark, especially the number of children in institutional care. There has been a slight increase in the number of children placed in foster family care.

The Committee notes from UNICEF data that in 2021, out of all children in care, the proportion of children in residential care in Denmark was 33%; 66% of children were in formal family-based care.

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

The Committee previously concluded that the situation in Denmark was not in conformity with Article 17 of the 1961 Charter on the grounds that the maximum length of pre-trial detention was excessive and that children could be placed in solitary confinement for up to four weeks. It also asked for information on all developments in the situation and information on the maximum prison sentences that could be imposed on a child (Conclusions XXI-4).

The report states that in 2018, the Act on Combatting Youth Crime was adopted. Its purpose is to determine targeted individual preventive measures for children and young people between the ages of 10 and 17. The measures must be implemented in the best interests of the child or young person, and they must be holistic, based on the child’s or young person’s own resources, and organised on the basis of a specific assessment of the child’s or young person’s and family’s circumstances.

The report states that the age of criminal responsibility in Denmark is 15 years. According to Section 33(3) of the Criminal Code, an offender, who has not reached 18 years, when the act was committed, cannot be sentenced to life imprisonment. Maximum prison sentence for children under 18 can be more than 8 years if a very serious crime has been committed. Children under 18 can be placed in pre-trial detention for four months when the accused is guilty of an offence punishable by possible imprisonment of up to six years, or for eight months when the accused is charged with an offence punishable by more than six years’ imprisonment. The Committee recalls that it has previously found that eight-month and seven-month periods of pre-trial detention were not in conformity with the Charter (Conclusions XX-4, 2015, Denmark, Conclusions 2019, Slovak Republic). The Committee considers that, in order to be in conformity with the Charter, the pre-trial detention of children should not exceed six months.

The Committee notes from other sources (Report to the Danish Government on the visit to Denmark carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 7 January 2020) that the length of solitary confinement has been reduced to a maximum of three days as a general rule, and seven days

under specific circumstances. However, the maximum of four weeks still applies in cases of violence against staff.

Taking into account the information provided, the Committee notes that the situation in Denmark has not changed and reiterates its conclusion of non-conformity with the 1961 Charter on the grounds that the maximum length of pre-trial detention is excessive and that children can be placed in solitary confinement for up to four weeks.

#### *Conclusion*

The Committee concludes that the situation in Denmark is not in conformity with Article 17 of the 1961 Charter on the grounds that:

- bone testing is used to assess the age of children in irregular migration situation;
- the length of pre-trial detention of children is excessive;
- children can be placed in solitary confinement for up to four weeks.