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EUROPEAN SOCIAL CHARTER

European Committee of Social Rights

Conclusions XXII-4 (2023)

LUXEMBOURG

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 Luxembourg on 10 October 1991. The deadline for submitting the 26th report was 31 December 2022 and Luxembourg submitted it on 22 December 2022.

The Committee recalls that Luxembourg 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.

Luxembourg has not accepted the article 8§4 from the above-mentioned group.

The conclusions relating to Luxembourg concern 25 situations and are as follows:

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

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

Article 7 - Right of children and young persons to protection

Paragraph 1 - Prohibition of employment under the age of 15

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

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

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

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

The Committee notes from the report that, with regard to activities to monitor the ban on work under the age of 15, the Labour and Mines Inspectorate revealed 3 and 2 breaches in the construction sector in 2020 and 2021 respectively, for which sanctions were imposed.

Conclusion

The Committee concludes that the situation in Luxembourg is in conformity with Article 7§1 of the 1961 Charter.

Article 7 - Right of children and young persons to protection

Paragraph 2 - Higher minimum age in dangerous or unhealthy occupations

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

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

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

Conclusion

The Committee concludes that the situation in Luxembourg is in conformity with Article 7§2 of the 1961 Charter.

Article 7 - Right of children and young persons to protection

Paragraph 3 - Prohibition of employment of young persons subject to compulsory education

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

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

In its previous conclusion the Committee found that the situation in Luxembourg was not in conformity with the Charter on the ground that children still subject to compulsory education are not guaranteed at least two consecutive weeks of rest during the summer holidays.

The Committee previously noted (Conclusions XXI-4, XX-4) that children aged 15 and over who are still subject to compulsory education can perform light work during the school holidays. The Committee also noted that during one calendar year, children who were still subject to compulsory education can actually work for two months during the summer holidays, which covers the entire duration of the summer holidays.

The report indicates that there is no change to this situation. Therefore, the Committee reiterates its previous finding on this ground.

Conclusion

The Committee concludes that the situation in Luxembourg is not in conformity with Article 7§3 of the 1961 Charter on the ground that children who are still subject to compulsory education are not guaranteed an uninterrupted rest period of at least two weeks during the summer holidays.

Article 7 - Right of children and young persons to protection

Paragraph 4 - Length of working time for young persons under 16

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

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

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

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

Conclusion

The Committee concludes that the situation in Luxembourg is in conformity with Article 7§4 of the 1961 Charter.

Article 7 - Right of children and young persons to protection

Paragraph 5 - Fair pay

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

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

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

Fair remuneration for young workers and apprentices

The Committee has previously concluded that the situation in this respect is in line with the requirements of the Charter (Conclusions 2019). However, with regard to the minimum wage paid to adults, the Committee points out that in 2022 it found the situation in Luxembourg not to be in conformity with Article 4§1 of the 1961 Charter. Since the net minimum wage fell below 50% of the net average wage in Luxembourg, the Committee considered that it did not ensure a decent standard of living (Conclusions (2022)). It recalls that “fair” or “appropriate” character of the wage is assessed by comparing young workers’ remuneration with the starting wage or minimum wage paid to adults (Conclusions XI-1 (1991), United-Kingdom) and that the reference minimum wage must in all cases be sufficient to comply with Article 4§1 of the Charter (Conclusions 2018, Article 4§1). Accordingly, the Committee concludes that the situation in this respect is not in conformity with Article 7§5 of the Charter.

Fair remuneration in atypical jobs

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

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

The report states that pursuant to the law, the minimum rate of conventional wages for adolescents under the age of eighteen is set in percentage of the salary of adult employees for the work of equal value, as follows: for adolescents aged seventeen to eighteen: 80 per cent; for adolescents aged fifteen to sixteen: 75 per cent. The rates of the minimum social wage are guaranteed to employees aged eighteen. Any stipulation of an individual contract or a collective labor agreement contrary to the provisions of this article is null and void. Individual contracts and collective labor agreements may, however, derogate from the provisions of this article by stipulations more favorable to adolescent employees. The Committee understands that these provisions apply to remuneration in all types of contracts, including for atypical jobs or in the gig or platform economy. The report further specifies that in Luxembourg there is no provision for “zero hours” employment contracts. The Committee recalls, in this regard, that the reference minimum wage must in all cases be sufficient to comply with Article 4§1 of the Charter (see above).

Enforcement

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

The report does not provide the requested information.

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

Conclusion

The Committee concludes that the situation in Luxembourg is not in conformity with Article 7§5 of the 1961 Charter on the ground that young workers' wages are not fair and apprentices' allowances not appropriate, since they are calculated on the basis of the minimum wage paid to adults, which is considered insufficient to ensure a decent standard of living.

Due to the failure to provide the information listed below the Committee concludes that the situation in Luxembourg is not conformity with Article 7§5 of the Charter. The Committee considers that this failure to provide information amounts to a breach by Luxembourg of their reporting obligations under Article 21 of the 1961 Charter.

List of questions:

- information on measures taken to ensure that the right of young persons to fair pay is effectively enforced.

Article 7 - Right of children and young persons to protection

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

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

The Committee recalls that no questions were asked for Article 7§6 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Children, families and migrants” thematic group).

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

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

Conclusion

The Committee concludes that the situation in Luxembourg is in conformity with Article 7§6 of the 1961 Charter.

Article 7 - Right of children and young persons to protection

Paragraph 7 - Paid annual holidays

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

The Committee recalls that no targeted questions were asked for Article 7§7 of the 1961 Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the 1961 Charter in respect of the provisions relating to the “Children, families and migrants” thematic group).

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

Conclusion

The Committee concludes that the situation in Luxembourg is in conformity with Article 7§7 of the 1961 Charter.

Article 7 - Right of children and young persons to protection

Paragraph 8 - Prohibition of night work

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

The Committee recalls that no targeted questions were asked for Article 7§8 of the 1961 Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the 1961 Charter in respect of the provisions relating to the “Children, families and migrants” thematic group).

In its previous conclusion, the Committee found that the situation in Luxembourg was in conformity with Article 7§8 of the 1961 Charter (Conclusions XXI-4 (2019)). Therefore, the Committee reiterates its previous conclusion.

Conclusion

The Committee concludes that the situation in Luxembourg is in conformity with Article 7§8 of the 1961 Charter.

Article 7 - Right of children and young persons to protection

Paragraph 9 - Regular medical examination

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

The Committee recalls that no targeted questions were asked for Article 7§9 of the 1961 Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the 1961 Charter in respect of the provisions relating to the “Children, families and migrants” thematic group).

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

Conclusion

The Committee concludes that the situation in Luxembourg is in conformity with Article 7§9 of the 1961 Charter.

Article 7 - Right of children and young persons to protection

Paragraph 10 - Special protection against physical and moral dangers

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

The Committee recalls that for the purposes of the present report, States were asked to reply to targeted questions for Article 7§10 of the 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”).

In its previous conclusion, pending receipt of the information requested, the Committee concluded that the situation in Luxembourg was in conformity with Article 7§10 of the 1961 Charter (Conclusions XXI-4). The assessment of the Committee will therefore concern the information provided by the Government in response to the conclusion of conformity pending receipt of information and the targeted questions.

Protection against sexual exploitation

The Committee previously asked that the next report provide updated information on measures taken to combat the sexual exploitation of children (Conclusions XXI-4).

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

The report provides a number of new regulations or amendments to existing legal regulations adopted within the reference period that extended the protection of children from sexual exploitation and abuse.

The report further states that, with regard to the Covid-19, the Government put in place a set of measures to keep children in their usual environments as much as possible, making every effort to keep schools and education and care facilities as open as possible. A support campaign was also launched in order to help young people to overcome this difficult period, as well as a campaign against sexting.

Protection against the misuse of information technologies

The Committee previously asked for updated information on the measures taken to protect children against the misuse of information technologies (Conclusions XXI-4).

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

The report states that awareness-raising campaigns are organised every year to inform minors of their rights and risks present in the digital environment. Illegal content on the internet can be anonymously reported using Bee SECURE Stopline. The report also states that Luxembourg is party to relevant international instruments on digital crime and trafficking in human beings (the Council of Europe Budapest Convention, the United Nations Convention against Transnational Organised Crime and its Protocol).

Protection from other forms of exploitation

The Committee previously asked what measures had been taken to protect and assist children in vulnerable situations, with particular attention to children in street situations and children at risk of child labour, including those in rural areas (Conclusions XXI-4).

The report states that children in street situations are almost non-existent.

The report also states that, with regard to trafficking in human beings, campaigns were launched in order to inform victims or potential victims about their rights at the European level. Training is available to civil servants and State employees. The report also states that the Ombudsman for Children and Youth receives and examines complaints for non-compliance with the rights of the child.

Covid-19

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

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

The report states that street prostitution has gradually shifted to social networks, the Internet and private houses. This has had an impact on the work of police and social workers.

Conclusion

The Committee concludes that the situation in Luxembourg is in conformity with Article 7§10 of the 1961 Charter.

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 Luxembourg.

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 Luxembourg was in conformity with Article 8§1 of the 1961 Charter, pending receipt of information on whether career breaks were taken into account when calculating maternity benefits.

Right to maternity leave

The Committee had previously concluded that the situation in Luxembourg 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

The Committee has previously asked whether career breaks were taken into account when calculating maternity benefits. It considered that if the information requested was not provided in the next report, there would be nothing to establish that the situation in Luxembourg is in conformity with Article 8§1 of the 1961 Charter (Conclusions XXI-4).

The report points out that, to be entitled to cash maternity benefits, employees are required to have been affiliated to the Luxembourg social security scheme for at least six months out of the 12 months preceding maternity leave. It further specifies that interruptions in the employee's professional career are permitted, and that the six-month period does not have to be uninterrupted, and can be split over the 12-month period preceding the start of the leave. For the purpose of calculating the 6-month period, periods during which the person was affiliated to the health insurance scheme are taken into account. Periods of interruption of activity, such as periods of illness, periods compensated for work-related injury or illness, family leave or parental leave, are also taken into account. There is no other statutory benefit for female employees who cannot claim maternity benefit. However, such cases are rare. The report states that the aim is to combat abuses which would consist in taking up salaried employment before the start of maternity leave for the sole purpose of being able to benefit from maternity cash benefit during the leave.

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 states that the Covid-19 crisis had no impact on the legislation on maternity or on cash benefits. Female workers on maternity leave have continued to receive the benefits in cash as laid down by Luxembourg's legislation, without any restrictions resulting from the Covid-19 crisis. The amounts of maternity benefits in cash are equivalent to the salary received before the maternity leave.

Conclusion

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

Article 8 - Right of employed women to protection

Paragraph 2 - Illegality of dismissal during maternity leave

The Committee takes note of the information contained in the Luxembourg report.

The Committee recalls that no targeted questions were asked in relation to Article 8§2 of the Charter only a question in relation to Covid-19. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the thematic group “Children, families and migrants”).

In its previous conclusion (Conclusions (2019)), the Committee considered that the situation was in conformity with Article 8§2 of the Charter pending the receipt of information on claims for damages where there is no reinstatement following an unlawfully dismissal during pregnancy or maternity leave.

Prohibition of dismissal

In its previous finding (Conclusions XXI-4 (2019)), the Committee concluded that the situation was in conformity with Article 8§2 of the Charter. There was therefore, no examination of the situation in 2023. The Committee reiterates its previous conclusion of conformity.

Redress in case of unlawful dismissal

In its previous conclusion (Conclusions XXI-4 (2019)), the Committee had asked for updated information concerning claims for damages where there is no reinstatement following an unlawful dismissal during pregnancy or maternity leave. The Committee had asked to know how this principle was applied by the Luxembourg courts, the criteria used, and any amounts awarded.

The report provides examples of case law on the protection of employees who have been unlawfully dismissed, during pregnancy or maternity leave.

Covid-19

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

The report states that during the Covid-19 crisis, the protection of pregnant employees or those on maternity leave remained unchanged. There were no exceptions to the ban on dismissal during pregnancy and maternity leave during the pandemic.

Conclusion

The Committee concludes that the situation in Luxembourg is in conformity with Article 8§2 of the 1961 Charter.

Article 8 - Right of employed women to protection

Paragraph 3 - Time off for nursing mothers

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

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

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

Therefore, the Committee reiterates its previous conclusion.

Conclusion

The Committee concludes that the situation in Luxembourg is in conformity with Article 8§3 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 Luxembourg.

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).

In its previous conclusion (Conclusions XXI-4 (2019)), the Committee found that the situation in Luxembourg was in conformity with Article 16 of the 1961 Charter, pending receipt of the information requested on mediation services, domestic violence against women, and the housing situation of Roma families.

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

Legal protection of families

Rights and obligations, dispute settlement

- **Mediation services**

In its previous conclusion, the Committee reiterated its request for clarification concerning the accessibility of mediation services to all families, in particular from a financial point of view (Conclusions XXI-4 (2019)).

In reply, the report indicates that various bodies are officially certified to provide mediation services, including the Luxembourg Association of Mediation and Certified Mediators (ALMA), the Mediation Centre, the *Familljen-Center* and the Pro Familia Foundation. Mediation is not free of charge. With regard to the *Familljen-Center*, the Government specifies that the contribution to the cost of mediation is based on net monthly income. For example, a couple with two salaries has to pay between €5 and €10 per session if their combined net income is less than €2,000, and between €10 and €20 per session if their combined net income is between €2,000 and €3,000; however, a lower (or higher) contribution is possible.

Domestic violence against women

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

In its previous conclusion (Conclusions XXI-4 (2019)), the Committee asked that the next report provide updated information on domestic violence against women and relevant prosecutions, including restraining orders, as well as on the implementation of the various prevention and protection measures introduced and their impact on the reduction in domestic violence against women, also in the light of the recommendations of the United Nations Committee on the Elimination of Discrimination against Women (CEDAW).

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

In reply, the report indicates that the National Action Plan for Equality between Women and Men was adopted by the Government and published in July 2020. It sets out the priorities for action by the Ministry for Equality between Women and Men (MEGA) in seven main areas, one of which is combating domestic violence.

In addition, in November 2021, the MEGA, the Ministry of Justice and the Ministry of Internal Security presented the government's strategy to tighten up the provisions against domestic violence in Luxembourg.

In this context, many measures have been taken or are being considered by the MEGA (and its partners), the Ministry of Justice and the Ministry of Internal Security to prevent and combat domestic violence and gender-based violence. These measures include information and awareness-raising campaigns; a free helpline available seven days a week; training courses for a wide range of people (state and municipal officials; representatives of the judicial authorities, the police training college and the military; members of the educational, teaching and healthcare services; social workers, etc.); care for victims (including accommodation); the gradual introduction, in appropriate cases, of electronic tracking bracelets to enable perpetrators to be located and victims alerted if they are in the vicinity; and compulsory psychological follow-up for perpetrators, to help them change their behaviour. There are also plans to set up a psychological unit in the Grand Ducal police force specialising in the issue of domestic violence.

The Committee for Co-operation between professionals combating violence produces an annual report monitoring trends in domestic violence and publishing the data collected in this field. It presents the official statistics on domestic violence, including police call-outs, evictions, the nature of the relationship between victims and perpetrators, judgments and the counselling/care provided by the MEGA's network of state-accredited service providers (Violence 2021 report: <https://violence.lu/wp-content/uploads/2022/06/Rapport-violence-2021-QR-CODE-version-finale.pdf>). The Equality Observatory gathers additional data from stakeholders in the field who are not legally obliged to provide statistics under the law on domestic violence; it also provides indicators that give a more complete picture of domestic violence in Luxembourg (<https://observatoire-egalite.lu/violence-domestique/>).

According to the above-mentioned Violence 2021 report, there were 917 police call-outs (including 249 evictions), 1 420 cases of domestic violence submitted to the prosecutor's offices of the two district courts of Luxembourg and Diekirch and 162 judgments for domestic violence offences were handed down that year.

Social and economic protection of families

Childcare facilities

In its previous conclusion, the Committee asked that the next report provide information on the follow-up to the draft legislation under consideration, which sought to put in place a national framework for childcare and new criteria for training and supervision. The Committee also requested comprehensive and up-to-date information on childcare facilities, in particular on the number and percentage of children under the age of six covered and the cost for parents.

The report indicates that the 2016 Act amending the Youth Act of 4 July 2008 introduced a national framework for non-formal education for children and young people in all nurseries, childcare facilities and youth centres. Non-formal education has now its own legal framework and well-defined quality criteria based on seven key areas for child development. The range of in-service training courses for educational staff has been expanded and these courses are free of charge. The National Youth Service carry out quality control checks in the field. The reference framework and various related publications and information are available on the non-formal education website (www.enfancejeunesse.lu).

Wider access to nurseries was introduced, with 20 hours per week of free childcare per child, regardless of parental income. In line with this measure, childcare in non-formal education facilities was also made free of charge during the school week for children in primary education (i.e. children from the age of four). This applies to childcare facilities, after-school care and childminders.

A new childcare model, in the form of mini-nurseries, was introduced by a Grand-Ducal regulation that came into force in January 2019. Since then, two such centres have been awarded official certification.

The Government has produced various tables showing the quantitative trend in, *inter alia*, the budget of the Department of Education and Childcare and the number of places in childcare and educational facilities. In particular, the Committee notes that the budget increased from around €425 million in 2018 to approximately €577.3 million in 2021 and that the total number of places available (educational and childcare facilities and childminders) increased from 59 260 in 2018 to 61 958 in 2021.

In October 2022, 31 970 children from 0 to five years residing in Luxembourg were enrolled in childcare (including certified public childcare services, private service providers and childminders), i.e. 78% of the total number of children in this age group. In certified childcare facilities, parents paid an average of €18 per child per week (in October 2022).

Family benefits

Equal access to family benefits

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

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

Level of family benefits

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

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

The Committee notes from Eurostat data (published on 17 March 2023) that the monthly median equivalised income stood at €3 540 in 2021.

The report states that no means-testing is required for the family allowance, special supplementary allowance for a child with disabilities, allowances for the birth of a child (antenatal allowance, childbirth allowance and postnatal allowance) or the annual back-to-school allowance. Support for children, young people and families in psychological or social distress is not means-tested either.

As at 31 December 2021, the basic monthly child benefit was €278.45 per child and a supplement was paid for each child aged six or over. For a child with disabilities, a special allowance of €200 was paid in addition to the basic amount.

The Committee notes that the basic family allowance represents almost 7.9% of median equivalised income and that this percentage is higher when supplements are taken into account.

Measures in favour of vulnerable families

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

In response, the report indicates that any person who qualifies for social welfare is entitled, under certain conditions, to a basic energy supply if they are unable to pay their household energy bills (see the amended Act of 1 August 2007 on the organisation of the electricity and natural gas markets and the amended Social Welfare Organisation Act of 18 December 2009).

In 2022, a flat-rate energy allowance was also introduced for low-income households (in the form of a one-off payment of between €200 and €400, depending on the composition of the household). The allowance scheme was continued in 2023.

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

In reply, the Government referred to three measures taken during the pandemic: (i) widening access to food banks (including individuals and families unlawfully present in the country); (ii) doubling the cost-of-living allowance in 2020; and (iii) increasing the cost-of-living allowance by 10% in 2021.

The measure to widen access to food banks was continued after the public health crisis. In 2022, the cost-of-living allowance for low-income households was also renewed and the maximum payments for this allowance were increased by at least €200 per household for that year.

Housing for families

In its previous conclusion, the Committee asked for (i) details on the reform of the Housing Benefit Act; (ii) information on the demand for housing grants in the form of rental subsidies and the number of people awarded such grants since 2016; and (iii) the total number of applications for social housing over the next reference period, the percentage of applications granted and the average waiting time for the allocation of social housing (Conclusions XXI-4 (2019)).

In addition, among the targeted questions that it raised, the Committee asked for updated information on the availability of adequate affordable housing for families.

In reply, the Government provides detailed information on the reforms undertaken with regard to the development of affordable housing, individual housing subsidies and rent control.

In particular, the Housing Benefit Act of 1979 will be amended by two bills (pending before Parliament): the Affordable Housing Bill (No. 7937) and the Individual Housing Benefit Bill (No. 7938).

Bill No. 7937 aims, among other things, to promote priority access to housing for people on low incomes, the development of affordable housing for rent and for sale and the renovation and refurbishment of housing. The aim of Bill No. 7938 is to reform the entire system of individual housing benefits, enabling more people to claim them (in particular, single parents and families with children).

In addition, there are plans to amend the 2006 Residential Tenancies Act, in order to improve rent regulation (Bill No. 7642).

With regard to figures, the Government states that the number of households receiving rent subsidies increased almost eightfold between 2016 (1 090) and 2021 (8 127).

However, the Government does not provide any information on the total number of applications for social housing, the percentage of applications granted or the average waiting time.

According to other sources, in 2021, Luxembourg's two largest social housing providers (*Fonds du logement* and *Société nationale des habitations à bon marché*) had almost 5 750

households on their social rental waiting lists (see *The State of Housing in Europe 2021 – 21 country profiles*, by Housing Europe and the French social housing association (USH), March 2021, p. 79).

In its previous conclusion, the Committee asked whether there was a system of free legal aid for tenants who did not have sufficient means to pay for a lawyer and whether there was an obligation to offer alternative accommodation in cases of forced eviction (Conclusions XXI-4 (2019)).

In reply, the Government states that evicted tenants who are unable to pay for a lawyer may be granted legal aid under certain conditions, in particular with regard to income. It also states that there is no obligation to offer alternative accommodation in the event of eviction.

The Committee points out that alternative accommodation must be made available in the event of eviction (*European Roma Rights Centre (CEDR) v. Italy*, Complaint No. 27/2004, decision on the merits of 7 December 2005, §41). It considers that the situation is not in conformity with Article 16 of the 1961 Charter on the ground that alternative accommodation is not made available in the event of eviction.

In its previous conclusion, the Committee reiterated its request for information on the housing situation of Roma families, the number of families illegally encamped and the existence of legal stopping places. It pointed out that if the requested information was not provided in the next report, there would be nothing to show that the situation in Luxembourg was in conformity with the Charter in this respect (Conclusions XXI-4 (2019)).

In reply, the Government states that there are no stopping places/encampments in Luxembourg.

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

In its report (under Article 19§2 of the Charter), the Government provides some information on provisions, including housing, for applicants for international protection and people who have been granted international protection status or subsidiary protection.

Conclusion

The Committee concludes that the situation in Luxembourg is not in conformity with Article 16 of the 1961 Charter on the ground that alternative accommodation is not made available in the event of eviction.

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 Luxembourg.

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, pending receipt of the information requested, the Committee concluded that the situation in Luxembourg was in conformity with Article 17 of the 1961 Charter (Conclusions XXI-4). The assessment of the Committee will therefore concern the information provided by the Government in response to the conclusion of conformity pending receipt of the information requested, 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 the prevention of statelessness is closely linked to the right of the person to a nationality. Through its accession to three international conventions in 2017 (Convention on the Reduction of Statelessness, European Convention on Nationality and the Council of Europe Convention on the avoidance of statelessness in relation to State succession), the Government confirmed its willingness to combat statelessness and to cooperate actively in the field of nationality at the international level.

Due to the failure to provide requested information on measures taken to facilitate birth registration, particularly for vulnerable groups, such as Roma, asylum seekers and children in an irregular migration situation, the Committee concludes that the situation in Luxembourg is not in conformity with Article 17 of the 1961 Charter. The Committee considers that this failure to provide information amounts to a breach by Luxembourg of their reporting obligations under Article 21 of the 1961 Charter.

Child poverty

In the general questions, the Committee asked for information on measures to reduce child poverty (including non-monetary measures such as ensuring access to quality and affordable services in the areas of health, education, housing, etc.); to combat discrimination and promote equal opportunities for children from particularly vulnerable groups, such as ethnic minorities, Roma children, children with disabilities and children in care. 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 a low-income household grant is intended for the acquisition of school materials and participation in extracurricular activities. The purpose of the school maintenance grant is to allow the continuation of education until the completion of a high school. There is also prevention of early school leaving and inclusion of children with special educational needs. Moreover, since 2018, each household with one or more children gets an increase for common household expenses and single parents receive an additional increase per child.

With regard to discrimination, the report states that a new legal framework will create integration classes in basic education, as is already done in secondary education.

With regard to child participation, the report states that dialogue with children is essential and the High Council for Youth must be mentioned. It is an advisory body responsible for studying youth issues. Young people are actively consulted throughout the adoption of various action plans related to their rights.

The Committee notes from EUROSTAT that in 2021, 29.4% of children in Luxembourg were at risk of poverty or social exclusion, while in 2018 the percentage was 23.4%. The Committee notes that this percentage is higher than the EU average (24.4% in 2021) and considers that the situation in Luxembourg is not in conformity with Article 17 of the 1961 Charter on the ground that the rate of children at risk of poverty is too high.

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

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

Right to assistance

The Committee previously requested information on accommodation facilities for migrant children whether accompanied or unaccompanied, including measures taken to ensure that such facilities were appropriate and were adequately monitored. It also asked whether children in an irregular migration situation had access to healthcare and noted that this information was not provided in the next report, there would be nothing to establish that the situation in Luxembourg was in conformity with Article 17 of the 1961 Charter. Finally, the Committee asked whether Luxembourg used bone testing to assess age and, if so, in what situations, as well as what potential consequences such testing could have (Conclusions XXI-4).

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

In reply to the questions asked in previous conclusions, the report states that unaccompanied minors are welcomed as soon as they arrive in housing facilities with specialised staff and they must be housed in an accommodation facility specially designed for children.

The report also states that universal healthcare coverage has been established to protect the most vulnerable people who would not have access to it otherwise. Therefore, children in an irregular migration situation are covered by the universal healthcare system and the State pays contributions on their behalf.

With regard to bone testing, the report states that, when an applicant for international protection presents themselves claiming to be under 18 but has no identity document, and visibly looks much older, medical examinations can be ordered. 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). However, it is unclear from the report whether bone testing is used in Luxembourg. Due to the failure to provide requested information on whether Luxembourg uses bone testing to assess age and, if so, in what situations and what potential consequences such testing could have, the Committee concludes that the situation in Luxembourg is not in conformity with Article 17 of the 1961 Charter. The Committee considers that this failure to provide information amounts to a breach by Luxembourg of their reporting obligations under Article 21 of the 1961 Charter.

In reply to the targeted question, the report states that as part of the closure of schools in March 2020 related to the Covid-19 pandemic, the website www.schouldoheem.lu has been set up, offering teaching materials for distance learning and a variety of activities to be carried out at home, as well as a series of articles with recommendations and simple actions to promote well-being.

Rights of children in public care

In its previous conclusion, the Committee asked to be kept informed about the number of children in care, the number of children in foster care, the number of children in institutions and trends in the area (Conclusions XXI-4).

The report states that in 2022, there were 772 children placed in institutions and 527 in foster care. The Committee notes that this information is outside the reference period for the purposes of the present reporting cycle.

Children in conflict with the law

The Committee previously asked for updated information on the age of criminal responsibility. It also asked for further information on the contents of the circular of the Prosecutors Office and the draft law No. 7276 on a Youth Protection Regime referred to in the report. It also sought confirmation as to whether, in exceptional circumstances, a minor could be detained for a period not exceeding one month. It also asked if children could be placed in solitary confinement and if so, under what circumstances and for how long (Conclusions XXI-4).

The report states that there is no explicitly defined age of criminal responsibility, but it is stated in the legislation that a minor under the age of 18 who has committed a crime, should not be referred to the criminal court, but rather to the juvenile court. There is a draft law (No. 7991) aiming to set the age of criminal responsibility explicitly, and it would be 14 years.

The report further states that the option of placement of a minor in a penitentiary centre is a measure of last resort.

The report confirms that a minor can be detained in exceptional circumstances for a period not exceeding one month.

The Committee notes that no information is provided on whether children could be placed in solitary confinement, in what circumstances and for how long. The Committee notes from other sources (UN Human Rights Council Working Group on the Universal Periodic Review, twenty-ninth session, 15-26 January 2018) that the possibility exists for children to be kept in solitary confinement for up to 10 days as a means of punishment for those deprived of their liberty.

The Committee also observes that, in its recent report on its periodic visit to Luxembourg from 27 March to 4 April 2023 (report published on 7 September 2023), the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) noted that children are detained at the Luxembourg Prison without strict separation from adult detainees, in poor material conditions. The Committee recalls that minors should never be detained with adults (Conclusions 2019, Belgium) and finds the situation in Luxembourg not to be in conformity in this respect.

Conclusion

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

- the rate of children at risk of poverty is too high;
- children may be detained with adults.

Due to the failure to provide the information listed below, the Committee concludes that the situation in Luxembourg is not in conformity with Article 17 of the 1961 Charter. The Committee considers that this failure to provide information amounts to a breach by Luxembourg of their reporting obligations under Article 21 of the 1961 Charter.

List of questions/Information missing:

- on measures taken to facilitate birth registration, particularly for vulnerable groups, such as Roma, asylum seekers and children in an irregular migration situation;
- whether Luxembourg uses bone testing to assess age and, if so, in what situations and what potential consequences such testing could have.

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

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

The Committee points out that no targeted question has been asked in respect of Article 19§1 of the 1961 Charter. For this reason, only those States for which the previous conclusion was one of non-conformity, deferral or conformity pending information were required to provide information for this provision under the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter as regards the provisions relating to the thematic group "Children, families and migrants").

In its previous conclusion (Conclusions XXI-4 (2019)), the Committee considered that the situation in Luxembourg was in conformity with Article 19§1 of the 1961 Charter, pending receipt of the information requested.

The Committee's assessment will therefore focus on the information provided in the report in response to the questions raised in its previous conclusion.

Migration trends

In its previous conclusion, the Committee asked that the next report contain an updated description of the evolution of migration trends (Conclusions XXI-4 (2019)).

The report provides a detailed description of migration trends over the last ten years and statistical data. The report shows that the majority of migrants are young people, and the majority come to Luxembourg to work or to live with their families. The average age of immigrants is 30.2. The report states that over the last few decades, the number of immigrants has increased overall, rising from 5,990 in 1984 to 26,668 in 2019. Over the same period, the number of emigrants, i.e. people leaving Luxembourg, has risen from 5,502 to 15,593.

Policy and the legal framework

In its previous conclusion, the Committee asked that the next report contain updated information on the legal framework for immigration and emigration and on new or ongoing policy initiatives (Conclusions XXI-4 (2019)). The report presents a description of legislative and regulatory changes during the reference period, such as those introduced by the Act of 16 June 2021 amending the amended Act of 29 August 2008 on the free movement of persons and immigration, concerning the format of residence permits and other procedural changes, in particular with regard to the procedure for drawing up an undertaking to take charge and certain reductions in the requirements for documents to be produced as part of immigration-related administrative procedures.

Measures against misleading propaganda relating to emigration and immigration

In its previous conclusion, the Committee asked that the next report provide details and examples of measures taken to combat misleading propaganda relating to migrant workers (Conclusions XXI-4 (2019)).

The report provides detailed information on the legislative framework and penalties applicable in the event of non-compliance with the legal provisions on misleading propaganda/advertising. It also indicates that Luxembourg law prohibits hate speech on any medium and provides for prison sentences ranging from eight days to two years and fines of between €251 and €25,000.

The report also provides information on the BEE SECURE project, a government initiative in the Grand Duchy of Luxembourg, which aims to promote safer, responsible and positive use of information technologies among the general public and, in particular, among 3 distinct groups: (i) children and young people, who need to be educated in their use from an early

age; (ii) parents, teachers and educators, who are their reference and must set an example; and (iii) senior citizens, whose demand is growing all the time.

The Committee also asked that the next report provide information on any new developments on trafficking in human beings, in particular on the envisaged adoption of the Istanbul Convention (Conclusions XXI-4 (2019)).

The report states that the Istanbul Convention was ratified by Luxembourg in 2018. With regard to human trafficking, the government's STOPTRAITE website (<https://www.stoptraite.lu/en/>) provides information, particularly for victims, on the different forms of trafficking, the indicators of this offence, and the telephone numbers of the police and Infotraite. The site is updated according to certain events (e.g. a pop-up in Ukrainian has been added to the site). The report states that the national action plan against human trafficking developed in December 2016 is still in force, but a new national action plan is being developed by the government.

Conclusion

The Committee concludes that the situation in Luxembourg is in conformity with Article 19§1 of the 1961 Charter.

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

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

The Committee points out that no targeted question has been asked in respect of Article 19§2 of the 1961 Charter. For this reason, only those States for which the previous conclusion was one of non-conformity, deferral or conformity pending information were required to provide information for this provision under the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter as regards the provisions relating to the thematic group "Children, families and migrants").

In its previous conclusion (Conclusions XXI-4 (2019)), the Committee concluded that the situation in Luxembourg was not in conformity with Article 19§2 of the 1961 Charter on the ground that it had not been established that the measures taken to facilitate the departure, journey and reception of migrant workers and their families were sufficient.

The Committee's assessment will therefore focus on the information provided in the report in response to the conclusion of non-conformity and to the questions raised in its previous conclusion.

Departure, journey and reception

In its previous conclusion, the Committee found that the situation in Luxembourg did not comply with Article 19§2 of the 1961 Charter on the grounds that it had not been established that the measures taken to facilitate the departure, journey and reception of migrant workers and their families were sufficient (Conclusions XXI-4 (2019)).

The Committee requested information on the assistance, financial or otherwise, offered to all migrants in the event of an emergency, in particular to meet their needs for food, clothing and accommodation (Conclusions XXI-4 (2019)). It also asked what rules govern access to healthcare for all migrants, regardless of their status, particularly in emergencies (Conclusions XXI-4 (2019)).

The report provides information on the assistance offered to applicants for international protection by the Migrants and Refugees Service, which works closely with the Office National de l'Accueil (ONA). The report states that the mission of the Migrants and Refugees Service of the Luxembourg Red Cross is to help people arriving in Luxembourg, in particular by providing information and assistance to migrants, especially those seeking international protection (IPR), throughout their stay in Luxembourg. The Health Inspection Division's Migrant Health Service is responsible for organising medical care. In addition, the Caritas Refugees & Migrants Service is responsible for helping applicants for international protection, refugees and migrants who need support when they arrive in the country and during the first few years after they settle.

As far as access to healthcare is concerned, the report states that compulsory insurance covers the persons listed in article 1 of the Social Security Code, which covers employed and self-employed persons, apprentices, recipients of replacement income and students. People who are not compulsorily insured may take out voluntary insurance on payment of contributions. Compulsory and voluntary insurance cover also extends to family members, in particular spouses or partners and children.

The report also provides information on universal healthcare cover, which has been introduced to cover the most vulnerable people who would not have access to healthcare under the legal means outlined above. The report specifies that universal healthcare cover is aimed at people who are usually on Luxembourg territory, have no source of income and cannot benefit from support from a social office or other public entity.

Conclusion

The Committee concludes that the situation in Luxembourg is in conformity with Article 19§2 of the 1961 Charter.

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

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

The Committee points out that no targeted question has been asked in respect of Article 19§3 of the 1961 Charter. For this reason, only those States for which the previous conclusion was one of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision under the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter as regards the provisions relating to the thematic group "Children, families and migrants").

In its previous conclusion (Conclusions XXI-4 (2019)), the Committee considered that the situation in Luxembourg was in conformity with Article 19§3 of the 1961 Charter, pending receipt of the information requested.

The Committee's assessment will therefore focus on the information provided in the report in response to the questions raised in its previous conclusion.

In its previous conclusion, the Committee noted that in terms of social security and social services, migrant workers and their families are treated on an equal footing with Luxembourgers. It also noted that, with a view to maintaining and facilitating access to social rights for migrants from third countries to Luxembourg, the authorities are developing bilateral relations by negotiating social security agreements with countries outside the European Economic Area, including countries that are parties to the Charter (Bosnia-Herzegovina, Macedonia, Moldova, Montenegro, Serbia, Turkey and Albania (Conclusions XXI-4 (2019)).

The Committee asked whether cooperation goes beyond the scope of social security (e.g. for family matters) and what types of services this information refers to (Conclusions XXI-4 (2019)).

The report provides information on the Social Offices placed under the supervision of the municipalities with a view, in particular, to providing advice and information on social measures and social and material benefits, and to ensuring the socio-educational supervision necessary to enable migrant workers to gradually overcome their difficulties. The report states that there are no new developments to report regarding cooperation between the social services of the emigration and immigration states.

Conclusion

The Committee concludes that the situation in Luxembourg is in conformity with Article 19§3 of the 1961 Charter.

Article 19 - Right of migrant workers and their families to protection and assistance
Paragraph 4 - Equality regarding employment, right to organise and accommodation

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

The Committee points out that no targeted question has been asked in relation to Article 19§4 of the Charter. For this reason, only those States whose previous conclusion was one of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter as regards the provisions relating to the thematic group "Children, families and migrants").

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

The Committee's assessment will therefore focus on the information provided in the report in response to the questions raised in its previous conclusion.

Accommodation

In its previous conclusion, the Committee noted that the conditions for obtaining individual housing benefits or access to social housing are the same for Luxembourg households as for foreign households, without discrimination, and asked that the next report confirm that this also applies to migrant workers (Conclusions XXI-4 (2019)).

The report emphasises that the conditions for obtaining individual housing subsidies or access to social housing are the same for Luxembourg households as for foreign households, without discrimination. It specifies that this obviously applies to migrant workers who have the necessary permits to live and work in Luxembourg.

Monitoring and judicial review

In its previous conclusion, the Committee noted the tasks of the various monitoring and supervisory bodies with regard to equal treatment. It noted in the MIPEX 2015 data that "Luxembourg's policies and equality bodies show little dynamism in encouraging people to assert their rights and in promoting equality within society". It asked the authorities to respond to these observations in the next report (Conclusions XXI-4 (2019)).

The report provides detailed information on the Centre for Equal Treatment's information and awareness-raising activities, as well as training to promote equality and combat discrimination. The report states that the Centre for Equal Treatment has seen its financial resources increase considerably in recent years from €88,000 in 2017 to €480,842.

In addition, the report provides information on certain initiatives taken by the government to further combat discrimination such as the law of 7 November 2017 completing the transposition of Directive 2014/54/EU of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of the free movement of workers. Finally, the report states that as part of its inspections, the Labour and Mines Inspectorate rigorously ensures that the provisions on discrimination are complied with.

Conclusion

The Committee concludes that the situation in Luxembourg is in conformity with Article 19§4 of the 1961 Charter.

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

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

The Committee points out that no targeted question has been asked in respect of Article 19§5 of the 1961 Charter. For this reason, only those States for which the previous conclusion was one of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision under the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter as regards the provisions relating to the thematic group "Children, families and migrants").

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

The Committee's assessment will therefore focus on the information provided in the report in response to the conclusion of deferral.

In its previous conclusion, the Committee noted that the law on income tax makes only a distinction between resident and non-resident taxpayers, while ensuring that migrant workers lawfully in the territory of the Grand Duchy receive treatment no less favourable than national workers as regards taxes and contributions relating to work (Conclusions XXI-4 (2019)).

The Committee repeated its question on the treatment of posted workers in this area (Conclusions XX-4 (2015) and Conclusions XXI-4 (2019)) and stressed that, if the next report did not provide a comprehensive response, there would be nothing to establish that the situation is in conformity with the Charter on this point.

The report states that there is no specific tax regime for posted workers. The report states that an employer who, for occasional work, is obliged to use temporary staff may be authorised, at his request, to deduct tax from wages on a flat-rate basis. The rules that apply in such cases are the same - whether the employee is a Luxembourg national or a foreigner.

The report stresses that the Luxembourg tax system makes no distinction on the basis of nationality when determining tax residence and taxation of work, and therefore does not treat migrant workers less favourably than nationals.

Conclusion

The Committee concludes that the situation in Luxembourg is in conformity with Article 19§5 of the 1961 Charter.

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

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

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

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

- social benefits are excluded from the calculation of the income of a migrant worker who has applied for family reunion;
- it has not been established that the refusal of a family reunification on health grounds is strictly limited to situation when the illness or condition constitutes a serious threat to public interest;
- it has not been established that the right to family reunion is subject to an effective mechanism of appeal or review.

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

Conditions governing family reunion

In the previous conclusion (Conclusions 2019), the Committee recalled that it had already assessed the housing requirement for family reunification and that it had found it to be in conformity with the Charter. The Committee asked for examples of how derogation from this requirement is applied in practice.

In reply, the report indicates that one of the conditions for family reunification is that the sponsor should have suitable accommodation to accommodate the member(s) of their family (the floor space cannot be less than 12 m² for the first occupant and 9 m² per additional occupant, lighting through opening windows measuring at least 1/10 of the floor area and hermetically closing, heated accommodation, with running water, electricity etc.). In response to the Committee’s specific question concerning derogations from this condition, the report states that foreigners under international protection can request family reunification while the conditions concerning housing and resources must only be met if the sponsor submits his request after a period of 6 months following the granting of their international protection. The report further provides that the law of 16 June 2021 (amending the law on the free movement of people and immigration) extended this period from 3 to 6 months during which the beneficiary of international protection can benefit from more favourable conditions to file a request for family reunification without having to meet the income and housing conditions provided for by the law. This extension of the deadline allows the beneficiary of international protection to have more time to gather the documents necessary for the application for family reunification.

In reply to the Committee’s previous question (Conclusions 2019) as to the requirement of language and integration tests, the report submits that the Immigration Department is not aware of any case where a request for long-term resident status has been refused due to failure to comply with the language and integration requirements. The report explains that the proof of the degree of integration of the person concerned can be provided by other means and a case-by-case assessment is made in this matter. The immigration services may consider that third-country nationals working legally on Luxembourg territory for several years

are integrated through work, while for others a testimonial certificate of a third party stating the integration of the interested party, or a membership card of an association or club may be accepted in this regard. According to the report, the Reception and Integration Contract (CAI) is an integration program on a voluntary basis for non-Luxembourg residents aged 16 and over.

The report provides detailed information on language trainings in one of the country's official languages offered by the State. It also provides gender and age disaggregated statistical information concerning the beneficiaries of reception and integration contracts. It states that in total, nationals from 109 countries signed the integration contracts in 2021. Since the launch of the program until the end of December 2021, a total of 10,714 reception and integration contracts were signed. The report underlines that there is no obligation to conclude an integration contract as part of a family reunification request.

As to the previous finding of the Committee (Conclusions 2019) that it had not been established that the refusal of a family reunification on health grounds was strictly limited to situations when the illness or condition constitutes a serious threat to public order or security, the report states that no family reunification has been refused for medical reasons since the entry into force in 2008 of the law on the free movement of people and immigration. The Committee also notes from the previous conclusion and previous report that the Law restricts public health reasons to the potentially epidemic diseases described by the World Health Organisation and the contagious infectious diseases listed in the Grand-Ducal Regulation, and provides for the possibility to require a person with the right to residence to undergo a medical check-up within three months of arriving so that it can be certified that he or she is not suffering from one of the aforementioned diseases.

As to the means requirement, and in particular as to whether social assistance benefits are taken into account for the assessment of sufficient resources, the report states that the applicant for family reunification should provide proof that they have stable, regular and sufficient resources (salaries, fees, income from assets) to meet their own needs and those of the members of their family who are dependent on them, without resorting to the system of social assistance. According to the report, the prospective assessment of the probability of maintaining stable, regular and sufficient resources is based on a prognosis according to which resources may reasonably be available during the year following the date of submission of the application for family reunification, so that the sponsor must not resort to the social assistance system. However, the report also explains that when the level of resources of the applicant does not reach the required level, the authorities may nevertheless issue a favourable decision taking into account the evolution of the situation of the person concerned, in particular in relation to the stability of their employment and their income etc.

The Committee refers nevertheless to its statement of interpretation on Article 19§6 and recalls that social benefits shall not be excluded from the calculation of the income of a migrant worker who has applied for family reunification. Therefore, on the basis of the information provided in the report, the Committee reiterates its conclusion of non-conformity on this point.

As to the Committee's previous question concerning the right of family members of the migrant worker to an independent right to stay in the territory, the report states that when the resident permit of a family member derives from that of the third-country national holding long-term resident status, they are granted the right of an autonomous residence after 5 years of residence on the territory. The report further explains that according to the provisions of the law on the free movement of people and immigration, to the extent that the family member has not received a residence permit for reasons other than family reunification, an independent residence permit may be issued for the family member concerned in the case of a) the death of the sponsor or the divorce, the annulment of the marriage or the breakdown of the partnership occurring at least three years following the granting of authorization to stay in the territory for the purposes of family reunification, or b) when particularly difficult situations

require it, in particular when the community of life has been broken down due to acts of domestic violence suffered.

The Committee recalls its established case-law that once a migrant worker's family members have exercised the right to family reunion and have joined them in the territory of a State, they should have an independent right to stay in that territory (Conclusions XVI-1 (2002), Article 19§8, the Netherlands; Conclusions 2015, Statement of interpretation on Articles 19§6 and 19§8). The Committee considers on the basis of the information provided in the report that this is not the case in Luxembourg as family member's permits remain contingent upon the right to stay of the migrant worker and only after 5 years of legal and uninterrupted stay in Luxembourg (apart from the above-mentioned exceptions), the family member acquires an independent right to residence, which, the Committee considered in its previous conclusions (see, for instance, Conclusions 2019, Slovak Republic, Article 19§6 –requirement of 4 years residence) not to be in conformity with Article 19§6 of the Charter.

The Committee therefore concludes that the situation is not in conformity with Article 19§6 of the Charter on the ground that family members of a migrant worker are not granted an independent right to remain after exercising their right to family reunion.

Concerning the Committee's previous question (Conclusions 2019) as to whether the restrictions on the exercise of the right to family reunion is subject to an effective mechanism of appeal or review, the report indicates that against the decisions taken by the authorities in the procedure of family reunification, an action for annulment can be opened before the Administrative Court in the ordinary forms and time limits. The decisions of the Administrative Court are subject to appeal before the Higher Administrative Court. Appeals are not suspensive. Moreover, when the appeal is accompanied by a request seeking suspension of execution or a protective measure, removal from the territory cannot take place until an interim order is issued, unless the decision to remove is based on compelling reasons of public security. According to the report, any expulsion decision takes into account the personal and family situation of the person concerned, as well as the duration of their stay and their prospects for reintegration into society. The Committee concludes that the situation is in conformity with Article 19§6 in respect of effective mechanism of appeal or review.

Conclusion

The Committee concludes that the situation in Luxembourg is not in conformity with Article 19§6 of the 1961 Charter on the ground that:

- the family members of a migrant worker are not granted an independent right to remain after exercising their right to family reunion;
- social benefits are excluded from the calculation of the income of a migrant worker who has applied for family reunion.

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

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

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

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

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

Conclusion

The Committee concludes that the situation in Luxembourg is in conformity with Article 19§7 of the 1961 Charter.

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

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

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

In the previous conclusion (Conclusions XXI-4 (2019)), the Committee concluded that the situation in Luxembourg was not in conformity with Article 19§8 of the 1961 Charter on the ground that it had not been established that there were sufficient guarantees concerning deportation of migrant workers. The assessment of the Committee will therefore concern the information provided in response to its previous conclusion of non-conformity and to other questions raised by the Committee.

In conclusions XX-4 (2016), the Committee, after a long series of non-conformity conclusions concerning the situation in Luxembourg, finally considered that the arrangements under the Law of 29 August 2008 on free movement of people and immigration to be in conformity with Article 19§8. It noted in particular that expulsion is reserved for foreigners whose presence in the country constitutes a serious threat to public order or safety or who reappear in the country in breach of an entry ban. The Committee also noted in Conclusions XX-4 (2016), that decisions in this connection are taken by the minister and communicated to the person concerned by administrative channels and must fully and precisely state the public order and safety reasons unless this is contrary to national security interests, as well as outlining the procedures and time-limits for appeals.

In the previous conclusion (Conclusions XXI-4 (2019)), however, the Committee reiterated its questions (which were not replied to in the previous report) as to whether decisions on expulsion take account of the personal circumstances, what facts or decisions can give rise to expulsion in practice and what national security interests may prevent reasons from being given in expulsion decisions.

In reply, the report indicates that any expulsion decision, whether against a Union citizen or a third-country national, takes into account the personal and family situation of the person concerned, as well as the duration of their stay and their prospects for reintegration into society. In exceptional cases where the indication of detailed reasons could compromise national security, the communication of detailed reasons may be reserved for the courts seized of an appeal.

Considering that under the provisions of the law on free movement of persons and immigration, the expulsion is limited to situations where the foreigner’s presence in the country constitutes a serious threat to public order, and taking note of the information provided in the current report, the Committee considers that the situation in Luxembourg is in conformity with Article 19§8 of the 1961 Charter.

Conclusion

The Committee concludes that the situation in Luxembourg is in conformity with Article 19§8 of the 1961 Charter.

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

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

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

In the previous conclusion (Conclusions XXI-4 (2019)), the Committee concluded that the situation in Luxembourg was not in conformity with Article 19§9 of the 1961 Charter on the ground that it had not been established that there are no excessive restrictions on the right of migrants to transfer earnings and savings. The assessment of the Committee in the present conclusion will therefore concern the information provided in response to its previous conclusion of non-conformity.

In the previous conclusion ((Conclusions XXI-4 (2019)), the Committee recalled that in 2011 (Conclusions XIX-4), it had requested a full and up-to-date description of the situation in law and practice in respect of Article 19§9, and that in the absence of an answer in previous reports, it had deferred its conclusions in 2016 pending receipt of this information (Conclusions XX-4 (2016)). In the previous conclusions (Conclusions XXI-4 (2019)), the Committee found that the previous report still did not provide the requested information and that it limited its submission to indicate that there were no changes in the situation with regard to Article 19§9.

In reply, the report states that no changes are to be reported. The provisions of the law on the free movement of people and immigration are still in force.

The Committee recalls, as it did in the previous conclusions (Conclusions XXI-4) that the latest comprehensive overview of the situation provided by Luxembourg dates back to 1994. Due to the failure to provide information on a full and up-to-date description of the situation in law and in practice in respect of Article 19§9 of the 1961 Charter, the Committee concludes that the situation is not in conformity with Article 19§9 of the 1961 Charter. The Committee considers that this failure to provide information amounts to a breach by Luxembourg of its reporting obligations under Article 21 of the 1961 Charter.

Conclusion

The Committee concludes that the situation in Luxembourg is not in conformity with Article 19§9 of the Charter due to the failure to provide the information listed below. The Committee considers that this failure to provide information amounts to a breach by Luxembourg of its reporting obligations under Article 21 of the 1961 Charter. List of missing information:

- a full and up-to-date description of the situation in law and in practice in respect of Article 19§9 of the 1961 Charter.

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

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

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

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

The Committee has found the situation in Luxembourg not to be in conformity with Articles 19§6 and 19§9 of the Charter. Accordingly, for the same reasons as stated in the conclusions on the abovementioned Articles, the Committee concludes that the situation in Luxembourg is not in conformity with Article 19§10 of the Charter.

Conclusion

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