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EUROPEAN SOCIAL CHARTER

European Committee of Social Rights

Conclusions XXII-4 (2023)

NETHERLANDS IN RESPECT OF CURAÇAO

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 the Netherlands in respect of Curacao on 23 January 2004. The deadline for submitting the 10th report was 31 December 2022, and the Netherlands in respect of Curacao submitted it on 21 December 2022.

The Committee recalls that the Netherlands in respect of Curacao was asked to reply to the specific targeted questions posed under various provisions (questions included in the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter). The Committee therefore focused specifically on these aspects. It also assessed the replies to the previous conclusions of non-conformity, deferral and conformity pending receipt of information (Conclusions 2019).

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

The Netherlands in respect of Curacao has accepted Article 16.

The present chapter on the Netherlands in respect of Curacao concerns 1 situation and contains:

- 1 conclusion of non-conformity : Article 16.

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

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 the Netherlands in respect of Curaçao.

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

In its previous conclusion (Conclusions XXI-4 (2019)), the Committee found that the situation in the Netherlands in respect of Curaçao was not in conformity with Article 16 of the Charter on the grounds that:

- the system of family benefits covered only families belonging to a certain category of the population; and
- nationals of other States Parties were not entitled to family benefits.

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

Legal protection of families

Rights and obligations, dispute settlement

- **Rights and obligations of spouses**

In its previous conclusions (Conclusions XXI-4 (2019) and XX-4 (2015)), the Committee asked for information on the legal framework ensuring the equality of spouses with regard to their rights and obligations within the couple (reciprocal responsibility, ownership, administration and use of property, etc.) and with regard to children (parental authority, management of the child's property).

Due to the failure to provide requested information, the Committee concludes that the situation in the Netherlands in respect of Curaçao is not in conformity with Article 16 of the 1961 Charter. The Committee considers that this failure to provide information amounts to a breach by the Netherlands in respect of Curaçao of its reporting obligations under Article 21 of the 1961 Charter.

- **Mediation services**

In its previous conclusions (Conclusions XXI-4 (2019) and XX-4 (2015)), the Committee asked for information on the legal arrangements available for the settlement of disputes, including mediation, and, in particular, conflicts relating to children (care and maintenance, custody and access to children).

Due to the failure to provide requested information, the Committee concludes that the situation in the Netherlands in respect of Curaçao is not in conformity with Article 16 of the 1961 Charter. The Committee considers that this failure to provide information amounts to a breach by the Netherlands in respect of Curaçao of its reporting obligations under Article 21 of the 1961 Charter.

Domestic violence against women

In its previous conclusions (Conclusions XXI-4 (2019) and XX-4 (2015)), the Committee asked for information on the legal framework ensuring the protection of women against domestic violence and the outcomes of the policies implemented. It also requested information on the content and implementation of the action plan, as well as on any other integrated policy aimed at ensuring the prevention of domestic violence, the protection of victims and the prosecution of perpetrators.

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

The report indicates that the National Plan against Violence aims to provide the public with sufficient information about violence against children and domestic violence and to adequately protect victims (through improved prevention, detection of violence, improved provision of assistance and aftercare). An Inter-ministerial Working Group was set up in 2018 to coordinate the implementation of the National Plan against Violence and a Permanent Committee was established to supervise its implementation. The Committee takes note of the actions envisaged for 2021-2022.

The report indicates that there are no data on incidence and conviction rates in relation to domestic violence against women.

The report states that an Instruction Note was updated in 2020 in order to provide guidelines and recommendations for the police and the justice system in cases of domestic violence.

Regarding shelters, the report indicates that a year-long research study on inter-island shelters was completed in July 2021. Its aim was to determine what would be required to set up and operate a structured system of inter-island shelters for victims of violence (legislation, social security, cost of protecting victims).

The report also mentions a number of measures taken in cooperation with international organisations (OIM, UNHCR and UNFPA) to help abused children, Venezuelan refugees and people in need of food and shelter.

The Committee takes note that the University of Curaçao has been commissioned to study what is needed for the country to ratify and start implementing the Istanbul Convention. This report is due in the second quarter of 2023 (outside the reference period).

Due to the failure to provide requested information on the legal framework ensuring the protection of women against domestic violence, the outcomes of the policies implemented, or the specific integrated policies aimed at prosecuting the perpetrators, the Committee concludes that the situation in the Netherlands in respect of Curaçao is not in conformity with Article 16 of the 1961 Charter. The Committee considers that this failure to provide information amounts to a breach by the Netherlands in respect of Curaçao of its reporting obligations under Article 21 of the 1961 Charter.

Social and economic protection of families

Childcare facilities

In its previous conclusions (Conclusions XXI-4 (2019) and XX-4 (2015)), the Committee asked for information on the availability of affordable, good quality childcare facilities (quality being defined in terms of the number of children under the age of six cared for, the staff to child ratio, staff qualifications, the suitability of the premises and the size of the financial contribution requested from parents).

Due to the failure to provide requested information, the Committee concludes that the situation in the Netherlands in respect of Curaçao is not in conformity with Article 16 of the 1961 Charter. The Committee considers that this failure to provide information amounts to a breach by the Netherlands in respect of Curaçao of its reporting obligations under Article 21 of the 1961 Charter.

Family benefits

Equal access to family benefits

The Committee previously found (Conclusions XXI-4 (2019) and XX-4 (2015)) that the situation was not in conformity with Article 16 of the 1961 Charter on the ground that nationals of other States Parties were not entitled to family benefits.

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

In response, the report indicates that child/family benefits are available to lawfully residents of Curaçao. However, the Committee notes from the report that in order to receive benefits, the applicant “must have Dutch citizenship and be a resident of Curaçao”. The Committee considers that the situation is still not in conformity with Article 16 of the 1961 Charter and reiterates its previous conclusion of non-conformity on the ground that nationals of other States Parties are not entitled to family benefits.

In its previous conclusion (Conclusions XXI-4 (2019)), the Committee asked whether stateless persons and refugees were treated equally with regard to family benefits.

Due to the failure to provide requested information, the Committee concludes that the situation in the Netherlands in respect of Curaçao is not in conformity with Article 16 of the 1961 Charter. The Committee considers that this failure to provide information amounts to a breach by the Netherlands in respect of Curaçao of its reporting obligations under Article 21 of the 1961 Charter.

Level of family benefits

In its previous conclusions (Conclusions XXI-4 (2019) and XX-4 (2015)), the Committee found that the situation was not in conformity with Article 16 of the 1961 Charter on the ground that the system of family benefits covered only families belonging to a certain category of the population.

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

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

The report indicates that under the Island’s Welfare Assistance Decree No. 135 of 2009, child benefits are intended for the most vulnerable groups in society, such as children of social benefit recipients. They receive a fortnightly sum of 21 NAf (€ 10 at the rate of 31 December 2021) for each minor under 21 years of age.

The report also indicates that there are other forms of benefits provided for children, to cover the purchase of school uniform, for example, or the cost of school transport.

In addition, the report indicates that children of civil servants under the age of 24 who continue to attend secondary school or higher education, receive a monthly compensation of NAf 55 (€ 27).

The report does not provide any information on the percentage of families covered by family/child benefits, nor on the median equivalised income for the reference period. The Committee considers that this failure to provide information amounts to a breach by the Netherlands in respect of Curaçao of its reporting obligations under Article 21 of the 1961 Charter.

In the light of all the information in its disposal, the Committee understands that child benefits are intended for the most vulnerable groups in society and for the children of civil servants. Therefore, it considers that the situation is still not in conformity with Article 16 of the 1961 Charter and reiterates its previous conclusion of non-conformity, on the ground that the system of family benefits covers only families belonging to a certain category of the population.

Measures in favour of vulnerable families

In its previous conclusion (Conclusions XXI-4 (2019)), the Committee asked what measures were taken to ensure the economic protection of various categories of vulnerable families, in particular single-parent families.

Due to the failure to provide requested information on specific measures taken to ensure the economic protection of single-parent families, the Committee concludes that the situation in the Netherlands in respect of Curaçao is not in conformity with Article 16 of the 1961 Charter. The Committee considers that this failure to provide information amounts to a breach by the Netherlands in respect of Curaçao of its reporting obligations under Article 21 of the 1961 Charter.

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

The report indicates that access to the most important services, such as water and electricity, is guaranteed for social benefit recipients and other vulnerable groups. Recipients are subject to periodic assessments of their needs to justify the continuation of these benefits. In addition, social benefit recipients and other vulnerable groups receive debt advice on essential services (water and electricity); water and electricity bills are fully subsidised to ensure that these groups continue to benefit from the water and electricity infrastructure system. The Committee takes note of the amounts of subsidies for water and electricity presented in the report. In 2021, 1,989 recipients of social benefits received a monthly subsidy for water and electricity amounting to about NAf 1.3 million (€ 655,000).

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

The report presents the various measures taken during the pandemic to help benefit recipients, employers and the self-employed (economic, fiscal and social support, the 'Bridging Employment' emergency measure, temporary assistance for the self-employed, job loss allowances, recovery and resilience allowances, credit facilities, provision of foodstuffs, see the report for more details). As of 1 December 2021, all measures taken to assist the most vulnerable populations during the Covid-19 period were cancelled.

Housing for families

In its previous conclusions (Conclusions XXI-4 (2019) and XX-4 (2015)), the Committee requested information on the provision of adequate housing for families and their protection against illegal eviction.

Due to the failure to provide requested information on the protection against illegal eviction, the Committee concludes that the situation in the Netherlands in respect of Curaçao is not in conformity with Article 16 of the 1961 Charter. The Committee considers that this failure to provide information amounts to a breach by the Netherlands in respect of Curaçao of its reporting obligations under Article 21 of the 1961 Charter.

In a targeted question, the Committee asked States Parties which have not accepted Article 31 of the Charter to provide updated information on the availability of adequate and affordable housing for families.

With regard to social housing, the report indicates that the waiting list of the local social housing foundation *Fundashon Kas Popular* (FKP), stands at more than 9,000 housing applicants, 900 of whom are classified as urgent. The FKP manages 5,000 houses on Curaçao, a third of which are owned by the government. According to the report, the majority of housing applicants have minimum wage income: 87% have income below or equal to the poverty threshold and 13% have an income above the poverty threshold.

Regarding housing benefits, the report indicates that all tenants (including welfare recipients, residents or undocumented persons) who have been allocated one of the 5,000 available social housing units managed by the FKP can apply for a rent subsidy. Tenants are means-tested to determine if they qualify. This means test is based primarily on the tenant's income. According to the report, the rent is determined by the FKP, and the surplus is subsidised by the government. The Committee takes note of the information on the scoring system used to determine the needs of the person seeking a home, which is based on three aspects: social situation, technical condition of the home and medical situation.

In the light of the information in its disposal, the Committee considers that the situation is not in conformity with Article 16 of the 1961 Charter on the ground that there is no adequate supply of housing for vulnerable families.

Participation of associations representing families

In its previous conclusions (Conclusions XXI-4 (2019) and XX-4 (2015)), the Committee asked for information on whether relevant associations representing families were consulted in the framing of family policies.

Due to the failure to provide requested information, the Committee concludes that the situation in the Netherlands in respect of Curaçao is not in conformity with Article 16 of the 1961 Charter. The Committee considers that this failure to provide information amounts to a breach by the Netherlands in respect of Curaçao of its reporting obligations under Article 21 of the 1961 Charter.

Conclusion

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

- nationals of other States Parties are not entitled to family benefits;
- the system of family benefits covers only families belonging to a certain category of the population;
- there is no adequate supply of housing for vulnerable families.

Due to the failure to provide the information listed below, the Committee concludes that the situation in the Netherlands in respect of Curaçao is not in conformity with Article 16 of the 1961 Charter. The Committee considers that this failure to provide information amounts to a breach by the Netherlands in respect of Curaçao of its reporting obligations under Article 21 of the 1961 Charter.

Information missing:

- the legal framework ensuring the equality of spouses with regard to their rights and obligations within the couple (reciprocal responsibility, ownership, administration and use of property, etc.) and with regard to children (parental authority, management of the child's property) ;
- the legal arrangements available for the settlement of disputes, including mediation, and, in particular, conflicts relating to children (care and maintenance, custody and access to children);

- the legal framework ensuring the protection of women against domestic violence, the outcomes of the policies implemented, and specific integrated policies aimed at prosecution of perpetrators;
- availability of affordable and good-quality childcare facilities (coverage with respect to the number of children aged 0-6, staff to child ratios, staff qualifications, suitability of the premises and cost of childcare to parents, etc.);
- equal treatment of stateless persons and refugees with regard to family benefits;
- percentage of families covered by family/child benefits ;
- the median equivalised income for the reference period;
- specific measures taken to ensure the economic protection of various categories of vulnerable families, in particular single-parent families;
- protection against illegal eviction;
- the participation of associations representing families in the framing of family policies.