



March 2020

# EUROPEAN SOCIAL CHARTER

European Committee of Social Rights

Conclusions 2019

**ANDORRA**

*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".

A presentation of this treaty as well as statements of interpretation formulated by the Committee appear in the General Introduction to the Conclusions.<sup>1</sup>

The European Social Charter (revised) was ratified by Andorra on 12 November 2004. The time limit for submitting the 12th report on the application of this treaty to the Council of Europe was 31 October 2018 and Andorra submitted it on 31 October 2018.

This report concerned the accepted provisions of the following articles belonging to the thematic group "Children, families and migrants":

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection of maternity (Article 8),
- the right of the family to social, legal and economic protection (Article 16),
- the right of mothers and children to social and economic protection (Article 17),
- the right of migrant workers and their families to protection and assistance (Article 19),
- the right of workers with family responsibilities to equal opportunity and treatment (Article 27),
- the right to housing (Article 31).

Andorra has accepted all provisions from the above-mentioned group except Articles 16, 19§2, 19§4, 19§6, 19§8, 19§10, 27 and 31§3.

The reference period was 1 January 2014 to 31 December 2017.

The present chapter on Andorra concerns 26 situations and contains:

- 23 conclusions of conformity: Articles 7§1, 7§2, 7§3, 7§4, 7§6, 7§7, 7§8, 7§9, 7§10, 8§1, 8§3, 8§4, 8§5, 17§1, 17§2, 19§1, 19§3, 19§5, 19§7, 19§9, 19§11, 19§12 and 31§1;
- 2 conclusions of non-conformity: Articles 7§5 and 31§2.

In respect of the situation related to Article 8§2, the Committee needs further information in order to assess the situation.

The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Andorra under the Revised Charter. The Government consequently has an obligation to provide this information in the next report from Andorra on the articles in question.

The next report from Andorra deals with the accepted provisions of the following articles belonging to the thematic group "Employment, training and equal opportunities":

- the right to work (Article 1),
- the right to vocational guidance (Article 9),
- the right to vocational training (Article 10),
- the right of persons with disabilities to independence, social integration and participation in the life of the community (Article 15),
- the right to engage in a gainful occupation in the territory of other States Parties (Article 18),
- the right of men and women to equal opportunities (Article 20),
- the right to protection in cases of termination of employment (Article 24),
- the right to workers to the protection of claims in the event of insolvency of the employer (Article 25).

The deadline for the report was 31 December 2019.

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<sup>1</sup> The conclusions as well as state reports can be consulted on the Council of Europe's Internet site ([www.coe.int/socialcharter](http://www.coe.int/socialcharter)).

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

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

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

The Committee noted previously that the minimum age for employment was 16, which coincided with the end of compulsory education (Conclusions 2011). Children aged 14-15 years were not allowed to work during the school year, but they were allowed to work only for half of the school holidays, provided it was light work and that time limitations did not exceed six hours per day and 30 hours per week (Conclusions 2015). In its previous conclusion (Conclusions 2015), the Committee noted that light work was defined as work which, due to the nature of the tasks to be performed and the particular conditions of their performance would not affect:

- the safety, health or development of children;
- school attendance, participation in programmes of vocational guidance or training or the ability to absorb the education received.

The current report states that children must have at least 15 consecutive days off during the summer holidays and at least half the time off during other holidays. The report also indicates that parliamentary proceedings have been initiated concerning a qualified labour relations bill which, in the area of employment under the age of 15, provides as follows: "Without exception, are forbidden recruitment and paid or free work of minors under the age of 15". The Committee asks for information on this legislative measure in the next report.

The Committee noted previously that the Labour Inspectorate Service needed to authorise the contracts of employment or apprenticeship for young persons under the age of 18 before they started working (Conclusions 2015).

The Committee requested examples of sanctions imposed on employers for breach of the prohibition on employment under the age of 15 (Conclusions 2015). The report states that no sanction was imposed during the reference period as the Labour Inspectorate Service did not identify any breaches of this prohibition.

The Committee asked in its previous conclusion how work done at home by children was monitored in practice (Conclusions 2015). The report indicates that although work done at home is excluded from the monitoring activities of the Labour Inspectorate Service, minors hired to do work at home are required to have an employment contract for minors authorised by the Labour Inspectorate Service. During the reference period, no contract for minors to do work at home was presented to the Labour Inspectorate Service.

The Committee refers to its General question on Article 7§1 in the General Introduction.

### *Conclusion*

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

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

*Paragraph 2 - Prohibition of employment under the age of 18 for dangerous or unhealthy activities*

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

In its previous conclusion (Conclusions 2015), the Committee found the situation to be in conformity with Article 7§2 of the Charter. It asked for information on the sanctions or fines imposed on employers who breached the prohibition on employing persons under the age of 18 in dangerous or unhealthy activities. The report states that the Labour Inspectorate did not identify any breaches of this prohibition.

The report also points out that the Labour Inspectorate does not authorise employment contracts for minors to engage in dangerous or unhealthy activities. Furthermore, it has never found that minors were employed in this type of activity in the course of its inspections.

The report also states that during the reference period, the Labour Inspectorate refused authorisation for 22 contracts for minors on the ground that these contracts were to be carried out in dangerous conditions.

The Committee asks that the next report provide information on the activities of the Labour Inspectorate and the sanctions applied in the event of breaches of the prohibition on employing persons under the age of 18 in dangerous or unhealthy activities.

*Conclusion*

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

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

### *Paragraph 3 - Prohibition of employment of children subject to compulsory education*

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

The Committee noted previously that the minimum age for employment is 16, which coincided with the end of compulsory education, and the employment of children under 14 was strictly forbidden, without any exceptions (Conclusions 2011).

In its previous conclusion, the Committee noted that under the Labour Relations Code, children aged 14 and 15 were not allowed to work during the school year but they were allowed to work during school holidays for up to two months per year provided that this was light work which did not harm their physical and moral development. They were required, however, to have 15 consecutive days off during summer holidays and half the time off during other holidays (Conclusions 2015).

The Committee also noted that during school holidays, children aged 14 and 15 could only work 6 hours a day and 30 hours per week maximum, and were required to have at least two consecutive days off per week. They should also benefit from a minimum rest period of 12 hours between two consecutive working days. Referring to its Statement of Interpretation on the permitted duration of light work, the Committee found that the situation in Andorra was in conformity with Article 7§3 of the Charter (Conclusions 2015).

The Committee asked previously for information on the number and nature of breaches detected and sanctions imposed by the Labour Inspectorate for breaches of the provisions on prohibition of employment of children subject to compulsory education (Conclusions 2015). The report states that during the reference period, the Labour Inspectorate did not identify any breaches of the prohibition on employing children under the age of 16 during school time. The report also states that during the reference period, the Labour Inspectorate rejected three contracts for minors aged 14 or 15 on the ground it was intended for these contracts to be performed during school time.

The Committee asks for information in the next report on the activities and findings of the Labour Inspectorate with regard to breaches of the rules prohibiting the employment of children subject to compulsory education.

### *Conclusion*

The Committee concludes that the situation in Andorra is in conformity with Article 7§3 of the Charter.

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

### *Paragraph 4 - Working time*

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

The Committee analysed the legal framework in its previous conclusion and found the situation in Andorra to be in conformity with Article 7§4 of the Charter (Conclusions 2011 and 2015). It noted that Article 22 of the Labour Relations Code stipulated that working time limits for young people aged 16 and 17 were 8 hours per day and 40 hours per week. It noted that persons under 18 years of age were not allowed to work overtime (Articles 24§2 and 61). Compulsory rest periods are a minimum of 12 hours per day and two consecutive days per week. A break of at least one hour must be granted to all young workers during the working day (Article 22).

The Committee asked previously for information on the activities and findings of the Labour Inspectorate with regard to the working time of persons under 18 years of age (Conclusions 2015). The report states that during the reference period, 11 sanctions were imposed for breaches of the regulations on child work, only one of which related to maximum working hours for young persons (Article 22 of the Labour Relations Code). The report also states that during the reference period, the Labour Inspectorate refused to grant authorisation for six contracts for minors because they included excessive working hours.

The Committee asks for information in the next report on the activities and findings of the Labour Inspectorate with regard to the working time of persons under the age of 18.

### *Conclusion*

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

**Young workers**

In its last conclusion (Conclusions 2015), the Committee found that the situation in Andorra was not in conformity with Article 7§5 of the Charter because the minimum wage of young workers was not fair. This was because the minimum wage for adults, which was the reference wage on which young persons' wages were based, had been judged to be incompatible with Article 4§1 of the Charter (Conclusions 2014). If the reference wage is too low, a young worker's wage cannot be considered fair even if it respects the 20-30% differential (Conclusions 2015, Austria).

According to the report, there were no changes to the legislation and regulations governing young persons' and apprentices' pay during the reference period. The differentials between young persons'/ apprentices' minimum wages and those of adults therefore remain unchanged. These are set down in Article 79 of the Labour Relations Code, under which the maximum permitted variations from the adult minimum wage are:

- minus 20% for young persons aged 15;
- minus 15% for young persons aged 16;
- minus 10% for young persons aged 17.

These differentials have been found, in principle, to be compatible with the Charter (Conclusions 2010, Article 4§1, Conclusions 2011, Article 7§5, Conclusions 2015, Article 7§5), but not the wage on which these calculations are based.

The Committee notes that, following the 2015 conclusions, the Andorran government undertook to raise the minimum wage to 50% of the average wage. The planned increase would take place gradually, so that the minimum wage would rise by at least 1.5% per year in 2016, 2017, 2018 and 2019 and by 2019 would amount to 50% of the average wage, net of social security contributions. For example, in 2016, even though the year on year change in the consumer price index was negative, the minimum wage rose by 1.5% to € 976.43. In November 2016, the government also approved the 1.5% increase for 2017, even though consumer prices had only risen by 0.4%, resulting in a minimum wage of € 991.47 in 2017. In November 2017, it decided on another 1.5% increase in the minimum wage to bring it to € 1,005.33 with effect from 1 January 2018. However, since this did not match the final figure for the rise in consumer prices in 2017, the government raised it again in January. Since 1 February 2018 the minimum wage has been € 1,017.47.

The Committee notes the government's efforts and considers that the planned net increase in the minimum wage is a positive development. However, it has already found that the minimum wage will ultimately not reach the 60% of net average earnings threshold for what it deems to be a fair level of remuneration (Conclusions 2018, Article 4§1). Moreover, since the reference period for these conclusions is 2014 to 2017, the young persons' minimum wage cannot be considered to be fair, since it is a reduced wage based on the reference wage, and it is still too low. The Committee therefore finds that the situation is incompatible with Article 7§5 of the Charter, because the minimum wage of young workers is not fair.

**Apprentices**

The Committee previously noted that the Labour Relations Code lays down the reductions applicable to the minimum wage under an apprenticeship contract. Under Article 28 of the Code, these reductions decrease gradually as apprentices gain experience in their respective trades:

- 40% in the first quarter;
- 30% in the second quarter;
- 20% in the third quarter;

- 10% in the fourth quarter.

The Committee previously stated that the adult reference wage must in all cases be sufficient to comply with Article 4§1 of the Charter (Conclusions 2018, Article 4§1). The Committee therefore finds that the situation is incompatible with Article 7§5 of the Charter on the ground that the allowances paid to apprentices are unfair, since the reference wage is itself too low to ensure a decent standard of living.

#### *Conclusion*

The Committee concludes that the situation in Andorra is not in conformity with Article 7§5 of the Charter on the grounds that:

- the minimum wage of young workers is not fair;
- apprentices do not receive adequate allowances.

## **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 Andorra.

It finds that the situation, which was deemed to be compatible with Article 7§6 of the Charter in its last conclusion, is unchanged. In that conclusion (Conclusions 2015), the Committee asked how the labour inspectorate ensured that time spent on vocational training was included in normal working hours.

According to the report, no specific checks were carried out during the reference period to ensure that businesses were counting time spent on vocational training as part of normal working hours, since the number of apprenticeship contracts was very limited and the labour inspectorate had not received any complaints or applications from apprentices concerning non-compliance with contract terms. The Committee repeats its question about how the authorities ensure that Article 7§6 of the Charter is applied in practice.

### *Conclusion*

Pending receipt of the requested information, the Committee concludes that the situation in Andorra is in conformity with Article 7§6 of the 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 Andorra.

The Committee considered the situation in its last conclusion and found it to be consistent with Article 7§7 of the Charter. It previously asked for information on the labour inspectorate's activities and notes that the situation in practice should be regularly monitored. It therefore asks for information in future reports on the number and nature of violations found, and on penalties imposed by the inspectorate for breaches of the regulations on paid annual holidays for workers aged under 18.

The report states that during the 2014-2017 reference period, 24 penalties were imposed for specific breaches of the regulations on paid holidays. None of these infringements concerned young persons under 18.

*Conclusion*

The Committee concludes that the situation in Andorra is in conformity with Article 7§7 of the 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 Andorra.

In its last conclusion (Conclusions 2015), the Committee noted that the Labour Relations Code prohibited night work for young persons under 18, defined as work undertaken between 10 pm and 8 am. However, there were legal exceptions for apprenticeships involving types of work usually performed at night, for example in the bakery sector. The situation was considered to be compatible with the Charter.

The Committee asks for information on the labour inspectorate's activities to monitor night work of children and young persons, and on any penalties imposed.

### *Conclusion*

Pending the information requested, the Committee concludes that the situation in Andorra is in conformity with Article 7§8 of the 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 Andorra.

The Committee previously found that the situation was compatible with the Charter (Conclusions 2015). According to the report, the legal situation remained unchanged during the reference period.

The Committee asks for information on the Labour Inspectorate's activities regarding, and available procedures for dealing with, non-compliance with the regulations on compulsory medical examinations for persons under 18.

*Conclusion*

Pending the information requested, the Committee concludes that the situation in Andorra is in conformity with Article 7§9 of the 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 Andorra.

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

The Committee notes from the report that the authorities are finalising a draft law on the rights of children and young persons with a view to compiling and updating all the Andorran legislation in this area for professionals, civil society and the general public. The aim of the draft law is to provide proper protection for neglected or endangered children and young persons, in accordance with the relevant international standards. It contains provisions on protecting children from the misuse of information technologies.

The Committee notes that the draft law on the rights of children and young persons was adopted in February 2019.

It asks for information in the next report on the provisions in this law relating to the protection of children against sexual exploitation.

It notes that Article 147§1 of the Criminal Code (non-consensual sexual acts) criminalises all sexual acts with a minor under 14 years of age. The Committee asks what protection from sexual exploitation is provided for children over 14 years of age.

It also notes that Article 157 bis of the Criminal Code stipulates that trafficking in human beings for the purpose of sexual exploitation is a criminal offence.

The Committee notes that the possession of child pornography is a crime.

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

In its previous conclusion (Conclusions 2015), the Committee asked whether it was planned to introduce legislation or codes of conduct for Internet service providers to protect children.

In reply, the report states that Internet service providers maybe held criminally liable for material they host under Article 155.2 of the Criminal Code. Further the Criminal Code as amended in 2013 introduces the concept of the use of information technologies in connection with sexual offences.

The Committee asks the next report to provide information on the provisions of the above mentioned law of 2019 on the rights of children and young persons, which protect children from the misuse of information technologies.

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

The Committee notes from the report that following the ratification of the Council of Europe Convention on Action against Trafficking in Human Beings, the authorities adopted amendments to the Criminal Code in December 2014. In addition, Law No. 9/2017 contains specific provisions on care for children who are either victims of trafficking themselves or the children of such victims.

The Committee asks whether measures have been taken to ensure children are not subject to labour exploitation.

Regarding street children and child begging, the report states that the data available to the Government show that there are no such cases in Andorra.

#### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Andorra is in conformity with Article 7§10 of the Charter.

**Article 8 - Right of employed women to protection of maternity**  
*Paragraph 1 - Maternity leave*

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

***Right to maternity leave***

The Committee noted previously that Law No. 35/2008 of 18 December 2008 on the Labour Relations Code grants women employees a 16-week guaranteed maternity leave, which can be extended by two weeks in the event of a multiple birth. Mothers must take a minimum of six weeks post-natal leave, which is paid at a rate of 100% of their salary. According to the report, under Law No. 17/2008 of 3 October 2008, the same rules apply to women employed in the public sector. The Committee notes that the situation is in conformity with the Charter in this respect.

However, as there is no information in the report on employees on a fixed-term contract, it reiterates its request.

***Right to maternity benefits***

In its previous conclusion (Conclusions 2015), the Committee found that the situation was in conformity with Article 8§1: for the duration of maternity leave, mothers are entitled to receive benefits from the Social Security service corresponding to 100% of their salary.

The Committee asks that the next report should provide information regarding the right to any kind of benefits for the employed women who do not qualify for maternity benefit during maternity leave.

It asked whether the minimum amount of maternity benefits corresponded to at least 50% of the median equivalised income.

The Committee points out that, under Article 8§1, the level of income-replacement benefits should be fixed so as to stand in reasonable proportion to the previous salary (these shall be equal to the previous salary or close to its value, and not be less than 70% of the previous wage) and it should never fall below 50% of the median equivalised income. If the benefit in question stands between 40% and 50% of the median equivalised income, other benefits, including social assistance and housing, will be taken into account. On the other hand, if the level of the benefit is below 40% of the median equivalised income, it is manifestly inadequate and its combination with other benefits cannot bring the situation into conformity with Article 8§1.

In the absence of the EUROSTAT median equivalised income indicator, the Committee refers to its previous conclusions on Article 12§1 (Conclusions 2017), in which it noted that since 2014, the reference threshold for determining the minimum subsistence level had been the “social cohesion economic threshold” (LECS), the level of which was the same as the minimum wage (set at €991.47 in 2017). The Committee also noted that the LECS is equivalent to 60% of average incomes per consumer unit, which is roughly the same as the EUROSTAT at-risk-of-poverty threshold, defined as 60% of the median equivalised income. Therefore, when assessing the adequacy of maternity benefits, the Committee will consider the threshold corresponding to 50% of average incomes, i.e. €826.23 in 2017 on the basis of the LECS. In view of the above, the Committee notes that the minimum amount of maternity benefit is higher than 50% of the median equivalised income. The situation is therefore in conformity with Article 8§1 of the Charter on this point.

***Conclusion***

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

**Article 8 - Right of employed women to protection of maternity**  
*Paragraph 2 - Illegality of dismissal during maternity leave*

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

In its previous conclusion (Conclusions 2015), the Committee found that the situation was in conformity with Article 8§2 of the Charter. Therefore, it will only consider the recent developments and additional information.

***Prohibition of dismissal***

In its previous conclusion, the Committee asked whether the prohibition of dismissal in the event of pregnancy also applied to public sector employees and what exceptions existed.

In response, the report states that the Civil Service Act of 15 February 2000 applies to women employed in the public sector. It provides for dismissal on disciplinary grounds without making a specific reference to cases of pregnancy. However, Law No. 35/2008 of 18 December 2008 on the Labour Relations Code applies to women employed in the public sector on a temporary contract (Article 90).

The Committee recalls that Article 8§2 of the Charter authorises the dismissal of an employee during her pregnancy and maternity leave only in certain cases, in particular when serious misconduct found justifies breaking off the employment relationship, if the undertaking ceases to operate or if the period described in the employment contract has expired. However, these exceptions are strictly interpreted by the Committee. Therefore, the Committee requests clarification, corroborated by any relevant case law, as to how the disciplinary grounds are interpreted and applied.

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

In its previous conclusion, the Committee also asked whether the rules relating to reinstatement and/or compensation in the event of unfair dismissal of a pregnant woman working in the public sector were the same as those set out in Law No. 35/2008. Since there is no information in the report on this subject, the Committee reiterates its question. It points out that, should the necessary information not be provided in the next report, nothing will enable the Committee to establish that the situation in Andorra is in conformity with Article 8§2 of the Charter in this respect.

*Conclusion*

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

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

*Paragraph 3 - Time off for nursing mothers*

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

In its previous conclusion (Conclusions 2015), the Committee found that the situation was in conformity with Article 8§3 of the Charter. Since the situation remains unchanged, it confirms its previous finding of conformity.

The Committee asks what rules apply to women working part-time.

*Conclusion*

The Committee concludes that the situation in Andorra is in conformity with Article 8§3 of the Charter.

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

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

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

In its previous conclusion (Conclusions 2015), the Committee found that the situation was in conformity with Article 8§4 and asked what rules applied if the transfer to a daytime job was not possible.

In response, the report states that in such a case, the employment contract of the pregnant employee concerned may be suspended. Under Article 39 of Law No. 35/2008, sick leave (for high-risk pregnancy) includes the period necessary for protecting employees' health and safety, as long as they are unable to return to their post or any other post compatible with their condition.

The Committee recalls that Article 8§4 also requires that women who have recently given birth or who are nursing their infant (including after the end of maternity leave) should be protected, and therefore asks what rules apply if a transfer to daytime work is not possible in that case.

The Committee refers to its Statement of Interpretation on Articles 8§4 and 8§5 (Conclusions 2019) and asks the next report to confirm that no loss of pay results from the changes in the working conditions or reassignment to a different post or any exemption from work for reasons related to pregnancy and maternity, and that the women concerned retain the right to return to their previous employment at the end of the protected period.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Andorra is in conformity with Article 8§4 of the Charter.

**Article 8 - Right of employed women to protection of maternity**  
*Paragraph 5 - Prohibition of dangerous, unhealthy or arduous work*

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

It already examined the situation concerning the prohibition of dangerous, unhealthy or arduous work. It will therefore only consider the recent developments and additional information.

In its previous conclusion (Conclusions 2015), the Committee asked whether work in underground mining was prohibited for pregnant women, women who have recently given birth or who are nursing their infants.

In response, the report states that there is no explicit prohibition on underground work in mines as there is no mine in Andorra.

The Committee points out that Article 8 of the Charter provides specific rights protecting employed women during pregnancy and maternity (Statement of Interpretation on Articles 8§4 and 8§5, Conclusions 2019). Since pregnancy and maternity are gender-specific, any less favourable treatment due to pregnancy or maternity is to be considered as direct gender discrimination. Consequently, the non-provision of specific rights aimed at protecting the health and safety of a mother and a child during pregnancy and maternity, or the erosion of their rights due to special protection during such a period are also direct gender discrimination. It follows that, in order to ensure non-discrimination on the grounds of gender, employed women during the protected period may not be placed in a less advantageous situation, also with regard to their income, if an adjustment of their working conditions is necessary in order to ensure the required level of the protection of health. It follows that, in the case a woman cannot be employed in her workplace due to health and safety concerns and as a result, she is transferred to another post or, should such transfer not be possible, she is granted leave instead, States must ensure that during the protected period, she is entitled to her average previous pay or provided with a social security benefit corresponding to 100% of her previous average pay. Further, she should have the right to return to her previous post. In this respect, the Committee asks the next report to confirm that no loss of pay results from the changes in the working conditions or reassignment to a different post and that the women concerned retain the right to return to their previous employment at the end of the protected period.

*Conclusion*

The Committee concludes that the situation in Andorra is in conformity with Article 8§5 of the Charter.

## **Article 17 - Right of children and young persons to social, legal and economic protection**

### *Paragraph 1 - Assistance, education and training*

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

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

The Committee has noted with concern the increasing number of children in Europe registered as stateless, as this will have a serious impact on those children's access to basic rights and services such as education and healthcare.

According to EUROSTAT in 2015 there were 6,395 first time asylum applications in the EU by children recorded as stateless and 7,620 by children with an unknown nationality. This figure only concerns EU states and does not include children born stateless in Europe or those who have not applied for asylum.

In 2015, UNHCR estimated the total number of stateless persons in Europe at 592,151 individuals. Therefore the Committee asks what measures have been taken to reduce statelessness such as ensuring that every stateless migrant child is identified simplifying procedures for obtaining nationality and taking measures to identify children unregistered at birth etc.

The Committee asks further what measure have been taken to facilitate birth registration, in particular for vulnerable groups, such as Roma, asylum seekers, and children in an irregular situation.

#### ***Protection from ill-treatment and abuse***

In its previous conclusion the Committee found that corporal punishment of children was not explicitly prohibited in the home, in schools and in institutions during the reference period and therefore concluded that during the reference period the situation was not in conformity with the Charter (Conclusions 2015).

However the Committee recalls that following amendments to the Penal Code in 2014 corporal punishment is unlawful in all settings. The report also states that a draft law on the Rights of Children and Young Persons also contains provisions prohibiting corporal punishment.

The Committee concludes that the situation is now in conformity in this respect.

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

The Committee refers to its previous conclusions for a description of the situation (Conclusions 2015).

The report recalls that where social services believe a child is at risk of harm, they will propose measures to the court to be taken to protect the child. After hearing all parties, including the child, it is for the courts to make a decision as to what measures are necessary to protect the child. All possible measures are taken to keep children at risk of harm within the family. However should this not be possible, the child may be placed in the care of social services or with a close family member.

In 2016 a new programme was established to assist young persons aged 16 to 21 years of age who are or were under guardianship of the state, to prepare them for leaving the care of the state and ensuring their social inclusion.

The Committee notes that between 2014 and 2017 there was a steady increase in the number of children removed from their families; 18 in 2014 and 46 in 2017. However this is significantly lower than the figures from the previous reference period. It requests information on the reasons for these trends and asks next report to continue to provide information on the number

of children removed from their families, the total number in care, the number placed in foster care and in institutional care.

### ***Right to education***

As regards the issue of education, the Committee refers to its conclusion under Article 17§2.

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

The Committee refers to its previous conclusion for a description of the situation (Conclusions 2015). It recalls that the age of criminal responsibility is 18 years. However it recalls that children who have committed a criminal offence maybe subject to special measures and placed in an open or closed facility. The Committee asks for updated information on the range of measures that maybe imposed on children who have committed a criminal offence.

The Committee also seeks information on the maximum period that children may be detained in a closed facility, whether children may be subject to pre-trial detention and if so for how long. It also asks whether children may be subject to solitary confinement, and if so, for how long and under what circumstances.

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

Article 17 guarantees the right of children, including children in an irregular situation and non-accompanied children to care and assistance, including medical assistance and appropriate accommodation<sup>1</sup> [International Federation of Human Rights Leagues (FIDH) v. France, Complaint No 14/2003, decision on the merits of September 2004, § 36, *Defence for Children International (DCI) v. the Netherlands*, Complaint N° 47/2008, Decision on the merits of 20 October 2009, §§70-7, European Federation of National Organisations working with the Homeless (FEANTSA) v, Netherlands, Complaint No.86/2012, Decision on the merits of 2 July 2014, §50.

The Committee considers that that the detention of children on the basis of their immigration status of that of their parents' is contrary to the best interests of the child. Likewise unaccompanied children should not be deprived of their liberty and detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status or lack thereof.

According to the report there are few children in an irregular situation in Andorra. However children of seasonal workers may be irregularly present, since such workers do not have the right to family reunification. In case of neglect, exploitation or violence such children will have the protection of social services.

Unaccompanied children are placed under the guardianship of the state and are entitled to special protection measures.

The Committee asks what measures have been taken to ensure that children irregularly present whether accompanied or not, are accommodated in appropriate facilities. It also requests further information on the assistance given to unaccompanied children, especially to protect them from exploitation and abuse. Lastly the Committee requests information as to whether children irregularly present accompanied by their parents or not, may be detained and if so under what circumstances.

As regards age assessments, the Committee recalls that, in line with other human rights bodies, it has found that the use of bone testing in order to assess the age of unaccompanied children 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]. The Committee asks whether Andorra uses bone testing to assess age and, if so, in what situations the State does so. Should the State carry out such testing, the Committee asks what potential consequences such testing may have (e.g., can a

child be excluded from the child protection system on the sole basis of the outcome of such a test?).

### ***Child poverty***

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. The obligation of states to take all appropriate and necessary measures to ensure that children and young persons have the assistance they need is strongly linked to measures directed towards the improvement and eradication of child poverty and social exclusion. Therefore, the Committee will take child poverty levels into account when considering the state's obligations under the terms of Article 17 of the Charter.

The Committee asks the next report to provide information on the rates of child poverty as well as on the measures adopted 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. Information should also be provided on measures focused on combatting discrimination against and promoting equal opportunities for, children from particularly vulnerable groups such as ethnic minorities, Roma children, children with disabilities, and children in care.

States should also make clear the extent to which child participation is ensured in work directed towards combatting child poverty.

### ***Conclusion***

The Committee concludes that the situation in Andorra is in conformity with Article 17§1 of the Charter.

## **Article 17 - Right of children and young persons to social, legal and economic protection**

### *Paragraph 2 - Free primary and secondary education - regular attendance at school*

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

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

The Committee recalls that free public compulsory education in Andorra is from the age of 6-16 years. Children from the age of 3 years have the right to attend school, however it is not compulsory. According to the report 90% of children between the ages of 3 and 6 years attend school.

The Committee previously asked for updated information on the enrolment rates in primary and secondary education as well information regarding measures taken to reduce the number of absentees (Conclusions 2015).

The Committee notes the information contained in the report on the number of children enrolled in compulsory education.

The Committee notes that the rate of absenteeism is low in Andorra, and notes that the report states that a decree of 2008 sets out measures to monitor and address absenteeism.

The Committee wishes the next report to provide updated information on enrolment rates, absenteeism and drop-out rates as regards compulsory education, as well as information on measures taken to address issues related to these rates.

#### ***Costs associated with education***

The Committee asks the next report to provide information on measures taken to mitigate the costs of education, such as transport, uniforms, books and stationary.

#### ***Vulnerable groups***

The Committee previously asked what measures are taken to facilitate access to education for children from vulnerable families, including children of minorities, and whether children in an irregular situation have access to education (Conclusions 2015).

In response the report states that the public authorities provide education assistance to compensate for economic and social inequalities. The Committee asks the next report to provide further details of such assistance.

According to the report all children in Andorra, including children in an irregular migration situation have the right to attend school.

As Andorra has accepted Article 15.1 of the Charter, the Committee will examine the issue of access to education for children with disabilities under that provision.

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

The Committee asks what measures have been taken to introduce anti bullying policies in schools, i.e., measures relating to awareness raising, prevention and intervention.

#### ***The voice of the child in education***

Securing the right of the child to be heard within education is crucial for the realisation of the right to education in terms of Article 17.2 This requires states to ensure child participation across a broad range of decision-making and activities related to education, including in the context of children's specific learning environments. The Committee asks what measures have been taken by the State to facilitate child participation in this regard.

#### *Conclusion*

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

**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 Andorra.

***Migration trends***

The Committee has assessed the migration trends in Andorra in its previous conclusion ([Conclusions 2015](#)). The report does not provide any new information in this regard. The Committee asks that the next report includes an up-to-date description of the developments in the migration trends.

***Change in policy and the legal framework***

The Committee notes from previous reports that the main legal instruments concerning migrant workers are the 2002 Qualified Law on Immigration and the Labour Code Act. This legislation is supplemented by a series of government decrees and bilateral conventions concerning relations with Spain, France and Portugal (see Conclusions 2011).

The report provides that in 2017 the Law on measures to combat trafficking in human beings and the protection of victims entered into force. Upon the Committee's question about the concrete framework of the Qualified Law on Immigration, the report specifies that together with the mentioned 2017 Law, it provides a potential victim of trafficking in human beings with reflection and recovery period of three months renewable once for three additional months. Throughout this period, the person may reside in Andorra and may not be subject to any administrative police measure. At the end of this period, if the person in question has collaborated with the national authorities for the investigation and the criminal trial derived from the offense of trafficking in human beings, he or she can choose to stay in the country by requesting a residence and work permit.

The Committee asks for further details on provisions of the Qualified Law on Immigration related to the assistance and information for migrant workers.

***Free services and information for migrant workers***

The Committee recalls that this provision guarantees the right to free information and assistance to nationals wishing to emigrate and to nationals of other States Parties who wish to immigrate (Conclusions I (1969), Statement of Interpretation on Article 19§1). Information should be reliable and objective, and cover issues such as formalities to be completed and the living and working conditions they may expect in the country of destination (such as vocational guidance and training, social security, trade union membership, housing, social services, education and health) (Conclusions III (1973), Cyprus).

The Committee considers that free information and assistance services for migrants must be accessible in order to be effective. While the provision of online resources is a valuable service, it considers that due to the potential restricted access of migrants, other means of information are necessary, such as helplines and drop-in centres (Conclusions 2015, Armenia).

The report provides that the Immigration Department offers multilingual assistance, personal, by telephone, or email, in several languages in addition to the official language, such as French, Spanish and English. Furthermore, there are also other ways of obtaining information for immigrants and emigrants, such as a personalized information service in different languages according to the person's needs at the employment offices. The website of the Immigration Department of the Ministry of Social Affairs, Justice and the Interior also disseminates information relating to the procedures to be followed by the applicant for immigration authorization in different languages (Catalan, French, English, Castilian and Portuguese). Informative brochures provide information on the rights and obligations of immigrants, such as how to obtain information on matters concerning employment with the

Labor Inspection Service; have access to the Employment Service in the event that the person concerned is looking for a job; have access to free Catalan courses for adults from the Adult Training Section; benefit from social security coverage in the host country, as well as for the renewal of permits.

### ***Measures against misleading propaganda relating to emigration and immigration***

The Committee recalls that measures taken by the government should prevent the communication of misleading information to nationals leaving the country and act against false information targeted at migrants seeking to enter (Conclusions XIV-1 (1998), Greece).

The Committee considers that in order to be effective, action against misleading propaganda should include legal and practical measures to tackle racism and xenophobia, as well as women trafficking. Such measures, which should be aimed at the whole population, are necessary inter alia to counter the spread of stereotyped assumptions that migrants are inclined to crime, violence, drug abuse or disease (Conclusion XV-1 (2000), Austria).

The Committee recalls that statements by public actors are capable of creating a discriminatory atmosphere. Racist misleading propaganda indirectly allowed or directly emanating from the state authorities constitutes a violation of the Charter (Centre on Housing Rights and Evictions (COHRE) v Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010). The Committee stresses the importance of promoting responsible dissemination of information, and of deterring the promulgation of discriminatory views.

The Committee recalls that in order to combat misleading propaganda, there must be an effective system to monitor discriminatory, racist or hate-inciting speech, particularly in the public sphere. It also recalls that the authorities should take action against misleading propaganda as a means of preventing illegal immigration and trafficking in human beings (Conclusions 2006, Slovenia).

Finally, the Committee recalls that States must also take measures to raise awareness amongst law enforcement officials, such as awareness training of officials who are in first contact with migrants.

In its previous conclusion ([Conclusions 2017](#)), the Committee found that Andorra had taken adequate steps to combat misleading propaganda and found the situation in conformity with the Charter in this respect. The report provides further exhaustive information on continuing measures implemented to fight against racist propaganda and hate speech. It confirms that the Ministry of Social Affairs, Justice and the Interior, has qualified immigration staff, particularly aware of racism and social and racial discrimination. Relevant staff such as the police or social workers receive additional training when necessary.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Andorra is in conformity with Article 19§1 of the 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 Andorra.

The Committee recalls that the scope of this provision extends to migrant workers immigrating as well as migrant workers emigrating to the territory of any other State. Contacts and information exchanges should be established between public and/or private social services in emigration and immigration countries, with a view to facilitating the life of emigrants and their families, their adjustment to the new environment and their relations with members of their families who remain in their country of origin (Conclusions XIV-1 (1998), Belgium).

It also recalls that formal arrangements are not necessary, especially if there is little migratory movement in a given country. In such cases, the provision of practical co-operation on a needs basis may be sufficient. Whilst it considers that collaboration among social services can be adapted in the light of the size of migratory movements (Conclusions XIV-1 (1996), Norway), it holds that there must still be established links or methods for such collaboration to take place.

The co-operation required entails a wider range of social and human problems facing migrants and their families than social security (Conclusions VII, (1981), Ireland). Common situations in which such co-operation would be useful would be for example where the migrant worker, who has left his or her family in the home country, fails to send money back or needs to be contacted for family reasons, or where the worker has returned to his or her country but needs to claim unpaid wages or benefits or must deal with various issues in the country in which he was employed (Conclusions XV-1 (2000), Finland).

The Committee previously noted that Andorran authorities collaborated closely with French and Spanish authorities ([Conclusions 2015](#)), also in cases of return to the origin country. In the light of the fact that migrants of these nationalities accounted to 84% of the non-Andorran population, the Committee considered the situation to be in conformity with the Charter. The report confirms that the cooperation persists.

*Conclusion*

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

It recalls that this provision recognises the right of migrant workers to equal treatment in law and in practice in respect of the payment of employment taxes, dues or contributions (Conclusions XIX-4 (2011), Greece).

In its previous conclusion (Conclusions 2015), the Committee noted that, outside the reference period, a new income tax was passed by the legislature and asked for information on its application to migrant workers. It also requested that the report include information on social insurance contributions in respect of employed persons.

In reply, the report states that the new personal income tax applies in the same way to all workers, since it relates to the actual residence of the worker and not to the nationality. Frontier workers who travel daily to Andorra from Spain or France, or temporary workers who reside less than 183 days a year on the Andorran territory are not considered tax residents. Their income is subject to the income tax of non-resident taxpayers, however, they may choose to be taxed according to the general rules provided by the Personal Income Act. The tax rate for both types of income taxes is 10%. There are also tax cuts and reductions that reduce the effective tax, which may apply to all taxpayers, including cross-border workers and temporary workers if they choose to be subjected to personal income tax.

The report also provides extensive information on the rates of social contributions for employees. The Committee understands that it applies equally to migrant workers and nationals, as it seems to be based on the residence, similarly to the personal income tax. It asks the next report to confirm that this is the case.

*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Andorra is in conformity with Article 19§5 of the Charter.

**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 Andorra.

The Committee recalls that States must ensure that migrants have access to courts, to lawyers and legal aid on the same conditions as their own nationals (Conclusions I (1969), Italy, Norway, United-Kingdom).

It further recalls that any migrant worker residing or working lawfully within the territory of a State Party who is involved in legal or administrative proceedings and does not have counsel of his or her own choosing should be advised that he/she may appoint counsel and, whenever the interests of justice so require, be provided with counsel, free of charge if he or she does not have sufficient means to pay the latter, as is the case for nationals or should be by virtue of the European Social Charter. Whenever the interests of justice so require, a migrant worker must have the free assistance of an interpreter if he or she cannot properly understand or speak the national language used in the proceedings and have any necessary documents translated. Such legal assistance should be extended to obligatory pre-trial proceedings (Conclusions 2011, Statement of interpretation on Article 19§7).

The Committee previously considered that the Andorran legal framework failed to meet the requirements of Article 19§7 of the Charter, in that a free legal assistance was limited to the assistance of an advocate. Services of an interpretation, when possibly required by the litigant or defendant in the interest of justice, were not available for free on a means-tested basis.

The situation has changed following legislative amendments in 2014 and 2017. The report submits that pursuant to the new legal framework, free legal assistance is guaranteed to all who cannot afford it and comprises of an assistance of an advocate, exemption of fees and costs, free legal copies of all documents and any other procedural and practical costs, which may include interpretation and translation. The Code of Criminal Procedure ensures the right to a free assistance of interpreter throughout all stage of procedure to all foreigners who do not speak or understand the official national language.

The report also states that mediation service in cases related to social rights is free and offered in languages of the neighbour countries (French and Spanish).

In the previous conclusion (Conclusions 2015) the Committee referred to its Statement of Interpretation on rights of refugees (Conclusions 2015) and asked under what conditions refugees and asylum seekers may receive legal aid assistance. In reply, the report explains that refugees are entitled to legal aid under the same conditions as all other residents of Andorra, but will receive additional administrative assistance in terms of administrative and logistical support. Persons who benefit from transitional and temporary protection for humanitarian reasons are designated a reference person who is their personal liaison with the administration, to help them in all their administrative procedures and in adaptation to everyday life in Andorra.

*Conclusion*

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

The Committee recalls that this provision obliges States Parties not to place excessive restrictions on the right of migrants to transfer earnings and savings, either during their stay or when they leave their host country (Conclusions XIII-1 (1993), Greece).

In its previous conclusion, the Committee found the situation to be in conformity with the requirements of the Charter ([Conclusions 2015](#)).

The report submits that the Law of 2017 on prevention of money laundering and against the financing of terrorism introduced an obligation to declare to customs any transfers of amounts equal to or /larger than 10,000 EUR. The obligation applies equally to nationals and migrants.

In the previous conclusion (Conclusions 2015) the Committee referred to its Statement of Interpretation on Article 19§9 ([Conclusions 2011](#)), affirming that the right to transfer earnings and savings includes the right to transfer movable property of migrant workers. It asked whether there were any restrictions in this respect.

In reply, the report states that there are no restrictions imposed on migrant workers as to transfer of movable property abroad.

*Conclusion*

The Committee concludes that the situation in Andorra is in conformity with Article 19§9 of the Charter.

**Article 19 - Right of migrant workers and their families to protection and assistance**  
*Paragraph 11 - Teaching language of host state*

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

The Committee recalls that the teaching of the national language of the receiving state is the main means by which migrants and their families can integrate into the world of work and society at large. States should promote and facilitate the teaching of the national language to children of school age, as well as to the migrants themselves and to members of their families who are no longer of school age (Conclusions 2002, France).

Article 19§11 requires that States shall encourage the teaching of the national language in the workplace, in the voluntary sector or in public establishments such as universities. It considers that a requirement to pay substantial fees is not in conformity with the Charter. States are required to provide national language classes free of charge, otherwise for many migrants such classes would not be accessible (Conclusions 2011, Norway).

The language of the host country is automatically taught to primary and secondary school students throughout the school curriculum but this is not enough to satisfy the obligations laid down by Article 19§11. The Committee recalls that States must make special effort to set up additional assistance for children of immigrants who have not attended primary school right from the beginning and who therefore lag behind their fellow students who are nationals of the country (Conclusions 2002, France).

The Committee notes that there have been no changes to the situation, which it previously had considered to be in conformity with the Charter ([Conclusions 2015](#)).

The report specifies that all three national educational systems, Andorran, French and Spanish, teach, in a compulsory way, the Catalan language. Newcomers, regardless of the system, receive as personalized instruction as possible and necessary to compensate delays and overcome any linguistic difficulties.

*Conclusion*

The Committee concludes that the situation in Andorra is in conformity with Article 19§11 of the Charter.

**Article 19 - Right of migrant workers and their families to protection and assistance**  
*Paragraph 12 - Teaching mother tongue of migrant*

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

The Committee recalls that according to its case law, States must promote and facilitate, as far as practicable, the teaching in schools or other structures, such as voluntary associations, of those languages that are most represented among migrants within their territory. In practical terms, States should promote and facilitate the teaching of the mother tongue where there are a significant number of children of migrants who would follow such teachings (Conclusions 2011, Statement of interpretation on Article 19§12).

In its previous conclusion, the Committee has assessed the teaching of the mother tongue to migrant workers and their families, both in the form of a free multilingual mainstream education and extra-curricular lessons ([Conclusions 2015](#)) and found it to be in conformity with the requirements of the Charter.

The report highlights that, given a large number of Portuguese migrants, particular bilateral agreements were signed with Portugal with the aim of providing education for Portuguese children in their mother tongue. It submits, furthermore, that in addition to the languages of the most represented migrant groups, extra-curricular language classes are also offered in Arabic and Chinese.

*Conclusion*

The Committee concludes that the situation in Andorra is in conformity with Article 19§12 of the Charter.

**Article 31 - Right to housing**  
*Paragraph 1 - Adequate housing*

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

***Criteria for adequate housing***

The Committee refers to its Conclusions 2011 for a description of the minimum criteria for housing in Andorra. It further refers to its Conclusions 2015 with regard to legislative and other measures for the renovation or refurbishment of housing.

The Committee asks that the next report provide updated statistics relating to the adequacy of housing (overcrowding, water, heating, sanitary facilities, electricity).

***Responsibility for adequate housing***

In its previous conclusions (Conclusions 2011, 2015) the Committee asked for information on how the authorities ensure that the rules on adequate housing are respected.

The report states that the legislation provides for control mechanisms to ensure that housing meets the minimum standards of fitness for human habitation. In the case of existing dwellings, a certificate of habitability is required by the notary for all purchases/sales or lettings. These certificates of habitability are valid for ten years and must be updated under the supervision of a qualified technical officer, after inspecting the housing concerned. Once signed and certified, the certificate is sent to the Government for approval. The approval procedure consists of verifying the data submitted for the purpose of drawing up the certificate, as well as random inspections of certain dwellings in order to ascertain whether or not the certificate should be approved.

The report states that in the case of new housing, the controls are far more thorough because they are carried out by both the Government and the *Comuns* (municipalities). In accordance with the General Law on Spatial Planning and Urban Development, the processing of applications for urban planning permits is the responsibility of the *Comuns*. Once the work has been completed, an application for a licence of first occupation is sent to the *Comú* so that the file can be closed. Technical officers from the *Comú* carry out an inspection of the site. If the work is compliant with the original application and the regulations in force, a licence of first occupation is issued by the *Comú*. Once this authorisation has been granted, an application for a habitation licence or certificate of habitability is sent to the Government. Officials from the Government's urban planning department carry out an inspection in order to check again that the dwelling is fit for human habitation and, where appropriate, issue the habitation licence or certificate of habitability. The report also states that other monitoring and evaluation mechanisms are embedded in all policies, including grants for improving energy efficiency, sustainability and accessibility.

***Legal protection***

The Committee refers to its previous conclusion (Conclusions 2015) for a description of the judicial remedies available to tenants. It had asked the next report to indicate whether judicial remedies were affordable and effective.

In its reply, the report notes that according to the Regulation of 19 July 2017 governing the right to defence and legal technical assistance, anyone who cannot afford to hire a lawyer of his or her choosing may apply to the justice system for free legal assistance. This service is run by the Andorran Bar Association and funded by the state. In addition to legal technical assistance, it may include exemption from court fees, exemption from payment of experts' fees, access to copies free of charge and, if necessary, translation costs.

The Committee further notes that according to the 2018 annual report by the Andorran ombudsman (*Raonador del ciutadà*), in 2018 the latter received 79 complaints concerning the

right to housing. The Committee asks that the next report provide information on the types of housing complaints that come before the Ombudsman and their outcome.

***Measures in favour of vulnerable groups***

In response to the request made in its previous conclusion about measures to assist Roma people (Conclusions 2015), the report states that there are no Roma communities registered in Andorra. Persons belonging to the “Gypsy” community are sedentary and integrated into the rest of the population. Insofar as such persons are not considered a “vulnerable group”, they benefit from the same social protection measures as the rest of the Andorran population.

The Committee further notes from the report that the rental housing grants administered by the Department of Social Affairs are targeted in particular at the following groups: young people, the elderly, single-parent families, large families, people with disabilities, women in disadvantaged economic situations who live in unstable family units and women victims of domestic violence. In addition, the Department of Social Affairs has 16 social housing units that are accessible to young people in guardianship, people with disabilities, women victims of violence, refugees, the elderly, and individuals or families in emergency situations. The report explains that three of the apartments had been set aside for the country’s first refugees who were expected to arrive in November 2018.

*Conclusion*

The Committee concludes that the situation in Andorra is in conformity with Article 31§1 of the Charter.

## **Article 31 - Right to housing**

### *Paragraph 2 - Reduction of homelessness*

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

#### ***Preventing homelessness***

In its previous conclusion (Conclusions 2015), the Committee took note of the measures taken to address the need for emergency accommodation and asked what additional measures were planned to foster the long-term integration of homeless people.

The report states that there are no homeless people in Andorra, as emergency aid or emergency rehousing arrangements are put in place as soon as someone is found to be at risk of homelessness. In order to facilitate the reintegration of people who are homeless or unable to pay their rent, a follow-up plan is instituted by members of the Individual and Family Assistance Service (AAPF) for each of the persons concerned. The main objectives are to help those concerned achieve stability in terms of their personal, occupational and financial circumstances so that they can quickly obtain access to affordable housing.

The Committee also notes the measures taken during the reference period to provide emergency shelter (including the establishment of an immediate assistance service in 2017 and its activities) and those aimed at expanding the supply of social housing (plans to build 22 social housing units following an agreement between the Ministry of Social Affairs, Justice and the Interior and the private foundation *Armor*) and grants for rental housing which, since 2016, have been administered by the Department of Social Affairs (see also under Article 31§1 measures in favour of vulnerable groups). In 2017, for example, 872 families received grants for rental housing.

The Committee considers that the situation in Andorra in this respect is in conformity with Article 31§2 of the Charter.

#### ***Forced eviction***

In its previous conclusion (Conclusions 2017), the Committee found that the situation was not in conformity with the Charter in the absence of specific regulations to protect persons threatened with eviction. It notes that it had previously asked whether the formal warning sent to tenants who had failed to obey an eviction order fixed another time-limit (Conclusions 2015). The Committee also asked for information on the prohibition to carry out evictions at night or during winter, access to legal remedies, access to legal aid and compensation in the event of illegal eviction (Conclusions 2015 and 2017).

As to the question of the notice period, the 2017 report stated that tenants who were being evicted normally received more than two months' notice. The current report states that if the individuals concerned have not found new housing within 15 working days as from the date of the eviction order, a new period does not start running by default. In such cases, social services contact the *Batllia* (the competent court) to request that the time-limit be extended. It is the court which determines this second time-limit, although social services may also make recommendations. Vulnerable individuals and families are not evicted until either they or social services have found alternative decent accommodation.

With regard to the ban on evictions at night or during winter, the report points out that these are never carried out at night but that they may be carried out during winter. On the subject of remedies and legal aid, the report mentions the possibility of bringing court proceedings and refers to the information provided concerning free legal assistance under Articles 19§7 and 31§1 of the Charter. The Committee notes that despite its repeated requests, the report does not provide any information about the possibility of claiming compensation in the event of illegal eviction.

The Committee points out that the law must establish eviction procedures, specifying when they may not be carried out (for example, at night or during winter), provide legal remedies and offer legal aid to those who need it to seek redress from the courts. Compensation for illegal evictions must also be provided (see *inter alia* ERRC v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005, § 41).

The Committee considers that the situation in Andorra is not in conformity with Article 31§2 of the Charter on the grounds that the law does not prohibit carrying out evictions during winter, and it has not been demonstrated that it provides compensation in the event of illegal eviction.

### ***Right to shelter***

The Committee takes note of the information contained in the current report which confirm that emergency accommodation satisfies security requirements and health and hygiene standards, including in terms of access to water and heating.

The Committee previously reserved its position on eviction from emergency accommodation/shelters without the provision of alternative accommodation, pending confirmation from the Government that in practice the authorities never evict people without first offering alternative accommodation (Conclusions 2017).

The report states that even though there is no formal prohibition against evicting persons staying in hotels (establishments that work with social services to provide emergency accommodation), in the event that the hotelier should no longer wish to continue to accommodate the person concerned, the hotelier notifies social services so that they can make alternative arrangements.

The Committee concludes that the situation in Andorra is in conformity with Article 31§2 of the Charter in this respect.

### *Conclusion*

The Committee concludes that the situation in Andorra is not in conformity with Article 31§2 of the Charter on the grounds that:

- the law does not prohibit carrying out evictions during winter;
- it has not been established that under domestic law, compensation is provided in the event of illegal eviction.