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EUROPEAN SOCIAL CHARTER

European Committee of Social Rights

Conclusions 2019

AUSTRIA

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.¹

The European Social Charter (revised) was ratified by Austria on 20 May 2011. The time limit for submitting the 7th report on the application of this treaty to the Council of Europe was 31 October 2018 and Austria submitted it on 8 November 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).

Austria has accepted all provisions from the above-mentioned group except Articles 7§6, 8§2, 19§4, 19§8, 19§§10, 19§11, 27§3 and 31.

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

The present chapter on Austria concerns 26 situations and contains:

- 21 conclusions of conformity: Articles 7§1, 7§2, 7§3, 7§4, 7§5, 7§7, 7§8, 7§9, 8§1, 8§3, 8§4, 8§5, 17§2, 19§2, 19§3, 19§5, 19§7, 19§9, 19§12, 27§1 and 27§2 ;
- 3 conclusions of non-conformity: Articles 16, 17§1 and 19§6.

In respect of the other 2 situations concerning Articles 7§10 and 19§1, 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 Austria under the Revised Charter. The Government consequently has an obligation to provide this information in the next report from Austria on the articles in question.

The next report from Austria 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.

¹ The conclusions as well as state reports can be consulted on the Council of Europe's Internet site (www.coe.int/socialcharter).

Article 7 - Right of children and young persons to protection

Paragraph 1 - Prohibition of employment under the age of 15

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

The Committee refers to its previous conclusion, where it found the situation to be in conformity with Article 7§1 of the Charter (Conclusions 2015).

Children are defined as minors under the age of 15 or older if compulsory education is completed later (Section 2(1) of the Act on the Employment of Children and Young Persons 1987 (*Kinder- und Jugendlichen Beschäftigungsgesetz, KJBG*)) and young persons are individuals under 18 years of age who are no longer children (Section 3 *KJBG*).

The Committee noted previously that child labour is prohibited in Austria (Section 5 *KJBG*). The employment of children is permitted only for the purpose of instruction or education or, in the case of one's own children, when they are given light household tasks for a short period (Section 4 *KJBG*). The Committee examined the specific exemptions provided by Sections 5a and 6 of the *KJBG* allowing the deployment of children in certain activities and light tasks and concluded that the situation was in conformity with the Charter (Conclusions 2015).

As regards monitoring child labour, the Committee noted previously that that District Administration Authorities are jointly responsible for monitoring compliance with the legal provisions, in collaboration with the Labour Inspectorates (labour inspectors responsible for child labour and the protection of young persons and apprentices), municipal authorities and school administrations (Conclusions 2015). An obligation exists to report any evidence of violations of child labour regulations; this obligation applies to schoolteachers, physicians and bodies of private youth welfare organisations as well as all corporate bodies whose responsibilities include matters pertaining to youth welfare (Section 9 *KJBG*). The Committee asked for information on the sanctions imposed in cases of violation and on the number and nature of violations detected (Conclusions 2015).

The current report indicates that violations of the Act on the Employment of Children and Young People are punishable in the case of a first-time offence by a fine of EUR 72 to EUR 1 090, and EUR 218 to EUR 2 180 after repeated offences (Section 30 *KJBG*). The report indicates that in 2016, the Labour Inspectorate identified one violation of child labour provisions, seven violations in 2015 and only one in 2014. The Agriculture and Forestry Inspections have not reported any violations of the prohibition on child labour during the reference period.

Regarding work done at home, the Committee previously recalled that States are required to monitor the conditions under which it is performed in practice and asked whether the authorities monitor work done at home by children and which are their findings in this respect (Conclusions 2015). The report indicates that the *KJBG* prohibits the deployment of children under the age of 15 at work in homes since such work does not fall under any exemption set forth in Sections 5 and 6 of the *KJBG*. The Central Labour Inspectorate is not aware of any such specific case.

The Committee asks for updated information in the next report on the violations identified and sanctions imposed in practice in cases of breach of regulations on child labour.

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

Conclusion

The Committee concludes that the situation in Austria 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 contained in the report submitted by Austria.

The Committee refers to its previous conclusion where it found the situation to be in conformity with Article 7§2 of the Charter (Conclusions 2015).

It noted previously that the Ordinance on Prohibitions and Restrictions of Employment for Young Persons (*Verordnung über Beschäftigungsverbote und Beschränkungen für Jugendliche, KJBG-VO*) prohibits young persons from performing (with some exceptions subject to conditions) work with hazardous substances, work under physical forces, work under psychological or physical strain, work with hazardous work equipment and other hazardous or stressful work or procedures. "Young persons" refers to persons who are below the age of 18 (Conclusions 2015).

In its previous conclusion (Conclusions 2015), the Committee noted that young persons are prohibited from performing the following types of work, listed in Sections 4 to 6 *KJBG-VO*: work with hazardous substances (lead, asbestos etc.); work under physical forces; work under psychological and physical strain; work with hazardous work equipment; other hazardous and stressful work and procedures (demolition work in construction and civil engineering, work on scaffolding etc.). By way of exception, young persons under 18 are permitted to perform the types of work listed above in certain cases, but only under the condition that those persons are in training, and the work is necessary for the training and performed under supervision (Section 3(2) or Section 5 No. 3 *KJBG-VO*). The Committee asked for information on the activities of the Labour Inspectorate of monitoring these arrangements (Conclusions 2015).

The report indicates that separate labour inspectors exist for monitoring child labour and youth protection. Section 17 of the Labour Inspection Act (*Arbeitsinspektionsgesetz, ArbIG*) requires that at every Labour Inspectorate at least one labour inspector responsible for child labour and youth protection is to be appointed, with the duty of monitoring compliance with regulations to protect children and young persons.

The report indicates that in 2016 there were 1,322 cases of violations of the specific provisions aimed at protecting young persons; 328 of those violations concerned retail trade and maintenance and repair of motor vehicles and motorcycles, 317 hotels and restaurants, and 218 manufacturing; 229 violations concerned construction. The report provides information on the situation in some specific *Laender* such as Vorarlberg and Upper Austria, in particular on the supervision performed by the Agriculture and Forestry Inspection.

The Committee asks for updated information in the next report on the number and nature of violations detected as well as on sanctions imposed for breach of the regulations regarding prohibition of employment under the age of 18 for dangerous or unhealthy activities.

Conclusion

The Committee concludes that the situation in Austria 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 contained in the report submitted by Austria.

The Committee refers to its previous conclusion where it found the situation to be in conformity with Article 7§3 of the Charter (Conclusions 2015).

The Committee noted that Section 5a of the Act on the Employment of Children and Young Persons (*Kinder- und Jugendlichen-Beschäftigungsgesetz, KJBG*) permits children who are at least 13 years of age to be employed under certain conditions at isolated and light tasks. It also noted that Section 5 a *KJBG* provides a limit of two hours' work on school days and on school holidays, whereas the total number of hours dedicated to school instruction and to light jobs must not exceed seven hours (Conclusions 2015).

The Committee previously noted that according to Section 7 (2) No. 3 *KJBG*, the employment of children during school holidays is only admissible if the head of the provincial government issues an administrative decision ensuring that:

- the children are employed for a maximum of one third of the school holidays and only to the extent absolutely necessary;
- the performances, photo or film shoots, television or audio recordings are of special value for culture or popular education and cannot take place outside of the school holidays.

The Committee noted that the total duration of school holidays is of three months. The summer holidays last two months. Since the period of employment as provided by in Section 6 *KJBG* may last for one month of the school year at most, two months must therefore be time off school. The legislation therefore ensures that at least two weeks of school holidays remain free of any employment, because even if employment for the one month permitted falls within the summer holidays, one month of leisure is left during the summer holidays (Conclusions 2015).

As regards the supervision, in reply to the Committee's previous question whether children subject to compulsory education were employed in hotels, restaurants, manufacturing, wholesale and retail trade, repair of motor vehicles and construction, the report provides information on violations of child labour provisions identified between 2010-2012. The Committee asks for updated information on this point.

The report reiterates that Section 2 *KJBG* defines children as minors under the age of 15, or older if compulsory education is completed later. With reference to the number of identified violations that involved children subject to compulsory education, the report refers to the statistics presented under Article 7§1, namely one violation of child labour provisions identified in 2016, seven violations in 2015 and only one in 2014.

The Committee recalls that the situation in practice should be regularly monitored and asks that the next report provide information on the number and nature of violations detected as well as on sanctions imposed for breach of the regulations regarding prohibition of employment of children who are subject to compulsory education.

Conclusion

The Committee concludes that the situation in Austria 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 contained in the report submitted by Austria.

In its previous conclusion (Conclusions 2015), the Committee noted that the working time of young workers under the age of 18 should not exceed 8 hours per day and 40 hours per week (Section 11 of the Act on the Employment of Children and Young Persons – *KJBG*) and found the situation to be in conformity with the Charter.

The Committee asked what limits apply to working time of children aged between 15 and 16 (Conclusions 2015). The report indicates that regulations relating to working hours set out in Chapter 3 of the *KJBG* apply to persons between the ages of 15 and 16 who are no longer subject to compulsory education. The Committee reiterates its question on the exact maximum working time that persons of at least 15 years of age and under 16 years old who are no longer subject to compulsory education are allowed to perform. It reserves its position on this point.

With regard to young persons employed in private households, the Committee asked previously how working hours in private households are monitored and examples of sanctions applied in cases of breach of regulations concerning young persons employed in private households (Conclusions 2015).

The report indicates that Labour Inspectorates are not authorised to check whether protection regulating the employment of particular groups is observed in private households (Section 1 Para. 2 no. 6 of the Labour Inspection Act (*Arbeitsinspektionsgesetz, ArbIG*)). The report indicates that, however, as soon as they become aware of offences against the Domestic Help and Domestic Employees Act (*Hausgehilfen- und Hausangestelltengesetz, HGHAG*), the District Administration Authorities must initiate criminal proceedings against the employer, and if violations are proven, impose fines of up to EUR 218. Section 23 of the *HGHAG* lays down sanctions for violation of the provisions related to maximum working hours, minimum rest periods, minimum rest breaks (for adults and young employees Section 5 (1), (3) and (4)), protection of young people and minors in employment (Section 7(1) *HGHAG*) and ban on employment of minors (Section 22 *HGHAG*).

The Committee asks updated information on the maximum working time for persons under 18 years of age employed in private households, minimum rest periods and rest breaks (under Article 5 of *Hausgehilfen- und Hausangestelltengesetz, HGHAG*). It also asks that the next report provide concrete data on the violations of the regulations regarding working time for young persons employed in private households and sanctions applied in practice against the employers.

Concerning young persons employed in agriculture and forestry, the Committee examined previously the applicable regulations (Conclusions 2015) and asked how the working time of young persons employed in agriculture and forestry are monitored (Conclusions 2015). The report indicates that monitoring compliance with regulations on working hours, including those applying to young persons, is the responsibility of bodies at *Land* level, specifically the Agriculture and Forestry Inspections established in each of the nine *Lands*. The report mentions that, for example, the Agriculture and Forestry Inspection Vienna monitors compliance with regulations on young people's working hours as part of normal inspection activities, in particular by verifying the records of hours worked that are kept by businesses and by interviewing, during inspections, the young people employed by those businesses. The report indicates that in the other *Lands* as well, compliance with regulations is ensured through inspections and consultations.

The Committee previously asked information on the sanctions imposed in practice on employers for breach of the rules concerning working time for young persons who are not subject to compulsory education (Conclusions 2015).

The report indicates that sanctions are imposed in case of violations that are identified, in line with Section 30 of *KJBG*, namely a fine of EUR 72 to EUR 1 090 for a first time offence and EUR 218 to EUR 2 180 after repeated offences. The report further specifies that, as of 2015, statistics on violations relating to breaks, rest periods, night rest, rest on Sundays and holidays, and weekly time off are no longer listed separately but subsumed under General Violations of the *KJBG*. The report makes reference to the statistics provided under Article 7§2 which indicate that in 2016, 155 cases accounted for violations of the maximum working time, 98 cases concerned violations of prohibitions and restrictions of employment, while 250 cases related to general breaches of the *KJBG*. The Committee asks updated information with regard to the monitoring in the next report.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Austria 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 Austria.

The report indicates that there have not been any changes during the reporting period.

The detailed statistics provided in the report indicate that the wage gap for young workers in relation to adults does not exceed 20-30% and that apprentice wages range from around a third or more of an adult starting wage at the beginning of the apprenticeship to two-thirds or more at the end as required by Article 7§5.

Young workers

The Committee recalls that under Article 7§5 the young worker's wage may be less than the adult starting wage, but any difference must be reasonable and the gap must close quickly (Conclusions II (1971), Statement of Interpretation on Article 7§5). For fifteen/sixteen year-olds, a wage of 30% lower than the adult starting wage is acceptable. For sixteen/eighteen year-olds, the difference may not exceed 20% (Conclusions 2006, Albania).

The report provides detailed figures indicating the amount of remuneration received by unskilled workers and skilled workers in 2013 in different economic sectors and Länder.

In its previous Conclusions (2015) the Committee asked clarification whether the salary indicated for skilled workers corresponds to an adult starting wage and the salary indicated for unskilled workers represents the wage paid to young workers. The report in reply to the question posed indicates that the "unskilled worker" salary group does not represent a salary group only for young workers, nor does the "skilled worker" salary group represent a salary group only for adults. The difference instead relates to the skills level of the particular employee and to the differing job profile. Skilled workers have usually completed an apprenticeship. Since an apprenticeship takes several years, the employees in this salary group are more likely to be over 18 years of age. Nonetheless, young workers are also to be assigned to this salary group on completion of an apprenticeship. Unskilled workers, who do not complete an apprenticeship, perform simple tasks. The distinction therefore is not based on age. It follows that adults also fall under this category. Where a young employee works as an unskilled worker, that person remains in that salary group even once they reach adult age, if their job profile does not change.

The Committee states that, in order to ensure a decent standard of living within the meaning of Article 4§1 of the Charter, the minimum or lowest net remuneration or wage paid in the labour market must not fall below 60% of the net average wage. When the net minimum wage is between 50% and 60% of the net average wage, the State Party must show that the wage provides a decent standard of living.

The Committee notes in the present case that the minimum wage set out in the collective agreements is approximately 62% of the average net wage. It concludes that these thresholds are in conformity with Article 7§5 of the Charter.

In its previous Conclusions (2015) the Committee asked on the minimum wage/starting wage of young workers and adult workers calculated net. The report in reply to the question indicates that the Austrian system of collective agreements does not generally differentiate between wages paid to young workers and those paid to adults. Rather, salary groups are differentiated based on the specific type of work and the worker's qualifications (see above for the differentiation between skilled and unskilled workers). Due to the differing job profiles and levels of skills required in each case, the "skilled worker" and the "unskilled worker" salary groups are not comparable. While some collective agreements stipulate pay increases within the particular salary group, such raises are awarded based on seniority and not age. Consequently, young workers with more years at a company could be classified at a higher pay level than recently hired adults. The salary schedules, defined under law, that apply in the

federal public service do not differentiate between contractual employees who are youths and those who are adults.

The report points out that no statistical data is available on the net wages paid out to persons under 18 or on the minimum net wages for adult employees. It underlines that the gross salaries indicated in collective agreements represent minimum wages. The employers are naturally allowed to pay more than the minimum level, and such “overpayment” is frequently encountered in practice. The net amount paid out to an employee depends on the individual’s personal situation, so that amounts can vary widely among individuals. This makes it very difficult to reach reliable, general figures for net amounts.

Apprentices

The Committee recalls that under Article 7§5 of the Charter, apprentices may be paid lower wages, since the value of the on-the-job training they receive must be taken into account. However, the apprenticeship system must not be deflected from its purpose and be used to underpay young workers. Accordingly, the terms of apprenticeships should not last too long and, as skills are acquired, the allowance should be gradually increased throughout the contract period (Conclusions II (1971), Statement of Interpretation on Article 7§5), starting from at least one-third of the adult starting wage or minimum wage at the commencement of the apprenticeship, and arriving at least at two-thirds at the end (Conclusions 2006, Portugal).

The Committee in its previous Conclusions (2015) as regards apprentices found the situation in conformity with the Charter.

The report provides detailed figures comparing apprentices’ allowances – broken down by branch, by year of apprenticeship and by Land – with relevant adult workers starting or lowest wages. These figures show that, overall, apprentices receive more than one third of an adult worker’s starting or lowest wage at the beginning of their apprenticeship and more than two thirds at the end. The Committee considers that the situation is in conformity with Article 7§5 of the Charter as regards apprentices’ allowances.

Conclusion

The Committee concludes that the situation in Austria is in conformity with Article 7§5 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 Austria.

In its previous Conclusions (2015) the Committee recalled that the satisfactory application of Article 7 cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised. It therefore asked that the next report provide information on the number and nature of violations detected as well as on sanctions imposed for breach of the regulations regarding paid annual holidays of young workers under the age of 18.

The report in reply to the question posed indicates the Section 26 of the Employment of Children and Young People Act (*Kinder- und Jugendlichen-Beschäftigungsgesetz, KJBG*) requires employers to keep records on young workers, showing items including the periods when those employees were on holidays. Failure to comply is liable to sanction in accordance with Section 30 of the *KJBG* (see above). The Labour Inspectorate does not verify compliance with the regulations on paid holidays for young workers, since related claims are based solely on labour law and enforcement falls under the jurisdiction of the Labour and Social Courts.

The report underlines that in general, the employer and the employee are to agree on the date when the employee will begin holidays, as required by Section 4 of the Annual Leave Act (*Urlaubsgesetz, UrlG*). Should a dispute over holidays arise that cannot be resolved (with the help of the works council), the Labour Courts ultimately decide the matter. At the young person's request, the employer must agree to allow at least twelve working days of annual leave to be taken between 15 June and 15 September, as set out in Section 32 Para. 2 *KJBG*; any "breach" of this regulation is not liable to administrative sanction. In this case as well, any dispute between an employer and a young worker would have to be resolved before a Labour Court. The report finally indicates that no proceedings involving this regulation took place before a Labour Court during the period under review.

Conclusion

The Committee concludes that the situation in Austria 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 Austria.

It notes that there have been no changes to the legal framework during the reference period.

In its previous Conclusions (2015) the Committee recalled that the situation in practice should be regularly monitored and asked that the next report provide information on the number and nature of violations detected as well as on sanctions imposed for breach of the regulations regarding night work.

The report in reply to the question indicates that violations of the *KJBG* are punishable by initial fines of EUR 72 to EUR 1090, and EUR 218 to EUR 2180 after repeated offences (Section 30 *KJBG*). It also underlines that there are not statistics on the outcome of administrative penal proceedings initiated in response to reported violations of child labour provisions, and therefore no details can be given on the sanctions imposed. As of 2015, statistics on violations relating to breaks, rest periods, night rest, rest on Sundays and holidays, and weekly time off are no longer listed separately, but subsumed under General Violations of the *KJBG*. In this respect the report makes reference to the statistics presented relating to Art. 7§2 where the *Laender* reported no instances of related violations.

Conclusion

The Committee concludes that the situation in Austria 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 Austria.

In its previous Conclusions (2015) the Committee found the situation in conformity with the Charter. The legal framework concerning the protection of young people at work remained unchanged during the reference period.

In its previous Conclusions (2015) the Committee recalled that the intervals between check-ups for medical examination must not be too long (Conclusions 2011, Estonia). It asked what is the duration between the medical examinations of young employees working in other sectors than mining.

The report in reply to the question posed indicates that Section 25 Paras. 1 and 1a of the Austrian KJBG implements Art. 6(2) of the EU Directive on the protection of young people at work which requires ensuring an appropriate free assessment and monitoring of young people's health at regular intervals, where an assessment reveals a risk to young people's health or safety. Based on this provision, employers are required to inform young persons about the examinations and to encourage them to participate. Young people are to be allowed the time off necessary for participating in such examinations, with full pay. When the assessment referred to in Section 23 Para. 1 KJBG reveals a risk to a young person's safety or health, the employer is additionally required to ensure that the person submits at regular intervals to the examinations for young persons required by Section 132a ASVG. The report underlines that for a young person taking up employment for the first time, such an examination as required by Section 132a ASVG is to take place if possible within two months. The Main Association of Austrian Social Security Institutions evaluates the results of the examinations for young persons in accordance with that body's guidelines (Section 31 Para. 5 no. 17 ASVG) and is required to disclose them immediately on availability, to the Federal Ministry of Labour, Social Affairs, Health and Consumer Protection, and to the Ministries of Economic Affairs and of Agriculture and Forestry.

In its previous Conclusions (2015) the Committee recalled that the situation in practice should be regularly monitored and asked up-to-date information on the activities of the Labour Inspectorate of monitoring whether the obligation of submitting young workers to regular medical examination is ensured in practice.

The report in reply the question provides detailed statistics from the Labour Inspectorate covering the reference period (2013-2016) on examinations of both young persons and all workers on noise and chemical agents exposure.

Conclusion

The Committee concludes that the situation in Austria 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 Austria.

Protection against sexual exploitation

The Committee previously found the situation not to be in conformity with the Charter on the grounds that that producing and possession of pornographic representations of minors older than 14 years was not a criminal offence, if it was intended for the minor's own use and if it was produced with his or her consent (Conclusions 2015).

With regard to the protection of children against child pornography, the report refers to Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse, sexual exploitation and sexual exploitation of children and child pornography, The report refers in particular to paragraph 20 of the Directive that provides, according to the report, for a wider margin of discretion to allow phenomena such as "sexting" to be dealt with in a youth-friendly manner, taking into account different cultural and legal traditions and new forms of establishing and maintaining relations between children and adolescents, including through information and communication technologies. The report refers to amendments to the Penal Code in order to make use of this discretion.

The Committee takes note of Article 18 of the Lanzarote Convention on the Protection of children against sexual exploitation which allows State Parties not to criminalise the production or possession of pornography involving children who have reached the age set in application of Article 18, paragraph 2, [...] where these images are produced and possessed by them with their consent and solely for their own private use. It further notes the Opinion on child sexually suggestive or explicit images and/or videos generated, shared and received by children, of the Lanzarote Committee, Committee of the Parties to the Council of Europe Convention on the Protection of children against sexual exploitation, adopted in June 2019. In the Opinion the Committee holds that the possession by children of sexually suggestive or explicit images and/or videos of themselves does not amount to "the possession of child pornography" when it is intended solely for their own private use, the voluntary and consensual sharing by children among each other of the sexually suggestive or explicit images and/or videos of themselves does not amount to "offering or making available, distributing or transmitting, procuring, or knowingly obtaining access to child pornography" when it is intended solely for their own private use and the reception by a child without knowledge or intention of sexually suggestive or explicit images and/or videos generated by other children does not amount to «procuring or knowingly obtaining access through information communication technologies to child pornography».

The Committee asks whether the Austrian legislation on child pornography found not to be in conformity with the Charter is compliant with the above standards.

The Committee asks the next report to provide updated information on this regard as well as on the measures taken to ensure that adequate measures can be taken to address 'sexting' (or sharing of 'sexts') that is non-consensual and/or that constitutes sexual exploitation.

Meanwhile the Committee defers its conclusion.

The Committee asked in its previous conclusion (Conclusions 2015) whether children, victims of sexual exploitation, can be prosecuted. According to the report, child victims of sexual exploitation cannot be prosecuted.

Protection against the misuse of information technologies

The report refers to the SeXtalks 2.0 workshop series for young people and trainers which provide information on safe Internet use. The Committee notes from the Report by the OSCE Acting Co-ordinator for Combating Trafficking in Human Beings following the official visit to

Austria 19-23 November 2018 and 14 January 2019 (2019) (outside the reference period) that while sexual exploitation victims were previously recruited through print media, model agencies and night clubs, this pattern has shifted to online in the last few years. The Austrian police reported that the Internet has been used in 74% of cases to groom, recruit, advertise and control victims.

In view of the constantly growing impact of the internet on the lives of children, the Committee requests information on any new measures adopted in law and practice to combat sexual exploitation of children through the use of Internet technologies.

Protection from other forms of exploitation

According to the report, in order to consolidate systematic cooperation among all responsible bodies to effectively combat the sale of children, a background and working paper was published in October 2016 by the Working Group on Child Trafficking under the Task Force on Trafficking in Human Beings (National Referral Mechanism – NRM). The publication aims to provide relevant professionals with guidance and direct their activities towards the identification and care of potential victims of child trafficking.

It notes from the Report of the European Commission – Together Against Trafficking in Human Beings – Austria, that the number of children assisted by *Drehscheibe*, the main institution providing support to child victims, steadily increased between 2014 and 2016. In 2017 *Drehscheibe* assisted 75 children of which the majority were girls of eastern European origin.

According to the Report of the OSCE Acting Co-ordinator for Combating Trafficking in Human Beings following the official visit to Austria 19-23 November 2018 and 14 January 2019 (2019) (outside the reference period) there is no basic data on child trafficking in Austria, and the statistics provided by public bodies do not reflect the extent of the problem. The Committee asks the State to comment on this finding and measures taken to address this problem.

The Committee notes that the Fifth National Action Plan against Trafficking in Human Beings 2018-2020, adopted at the end of 2018, focuses on preventing and combating trafficking in refugees and asylum-seekers, in particular unaccompanied children.

The Committee asks that the next report provide information on the extent of the problem of trafficking of children and the results of the action plan.

The Committee recalls that under Article 7§10 of the Charter, States must prohibit the use of children in other forms of exploitation such as domestic/labour exploitation, including trafficking for the purposes of labour exploitation and begging. States must also take measures to prevent and assist street children. In all these cases, States Parties must ensure not only that they have the necessary legislation to prevent exploitation and protect children and young persons, but also that this legislation is effective in practice.

The Committee asks for information on the measures taken to protect and assist children in vulnerable situations, with particular attention to children in street situations and children at risk of child labour, including those in rural areas.

With regard to children in street situations, the Committee refers to the General Comment No. 21 of the UN Committee on the Rights of the Child which provides authoritative guidance to States on developing comprehensive, long-term national strategies on children in street situations using a holistic, child rights approach and addressing both prevention and response to this phenomenon.

Conclusion

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

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 Austria.

Right to maternity leave

According to the report, the situation that the Committee previously found to be in conformity with Article 8§1 (Conclusions XIX-4 (2011) and XX-4 (2015)) has not changed: the Maternity Protection Act provides for 16 weeks' maternity leave, including a compulsory 8-week leave immediately prior to the presumed date of delivery and another compulsory 8-week leave following childbirth. The same rules apply to women employed in the public sector.

Right to maternity benefits

In its previous conclusion (Conclusions 2015), the Committee found that the situation was in conformity as regards the right to maternity benefits: the amount of maternity benefit is based on the average net pay received during the 13 weeks or three calendar months prior to the beginning of maternity leave. The same rules apply to employees in the public sector.

The Committee requires 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.

In its previous conclusion, the Committee asked whether the minimum amount of maternity benefits corresponded to at least 50% of the median equivalised income.

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

According to Eurostat data, the median equivalised annual income was €24,752 in 2017, or €2,063 per month. 50% of the median equivalised income were €12,376 per annum, or €1,031 per month.

The Committee refers to its conclusion under Article 4§1 (Conclusions 2018), in which it noted that in 2017, the monthly minimum gross wage was above €1,200 (€1,019 net).

In view of the above, the Committee finds that the minimum amount of maternity benefits is almost equal to 50% of the median equivalised income. Accordingly, the situation is in conformity with Article 8§1 of the Charter on this point.

Conclusion

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

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 Austria.

In its previous conclusion (Conclusions 2015), the Committee found that the situation was in conformity with Article 8§3 and asked whether nursing breaks were provided during the first nine months of the child.

The Committee notes from the report that there is no time limit on the right to take nursing breaks and, therefore, it may go beyond the age of nine months of the child. The Committee notes that the situation is in conformity with Article 8§3 of the Charter.

Conclusion

The Committee concludes that the situation in Austria 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 Austria.

In its previous conclusion (Conclusions 2015), the Committee found that the situation was in conformity with Article 8§4. It asked whether the women employees concerned were transferred to daytime work and what rules applied if such a transfer was not possible.

In response, the report indicates that under Article 6§1 of the Maternity Protection Act, pregnant women and those who are nursing their infant must be transferred to daytime work. As to federal public servants, pregnant women and nursing mothers must also be assigned daytime duties where possible. If an employee cannot be given work during the daytime, she must be released from her duties either entirely or for the night hours that she worked previously. Under Article 14§1, if a transfer to a daytime work is not possible, women workers are entitled to pay to equal the average remuneration received throughout the last 13 weeks of employment. The Committee asks what rule applies to women who have recently given birth but are not breastfeeding their child.

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 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

The Committee concludes that the situation in Austria 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 Austria.

In its previous conclusion (Conclusions 2015), the Committee found that the situation was in conformity with Article 8§5 of the Charter. Since the situation remains unchanged, it confirms its previous finding of conformity.

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 in case of exemption from work related to pregnancy and maternity the woman concerned is entitled to paid leave; it furthermore asks the next report to confirm that the women concerned retain the right to return to their previous posts at the end of the protected period.

Conclusion

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

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

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

Legal protection of families

Rights and obligations, dispute settlement

The Committee refers to its previous conclusion (Conclusions 2015) and takes note of the additional information provided in response to its request of information on the **rights and obligations of spouses** in respect of reciprocal responsibility, ownership, administration and use of property. It notes in this respect that under Section 1237 of the General Civil Code (ABGB), the property regime for marriages is separation of goods, unless the couples stipulate another arrangement (which often is community of goods) in a marriage contract, which must be signed as a notary deed in order to be valid.

The report indicates that the legal property regime has however no effect on how property is divided up in the event of divorce as, according to Section 81 et seq. of the Marriage Act (Ehegesetz), in case of disagreement, the property is apportioned as fairly as possible, regardless of the share of individual goods owned by either party (see details in the report on what types of goods are nevertheless considered to be individual property of each spouse). As regards other aspects of legal arrangements for the **settlement of disputes**, the Committee refers to its previous conclusion (Conclusions XIX-4 (2011)).

Issues related to **restrictions to parental right and placement of children** are examined under Article 17§1.

The Committee refers to its previous conclusions (Conclusions XIX-4 (2011) and 2015) for a description of **mediation services** and takes note of the detailed additional information and data provided in the report. It notes in particular that parents with children with different ethnic backgrounds affected by divorce or separation can access mediation services through a web portal available in 24 languages with a pool of around 2 000 counsellors who are accredited according to relevant quality criteria developed by a panel of experts. Furthermore, the service is free to low income families.

Domestic violence against women

The Committee takes note of the information detailed in the report concerning the developments occurred since its latest assessments (see Conclusions 2015 and XIX-4 (2011)), in particular as regards the information and awareness-raising measures taken to improve prevention of violence (see details in the report), as well as the data confirming the development of violence protection centres. With regard to integrated policies, the Committee notes the setting up of a national coordination mechanism in 2014, consisting of an inter-ministerial working group (IMAG) and a national coordination point. The Committee takes furthermore note of the information provided by different Länder on the measures taken at their level. It notes however that the report does not provide any new information as regards prosecution of domestic violence.

Insofar as Austria has signed and ratified the Istanbul Convention on Preventing and Combating Violence against Women and Domestic Violence (which came into force in Austria on 1 August 2014), the Committee refers to the assessment procedure which took place in the context of this mechanism. It notes that in September 2017, the Council of Europe's Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) published its first baseline evaluation report on Austria. GREVIO highlighted a number of positive legal and policy measures in place in Austria, in particular the introduction of an effective system of emergency barring and protection orders for victims of domestic violence. Despite these measures, GREVIO has identified a number of areas where improvement is needed (see details in GREVIO report).

The Committee asks the next report to provide updated information on domestic violence against women and related convictions, the implementation of the various measures described in the report and their impact on reducing domestic violence against women, also in the light of the abovementioned GREVIO recommendations.

Social and economic protection of families

Family counselling services

The Committee refers to its previous conclusions (Conclusions XIX-4 (2011) and 2015) as well as to the additional information provided in the report concerning the network of 383 family counseling offices which offer free, anonymous counselling for those seeking advice. It also takes note of the information provided on parental education programmes aimed at supporting parents in developing their competence and parenting skills.

Childcare facilities

According to the report, in 2016/2017 there were 9 267 childcare institutions (not counting seasonal day care facilities), including 4 574 nursery schools, 1 882 crèches, 1 080 after school care facilities and 1 731 mixed-age care institutions. In response to the Committee's question (Conclusions 2015, Article 27§1), the report indicates that no data is available on the number of applications rejected. It indicates however that the Barcelona target has been met for the group of children aged three to six and the care rate for children under age three has doubled: over the past five years the number of crèches has risen sharply by 48.5% and altogether, 85.5% of all three-year-olds were in childcare, while the rate was 96.1% for four-year-olds and 97.6% for five-year-olds. The report indicates that the Federal Government decided to continue sharing in the costs of expanding basic childhood education and childcare programmes in 2018, in view of meeting the Barcelona target also for children under three years. The Committee takes note of the detailed data provided, also in respect of *Länder*, and asks the next report to provide updated information on this issue.

In response to the Committee's question (Conclusions 2015, Article 27§1) the report explains that the principles relating to the professional requirements applying to the care staff to be employed by *Länder*, municipalities and municipal associations are set out at federal level in the Federal Act of 13 November 1968, which specifically concerns nursery school teachers, educators at day homes and educators at school boarding houses designated exclusively or mainly for pupils at compulsory schools. Other requirements relating to staff qualification are set out in *Länder* legislation and depend on the category of the childcare institution and the tasks to be performed in the latter, e.g. teaching or auxiliary work. Quality monitoring of staff qualifications and childcare services falls within the scope of *Länder* jurisdiction, as stated in constitutional law, and is usually ensured through inspections by qualified *Länder* officers (see in the report details concerning different *Länder*).

Family benefits

Equal access to family benefits

According to the report, family benefit is given to persons who are permanently or habitually resident in Austria, in respect of minor children (under additional conditions also for children of full age) who belong to their household or for whose maintenance costs they are mainly responsible. Parents, grand-parents, adoptive or foster parents are the beneficiaries as well as the child himself if certain conditions are satisfied.

In the previous conclusion (2015), the Committee noted that there were no minimum residence requirements applied to foreign nationals, who thus enjoyed equal treatment with regard to family benefits.

Level of family benefits

In its previous conclusion (Conclusions 2015) the Committee considered that the situation was in conformity with the Charter as the family allowance represented a significant percentage of the median equivalised income.

The Committee now notes that according to Eurostat data the median equivalised income in 2017 was € 2.062.

According to the report, child benefit is a universal scheme for all residents financed by employers' contributions and taxes. The amount of child benefit (*Familienbeihilfe*) is dependent on the number and age of the children.

The Committee notes that in 2017 the family allowances were as follows:

- 0-3 years: € 111.80
- 3-9 years: € 119.60
- 10-18 years: € 138.80 and
- 19 years and older: € 162.

The following amounts are added for each child to the total family allowance per month:

- with two children € 6.90 per child
- with three children € 17.00 per child
- with four children € 26.00 per child
- with five children € 31.40 per child
- with six children € 35.00 per child
- with seven and more children € 51.00 per child.

Furthermore, for the third and additional child, if the family's annual income during the previous year is less than € 55 000, a multiple-child supplement of € 20/month per child is paid out as a supplement to family allowance. An additional supplement of €155.90 per month is paid in case of significantly disabled children. In addition, according to MISSOC, a School Start Allowance of € 100 is paid in September for each child aged from 6 to 15.

According to MISSOC, for single parents there is a flat-rate parental benefit as an account: Single parents on low incomes can claim a benefit of € 6.06 per day in addition to the flat-rate parental benefit (account) for a maximum of 365 days. The benefit is to be considered as a social assistance benefit and can therefore only be claimed if residency is in Austria. No benefit is paid in case of income-related parental benefit. Moreover, single parents receive an annual tax reduction of € 364.

The Committee notes that the family allowance paid for a child aged 0-3 years represents 5.4% of the median equivalised income. These percentages are higher when other supplements are taken into account and also higher for older children. Therefore, the Committee considers that the family benefit represents a significant percentage of the median equivalised income and therefore, the situation is in conformity on this point.

The Committee also takes note of the childcare benefit which is payable for children born on or after 1 January 2002. According to the report, as of March 2017 parents can now choose between two systems: the childcare benefit account, offering 481 different options for collecting the fixed-level benefit; and an income-based childcare benefit. The Committee asks the next report to explain whether child care benefit and family benefit are complementary.

Measures in favour of vulnerable families

In reply to the Committee question in the previous conclusion, the report states that the issue of ensuring financial protection for vulnerable families falls within the measures of poverty reduction. Any measures already in force (such as minimum income, family allowance, etc.) are certainly also available to Roma families provided that they meet the relevant requirements for eligibility.

Housing for families

In its previous conclusion (Conclusions 2015), the Committee asked for information concerning the steps taken to promote the provision of an adequate supply of housing for families and the legal protection of the right to adequate housing.

The report provides information on the different measures taken by the *Länder* in the field of housing for families (such as housing subsidies, social housing, subsidised loans, housing counselling services), in particular young families, single parents and families with multiple children. The report indicates that in 2016 56,359 dwellings, not counting Vienna, were completed. At the end of 2015, the Housing Investment Bank (WBIB) was created. The bank can grant long-term housing loans to non-profit and commercial property developers as well as to municipalities. The report also presents some statistics for the year 2016 on the adequacy (housing amenities) and size (living space considering the composition of the households) of dwellings. As regards the legal protection of the right to adequate housing, the report simply mentions the possibility for housing seekers in the city of Vienna to submit a case to a housing commission (*Wohnungskommission*), which has the power to recommend that a flat be awarded.

The Committee takes note of all the measures described in the report. It asks however for more general information in the next report on the existence of remedies (judicial or non-judicial) concerning the right to adequate housing and on any existing case-law.

The Committee previously found (Conclusions 2015) that the situation was not in conformity with Article 16 on the ground that equal treatment for nationals of the other States Parties with regard to the payment of housing subsidies was not ensured (nationality, length of residence requirements).

In this respect, the Committee notes from the report that, pursuant to legislative changes, the situation in seven out of nine *Länder* (Burgenland, Carinthia, Upper Austria, Styria, Salzburg, Tyrol and Vorarlberg) has been put in conformity with the Charter (see also the Governmental Committee Report concerning Conclusions 2015, document (2016)22)), insofar as their Housing Subsidies Acts provide for equal treatment of foreign nationals on the basis of an international treaty, including the Charter. However, in Lower Austria and in Vienna *Länder* a distinction continued to apply, to a certain extent, in the specific context of housing allowances (not with regard to housing subsidies for housing construction and refurbishment): nationals of non-EEA States Parties are eligible to this allowance only after completion of a legitimate residence period of five years in Austria. According to the report, there are no plans to expand the eligibility criteria for the housing allowance in these two *Länder*.

The Committee takes note of the positive developments in the majority of *Länder* with regard to equal treatment of nationals of other States Parties. As regards Lower Austria and Vienna *Länder*, the Committee considers that the five years residence requirement still applicable in the context of housing allowances is manifestly excessive. It recalls that lengths of 3 to 5 years of residence for housing benefits have been held to be clearly excessive and in breach of Article 16 of the Charter (Conclusions XVIII-1(2006), Denmark).

As regards Roma families and in response to the Committee's previous question on the outcome of the measures already adopted in this field (Conclusions 2015), the report mentions that the housing situation is satisfying and that this is ensured by a well-established social housing policy. In particular, the report refers to the social housing programme in the Burgenland Land, which has led to an improvement of the living situation of Roma families in this Land. The Committee asks the next report to continue to provide information on the housing situation of Roma families, including on the outcome and assessment of the National Roma Integration Strategy up to 2020. It also asks for further information on how many Roma families live in settlements and whether legal stopping places exist.

Concerning refugees families, the Committee previously asked for information on the measures that were being taken in order to improve their access to housing (Conclusions

2015). The report explains that refugees who have applied for international protection and are not able to provide for their own subsistence are entitled to basic welfare support, which includes housing in the form of organised (reception facilities) or individual accommodation. Once the procedure is completed and they are granted asylum, refugees are entitled to benefits under basic welfare support, including accommodation, for an additional four months. Otherwise, in terms of access to housing, the same conditions apply to refugees as to Austrian citizens. The Committee asks the next report to clarify whether persons granted refugee status who are no longer entitled to basic welfare support are eligible to housing benefits and social housing in all the *Länder*, irrespective of their length of residence in Austria. The Committee refers in this connection to its Statement of Interpretation on the rights of refugees under the Charter (Conclusions 2015) and asks for further information in the next report on the housing situation of refugees families, including figures and statistics. Pending receipt of the information requested, the Committee reserves its position on this point.

Participation of associations representing families

The Committee previously noted the role of the Family Policy Advisory Committee (*Familienpolitischer Beirat*) (see Conclusions XIX-4(2011) for details) which includes up to ten representatives from family organisations, in addition to representatives from public bodies. It also noted that local associations were also represented within regional bodies, such as the Vorarlberg family consultative committee.

Conclusion

The Committee concludes that the situation in Austria is not in conformity with Article 16 of the Charter on the ground that the length of residence required for receipt of housing allowances in certain *Länder* is excessive.

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 Austria.

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. In this respect the Committee notes a UNHCR mapping study of statelessness in Austria (UNHCR, "Mapping Statelessness in Austria" (January 2017), which noted that in the Central Register of Residents (*Zentrales Melderegister* [ZMR]) there are three categories within which stateless people are likely to be recorded: 'stateless', 'unknown nationality' and 'undetermined nationality'. On 1 January 2016, 11,628 people were recorded in these three categories, of which 4,142 were classified as 'stateless'. Young people aged 0-14 years in these categories amounted to 6,910, of which 1,019 were classified as 'stateless'. These official figures are unlikely to reflect the actual numbers, ZMR only records those legally residing in Austria and those who have applied for international protection [cited in European Network on Statelessness, DLA Piper, No Child Should be Stateless in Austria 2017].

Therefore the Committee asks what measures have been taken by the State 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).

Further the Committee asks what measures have been taken to facilitate birth registration, particularly for vulnerable groups, such as Roma, asylum seekers and children in an irregular situation.

Protection from ill-treatment and abuse

The Committee notes that the situation previously found to be in conformity has not changed (Conclusions 2015). It recalls that that all forms of corporal punishment are prohibited in all settings, including in the home.

Rights of children in public care

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

In its previous conclusion the Committee recalled that the placement of a child outside the home must be an exceptional measure and is only justified when it is based on the needs of the child. The financial conditions or material circumstances of the family should not be the sole reason for placement (Conclusions 2011, Statement of Interpretation on Articles 16 and 17). The Committee asked whether children can be taken into care solely on the grounds of inadequate resources of parents (Conclusions 2015).

The report states that the placement of a child in a home outside their family is authorised only if staying in their family of origin would put the child's well-being at risk by the child. The child's well-being is deemed to be at risk, for instance, if there is physical or sexual violence or if the child's educational needs are neglected. A situation of financial need is not sufficient to justify taking a child into care. In such a case, the family must receive adequate support in the form of social assistance to ensure the child's well-being.

The Committee previously requested to be kept informed of the number of children placed in foster care as opposed to institutions. It also wished to know what is the maximum number of children accommodated in a single institution (Conclusions 2015).

The report states that according to the statistics published by the child and youth welfare services at Federal level for 2016, 34,053 children and young persons were provided with parenting support within the family, 8,423 children and young persons were taken care of in socio-pedagogical institutions and 5,223 children and young persons were taken care of by foster parents. The maximum number of children accommodated in a single institution is determined by each Land rather than by Federal law. Care in socio-pedagogical institutions mainly takes place in flat-sharing communities (commonly 8-10 young persons maximum) or in facilities divided into flat-sharing groups (commonly 8-10 young persons maximum).

The Committee recalls that the long term care of children outside their home should take place primarily in foster families suitable for their upbringing and only if necessary in institutions [Conclusions XV-2, Statement of Interpretation on Article 17§1]. The Committee notes that there are more children in institutions than foster care and asks to be kept informed of the measures taken to increase foster care and reduce the number of children in institutional care, as well as trends in the area.

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 previously found that the situation was not in conformity with the Charter on the grounds that legislation permits the detention of children pending trial for one year (Conclusions 2015).

The report states that Section 35.3 of the Juvenile Court Act (*Jugendgerichtsgesetz, JGG*) provides for the maximum length of one year pre-trial detention only in special (extreme) cases (for instance, in the event of Jihadism/terrorist attacks). Normally, a child must be released after three months or, if the offence falls within the competence of the regional court sitting as a panel including lay judges (*Schöffengericht*) or a court with a jury (*Geschworenengericht*), after six months.

Furthermore the Federal Act amending the Juvenile Court Act 1988, the Criminal Code and the Probation Service Act and Introducing a Federal Act on the Erasure of Convictions under Sections 129 I and 129 I lit. b, Section 500 or 500a Criminal Code of 1945 as well as Sections 209 or 210 Criminal Code Federal Law Gazette I no. 154/2015, entered into force on 1 January 2016.

According to the report the main purpose of this act was to ensure that children should be detained only if and only for as long as absolutely necessary.

The amendments introduced, inter alia, the principle of proportionality in criminal proceedings involving children. This means that in cases where only a very mild punishment is provided for (district court jurisdiction), no pre-trial detention can be imposed.

Public prosecutors and judges were given alternatives to detention in the form of “social group conferences” (*Sozialnetzkonferenzen*). These conferences, involve family members, teachers, social workers and/or employees of the youth welfare office in an attempt to re-organise the life of a child and to ultimately create circumstances where pre-trial detention can be avoided.

Young persons may also be required to live in socio-therapeutic living facilities pending trial.

The amending Act also laid down the statutory basis for the Juvenile Legal Aid Service (*Jugendgerichtshilfe*), a new institution available all over Austria, which supports the court and public prosecutors by, for instance, gathering information on the living situation of the young accused and suggesting alternatives to detention.

While the Committee welcomes these positive developments in terms of pre-trial arrangements, it notes that provision for a maximum length of one year pre-trial detention under the terms of the JGG remains unchanged. The Committee reiterates its position that the pre-trial detention of a child for up to one year even in exceptional cases cannot be in conformity with Article 17 of the Charter and it reiterates its previous conclusion.

According to the report, the average post-conviction detention period of minors has decreased to 91 days over the last 4 years. The Committee asks to be kept informed about the trends in detention periods and about the maximum period a child may be detained post-conviction. It also asks whether children may be subject to solitary confinement, and if so, for how long and under what circumstances.

The Committee previously asked whether children are always separated from adults, in prisons as well as during pre-trial detention (Conclusions 2015). The report states that whether in pre-trial detention and post-conviction children are detained separately from adults. However the report states that separation may be suspended if there is no risk of any detrimental influence or any other kind of discrimination. The Committee asks for further information in this respect; namely when and under what circumstances may children be detained with adults.

Right to assistance

Article 17 guarantees the right of children, including children in an irregular situation and non-accompanied minors to care and assistance, including medical assistance and appropriate accommodation [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 the detention of children on the basis of their immigration or that of their parents' is contrary to the best interests of the child. Likewise unaccompanied minors should not be deprived of their liberty, and detention cannot be justified solely on the grounds that the child is unaccompanied or separated, or on their migratory or residence status or lack thereof.

The Committee recalls that according to Section 2, paragraph 1 No. 4 of the Basic Welfare Support Agreement – Article 15a of the Federal Constitutional Law children irregularly present have access to basic welfare support, which according to Article 6, comprises accommodation and medical treatment. Article 7 provides for additional services for unaccompanied minors.

However the Committee requests further information on accommodation facilities for migrant children whether accompanied or unaccompanied, including measures taken to ensure that children are accommodated in appropriate settings. It also requests further information on the assistance given to unaccompanied children, in particular to protect them from exploitation and abuse. Lastly, the Committee requests information as to whether children who are irregularly present in the State 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 Austria 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 amelioration and eradication of child poverty and social exclusion. Therefore, the Committee will take child poverty levels into account when considering the State's obligations in terms of Article 17 of the Charter.

The Committee notes that according to EUROSTAT in 2017 23.0% of children in Austria of children were at risk of poverty or social exclusion (lower than the EU average of 24.9%).

The Committee asks the next report to provide information on rates of child poverty as well as information on 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 Austria is not in conformity with Article 17§1 of the Charter on the ground that the maximum length of pre-trial detention is excessive.

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 Austria.

Enrolment rates, absenteeism and drop out rates

According to UNESCO in 2017 the net enrolment rate for primary education for both sexes was 88.62% , the corresponding rate for secondary education was 86.26%.

The Committee notes that these rates seem to be lower than rates in other European countries and asks the Government to comment on these rates.

The Committee notes from the report that in 2016, the Government enacted a law to prolong compulsory education after the completion of compulsory schooling of nine years to give everyone below the age of 18 the chance to complete education or training beyond compulsory schooling ("*Ausbildung bis 18*").

The percentage of early school leavers (ESL), i.e. young people who have not finished upper secondary education or an apprenticeship and do not undergo education or training, in Austria is below the EU average however it was seen as a priority area for the Government. In 2015, a total of 21,907 persons aged 15-17 were early leavers from education and training, an increase of 3,994 persons compared to 2014.

According to the report the figures suggest that young persons with migrant background tend to leave early more often than Austrian nationals.

In order to prevent early leaving from education the Government has introduced a youth coaching service aimed at those in their final year of education. "Production schools" offered by the Service Centre of the Ministry of Social Affairs (SMS) offer young people who may lack certain social skills, literacy and numeracy skills appropriate training to ensure a smooth transition to further training such as apprenticeships, etc.

Since 1 July 2018 (outside the reference period), it has been possible to impose fines for non-compliance with the compulsory education obligation. Such fines are only imposed as a measure of last resort. The Committee asks the next report to provide information on the number of fines imposed during the relevant reference period.

The Committee notes the information provided in the report on apprenticeships this information will be examined under Article 10 of the Charter during the next reporting cycle for this provision.

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.

Cost associated with education

The Committee previously asked whether assistance is provided to vulnerable groups to assist with the costs of education (Conclusions 2015).

According to the report the School Grants Act (*Schülerbeihilfengesetz*, SchBG), Federal Law Gazette No. 152/1984 as last amended), provides that students who are Austrian citizens or are whose status is equal to Austrian citizens (including convention refugees, EEA citizens, and, foreigners who have stayed in Austria for quite some time) as well as certain groups of students in an irregular situation who meet certain criteria, are entitled to school boarding grants from the 9th school year and to school grants from the tenth school year. In the school year of 2016/2017 a total of 33,970 applications for school grant were filed, 27,100 of these were approved. In addition part subsidies in cases of hardship may be granted.

Further subsidies for participating in school events are granted if the relevant conditions are met.

As regards school books school children at all levels are entitled to free school books required for their classes.

The Committee asks whether free or subsidized meals or transport are available.

Vulnerable groups

The Committee previously asked what measures are taken to guarantee equal and effective access to education to children of Roma origin as well as children from vulnerable groups (Conclusions 2015).

According to the report in order to ensure equal access to education for Roma children, the National Roma Integration Strategy 2017 provides for, inter alia, making the last year of nursery school compulsory improving language support, improving the initial orientation phase at school, increasing cooperation between nursery schools and primary schools, promoting all-day schooling and employing Roma mediators in schools.

Some of these measures are also available to other socio economically disadvantaged groups such as places in all-day schools, improvement of the initial orientation phase at school, and language support to multilingual pupils/students in German and their first language.

The Committee asks to be kept informed of measures taken to improve educational outcomes for Roma and migrant children, including information on enrolment, drop out and completion rates.

The Committee previously asked whether children in an irregular situation have a right to education (Conclusions 2015). According to the report, children who stay in Austria only temporarily are entitled to the same rights to attend school as Austrian children (Section 17 of the Compulsory Schooling Act (*Schulpflichtgesetz*, SchPflG). In this connection, “bridging classes” have been established in the federal reception centres whose aim it is to facilitate entry into the Austrian school system. In addition, in some selected federal reception centres, there are school pilot projects involving teachers from the local communities. School materials and costs for travelling to and from school are covered by basic welfare support (Article 6 Para. 1 no. 10 of the Basic Welfare Support Agreement).

The schools responsible for a specific catchment area have to admit all children subject to compulsory schooling – i.e. also children of asylum seekers and children whose residence status is unclear – and, as far as possible, have to put such children in the appropriate grades according to their age.

If a particular school does not have enough space, the competent school board would be called upon without delay and asked to find a solution.

The report states that school-age children can also attend the lower level of academic secondary schools (AHS) to complete compulsory schooling. AHS, however, are under no obligation to admit *external* students. It is for the school management to decide whether the individual student has all the qualifications required for successful attendance of the AHS. The Committee asks what happens to those children still subject to compulsory schooling who are not admitted to a lower academic secondary school.

From 2017 the Education Reform Act (*Bildungsreformgesetz*) provides that students who, in the 9th year of their compulsory schooling, attended a lower secondary school (*Hauptschule*), a new secondary school (NMS) or a pre-vocational school (Polytechnische Schule) as *external* students, can now voluntarily attend the above schools as external or internal students for a 10th school year, provided that the school’s funding body and the competent school authority give their formal approval.

As Austria has accepted Article 15§1 of the Charter the Committee will examine the right of children with disabilities to education 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

Pending receipt of the information requested the Committee concludes that the situation in Austria 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 Austria.

Migration trends

Austrian population is estimated approximately 8.7 million in 2016. Austria has one of the most significant populations of people with migrant backgrounds in Europe, with 17.2% of population in 2015 and 19.9% of total population in 2019 being foreign-born. Around 77% of migrants are of working age (20-64). Since the 1960's, immigration has constituted an important element of population growth in Austria.

Austria recorded an international net-migration gain of 64 676 people in 2016, about 43% less than in the previous year because of the refugee crisis (2015: +113 067). Migration statistics, calculated by Statistics Austria and derived from data of the Central Register of Residence, showed an inflow of 174 310 people in 2016 and an outflow of 109 634. As in previous years, Austrian citizens had a negative migration balance of 5044, meaning a significant increase of migration loss over the previous year. However, a migration gain of 69720 people was recorded for foreign citizens.

The migration balance of third country nationals reached +35.371 people in 2016. Almost 23% of migration gains with third-country nationals were with citizens of European states outside the EU. The largest groups with migrant backgrounds come from Serbia, Turkey, Bosnia and Herzegovina and Romania. The largest sub-group were citizens of Afghanistan (+8.992 people), followed by Syrians (+7.839 people).

At the level of the federal states, Vienna remained the prime destination for international immigration to Austria. The federal capital accounted for about 32.7% of net migration (+21.139 people), followed by Upper Austria (+11.118), Lower Austria (+7.044) and Styria (+6.343). Within the federal provinces, international immigration focused on the state capitals and their environs; in Tyrol, Salzburg and Carinthia, it also gravitated towards tourist regions and in the case of Lower Austria towards the southern suburbs of Vienna.

According to the migrant policy integration index (2015) integration of migrants in Austria continues to be not favourable particularly towards non-EU immigrants. Immigrants have equal rights and opportunities in fewer areas in Austria than in almost all Western European countries. Around 1/3 of working-age non-EU citizens are not in employment, education or training. The proportion of educated migrants who find employment in jobs which require lower levels of qualification is among the highest in comparison to other Western European countries.

Change in policy and the legal framework

The Committee notes the information provided in the report regarding the latest developments in policies to address issues in the labour market. Around a quarter of those born abroad and currently employed in Austria are working in jobs for which they are overqualified, with more women than men holding such jobs. With a view to facilitating their participation in the Austrian labour market and fostering employment that matches peoples' training, education and skills, it was necessary to improve the existing conditions for recognition of professional qualifications.

The Recognition and Assessment Act (Anerkennungs- und Bewertungsgesetz, AuBG) entered into force on 12 July 2016. The Act allows the target group to gain access to recognition and assessment procedures of their qualifications. Specific conditions apply to persons entitled to asylum or subsidiary protection who cannot provide documentation of their qualifications. The aim is to promote real labour market integration, in particular at a medium- and high qualification level.

Improvements relevant to the procedure and practical use of the service facility as well as redesigning of the online portal was another important step. The online portal can be accessed at www.berufsanerkennung.at. The recognition portal recorded about 150,000 visits in the period from January to June 2017. Throughout the whole year of 2016, there were 232,958 and in 2015 a total of 160,163 visits to the website.

Considering that it is still too early to assess the concrete results since their evaluation will only be possible after the expiration of the first statistical reference period, the Committee requests that the next report provides for detailed data on the results on the implementation of these measures.

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 of 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 notes from the report, that individuals planning to move to another country or planning a stay in another country are well-advised to obtain information about any permits required for the host country from the authority representing that country in Austria.

To receive effective support quickly, Austrians residing in another country for a lengthy period have to have first contacted the competent Austrian embassy or consulate general. The representing authority in the particular country can be notified by registering online, by email or fax or by personal appointment. Important information concerning things such as service points, associations of Austrians living abroad, issues related to citizenship, voting rights of Austrians abroad and social benefits can be viewed at the respective website of the Foreign Ministry.

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 also 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 further 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 underlines 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.

The Committee notes from the report, that a hotline against discrimination and intolerance is in place since 2015 under the Federal Ministry for Europe, Integration and Foreign Affairs. The aim of the hotline is to provide support to those affected, as well as raise awareness on various anti-discrimination bodies. So far, 580 persons affected have contacted the hotline via telephone or e-mail and were forwarded to competent persons.

It is noted, that combating racial and xenophobic prejudice and discrimination falls under the activities of the association known as ZARA – Civil Courage and Anti-Racism Work (Zivilcourage und Anti-Rassismus-Arbeit). The association receives funding from the Federal Ministry for Digital and Economic Affairs, the Federal Ministry of Labour, Social Affairs, Health and Consumer Protection, the Vienna Municipal Department (MA) 17 – Integration and Diversity, and the European Commission.

The Committee notes from the 2015 report of European Commission against Racism and Intolerance (ECRI) on Austria, that the police and prosecution services have invested considerable resources in investigating hate speech and intensified human rights training for their staff. In autumn 2014 an inter-ministerial summit on combating hate speech took place and the government has run several campaigns towards a balanced debate on migration and foreigners.

However, the abovementioned ECRI report reveals, that the hate speech and racial and xenophobic discourse are persistent in Austria. Many hate motivated public statements have been made – in particular during election campaigns – and nourish everyday racism and neo-fascism in Austria. The far right – the FPÖ (Austrian Freedom Party) and the BZÖ (Alliance for Austria's Future) – is openly hostile to historical ethnic, religious and linguistic minorities, migrants, refugees and asylum seekers. In its Handbook for Liberal Policies the FPÖ quotes documents accusing migrants of causing crime and unemployment, spreading diseases and being responsible for rising real estate prices. As a solution, "negative immigration" is suggested, i.e. the removal of foreign nationals to their countries of origin.

The Service for the Protection of the Constitution (SPC) reports that a new generation of right-wing extremist organisations has appeared, which present racist views through "more diplomatic propaganda" and aim at recruiting young people to a large extent from universities and student fraternities (Burschenschaften). For example, the IBÖ (Austrian Identitarian Movement) campaigns for maintaining the Austrian identity and states that Austria needs to be protected from mass immigration and "Islamisation". Music is also used to spread neo-Nazi ideas.

Racism on the internet and social media, as well as on traditional media is also wide-spread. Some media are considered to produce xenophobic content, which has not been properly researched; resentment is stirred up and Roma, asylum seekers and other vulnerable groups are portrayed as criminals.

According to the ECRI 2015 report, the authorities are in the process of further improving their criminal-law response to hate speech. There was an increase in criminal investigations following the wave of online-hate speech in 2014 and an inter-ministerial summit on combating hate speech was organised in autumn 2014.

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. It considers 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.

The Committee requests the next report to provide detailed information on the measures taken to combat hate speech and racist and xenophobic discourse.

With regard to the Committee's question raised in its previous conclusion (Conclusions 2015), the report provides further information on the implementation of the National Action Plan for Integration. To respond to the challenges stemmed from a high number of people seeking protection in Austria as of 2015, a 50-Point Plan towards integration was prepared, aimed at supporting and facilitating integration of target groups.

In 2017 the new Integration Act was adopted, providing for a comprehensive definition of "integration". The act sets out the central framework for the integration of third-country nationals residing in Austria who intend to settle in Austria in the long term. In doing so it defines the integration process in terms of clear responsibilities on the part of the state and detailed steps towards integration to be taken by immigrants. The Committee welcomes the adoption of Integration Act and asks for further information on its implementation in the next report.

The Committee notes the information provided in the report on the implementation and effects of the National Roma Strategy 2020, as requested in its previous conclusion (Conclusion 2015). Particularly, the Roma dialog platform supports the active citizenship of Roma by promoting their social, economic, political and cultural participation in society and raises awareness among Roma of their rights (notably in relation to discrimination and the possibilities of seeking redress) and of their civic duties.

The draft of the updated Roma Strategy has been prepared, which incorporated policy areas on women and youth. The updated Strategy was planned to be adopted by the Council of Ministers in May 2017. The Committee asks the next report to provide further information on the adoption and implementation of the updated Strategy.

The Committee notes from the report, that since 2012 the Ombudsman Board has been mandated by the UN with responsibilities under the OPCAT (preventive human rights protection in institutions of deprivation or limitation of liberty) and with the tasks under Art. 16(3) of the UN Convention on the Rights of Persons with Disabilities. The Ombudsman Board has adequate financial and personnel resources for these responsibilities.

The Committee notes from the abovementioned ECRI report, that since the reestablishment of the Austrian Press Council in 2010, it found violations of its Code of Ethics in most of media-related cases. As the main tabloids are not members, they are not obliged to follow and publish the Council's decisions. Also, there is no comparable mechanism for other media including television and radio. The Committee asks how hate speech is combated and monitored with respect to these means of information, as well as with respect to tabloid press.

Conclusion

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

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

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

It recalls that it has previously assessed the legal framework relating to the departure, journey and reception of migrant workers and the measures taken to implement it ([Conclusions 2015](#)) and put some questions in this respect. The present examination focuses on replies to the Committee's queries.

Immediate assistance offered to migrant workers

This provision obliges States to adopt special measures for the benefit of migrant workers, beyond those which are provided for nationals to facilitate their departure, journey and reception (Conclusions III (1973), Cyprus).

Reception means the period of weeks which follows immediately from their arrival, during which migrant workers and their families most often find themselves in situations of particular difficulty (Conclusions IV, (1975) Statement of Interpretation on Article 19§2). It must include not only assistance with regard to placement and integration in the workplace, but also assistance in overcoming problems, such as short-term accommodation, illness, shortage of money and adequate health measures (Conclusions IV (1975), Germany). The Charter requires States to provide explicitly for assistance in matters of basic need, or demonstrate that the authorities are adequately prepared to afford it to migrants when necessary (Conclusions XX-4 (2015), Poland).

The Committee also reiterates that equality in law does not always and necessarily ensure equality in practice. Additional action becomes necessary owing to the different situation of migrant workers as compared with nationals (Conclusions V (1977), Statement of Interpretation on Article 19).

The Committee notes at the outset that it considered that Austria has been in conformity with Article 19§2 since the previous cycles.

At its examination of the newly amended Settlement and Residence Act and its implementation ([Conclusions 2015](#)), the Committee noted the employment-related assistance provided by this Act and asked whether any limits or restrictions applied on the access of working migrants to state welfare services. In reply, the report submits that migrant workers entitled to permanent residence in Austria are granted full access to means-tested minimum income. Financial support, such as unemployment benefit, unemployment assistance or social housing fall under the jurisdiction of the Public Employment Service, the Laender and the municipalities. The Committee refers in this respect to its assessment under Article 13 which specifically deals with these issues.

The report submits that, in general legal, residents of Austria are ensured access to public healthcare, also during periods of unemployment. With the beginning of employment migrant workers are subject to statutory social security, thereby meeting the requirement for a health insurance covering all risks. The same applies to the worker's family members, who can be voluntarily co-insured under the compulsory statutory insurance scheme.

The report does not explicitly explain what assistance, financial or otherwise, is available to migrant workers in emergency situations, in particular in response to their needs of food, clothing and shelter. The Committee recalls its previous questions on that matter and asks what obligations in this respect are borne by the public authorities, the Laender and the municipalities.

Services during the journey

As regards the journey, the Committee recalls that the obligation to "provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions

during the journey" relates to migrant workers and their families travelling either collectively or under the public or private arrangements for collective recruitment. The Committee considers that this aspect of Article 19§2 does not apply to forms of individual migration for which the state is not responsible. In such cases, the need for reception facilities would be all the greater (Conclusions V (1975), Statement of Interpretation on Article 19§2).

The Committee notes that no large scale recruitment of migrant workers has been reported during the reference period. It asks what requirements for ensuring medical insurance, safety and social conditions are imposed on employers, shall such recruitment occur, and whether there is any mechanism for monitoring and dealing with complaints.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Austria is in conformity with Article 19§2 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 Austria.

General principles of assessment

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).

Co-operation between social services

It notes that the situation, which it has previously found to be in conformity with the Charter, has not changed: the Federal Government and the regional governments support NGOs which specialise in the assistance of migrant workers and cooperate with welfare institutions in the countries of origin (see for more details [Conclusions XIX-4, 2011](#)). The Committee asks that the next report provide for an updated description of the situation.

Conclusion

The Committee concludes that the situation in Austria 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 Austria.

The Committee 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).

It recalls that following the assessment of the full up-date on the situation in 2015, the Committee noted that under the Income Tax Act of 1988, as amended, migrants were treated equally with nationals in relation to taxes and social security contributions (see [Conclusions 2015](#)).

The report confirms that the Austrian social security system makes no distinction based on the nationality of insured persons.

The Committee understands from the report that the rules concerning additional contributions or entitlements, which may arise in the case of individuals who do not meet all requirements for legal residence, apply equally to nationals in the same circumstances. It asks the next report to confirm that this is the case and to explain in more detail in which circumstances such duties and entitlements may arise.

Conclusion

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

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

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

Scope

This provision obliges States Parties to allow the families of migrants legally established in the territory to join them. The worker's children entitled to family reunion are those who are dependent and unmarried, and who fall under the legal age of majority in the receiving State. "Dependent" children are understood as being those who have no independent existence outside the family group, particularly for economic or health reasons, or because they are pursuing unpaid studies (Conclusions VIII (1984) Statement of Interpretation on Article 19§6).

Austria was previously found to be in violation of the Charter on the ground that the age limit of 21 for family reunion of married couples who were not nationals of an EEA member state did not facilitate family reunion ([Conclusions 2015](#)). This limit has remains valid and, as highlighted in the report, it has been set to ensure the maturity necessary to refuse to enter into a forced marriage or to choose to move to another country with a spouse. The Committee considers that raising the age threshold above the age at which a marriage may be legally recognised in the host state is an undue hindrance to family reunion. Therefore, it reiterates its conclusion on non-conformity with the Charter in this respect.

The Committee understands from the Settlement and Residence Act that minor children are fully allowed for a family reunion but adult children and parents are excluded. It asks the next report to confirm that this is the case and to provide a full description of the scope of the right to family reunion.

Conditions governing family reunion

The Committee recalls that a state must eliminate any legal obstacle preventing the members of a migrant worker's family from joining him (Conclusions II (1971), Cyprus). Any limitations upon the entry or continued present of migrant workers' family must not be such as to be likely to deprive this obligation of its content and, in particular, must not be so restrictive as to prevent any family reunion (Conclusions XVII-1 (2004), the Netherlands; Conclusions 2011, Statement of Interpretation on Article 19§6).

The Committee furthermore recalls taking into account the obligation to facilitate family reunion as far as possible under Article 19§6, States Parties should not adopt a blanket approach to the application of relevant requirements, so as to preclude the possibility of exemptions being made in respect of particular categories of cases, or for consideration of individual circumstances (Conclusions 2015, Statement of Interpretation on Article 19§6).

In its previous conclusion the Committee has made a comprehensive assessment of the requirements for a family reunion (see [Conclusions 2015](#)). It found that the requirements of suitable accommodation and these related to health were in conformity with the Charter.

It considered, however, that the language requirements, namely the fact that certain categories of sponsored family member needed to prove knowledge of the German language at level A1 on the Common European Framework hindered the right to family reunion. The situation has not changed in this respect and the Committee thus reiterates its finding of non-conformity on this point.

Moreover, upon the Committee's request for clarifications on related fees, the report specifies that a set fee of 130 EUR applied for candidates sitting the examination to complete the language requirements. Furthermore, under the integration agreement, within two years after obtaining the residence title foreigners must pass the A2 level German proficiency test. Family members can be reimbursed with 50% of the course fees to a maximum of 750 EUR. The Committee recalls that it has held that states are required to provide classes in the national

language for migrants and members of their families free of charge under Article 19§11 (Conclusions 2011, Norway). It refers to its conclusion in that context that a requirement to pay substantial fees is not in conformity with the Charter, and considers that this also applies to the conditions for family reunion under Article 19§6, where language courses and tests are part of the process. While it acknowledges that the language test does not bar initial grant of a permit, it notes that migrants are required to sign an integration agreement which entails such a test in most cases. It also notes from the MIPEX 2015 report, quoted above, that pre-entry language tests for families are mostly unsuccessful at promoting language learning abroad, as courses are often expensive or inaccessible and that measures in Austria would better help families learn German through guaranteed free courses. The Committee therefore considers that the requirement to pay fees for the language tests and language courses may impede rather than facilitate family reunion and therefore is contrary to Article 19§6 of the Charter.

As to the means requirement, the Committee asked in its previous conclusion whether it applied in Austria, and if so, what the criteria were and how it was calculated. It recalled that the level of means required by States to bring in the family or certain family members should not be so restrictive as to prevent any family reunion (Conclusions XVII-1 (2004), the Netherlands). Social benefits shall not be excluded from the calculation of the income of a migrant worker who has applied for family reunion (Conclusions 2011, Statement of Interpretation on Article 19§6). In reply, the report states that adequate financial means are a condition for obtaining any residence title and the foreigner's fixed personal income must allow the person to live without having to claim any social assistance benefits. The Committee notes from the report that a residence title can ultimately be granted even in the absence of proof of financial means, if required after a weighing of interest by court based on Article 8 of the ECHR, however, it refers to specific circumstances such as the winter, future outlook to possess sufficient financial means. It further notes from the Migration Integration Policy Index 2015 report that Austria maintains one of Europe's most restrictive family reunion policies. Transnational families are expected to live up to standards that many national families could not, all without enough support to succeed or exemptions for vulnerable groups. Given that the report does not provide necessary clarifications on how the level of means is calculated and that social benefits are not to be excluded, the Committee recalls its question and underlines that should the next report not provide comprehensive information in this respect, there will be nothing to show that the situation is in conformity with the Charter on this point.

The Committee furthermore notes from the report that the quota system continues to apply to certain categories of application for family reunion. The Committee found this system not to be in conformity with the Charter in its previous conclusion (Conclusions 2015). The information provided by the report highlights the rule that either the quota of the year when the application is filed or the quota of the following year can be referred to when granting a residence title connected with quota-based family reunion. This means that a waiting period of three years is not generally applicable, but after expiry of three years at the latest the quota requirement ceases to apply. The report further states that the quota system does not lead to restrictions in cases of family reunion in the current situation but "might be an important tool in the future". According to the MIPEX report 2015, the system affects all families and delays their integration. The Committee considers that although the requirements of the law may prevent family reunion in only a limited number of cases, it is important that in practice the authorities in charge of issuing residence permits following applications for family reunion take account of the fact that "the principle of family reunion is but an aspect of the recognition in the Charter (Article 16) of the obligation of states to ensure social, legal and economic protection of the family" (Statement of interpretation – Conclusions VIII). Accordingly, the Committee repeats its conclusion (Conclusions 2015) that the situation is not in conformity with the Charter because families may still be required to wait in excess of the one year residence requirement allowed under the Charter.

Finally, the Committee recalls that once a migrant worker's family members have exercised the right to family reunion and have joined him or her in the territory of a State, they should have an independent right to stay in that territory (Conclusions XVI-1 (2002), Article 19§8, Netherlands). It notes from the MIPEX 2015 report on Austria that the family members' path to autonomous residence is long and complicated following a family reunion, except for certain vulnerable groups (e.g. widowhood, violence and, under certain conditions, divorce). It asks the next report to confirm whether a family member would be expelled if the sponsoring member's residence permit expires and if so, under which circumstances. Meanwhile, it reserves its position on this point.

Remedy

The Committee recalls that restrictions on the exercise of the right to family reunion should be subject to an effective mechanism of appeal or review, which provides an opportunity for consideration of the individual merits of the case consistent with the principles of proportionality and reasonableness (Conclusions 2015, Statement of Interpretation on Article 19§6).

The report states that the law ensures a complete review of the official decision is carried out by an independent court (administrative courts), not only in matters of family reunion but in every other issue related to right of residence. Of a ruling by the administrative court involves a legal issue of fundamental importance, an appeal on point of law can be brought before the Federal Administrative Court, or if the ruling is alleged to breach any rights guaranteed under the constitution (such as the right to respect for private and family life) an appeal can be lodged with the Constitutional Court.

Conclusion

The Committee concludes that the situation in Austria is not in conformity with Article 19§6 of the Charter on the grounds that:

- age threshold of 21 which is above the age at which a marriage may be legally recognised in the host state is an undue hindrance to family reunion;
- the fact that certain categories of sponsored family member need to prove knowledge of the German language hinders the right to family reunion;
- requirement to pay fees for the necessary language tests and language courses may impede rather than facilitate family reunion;
- families may be required to wait for more than a year before being granted reunion under the quota system, a delay which is excessive.

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 Austria.

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 notes that it previously assessed the legal framework relating to the access to free legal counsels, legal aid and interpreter for migrant workers in judicial proceedings concerning the rights guaranteed by Article 19§7 ([Conclusions 2015](#)) and found it to be in conformity with the requirements of the Charter. It will focus in the present assessment on any changes or outstanding issues.

The report provides information on criteria applied to determine whether a party is “lacking means” for the purposes of qualifying for legal aid. It explains, in particular, that the objective pursued in Austrian legislation is to allow the circumstances of the individual case to be fully considered in detail, in light of both the party’s financial situation and the expected cost of proceedings. To qualify for legal aid in Austria, a party must not necessarily be lacking means. The consideration instead is whether the party is able to pay the costs of conducting proceedings without limiting his or her ability to meet necessary living expenses. Based on court rulings, the necessary living expense is regarded as higher than the minimum subsistence level and lower than the person’s normal level of expense. When calculating necessary expenses, consideration is to be given to the circumstances of the individual case, including factors such as the party’s health and ability to pursue employment.

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.

The report indicates that refugees and asylum seekers receive legal aid subject to the same conditions as Austrian citizens and other applicants. Individuals belonging to this group who do not have sufficient financial means and are not adequately proficient in German language are additionally provided with an interpreter for assistance. The Asylum Act, as amended in 2016, provides asylum seekers in the admission procedure with a legal advisor, at no charge and as part of official duties. The assistance expands to appeal proceedings and to proceedings before the highest courts.

Conclusion

The Committee concludes that the situation in Austria 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 Austria.

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).

The Committee further notes that it previously assessed the legal framework relating to transfer of earnings and savings of migrant workers ([Conclusions 2015](#)) and found it to be in conformity with the requirements of the Charter. It will focus in the present assessment on any changes or outstanding issues.

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 confirms that there are no restrictions on the transfer of movable property belonging to a migrant worker.

Conclusion

The Committee concludes that the situation in Austria is in conformity with Article 19§9 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 Austria.

It 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 ([Conclusions 2015](#)) and found it to be in conformity with the requirements of the Charter. The report provides up-to-date statistical data on the number of teachers and pupils by language and region. The Committee notes that the situation has not changed.

Conclusion

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

Article 27 - Right of workers with family responsibilities to equal opportunity and treatment

Paragraph 1 - Participation in working life

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

It already examined the situation with regard to the right of workers with family responsibilities to equal opportunity and treatment (employment, vocational guidance and training, conditions of employment, social security, child day care services and other childcare arrangements). It will therefore only consider recent developments and additional information.

Employment, vocational guidance and training

The Committee notes that different measures aimed at supporting persons with family responsibilities to enter, remain or to re-enter the labour market exist in Austria. The report provides information on different active labour market policy measures, with the focus on the measures that support persons re-entering the labour market, on training programmes, as well as on the “Businesses for Families” network and award.

Conditions of employment, social security

In its previous conclusions (Conclusions 2015), the Committee asked to what extent periods of leave due to family responsibilities were taken into account when determining pension entitlements and the calculation of the pension.

In reply, the report states that under Articles 14c and 14d of the Employment Contract Law Adaptation Act, employees can sign a written agreement with their employers that provides for non-paid full-time or part-time leave for a maximum period of three months for the purpose of caring for a close relative, provided that the employment relationship has already existed for three months. When taking part-time care leave, employees’ normal weekly working time must be at least ten hours. Under the prescribed conditions, a one-time renewal of the agreements is permitted.

Under Article 21c of the Federal Long-Term Care Benefit Act, an employee taking such leave is entitled to the care leave benefit for the entire leave period (matching the amount of unemployment benefit); in case of a part-time care leave, an employee is entitled to the pro-rata amount of such benefit.

The Committee notes that employees taking full-time care leave benefit from health and pension insurance coverage since the related contributions are paid by the Federal Government. Employees who take part-time care leave do not need supplementary health insurance; they continue to benefit from the health and pension insurance coverage by virtue of their employment relationship. According to the report, to ensure employees’ continued entitlement under the pension insurance scheme, contributions are paid by both, the employer, on the basis of the employee’s remuneration, and the Federal Government, on the basis of the pro-rata amount of care leave benefit.

The report also states that up to 48 months of child-rearing periods following the birth of one child are accounted for in the pension insurance, with no contribution required (up to 60 months in case of a multiple birth). Child-rearing periods affect both pension entitlements and the amount of pension paid.

Child-rearing periods which overlap with other insurance periods only count once towards the calculation of pension entitlements. However, months of child-rearing that overlap in time with other insurance months are also taken into account in the form of a fixed assessment base when determining the amount of pension payments

Child day care services and other childcare arrangements

The Committee notes that, as Austria has accepted Article 16 of the Charter, measures taken to develop and promote child day care structures are examined under that provision.

Conclusion

The Committee concludes that the situation in Austria is in conformity with Article 27§1 of the Charter.

Article 27 - Right of workers with family responsibilities to equal opportunity and treatment

Paragraph 2 - Parental leave

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

In its previous conclusion (Conclusions 2015), the Committee found that the situation was in conformity with Article 27§2 of the Charter. It will therefore only consider the recent developments and additional information.

The report states that the Maternity Protection Act (as amended, Federal Law Gazette I No. 162/2015), introduced entitlement to parental leave for foster parents.

The Committee takes note from the report that with effect from 1 March 2017, the Childcare Benefit Act (as amended) offers parents greater choice enabling them to remain in employment or re-enter the labour market.

The Committee notes from the report that a leave period entitled "Daddy's month" (parental leave for fathers shortly after the birth of a child) introduced in the public sector (Conclusions 2015) was renamed "Baby month" in June 2015. This measure is available to both fathers and mothers (including couple in same-sex relationships) who are free to choose the start date and duration of this leave at any time during the period between the birth of the child and the end of the period during which the mother is not allowed to work (usually eight weeks). Taking this type of leave does not reduce the parental leave provided for under the Parental Leave for Fathers Act.

For children born on or after 1 March 2017, the Family Time Bonus Act (Federal Law Gazette I No. 53/2016) provides that fathers taking family time leave (including a "Baby month") will receive a family time bonus of €22.60 per day. This sum is then deducted from any childcare allocation subsequently claimed by the father.

According to the report, public-service employees who adopt a child under the age of two are also entitled to take early parental leave. Such leave starts when the child is adopted or taken into the care of the prospective adoptive parents with a view to adoption, and can last up to four weeks. This leave may be taken only if the father (partner) lives in the same household as the mother and child. The employer must be notified of the start and duration of parental leave no later than one week prior to the planned starting date. Social insurance protection remains in effect throughout this period, with the employer paying all contributions.

The report also indicates that since 2014, public-sector employees may also take care leave of between one and three months in order to care for a relative with dementia or for a relative under the age of 18 who is entitled to the long-term care allowance.

Conclusion

The Committee concludes that the situation in Austria is in conformity with Article 27§2 of the Charter.