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EUROPEAN SOCIAL CHARTER

European Committee of Social Rights

Conclusions 2019

BULGARIA

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 Bulgaria on 7 June 2000. The time limit for submitting the 17th report on the application of this treaty to the Council of Europe was 31 October 2018 and Bulgaria submitted it on 28 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).

Bulgaria has accepted all provisions from the above-mentioned group except Articles 17§1, 19, 27§1 and 31.

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

The present chapter on Bulgaria concerns 19 situations and contains:

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

In respect of the other 4 situations concerning Articles 7§1, 7§3, 7§10 et 8§5, 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 Bulgaria under the Revised Charter. The Government consequently has an obligation to provide this information in the next report from Bulgaria on the articles in question.

The next report to be submitted by Bulgaria will be a simplified report dealing with the follow up given to decisions on the merits of collective complaints in which the Committee found a violation.

The deadline for submitting that 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 Bulgaria.

The Committee notes from the information provided in the report submitted by Bulgaria that there have been no changes to the legal situation which it has previously found to be in conformity with Article 7§1 of the Charter (Conclusions 2011).

The Committee recalls that according to Chapter XV, Section I of the Bulgarian Labour Code, the employment of persons under 16 years old is prohibited. As an exception, children aged 15 to 16 years may be employed in work which is light and is not dangerous or hazardous to their health and proper physical, mental and moral development and the performance which would not be detrimental to their school attendance or their participation in programmes for vocational guidance or training. Moreover, according to Article 301 (3) of the Labour Code children under the age of 15 can be employed in the field of arts (circus, theatre, film making).

In its previous conclusion (Conclusions 2011), the Committee noted the measures taken by the Bulgarian authorities in order to implement the legal framework, such as the pilot project funded by the International Labour Organisation to monitor child labour in Bulgaria as well as the programmes planned and carried out at national and/or regional level by the General Labour Inspectorate in order to strengthen control over observance of rules protecting the labour of minors. In this respect, the Committee asked to receive detailed information on the results and the impact of these measures and initiatives in practice.

The current report indicates that the control over the observance of the provisions protecting the work of persons under the age of 18 is a constant priority in the activity of the General Labour Inspectorate Executive Agency (GLI-EA). According to the report, from the control activity of the General Labour Inspectorate, it appears that persons under the age of 18 are prevalingly employed in the retail, restaurant and hotel sectors. The report points out that these activities are predominantly performed within small and medium-sized enterprises where the nature of work allows for seasonal hiring of the labour force without strict qualification requirements and in good working conditions.

The report further provides information on the number of requests received and permits issued by the General Labour Inspectorate for persons under the age of 18 over the reference period. The Committee notes in particular that in 2016, the requests were 5,283 and the permits issued were 5,009, out of which 90 were granted to children under 16 years of age; in 2017, the requests were 7,240 and the permits issued were 6,938, out of which 144 were granted to children under the age of 16.

As regards monitoring of child labour, the report provides information on the number of violations detected by the General Labour Inspectorate over the reference period (2010-2017) concerning the provisions protecting the work of persons who have not attained 18 years of age: 114 in 2010 (out of a total of 46,736 inspections); 84 in 2011 (out of a total of 53,195 inspections); 84 in 2012 (out of a total of 56,431 inspections); 50 in 2013 (out of a total of 55,952 inspections); 90 in 2014 (out of a total of 52,543 inspections); 89 in 2015 (out of a total of 50,229 inspections); 207 in 2016 (out of a total of 48,053 inspections); 210 in 2017 (out of a total of 45,645 inspections).

Moreover, the report provides information on the number of minors working without a permit reported by the General Labour Inspectorate: two cases in 2010; one case in 2011; 25 cases in 2012; 27 cases in 2013; 43 cases in 2014; 48 cases in 2015; 99 cases in 2016; 95 cases in 2017.

The Committee takes note of the information provided and asks the next report to provide up-to-date information on the monitoring activities of the General Labour Inspectorate with specific regard to children under 15 years of age. It asks, in particular, to provide information

on the type and level of sanctions imposed in practice to the employers in cases of violations of the prohibition of employment of children under the age of 15.

As regards working time of children, the Committee refers to its Statement of Interpretation on Articles 7§1 and 7§3 (Conclusions 2015) and it points out that children under the age of 15 and those who are subject to compulsory schooling may perform only “light” work. Work considered to be “light” ceases to be so if it is performed for an excessive duration. States are therefore required to set out the conditions for the performance of “light work” and the maximum permitted duration of such work.

The Committee considers that children under the age of 15 and those who are subject to compulsory schooling should not perform light work during school holidays for more than 6 hours per day and 30 hours per week to avoid any risk to their health, moral welfare, development or education. The Committee also points out that children should be guaranteed at least two consecutive weeks of rest during summer holidays. As to the length of light work during term time, the Committee considered that a situation in which children who were still subject to compulsory schooling carried out light work for two hours on a school day and 12 hours a week in term time outside the hours fixed for school attendance was in conformity with the requirements of Article 7§3 of the Charter (Conclusions 2011, Portugal).

The Committee asks for information in the next report on whether the situation in Bulgaria is in conformity with the above-mentioned principles. It asks, in particular, for information on the daily and weekly duration of any light work that children under the age of 15 and those who are subject to compulsory schooling are allowed to perform during term time and school holidays. In the meantime, it reserves its position on this point.

The Committee notes from another source (Concluding Observations (CRC) – adopted 2016, Bulgaria, Convention on the Rights of the Child) that children living in vulnerable situations, particularly Roma children, continue to be exposed to harmful and exploitative work in the informal economy, mainly in agriculture, tourism, retail and domestic work. According to another source (Direct Request (CEACR) – adopted 2014, published 104th ILC session (2015), Bulgaria, Worst Form of Child Labour convention 1999 (No. 182)), the worst forms of child labour are most often observed in households (agriculture and housekeeping sectors) and in the informal economy. The same source further indicates that cases of worst forms of child labour in the agricultural sector, especially hazardous work performed by children from the Roma community, will most often be observed in the informal economy and/or family agricultural undertakings, that is, outside the scope of jurisdiction of the labour inspection.

The Committee recalls that the prohibition of the employment of children under the age of 15 applies to all economic sectors, including agriculture, and all places of work, including work within family enterprises and in private households (Conclusions I (1969), Statement of Interpretation on Article 7§1). It further recalls that the prohibition also extends to all forms of economic activity, irrespective of the status of the worker (employee, self-employed, unpaid family helper or other). The Committee asks what are the measures taken by the authorities (e.g. labour inspection, social welfare and child protection, the police, prosecutors, Ombudsman) to protect and prevent children under the age of 15 from engaging in harmful and exploitative work in the informal economy, especially in agriculture, and to detect such cases in practice. The Committee points out that should the next report not provide the information requested, there would be nothing to establish that the situation in Bulgaria is in conformity with Article 7§1 of the Charter.

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

Conclusion

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

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 Bulgaria.

The Committee previously noted (Conclusions 2011) that the Bulgarian Labour Code provides that employment of persons between 16 and 18 years of age in heavy, harmful and dangerous jobs or jobs that could threaten their proper physical, mental and moral development shall be prohibited. The Committee further noted (Conclusions 2011) that in this framework a person under 18 may be hired only if the job is not difficult, dangerous or harmful to the health and proper development of the child and performing the work does not interfere with regular school attendance and preparation for school.

The Committee further notes that according to Article 304 (1) of the Labour Code, minors may not engage in work which is: (i) beyond their physical or psychological capacity; (ii) involving exposure to a harmful physical, biological or chemical impact, and in particular to toxic agents, carcinogens and agents causing heritable genetic or intrauterine damage; (iii) involving hazards which chronically affect human health in any other way whatsoever; (iv) involving exposure to radiation; (v) at extremely low or high temperatures, noise or vibration; (vi) involving the risk of employment injury which it may be assumed the minor cannot recognise or avoid owing to his or her physical or psychological immaturity.

In its previous conclusion (Conclusions 2011), the Committee noted that in cases of violation concerning the prohibition of employment under the age of 18 for dangerous or unhealthy activities, cases where pre-trial proceedings are instituted and brought to court are few and most often result in no finding and criminal liability, but the imposition of administrative sanctions (from 500 to 1000 BGN). The Committee asked the next report to confirm its understanding of the situation concerning the imposition of sanctions.

The current report indicates that over the reference period (2010-2017) the General Labour Inspectorate detected 101 violations (out of a total of 408.784 inspections) concerning the prohibition of the performance of certain types of work by persons under the age of 18, laid down in the above-mentioned Article 304 (1) of the Labour Code. The report points out that with regard to the violations found, the control authorities have implemented coercive administrative measures requiring from employers to adapt the workplaces of underage persons to the legal requirements. According to the report, in the case of graver forms of non-compliance with the regulatory requirements, the control authorities have drawn up acts establishing administrative violations. On the basis of the drafted acts, penal decrees have been issued, imposing pecuniary sanctions on the employers for the established violations, ranging from BGN 1.500 (€ 766,98) to BGN 15.000 (€7669,85).

The Committee recalls that the situation in practice should be regularly monitored and asks the next report to provide up-to-date information on the monitoring activities of the General Labour Inspectorate with specific regard to the prohibition of employment of children and young persons under the age of 18 for dangerous or unhealthy activities, including in particular the number of violations detected and the sanctions imposed in practice to the employers in cases of violations.

Conclusion

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

The report indicates that the Pre-school and School Education Act of 12.10.2015 requires children to attend school from the age of 6-8 until the age of 15-17.

The Committee refers to its conclusion on Article 7§1 where it noted that according to Article 301 (1) – (2) of the Labour Code, the minimum employment age is 16 years. As an exception, persons aged between 15 and 16 years may be employed in work which is light and is not dangerous or hazardous to their health and proper physical, mental and moral development and the performance whereof would not be detrimental to their regular attendance at school or to their participation in programmes for vocational guidance or training. Moreover, according to Article 301 (3) of the Labour Code children under 15 years old can be employed in the field of arts (circus, theatre, film making). Children under 16 years old shall be employed with permission of the Labour Inspectorate that shall also take into account their possibility to attend school.

In its previous conclusion (Conclusions 2011), the Committee recalled that during school term, the time during which children may work must be limited so as not to interfere with their attendance, receptiveness and homework. It further recalled that allowing children to work before school begins in the morning is, in principle, contrary to Article 7§3 and asked the next report to provide detailed information on any criteria for determining when work interferes with school attendance.

The current report indicates that according to Article 140 (4) of the Labour Code, children under the age of 16 are not allowed to perform work from 8 p.m. to 6 a.m. The Committee notes that the report does not provide information on whether children are allowed to work after 6 a.m., before school begins in the morning. Therefore, the Committee reiterates its question.

The Committee refers to its Statement of Interpretation on Articles 7§1 and 7§3 (Conclusions 2015) mentioned on Article 7§1 and asks for information in the next report on the daily and weekly duration of any light work that children under the age of 15 and those who are subject to compulsory schooling are allowed to perform during term time and school holidays. In the meantime, it reserves its position on this point.

In its previous conclusion (Conclusions 2011), the Committee asked whether the rest period free of work has a duration of at least two consecutive weeks during the summer holiday. It also asked what the rest periods during the other school holidays are.

As regards summer holidays, the current report indicates that pupils from the 5th to the 11th grade finish school at the end of June and start again at the beginning or at the half of September. According to Article 305 (4) of the Labour Code, workers or employees who have not attained the age of 18 years are entitled to an extended paid annual leave amounting of not less than 26 working days. The report does not specify whether during the summer holidays the child has the right to a rest period free of work of at least two consecutive weeks out of the ensured leave days. The Committee therefore reiterates its previous question. Meanwhile, it reserves its position on this point.

As regards the other school holidays, the current report indicates the dates of the school holidays during the school year. However, it does not provide any information with regard to the rest period during such holidays. The Committee therefore reiterates its question.

As regards monitoring child labour, the Committee refers to its conclusion on Article 7§1 concerning the information provided by the national report. The Committee asks the next report to provide up-to-date information on the monitoring activities of the General Labour Inspectorate with specific regard to children still subject to compulsory school attendance. It asks in particular to provide information on the number of violations detected and on the type

and level of sanctions imposed in practice to the employers in cases of violations of the legislation concerning the employment of children still subject to compulsory education.

Conclusion

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

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 Bulgaria.

The Committee noted previously (Conclusions 2011) that the Labour Code provides that working hours of employees under 18 shall be 35 hours per week and 7 hours per day, for a five-day workweek. Their daily and weekly working time includes the time for vocational training. The Committee noted that a person under 18 may be hired under an employment contract only if, *inter alia*, the job is not harmful to the development of the person concerned. Persons between 16 and 18 years of age shall be employed upon permission of the Labour Inspectorate in each separate case. The employer shall take special care for the labour of persons under 18 by providing alleviated working conditions and opportunities to acquire professional qualification and to raise their qualification level. According to the report, Article 404 (1) of the Labour Code imposes an obligation on the employers to abstain from admitting overtime labour for persons under 18 years of age.

The Committee notes from the current report that during the reference period amendments have been adopted concerning vocational education and training. The report indicates that pursuant to the Vocational Education and Training Act, school vocational education and training is carried out after the acquisition of at least primary education and may also be carried out on the basis of 'training through work' (dual system training). According to the report, 'training through work' is a specific form of vocational training for acquiring professional qualification and it is performed on the basis of a contract of employment with a condition of training at work (Articles 230- 233 of the Labour Code). Such contract shall specify the forms, place and duration of the training, the compensation that the parties owe to each other in case of non-performance, as well as other issues related to the implementation of the training. The duration of such training is determined in accordance with the school curriculum. According to the report, employers may sign contracts of employment under Article 230 (1) of the Labour Code only with persons who have attained the age of 16 years, regardless if they are pupils or not.

In its previous conclusion (Conclusions 2011), the Committee asked the next report to contain updated information on the situation in practice as well as on the measures taken by the Government to counter the violations detected and secure that the working hours of persons under 18 years of age are limited in accordance with their needs of development and vocational training. Pending receipt of the information requested, the Committee deferred its conclusion.

The current report indicates that during the reference period (2010-2017), the General Labour Inspectorate found a total of 8 violations of the prohibition of overtime work by young persons who have not attained the age of 18. The most frequent violation was work by persons under the age of 18 years over the agreed part-time (4 or 6 hours). Moreover, the report indicates that during the reference period the General Labour Inspectorate found 31 violations of the legal length of the full working time for persons under the age of 18. The violations refer to work on an 8-hour working day instead of a 7-hour working day. Furthermore, the report indicates that the General Labour Inspectorate found a total of two violations of the provisions of Article 305 (1) of the Labour Code, which require from the employer to take special care of the work of persons who have not attained the age of 18 years by providing alleviated working conditions and opportunities for acquisition of professional qualification and for upgrading of the said qualification.

According to the report, the legal restrictions concerning the length of working time of underage persons are mainly violated by employers in hotels and restaurants, businesses operating in the field of commerce, production of food and beverage and clothing.

Concerning the sanctions imposed in cases of violations, the report indicates that coercive administrative measures have been imposed and employers have been subjected to

administrative penalty liability. According to the report, during the reference period a total number of 5 statements of administrative offences were issued for established violations of the prohibition of overtime labour of persons under 18 years of age. On the basis of these statements penal decrees were issued, by virtue of which pecuniary sanctions and fines were imposed to employers in the amounts from BGN 1.500 (€ 766,98) to BGN 15.000 (€7669,85).

The Committee asks the next report to provide up-to-date information concerning the monitoring activities and findings of the General Labour Inspectorate in relation to working time for young persons under 18, including information on the measures taken and sanctions imposed by the General Labour Inspectorate in relation to violations concerning work and rest time of young persons under 18 who are not subject to compulsory school attendance.

Conclusion

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

The Committee recalls that it found previously the legislation in conformity with the requirements of Article 7§5. However, it concluded that the situation did not comply with the Charter, due to non-effective application of the legislation in 2004, 2006 and 2011, as the report did not contain any information that could lead the Committee to consider that the de facto situation had been improved.

Young workers

Under Article 7§5 of the Charter, wages paid to young workers between 16 and 18 years of age can be reduced by as much as 20% compared to a fair adults' starting or minimum wage. Therefore, if young workers were paid 80% of a minimum wage in line with the Article 4§1 fairness threshold (60% of the net average wage), the situation would be in conformity with Article 7§5 (Conclusions XVII-2 (2005), Spain). In the present case, as the young workers' wage is at the same level as the adult workers' wage, the Committee examines whether the net minimum wage of young workers represents 80% of the minimum threshold required for adult workers (60% of the net average wage). This is at least a 48% of the net average monthly wage. Since Bulgaria has not accepted Article 4§1 of the Charter, the Committee makes its own assessment on the adequacy of young workers wage under Article 7§5. For this purpose, the ratio between net minimum wage and net average wage is taken into account.

The Committee notes that according to the report the minimum wage determined by the Council of Ministers, pursuant to Article 244, item 1 of the Labour Code is paid in full to young workers. The report further states that in 2018, the determined new amount of the Minimal Work Salary (MWS), which was 510 BGN (261 €) marked a growth of 10.9% compared to 2017. A criterion for determining the MWS used by the Government is that the net amount is higher than the "official poverty line". The net minimal salary in year 2018, after the deduction of the compulsory personal insurance contribution and tax burden, was 396 BGN (202 €) which exceeds the poverty line for 2018 of 321 BGN (164 €). No other information was found in the report on the implementation of the relevant legislation or on data relating to the period of reference (2014 to 2017). According to Eurostat, the net annual earnings of a single person without children in Bulgaria was 5,447.10 €, so 453,9 € per month. As young workers receive the same than adult workers and the net MWS is 261 €, this is a 57% of the net average monthly wage, the Committee considers that the situation in this respect is in conformity with the Charter. The Committee asks that the next report contain detailed figures on the wages or other appropriate allowances paid to young workers, including net minimum wage and net average monthly wage of young workers.

Apprentices

No information was found in the report on the implementation of the relevant legislation. In its previous conclusions (2004, 2006, 2011), the Committee asked what the net value of the amounts paid to apprentices at the end of their apprenticeship was. The report does not contain the requested information, so the Committee repeats its question.

The Committee asks that the next report contain detailed figures on the net value wages or other appropriate allowances paid to apprentices at the beginning and at the end of their apprenticeship. The report does not contain any information that could lead the Committee to consider that the de facto situation has improved. Consequently, it concludes that the situation is still not in conformity.

Conclusion

The Committee concludes that the situation in Bulgaria is not in conformity with Article 7§5 of the Charter on the ground that it has not been established that the right of apprentices to a fair wage and other appropriate allowances is guaranteed in practice.

Article 7 - Right of children and young persons to protection

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

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

The Committee recalls that in 2004, it concluded that the, although the legislation was in conformity with the Charter, Bulgaria did not comply with the Charter due to non-effective application of the legislation. In 2006, the Committee concluded that the situation was still not in conformity on the ground that the report did not contain any information that could lead the Committee to consider that the de facto situation had been improved. In the last conclusion (2011), it deferred its assessment pending the receipt of information on how the General Labour Inspectorate monitored the respect for the rules in practice, as well as on the measures taken by the Government to promote the inclusion of time spent on vocational training in the normal working time.

According to the report, the Vocational Education and Training Act (VETA) regulates training through work (dual system of training) as a form of partnership between an institution from the system of vocational education and training and one or several employers, which includes practical training in real working environment, and training in an institution from the system of vocational education and training (a vocational high school, a vocational college or a center for vocational training). The employment contract between the trainee and the employer must enounce that training shall be considered as part of the working time (Article 230 of the Labour Code). In connection with the regulation of the dual system of training as a specific form of vocational training, the Employment Promotion Act (EPA) was amended and in force since 1 August 2015 and introduced incentives for employers to train workers in accordance with the procedure and conditions of VETA.

With regard to the request of data on the number of inspections, the report states that the Labour Inspectorate controls the respect of the labour legislation, including technical safety, labour hygiene and health at work, conditions of labour and labour law relations, and working hours. However, there is no statistical information about the number of inspections conducted regarding young workers. The report states that during the period of reference there were 31 violations detected, but these violations concerned the rules on working hours for young workers and not the inclusion of time spent on vocational training in the normal working time.

The Committee recalls the importance of monitoring the situation in practice. It considers that there is no information in the report which demonstrates that the situation in Bulgaria regarding the inclusion of time spent on vocational training in the normal working time is in conformity with the Charter.

Conclusion

The Committee concludes that the situation in practice in Bulgaria is not in conformity with the Charter on the ground that it has not been established that the time spent on vocational training is included in the normal working time.

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 Bulgaria.

The Committee recalls that in its previous conclusions (2004, 2006), it found that the legal framework was in conformity with Article 7§7. However, it concluded that the situation did not comply with the Charter, due to non-effective application of the legislation.

According to the report, no legislative amendments have been made. During the period of reference, the report provides information on the number of violations of these rules: 314 in total. The violations found concern that the annual paid leave was less than the legal requirement of 26 working days in individual employment contracts signed between the employers and workers under 18 years of age. The report indicates that, in most cases, the contract fixes the annual paid leave as 20 working days, neglecting the special care for young workers and their need of sufficient time for rest and for education and professional qualification. The Committee asks to be kept informed on its evolution.

In its previous conclusion, the Committee also asked whether young workers may waive their right to paid annual leave and whether such leave may be suspended in the event of illness or accident. The report indicates that Article 175 paragraph 1 of the Labour Code provides that, where during the use of paid annual leave the worker or employee is granted another type of paid or unpaid leave, the use of paid annual leave shall be interrupted upon the worker's request and the balance shall be used later by agreement between the worker and the employer. The balance of paid annual leave may be used immediately after the expiry of the temporary sick leave or at a later time. The moment to use this leave is determined by mutual consent of the parties for which the employee must submit an application and obtain a permission in writing from his or her employer accordingly.

Conclusion

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

The Committee further notes that night work by minors is forbidden. In this respect, the Labour Code specifies that for employees under 18 years of age night work shall be any work performed between 8.00 pm and 6.00 am.

The Committee recalls that in its previous conclusions (2004, 2006), it found that the legal framework was in conformity with Article 7§8. However, it concluded that the situation did not comply with the Charter, due to non-effective application of the legislation. The Committee asked that the next report contain updated information on the situation in practice as well as on measures taken by the Government to counter the violation of the rule prohibiting the night work of persons under 18 of age.

According to the report, during the period of reference, there have been 66 violations of the prohibition of night work of persons under 18 years of age. It is pointed out that in the vast majority of cases, these violations took the form of work performed by persons 18 years between 8 and 10 pm during the summer months. Coercive administrative measures were imposed with regard to the established violations, imposing an obligation on the employers to abstain from these violations. During the period of reference, 32 statements of administrative offences were issued and pecuniary sanctions were imposed to employers up to BGN 15,000. The Committee asks that the next report contain more updated information on how many inspections are conducted and the effectiveness of the monitoring in practice.

Conclusion

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

The report reiterates the information given during the last conclusions: that according to the Labour Code: a) persons under 16 shall be employed after a thorough medical examination and a medical ruling that they are fit to perform the respective job and that it would not impair their proper physical and mental development. They shall be employed upon permission of the Labour Inspectorate in each separate case; b) persons between 16 and 18 years of age shall be employed after a thorough preliminary medical examination and a medical ruling which certifies their fitness to perform the respective work. They shall be employed upon permission of the Labour Inspectorate in each separate case. According to the report, the employer of persons under 15 years of age must ensure the performance of medical controls. These individuals are subjected: every 3 months, to a general medical examination; every 6 months, to anthropometric measurements, functional tests of the condition of the cardiovascular and respiratory system, and if necessary – to other special tests.

The Committee asked in its former conclusions whether the persons aged 15 to 18 employed in occupations prescribed by national laws or regulations are also subject to regular medical controls. The Committee recalls that in its previous conclusions (2011), it found that the legal framework was in conformity with Article 7§9, but that the situation did not comply with the Charter, due to non-effective application of the legislation. The report states that for workers between 15 and 16 years, a compulsory periodic medical examination has to be conducted every 6 months, and for workers aged between 16 and 18 years, annually. However, the report does not contain any information that could lead the Committee to conclude that the *de facto* situation has improved or it is monitored. Consequently, it concludes that the situation is still not in conformity.

Conclusion

The Committee concludes that the situation in Bulgaria is not in conformity with Article 7§9 of the Charter on the ground that it is not established that the right of young workers to regular medical examination is guaranteed due to non-effective enforcement of the legislation.

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 Bulgaria.

Protection against sexual exploitation

The Committee previously considered that the situation was not in conformity with the Charter on the grounds that it had not been established that minors under 18 years were effectively protected from all forms of child pornography and child prostitution (Conclusions 2011). It asked to be kept informed about amendments made to legislation further to the ratification of the Council of Europe Convention against Sexual Abuse and Exploitation of Children.

The Committee notes from the report that the Criminal Code was amended several times during the reference period and in particular in 2015 to implement the Directive 2011/92/EU on combating sexual abuse, sexual exploitation of children and child pornography. Pursuant to these amendments, inter alia, children who have been victims of sexual abuse or sexual exploitation or a minor who has been used for the production of pornographic material are exempt from criminal liability or are not punished for their involvement in the criminal activities they were forced to engage in (Article 16a). The establishment of a contact with a person who has reached 14 years of age for the purpose of committing molestation, sexual intercourse, making pornographic material, or a pornographic performance has been criminalized, as was the persuading of an underage person through the use of force or threat, or through taking advantage of a state of dependence or supervision to participate in actual, virtual or simulated sexual act. Also the provisions concerning the criminal responsibility for coercing, recruiting, supporting or using a person who has not attained the age of 18 years or a group of such persons to participate in a pornographic performance were made more precise.

The Committee notes from the report of the Governmental Committee (GC 2016(22) report of the Governmental Committee concerning Conclusions 2015) that the simple possession of child pornography depicting a child under the age of 18 years is a criminal offence.

The Committee understands from the information provided in the report that all children under 18 years are protected against all forms of sexual exploitation including child pornography and child prostitution, it considers that the situation is now in conformity in this respect.

Protection against the misuse of information technologies

According to the report, the annual National Programme for Child Protection places particular emphasis on measures and activities to protect children from violence and various forms of abuse, including the protection of children on the Internet. In addition, specific measures for the protection of children's rights in a digital environment are set out in the Action Plan 2017-2018 of the National Programme for the Prevention of Violence and Abuse against Children (2017-2020).

The report states that the Cyber Crime Division of the Directorate General for the Fight against Organised Crime (DGCOOC) is taking serious steps to educate young people about digital culture. Numerous meetings and discussions are being held with pupils of all ages and their parents to explain the dangers of the Internet and ways of protecting personal information.

One of the main tools for achieving these objectives is the national telephone line to inform, advise and help children, which covers the entire territory and is free of charge.

Legislative amendments were made to the Criminal Code in 2015 to facilitate the investigation of online child sexual exploitation.

The amended Article 155a (1) of the Criminal Code criminalises the provision or collection of information about a person under the age of 18 years, by means of information or communication technologies or otherwise, for the purpose of establishing contact with that person so as to engage in sexual intercourse or prostitution, or for the purpose of creating

pornographic material, or for the purpose of involvement in a pornographic performance. The Committee notes that in 2016, a special "Child Safety" website ([http://detskasisgurnost.bg./](http://detskasisgurnost.bg/)) was launched to prevent unlawful acts committed by and against children. The website provides contact details of relevant services that can be contacted when children need help or advice, including in cases of illegal or negative content on the Internet.

The Committee requests that the next report provide updated information on measures taken to prevent the exploitation of children through the Internet in this respect.

Protection from other forms of exploitation

In its previous conclusion (Conclusions 2011) the Committee asked to be informed of any legislative amendments in relation to child trafficking and trends in the number of child victims of trafficking.

The Committee notes from the report that according to the State Agency for Child Protection (SACP) data, in the last few years there has been decrease in the number of cases of child trafficking.

In 2014, the SACP co-ordinated assistance in 36 cases of child victims of trafficking and exploitation in 2015 34 cases, in 2016 28 cases and in 2017, 18 cases.

According to the Agency for Social Assistance (ASA), in 2014, the number of children – victims of trafficking and/or repatriated from abroad – that were monitored by the Child Protection Department (CPD) was as follows: 193 in 2014, 139 in 2015, 96 in 2016 and 60 children in 2017.

The Committee notes from the Report of GRETA concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Bulgaria (2016) that, according to data collected by the Supreme Cassation Prosecutor's Office on the number of victims who took part in pre-trial proceedings in a given year, there were 266 child victims of human trafficking in the period 2011 – first half of 2015: 60 girls and 10 boys in 2011, 55 girls, and 11 boys in 2012, 48 girls and 17 boys in 2013, 29 girls and 12 boys in 2014, and 21 girls and 3 boys in the first half of 2015.

The Committee further notes that according to the report legislation (Criminal Code and Law on Combating Trafficking in Human Beings) has been brought into conformity with international and European standards. In 2013, Section IX "Trafficking in Human Beings" was amended and supplemented in order to implement the requirements of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims. The provisions covering trafficking in human beings apply to all persons, including those under 18 years of age.

The Committee notes from the report that a Coordination Mechanism for Referral and Care of Unaccompanied Children and Child Victims of Trafficking Returning from Abroad, has been established.

It notes from the Concluding Observations of the UN Committee on the Rights of the Child on the combined third to fifth periodic reports of Bulgaria [CRC/C/BGR/CO/3-5(2016)] that this mechanism does not function efficiently and that there is no system in place to provide specialised care and support to child victims of trafficking who are often placed in socio-pedagogical boarding schools and correctional centres.

The Committee notes the efforts made by Bulgaria to address child trafficking and abuse, in particular through the adoption of the National Programme for the Prevention of Violence Against Children and Child Abuse (2017-2020) and the 2017-2018 Action Plan to the National Programme for the Prevention of Violence against Children and Child Abuse (2017-2020), which complies with the objectives set out in the National Strategy for Children (2008-2018). However, it asks the next report to provide updated information on further measures to

address the problem in particular in light of the above-mentioned observations of the UN Committee on the Rights of the Child.

The Committee notes, from the above-mentioned Concluding Observations of the UN Committee on the Rights of the Child, that children living in vulnerable situations, in particular Roma children, continue to be exposed to harmful work and exploitation in the informal economy, mainly in agriculture, tourism, retail and domestic work.

The Committee recalls that under Article 7§10, Parties must prohibit the use of children in other forms of exploitation such as domestic/labour exploitation, including trafficking for the purposes of labour exploitation, begging, or the removal of organs. States Parties must also take measures to prevent and assist street children.

In this context, 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.

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

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 Bulgaria.

Right to maternity leave

The report states that there has been no change in the legal framework on maternity leave during the reference period: Article 163 of the Labour Code provides that women employees are entitled to 410 days' maternity leave for each child, 45 days of which must be used before childbirth.

In its previous conclusion (Conclusions 2011), the Committee noted that Section 26 of the Ordinance on Medical Expertise provided that a medical certificate should be delivered for absence from work totalling 135 days (45 days' leave before the birth, 42 days' leave after and 48 days' leave after discharge from hospital or in the event of hospitalization of the newborn child). The Committee asked whether hospital certificates were granted automatically and whether the periods they covered were fixed.

According to the report, certificates lay down time limits, which may be extended in some cases. The Committee understands from the report that doctors issue these certificates automatically and the periods they cover are fixed.

The report states that the same rules apply to women employed in the public sector.

Right to maternity benefits

In its previous conclusion, the Committee asked whether there was a qualifying period (minimum period of employment or social security contributions) for entitlement to maternity benefits and whether the same rules applied to women employed in the public sector.

In reply, the report states that, as of 1 January 2015, the 24-month period used to calculate benefits was restored so as to link employees' social security contributions more closely with the amount of their maternity benefit. Under Article 49 of the Social Security Code (as amended), daily maternity benefit amounts to 90% of the daily average gross pay on which contributions must be paid, as calculated over the 24 calendar months preceding the leave. The amount cannot be less than the (statutory) minimum wage and cannot exceed the net average wage. Women who resume work when their child has reached the age of six months receive 50% of the benefits.

The report states that all women employees with sickness or maternity insurance are entitled to financial compensation for pregnancy and childbirth in lieu of remuneration for work provided that they have paid contributions against such risks for at least 12 months (Article 48 of the Social Security Code). The Committee asks if interruptions in employees' careers are taken into account when calculating the duration of contributions required. In the meantime, it reserves its position on this issue.

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

The Committee takes note of the list provided in the report of the persons who have compulsory health or maternity insurance under Article 4(1) of the Social Security Code.

The Committee notes that the same rules apply to women employed in the public sector.

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 equalised 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, while 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 in 2017 was €3,588, or €299 per month. 50% of the median equivalised income was €1,794 per year, or €149.50 per month. In 2017, the gross minimum monthly wage was €235.20 in Bulgaria (90% of the gross minimum monthly wage is €211.70). In the light of the above, the Committee finds that the situation is in conformity with Article 8§1 on this point.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Bulgaria is in conformity with Article 8§1 of the Charter.

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

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

Prohibition of dismissal

In its previous conclusion (Conclusions 2011), the Committee found that the situation was not in conformity with Article 8§2 of the Charter on the ground that exceptions to the prohibition of dismissal of pregnant women were excessively broad. It noted in particular that a pregnant woman could be dismissed in the event of the relocation of the undertaking for which she worked if she did not follow it. It also considered that the possibility of dismissing a pregnant worker in case the post which she occupied had been previously occupied by a person who had been unlawfully dismissed and should be reintegrated, went beyond the exceptions that are acceptable under Article 8§2.

The Committee recalls that Article 8§2 of the Charter allows, as an exception, dismissal of pregnant women and women on maternity leave in certain cases such as misconduct which justifies breaking off the employment relationship, if the undertaking ceases to operate or if the period prescribed in the employment contract has expired. However, these exceptions are subject to strict interpretation by the Committee. It notes that there was no change in the situation during the reference period, and therefore, it reiterates its finding of non-conformity on this point.

Redress in case of unlawful dismissal

The report states that following an amendment to Article 222§1 of the Labour Code, the scope of compensation for dismissal was extended. Compensation is now provided for in the event of termination of a worker's employment contract in case of relocation of the undertaking for which she works, and she decides not to follow it or where the post she occupies must be vacated to allow an employee who occupied it previously but was unlawfully dismissed to be reintegrated. In such cases, compensation is restricted to a maximum of the equivalent of one month's salary. However, the report indicates that a higher amount may be paid in accordance with a Ministerial Council Act, a collective agreement or an employment contract. The Committee recalls that compensation for unlawful dismissal must be both proportionate to the loss suffered by the victim and sufficiently dissuasive for employers. Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive is proscribed. In the light of the above, the Committee finds that the situation is not in conformity with Article 8§2 on the ground that the compensation awarded in the event of termination of a worker's employment contract during pregnancy or maternity leave if the company for which she works relocates and she decides not to follow it or if the post she occupies must be vacated to allow an employee who occupied it previously but was unlawfully dismissed to be reintegrated, is inadequate.

In its previous conclusion, the Committee asked (1) whether there was a ceiling on the amount that could be awarded as compensation, and (2) if so, whether this compensation covered both pecuniary and non-pecuniary damage or whether unlimited compensation for non-pecuniary damage could also be sought by the victim through other legal avenues (e.g. anti-discrimination legislation).

In response, the report states that, under Article 225§1 of the Labour Code, in the event of unlawful dismissal, employees may obtain compensation for the period of unemployment resulting from dismissal, but they are limited to the equivalent of six months' salary (gross). When, during this period, the worker occupied a lower-paid position, she is entitled to the difference between two salaries. The amount of compensation is set by the court's decision, and the employer may not recalculate it. In addition to the compensation for unlawful dismissal provided for by the Labour Code, employees are entitled to seek compensation for the non-pecuniary damage incurred under the Obligations and Contracts Act. According to the report,

there is no ceiling on this compensation. The two types of compensation are awarded in accordance with the procedure provided for by the Code of Civil Procedure, and thereupon, by the same court. The report also recalls that under the Labour Code, employees who have been unlawfully dismissed may take legal action to claim their reinstatement.

The Committee asks that the next report specify, in the light of the relevant case-law, which criteria are taken into account by courts in deciding on the compensation to be awarded. It also asks that the next report provide relevant examples of case-law showing how these provisions are implemented in cases of unlawful dismissal of woman workers during their maternity leave.

Conclusion

The Committee concludes that the situation in Bulgaria is not in conformity with Article 8§2 of the Charter on the grounds that:

- exceptions to the prohibition of dismissal of pregnant women are excessively broad,
- the compensation awarded in some circumstances is inadequate (in the event of termination of a worker's employment contract during pregnancy or maternity leave if the company for which she works relocates and she decides not to follow it or if the post she occupies must be vacated to allow an employee who occupied it previously but was unlawfully dismissed to be reintegrated).

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 Bulgaria.

In its previous conclusion (Conclusions 2011), the Committee noted that women were entitled to paid breastfeeding breaks until their child reached eight months, one hour twice a day or with the women's consent two hours together. After the child reached the age of eight months, leave was reduced to one hour per day and was granted where the medical authorities found that it was necessary for the woman to continue to breastfeed the child.

The Committee previously deferred its conclusion and asked whether in practice women wishing to continue breastfeeding their child over eight months were granted the necessary certificate from the medical authorities. In response, the report confirms that employers have no discretion in such cases and are obliged to comply with the prescriptions of the medical authorities.

The report also confirms that women employed in the public sector have the right to breastfeed their child under the conditions laid down by the Labour Code. Therefore, the Committee considers that the situation is in conformity on this point.

The Committee asks that the next report indicate the situation of part-time employees regarding paid breastfeeding breaks.

Conclusion

The Committee concludes that the situation in Bulgaria 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 Bulgaria.

In its previous conclusion (Conclusions 2011), the Committee found that the situation was in conformity with Article 8§4 and asked whether the same rules applied to women working in the public sector.

In response, the report indicates that the Labour Code applies to women working in the judiciary, military personnel covered by the Defence and Armed Forces Act, civil servants covered by the Ministry of Interior Act and the Implementation of Penal Sanctions and Detention in Custody Act, employees with employment contracts under the State Agency for National Security Act, the State Intelligence Agency Act or the Special Intelligence Means Act, and officers and sergeants under the National Security Service Act. The Committee notes from the report that the legislation listed contains provisions referring to the Labour Code or similarly regulating the prohibition of night work for pregnant women and women who have recently given birth or are nursing their infant.

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 and that in case of exemption from work related to pregnancy and maternity, the woman concerned is entitled to paid leave; 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 Bulgaria 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 Bulgaria.

In its previous conclusion (Conclusions 2011), the Committee concluded that the situation in Bulgaria was not in conformity with Article 8§5 of the Charter on the ground that women who have recently given birth, who are not breastfeeding, do not benefit from the possibility of adjustments of their working conditions or temporary reassignment to an adequate post.

The report states that Order No. RD-07-4 on Improving the Working Conditions of Pregnant Women, Women Who Have Recently Given Birth or Who Are Breastfeeding Their Infants was adopted on 15 June 2015. Under this Order, employers are required to inform employees who are pregnant, have recently given birth or are breastfeeding, or those who could fall into these categories in future, of the results of risk assessments and prevention measures. It is prohibited to involve pregnant or breastfeeding workers in activities for which risk factors have been identified in the course of risk assessments or the activities listed in Appendices 2 and 3 to the Order (non-exhaustive list of risk factors and prohibited working conditions). The report specifies that the provisions of the Order also apply to women who have recently given birth but are not breastfeeding their infants. The Committee asks the next report to provide full information on the activities and factors which are prohibited for the categories of women covered by Article 8§5 of the Charter. It asks in particular whether all the specific risks referred to above (that is, activities involving exposure to lead, benzene, ionising radiation, high temperatures, vibration or viral agents) are included in the list of risk factors and working conditions not to be imposed on pregnant women, women who have recently given birth or who are breastfeeding or women who have recently given birth but are not breastfeeding.

Under Article 2 of the Order, employers must take measures to temporarily adjust working conditions and/or hours to eliminate any risk to pregnant women, women who have recently given birth or who are breastfeeding. If such adjustments are technically or objectively impossible or not reasonably justified, employers must take the necessary measures to transfer the woman employee concerned to another suitable post (Article 5). The posts and workplaces suitable for employing pregnant women, women who have recently given birth or who are breastfeeding are set out in the Order on Occupational Rehabilitation adopted by Decree No. 72 of the Council of Ministers of 1986.

The report also states that under Article 6 of the Order, it is prohibited to employ women in these categories in underground mining. According to the report, this prohibition does not cover the women who:

- occupy managerial posts and do not perform manual work;
- work in the health and welfare services;
- are over the age of 18 and must complete an internship period as part of their studies or vocational training;
- must descend in the underground sections of a mine (not daily) to perform work other than physical work.

The Committee finds that the situation is in conformity with Article 8§5 of the Charter on this point.

The Committee held previously (Conclusions 2011) that if adjustments to the working conditions and/or hours could not be made and the employer could not reassign the woman employee concerned to another suitable post, she was relieved from the obligation to carry out any work which her condition ruled out, and her employer would have to pay compensation amounting to her gross salary in the month preceding the date the medical recommendation on her reassignment had been issued. When the salary for a replacement job was lower than the employee's usual salary, she should receive financial compensation for the difference. The Committee refers to its Statement of Interpretation on Articles 8§4 and 8§5 (Conclusions 2019) and asks for confirmation in the next report that no loss of salary arises from changes

to working conditions, reassignment to another post or any exemptions from work for reasons linked to pregnancy or maternity and that the employees concerned (who are pregnant, have recently given birth, are breastfeeding or who have recently given birth but are not breastfeeding) retain the right to return to their previous post at the end of the protected period. It asks whether Order No. RD-07-4 applies to workers in the public sector. It also asks whether women transferred to another post or discharged from work for reasons related to maternity are entitled to return to their previous posts at the end of the protected period.

According to the report, pregnant women, women who have recently given birth or who are nursing their infant constitute an at-risk group. Therefore, the General Labour Inspectorate pays special attention to the health and safety of these categories during its visits. In addition, Labour inspectors arrange consultations on the implementation of the legislation on the protection of women's work.

Conclusion

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

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 Bulgaria.

Legal protection of families

Rights and obligations, dispute settlement

In response to the Committee's request for information (Conclusions 2006 and 2011) on **rights and obligations of spouses**, the report explains that the Family Code regulates the relations which are based on marriage, kinship and adoption, as well as those based on custody and guardianship. Family relationships are governed in accordance with principles that guarantee: protection of marriage and the family by the state and the society; equality of man and woman; voluntary nature of matrimony; special protection of children; equal treatment of children born in wedlock, out of wedlock and adopted; respect for the personality in the family and respect, care and support among family members.

In addition to the information noted in previous conclusions (Conclusions 2004), the report describes the legal framework for the **settlement of disputes** related to children, in particular as regards their protection, their right to be heard in judicial proceedings on matters concerning them, the exercise of parental rights, custody and visiting rights (see report for details).

With regard to **restrictions to parental rights and placement of children**, the report points out that a process of deinstitutionalization of childcare has been underway since 2010, based on the principle that the family is the best environment for childcare, and an updated Action Plan for the deinstitutionalisation of children was adopted in 2016. The report confirms that domestic law regulates the conditions and procedure for the implementation of measures aimed at preventing that children be abandoned and placed in specialised institutions. The law also provides for measures aimed at the child's reintegration in the family (in case of placement outside the biological family), after a comprehensive and thorough assessment of parental capacity and the ability to fully care for the child. The Committee notes that the report seems to refer in particular to children with disability and/or abandoned by the parents and asks the next report to clarify if these measures also address other situations where the restrictions to parental rights and placement of children outside their family is decided by courts for the protection and best interest of child and whether appropriate provisions guarantee that restrictions or limitations of custodial rights of parents' are based on adequate and reasonable criteria laid down in legislation and do not go beyond what is necessary for the protection and best interest of child and the rehabilitation of the family. It recalls in this respect that placement of children outside the home must be an exceptional measure, and is only justified when remaining in the family environment represents a danger for the child, and that the financial conditions or material circumstances of the family should not be the sole reason for placement.

The Committee refers to its previous conclusion (Conclusions 2011) as regards **mediation services** under the Law on mediation of 2004, as amended. It reiterates its request for information on access to mediation services, whether they are free of charge, how they are distributed across the country and how effective they are.

Domestic violence against women

The Committee refers to its previous conclusions (Conclusions 2006 and 2011), requesting information on the extent of domestic violence in Bulgaria, a comprehensive description of the measures taken to combat domestic violence against women (measures in law and practice, data, judicial decisions) and on the implementation of the relevant legislation. It recalls that States Parties are required to ensure an adequate protection with respect to women, both in law and in practice, in the light of the principles laid down in Recommendation Rec(2002)5 of the Committee of Ministers of the Council of Europe to member States on the protection of women against violence and Parliamentary Assembly Recommendation 1681 (2004) on a

campaign to combat domestic violence against women in Europe. It notes that these instruments have been superseded in 2011 by the Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), which is legally binding for the States which have ratified it. However, Bulgaria has not ratified it yet.

The report recalls that the rights of the victims of domestic violence, the protection measures and the procedure for their enforcement are regulated by the Protection Against Domestic Violence Act (PADVA) of 2005, as amended in 2009, which defines Domestic violence as "any act of physical, sexual, mental, emotional or economic violence, as well as attempts of such violence, coercive restriction of personal life, personal liberty and personal rights committed against individuals, who are related, who are or have been in a family relationship or in de facto conjugal co-habitation". The report also refers to the relevant provisions in the Criminal Code (notably Articles 150, 152 and 153), as amended, and those improving access to free legal aid, under the Legal Aid Act, and compensation of pecuniary and non-pecuniary damage for victims of violence under the Crime Victim Assistance and Financial Compensation Act (CVAFCA), as amended in 2016, and the rules concerning its implementation (see details in the report).

The Committee takes note of the information provided on the prevention and protection measures enacted or envisaged in the framework of the annual National Programme for the Prevention and Protection against domestic violence. It notes that the prevention measures include awareness-raising programmes for young people, training of relevant NGO staff and the setting-up of rehabilitation programmes for perpetrators. It asks the next report to provide more detailed information on the prevention measures effectively carried out and the results achieved in raising awareness of domestic violence against women.

It also takes note of the detailed information provided on the conditions and procedure for issuing protection orders (including removal of perpetrators) under the PADVA, as amended in 2009 and 2015, the registration of legal entities working on protection of victims in accordance with the Non-Profit Legal Entities Act and the provision of social and psychological counselling and programmes of support for victims of domestic violence. In this connection, it notes from the report that victims of domestic violence are directed by the Social Assistance Directorate (SAD) to the appropriate social, psychological and legal counselling programmes as well as to other specialists and interdisciplinary counselling and resident-type social services (Crisis Centres and Mother and Baby Unit). The Committee takes note of the information provided in the report on the number of victims of domestic violence directed to social services during the reference period and on the number and capacity of the centres providing specialised support to victims, which are decentralised and managed by the municipalities (see details in the report).

The authorities recognise in the report that, as regards the establishment of comprehensive legal protection for women and girls from all forms of violence and for prevention and elimination of violence against them, including domestic violence, it is necessary to implement integrated policies ensuring a comprehensive response to violence and domestic violence through placing the victims' rights at the heart of effective cooperation at national, regional and local level. In order to achieve this objective, the report indicates that the National Programme for Prevention and Protection Against Domestic Violence for 2017-2020 envisages the preparation by the Ministry of Justice of a package of amendments to the relevant legislation. The report adds that the ASA (Agency for Social Assistance, which is an administration with the Minister of Labour and Social Policy for implementation of the state policy in social assistance) is responsible for carrying out specific measures included in national programmes and plans, aimed at the effective implementation of the policies for prevention and protection from domestic violence, suppression of trafficking in human beings and protection of victims. The Committee asks the next report to provide updated information on the calendar expected for the preparation and adoption of the amendments envisaged and asks whether all levels of government and all relevant agencies and institutions are involved in the project.

As regards prosecution of domestic violence, the report indicates that during the reference period the Agency for Social Assistance (ASA) worked on 2 990 cases of domestic violence and 266 proceedings were initiated in accordance with the procedure laid down in item 4 of Article 8 of the PADVA. The Committee notes however that both the United Nations Committee on Economic, Social and Cultural Rights (CESCR) and the United Nations Human Rights Committee (CCPR), in their latest concluding observations, expressed concern on the high prevalence of violence against women, including domestic violence, the fact that such acts remain highly underreported and the low level of awareness of violence against women, including domestic violence. The National Study on Domestic and Gender-Based Violence in Bulgaria (2016) also points out the lack of reliable data in this field, due to the fact that domestic violence is not qualified as a specific criminal offence in the Criminal Code and no statistical information is available about the victim-offender relationship, which would allow to assess the share of domestic violence among crimes against the person. According to this source, only a small part of victims seeks consultation and help at NGO facilities, and an insignificant share of those turn to the police and bring a suit to the court. In this connection, the National Study recalls that while the FRA Violence against Women Survey conducted in 2012 (out of the reference period) found that around 6% of Bulgarian women aged 18-74 (i.e. about 170 000) had suffered from physical or sexual violence by an intimate partner, the number of cases brought to court in the same period did not exceed 3400. Similar shortcomings are also pointed out by the Country report on Gender Equality 2018.

The Committee asks the next report to provide updated information on all the points considered above, including relevant statistical data and examples of case-law in order to assess in particular how the legislation is interpreted and applied. In the light of all the information available, it considers in the meantime that it has not been established that women are ensured an adequate protection, in law and in practice, against domestic violence.

Social and economic protection of families

Family counselling services

The Committee takes note of the detailed information provided in the report concerning family counselling services (provision of psychological support, counselling and information on issues related to childcare and upbringing of children, increase of parental capacity, etc.), in the light of the Child Protection Act (CPA). The report explains that Public Support Centres provide the largest and most diverse work related to family counselling (see details in the report), including counselling and support for children with behavioural problems, psychological support, counselling and information on issues related to childcare and upbringing of children and increase of parental capacity. More specific family counselling (in relation for example to children with disabilities, street children, new mothers etc.) is carried out by other services such as: Crisis Centres (CrC); Centres for Temporary Placement; Mother and Baby Units; Centres for Work with Street Children; Day Care Centres; Centres for Social Rehabilitation and Integration. The report stresses the importance of cross-sectoral approach, the implementation of an integrated policy as well as the targeted and systematic efforts of all involved participants through intersectoral interaction and interconnection of social, health, educational and other measures for support of children and families. In the framework of the CPA, the Social Assistance Directorate (SAD) provides advice and consultation on child raising and upbringing and ensures information about the social services offered, provide assistance and support for the families and parents of vulnerable children in need. According to the report, the legal framework of child protection ensures the possibility to provide family counselling and family support directly through the services of the SAD and/or through directing to community-based licensed social service providers. In order to support the parents and the child, they can be directed to use social services involving various specialised activities of psychologists, pedagogues, social workers, family counsellors, therapists and other experts according to the risk assessment and the need for support. The use of all social services, which are a state-delegated activity, is completely free of charge for children and

families, the funds being secured by the state budget. In the case of children and families in need of support and assistance, the resources of the Public Support Centres, Centres for Social Rehabilitation and Integration, Day Care Centres, etc. are actively used. The report also refers to the role played by the Agency for Social Assistance as well as by community-based and resident-type social services, which are an alternative to the institutional childcare.

Childcare facilities

The Committee previously requested information on the number of childcare places according to age group, the number of unfulfilled requests, the parents' financial contribution to services as well as on staff qualifications and inspection arrangements (Conclusions 2006 and 2011).

In this respect, the report explains that significant efforts have been made to develop early child development services in the framework of the Social Inclusion Project (SIP) 2010-2015, implemented by the Ministry of Labour and Social Policy. According to the report, 66 municipalities were funded to provide services for children aged 0 to 7 years and their parents, as well as infrastructure investments and training of service providers and staff in nurseries and kindergartens. This project also contributed to the opening of 1 889 new places in nurseries and kindergartens in 30 municipalities (184 places in nursery groups and 1 705 in kindergarten groups) and the training and recruitment of specialised staff. As a follow-up to this project and in order to consolidate the services set up under the SIP, new measures are being carried out in 2016-2019 in the context of the operation 'Early Child Development Services'.

As regards in particular the questions raised, the Committee takes note of the detailed information provided in respect of childcare in Sofia, Varna and Burgas, which shows that the number of childcare places has been increased, particularly in kindergartens, thus reducing the number of unfulfilled requests: in Sofia, the number of places has passed from 45 772 in 2014 to 49 479 in 2017 and the number of rejected application has passed from 12 621 to 5 454; in Varna, according to the report, the problem of shortage of places for children aged 3 to 6 years and 2 to 5 years has been solved in 2015-2016; in Burgas, there were no unsatisfied applications during the reference period. The Committee takes also note of the information provided on the staff qualifications, quality monitoring and parental contributions in these three towns.

Despite the progress made, the Committee notes from Eurostat data that only 9.4% of children under 3 years old were cared for by formal arrangements other than by the family in 2017. According to information available from the ChildPact network (which consists of some 600 child-focused NGOs from 10 different countries), one of the main problems is the lack of affordable private services or other alternative forms of care. The same source also alleges the lack of any form of childcare for children below 10 months; the lack of childcare services in rural areas, particularly those with predominant populations of Roma and/or Turkish origins; the existence of cultural and economic barriers to enrol children in childcare before the preschool compulsory age; the unfavourable children to adult care ratio (it is alleged that there can be groups of 25-30 children below 3 years, although the state standard is set at 18-20). In the light of these allegations, the Committee asks the next report to provide updated information on the adequacy between childcare demand and offer, also in terms of geographical coverage and ratio of staff to children).

Family benefits

Equal access to family benefits

In its previous conclusion (Conclusions 2011) the Committee asked what were the conditions for acquiring the permanent residence status. The Committee notes that the report does not provide this information.

The Committee recalls that under Article 16 the States may apply a length of residence requirement as regards non-contributory benefits on condition that the length is not excessive. The Committee has considered that a period of 6 months is reasonable and therefore in conformity with Article 16. The Committee reiterates its question concerning the length of residence requirement to qualify for permanent residence status. It considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter on this point.

Level of family benefits

In its previous conclusion (Conclusions 2011) the Committee considered that the amount of family benefits was adequate as it represented a significant percentage of the median equivalised income.

The Committee notes from MISSOC that a universal system financed by the State budget provides flat-rate benefits to all beneficiaries. Most of family allowances are provided regardless of family income. Only four allowances are income-tested:

- monthly allowances for raising children under the age of one;
- monthly allowances for raising a child until graduation from high school, but not after the age of 20;
- one-off pregnancy benefit;
- one-off benefit for pupils having been enrolled in the first grade in school.

The benefits are granted in cash or in kind according to the child's personal needs (e.g. full or partial payment of nursery fees; provision of food, clothing, baby care products).

As regards the level of benefits, the Committee notes that the monthly allowance for raising children under the age of one stood at BGN 100 (€51) per month. Monthly allowances for raising a child until graduation from high school, but not after the age of 20 years are granted to support families in raising children in a family environment. The following amounts are paid:

- with one child: BGN 40 (€20);
- with two children: BGN 90 (€46);
- with three children: BGN 135 (€69);
- with four children – BGN 145 (€74) per month.

The amount of the allowance increases by BGN 20 (€10) for each subsequent child in the family.

The Committee notes from Eurostat that the median equivalised income stood at € 299 in 2017. The Committee notes that the levels of different benefits are adequate as they represent a significant percentage of the median equivalised income.

Measures in favour of vulnerable families

As regards measures taken in favour of Roma families, the Committee notes that an integrated scheme for integration of vulnerable groups, 'Socio-economic Integration of Vulnerable Groups' in the Operational Programme 'Human Resources Development' 2014-2020 (OP HRD) was developed. The objective of the integrated procedure is improvement of the quality of life, social inclusion and poverty reduction as well as permanent integration of the most marginalised communities, including Roma, through the implementation of complex measures and application of an integrated approach.

The implementation of the operation and its main objective require a thorough and coherent approach and for this purpose the use of the possibilities of three operational programmes – Operational Programme 'Science and Education for Smart Growth', Operational Programme 'Regions for Growth' and Operational Programme 'Human Resources Development' in a complementary manner. The Committee wishes to be informed about the concrete impact of the measures envisaged under these programmes on Roma families and single-parent families.

Housing for families

In its previous conclusion (Conclusions 2011), the Committee reiterated its questions on the situation regarding social housing shortage, the guarantee of equal treatment for nationals of other States Parties to the 1961 Charter and to the Charter, and the measures taken to reduce the number of sub-standard dwellings and to help young families to access housing (see also Conclusions 2006 and 2004). The Committee held that if the next report did not provide the necessary information, there would be nothing to show that the situation in Bulgaria is in conformity with Article 16 of the Charter on this ground.

The Committee takes note of the measures described in the report aimed at the provision of social housing for vulnerable, disadvantaged and minority groups during the reference period. The target beneficiaries of these measures are homeless people or people living in very poor living conditions, parents with children, large families, underage parents and people at risk of poverty. During the period 2014-2017 four projects of a total amount of BGN 14.4 million were completed, with the result of 684 persons accommodated in social housing and 334 individual social dwellings provided. The Committee wishes to be provided in the next report with figures on the overall availability of social housing (demand and supply).

The Committee notes however that Bulgaria has submitted no information in its report in response to the other requests and issues covered by Article 16, notably on the guarantee of equal treatment for nationals of other States Parties and the measures taken to reduce the number of sub-standard dwellings.

In this regard, the Committee notes that the United Nations Committee on Economic, Social and Cultural Rights, in its Concluding observations on the sixth periodic report of Bulgaria (8 March 2019, § 35, outside the reference period), expressed concerns about the large number of persons who live in inadequate housing conditions, in some cases without access to sanitation and water facilities, and about the increasing number of homeless people. It further notes from the European Index of Housing Exclusion 2019 (FEANTSA and Abbé Pierre Foundation, Eurostat-EU-SILC 2017) that the overcrowded housing rate for Bulgarian households in 2017 was 41.9%, well above the average rate for the European Union (15.7%).

The Committee asks the next report to provide information on all the previous requests and points raised (notably on equal treatment for nationals of other States Parties and the measures taken to reduce the number of sub-standard dwellings). It also asks the next report to provide up-to-date figures on the adequacy of housing (water, heating, sanitary facilities, electricity, living size/overcrowding).

Furthermore, the Committee recalls that the effectiveness of the right to adequate housing requires its legal protection through adequate procedural safeguards. Occupiers and tenants must have access to affordable and impartial judicial or other remedies. Any appeals procedure must be effective (*FEANTSA v. France*, Complaint No. 39/2006, decision on the merits of 5 December 2007, § 78).

As to protection against unlawful eviction, States must set up procedures to limit the risk of eviction. The Committee recalls that in order to comply with the Charter, legal protection for persons threatened by eviction must include (*European Roma and Travellers Forum (ERTF) v. the Czech Republic*, Complaint No. 104/2014, decision on the merits of 17 May 2016, par. 81-82):

- an obligation to consult the parties affected in order to find alternative solutions to eviction;
- an obligation to adopt measures to re-house or financially assist the persons evicted in case of eviction justified by the public interest;
- an obligation to fix a reasonable notice period before eviction;
- prohibition to carry out evictions at night or during winter;
- access to legal remedies;
- access to legal aid;

- compensation in case of illegal eviction

Furthermore, when evictions do take place, they must be:

- carried out under conditions which respect the dignity of the persons concerned;
- governed by rules of procedure sufficiently protective of the rights of the persons.

To determine whether the situation concerning families' access to housing is compatible with Article 16 of the Charter, the Committee asks for information in the next report on all the aspects considered above. In the meantime, it reserves its position on this point.

As regards Roma families, the Committee previously considered (Conclusions 2011) that it had not been established that Roma families received adequate protection with regard to housing. In this regard, it referred to its decision on the merits of 18 October 2006 (European Roma Rights Centre v. Bulgaria, Collective Complaint No. 31/2005), in which it concluded "(i) that the situation concerning the inadequate housing of Roma families and the lack of proper amenities, constitutes a violation of Article 16 of the Revised Charter taken together with Article E" and (ii) "that the lack of legal security of tenure and the non-respect of the conditions accompanying eviction of Roma families from dwellings unlawfully occupied by them, constitute a violation of Article 16 of the Revised Charter taken together with Article E."

The Committee takes note of the information supplied in the current report concerning social housing projects aimed at vulnerable and minority groups and the results achieved during the reference period. It notes however that the report does not specify the percentage or the number of Roma families who have been beneficiaries of these projects. The Committee refers to its Findings 2018 on the follow-up to the decision mentioned above, in which it considered that the situation as regards Roma families' access to housing had not been brought into conformity with the Charter, in the light of all the information available (in the same vein, see the United Nations Committee on Economic, Social and Cultural Rights' Concluding observations on the sixth periodic report of Bulgaria, 8 March 2019, § 35, outside the reference period; and the United Nations Human Rights Committee's Concluding observations on the fourth periodic report of Bulgaria, § 13, 29 October 2018, outside the reference period). It observes that the reference period of the present conclusions is covered by those findings. The Committee points out that the subsequent follow-up to this decision will be carried out when examining the report which Bulgaria is due to submit by 31/12/2019. In the meantime, in view of the abovementioned negative assessments and the lack of relevant information on the improvement of the situation, the Committee can only reiterate its finding of non-conformity with Article 16 of the Charter on account of the inadequate protection of Roma families in respect of housing, including eviction conditions.

Finally, the Committee refers to its Statement of Interpretation on the right of refugees under the Charter (Conclusions 2015). In this respect, the Committee notes that during the reference period Bulgaria has experienced a considerable increase in arrivals of migrants, refugees and asylum-seekers. It notes from the report of 22 June 2015 of the Commissioner for Human Rights of the Council of Europe (following his visit to Bulgaria from 9 to 11 February 2015, § 128) that the authorities give the possibility for the recognised refugees to stay in the open centres for a period of up to six months. But once the six months are over, the persons have to leave and they reportedly have no access to municipal social housing and receive financial aid that is not sufficient to cover the cost of decent accommodation. As a result, many are said to be at risk of homelessness (see also the Report of 19 April 2018 of the fact-finding mission by the Special Representative of the Secretary General of the Council of Europe on migration and refugees to Bulgaria, 13-17 November 2017). The Committee asks the next report to indicate which measures are taken to ensure adequate housing for refugee families.

Participation of associations representing families

The Committee previously noted (Conclusions 2011) that parents' organisations and associations are closely involved in the elaboration of policies relating to families and in the monitoring of their implementation. The report confirms that of all stakeholders, including state

institutions, academic, non-governmental and civic organisations, parents, families and children, is an important contribution to the process of planning and implementation of the policies for support of children and families.

Conclusion

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

- it has not been established that women are ensured an adequate protection, in law and in practice, against domestic violence;
- the protection of Roma families with respect to housing, including in terms of eviction conditions, is inadequate.

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 Bulgaria.

According to the report, the Pre-School and School Education Act (PSSEA) (2015) provides that education is compulsory from the age of 7 to 16 years, one year of preschool education from the age of 5 years is also compulsory.

Enrolment rates, absenteeism and drop out rates

The Committee previously concluded that the situation in Bulgaria was not in conformity with Article 17§2 of the Charter on the grounds that it had not been established that measures taken to increase enrolment rates in secondary education were sufficient (Conclusions 2011).

No information is provided in the report on enrolment rates. According to UNESCO in 2017 the net enrolment rate for primary education for both sexes was 87.56%, the corresponding rate for secondary education was 78.69%. The Committee considers these rates to be low, in particular the rate for secondary education, therefore it reiterates its previous conclusion of non conformity.

The Committee further requested information on drop out rates (Conclusions 2011).

According to the report, in 2017, the Government decided to create an inter-institutional mechanism to tackle early school leaving, involving the educational, social, health and administrative services as well as municipalities.

Following the establishment of the mechanism, as of 31 July 2018, a total of 216,904 addresses have been visited and 197,659 children have been contacted. A total of 23,898 children had been returned or enrolled for the first time in the education system.

As a result of the work on the mechanism, 7,974 five-year-old and 2,863 six-year-old children were enrolled in the education system. These are children who had not been included in compulsory pre-school education groups by 15 September 2017.

According to the report the number of children dropping out of the education had decreased significantly in recent years; from 21,146 children in 2014/2015 to 14,058 children in 2017/2018.

The Committee wishes the next report to provide up to date information on enrolment rates, absenteeism and drop out rates as well as information on measures taken to address issues related to these rates.

Costs associated with education

The Committee asks the next report to provide information on measures taken to mitigate the costs of education, meals, transport, books or stationary etc.

Vulnerable groups

The Committee previously requested that the next report provide detailed information on the total number of Roma children in schools, the progress made in qualitative and quantitative terms with desegregation of still existing 'Roma' schools, as well as with moving Roma children with no specific disabilities from special schools to mainstream education. In the meantime it reserved its position on this issue (Conclusions 2011).

According to the report, in order to improve inclusion of children and pupils from vulnerable groups, including Roma, changes were made to the Ordinance on inclusive education in order to provide additional support in the Bulgarian language for children for whom the Bulgarian language is not a mother tongue. No further information is provided.

According to a 2016 Fundamental Rights Agency report (Second European Union Minorities and Discrimination Roma study) approximately 60% of the Roma children surveyed in Bulgaria attended schools where a majority of the pupils were of Romani origin.

In light of the information available the Committee concludes that it has not been established that Roma children are not subject to segregation in education. The Committee again asks that the next report provide detailed information on the total number of Roma children in schools, the progress made in qualitative and quantitative terms with desegregation of still existing 'Roma' schools, as well as with moving Roma children with no specific disabilities from special schools to mainstream education.

In its previous conclusion the Committee held that the situation was not in conformity with the Charter, as children with disabilities were not guaranteed an effective right to education (Conclusions 2011). It asked the next report to provide information on the number of children with disabilities who attend mainstream schools, as well as the number of those who receive education in specialised schools and those who continue to be educated in the homes for "mentally disabled children" (HMDCs).

No information is provided in the report on this issue. The report refers to the information submitted in 2017 on the follow up to Collective Complaint No. 41/2007, Mental Disability Advocacy Center (MDAC) v. Bulgaria, Decision on the merits of 3 June 2008. The Committee recalls that in its Decision on the Merits of 3 June 2008 of the Complaint No 41/2007, Mental Disability Advocacy Center (MDAC) v. Bulgaria it held that that there was a violation of Article 17§2 of the Revised Charter on the grounds that children with moderate, severe or profound intellectual disabilities residing in Homes for Medico-Social Care for Children (HMDCs) did not have an effective right to education.

The Committee refers to its follow up to collective complaints, Findings 2018 where it considered that the situation had not been brought into conformity with the Charter. There was no evidence to establish that children previously accommodated in HMDCs now accommodated in Family Type Centres for Disabled Children and Young People had an effective right to education.

The Committee previously requested information on the standard of education in institutions. No information is provided in the report. The Committee asks how the standard of education in institutions is monitored.

The report states that scholarships are granted to pupils with permanent disabilities and pupils with special learning needs, who have completed the 7th grade with a certificate and have continued their education in school stage.

No further information is provided on the situation of children with disabilities.

The Committee notes that the UN Committee on the Rights of Persons with Disabilities expressed concern in recent Concluding Observations on the initial report of Bulgaria [CRPD/C/BGR/CO/1, 2018] that segregated education systems still remain in the State party and children with disabilities are not allowed to enroll in mainstream schools. The UN Committee also expressed concern about the lack of an independent mechanism to monitor and assess the implementation and effects of the Public Education Act and the Pre-School and School Education Act, especially for children with psychosocial disabilities and children still in institutions, the uneven and unsystematic allocation of human and financial resources to ensure that sufficient teachers and auxiliary staff are trained in inclusive education and the lack of data on the number of children and youth with disabilities not currently enrolled in any form of education.

The Committee considers, in light of its previous conclusion, the follow up to the collective complaint and the information currently available that it has not been established that children with disabilities have an effective right to education. Therefore it reiterates its previous conclusion.

It asks the next report to provide information on the number of children with disabilities who attend mainstream schools, as well as the number of those who receive education in specialised schools and those who continue to be educated in the homes for “mentally disabled children” (HMDCs).

The Committee notes from the report that children seeking or granted international protection have the right to education. However it asks whether all children in an irregular migration situation have access to education.

Anti bullying measures

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

The voice of the child in education

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

Conclusion

The Committee concludes that the situation in Bulgaria is not in conformity with Article 17§2 of the Charter on the grounds that:

- the enrolment rate in secondary education is too low;
- it has not been established that Roma children are not segregated in education;
- it has not been established that children with disabilities have effective access to education.

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 Bulgaria.

In its previous conclusion (Conclusions 2011), 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 Committee noted previously that Article 163 of the Labour Code gave women employees the right to leave for pregnancy, motherhood or adoption for a period of up to 410 days per child (with the consent of the mother, the leave may be used by the father after the child has reached the age of six months) and asked for information on the level of financial compensation or benefits provided during this period. In reply, the report states that compensation is paid and that daily cash benefits amount to 90% of average daily gross pay or the average daily insurance income on which contributions have been paid or are payable.

The report also states that under Article 164(3) of the Labour Code, fathers (or adoptive fathers) may be granted childcare leave until their child reaches the age of two. This leave must be used after the pregnancy and childbirth, subject to the mother's (or adoptive mother's) consent. During this period, mothers (or adoptive mothers) or fathers (or adoptive fathers) receive a monthly financial compensation, the amount of which is set by the Social Security Act and included in the state budget.

The Committee noted previously that the Labour Code provides for unpaid leave for employed mothers to raise a child up to the age of two (Article 165), and also provides the possibility for parent to raise a child up to the age of eight (Article 167a). The latter case is "parental leave" in a strict sense, as the law guarantees six months' leave to the mother and the father alike, and the period is not transferable between the parents. The report specifies that each parent (or adoptive parent) may use up to five months of the other parent's (or adoptive parent's) leave, subject to their consent.

The report states that there are no statistics on the number of parents who benefit from parental leave available. The Committee notes, however, from the information in the observations and the direct request of the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) published in 2019 (108th session of the International Labour Conference) concerning Convention No. 156 (1981) on Workers with Family Responsibilities, that in 2015, there were 53 555 beneficiaries of maternity and paternity leave, including 241 men, and 42 837 beneficiaries of parental leave, including 611 men.

In its previous conclusion (Conclusions 2011), the Committee asked whether at the end of parental leave, workers had the right to return to the same job they held before. In reply, the report explains that this issue is dealt with by the Labour Code. Pursuant to Article 167b, when an employee returns to work at the end of a period of leave provided for by Articles 163 – 167a of the Labour Code or because such leave has been discontinued, they have the right to suggest changes in the length and/or distribution of their working time for a certain period (in the form of part-time work or flexible working hours) to facilitate their return to work.

Moreover, under Article 3 of the Protection against Discrimination Act, when a person who uses childcare leave returns to work because their leave has ended or been discontinued, they have the right to take up the same post or a similar one, and to benefit from any improvements in their working conditions to which they would have been entitled if they had not been on leave.

Conclusion

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

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

Paragraph 3 - Illegality of dismissal on the ground of family responsibilities

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

Protection against dismissal

In its previous conclusions (Conclusions 2011), the Committee found that the situation in Bulgaria was not in conformity with Article 27§3 of the Charter on the ground that the legislation did not sufficiently protect workers with family responsibilities against dismissal.

It previously noted that Article 333 of the Labour Code provides that an employer must obtain the Labour Inspectorate's prior consent before dismissing a female employee with children under the age of three, or dismissing an employee who has requested leave under Article 163. The Committee found that there were no legislative provisions on the termination of an employment contract solely on grounds of family responsibilities. The Labour Code contained general provisions on the termination of an employment contract. As the situation has not changed, the Committee reiterates its finding of non-conformity on the ground that the Labour Code does not specifically protect workers with family responsibilities against dismissal.

Effective remedies

As regards effective remedies, the Committee refers to its conclusions relating to Article 8§2 of the Charter and considers that the situation is in conformity on this point. The Committee requests that the next report clarifies, in the light of the relevant case law, what criteria are taken into account by the court when deciding on awarding compensation. It also requests that the next report provide relevant examples of case law showing how these provisions are applied in cases of unlawful dismissal of workers with family responsibilities.

Conclusion

The Committee concludes that the situation in Bulgaria is not in conformity with Article 27§3 of the Charter on the ground that the Labour Code does not specifically protect workers with family responsibilities against dismissal.