



March 2020

# **EUROPEAN SOCIAL CHARTER**

European Committee of Social Rights

Conclusions 2019

**BELGIUM**

*This text may be subject to editorial revision.*



The function of the European Committee of Social Rights is to rule on the conformity of the situation in States with the European Social Charter. In respect of national reports, it adopts conclusions; in respect of collective complaints, it adopts "decisions".

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

The European Social Charter (revised) was ratified by Belgium on 2 March 2004. The time limit for submitting the 13th report on the application of this treaty to the Council of Europe was 31 October 2018 and Belgium submitted it on 30 October 2018.

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

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

Belgium has accepted all the Articles from this group apart from Articles 19§12, 27§3 and 31.

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

The present chapter on Belgium concerns 31 situations and contains:

- 22 conclusions of conformity: Articles 7§1, 7§2, 7§3, 7§4, 7§6, 7§7, 7§8, 7§9, 8§1, 8§2, 8§3, 8§4, 8§5 19§2, 19§3, 19§5, 19§7, 19§8, 19§9, 19§11, 27§1 and 27§2;
- 6 conclusions of non-conformity: Articles 7§5, 16, 17§1, 19§1, 19§6 and 19§10.

In respect of the other 3 situations concerning Articles 7§10, 17§2 and 19§4, 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 Belgium under the Revised Charter. The Government consequently has an obligation to provide this information in the next report from Belgium on the articles in question.

The next report to be submitted by Belgium 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.

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

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

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

The Committee notes from the report submitted by Belgium that there has been no change in the legal situation which it previously found to be in conformity with Article 7§1 of the Charter.

The report takes note of the labour inspectorate's work to ensure compliance with child labour legislation. During inspections carried out in 2014-2017, 90 breaches of the prohibition on child labour were found. These breaches concerned 94 child workers. As a result, 24 warnings and 66 written reports were issued. The Committee asks for updated information in the next report on the activities of the labour inspectorate in relation to child labour.

Certain activities can be carried out by children under the age of 15 subject to written authorisation from the Director General of the Social Laws Inspectorate. Between 1 January 2014 and 31 December 2017, 2 105 permissions were granted for a total of 51 295 working days, of which 9 080 gave rise to authorised absences from school. These authorisations related mainly to artistic activities (27.70%), radio and television without (45.42%) and with (28.55%) advertising purposes, and fashion shows (1.95%).

The Committee refers to its Statement of Interpretation on Articles 7§1 and 7§3 (Conclusions 2015). 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 in order to avoid any risks that the performance of such work might have for their health, moral welfare, development or education. The Committee also recalls 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 the next report to indicate whether the situation in Belgium 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 are allowed to perform during term time and school holidays.

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

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Belgium is in conformity with Article 7§1 of the Charter.

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

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

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

The Committee points out that in its previous conclusion (Conclusions 2011), it found the situation to be in conformity with Article 7§2 of the Charter.

The report states that the rules designed to provide specific protection for young workers are laid down in the Labour Law of 16 March 1971 and the Law of 4 August 1996 on the well-being of workers while performing their work, and in their implementing decrees. The specific rules on protecting the health and safety of young workers at work are laid down in the legislation on well-being at work, particularly the Royal Decree of 3 May 1999 on the protection of young people at work (the implementing decree for the above-mentioned Law of 4 August 1996), as most recently amended by the Royal Decree of 31 May 2016. This Royal Decree has now been incorporated into the Law on Well-Being at Work (Title 3 (on "young people at work") of Book 4 (on "work organisation and specific categories of workers")).

Article X.3-8 of the Law on Well-being at Work contains a general prohibition on young people carrying out dangerous work, described in this article and listed non-exhaustively in its appendix (Appendix X.3-1). Article X.3-10 provides for exemptions from this prohibition, applying firstly to young workers subject to the following conditions:

- Such workers must be at least 16 years old;
- Employers must ascertain that these persons have received special training for the activity to be carried out or that they have received the necessary vocational training;
- Employers must take appropriate measures to protect the health and safety of young workers and ensure that these measures are effective and monitored;
- Employers must ensure that the work listed in the appendix may only be carried out in the presence of an experienced employee.

Article X.3-10 also provides for exemptions from the general prohibition for other categories of young worker (apart from working students), subject to the following conditions:

- The activities listed in the appendix must be crucial for their vocational training;
- Employers must also take the necessary prevention measures and an experienced employee must be present during the prohibited activities listed in the appendix.

The report states that over the last few years, information campaigns have been run at technical and vocational schools for teachers and for pupils already required to work as trainees from "mobile trucks".

The report refers to the inspection findings of the Directorate General of Employee Well-being regarding compliance with health and safety regulations for young workers over the period from 2014 to 2016, indicating few violations in this field. The Committee asks for updated information on this matter in the next report.

### *Conclusion*

The Committee concludes that the situation in Belgium 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 points out that in its previous conclusion (Conclusions 2011), it found the situation to be in conformity with Article 7§3 of the Charter.

The report states that there has been no significant change since the last report.

Regarding the duration of light work permitted for children, the Committee refers to its Statement of Interpretation on Articles 7§1 and 7§3 (Conclusions 2015). It considers that children under the age of 15 and those subject to compulsory schooling should not perform light work during school holidays for more than six hours per day and 30 hours per week to avoid any risks to their health, moral well-being, development or education. The Committee further points out that children should be guaranteed at least two consecutive weeks of rest during the summer holiday.

As regards the duration of light work during term time, the Committee considered that a situation in which a child who was 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 fixed hours for school attendance was in conformity with the requirements of Article 7§3 of the Charter (Conclusions 2011, Portugal).

The Committee requests that the next report indicate whether the situation in Belgium is in compliance with the principles set out in the statement of interpretation as regards children who are subject to compulsory schooling. It asks, in particular, for information on the daily and weekly duration of the light work that children subject to compulsory schooling are allowed to carry out during term time and school holidays.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Belgium is in conformity with Article 7§3 of the Charter.

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

### *Paragraph 4 - Working time*

The Committee notes from the report submitted by Belgium that there have been no changes to the situation which it previously found to be in conformity with Article 7§4 of the Charter.

It points out that young people must not work more than eight hours per day and 40 hours per week (i.e. since the general reduction in working hours which came into force on 1 January 2003: 38 hours per week, effective or average over a specified reference period, although never exceeding a 40-hour limit and regardless of the working conditions applicable in the company). The report stresses that under Article 19*bis* of the Labour Law of 16 March 1971, the combined length of a young worker's hours at school and working hours for an employer may not exceed statutory working hour limits. The Committee considers that this limit is sufficient in relation to this provision of the Charter (Conclusions XV-2 (2001)).

The report states that a Royal Decree adopted pursuant to a unanimous opinion of the competent joint body may also set out a higher daily and weekly limit up to a maximum of 10 hours per day and 50 hours per week in the cases referred to in Article 26 of the Labour Law. This may occur in the following cases of force majeure:

- work for the company or for third parties to deal with accidents that have occurred or are likely to occur;
- urgent work for the company or for third parties on machines or equipment provided that it must be done outside working hours to prevent a major slowdown in the normal work of the company;
- work called for by an unforeseen need.

The Committee asked previously to be informed, during each supervision cycle, of any Royal Decree adopted in this regard (Conclusions XV-2 (2001)). The report states that only Joint Committee 227 (audiovisual sector) has availed itself of the possibility of derogating from the daily and weekly limits on the working hours of young workers (RD of 18/11/2011 – MB of 7/12/2011). It stresses that the Royal Decree specifies that this derogation can only be applied in cases of unforeseen need, and then only if the company's trade union delegation agrees or, where such an agreement cannot be requested, it is subsequently informed thereof; it is also stated that in both cases, the social inspectorate must be informed.

### *Conclusion*

The Committee concludes that the situation in Belgium 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 Belgium.

### **Young workers**

In its previous conclusion (Conclusions 2011) the Committee found that the situation in Belgium was in conformity with Article 7§5 of the Charter regarding young workers. It notes that the situation still meets the requirements of Article 7§5.

The report states that the average minimum monthly income for young workers is set at the following amounts:

- 18 and no seniority : 1.593,81 € ;
- 19 and 6 months' service: 1.636,10 €;
- 20 and 12 months' service: 1.654,90 €.

Consequently, an 18-year-old worker and a 22-year-old worker with no seniority in a company will receive the same income.

Collective Agreement (CCT) No. 50 on the guaranteed average minimum monthly income for workers under the age of 21, as amended by CCT No. 50bis, still applies to young persons under the age of 18, in other words young persons for whom schooling is still compulsory, and to workers between the ages of 18 and 21 employed under a student work contract.

For these young workers, the average minimum monthly income is set at a percentage of income determined by CCT No. 43. The percentages are as follows::

- - 20 years of age: 94%
- - 19 years of age: 88%
- - 18 years of age: 82%
- - 17 years of age: 76%
- - 16 or less: 70%.

### **Apprentices**

In its previous conclusion, the Committee concluded that the situation in Belgium was not in conformity with Article 7§5 of the Charter on the ground that the allowances paid to apprentices were inadequate.

Under Article 7§5, the allowance paid to apprentices must be at least a third of an adult's starting or minimum wage at the beginning of their apprenticeship and reach two-thirds by the end (Conclusions 2006, Portugal).

The Committee notes that vocational training is the responsibility of Belgium's federated entities. The amounts of the monthly allowances to be paid to apprentices under the various relevant pieces of legislation are minimum amounts which may be exceeded by employers.

In the French Community (COCOF) the minimum monthly apprenticeship allowance is: - €265.64 for the first year; - €375.02 for the second year; - €500.02 for the third year. This monthly allowance is indexed every year on 1 January. Company managers provide apprentices with the materials and safety equipment they need to engage in their occupation and pay part of their transport costs. Apprentices may also still be entitled to family allowances under some circumstances. However, their monthly income must not exceed €541.09.

The Brussels-Capital Region is not responsible for setting the levels of the minimum monthly apprenticeship allowance. However, as part of the powers assigned to it under the sixth state reform, it does carry out activities to support sandwich training. The Decree of the Government of the Brussels-Capital Region of 7 June 2018 on allowances to promote



sandwich training came into force on 1 July 2018. It establishes a system of allowances for young persons under the age of 25 resident in the region for all sandwich courses of 4 months or more with the same employer. On the first and second request, claimants are paid an allowance of €500; on the third request, the allowance rises to €750.

The minimum requirements set by the Charter as to the amounts of the minimum monthly apprenticeship allowance are respected in the Brussels-Capital Region but not for apprentices at the beginning of their apprenticeship in the French Community.

The report does not contain any information on the amounts of the minimum monthly apprenticeship allowance in the Flemish Region.

#### *Conclusion*

The Committee concludes that the situation in Belgium is not in conformity with Article 7§5 of the Charter on the ground that the allowances paid to apprentices are not appropriate.

## **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 Belgium.

The Committee noted previously that the time spent by young workers on vocational training at their employer's request was regarded as working time and remunerated as such. It therefore found that the situation in Belgium was in conformity with Article 7§6 of the 1961 Charter. Article 19 bis of the Labour Law of 16 March 1971 provides that time young workers spend on part-time education or on training that is seen to satisfy the requirements of compulsory schooling is regarded as working hours.

Time spent by these young persons on vocational training at their employer's request is regarded as working hours and remunerated as such. This situation was found by the Committee to be in conformity with the Charter in Conclusions XV-2, p.85.

The Committee concluded that the situation was not in conformity with Article 7§6 on the ground that it had not been established that, in practice, training undertaken by young employees at their own request and with the employer's consent was regarded as working hours and remunerated as such.

The authorities point out that such a case is extremely theoretical. As they are already attending classes which are combined in practice with the work they engage in, it is extremely rare for the young persons concerned to take the initiative to ask for vocational training or an apprenticeship.

Assuming this to be the case, it is up to the parties to set out in an agreement whether this time should be considered as working hours and remunerated as such.

The Committee asks for information on the monitoring activities of the Labour Inspectorate, focusing on the number and nature of infringements found, and the penalties imposed for breaches of the regulations relating to the inclusion of time spent on vocational training by young employees in standard working hours.

### *Conclusion*

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

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

### *Paragraph 7 - Paid annual holidays*

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

The Committee notes from the report submitted by Belgium, that there has been no change in the situation which it previously found to be in conformity with the Charter.

The Committee notes that under the Royal Decree of 30 March 1967, young workers who are employed for five days a week are entitled to 20 days' (four weeks') paid annual leave. The situation is therefore in conformity with Article 7§7 of the Charter on this point.

The Committee points out that the same principles as those relating to adults' right to paid annual leave apply (Article 2§3), particularly in the event of illness or an accident occurring during this leave (Conclusions 2006, France). It also points out that it has concluded that the situation in Belgium is not in conformity with Article 2§3 of the Charter on the ground that workers who fall ill or are injured during their holiday are not entitled to take the days lost at another time (Conclusions 2010, Article 2§3). The Committee understands from the report that the same rules apply to workers under 18 years of age.

On this point, the report states that the issue is still being discussed by the social partners. However, it should be noted that it has been agreed in principle that it should be possible to carry over such days in the event of illness or an accident.

The Committee asks for information in the next report on the recognition of workers' right to recover days of holiday lost in the event of an illness or accident during their leave.

### *Conclusion*

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

In its previous conclusion, the Committee concluded that the situation in Belgium was not in conformity with Article 7§8 of the Charter because it had not been established that the legal prohibition on night work applied to the great majority of persons under the age of 18.

The report confirms that night work (between 8 p.m. and 6 a.m.) is prohibited under Section 34bis of the Labour Law of 16 March 1971. However, a number of exceptions are also provided for. For instance, for young workers over the age of 16, the limits may be shifted to 10 p.m. and 6 a.m. or 11 p.m. and 7 a.m. for the performance of tasks which cannot, on account of their nature, be interrupted or for the performance of organised shift work. Furthermore, young workers over the age of 16 may work up to 11 p.m. when involved in work carried out to deal with an accident that has just occurred or is imminent or urgent work to be carried out on machines or equipment, provided that it is essential for these activities to take place outside normal working hours to avoid a serious obstacle to the normal functioning of the undertaking or tasks dictated by an unforeseen need. According to the report, in all three cases, the employer must notify the director of the Social Laws Inspectorate within three days. Lastly, night work for certain categories of young worker, types of work or sectors of activity may be authorised by royal decree, as is the case, for instance, in the hotel industry, where minors over the age of 16 are authorised to work up to 11 p.m. The Committee notes that even where night work is authorised, workers under the age of 18 may not work between midnight and 4 a.m. Furthermore, rest periods between one period of work and the next must last at least twelve hours in a row.

It should be noted that Belgian legislation does indeed provide for a general prohibition on night work for most young workers, and the exceptions described above are limited.

The report provides detailed statistics on the number of young workers carrying out night work. The prohibition on night work for young workers is supervised by the Social Laws Inspectorate under the general regulations on night work.

During inspections carried out in 2014-2017, 71 breaches of the prohibition on night work were found. These involved 2 196 workers.

In response 51 warnings were issued and 21 reports were drawn up.

*Conclusion*

The Committee concludes that the situation in Belgium 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 Belgium.

The Committee notes from the report submitted by Belgium that there have been no changes in the situation which it previously found to be in conformity with Article 7§9 of the Charter.

*Conclusion*

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

**Article 7 - Right of children and young persons to protection**  
*Paragraph 10 - Special protection against physical and moral dangers*

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

***Protection against sexual exploitation***

The Committee asked in its previous conclusion (Conclusions 2011) for information on the incidence of sexual exploitation and trafficking in children.

According to the GRETA report on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Belgium (2017), trafficking for the purpose of sexual exploitation chiefly affects eastern European nationals and involves both organised networks and individual traffickers. The authorities have observed that young women and girls fall prey to “loverboys”, in other words young men who manipulate them and force them to prostitute themselves – a problem to which Belgians also fall victim.

The Committee notes from a report of December 2017 by the Federation of Belgian Children’s Rights NGOs (*CODE*), that the “loverboys” or teen pimps’ phenomenon – primarily involving teenage girls – is an ever-expanding problem in the area of exploitation of children for sexual purposes. In 2016, Child Focus received 60 reports of prostitution of minors, 37 of which were cases of victims of “loverboys”. However, all the professionals in this sector think that this is a much wider problem because many victims never lodge a complaint, do not request assistance or do not consider themselves to be victims. In the *CODE*’s view, the information on cases involving loverboys is fragmented and there is little pooling of information between the police, the justice system and social workers.

In this context, the Committee refers to the GRETA report mentioned above, which recommends that the authorities set up a comprehensive, centralised data system on trafficking in human beings, designed, in particular, to collect information on cases of exploitation of children by “loverboys”, and to follow up effectively on such cases.

The Committee asks for information in the next report on measures taken to improve the collection of data on the sexual exploitation of children and on measures taken to address the sexual exploitation of children.

With regard to the fight against sexual violence, the report states that since November 2016 there has been a professional telephone helpline in Belgium together with a website set up in March 2016 to collect information on the subject for victims and their entourage.

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

In its previous conclusion (Conclusions 2011) the Committee asked whether internet providers were made responsible for controlling the material they hosted, encouraging the development and use of the best monitoring system for activities on the net (safety messages, alert buttons, etc.) and logging procedures (filtering and rating systems, etc.).

The report states that Internet service providers may not supervise their clients’ navigations as this would amount to an unlawful interception of telecommunication data. Interceptions of this kind are technically possible however and are carried out in the context of judicial proceedings.

The report points out that without prior manipulation of the computers of Internet users, it is impossible to know what a user is doing on a site nor to inject the data required to display an alert button or a safety message, and that this respects the principle of the protection of private life, which is one of the key components of a democratic society. However, where it proves necessary, the courts may block access to an Internet site. If the Internet address is Belgian (ending in .be) or European (ending in .eu), the Belgian justice system may seize the domain and deactivate it. For other domain names, the courts require all Internet service providers to block the name resolution for the domain in question.

The CODE states in the report cited above that although Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography requires member states to combat the dissemination of material depicting sexual abuse of children via the Internet and remove any such content, Belgium is behind in its implementation of the Directive. The Committee asks whether the Directive has been implemented.

### ***Protection from other forms of exploitation or moral dangers***

In its previous conclusion (Conclusions 2011) the Committee referred to the Concluding Observations of the UN Committee on the Rights of the Child with regard to, the inadequate protection of child trafficking victims in Belgium and the lack of places in reception centres for children and asked the authorities to comment on these observations.

According to the report, in 2017, 13 residential places in the Flemish Community were converted into secure places for girls who are at risk of sexual exploitation.

Three centres in Belgium have been granted certification as reception and support centres for victims of trafficking and trafficking in human beings. Victims of forced prostitution may also make use of these. Flanders subsidises one of these centres – the non-profit-making association Payoke in Antwerp – which combats trafficking by providing training and awareness-raising targeting both professionals and students, focusing in particular on teen procuring.

The report states that a steering group on the recruitment of teenagers for sexual exploitation has been set up to optimise co-operation between Community institutions and reception centres for victims of trafficking.

The Committee notes that no information is provided on the situation in Brussels Capital Region and French Speaking Community and hence reserves its position on this point. If no information is provided in the next report, there will be nothing to establish that Belgium is in conformity with the Charter on this point.

According to GRETA's report referred to above, 13 children – 8 girls and 5 boys – were identified as victims of trafficking between 2013 and 2015.

However, according to GRETA's report further training is needed for legal guardians, lawyers and juvenile judges on preventing and combating trafficking in children.

The Committee notes from the GRETA report mentioned above that other changes relating to the criminalisation of trafficking in human beings were adopted on 31 May 2016 with the aim of bringing Belgian criminal law into line with the relevant EU legislation on measures to prevent and combat trafficking.

The Committee notes that National Action Plans on Trafficking in Human Beings (2012-2014 and 2015-2019) introduced various measures to improve the detection, identification and referral of child victims, in accordance with the multidisciplinary circular of 2008, as revised on 23 December, setting out the arrangements for the referral of victims of trafficking.

The Committee asks the next report to provide updated information on measures taken to detect child victims of trafficking, and to prevent trafficking.

The Committee asked in its previous conclusion (Conclusions 2011) what the incidence of begging was and what measures the Government was taking to resolve the question of irregular migrants who begged in the streets accompanied by their children.

The report states that on 20 September 2016, the Board of Principal Crown Prosecutors adopted a circular on the investigation and prosecution of offences of exploitation through begging. The circular focuses in particular on children.

The Committee refers to the aforementioned, Concluding Observations of the UN Committee on the Rights of the Child and, in particular, to this Committee's recommendation that sufficient financial, human and technical resources should be earmarked to identify cases of trafficking affecting children, including exploitation through begging,

The Committee again asks for information to be provided in the next report on measures taken to address the problem of exploitation through begging. It considers if this information is not provided in the next report there will be nothing to establish that the situation is in conformity with the Charter in this regard

The Committee refers to General Comment No. 21 of the UN Committee on the Rights of the Child, which provides states with authoritative guidance on ways of developing comprehensive, long-term national strategies on children in street situations using a holistic, child-rights approach and addressing both prevention and response in line with the Convention on the Rights of the Child.

#### *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 Belgium.

In its previous conclusion (Conclusions 2011), the Committee concluded that the situation was in conformity with Article 8§1 of the Charter. It will therefore only consider recent developments and additional information.

***Right to maternity leave***

The report notes that according to the legislation, the duration of maternity leave is 15 weeks (with certain exceptions for multiple births) i.e. six weeks before the birth and nine following the birth. In both the public and private sectors one week's leave before the birth and nine weeks after the birth are compulsory. A woman is not allowed to relinquish any part of this leave.

***Right to maternity benefits***

No change has been brought to the system of maternity benefits: women who fulfill the required conditions (120 days worked in the six months preceding the date of entitlement) are entitled to a benefit amounting to 82% of their previous gross salary for the first thirty days of maternity leave, and subsequently to 75% of the gross salary.

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

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

According to EUROSTAT data, the median equivalised annual income was €22,777 in 2017, that is €1,898 per month. 50% of the median equivalised income was €11,389 per annum, that is €949 per month. According to EUROSTAT data, the minimum gross monthly salary in 2017 was € 1,547 (82% of the gross minimum monthly salary corresponds to €1,269, 75% of the gross minimum monthly salary corresponds to €1,160). In view of the above, the Committee finds that the situation is in conformity with Article 8§1 on this point.

*Conclusion*

The Committee concludes that the situation in Belgium 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 Belgium.

***Prohibition of dismissal***

In its previous conclusion (Conclusions 2011), the Committee found that the situation was in conformity with Article 8§2 of the Charter. It noted that employers could terminate an employment contract for serious reasons and with "sufficient grounds" (unrelated to the physical condition resulting from pregnancy or childbirth). The Committee takes note of the examples of case law illustrating how the notion of "sufficient grounds" is interpreted by the courts.

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

In its previous conclusion, the Committee asked whether there was a right to reinstatement.

In response, the report states that there is no mechanism in Belgian law for reinstating a pregnant worker if she is dismissed in breach of Article 4 of the Labour Act of 16 March 1971 (prohibition of dismissal of pregnant/women who have recently given birth, Conclusions 2011). However, the report states that Article 22 of the Act 10 May 2007, provides for measures to combat retaliatory dismissal with the possibility of requesting reinstatement but only in cases where the retaliatory measures were taken in response to a reasoned complaint.

The Committee asks what this means in practice as it recalls from previous conclusions and the 2018 country report on Belgium of the European Network of Legal Experts in gender equality and non-discrimination, that following long-standing decisions of the Court of Cassation, no court may order an employer to reinstate a worker in his/her job.

The Committee recalls that within the meaning of Article 8§2 of the Charter, the reinstatement of the woman in her job should be the rule when she was unlawfully dismissed during pregnancy or maternity leave. If this is impossible (e.g. if the enterprise closes down or the woman concerned does not wish it), adequate compensation must be ensured. Domestic law must not prevent courts from awarding a level of compensation that is sufficient both to deter the employer and fully compensate the victim of dismissal.

As regards compensation in the case of unlawful dismissal during pregnancy or maternity leave, the Committee refers to its previous conclusion (Conclusions 2011) for a full description: according to Article 23, a victim of discrimination may claim compensation for the damages that she/he has suffered; alternatively, the victim may claim fixed damages equal to six months' gross pay (in employment matters) or €1,300 (in other matters). It found that the situation was in conformity in this regard. In view of the foregoing and the examples of case-law provided, the Committee considers that the law does not prevent courts from awarding a level of compensation that is sufficient both to deter the employer and fully compensate the victim of dismissal.

*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Belgium is in conformity with Article 8§2 of the Charter.

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

*Paragraph 3 - Time off for nursing mothers*

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

The report indicates that the situation, which had previously been found to be in conformity with Article 8§3 of the Charter (Conclusions 2011), is unchanged.

As regards the public sector, the report notes that each administration is responsible for establishing its staff regulations and, consequently, for the rules concerning breastfeeding breaks. Article 33ter of the Royal Decree of 19 November 1998 on types of leave and furlough for members of staff of state administrations lays down rules on breastfeeding breaks for contractual and statutory staff members employed in the federal civil service. In addition, since 2011, all female staff members are entitled to take paid breastfeeding breaks until the child reaches the age of nine months. According to the report, similar rules apply in the Flemish Authority and the Walloon Region.

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

*Conclusion*

The Committee concludes that the situation in Belgium 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 Belgium.

In its previous conclusion (Conclusions 2011), the Committee found that the situation was in conformity with Article 8§4 of the Charter. Since the situation remains unchanged, it confirms its previous finding of conformity.

Furthermore, the Committee asks that the next report contain updated information on any changes to the legal framework concerning the regulation of night work for women who are pregnant, have recently given birth or are nursing their infant. It also asks the next report to clarify whether the employed women concerned are transferred to daytime work and what rules apply if such transfer is not possible.

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; it furthermore asks the next report to confirm that the women concerned retain the right to return to their previous employment at the end of their protected period.

### *Conclusion*

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

In its previous conclusion (Conclusions 2011), the Committee found that the situation was in conformity with Article 8§5 of the Charter.

The report states that the legal framework for the protection of the health and safety of pregnant workers, workers who have given birth and who are breastfeeding is contained in the Labour Act of 16 March 1971 (Sections 41 to 43 bis) and in Title 5 on maternity protection of Book X of the Well-being at Work Code, which came into force on 28 April 2017.

According to the report, an analysis of specific risks is provided for on the basis of a non-exhaustive list of risks to be assessed (Annex X.5-1 of the Code). All female workers are informed of the results of this analysis and the measures to be taken by the employer.

If a risk has been identified, the employer must take an appropriate preventive measure and inform the prevention consultant/occupational physician when a worker in one of these positions is pregnant. Preventive measures must be immediately applied if a worker who is pregnant or breastfeeding performs an activity that is prohibited (Appendix X.5-2 to the Code contains a list of prohibited agents and working conditions). The worker in question is subject to health monitoring, as stipulated in Title 4 of Book 1 of the Code. Depending on the medical examination results, the prevention consultant/occupational physician could decide to remove her from the post.

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

### *Conclusion*

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

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

The Committee takes note of the information contained in the report submitted by Belgium. It notes that different federate bodies are responsible for the different areas of family policy. The Communities deal with "matters which can be personalised", including assistance for families, while the regions deal with housing policy and the Federal Government is in charge of family allowances and special tax arrangements.

### ***Legal protection of families***

#### ***Rights and obligations, dispute settlement***

With regard to the **rights and obligations of spouses**, the Committee refers to its previous conclusions (Conclusions XIV-1(1998) concerning joint parental authority, XV-1 (2000) concerning divorce, XVI-1(2002) concerning recognition of common-law partners, XVIII-1(2006) concerning same-sex marriage and adoption). In reply to its request for up-to-date information on the system governing the rights and obligations of spouses in respect of one another and their children (Conclusions 2011), the report outlines the rights and obligations which apply respectively in the event of marriage, legal cohabitation and de facto cohabitation, and specifies that parental authority is not directly related to the couple's status.

The report also describes the legal arrangements for the **settlement of disputes**, which depend on the type of couple. In particular, termination of legal or de facto cohabitation does not have any consequences regarding maintenance or property rights. The exercise of parental authority is supervised, however, by the family courts (Article 387bis of the Civil Code, Articles 1253ter/4 to 1253ter/6 of the Judicial Code), which also determines the amounts and payment arrangements for maintenance contributions in the event of a dispute.

Questions linked to **restrictions to parental rights and placement of children** are dealt with under Article 17§1.

The Committee refers to its previous conclusion (Conclusions 2011) for a description of the judicial or voluntary **mediation services** available.

#### ***Domestic violence against women***

The Committee refers to its previous conclusions for a description of the relevant legal framework relating to prosecution and the prevention and protection measures taken as part of integrated policies (see Conclusions XVIII-1(2006) and 2011). It takes note of the information in the report concerning developments since its last assessment, especially those taken in the context of the National Action Plan to combat all forms of gender-based violence (2015-2019), particularly:

- in Wallonia, the establishment in 2016 of a website and a free professional helpline and the organisation of a two-yearly fair, dealing among other things with the subject of sexual abuse. The Committee also takes note of the preventive and advisory role in this area of the Walloon Agency for Quality of Life (AviQ) and its network of family planning and advice centres;
- the introduction by the Flemish authorities of measures in each region at least for a multidisciplinary approach to domestic violence, namely a co-ordinated range of services offered by the partners working in this area (police, prosecution services, General Social Assistance Centres, youth protection services and public welfare centres (CPASs). Services may be provided at a Family Justice Centre, which brings together the various assistance and support services. A helpline is also available, along with victim reception centres (see details in the report).

Insofar as Belgium has signed and ratified the Istanbul Convention on Preventing and Combating Violence against Women and Domestic Violence (which came into force in Belgium on 1 July 2016), the Committee refers to the procedure to assess the conformity of the situation in Belgium which is under way in the context of this mechanism.

The Committee asks for up-to-date information in the next report on domestic violence and related convictions, the implementation of the various measures described in the report and their impact on the reduction of domestic violence against women.

## ***Social and economic protection of families***

### ***Family counselling services***

In reply to the Committee's request concerning family counselling services (Conclusions 2011), the report states that in Flanders and in Brussels there are 11 General Social Assistance Centres which families can turn to in the event of financial, social or psychological problems or issues relating to well-being. There are also special facilities for children in critical situations. In Wallonia, the Agency for Quality of Life (AviQ) certifies and subsidises helpline services, which are available to anyone in difficulty, and 70 family planning and marital advice centres. In the context of the certification and subsidising of special facilities by AviQ, the Family and Elderly Persons Assistance Services (SAFA) work with families in difficulty. In the German-speaking Community the youth support service (set up by a decree of 19 May 2008) examines individual applications for assistance and provides advice and support for minors, their parents and any other persons and institutions concerned.

### ***Childcare facilities***

According to the report, the legislation on care for infants (children up to the age of three) in Flanders underwent a major reform in 2014, whose progressive implementation was scheduled to be completed by the end of 2020. New measures are also being prepared on care facilities for children of nursery and primary school age. For infants, care systems are based on family care, childminding or group facilities (crèches or other care facilities employing several professionals). These facilities are free to set their own rates but may only obtain public grants if they satisfy certain conditions. In reply to the Committee's request (Conclusions 2011), the report states that there are not yet any data enabling it to assess whether care provision meets families' needs. It states, however, that in Flanders in 2016, 51.9% of children under the age of three were attending care facilities and that this exceeded the Barcelona objectives (of 33%) and a new study, launched in 2018 (outside the reference period) should make it possible to assess needs more accurately.

The Committee takes note of the data provided on attendance at crèches in the German-speaking Community during the reference period. However, the report does not provide any information on childcare facilities in the French-speaking Community. According to the public information available on the Eurydice network, the coverage rate for care of children under the age of 3 in Wallonia was 48.3%, and therefore exceeded the Barcelona objectives, if it included children who attended nursery school from the age of two and a half on. The coverage rate was 28.2% for children under the age of two and a half, and there was still an imbalance between supply and demand as there were only about 40 000 places available for about 140 000 children under the age of two and a half. The same source also shows that care facilities are accessible in terms of costs and geographical distribution and their quality is guaranteed by the Birth and Childhood Office (ONE). The Committee notes that a reform of care facilities is under way and asks for information in the next report on the implementation of the new measures described and full and up-to-date data on the percentage of children placed in care facilities for each Community.

## ***Family benefits***

### ***Equal access to family benefits***

In its previous conclusion (Conclusions 2011) the Committee asked if nationals of other non-EU/EEA states party residing or working lawfully in Belgium enjoyed equal treatment with regard to the payment of family benefits. The Committee notes from the report that all workers covered by Belgian social security are equally entitled to family benefits regardless of nationality (including stateless persons). As to the residual regulations on guaranteed family benefits, the five-year residence requirement does not apply to stateless persons. It does apply, however, to non-EEA citizens. The Committee considers therefore that the situation is not in conformity with the Charter because nationals of non-EEA member states are required to have lived in Belgium for an excessive length of time (5 years) to be entitled to family benefits on an equal footing with Belgian nationals.

### ***Level of family benefits***

In its previous conclusion (Conclusions 2011) the Committee considered that the amount of family benefits was sufficient. It notes from the report that since 1 June 2017, the amounts of ordinary family allowances paid in the German-speaking Community, Wallonia, Brussels and the geographical jurisdiction of the German-language region have been €93.93 for the first child, €173.80 for the second, and €259.49 for the third and each subsequent child. The equivalent amounts in Flanders are €92.00, €170 and €254 respectively.

The Committee notes that the Eurostat median equivalised income was €1898, meaning that family allowances amount to 4.9% to 9.1% thereof. The situation therefore is in conformity with regard to family benefits.

The Committee also takes note of other benefits highlighted by MISSOC which are granted to children with disabilities, together with a supplement for single-parent families. The rates of family benefit are tied to fluctuations in the consumer price index and variations in the number of inhabitants.

### ***Measures in favour of vulnerable families***

The Committee recalls that positive obligations under Article 16 include implementing means to ensure the economic protection of various categories of vulnerable families, including Roma families.

In reply to its request (Conclusions 2011), the Committee notes that the notion of beneficiary (the person who opens up entitlement to family allowances) is interpreted very broadly by the regulations to allow entitlement in as many cases as possible (for example a parent, a resident grandparent, an aunt or an uncle). Children in single-parent families may be entitled to a supplement if the family's occupational or replacement income does not exceed a specified upper limit. As to Roma families, the principle whereby any employment covered by the Belgian social security scheme opens up entitlement to family allowances also applies. With regard to the economic protection of Roma families, the Law of 26 May 2002 on the right to social integration and the Organic Law on CPASs of 8 July 1976 do not make any special provision for Roma families; either they meet the national requirement set out in Article 3 of the Law of 26 May 2002 relating to the right to social integration or they fall within the scope of the Organic Law of 8 July 1976 (namely if lawfully resident, they are entitled to welfare and if unlawfully resident, to emergency medical care).

The Committee notes that in February 2012, Belgium submitted its national strategy for the integration of Roma to the European Commission. The strategy was the result of a partnership between the federated entities, the federal government and civil society representatives. To supervise and co-ordinate it, Belgium set up a Belgian National Contact Point for Roma, which was supported by an intergovernmental working group. In 2015, a



review was conducted on the functioning and composition of the Belgian National Contact Point, and as a result it was converted into an administrative working group, comprising representatives of the federal government and the regional authorities. The National Contact Point for Roma is responsible for the intersectoral co-ordination of the development and implementation of the national strategy for the integration of Roma. It submitted a proposal for the creation of a Belgian national platform for Roma to the European Commission's Directorate General for Justice. The platform was launched in May 2016 with the Commission's support and aims to initiate participatory dialogue with all the stakeholders and Roma communities in Belgium. This dialogue focuses on the main spheres of activity designed to promote the socio-economic integration of Roma. More specifically, the emphasis is on combating discrimination in employment, education, housing and health services.

### ***Housing for families***

In its previous conclusion (Conclusions 2011), the Committee asked for information on how access to adequate housing was guaranteed in the light of the principles established in case law and on measures taken to improve the housing situation of Roma families. It also asked for details on housing benefits in the Walloon Region and the length of residence requirement for entitlement to such benefits in the Brussels-Capital Region.

The Committee takes note of the information in the report on social housing policy in the Flemish Community and Region (social housing rental system, owner-occupied homes under social housing conditions, loans at social rates, housing renovation grants, rental allowances), including data which show that there was an increase in the supply of rented and owner-occupied social housing during the reference period. As to protection from unlawful eviction, the report states that under the established case law of the Constitutional Court, evictions may not be carried out unless there is a prior judicial review including an assessment of proportionality. Since the sixth reform of the state, the regulations on evictions have become a regional responsibility. In this sphere, there has been a special procedure for evictions to be conducted in a more humane manner: every application for eviction must be referred to a public welfare centre (CPAS) so that it can provide assistance for the person threatened with eviction. Courts ordering evictions must allow a one-month suspension period, which may be extended at the tenant's request.

As to Travellers and Roma in the Flemish Community and Region, the report states that the regulations on grants and contracts for the development of sites for trailers was clarified in 2015 so as to be able to carry out projects rapidly and efficiently. It is now possible to obtain sites to be developed for trailers through the legal technique of long leasing. The Committee also notes from the report that the Flemish authority subsidises the purchase, development, renovation and extension of sites for trailers.

In the Walloon Region, several housing policy stakeholders help to open up access to social housing to persons who are deprived thereof through measures such as removal and rent support, the creation and management of public housing, rental allowances and loans designed to provide access to home ownership. As to access to public housing, it is subject to qualifying conditions, particularly where it comes to applicants' incomes or priority points. On evictions, the Walloon Housing and Sustainable Dwellings Code provides that alternative housing must be proposed in the event of eviction on grounds of unsanitary conditions and there should be a moratorium on evictions from public housing over the winter. As to Roma families, the report states that there is no specific body in charge of providing housing for Roma, but they are covered by housing policy.

The report states that the Brussels-Capital Region encourages renovation work on housing through grants to private individuals and subsidies to associations promoting integration through housing. The region also assists tenants living in homes which do not meet health and safety standards through a removal and settlement and rental support system. New

legislation in 2014 set up a special form of rental allowance for applicants on waiting lists for social housing. In reply to the question on the minimum residence requirement for entitlement to housing benefits, the report explains that where it comes to rehousing allowance, applicants are required to have occupied the home from which they are moving out for a minimum of twelve months before moving in to suitable housing. Migrants living in Belgium temporarily are not therefore explicitly or implicitly excluded from the benefit of this allowance because no distinction is made between different categories of citizens. Lastly, the Committee notes from the report that social housing amounts to 16.7% of Brussels' total rented housing stock.

The Committee notes that the current report contains no information on the legal protection of persons threatened with eviction or on the housing situation of Roma families in the Brussels-Capital Region. Accordingly, it asks for information on this region in the next report. It also asks for the next report to outline any judicial or extra-judicial remedies to which families have access to claim their right to adequate housing in all the regions. In this connection, it would like the next report to indicate how accessible and effective these remedies are and outline the relevant case law.

The Committee also notes from Housing Europe – The State of Housing in the EU 2017 that the social housing sector (at 6.5% of the housing stock) does not appear to be in a position to meet existing demand (ibid., some 40 000 households are on waiting lists for social housing in the Walloon Region and 28 000 in Brussels; see also European Social Policy Network (ESPN), “National strategies to fight homelessness and housing exclusion: Belgium”, 2019, pp. 14 and 17). In order to establish whether the situation is in conformity with Article 16 of the Charter with regard to the adequate provision of housing for families, the Committee asks for information in the next report on the total number of applications for social housing for the entire country, the percentage of applications that are successful and the average length applicants have to wait to obtain housing. Pending receipt of the information requested, the Committee reserves its position on this point.

With regard more particularly to Traveller families (including Roma who live in mobile homes), the Committee points that it found that the situation was in breach of Article E of the Charter read in conjunction with Article 16 on several grounds relating to the housing of these persons (International Federation of Human Rights Leagues (FIDH) v. Belgium, Complaint No. 62/2010, decision on the merits of 21 March 2012). In this connection, the Committee refers to Findings 2018 on the follow-up to this decision, in which it held that the situation had not been brought into conformity with the Charter. Given that the reference period of these conclusions is covered by these findings, it can only conclude, on the same grounds, that the situation is not in conformity on this point. The Committee points out that the subsequent follow-up to the aforementioned decision will be carried out when examining the report which Belgium is due to submit by 31/12/2019. In this regard, the Committee also refers to the findings and recommendations of the Council of Europe Commissioner for Human Rights on the situation of Belgian Travellers and Roma after his visit to Belgium during the reference period (Report of 28 January 2016 following the visit to Belgium from 14 to 18 September 2015, §§ 156-164, and 172-175), and the Concluding Observations of the United Nations Committee on the Elimination of Racial Discrimination of 2014 on the 16th to 19th periodic reports of Belgium (adopted on 19 and 20 February 2014).

Lastly, having regard to its Statement of Interpretation on the rights of refugees under the Charter (Conclusions 2015), the Committee also asks for information in the next report on the housing situation of refugee families.

### ***Participation of associations representing families***

The Committee notes that there has been no change in the situation which it previously found to be in conformity with the Charter (Conclusions 2011).

### *Conclusion*

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

- an excessive length of residence (5 years) is required for nationals of non-EEA member states to be entitled to family benefits;
- Traveller families are not afforded adequate protection with respect to housing, including in terms of eviction conditions.

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

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

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

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

As regards the right of children to know their origins, the Committee previously requested what restrictions apply and under what circumstances a child would not be allowed to know his/her origins (Conclusions 2011). The Committee takes note of the information provided in the report. It notes that children born through medically-assisted reproduction only have the right to non-identifying information concerning their biological parents.

Adoption is regulated at both the Federal and community levels. The Committee notes that at both the Federal level and in the Flemish Community, adopted children have in principle the right to information regarding their origins, including identifying information. However, such information may be restricted in cases concerning children adopted abroad where the biological parents have requested anonymity and refuse to lift it. However, it is unclear whether the decision of the biological parents can be overruled by an adoption officer in such circumstances. The Committee seeks clarification on this point. Further, the Committee seeks confirmation that the situation is similar in the French Community and in the German-speaking Community.

The Committee has noted with concern the increasing number of children in Europe registered as stateless, as this will have a serious impact on those children's access to basic rights and services such as education and healthcare. The Committee notes that according to Myria – *Centre fédéral Migration (Federal Centre for Migration)*, the number of stateless persons has been increasing since 2015. Between 1 January 2015 and 1 January 2018, their number increased from 593 to 906 persons (+ 53%). One should add to this figure the persons who were already authorised to reside for various reasons, sometimes for several years, at the time when their status as stateless was transcribed in the population registers.

Therefore, the Committee asks what measures have been taken by the State to reduce statelessness (such as ensuring that every stateless migrant child is identified, simplifying procedures for obtaining nationality, and taking measures to identify children unregistered at birth).

The Committee also asks what measures have been taken to facilitate birth registration, particularly for vulnerable groups, such as Roma, asylum seekers, persons in an irregular situation.

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

The Committee recalls that the situation was found not to be in conformity with the Charter both in the previous conclusion (Conclusions 2011) and in its decisions on the merits of the World Organisation against Torture (OMCT) v. Belgium (Complaint No. 21/2003, Decision on the merits of 7 September 2004), Association for the Protection of All Children (APPROACH) Ltd v. Belgium, Complaint No. 98/2013, Decision on the merits of 20 January 2015) as well as in its follow-up to decisions on the merits of collective complaints, Findings 2018, on the grounds that corporal punishment is not explicitly prohibited in the home. The situation has not changed. Therefore, the Committee reiterates its previous conclusion of non-conformity on this point.

The Committee notes from its Follow-up to decisions on the merits of collective complaints, (Findings 2018), that discussions are under way to bring Civil Code into conformity with the Charter and asks to be kept informed of all developments in this field.

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

In its previous conclusion, the Committee noted that child care is still primarily focused on placing children in residential institutions and that the French Community has the highest rate in Europe of institutionalisation of children below 3 years of age. The Committee asked what measures the Government was taking to reduce reliance on institutional care (Conclusions 2011).

According to the report, the placement of children outside the home is to be used only as a measure of last resort. The Communities have taken various initiatives to avoid placement outside the home and to increase alternative care in a family setting.

The Flemish Community is trying to strengthen the network of assistance to minors and their families, concentrating on home visits and day-care. Capacity has been expanded and residential assistance has been transformed into day-care provision. Most forms of mobile or day-care support have been directly accessible since 2015, so that children and their parents can more easily obtain such forms of assistance independently. The youth court was recently empowered to impose day-care measures in emergency situations, so as to avoid institutionalization.

In addition, staff providing assistance to young people and adults are collaborating more closely on mental health care, so that fewer children have to be institutionalized because of their parents' psychological problems.

In the Flemish Community, the primacy of foster care over institutionalisation was established by decree in 2012. In late 2015, foster care increased by 6 per cent over the previous year.

The report further states that in the French Community, services providing assistance in the community have continued to take preventive measures to support families in precarious situations.

In 2013, so as to prevent the institutionalization of young children, an order on assistance and educational support services in the French Community strengthened non-residential services that could help reintegrate young people into their families. The order provides for intensive follow-up interventions within the family for children under 6 years of age in situations of serious, potential or actual neglect or abuse.

If, however, the youth court finds that removal from the home is appropriate, the law favours placement in a family environment.

The French Community has continued its support to foster families by simplifying administrative procedures, reducing delays in the reimbursement of expenses and providing cash advances, by shortening the selection process for foster families, publishing explanatory brochures for the public and a handbook for foster families. A comprehensive awareness-raising and recruitment campaign for foster families is also under way.

The Code on Prevention, the Youth Welfare Services and Protection of Young Persons (2018) (adopted outside the reference period) reaffirms that assistance and protection are to be provided as a matter of priority in a home environment, with removal being the exception. The Committee requests the next report to provide full information on the changes introduced by the Code.

As regards the German-speaking Community, the Committee notes from the report that the number of children placed in institutions has increased steadily over the reference period whereas the number of children placed in foster care has declined. Little additional information is provided.

The Committee notes from the Concluding Observations of the UN Committee on the Rights of the Child on the fifth and sixth periodic reports of Belgium [CRC/C/BEL/C/5-6, 28 February 2019] that while progress has been made to prevent the institutionalization of children, "institutional care remains the first response for children in need of care, particularly

for children with disabilities, children from socially or economically disadvantaged families and for very young children”.

Therefore, the Committee requests that the next report continue to provide information on measures taken in all communities to prevent institutionalization of children and trends in practice in this regard.

The Committee previously asked for information on the criteria for the restriction of custodial or parental rights, and the procedural safeguards in force ensuring that children are removed from their families only in exceptional circumstances.

It further asked whether the national law provides for a possibility to lodge an appeal against a decision to restrict parental rights, to take a child into public care or to restrict the right of access of the child’s closest family (Conclusions 2011).

The report refers to the 1965 Law on the Protection of Youth which provides that parental authority may be removed where a parent, through ill-treatment, abuse of authority, misconduct or gross negligence, endangers the health, safety or morals of the child. A decision to remove parental authority is made by the youth court. However, a parent deprived of parental authority has the right to maintain personal relations with the child. The Committee seeks confirmation as to whether parents may appeal a decision restricting parental rights.

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

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

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

The Committee previously found that the situation was in conformity with the Charter on the grounds that children may be held in adult detention facilities. It also requested information on the maximum length of pre-trial detention and prison sentences for children (Conclusions 2011).

According to the report, since 2009 children have been detained separately from adults at the Federal level.

Recent reforms delegated certain areas of competence relating to the youth justice system to the communities and reforms are underway at this level.

According to the report, the maximum length of pre-trial detention is 350 days in the French Community. However, since 2017, the longest pre-trial detention period recorded has been 196 days. The Committee notes that in theory, pre-trial detention may last for up to nearly one year. The Committee recalls that it has previously found that an 8-month period was not in conformity with the Charter (Conclusions XX-4, 2015, Denmark)

The Committee concludes that pre-trial detention of up to 350 days cannot be considered to be in conformity with Article 17 of the Charter.

It seeks confirmation that children are detained separately from adults.

As regards the solitary confinement of children in detention, the Committee notes that since 2018 (outside the reference period), minors may be placed in solitary confinement for a maximum of three days. However, other rules apply depending on the type of institution. The Committee wishes to receive updated information in this respect, including information on the different types of institutions.

In the Flemish community, young persons may be detained both pre-trial and post-conviction in a *community institution*. Pre-trial detention is initially for 3 months, renewable for 3 months and then renewable month by month with no upper limit. Young persons aged 16 to 23 may also be detained in detention centres, but separately from adults.

The Committee notes that pre-trial detention of potentially unlimited duration is not in conformity with the Charter. However, it seeks further information on the distinction between a community institution and a detention centre. It asks whether minors can be detained pending trial in a detention centre and what the maximum length of any pre-trial detention is. Meanwhile, it reserves its position on the conformity of the situation.

Further, the Committee notes that in the Flemish Community, 16-18 year-olds can be detained with persons aged up to 23 years. The Committee recalls that minors should never be detained with adults and finds the situation not to be in conformity in this respect.

The Committee asks whether children may be held in solitary confinement in the Flemish Community, and if so, under what circumstances and for how long.

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

Article 17 guarantees the right of children, including children in an irregular situation and non-accompanied minors to care and assistance, including medical assistance and appropriate accommodation [ International Federation of Human Rights Leagues (FIDH) v. France, Complaint No 14/2003, decision on the merits of September 2004, § 36, Decision on the merits of September 2004, § 36, *Defence for Children International (DCI) v. Netherlands*, Complaint NO. 47/2008, Decision on the merits of 20 October 2009, §§70-71, European Federation of National Organisations working with the Homeless (FEANTSA) v, Netherlands, Complaint No.86/2012, Decision on the merits of 2 July 2014, §50].

*The Committee notes that migrant children including those in an irregular situation are guaranteed access to medical care and accommodation – follow-up to *Defence for Children International (DCI) v. Belgium*, Complaint No. 69/2011, Decision on the merits of 23 October 2012, Findings 2018.*

In the initial reception phase, unaccompanied children are accommodated in monitoring and guidance centres. Capacity in these specialized centres has risen from 115 to 495 places.

In the second phase, unaccompanied children are referred to the collective reception facilities of the *Agence Fédérale pour l'Accueil des Demandeurs d'Asile* (FEDASIL) network, where the number of places available for unaccompanied children has also increased significantly, from 585 in 2015 to 2,162 places in 2016. FEDASIL also supports projects to house very young unaccompanied children with foster families.

The Committee asks what measures have been taken to ensure that children accompanied by their families are accommodated in appropriate settings. It also requests further information on assistance given to unaccompanied children, especially to protect them from exploitation and abuse.

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

The Committee notes that legislation laid down the principle of non-detention of families with children in closed centres, and stipulated that a family with minor children that does not meet the requirements for entry and residence, and whose residence has ceased to be regular or is irregular, should be housed in separate accommodation or in an open accommodation structure adapted to the needs of families with children (a “return house”).

However, the Committee notes from other sources, namely the letter to the Belgian authorities from the Commissioner for Human Rights of the Council of Europe [CommHR/DM/sf/062-2018 of June 2018] and the Concluding Observations of the UN Committee on the Rights of the Child’s on the fifth and sixth periodic reports of Belgium

[CRC/C/BEL/C)/5-6, 28 February 2019] that Belgium has resumed the practice of detaining families with children in closed centres in certain situations (outside the reference period).

The Committee asks whether there have been any developments in the situation and refers to its statement above.

As regards age assessment, the Committee recalls that, in line with other human rights bodies, it has found that the use of bone testing in order to assess the age of unaccompanied children is inappropriate and unreliable [European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France, Complaint No. 114/2015, Decision on the merits of 24 January 2018, §113]. The Committee asks whether Belgium uses bone testing to assess age and, if so, in what situations the State does so. Should the State carry out such testing, the Committee asks what potential consequences such testing may have (e.g., can a child be excluded from the child protection system on the sole basis of the outcome of such a test?).

### ***Child poverty***

The prevalence of child poverty in a state party, whether defined or measured in either monetary or multidimensional terms, is an important indicator of the effectiveness of state efforts to ensure the right of children and young persons to social, legal and economic protection. The obligation of states to take all appropriate and necessary measures to ensure that children and young persons have the assistance they need is strongly linked to measures directed towards the improvement and eradication of child poverty and social exclusion. Therefore, the Committee will take child poverty levels into account when considering the state's obligations in terms of Article 17 of the Charter.

The Committee notes that according to EUROSTAT in 2017 22% of children in Belgium of children were at risk of poverty or social exclusion, lower than the EU average (24.9%).

The Committee asks the next report to provide information on the rates of child poverty as well as information on the measures adopted to reduce child poverty, including non-monetary measures such as ensuring access to quality and affordable services in the areas of health, education, housing etc. Information should also be provided on measures focused on combatting discrimination against and promoting equal opportunities for, children from particularly vulnerable groups such as ethnic minorities, Roma children, children with disabilities, and children in care.

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

### *Conclusion*

The Committee concludes that the situation in Belgium is not in conformity with Article 17§1 of the Charter on the grounds that:

- not all forms of corporal punishment are prohibited in all settings;
- the maximum length of pre-trial detention is excessive;
- children may be detained with adults.



## **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 Belgium.

The Committee notes the State's response to questions in its previous Conclusions (Conclusions 2011). The report states that in July 2017, Belgium delivered a report to the UN Committee on the Rights of the Child on the implementation of the Convention on the Rights of the Child. This report focuses on the steps taken by the Flemish authority to create equal educational opportunities for all children. The Committee reminds the State that its reporting obligations in terms of the Social Charter System, are not satisfied by a general cross-reference to a report produced for another human rights treaty monitoring system with a different mandate and which was produced prior to the end of the relevant reporting period for this cycle.

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

According to UNESCO in 2017 the net enrolment rate for primary education for both sexes was in 98.76%, the corresponding rate for secondary education was 86.24%. The Committee considers that the enrolment rate for secondary education still appears low and asks for further information in this respect.

### **Flemish speaking community**

According to the report 10.4% of Flemish young people left school prematurely during the 2015-2016 school year. In Antwerp and Brussels, this percentage rose to almost 20%. Most major cities, such as *Genk, Mechelen and Ghent*, also have an above-average drop-out rate.

In order to reduce drop-out rates an action plan "*Samen tegen schooluitval*" ("Together against school dropout"), was adopted. This plan includes measures to identify children at risk, preventive measures as well as measures to assist children without qualifications.

### **French speaking community**

According to the report in the French speaking community the Social Cohesion Plan 2014-2019 aims to improve school attendance and decrease drop-out rates, by providing for specific support measures.

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

If this information is not provided in the next report there will be nothing to demonstrate that the situation is in conformity with the Charter.

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

#### **Flemish Speaking Community**

According to the report, enrolment of a child in school is free in kindergarten, primary and secondary school. The school cannot request a registration fee. Similarly, the equipment and activities that are strictly necessary to achieve the competency base and development goals are free of charge. The school cannot therefore request a fee. There is an official list of free material.

According to the report, schools often use more equipment and offer more activities than is necessary to achieve the required skills and development goals. In addition, schools can offer other services. For these expenses, the school can ask parents to make a contribution. However, there are rules, which differ depending on the nature of the expenditure, on what the parents can be asked to pay for. The Committee asks for details on: first, the nature of the expenses (i.e., what is the nature of the 'other services' they fund) that parents can be asked to contribute to; second, what rules apply with regard to the amount of expenses that

parents can be asked to contribute to. The Committee finally asks what the position is with regard to students whose parents cannot afford to contribute to these 'other services'.

A secondary school may ask parents to contribute to the cost of educational materials, certain activities (theatre, multi-day excursions) and certain services and products (meals, drinks, supervision during the lunch break, reception, school transport).

Unlike primary education, secondary education does not have a list of free materials, nor does it have a ceiling on the amount that maybe sought from parents.

However, schools must establish rules on how much parents can be asked to contribute. And which also set out how the contribution should be paid i.e. monthly bill, quarterly. These rules must be discussed in the school board where parents and students are represented. The Committee asks how the scope and implementation of these rules are regulated beyond the school level.

Parents can ask the school to agree on an individual payment plan. Many schools work with a savings system to stagger fees. Sometimes a school has a solidarity fund.

To help parents financially, there are also school allowances the payment of which depend primarily on the resources of the parents. The Committee notes the figures in the report on the number of families receiving such allowances, the number refused on financial grounds as well as the number refused on other grounds. It asks what are the main grounds that families are refused such an allowance not on financial grounds.

The Committee notes from the Concluding Observations of the UN Committee on the Rights of the Child on the fifth and sixth periodic report of Belgium [CRC/C/BEL/CO/5-6, February 2019] (outside the reference period) that the withdrawal of family allowances in the case of frequent absences in Flemish schools have a negative impact on children from the most economically and socially disadvantaged families. It asks for the Government's comments on this.

### **French speaking Community and German speaking community**

No information is provided on assistance with costs in the French speaking community nor in the German speaking community. The Committee asks the next report to provide information on measures taken to mitigate the costs education, such as, transport, uniforms or stationary.

If this information is not provided in the next report there will be nothing to establish that the situation is in conformity with the Charter.

### ***Vulnerable groups***

#### **Flemish speaking community**

The Committee previously noted from the UN Committee on the Rights of the Child that there remained a significant inequality in the enjoyment of the right to education among children; children from poor families and foreign children are likely to be referred to special education programmes. The Committee requested that the next report provide comments on these statements and, also, detailed information on the measures taken to implement Decree of June 2002. (Conclusions 2011)

No substantive information is provided in the report on this point.

However the Committee notes from the Concluding Observations of the UN Committee on the Rights of the Child on the fifth and sixth periodic report of Belgium [CRC/C/BEL/Co/5-6, February 2019] (outside the reference period), that children from socially and economically disadvantaged families and children with a migrant background still face barriers in their access to quality education. The Committee refers to its question below.

According to the report Roma pupils may avail of additional support at school. Additional resources may be granted to a school for each pupil who meets certain socio-economic

indicators A school with students from the travelling population is therefore given additional resources

The Committee asks whether children in an irregular situation in the Flemish speaking community have the right to education.

### **French speaking community**

No information is provided on the situation of Roma or other specific vulnerable groups. If this information is not provided in the next report there will be nothing to demonstrate that the situation is in conformity with the Charter.

As regards children in an irregular situation the Committee recalls that in the French Community it is forbidden to refuse enrolment to a minor in an irregular situation. Article 41 of the Decree of 30 June 1998 stipulates that minors in irregular situation are taken into account in the calculation of funding to be provided to the school where such minors are studying (Conclusions 2011).

The Committee asks the next report to provide information on the total number of Roma children in schools, including information on enrolment and drop-out rates and measures taken to support such children in education for all communities. In addition it asks the next report to provide information on measures taken to support and assist migrant children and children from ethnic minorities in education, including data on enrolment and drop-out rates. As Belgium has accepted Article 15.1 of the Charter the Committee will examine the rights of children with disabilities to education under that provision.

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

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

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

Securing the right of the child to be heard within education is crucial for the realisation of the right to education in terms of Article 1.2 This requires states to ensure child participation across a broad range of decision-making and activities related to education, including in the context of children's specific learning environments. The Committee asks what measures have been taken by the State to facilitate child participation in this regard.

### ***Conclusion***

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

## **Article 19 - Right of migrant workers and their families to protection and assistance**

### *Paragraph 1 - Assistance and information on migration*

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

### ***Migration trends***

The Committee has assessed the migration trends in Belgium in its previous conclusion ([Conclusions 2011](#)). The report does not address this point and the Committee asks that the next report provide up-to-date information on the developments in this respect.

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

The Committee notes that it has previously assessed the policy and legal framework relating to migration matters (Conclusions 2011). The report provides that in 2016 the Law on access to the territory, stay, establishment and removal of foreigners was amended, in particular introducing a general requirement applicable, in principle, to all requests for authorization or renewal of a stay of more than three months, in that when submitting the request, a foreigner must sign a declaration by which he or she undertakes to comply with the fundamental values and standards of the state. A foreigner authorized or admitted to stay more than three months in Belgium, must provide a proof that he or she is ready to integrate into society and make reasonable efforts to integrate. The Immigration Office must inform that the integration efforts will be monitored.

The Committee asks about the implementation of this principle in practice, in particular on the statistics of refusals to stay or removals based on non-compliance with this principle and how it is monitored.

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

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

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

In its previous conclusions (Conclusions 2011), the Committee has requested an updated description of the services and information which migrant workers may obtain from the relevant public authorities.

The report provides, in this respect, information on various sources of information in all Belgian entities:

The Agency "Integratie en Inburgering" is responsible for supporting, encouraging and accompanying the integration of people of origin foreign. In particular, it offers civic integration courses. It also offers legal services for foreigners, as well as information relevant for migrant workers. Furthermore, it provides interpretation and linguistic support, as well "Dutch as a second language" courses for migrant workers and their families.

Furthermore, the reference center for integration and migration gives within the hours of consultation, by appointment or by phone or email. advice to people from a migration

background, in particular with regard to the right of residence, family reunification, the asylum procedure or the acquisition of Belgian nationality, etc. The website [www.werk.be](http://www.werk.be) gives an overview of the regulations relating to the application for work permits, professional cards and exemptions. Nationals from Switzerland and the European Economic Area who want to come to work in Belgium can use the EURES network, the European portal for professional mobility.

The website of the Flemish employment and vocational training service (VDAB) provides information for Belgian nationals who want to gain experience abroad, including a databases of vacant jobs and of administrative formalities to be accomplished.

There is also the FOREM service with information for foreign nationals wishing to work in Belgium and to Belgian nationals wishing to work abroad, and to provide information on the specific actions implemented by Forem to respond to the migration crisis.

In this context, the Brussels Region provides the public with a “counter” and “telephone” permanence every morning from Monday to Friday. In addition, it has developed an accessible website containing information on the subject. It also provides an online tool to find out the formalities to be followed on a case-by-case basis, the most general.

The Committee asks for languages in which the information is available. It also asks which sources are available for non-EU migrant workers.

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

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

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

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

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

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

The report provides information on practical measures, in particular guide books and awareness-raising campaigns targeted to preventing hate speech. It also specifies that one of the strategic objectives of the Horizontal Integration Policy Plan 2016 is worded as follows: "Mutual respect for people of another origin has significantly increased". The Committee asks for more details on this strategy, its implementation in practice, as well as any noted or envisaged outcomes.

The report further specifies that preventive screening is conducted to detect discriminatory requirements in the online job vacancy database of the Flemish employment and vocational training service (VDAB) and through increased efforts by the Flemish Social Inspectorate to combat discriminatory practices. Awareness raising measures are taken for this purpose (pamphlets on prejudice against people with a migrant background or an awareness campaign to combat racist ideas, training for organizations and institutions that are in contact with migrants, in order to promote their intercultural skills).

In its previous conclusion (Conclusions 2011), the Committee noted from the European Commission against Racism and Intolerance's (ECRI) report that a problem of racist propaganda persisted on websites which disseminate hate speech against immigrants or persons of immigrant background. It asked what measures have been taken to prevent this type of propaganda which affects certain migrant workers and their families in particular. The report provides in this respect that the College of Prosecutors General and the police are actively fighting against hate speech on internet pursuant to the general codes of racism and xenophobia, paying specific attention to cyber hate: expressions of hatred directed against certain individuals / groups on the internet (websites, discussion forums and social networks).

In view of persistent racist and discriminatory behaviour on the part of the police, the Committee has already twice asked in its previous conclusions whether police officers received appropriate training. It noted that there were continuing allegations of instances of racial discrimination and in particular racial profiling by the police and also that racially motivated abusive behaviour by police officers was not receiving sufficient attention and those responsible are not being punished. The Committee requested that the next report provided information on the administrative measures taken to deal with this. The report does not address this issue and the Committee considers that it has not been established that the situation is in conformity with the Charter on this point.

#### *Conclusion*

The Committee concludes that the situation in Belgium is not in conformity with Article 19§1 of the Charter on the ground that it has not been established that sufficient and effective anti-propaganda measures, in particular addressing racial profiling by the police, have been adopted.

## **Article 19 - Right of migrant workers and their families to protection and assistance**

### *Paragraph 2 - Departure, journey and reception*

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

#### ***Immediate assistance offered to migrant workers***

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

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

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

The Committee notes from the report all the information at its disposal that there have been no changes to the situation, which it has previously considered to be in conformity with Article 19§2 of the Charter (see Conclusions 2011 and Conclusions XV-1 for more detailed assessment).

The report confirms that Integration and Civic Integration Agencies are dedicated to supporting foreigners, including migrant workers and their families, with a view to integrate them and respond to their needs. The policy adjusts appropriately to growing diversity.

#### ***Services during the journey***

As regards the journey, the Committee recalls that the obligation to "provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey" relates to migrant workers and their families travelling either collectively or under the public or private arrangements for collective recruitment. The Committee considers that this aspect of Article 19§2 does not apply to forms of individual migration for which the state is not responsible. In such cases, the need for reception facilities would be all the greater (Conclusions V (1975), Statement of Interpretation on Article 19§2).

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

#### *Conclusion*

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

## **Article 19 - Right of migrant workers and their families to protection and assistance**

### *Paragraph 3 - Co-operation between social services of emigration and immigration states*

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

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

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

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

The Committee has concluded in its conclusion 2006 ([Conclusions XVIII-1 \(2006\)](#)) and in the previous ones (see in particular for a detailed assessment [Conclusions XV-1 \(2000\)](#)), that co-operation between public-sector and private-sector social services in Belgium and in emigration countries was in conformity with the Charter. The Committee noted that the cooperation took place through contacts between Belgian and foreign embassies; between relevant services in Belgium and the emigration countries; as well as through a large number of voluntary associations set upon the initiative of foreign nationals resident in Belgium. In 2011 the Committee requested updated information on the current situation ([Conclusions 2011](#)).

In reply, the report provides updates on numerous international projects within the framework of the European Social Fund and the European Network of Public Employment Services which set up collaboration in the field. Furthermore, Belgium participates in the Local Welcoming Policies for EU Migrants project (2015-2016) with a view to adapt and improve where necessary the reception policy for migrants from Central and Eastern Europe.

The Committee assumes that, beyond the mentioned current projects, the cooperation between social services in Belgium and in emigration countries continues to take place on the everyday-basis through embassies and private associations, and that it is not limited to social security issues alone (for example in family matters). It asks that the next report confirms that this is the case.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Belgium is in conformity with Article 19§3 of the Charter.



## **Article 19 - Right of migrant workers and their families to protection and assistance**

### *Paragraph 4 - Equality regarding employment, right to organise and accommodation*

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

#### ***Remuneration and other employment and working conditions***

The Committee recalls that States are obliged to eliminate all legal and de facto discrimination concerning remuneration and other employment and working conditions, including in-service training, promotion, as well as vocational training (Conclusions VII (1981), United-Kingdom).

The Committee has assessed the situation in its previous conclusions, as regards legal framework and its practical implementation ([Conclusions XVIII-1 \(2006\)](#) and ([Conclusions 2011](#))) and found them to be in conformity with the Charter. No changes have been reported.

#### ***Membership of trade unions and enjoyment of the benefits of collective bargaining***

The Committee recalls that this sub-heading requires States to eliminate all legal and de facto discrimination concerning trade union membership and as regards the enjoyment of the benefits of collective bargaining (Conclusions XIII-3 (1995), Turkey). This includes the right to be founding member and to have access to administrative and managerial posts in trade unions (Conclusions 2011, Statement of interpretation on Article 19§4(b)).

The Committee further notes that it addressed the legal framework relating to equal right for migrant workers to membership in trade unions and enjoyment of the benefits of collective bargaining and found it to be in conformity with the requirements of the Charter. Considering the fact that the situation was repeatedly reported to have remained unchanged, the Committee could renew its positive conclusion, most recently in 2006.

In the previous conclusion (Conclusions 2011), the Committee requested a full and up-to-date description of the situation in law and practice in respect of this point. The report does not address this issue. The Committee recalls its request for updated information, in the light of the fact that the latest comprehensive assessment of the situation dates back to 2000 (see [Conclusions XV-1](#)). It considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation is still in conformity with Article 19§9 of the Charter.

#### ***Accommodation***

The Committee recalls that States shall eliminate all legal and de facto discrimination concerning access to public and private housing (European Roma Rights Centre (ERRC) v. France, Complaint No. 51/2008, decision on the merits of 19 October 2009, §§1111-1113). It also recalls that there must be no legal or de facto restrictions on home-buying (Conclusions IV (1975), Norway), access to subsidised housing or housing aids, such as loans or other allowances (Conclusions III (1973), Italy).

In its previous conclusion (Conclusions 2011), the Committee noted from the report adopted by the European Commission against Racism and Intolerance (ECRI), that racial discrimination in housing was still a problem in Belgium and that the Belgian authorities were encouraged to take measures to combat racial discrimination in access to housing and public services by taking positive action measures, in particular to prevent the language requirements resulting in less favourable treatment of nationals of States Parties to the Charter who were lawfully resident in the country. The Committee wished to receive information – including figures – about the decisions taken by the Flemish authorities in this respect.

The report states that in 2017 the linguistic conditions for accessing social housing were abolished. Candidate tenants no longer have to demonstrate their willingness to integrate or learn the language to be registered or admitted for social housing. However, the social tenant must, one year after becoming a tenant, prove that they have basic skills in Dutch (level A1 of the European Framework of Reference for Languages). If the tenant does not obtain the level of language and if no exception or no suspension regime applies, an administrative fine may follow. However, it is not possible to terminate the rental contract. The obligation to reach the level of language continues to apply until the tenant satisfies it.

Furthermore, there is a supervisory body for social housing, equipped with competences to ensure equal treatment of beneficiaries of the instruments of social housing policy. Candidate tenants who feel aggrieved by certain decisions of a lessor (for example, the decision to allocate accommodation to another candidate tenant or to refuse the allocation of accommodation) may appeal to the supervisory body. The report provides relevant statistics in this respect.

The Committee considers that the situation has been brought into conformity with the Charter on this point.

### ***Monitoring and judicial review***

The Committee recalls that it is not enough for a government to demonstrate that no discrimination exists in law alone but also that it is obliged to demonstrate that it has taken adequate practical steps to eliminate all legal and de facto discrimination concerning the rights secured by Article 19§4 of the Charter (Conclusions III (1973), Statement of interpretation).

In particular, the Committee considers that in order to monitor and ensure that no discrimination occurs in practice, States Parties should have in place sufficient effective monitoring procedures or bodies to collect information, for example disaggregated data on remuneration or information on cases in employment tribunals (Conclusions XX-4 (2015), Germany).

The Committee further recalls that under Article 19§4(c), equal treatment can only be effective if there is a right of appeal before an independent body against the relevant administrative decision (Conclusions XV-1 (2000) Finland). It considers that existence of such review is important for all aspects covered by Article 19§4.

The report does not address this issue. The Committee notes from the Migration Integration Policy Index (MIPEX) 2015 report on Belgium that its anti-discrimination laws are strong and that victims can use robust procedures to enforce their rights, with NGO support, wide sanctions, legal aid and free interpreters. In the light of the fact that the Committee has not yet had an opportunity to assess this situation in full in this regard, it asks the next report to provide comprehensive information on the functioning of anti-discriminatory monitoring bodies, as well as on all avenues of appeal or review as regards the aspects covered by this provision of the Charter.

### ***Conclusion***

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

**Article 19 - Right of migrant workers and their families to protection and assistance**

*Paragraph 5 - Equality regarding taxes and contributions*

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

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

The Committee notes that it addressed the relevant legal framework and found it to be in conformity with the requirements of the Charter (see Conclusions 1998). Considering the fact that the situation was repeatedly reported to have remained unchanged, the Committee could renew its positive conclusion, most recently in 2011 (Conclusions 2011).

In the previous conclusion (Conclusions 2011), the Committee requested a full and up-to-date description of the situation in law and practice in respect of Article 19§5. The report states that there have been no changes to the situation which the Committee previously considered to be in conformity with the Charter. The Committee recalls its request for a renewed description of the legal framework, in the light of the fact that the latest comprehensive assessment of the situation dates back to 1998.

*Conclusion*

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

## **Article 19 - Right of migrant workers and their families to protection and assistance**

### *Paragraph 6 - Family reunion*

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

#### **Scope**

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

The Committee refers to a detailed description of the scope of the right to family reunion in Belgium to its previous conclusion ([Conclusions 2011](#)). The Committee considers the legal framework in this respect to be in conformity with the Charter.

#### **Conditions governing family reunion**

The Committee deferred its previous conclusion (Conclusions 2011), observing that the legislative framework as regards family reunion was amended in 2007 and noting that the European Commission against Racism and Intolerance recommended that the Belgian authorities evaluate the implementation of the new legislation on non-citizens, verifying, amongst other things, that the new requirements relating to family reunification comply with the right to private and family life. The Committee requested specific information, including figures, on cases of applications for family reunion being turned down, in particular on the ground of the dwellings being inadequate for housing the family members of the migrant worker. The Committee considered that although the requirements of the law prevent family reunion in only a limited number of cases, it is important that in practice the authorities in charge of issuing residence permits following applications for family reunion take account of the fact that "the principle of family reunion is but an aspect of the recognition in the Charter (Article 16) of the obligation of states to ensure social, legal and economic protection of the family" (Statement of interpretation – Conclusions VIII).

The report provides that under the new legislative framework, migrant workers applying for a family reunion with a the non-EU family are required to prove: (1) family link, (2) lack of illness which could pose a danger to the public health, (3) certificate attesting to the absence of criminal convictions, (4) sufficient, stable and regular income, (5) sufficient accommodation and (6) health insurance. Family members may join the European Union national provided that they prove: (1) family link, (2) sufficient resources which would not pose a burden to the Belgian welfare system and (3) health insurance. Finally, a Belgian national applying for a family reunion must possess (1) health insurance for himself and his family members, (2) sufficient housing to accommodate his family, (3) stable, regular and sufficient income.

The report submits numbers as regards the permits and refusals for a family reunion. It transpires from this data that the percentage of unsuccessful application is quite high (for third countries nationals and EU nationals, respectively: 2,430 negative decisions for 11,566 applications and 2,466 negative decisions for 6,799 applications). The Committee notes in this respect from the Migration Integration Policy Index 2015 report on Belgium that the procedure to reunite with family is increasingly changing and complicated and that under the amended legislative framework both non-EU and EU or Belgian citizens face much more restrictive requirements.

The Committee asks the next report to provide comprehensive information on all the relevant requirements in order to enable an assessment whether they are not so excessive as to prevent any family reunion and thus in conformity with the Charter. In particular, it asks how the level of means required to bring in the family or certain family members is calculated and whether social benefits may be excluded from the calculation of the income of a migrant worker who has applied for family reunion. Furthermore, it asks whether the accommodation requirement is applied in a proportionate manner so as to protect the interests of the family. In the meantime it reserves its position on this point.

As to the health requirement, the Committee recalls that a state may not deny entry to its territory for the purpose of family reunion to a family member of a migrant worker for health reasons. A refusal on this ground may only be admitted for specific illnesses which are so serious as to endanger public health (Conclusions XVI-1 (2002), Greece). These are the diseases requiring quarantine which are stipulated in the World Health Organisation's International Health Regulations of 1969, or other serious contagious or infectious diseases such as tuberculosis or syphilis. Very serious drug addiction or mental illness may justify refusal of family reunion, but only where the authorities establish, on a case-by-case basis, that the illness or condition constitutes a threat to public order or security. It asks the next report to provide more information in the list of diseases preventing a family reunion.

Finally, the Committee recalls that once a migrant worker's family members have exercised the right to family reunion and have joined him or her in the territory of a State, they should have an independent right to stay in that territory (Conclusions XVI-1 (2002), Article 19§8, Netherlands). The Committee understands from the report that this is not the situation in Belgium, as family members' permits remain contingent upon the right to stay of the migrant worker. The Committee therefore considers that the situation is not in conformity with the Charter in this respect.

### ***Remedy***

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

The Committee has not yet fully assessed the relevant review mechanism in Belgium and requests comprehensive information in this respect in the next report.

### ***Conclusion***

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

## **Article 19 - Right of migrant workers and their families to protection and assistance**

### *Paragraph 7 - Equality regarding legal proceedings*

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

The Committee recalls that States must ensure that migrants have access to courts, to lawyers and legal aid on the same conditions as their own nationals (Conclusions 2015, Armenia).

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

The Committee further notes that it addressed the legal framework relating to equality in legal proceedings and found it to be in conformity with the requirements of the Charter. Considering the fact that the situation was repeatedly reported to have remained unchanged, the Committee could renew its positive conclusion, most recently in 2011 ([Conclusions 2011](#)). It then requested a full and up-to-date description of the situation in law and practice.

In reply, the report provides that legal aid can take two forms: front-line legal aid and second-line legal aid. Front-line legal aid is provided in the form of "practical information, legal information, first legal opinion or referral to a specialized body or agency". It takes form of free consultations provided by representatives of the Bar, public welfare centers and licensed legal aid organisations. Second-line legal aid is defined as that granted in the form of "detailed legal advice or legal assistance in the context of judicial proceedings". A migrant worker is entitled to second-line legal aid (art 508/1 Judiciary Code) provided that he / she fulfills the same conditions as applicable to citizens.

In 2016, legal aid reform was introduced to improve the quality of services offered and to improve the entire legal aid chain for beneficiaries and providers. In particular, the system is made more equitable. Certain categories of persons – such as persons in detention, asylum seekers, recipients of sums paid as integration income or social assistance, etc. – benefit from a rebuttable presumption of inadequacy of income. Minors benefit from an irrebuttable presumption of insufficient income.

In the context of second-line legal aid, where the litigant does not speak the language of the proceedings and no designated attorney speaks his or her other language, an interpreter may be designated. The costs are borne by the State and are paid according to the procedure provided for in the general regulation on legal fees.

### *Conclusion*

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

## **Article 19 - Right of migrant workers and their families to protection and assistance**

### *Paragraph 8 - Guarantees concerning deportation*

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

The Committee has interpreted Article 19§8 as obliging 'States to prohibit by law the expulsion of migrants lawfully residing in their territory, except where they are a threat to national security, or offend against public interest or morality' (Conclusions VI (1979), Cyprus). Where expulsion measures are taken they cannot be in conformity with the Charter unless they are ordered, in accordance with the law, by a court or a judicial authority, or an administrative body whose decisions are subject to judicial review. Any such expulsion should only be ordered in situations where the individual concerned has been convicted of a serious criminal offence, or has been involved in activities which constitute a substantive threat to national security, the public interest or public morality. Such expulsion orders must be proportionate, taking into account all aspects of the non-nationals' behaviour, as well as the circumstances and the length of time of his/her presence in the territory of the State. The individual's connection or ties with both the host state and the state of origin, as well as the strength of any family relationships that he/she may have formed during this period, must also be considered to determine whether expulsion is proportionate. All foreign migrants served with expulsion orders must have also a right of appeal to a court or other independent body (Statement of Interpretation on Article 19§8, Conclusions 2015).

In its previous conclusion ([Conclusions 2011](#)), the Committee has assessed the guarantees concerning deportation and found the situation to be in conformity with the Charter in this respect. It asked, however, for an updated information on the grounds in which non-EU nationals, not long-term residents, might be expelled.

The reply submits that in the reference period the Law of 15 December 1980 on entry, stay, settlement and removal of foreign nationals was amended. It strengthened the guarantees concerning deportation, in particular, removal and deportation orders are abolished, with the order to leave the territory being the only removal order for any foreigner, the King no longer intervenes in the decision-making process and the principle of the right to be heard is enshrined in law.

In reply to the Committee's questions, the report states that non-EU nationals, not long-term residents, might be expelled only in case of being sentenced to prison of five years or more, or in the event of a serious breach of public order or national security (Article 21 of the Law).

The Committee furthermore notes that the Law guarantees the right to appeal to court in all cases.

### *Conclusion*

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

**Article 19 - Right of migrant workers and their families to protection and assistance**

*Paragraph 9 - Transfer of earnings and savings*

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

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

The Committee further notes that it addressed the legal framework relating to transfer of earning and savings of migrant workers and found it to be in conformity with the requirements of the Charter ([Conclusions XIV-1](#)). Considering the fact that the situation was repeatedly reported to have remained unchanged, the Committee could renew its positive conclusion, most recently in 2011 ([Conclusions 2011](#)).

In the previous conclusion (Conclusions 2011), the Committee requested a full and up-to-date description of the situation in law and practice in respect of Article 19§9. The report states that there have been no substantial changes to the situation which the Committee previously considered to be in conformity with the Charter. The Committee recalls its request for updated information, in the light of the fact that the latest comprehensive assessment of the situation dates back to 1998.

Referring to its Statement of Interpretation on Article 19§9 ([Conclusions 2011](#)), affirming that the right to transfer earnings and savings includes the right to transfer movable property of migrant workers, the Committee asks whether there are any restrictions in this respect in Belgium.

*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Belgium is in conformity with Article 19§9 of the Charter.



**Article 19 - Right of migrant workers and their families to protection and assistance**

*Paragraph 10 - Equal treatment for the self-employed*

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

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

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

The Committee has found the situation in Belgium not to be in conformity with Articles 19§1 and 19§6. Accordingly, for the same reasons as stated in the conclusions on the abovementioned Articles, the Committee concludes that the situation in Belgium is not in conformity with Article 19§10 of the Charter.

*Conclusion*

The Committee concludes that the situation in Belgium is not in conformity with Article 19§10 of the Charter as the grounds of non-conformity under Articles 19§1 and 19§6 apply also to self-employed migrants.

## **Article 19 - Right of migrant workers and their families to protection and assistance**

### *Paragraph 11 - Teaching language of host state*

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

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

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

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

The Committee notes that it previously addressed the teaching of the national language to migrant workers and their families ([Conclusions 2011](#)) and found it to be in conformity with the requirements of the Charter. It will focus in the present assessment on any changes or outstanding issues.

The report provides that adult education centers are currently undergoing an in-depth reform. The reform's main objectives are to focus more on vulnerable groups, to increase the scale of centers and to increase the qualification orientation of adult education. Its implementation period lasted from 2016 to 2018, with additional financial means made available for this purpose.

The report also provides statistics on the number of adults attending language classes, highlighting that it almost doubled since 2014. It further confirms that language courses offered by Social Promotion Centres and through the Read and Write Programme are free of charge and there are no waiting lists.

In reply to the Committee's query on facilities for migrant workers and their adult family member to learn German, the report provides that adult education centers have been offering language courses, also in German, targeting not only migrants, but also Belgians who want to learn German. Participants pay a registration fee. Since 2017, courses "German as a foreign language" are organized specifically for foreigners, especially newcomers, at various levels. These language courses are part of the integration course and are free of charge, with no access conditions or waiting lists.

### *Conclusion*

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

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

### *Paragraph 1 - Participation in working life*

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

### ***Employment, vocational guidance and training***

The Committee recalls that the aim of Article 27 of the Charter is to promote the reconciliation of professional and family responsibilities by providing people with family responsibilities with equal opportunities in respect of entering, remaining in and re-entering employment. To be able to return to professional life, such persons may need special assistance in terms of vocational guidance and training. However, if the standard employment services (those available to everyone) are well developed, the lack of additional services for people with family responsibilities cannot be regarded as a human rights violation (Conclusions 2003, Sweden).

According to the report, the Collective Labour Agreement No. 38 adopted by the National Labour Council on 6 December 1983 and concerning the recruitment and selection of workers (as amended) contains provisions allowing workers with family responsibilities to enter the labour market. Article 11 of this agreement relates in particular to respect for workers' privacy.

As far as the Flemish Community is concerned, the report indicates that the labour market policy does not include specific services or measures for workers with family responsibilities, but rather focuses on an individual approach. The Committee notes that there are a number of facilities for jobseekers with family responsibilities, such as a free personal and digital service as part of the scheme to help people into employment – the toolbox "loopbaan met zorg" (combining career and family responsibilities). In this context, a number of career support services have specialised in supporting parents with family responsibilities who wish to combine work and family life. As regards access to vocational training, the Committee notes from the report that, if jobseekers have to place their children in childcare so that they can attend vocational training courses, the Flemish Employment and Training Service reimburses these costs. In addition, jobseekers undergoing vocational training are entitled to an incentive bonus.

With regard to Wallonia region, the report states that a Social Cohesion Plan 2014-2019 sets out a number of actions which have been implemented, including childcare for parents seeking employment, support for families in terms of social and occupational integration, housing and health care, etc.

The Committee asks if any other specific vocational guidance, counselling, information and placement services for workers with family responsibilities, to assist such workers in participating or advancing in professional life exists.

### ***Conditions of employment, social security***

The Committee recalls that implementing Article 27§1 of the Charter may also require the adoption of measures concerning length and organisation of working time. Workers with family responsibilities shall be allowed to work part time or to return to full employment (Conclusions 2005, Estonia). The nature of these measures cannot be defined unilaterally by the employer but should be provided by a binding text (legislation or collective agreement).

Workers with family responsibilities shall be entitled to social security benefits under different schemes, in particular health care, during the periods of parental/childcare rearing leave. Legislation or practice shall provide for arrangements entitling workers to time off from work on grounds of urgent family reasons in cases of sickness or accident making the immediate presence of the worker with the sick or injured person indispensable.

The legislation should provide the possibility for the worker raising a child or caring for a sick family member to work part time when requested and to reduce or cease suspend their professional activity because of serious illness of a child.

The Committee further recalls that Article 27§1 of the Charter requires States Parties to take account of the needs of workers with family responsibilities in terms of social security. These workers shall be entitled to social security benefits under the different schemes, in particular health care, during periods of parental/parental educational leave. Periods of leave due to family responsibilities should be taken into account when determining the right to pension and calculating its amount. Crediting periods of childcare leave in pension schemes should be secured equally to both men and women.

The report states that, at federal level, various measures have been adopted to make it easier for workers to reconcile family and professional commitments. It specifies that, in accordance with the Contracts of Employment Act of 3 July 1978, workers may suspend the performance of their employment contracts to care for a child, take childbirth leave (Article 30§2), adoption leave (Article 30ter) or fostering leave (Article 30 quater).

In accordance with the Economic Recovery Act of 22 January 1985, workers could suspend their employment contracts or reduce their working time in the context of special-purpose leave (Royal Decree of 29 October 1997 introducing a right to parental leave in the form of a career break; Royal Decree of 10 August 1998 establishing a right to career breaks for the purpose of assisting or caring for seriously ill members of the household or family; Royal Decree of 22 March 1995 on palliative care leave) or time credit (Collective Labour Agreement No. 103 adopted by the National Labour Council on 27 June 2012 and establishing a system of time-credit, career reduction and end-of-career employment).

The Committee asks whether workers on leave due to family responsibilities are entitled to social security benefits under the different schemes, in particular health care and whether periods of absence are taken into account for determining the right to pension and for calculating the amount of pension. It asks the next report to describe any working conditions foreseen in legislation that may facilitate the reconciliation of working and private life, such as part-time work, working from home or flexible working hours.

### ***Child day care services and other childcare arrangements***

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

#### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Belgium is in conformity with Article 27§1 of the Charter.

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

### *Paragraph 2 - Parental leave*

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

The Committee recalls that the focus of Article 27§2 of the Charter is parental leave arrangements and its modalities which are distinct from those of maternity leave and come into play after the latter. National regulations regarding maternity leave fall under the scope of Article 8§1 of the Charter and are examined under that provision. States Parties should provide the possibility for each parent to obtain parental leave.

An important element for the reconciliation of professional, private and family life are parental leave arrangements for taking care of a child. Whilst recognising that the duration and conditions of parental leave should be determined by States Parties, the Committee considers important that national regulations entitle men and women to an *individual right* to parental leave on the ground of the birth or adoption of a child. With a view to promoting equal opportunities and equal treatment between men and women, the leave should, in principle, be provided to each parent and at least some part of it should be non-transferable.

The Committee notes from the report that parental leave is governed by Section 5 of Chapter IV of the Economic Recovery Act of 22 January 1985 and by the Royal Decree of 29 October 1997 introducing a right to parental leave in the form of a career break.

The right to parental leave may be exercised individually by each parent for a period starting from the birth of the child until the child reaches the age of 12. The Committee asks whether the same rules apply in the public sector.

According to the report, there are different forms of parental leave:

- each worker (employed full-time or part-time) may for a period of four months suspend the performance of their employment contract completely; the four-month period may, at the worker's discretion, be divided into months;
- each full-time worker may switch to part-time working for a period of eight months. The eight-month period may, at the worker's discretion, be divided into months. However, each request must be for a period of two months or a multiple thereof;
- each full-time worker is entitled to reduce his or her working hours by one fifth for a period of 20 months. This reduction in working hours may, at the worker's choice, be divided into months. However, each request must be for a period of five months or a multiple thereof.

Under Article 27§2 of the Charter the States are under a positive obligation to encourage the use of parental leave by the father or the mother. The States shall ensure that employees receive an adequate compensation for their loss of earnings during the period of parental leave.

The modalities of compensation are within the margin of appreciation of the States Parties and can take the form of paid leave (continued payment of wages by the employer), a social security benefit, any alternative form of benefit from public funds or a combination of such forms of compensation. Regardless of the modality of payment, the level of compensation shall be adequate (Statement of Interpretation on Article 27§2 of the Charter, General Introduction to Conclusions 2015).

The report states in this connection that the worker receives a career break allowance funded by the National Employment Office during parental leave. The Committee wishes to receive information on the amount and duration of the parental leave allowance.

The Committee asks if at the end of the parental leave workers have the right to return to the same job. they held before

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Belgium is in conformity with Article 27§2 of the Charter.