March 2020

EUROPEAN SOCIAL CHARTER

European Committee of Social Rights

Conclusions 2019

GERMANY

This text may be subject to editorial revision.

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

A presentation of this treaty as well as statements of interpretation formulated by the Committee appear in the General Introduction to the Conclusions.[1]

The 1961 European Social Charter was ratified by Germany on 27 January 1965. The time limit for submitting the 36th report on the application of this treaty to the Council of Europe was 31 October 2018 and Germany submitted it on 7 January 2019.

This report concerned the following "non-hard core" provisions of the Charter:

- 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).

Germany has accepted all of these articles, with the exception of Articles 7§1, 8§2 and 8§4.

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

The present chapter on Germany concerns 23 situations and contains:

– 15 conclusions of conformity: Articles 7§2, 7§6, 7§7, 7§8, 7§9, 7§10, 8§1, 8§3, 16, 17, 19§2, 19§3, 19§5, 19§7 and 19§9;

– 3 conclusions of non-conformity: Articles 7§5, 19§6 and 19§10.

In respect of the other 5 situations concerning Articles 7§3, 7§4, 19§1, 19§4 and 19§8, 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 Germany under the 1961 Charter. The Government consequently has an obligation to provide the requested information in the next report from Germany on this provision.

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

- the right to work (Article 1);
- the right to vocational guidance (Article 9);
- the right to vocational training (Article 10);
- the right of persons with disabilities to education, training and employment (Article 15);
- the right to engage in a gainful occupation in the territory of other States Parties (Article 18);
- the right of men and women to equal opportunities (Article 1 of the Additional Protocol).

The deadline for the report was 31 December 2019.

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

Article 7 - Right of children and young persons to protection

Paragraph 2 - Higher minimum age in dangerous or unhealthy occupations

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

The Committee previously noted that the Act on the Protection of Young People at Work of 12 April 1976 and the Child Labour Protection Ordinance of 23 June 1998 protect young people under the age of 18 from work which is too difficult, dangerous or unsuitable for them (Conclusions XX-4 (2015)). The Committee concluded previously that the relevant provisions of the Act on the Protection of Young People at Work (section 22 to 31) afford sufficient protection to the health and safety of young workers (Addendum to Conclusions XV-2). It further noted that as regards the employment of young persons on merchant vessels, the Maritime Labour Act contains occupational restrictions applicable to young people. These restrictions are supplemented by a catalogue of activities which should not be carried out by young crew members (Conclusions XX-4 (2015)).

In its previous conclusion (Conclusions XX-4 (2015)), the Committee recalled that there must be an adequate statutory framework to identify potentially hazardous work, which either lists such forms of work or defines the types of risk (physical, chemical, biological) which may arise in the course of work (Conclusions 2006, France). The Committee asked whether the law or regulations provide such list of activities (besides the list for seafarers) with hazard to life, health, physical or mental development of young people and whether the list is updated in view of new occupational health and safety risks.

In this respect, the current report indicates that Section 22 (1) of the Act on the Protection of Young People at Work defines which activities are classified as hazardous work for young people. The report points out that this provision must be read in conjunction with the current occupational safety and health regulations. The Committee notes from Section 22 (1) of the Act that young people shall not be employed in (i) work that exceeds their physical or mental capacity (ii) work which exposes them to moral hazards (iii) work involving the risk of accidents which it may be assumed cannot be recognised or avoided by young people due to a lack of safety awareness or lack of experience, (iv) work in which their health is impaired by exceptional heat or cold or severe moisture (v) work in which they are exposed to harmful effects of noise, vibrations or radiation (vi) work in which they are exposed to the harmful effects of hazardous substances within the meaning of the Hazardous Substances Ordinance, (vii) work in which they are exposed to harmful effects of biological agents in the sense of the Bio-substance Ordinance.

In its previous conclusion (Conclusions XX-4 (2015)), the Committee asked for more detailed information on how the authorities monitor the possible illegal employment of young workers in dangerous or unhealthy occupations. The Committee asked in particular if sanctions are imposed in practice against employers who do not comply with the restrictions on the employment of young persons in work which entails exposure to danger.

The Committee notes from the current report that compliance with the Act on the Protection of Young People at Work is monitored by the occupational safety and health authorities of each Land (Section 51 of the Act). The report indicates that over the years 2016 and 2017 the occupational safety and health authorities of the 16 Lands inspected a total of 9,635 organisations and identified 2,385 violations concerning the legal provisions on the protection of children and young people at work. According to the report, if violations are identified, the authorities respond by providing information about the legal provisions, issuing oral warnings or sending post-inspection notices. In the case of more serious or repeated violations, administrative fine proceedings or criminal proceedings are initiated. In addition, follow-up checks take place in the organisations concerned.

With regards in particular to the employment of young people in dangerous or unhealthy occupations, the Committee notes from the current report that under Section 58 (1) n. 18 of the Act on the Protection of Young People at Work, administrative fines may be imposed in

the event of non-compliance with the above-mentioned Section 22 of the Act. In the event of persistent repetitions of violations or in the case of an intentional exposure of a young person to danger, it is also possible for a prison sentence to be imposed under Section 58 (5) of the Act. According to the report, in the years 2016 and 2017, three Lands identified a total of 5 cases falling under Section 58 (1) n. 18 to 20 of the Act (hazardous work, piecework, underground work). In one case, an administrative fine was imposed. The occupational safety and health authorities passed on 4 cases to the public prosecution office for prosecution. All 4 cases involved an infringement of the ban on employing young people in work associated with a risk of accidents (use of machinery).

The Committee asks the next report to provide up-to-date information concerning the activities and findings of the authorities, including the number of violations detected and the sanctions imposed in practice on the employer in cases of violations concerning the employment of young people in dangerous or unhealthy occupations.

Conclusion

The Committee concludes that the situation in Germany is in conformity with Article 7§2 of the 1961 Charter.

Article 7 - Right of children and young persons to protection

Paragraph 3 - Prohibition of employment of young persons subject to compulsory education

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

The Committee previously noted (Conclusions XX-4 (2015)) that young people in compulsory full-time education in Germany are allowed to work a maximum of 4 weeks in the calendar year (Section 5§4 of the Act on the Protection of Young People at Work). It also noted that the annual length of school holidays in Germany amounts to a total of 75 working days according to the "Hamburg Agreement" of 28 October 1964, and each Land may "make pedagogical considerations paramount" in scheduling the holidays. The Committee further noted that young persons may work for a maximum of 20 days during the holidays and they will have in any case at least two consecutive weeks in the summer holidays (Conclusions XX-4 (2015)).

In its previous conclusion (Conclusions XX-4 (2015)), the Committee asked information as regards the distribution of holidays over the school year and the timing of the uninterrupted period of rest with regard to the other holidays than the summer holiday.

In this respect, the current report indicates that summer holidays last between 6 and 7 weeks. In addition, there are autumn, Christmas and Easter holidays. The length of these holidays varies, lasting between 1 and 3 weeks. Some Lands have shorter Christmas and Easter holidays, but as a balance they have additional winter and/or spring holidays, lasting for a period between a few days and 2 weeks.

The Committee notes that the report does not provide information on the timing of the uninterrupted period of rest with regard to the other holidays than the summer holiday. Therefore, it reiterates its question on this point.

In its previous conclusion (Conclusions XX-4 (2015)), the Committee asked what is the daily and weekly duration of light work permitted to children who are still subject to compulsory education during school holidays.

The current report indicates that in the case of children subject to full-time compulsory education, Section 5 of the Act on the Protection of Young People at work does not make any distinction between the maximum daily duration of work during the school term and during school holidays. Children may not be employed for more than 2 hours a day or for more than 3 hours if they are working in agricultural family-owned businesses. In addition, any employment in the morning before school or during school time is expressly forbidden. Furthermore, children may not work more than 5 days per week and not before 8 a.m. or after 6 p.m. (Conclusions XX-4 (2015)).

The Committee refers to its Statement of Interpretation 2015 on permitted duration of light work and recalls that children under the age of 15 and those who are subject to compulsory schooling are entitled to perform only "light" work. Work considered to be "light" in nature 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. As to the length of such 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 outside the hours fixed for school attendance was in conformity with the requirements of Article 7 of the Charter (Conclusions 2011, Portugal). Regarding working time during school holidays, the Committee considered 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 risk to their health, moral welfare, development or education (Conclusions 2015, General Introduction, Statement of interpretation of Article 7§1).

As regards the duration of work during school term, the Committee notes that according to Section 5 of the Act on the Protection of Young People at work children are allowed to work up to 3 hours a day if they are working in agricultural family-owned businesses. The Committee wishes to receive information on the type of agricultural work children are allowed to perform within the agricultural family-owned businesses and on the conditions under which such work is monitored in practice by the national authorities.

As regards working time during school holidays, given that according to the Act on the Protection of Young People at work, during the school holidays, children may not perform work for more than 2 hours a day or for more than 3 hours if they are working in agricultural family-owned businesses, 5 days per week, the Committee concludes that the situation in Germany is in conformity with Article 7§3 of the 1961 Charter on this point.

In its previous conclusion (Conclusions XX-4 (2015)), the Committee asked for more detailed information on the activities of the authorities (the Labour Inspectorate) of monitoring and detecting cases of possible illegal employment of young persons subject to compulsory education. It asked in particular what sanctions are imposed in practice against the employers for infringements of the applicable legislation.

The Committee refers to its conclusion under Article 7§2 where it noted that compliance with the Act on the Protection of Young People at Work is monitored by the occupational safety and health authorities of each Land (Section 51 of the Act). The report indicates that over the years 2016 and 2017 the occupational safety and health authorities inspected a total of 9,635 organisations and identified 2,385 violations concerning the legal provisions on the protection of children and young people at work. According to the report, if violations are identified, the authorities respond by providing information about the legal provisions, issuing oral warnings or sending post-inspection notices. In the case of more serious or repeated violations, administrative fine proceedings or criminal proceedings are initiated. In addition, follow-up checks take place in the organisations concerned.

The Committee notes that the current report does not provide specific information on activities and findings of the authorities in relation to the prohibition of employment of young persons subject to compulsory education. The Committee asks to receive disaggregated data concerning the monitoring activities and findings of the authorities in relation to the prohibition of employment of young persons subject to compulsory education, including the number of violations detected and sanctions applied in practice.

Conclusion

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

Article 7 - Right of children and young persons to protection

Paragraph 4 - Length of working time for young persons under 16

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

The current report indicates that children under the age of 15 and young persons aged from 15 to 17 still subject to full-time compulsory education may not be employed for more than 2 hours a day or for more than 3 hours if they are working on agricultural family-owned businesses, 5 days per week and not before 8 a.m. or after 6 p.m.

According to Section 12 of the Act on the Protection of Young People at Work, young people aged from 15 to 17 who are no longer subject to full-time compulsory education may not be employed for more than 8 hours a day and 40 hours a week. The duration of their shift – including breaks – may not exceed 10 hours. The report also indicates that the duration of such shifts – including breaks – may not exceed 8 hours in the mining sector, 11 hours in the agricultural sector, livestock farming and on construction and installation sites. It further indicates that young people may not be employed on Saturdays, Sundays, on 24 and 31 December after 2 p.m., or on public holidays. In sectors where it is normal to work on Saturdays and Sundays, exemptions allowing young people to work on these days are possible (Section 16 to 17 of the Act on the Protection of Young People at Work).

As regards rest time, the report indicates that young people must benefit of predetermined breaks lasting at least 30 minutes if they are working for more than 4 and a half hours, and breaks lasting at least 60 minutes if they are working for more than 6 hours (Section 11 of the Act on the Protection of Young People at Work). They must receive an uninterrupted rest period of at least 12 hours after the end of their daily working time (Section 13 of the Act on the Protection of Young People at Work).

According to the report, a collective agreement, or an organisation-level agreement based on a collective agreement, may permit working time to be organised differently, allowing young people to work up to 9 hours daily, 44 hours weekly and up to 5 and a half days per week. However an average weekly working time of 40 hours may not be exceeded over a two-month reference period (Section 21a of the Act on the Protection of Young People at Work).

The Committee notes from the report that the Act on the Protection of Young People at Work also applies to the short-term employment of young people.

The Committee recalls that for persons under 16 years of age, a limit of 8 hours a day or 40 hours a week is contrary to Article 7§4 of the Charter (Conclusions XI-1 (1991), Netherlands). However, for persons over 16 years of age, the same limits are in conformity with the Article (Conclusions 2002, Italy).

The Committee notes that education is compulsory in Germany for children up to the age of 16, 17 or 18, depending on the Land. The Committee asks the next report to indicate what is the number of children under the age of 16 no longer subject to full-time compulsory education actually employed. It also asks the next report to indicate how the Labour Inspectorate monitor in practice the implementation of organisation-level agreements permitting working time to be organised differently. In the meantime, it reserves its position on this point.

The Committee further notes from the report that an employer who intentionally or negligently employs a young person to work for longer than the permitted working time is committing an administrative offence and can be fined up to €15,000. If an intentional act of this kind places a young person in danger, or if the employer persistently repeats it, it constitutes a criminal offence and can result in up to 1 year imprisonment or in a criminal fine (Section 58 of the Act on the Protection of Young People at Work).

As regards monitoring the rules on the protection of young people at work, the Committee refers to its conclusion under Article 7§2 where it noted that compliance with the Act on the

Protection of Young People at Work is monitored by the occupational safety and health authorities of each Land (Section 51 of the Act). The report indicates that over the years 2016 and 2017 the occupational safety and health authorities inspected a total of 9,635 organisations and identified 2,385 violations concerning the legal provisions on the protection of children and young people at work. According to the report, if violations are identified, the authorities respond by providing information about the legal provisions, issuing oral warnings or sending post-inspection notices. In the case of more serious or repeated violations, administrative fine proceedings or criminal proceedings are initiated. In addition, follow-up checks take place in the organisations concerned. The report further indicates that young people have the option of seeking legal protection from the competent labour court in the event of a dispute.

The Committee notes that the report does not provide specific information on activities and findings of the authorities in relation to the legislation concerning the length of working time for young persons under 16. The Committee asks to receive disaggregated data concerning the monitoring activities and findings of the authorities in relation to the length of working time for young persons under 16, including the number of violations detected and sanctions applied in practice.

Conclusion

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

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 Germany.

Young workers

In its Conclusions XX-4(2015), the Committee concluded that the situation with respect to pay of young workers was in conformity with Article 7§5 of the Charter. The previous report indicated that in the industry-wide collective agreements there are only two sectors in which wages have been negotiated for the young persons under 18 years (chemical industry in Bavaria and in Eastern Germany; confectionery industry in Lower Saxony/Bremen and in Eastern Germany). The report contains updated information on the pay of young workers. As regards the wages paid to young employees working in these particular sectors the Committee notes that, on the basis of the figures provided in the report, the difference between the starting wage of adult workers and the lowest wage for young workers is approximately 20%, which it considers to be acceptable under Article 7§5 of the 1961 Charter. The Committee notes that the adult starting salary in the above mentioned sectors is above 60% of the net average wage which is considered sufficient to secure a decent standard of living, therefore the Committee on these basis reconfirms its positive conclusion.

The previous report indicated that most collective agreements no longer differentiate between adolescent and adult workers. On the basis of this information the Committee notes from the figures provided in the report, that the young workers wage represents more than 80% of the minimum threshold (60% of the net average wage) which is considered enough to ensure a decent standard of living.

In its Conclusions XX-4(2015) the Committee asked information on the wages paid to young workers who are not covered by collective agreements. The report indicates that the general minimum wage applies to young workers under the age of 18 who have completed a vocational training programme. Since 1 January 2017, the minimum wage has been 8.84 € gross per hour worked.

Apprentices

The Committee notes from the information on different economic sectors contained in the report that apprentices at the beginning of an apprenticeship could receive more than one third of the adult starting wage in most sectors (with the exception of construction, painting and decorating sectors throughout Germany and private transport industry in Thuringia) which is in conformity with Article 7§5 of the 1961 Charter, while at the end of the apprenticeship the allowance is lower than the required two thirds under Article 7§5 of the 1961 Charter.

The Committee recalls that under Article 7§5, the allowance paid to apprentices must be at least one third of an adult's starting wage or minimum wage at the beginning of their apprenticeship and reach at least two thirds by the end (Conclusions 2006, Portugal). In accordance with the methodology adopted with regard to Article 4§1, wages are taken into account after deduction of both social security contributions and taxes. The Committee recalls its opinion that, as for young workers, where the adult reference wage is very low, the wage of apprentices cannot be considered fair (Conclusions XII-2 (1992), Malta). The Committee points out that in Conclusions XXI-3(2018) it has concluded that the situation in Germany is not in conformity with Article 4§1 of the 1961 Charter on the ground that the statutory minimum wage is not sufficient to ensure a decent standard of living to all workers.

As regards public sector apprentices, the report indicates that the "Collective Agreement for Public Sector Trainees (TVAöD)" of 13 September 2005 (most recently amended by collective agreement No.6 of 29 April 2016) gives public sector trainees the right to negotiate independently. The TVAöD covers basically all public sector occupations requiring training

and is supplemented by specific regulations. The report indicates that apprentices' wages in the public sector are higher than average. The Committee notes, from the examples and information on allowances paid to apprentices in the public sector provided in the report, that apprentices at the beginning of their apprenticeship may receive more than one third of the adult starting wage, while at the end of the apprenticeship the allowance is lower than the required two thirds under Article 7§5 of the 1961 Charter.

Conclusion

The Committee concludes that the situation in Germany is not in conformity with Article 7§5 of the 1961 Charter on the ground that the allowances paid to apprentices are inadequate.

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 Germany.

In its previous Conclusions XX-4(2015) the Committee asked the next report to provide a full and up-to-date description of the situation in law and in practice. The report indicates that employers are required to release young people from work to attend vocational school, without a reduction in pay. In addition, employers are not permitted to require young people to work prior to a class beginning before 9 a.m. Young people are to be released completely from work once a week for a day of vocational school with more than five hours of lessons. In weeks spent at vocational school with a planned block of lessons lasting at least 25 hours over at least five days, young people are not allowed to work. Additional training events in the workplace lasting up to two hours weekly are permitted. Days and weeks spent at vocational school are counted as working time (Section 9 of the Act on the Protection of Young People at Work). Employers are required to release young people from work to sit exams and attend vocational training, and for the working day immediately preceding the day of their final written examination. Time spent sitting the examination, including breaks and the day before the examination when young people are released from work, is counted as working time (Section 10 of the Act on the Protection of Young People at Work). The Committee notes from the information provided in the German report that there have been no changes to the legal situation which it has previously found to be in conformity with Article 7§6 of the 1961 Charter.

Conclusion

The Committee concludes that the situation in Germany is in conformity with Article 7§6 of the 1961 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 Germany.

In its previous Conclusions XX-4(2015) the Committee asked the next report to provide a full and up-to-date description of the situation in law and in practice. The report indicates that young people are entitled to paid holidays; the duration of the holidays depends on their age. The Act on the Protection of Young People at Work calculates holiday entitlement on the assumption of a week consisting of six business days, including Saturday. Under Section 19 of the Act on the Protection of Young People at Work, 15-year-olds are entitled to 30 days, 16-year-olds to 27 days, and 17-year-olds to 25 days of annual holiday. The Committee notes from the information provided in the German report that there have been no changes to the legal situation which it has previously found to be in conformity with Article 7§7 of the 1961 Charter.

Conclusion

The Committee concludes that the situation in Germany is in conformity with Article 7§7 of the 1961 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 Germany.

In its previous conclusion XX-4(2015) the Committee requested information on the proportion of young workers not covered by the ban on night work, including on the number of young workers employed in the above-mentioned sectors. The report indicates that in principle, young people may not be employed between 8 p.m. and 6 a.m. Section 14 of the Act on the Protection of Young People at Work provides an exhaustive list of activities and sectors where it may be permissible for young people to be employed in the evening after 8 p.m. or in the early morning before 6 a.m. The rules on the times permitted vary and depend on the special nature of the sector in question, the young person's age and the time of year. The Federal Government has no valid statistics on how many young people in the specified sectors regularly work in the evening or early morning. The Committee recalls that in application of Article 7.8 domestic law must provide that under-eighteen year olds are not employed in night work. Exceptions can be made as regards certain occupations. If they are explicitly provided in domestic law, the number of young workers concerned should be low. In this respect the Committee reiterates its request to provide in the next report data on the number of young workers involved in the night work (in the evening or early morning) in the specified sectors.

In its previous conclusion XX-4(2015) the Committee asked for more detailed information on how the regulatory authorities monitor the possible illegal involvement of young workers in night work. The Committee wished to know if sanctions are imposed in practice against employers who do not comply with the prohibition of night work and the restrictions provided under Sections 13 and 14 of the Act on the Protection of Young People at Work. The report indicates that compliance with the prohibition of night work is monitored by the occupational safety and health authorities of the *Länder*, as is the case for the other provisions of the Act on the Protection of Young People at Work. See also the information provided in the sections of the report relating to Article 7, paragraphs 2 and 3. The report stated that most *Länder* do not collect statistics on the type of infringement. However, some *Länder* have reported that they identified infringements of the prohibition of night work in 2016 and 2017. Depending on the seriousness of the infringement and the results of previous checks on the employer, oral and written warnings were issued, and administrative fine proceedings initiated.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Germany is in conformity with Article 7§8 of the 1961 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 Germany.

The report indicates that there have been no changes to the legal situation which it has previously found to be in conformity with Article 7§9 of the 1961 Charter. The Committee asks the next report to provide a full and up-to-date description of the situation in law and in practice.

Conclusion

The Committee concludes that the situation in Germany is in conformity with Article 7§9 of the 1961 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 Germany.

Protection against sexual exploitation

The Committee previously asked whether all acts of sexual exploitation of children, including simple possession of child pornography, are criminalised to protect all children under 18 years of age. It also asked whether child victims of sexual exploitation are in all circumstances considered victims or whether they can be prosecuted (Conclusions XX-4, 2015).

The Committee notes from the report that the criminal law criminalises all acts of sexual exploitation of all children under the age of 18 years. In particular the Committee notes that the law criminalises the simple possession of child pornography where the child depicted is under 18 years of age. Increased penalties are provided for where the child is under the age of 14 years.

The Committee further asked for information on measures taken to ensure the prevention of sexual violence against children, especially in schools as well as the allocation of resources to specialised services (Conclusions XX-4, 2015).

According to the report in 2014, strategy to protect children and young people from sexual violence was published, building in part on the recommendations of the Round Table on the Sexual Abuse of Children in Relationships of Power and Dependency in Public and Private Institutions and Within the Family. The strategy aimed to bring about improvements in the fields of criminal law, criminal proceedings, the right to protection, advice and support for victims, and digital media. The measures set out in the strategy have largely been implemented.

In addition, both the Federation and the Länder have taken various non-legislative measures during the reporting period to improve the protection of children and young people from sexual violence and exploitation. The nationwide initiatives “You Can Do It!” (Trau Dich!) and “Schools Against Sexual Violence” (Schule gegen sexuelle Gewalt) focus on schools as important forums in terms of protection from sexual violence. As part of the “You Can Do It!” prevention initiative, run by the Federal Government and the Federal Centre for Health Education, children aged between 8 and 12 are educated about and empowered in their right to protection from sexual violence, in an age-appropriate manner, via individual partnerships with the Länder. By the end of 2018, the initiative will have reached around 54,000 children in ten Länder. The initiative is to be continued beyond 2018. The nationwide “Schools Against Sexual Violence” initiative, which is run by the Independent Commissioner for Child Sex Abuse Issues in partnership with all 16 Länder, supports schools in developing strategies on protection from sexual violence. A specialised website provides practical guidance and information specific to the Land in question for head teachers and school staff.

It asks the next report to provide updated information on measures taken to prevent the sexual exploitation of children.

Protection against the misuse of information technologies

The Committee previously asked to receive updated information regarding measures taken in law and in practice to combat sexual exploitation of children through the use of internet technologies, such as by providing that internet service providers be responsible for controlling the material they host and encouraging the development and use of the best monitoring system for activities on the Internet (Conclusions XX-4, 2015).

To improve protection from sexual violence and exploitation in digital media, the Federal Government launched the “No Grey Areas on the Internet” network (*Keine Grauzonen im*

Internet) in 2014 to combat all forms of sexual exploitation of children and drive forward the international prohibition of depictions which fall in a grey area. The grey area includes depictions of minors which do not cross the line to be considered criminal offences in every country, but which are disseminated for sexual purposes. These include depictions which already constitute criminal offences in Germany under Section 184b (1) no. 1 b and c of the Criminal Code (*Strafgesetzbuch*) (which deals with child pornography) and Section 184c (1) no. 1 b of the Criminal Code (juvenile pornography), as well as depictions which are prohibited in light of the law on the protection of young people in relation to media. The network is a forum for existing complaint offices, internet companies and the "Don't Offend" network (*Kein Täter werden*) to support each other. The complaint offices receive alerts about depictions falling in the grey area, pass on content which constitutes a criminal offence or an offence under the law on the protection of young people in relation to media to investigating authorities and partner hotlines abroad, and contacts service-providers to ensure the removal of the content.

Protection from other forms of exploitation

The Committee previously asked what measures were taken to assist children in street situations and child victims of trafficking, in particular whether conditions linked to the provision of residence permits to child victims of trafficking had been removed (Conclusions XX-4, 2015).

According to the report all forms of exploitation have been criminalised since the Act Implementing Directive 2011/36/EU (*Gesetz zur Umsetzung der Richtlinie 2011/36/EU*) was adopted in the autumn of 2016: exploitation in connection with prostitution or other forms of sexual exploitation; labour exploitation; exploitation in connection with begging, criminal activities, slavery or practices similar to slavery; servitude; and human trafficking for the purpose of the removal of organs.

In partnership with ECPAT (End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes) Deutschland, the Federal Government has developed a Federal Cooperation Strategy on Protection and Assistance regarding Child Trafficking and Exploitation. It sets out recommendations for coordinated cooperation and guidance on the protection of minor victims of human trafficking.

The strategy's aim is to offer children and adolescents protection from trafficking and exploitation, to support victims and to ensure effective prosecution, while at the same time avoiding the potential for the victims to be traumatised or victimised further.

The report states that Section 25 (4a) of the Residence Act (*Aufenthaltsgesetz*) contains a special humanitarian provision concerning the issuing of residence permits to victims of human trafficking. It stipulates that a permit is to be issued if, among other things, the victim has declared his or her willingness to testify as a witness in the criminal proceedings relating to the offence committed against him or her.

However, victims of human trafficking may also be issued residence permits on the basis of other provisions, irrespective of their participation in criminal proceedings. Minors who are victims of human trafficking, in particular, may be issued a permit under Sections 23a and 25 (4) or (5) of the Residence Act, for example.

The Committee asks the next report to provide updated information on measures taken to address the trafficking of children.

As regards assistance to children in street situations the report states that Child and Youth services are, in principle, available to all children and young people in Germany, and include a variety of different services. These services take into account the different life situations and needs of the children and young people in question.

A wide spectrum of individual forms of assistance in bringing up children make it possible to tailor assistance to the needs of the specific case. One temporary measure for the protection of children and young people, including children in street situations is taking them into care,

Conclusion

The Committee concludes that the situation in Germany is in conformity with Article 7§10 of the 1961 Charter.

Article 8 - Right of employed women to protection

Paragraph 1 - Maternity leave

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

In its previous conclusion (Conclusions XX-4 (2015)), the Committee found that the situation was in conformity with Article 8§1 of the Charter. It will therefore only consider the recent developments and additional information.

Right to maternity leave

The report states that the Maternity Protection Act was enacted on 23 May 2017 and is being implemented in several stages. The Committee notes that the post-natal maternity leave for the mother of a disabled child has increased from 8 to 12 weeks (on request).

As to the subsequent stages of the entry into force of the law (outside the reference period), the Committee will examine them during its next assessment.

Right to maternity benefits

The report states that the provisions concerning maternity benefits were not amended during the reference period. However, the Committee notes that according to the report, the Maternity Protection Act applies to all working mothers or pregnant women in employment, and to teleworkers or having an equivalent status, including those in part-time employment, domestic workers and women in vocational training (if the training is part of an employment contract).

The Committee noted previously (Conclusions XX-4 (2015)) that women receive maternity benefit from the statutory health insurance fund during the whole maternity leave period (§§ 13 and 14, MuSchG). The amount of the benefit corresponds to 100% of the average net wages paid over in the last three months preceding the start of the statutory leave period.

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

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

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

According to Eurostat data, the median equivalised annual income was €21,906 in 2017, or €1,826 per month. 50% of the median equivalised income was €10,953 per annum, or €913 per month.

The Committee noted previously (Conclusions XX-4 (2015)) that the amount of maternity benefits corresponds to the entire average net wage. According to EUROSTAT data, the gross minimum monthly salary in Germany in 2017 was € 1,498. In the light of the above, the Committee finds that the situation is in conformity with Article 8§1 on this point.

In its previous conclusion, the Committee asked whether interruptions in the employment record were taken into account in the determination of maternity benefits. The report does not provide any information on this point. The Committee accordingly reiterates its request.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Germany is in conformity with Article 8§1 of the 1961 Charter.

Article 8 - Right of employed women to protection

Paragraph 3 - Time off for nursing mothers

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

In its previous conclusion (Conclusions XX-4 (2015)), the Committee found that the situation was in conformity with Article 8§3 of the 1961 Charter. Since the situation remains unchanged, it confirms its previous finding of conformity.

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

Conclusion

The Committee concludes that the situation in Germany is in conformity with Article 8§3 of the 1961 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 Germany.

Legal protection of families

Rights and obligations, dispute settlement

The report indicates that during the reference period there have been no major changes to the situation which the Committee previously considered to be in conformity with Article 16 of the 1961 Charter as regards **rights and obligations of spouses**, **settlement of disputes** and **mediation services** (see Conclusions XX-4 (2015)). As regards the question raised in respect of mediation costs, the Committee understands from the report that a reform of non-contentious jurisdiction was ongoing. It asks the next report to provide full information in this respect.

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

Domestic violence against women

Germany has signed and ratified the Istanbul Convention on Preventing and Combating Violence against Women and Domestic Violence (which came into force in Germany on the 1st February 2018). The assessment under this instrument has not taken place yet.

The Committee takes note of the information presented in the report concerning the developments occurred since its latest assessment (see Conclusions XX-4 (2015)), in particular as regards the protection measures provided under the Act on Civil Law Protection against Violent Acts and Stalking of 2002 (see also Conclusions XVIII-1 (2006)). The report recalls that as from September 2009, judicial responsibility for matters relating to protection from violence, which had previously been shared between various courts, has been concentrated on the family courts, with the aim of putting all forms of recorded acts of violence or harassment into the hands of their judges, with proceedings subject to rules of procedure characterised by the principle of *ex-officio* investigation. Since 10 March 2017, it has been an offence not only to violate an injunction issued to provide protection against violence, but also to violate a settlement confirmed by the court. In addition, the courts are legally required to inform without delay the relevant police authorities, and other public bodies affected by the implementation of the measures, of any injunctions or settlements confirmed by the courts which contain measures pursuant to the Act on Civil Law Protection against Violent Acts and Stalking. According to the report, this is intended to ensure the effective protection of victims from further violence. The Committee takes note of the statistical data referred to in the report, which indicate a moderate increase in court proceedings under the Act on Civil Law Protection against Violent Acts and Stalking since 2006, but a slight decrease in 2016, as compared to 2012 (respectively 47 146 and 47 623 cases passed through the local courts under the abovementioned law in 2016 and 2012).

The Committee recalls that Article 16 requires that there exists protection for women, both in law (through appropriate measures and punishments for perpetrators of violent acts, including restraining orders, fair compensation for the pecuniary and non-pecuniary damage caused to the victims, the possibility for victims – and associations acting on their behalf – to take their cases to court and special arrangements for the examination of victims in court) and in practice (through the collection and analysis of reliable data, training for members of the police in particular, and services to reduce the risks of violence, support and rehabilitation services for victims of such conduct).

While taking note that, according to the report, the reform of 2009 has proven its worth, the Committee notes that the report does not provide any information on the prevention measures enacted (training, awareness-raising, rehabilitation...), on the existence of

helplines, shelters or emergency centres, on the effective implementation of restraining orders and the prosecution of domestic violence against women or the implementation of integrated policies involving all levels of government and all relevant agencies and institutions.

It accordingly asks the next report to provide comprehensive and updated information on all these points, the measures enacted and their impact on reducing domestic violence against women, also in the light of the concerns expressed in the Concluding Observations of the Committee on the Elimination of Discrimination against Women (CEDAW) of 2017 about "a) the prevalence of domestic violence against women and the absence of a comprehensive strategy of prevention and early intervention, along with the prevailing attitudes among judicial authorities that cases of domestic violence are a private matter; (b) Underreporting of gender-based violence to the police, and low prosecution and conviction rates; (c) Reports suggesting that women with disabilities, in particular those living in residential institutions, are two to three times more likely to be exposed to violence than other women; (d) Reported incidents of sexual and domestic violence against women in refugee shelters by their partners, shelter staff or security staff; and the legal restrictions on their freedom, which often force them to wait several months before they can be transferred to an alternative safe shelter; (e) Incidents of hate crimes and attacks on refugees and asylum seekers in both shelters and camps, causing injury to women and girls; (f) Gender-based stereotypes and myths surrounding rape within society and among legal professionals; (g) The fact that, in certain cases, women encounter difficulties in achieving recognition of their situation of particular hardship, which, according to the Residence Act, leads to the abandonment of the requirement for cohabitation in marriage of at least three years to gain an independent right of residence, or their being forced to remain married to a violent spouse to avoid losing their derived right of residence".

Social and economic protection of families

Family counselling services

The Committee refers to its previous conclusion (Conclusions XX-4 (2015)), in which it found the situation to be in conformity with the Charter.

Childcare facilities

The Committee recalls that States Parties are required to ensure that childcare facilities are available, affordable and of good quality (coverage with respect to the number of children aged 0-6, ratio of staff to children, staff training, suitable premises and cost of childcare to parents, etc.). The report does not provide any information on this point, despite the repeated requests for detailed and up-to-date information (Conclusions XIX-4 (2011), XX-4 (2015)). The Committee therefore reiterates its request. Should the next report not provide the requested information there will be nothing to show that the situation is in conformity with the Charter in this respect.

Family benefits

Equal access to family benefits

The Committee notes that there is no change to the situation which was previously (Conclusions XX-4 (2015) found to be in conformity with the 1961 Charter. Therefore, the Committee reiterates its conclusion of conformity on this point.

Level of family benefits

The Committee notes from MISSOC that the amount of child benefit for the first child and second children stood at € 194 and at € 200 for the third child. The Committee notes from

Eurostat that the median equivalised income stood at € 1,825 per month. The Committee observes that the child benefit represents 10% of the median equivalised income and is, therefore, an adequate income supplement. The Committee considers that the situation is in conformity with the 1961 Charter on this point.

Measures in favour of vulnerable families

The Committee asks what specific measures are taken to protect vulnerable families, such as Roma families and single-parent families.

Housing for families

The Committee refers to its previous conclusions (Conclusions XX-4 (2015)) for a description of the procedural framework for the protection of persons threatened by eviction. It also takes note of the information provided in the current report in respect of Article 19§4 of the Charter, concerning social housing (see Conclusions XXI-4 (2019), Article 19§4). There is a system of funding for owner-occupied residential property, which is particularly suited to households with two or more children, provided that the specified income limits are met.

The Committee wishes that the next report provide detailed information and figures (demand and supply) on the various types of housing support for vulnerable families, including social housing and housing allowances. In this regard, it notes from another source (Housing Europe, The State of Housing in the EU 2017, p. 68) that while the social housing stock has been decreasing over the past two decades, in recent years (2014-2015) the number of new completed social housing has risen again for the first time. The Committee further observes that the United Nations Committee on Economic, Social and Cultural Rights, in its Concluding observations on the sixth periodic report of Germany adopted on 12 October 2018 (outside the reference period), expressed concern about the very high level of rents and rent increases, the acute shortage of affordable housing, coupled with the decreased number of apartments available as social housing, as well as the situation of homeless families in metropolitan areas (§ 54). In this connection, the Committee also asks for information in the next report on whether the offer of emergency accommodation (shelters or other centres) corresponds to the demand.

The Committee previously asked (Conclusions XIX-4 (2011), XX-4 (2015); with reference to the comparative report on "Housing conditions of Roma and Travellers in the European Union" (October 2009), European Union Agency for Fundamental Rights (FRA)) information on conditions in accommodation provided to Roma asylum-seekers from non-EU Member States, particularly as regards children. The report does not provide any information in this respect. The Committee refers to its Statement of Interpretation on the rights of refugees under the Charter (Conclusions 2015). In this connection, it notes that during the reference period Germany has been particularly affected by the refugee movements across Europe, experiencing a very high number of arrivals of asylum-seekers or persons seeking protection, particularly from Syria. The Committee therefore asks the next report to indicate which measures are taken to ensure adequate housing for refugee families and whether they have access in practice to social housing schemes and housing allowances after leaving reception centres. It wishes to be provided with any figures and statistics available on this issue.

Pending receipt of the information requested, the Committee considers that the situation is in conformity with Article 16 of the 1961 Charter on this point.

Participation of associations representing families

The Committee refers to its previous conclusion (Conclusions XX-4 (2015)), in which it found the situation to be in conformity with the Charter.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Germany is in conformity with Article 16 of the 1961 Charter.

Article 17 - Right of mothers and children to social and economic protection

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

The legal status of the child

The Committee notes the information in the report on the Act to Improve Enforcement of the Requirement to Leave the Country (*Gesetz zur besseren Durchsetzung der Ausreisepflicht*) (Fed-eral Law Gazette I, p. 2780) of 29 July 2017. The Committee requests information as to the extent to which the best interests of the child plays a role with regard to the review process outlined in the Act. The Committee also requests further information as to what is meant by acknowledgement of paternity for the specific purpose of creating the conditions for authorized residence for the child, the acknowledging party or the mother. In particular, the Committee asks whether it is possible to have a situation under the Act where there is acknowledgement of paternity by a biological father but this is not legally permitted to be taken into account in processes focused on determining the authorization of the residence of the child, the acknowledging party or the mother .

The Committee notes that according to the report the European Convention on the Adoption of Children (Revised) of 27 November 2008 entered into force for Germany on 1 July 2015. It replaces and modernises the 1967 European Convention on the Adoption of Children and gives greater consideration to the child's best interests.

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

According to EUROSTAT in 2015 there were 6,395 first time asylum applications in the EU by children recorded as stateless and 7,620 by children with an unknown nationality. This figure only concerns EU states and does not include children born stateless in Europe, nor those who have not applied for asylum. In 2015, UNHCR estimated the total number of stateless persons in Europe at 592,151 individuals

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

Protection from ill-treatment and abuse

The Committee notes that there have been no changes to the situation which it has previously found to be in conformity with the Charter (Conclusions 2015). The Committee recalls that all forms of corporal punishment are prohibited in all settings.

Rights of children in public care

The Committee previously requested updated information on the situation of children in public care and the number of children in foster care (as opposed to in institutions).

No information is provided in the report on this issue, therefore the Committee asks the next report to provide information on the number of children in the care of the state, the number placed in institutions and the number placed in foster families, as well as information on the trends in the area. 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.

The Committee further requests information on measures to support families so as to ensure that the placement of children outside the home is always in the best interests of the child and a measure of last resort.

Children in conflict with the law

The Committee recalls from previous reports that the age of criminal responsibility is 14 years in Germany. Children who transgress the criminal law are dealt with by youth courts. A youth court can impose on a child found guilty of a criminal offence, measures of correction and socio educational measures or youth detention. Detention may not be longer than 10 years. The Committee recalls in this respect that the detention of a child must be exceptional, a measure of last resort, for the shortest period of time. Further it must be subject to regular review. The Committee asks in this respect whether such sentences are subject to regular review.

The Committee recalls from previous reports that pre-trial detention must be an exceptional measure and should not last longer than six months but maybe extended in exceptional circumstances. The Committee recalls that it has previously found a period of pre- trial detention of 8 months not to be in conformity with the Charter (Denmark 2015). The Committee asks the next report to provide further information on the length of pre-trial detention.

The Committee recalls that children are separated from adults while in detention.

The Committee asks whether children maybe held in solitary confinement, and if so, for how long and under what circumstances.

The report provides statistics on the number of children sentenced to detention, measures of correction and socio-educational measures. The Committee notes that most children are sentenced to measures of correction or socio educational measures However approximately 10,000 children in 2016 were sentences to detention, however in 5,000 cases it was suspended.

Right to assistance

Article 17 guarantees the right of children, including children in an irregular situation and non-accompanied minors to care and assistance, including medical assistance and appropriate accommodation[International Federation of Human Rights Leagues (FIDH) v. France, Complaint No 14/2003, Decision on the merits of September 2004, § 36, *Defence for Children International (DCI)* v. the Netherlands Complaint 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 previously asked what assistance is provided to children in an irregular situation, and what measures have been taken to ensure that children in an irregular situation are not discouraged from requesting assistance due to their irregular situation (Conclusions 2015). The Committee notes that the report provides no information in this respect therefore it repeats its request for this information. 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.

The Committee considers that the detention of children on the basis of their or their parents' immigration status is contrary to the best interests of the child. Likewise unaccompanied minors should not be deprived of their liberty and detention cannot be justified solely on the basis of the child being unaccompanied or separated. Nor can it be justified solely on the basis of their migratory or residence status or (lack thereof). The Committee requests information as to whether children who are irregularly present in the State accompanied by their parents or not, may be detained and if so under what circumstances.

The Committee requests information on accommodation facilities for migrant children whether accompanied and unaccompanied, including measures taken to ensure that children are accommodated in appropriate settings.

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

Child poverty

he 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 Parties efforts to ensure the right of children and young persons to social, legal and economic protection. The obligation of states to take all appropriate and necessary measures to ensure that children and young persons have the assistance they need is strongly linked to measures directed towards the amelioration and eradication of child poverty and social exclusion. Therefore, the Committee will take child poverty levels into account when considering the State Parties obligations in terms of Article 17 of the Charter.

The Committee notes that according to EUROSTAT in 2017 18% of children in Germany were at risk of poverty or social exclusion (below the EU average of 24.9%).

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

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

Conclusion

Pending receipt of the information requested the Committee concludes that the situation in Germany is in conformity with Article 17 of the 1961 Charter.

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

Paragraph 1 - Assistance and information on migration

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

Migration trends

The Committee has assessed the migration trends in Germany in its previous conclusion (Conclusions XX-4 (2015)). 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.

Policy and the legal framework

The Committee notes that it has assessed the policy and legal framework relating to migration matters in 2011 (Conclusions XIX-4). The report provides that the Federal Government focuses on teaching German and provision of migration advisory services. The Committee asks that the next report provide up-to-date information on the framework for immigration and emigration, and any new or continued policy initiatives.

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 the previous conclusion (Conclusions XIX-4), the Committee noted that language and orientation classes continue to be offered as a part of an integration course and that some migrants had to pay for these classes upon arrival. It requested specific information on the thresholds for payment and on the costs of these courses, as well as whether temporary residents, such as posted workers, could participate. It also asked about sanctions for failure to participate.

In reply, the report states that the need for integration courses increased in the reference period. The contribution to costs for participants is 1,95 EUR per lesson and a full integration course is 700 lessons. Participants who receive cost-of-living assistance can be exempted from costs and exemption can also be granted upon request to those to whom the costs represent an unreasonable hardship. The integration course is targeted at migrants who are lawful permanent residents of Germany. Migrants are assumed to be permanent residents if they receive a residence permit for at least one year or have held a residence permit for more than 18 months, unless their residence in Germany is limited in time from the outset. However, other migrants and German nationals are permitted to attend an integration course if there are places available because they do not have a sufficient command of the German language and they have particular integration needs. The contribution to the costs set out above applies equally in such cases.

Passing the integration course's final examination serves as evidence of the sufficient command of the German language and the basic knowledge of Germany's legal and social system which are required for a permanent settlement permit to be issued. Also, institutions

providing basic income support for jobseekers or institutions providing benefits under the Asylum Seekers Benefits Act may require migrants to attend integration courses. As regards sanctions, migrants who receive benefits under Book II of the Social Code can, in the case of nonattendance or an infringement of their obligations, face a 30% reduction in these benefits, and further reductions in the event of repeated infringements. Migrants who receive benefits under the Asylum Seekers Benefits Act risk losing these benefits in the event of non-attendance or an infringement of their obligations. In such cases, individuals generally only receive benefits in kind to meet their need for food and accommodation, including heating, as well as personal care and health care. Furthermore, participants with an obligation to attend can, if they infringe this obligation, be charged the estimated course fee in advance.

The report further provides the usage statistics for the Migration Advisory Service for Adult Immigrants which show a significant increase for several years.

The Committee considers that the situation is in conformity with the Charter on this point.

Measures against misleading propaganda relating to emigration and immigration

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

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

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

The Committee 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 also recalls that the authorities should take action against misleading propaganda as a means of preventing illegal immigration and trafficking in human beings (Conclusions 2006, Slovenia) and that States must also take measures to raise awareness amongst law enforcement officials, such as awareness training of officials who are in first contact with migrants.

In its previous conclusion (Conclusions XIX-4 (2011)), the Committee noted that Germany had an Action Plan against racism dating back to 2008 and not revised using a participatory approach and that it did not include practical measures or officials responsible for their implementation, nor timetables or control indicators. It asked for information on any further evaluation or update of the Action Plan. It further requested complete and up-to-date information on any measures taken to target illegal immigration and in particular, trafficking in human beings. It also asked what monitoring systems existed to ensure the implementation of anti-discrimination regulations.

The report does not address the above mentioned issues and does not reply to the Committee's queries. The Committee thus recalls its questions and underlines that should the next report not provide comprehensive information in this respect, there will be nothing to show that the situation is in conformity with the Charter on this point.

Conclusion

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

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

Paragraph 2 - Departure, journey and reception

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

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 further notes that it addressed the legal framework relating to assistance offered to migrant workers and found it to be in conformity with the requirements of the Charter (see, i.a. Conclusions XVI-1(2003)). Considering the fact that the situation was repeatedly reported to have remained unchanged, the Committee could renew its positive conclusion, most recently in 2006 (Conclusions XVIII-1). In 2011 the Committee requested a full and up-to-date description of the situation in law and practice in respect of Article 19§2 and, subsequently, deferred its conclusion, awaiting information on circumstances in which help may be given to migrants upon reception to assist them to overcome problems, such as short-term accommodation, illness, shortage of money and adequate health measures (Conclusions XX-4 (2015)).

The report replies that the situation which the Committee has previously considered to be in conformity with the Charter, has not changed: benefits under the Social Code can be provided in the form of a loan to assist foreign nationals in overcoming problems, such as short-term accommodation, illness, shortage of money and adequate health measures, which they may face despite having provided evidence that they have adequate means of subsistence and health insurance.

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

Pending receipt of the information requested, the Committee concludes that the situation in Germany is in conformity with Article 19§2 of the 1961 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 Germany.

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

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

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

The Committee notes that the situation, which it has previously assessed in detail and found to be in conformity with the Charter (Conclusions 2015), has not changed.

The Committee further notes from the International Organisation for Migration (IOM) country assessment that migration services in Germany are well developed and that they serve both emigrants and immigrants.

Conclusion

The Committee concludes that the situation in Germany is in conformity with Article 19§3 of the 1961 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 Germany.

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 notes from the report that the Equal Treatment Act 2006 implements the principle of equal treatment between persons irrespective of racial or ethnic origin and establishes a general framework for equal treatment in employment and occupation into domestic law. The aim of the Act is to "prevent or stop discrimination based on grounds such as race, ethnic origin, sex, religious or other convictions, disability, age or sexual orientation".

In its conclusion in 2015 (see Conclusions XX-4), the Committee recalled that it was not enough for a government to demonstrate that no discrimination existed in law alone but also that it was obliged to demonstrate that it has taken adequate practical steps to eliminate all legal and de facto discrimination concerning remuneration and other employment and working conditions, including in-service training and promotion (Conclusions III (1973), Statement of interpretation). It found not established that this was the case. In 2017 (Conclusions XXI-2), the Committee assessed information provided in reply to this finding, in particular on advisory centers for nationals of EU Member States and mobile workers from Central and Eastern Europe. It repeats its question whether support is offered also to nationals of other State Parties to the Charter when requiring help. The Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the 1961 Charter on this point.

The Committee further notes from the Migration Integration Policy Index (MIPEX) 2015 report on Germany that non-EU residents looking to pursue jobs and training benefit from equal rights and strong support to pursue jobs and training. Government integration plans have produced local/regional initiatives and federal integration courses and employment programmes across the country and immigrants can participate in a wide range of targeted support.

Finally, the report confirms that vocational training system is, in principle open to everyone. It is also possible for foreign professional qualifications to be reconised.

The Committee asks the next report to provide additional information on any practical measures taken to implement the legislative framework, such as awareness-raising measures or training for employees.

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)).

Implementation of Article 19§4 b), was previously found to be in conformity with the 1961 Charter (see Conclusions XVIII-1). The report confirms that every individual has the right to form or join associations and that all member of a trade union have the same rights,

irrespective of their nationality, including the right to hold official positions. This right is also guaranteed to posted workers.

The Committee reiterates its conclusion of conformity with the 1961 Charter in this respect.

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, §§111-113). 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).

The Committee noted in its previous conclusion (see Conclusions XX-4 (2015)), that migrant workers had equal access to social housing, provided they fulfil the general requirements and asked what they were.

In reply, the report states that responsibility for legislation to promote social housing rests with the Länder but the following principles underpin the funding of social housing in general: funding for social housing aims to support households whose own resources are insufficient to pay for adequate housing on the market. It consists, in particular, of the provision of affordable rented housing and support for the creation of owner-occupied residential property. A key factor in eligibility for social rented accommodation is meeting certain income limits, which are calculated on the basis of the size of the household. Flat-rate amounts are deducted for children and people with a severe disability within the household. Those eligible are issued a certificate of eligibility for social housing. No distinctions are made on the basis of nationality or ethnicity.

The Committee considers that the situation is in 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 provide any information in this respect. In its previous conclusion (Conclusions XXI-2 (2017)), the Committee noted that Germany set up the Office for the Equal Treatment of EU workers under the Federal Government Commissioner for Migration, Refugees and Integration in May 2016 with the objective of the Equal Treatment Office is to support EU citizens and their family members with their rights with respect to the principle of freedom of movement for workers. It asked for relevant information to be provided. Furthermore, there is no information about the protection of non-EU migrant workers in this respect.

In the absence of the requested information, the Committee notes from the MIPEX report, cited above, that potential victims are poorly informed and supported to take even the first step in the long path to justice, facing greater obstacles to access justice than on average in Western Europe. German's anti-discrimination law and equality body are young and equality policies appear weak.

The Committee asks the next report to comment on these observations. At the same time, it asks for comprehensive information on the functioning and competences of the monitoring and anti-discrimination bodies, as well as on all avenues of appeal or review as regards the aspects covered by this provision of the Charter. The Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the 1961 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 Germany.

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

In its previous conclusion, the Committee has concluded that the situation continued to be in conformity with the requirements of the Charter and requested up-to-date information.

In reply, the report submits that there were no amendments to the legal framework in respect of employment taxes, dues or contributions and that they continue to be unrelated to nationality. Migrant workers are treated no less favourably than German nationals regarding taxation. Their treatment for tax purposes depends on whether they have their residence or habitual abode in the country. Pursuant to the Income Tax Act of 2009, those with residence or habitual abode in Germany are subject to unlimited tax liability, while those without have a limited income tax liability, if they derive domestic (i.e. German) income. Income tax on these earnings is deducted from the individual's wages, if they are paid by a domestic employer.

Conclusion

The Committee concludes that the situation in Germany is in conformity with Article 19§5 of the 1961 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 Germany.

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).

In its previous conclusion (Conclusions XX-4 (2015)), the Committee noted that there distinction drawn between the spouses of first or second generation foreign nationals was dropped. It furthermore observed that children of majority age were entitled to family reunion if the authorities considered that a rejection of their application would place them in hardship, and found that the situation with regard to the scope of family reunion was in conformity with the 1961 Charter.

In reply to the Committee's request for more details, the report submits that "extraordinary hardship" must be assumed in cases where a refusal of the right of residence and therefore of preservation of the family unit would contradict fundamental concepts of justice in the light of Article 6 (1) and (2) of the Basic Law and Article 8 of the European Convention on Human Rights, and would therefore be simply indefensible. An extraordinary hardship in this sense fundamentally presupposes that the family member in need of protection is unable to survive independently, but must necessarily rely on the family's assistance, and that such assistance can reasonably be provided only in Germany.

Conditions governing family reunion

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

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

All conditions governing family reunion and related to requirements of length of residence, housing, means, language or integration level were comprehensively assessed in the previous conclusion (Conclusions XX-4 (2015)). The Committee then found that the situation was not in conformity with the Charter on two grounds:

- the requirement for migrant workers to hold a temporary residence title for two years in certain circumstances before being entitled to family reunion was too restrictive;
- the requirements to prove language proficiency for family reunion of spouses and children over 16 presented an obstacle to family reunion.

The situation has not changed.

As regards the length of residence, the Committee notes that the requirement of having held a residence permit for two years applies in restricted cases, however, it considers that the maximum period of one year (see Conclusions I (1969), II (1971), Germany) must apply without discrimination to all migrants and their families regardless of their specific situations, save for legitimate intervention in cases of forced marriage and fraudulent abuse of immigration rules. Thus it maintains its previous conclusion (Conclusions XIX-4 (2011)) that the situation in Germany is not in conformity with the Charter because the requirement to hold a temporary residence title for two years in certain circumstances is too restrictive.

As regards the language requirement, the report confirms that between the ages of 16 and 18, children must provide evidence of their proficiency in German unless they are relocating their residence to Germany together with both parents or one parent (either a parent possessing the sole right of care and custody or a sole surviving parent) or unless there are other grounds to believe they will be able to integrate in Germany. The Committee thus reiterates its conclusion on non-conformity.

Moreover, the report submits that the minimum period for which a marriage must exist before a spouse who subsequently migrates to Germany can obtain an independent residence permit was increased from two to three years. In general, family members only have an accessory right of residence and if the principal residence entitlement ceases to exist, the same is true of the right of residence of the family member who immigrated for the purpose of a family reunion. An independent right of residence can be obtained only in the event of the termination of marital cohabitation. Children, however, can receive an independent right of residence, which does not depend on their parents. The Committee considers this lack of independent right to stay not to be in conformity with the Charter. It recalls that for as long as a migrant workers' family members hold a right of residence it must not be possible to remove them, even if the migrant worker has personally lost this right, except where they endanger national security or offend against public interest or morality (Conclusions XVI-1 (2002), Netherlands, Article 19§8, Conclusions 2015, Statement of interpretation on Articles 19§6 and 19§8).

The report confirms that living space requirement must not represent a *de facto* barrier to a family reunion. Sufficient living space shall always be deemed to exist if 12 sqm of living space is available for each family member aged six and over. Falling short of these sizes by around 10% shall not be problematic.

Finally, the report provides statistics on family reunion visas, which have doubled in number in the reference period.

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 request the next report to provide a comprehensive information on the existing remedy. Meanwhile, it reserves its position on this point.

Conclusion

The Committee concludes that the situation in Germany is not in conformity with Article 19§6 of the 1961 Charter on the grounds that:

- the requirement for migrant workers to hold a temporary residence title for two years in certain circumstances before being entitled to family reunion is too restrictive;

- the requirements to prove language proficiency for family reunion of children over 16 wishing to move to Germany with one parent without the consent of the other, present an obstacle to family reunion;
- spouses do not enjoy an independent right of residence in case of expulsion of a migrant worker.

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 Germany.

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 2015 (Conclusions XX-4). It then requested a full and up-to-date description of the situation in law and practice .

In reply, the report provides that any parties who, due to their personal or economic circumstances, are unable to pay the costs of civil proceedings and – if necessary – of an attorney, or are able to pay them only in part or only as instalments, are granted legal aid upon filing a corresponding application, provided that the action they intend to bring or their defence against an action that has been brought against them has sufficient prospects of success and does not seem frivolous (Section 114 (1) of the Code of Civil Procedure (Zivilprozessordnung)). If legal aid is granted, the party either does not have to pay anything in court costs and the costs of their own attorney, or only has to pay legally defined instalments. The costs of representation by an attorney are met if the court assigns an attorney, which must be specially requested. The reimbursable costs for the attorney also include the costs incurred by the attorney to engage an interpreter. The court costs covered by legal aid also include the cost of a court-appointed interpreter. Access to legal aid is designed to be non-discriminatory and enables migrant workers to request legal aid in the same way as German nationals. Refugees and asylum seekers also have equal access to legal aid. Same principle applies also in the administrative proceedings, as well as before social and labour courts.

Conclusion

The Committee concludes that the situation in Germany is in conformity with Article 19§7 of the 1961 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 Germany.

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).

The Committee recalls that the conclusion has been one of non conformity for several cycles on the grounds that legislation permitted expulsion of non EU nationals on grounds unrelated to national security or the public interest, namely lack of resources to ensure subsistence, repeated convictions for drug abuse and being homeless for long periods. The Committee noted in its previous conclusion (Conclusions 2015) that amendments to the relevant legislation (the Residence Act and the Free Movement Act EU) were underway and requested comprehensive information in this respect.

The report does not address the issue of the changes to the legal framework. The Committee notes from the German official Law Journal that the rules governing expulsion of non EU nationals have been revised and that long term homelessness and claims for social assistance are no longer listed among grounds for expulsion from Germany.

The Residence Act, as amended, still, however, stipulates under Section 54 that there shall be a particularly serious public interest in expelling the foreigner where the foreigner uses heroin, cocaine or a comparably dangerous narcotic drug and is not prepared to undergo the necessary treatment which serves his rehabilitation or he evades such treatment. The Committee recalls that risks to public health are not in themselves risks to public order and cannot constitute a ground for expulsion, unless the person refuses to undergo suitable treatment (Conclusions V (1977), Germany). It notes from the report, in this regard, that if a foreign national could potentially be expelled on the grounds of a public interest in his or her expulsion, his or her individual interest in remaining in the federal territory must be weighed on a case-by-case basis against the interest in expulsion. The Committee considers that such regulation as a whole may meet requirements of reasonableness and proportionality under Article 19§8, however, it needs a comprehensive description of the legal framework and the pertinent procedures, in order to be able to reach a conclusion to this end. It thus requests the next report to provide it with exhaustive information in this respect.

As regards the expulsion of EU nationals and their family members, the Committee has assessed the relevant Free Movement Act/EU in its previous conclusion (Conclusions 2011). It asks that the next report specifies whether any amendments were adopted in the framework of the recent reform.

Finally, the Committee repeats its requests for information on the rights of the dependents of the migrant worker to be expelled, both in respect of EU nationals and non EU nationals.

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 9 - Transfer of earnings and savings

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

It notes that no change has been reported to the situation which it previously found it to be in conformity with the requirements of the Charter (Conclusions 2011).

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 are were any restrictions in this respect. It also requests the next report to provide an up-to-date description of the legal framework, specifying restrictions, if any, on the right of migrants to transfer earnings and savings, either during their stay or when they leave their host country.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Germany is in conformity with Article 19§9 of the 1961 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 Germany.

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.

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 Germany not to be in conformity with Article 19§6 . Accordingly, the Committee concludes that the situation in Germany is not in conformity with Article 19§10 of the 1961 Charter.

Conclusion

The Committee concludes that the situation in Germany is not in conformity with Article 19§10 of the 1961 Charter as the grounds of non-conformity under Article 19§6 applies also to self-employed migrant workers.