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EUROPEAN SOCIAL CHARTER

European Committee of Social Rights

Conclusions 2019

FRANCE

This text may be subject to editorial revision.

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

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

The European Social Charter (revised) was ratified by France on 7 May 1999. The time limit for submitting the 18th report on the application of this treaty to the Council of Europe was 31 October 2018 and France submitted it on 24 January 2019. Comments on the report from the Association Sociale Nationale Internationale Tzigane (ASNIT) were registered on 14 June 2019.

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

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

France has accepted all the Articles from this group.

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

The present chapter on France concerns 36 situations and contains:

– 24 conclusions of conformity: Articles 7§1, 7§2, 7§3, 7§4, 7§5, 7§6, 7§7, 7§8, 7§9, 8§1, 8§2, 8§4, 8§5, 17§2, 19§2, 19§5, 19§7, 19§8, 19§9, 19§11, 19§12, 27§1, 27§2 and 27§3;

– 10 conclusions of non-conformity: Articles 8§3, 16, 17§1, 19§1, 19§4, 19§6, 19§10, 31§1, 31§2 and 31§3.

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

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

The deadline for submitting that report was 31 December 2019.

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

Article 7 - Right of children and young persons to protection

Paragraph 1 - Prohibition of employment under the age of 15

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

The report indicates that Article L.7124-1 of the Labour Code provides for a derogation to the minimum age for employment in the sectors of entertainment, itinerant professions, advertising and fashion. The employment of children under the age of 16 in these sectors is subject to an individual authorisation (or an agreement, for modelling agencies) issued by the administrative authorities on the assent of a specialised committee responsible for assessing the children's working, in particular, as regards the difficulty and moral decency of such work, working hours and rhythms, wages, leave and rest breaks, hygiene and safety, the degree of protection of children's health and morals, and measures taken to ensure a regular school attendance (Article R.7124-5 of the Labour Code).

The report specifies that Law No.2016-1321 of 7 October 2016 for the Digital Republic introduced a new derogation enabling companies or associations which take part in video game competitions to employ minors under the age of 16. These children enjoy the safeguards deriving from Articles L.7124-1 et seq. of the Labour Code. In addition, the participation of children under the age of 12 in video game tournaments which offer cash rewards is prohibited by Article R.321-44 of the Labour Code deriving from Decree No.2017-871 of 9 May 2017 on the organisation of video game competitions.

In its previous conclusion, the Committee requested information on the implementation of Article L.4153-5 of the Labour Code with regard to occasional or short-term work allowing employing children in family undertakings with no potential risks for their health or safety (Conclusions 2011). The report specifies that Article L.4153-5 of the Labour Code does indeed provide for an exception to the principle that minors under the age of 16 are prohibited from working, enabling children under the age of 15 to be employed in a family undertaking under the authority of their father, mother or guardian, for occasional or short-term work with no potential risk for their health or safety. The report refers to Article D.4153-4 of the Labour Code on the employment conditions for minors under the age of 16 during their school holidays, which specifies that *"minors may only be assigned to light work which is not likely to harm their health, safety or development"*.

The Committee asked previously for information on the procedures adopted by the Labour Inspectorate to monitor work performed at home (Conclusions 2011).

The report indicates that Article L.8113-1 of the Labour Code provides that labour inspectors have the right to enter establishments and premises used for accommodation. The same Article also contains a specific provision for domestic workers: *"They also have the right to enter premises where domestic workers perform the work outlined in Article L.7424-1. However, when the work is performed in homes, the labour inspectors mentioned in Article L.8112-1 may only enter the premises with the occupants' authorisation."* This authorisation does not require any specific formalities and can be inferred from the absence of any opposition by the occupant to the labour inspector's inspection. It follows from the case law of the Court of Cassation (Cass. crim., 4 January 1994, No.92-86290; Cass. crim., 10 May 2000, No.99-80711) that it is for the person who alleges that the labour inspector entered the premises concerned against his/her will to prove that permission to enter was denied.

The Committee asked previously for a description of the measures taken by the Labour Inspectorate to implement the prohibition of work for persons under the age of 15 (Conclusions 2011). The report indicates that Article L.4153-1 of the Labour Code prohibits the employment of persons under the age of 16. The Labour Inspectorate is mindful of this measure to protect vulnerable persons, particularly in activities: farming and retail. In 2017, 211 follow-up requests were sent to companies following inspections related to Article L.4153-1. The Committee asks for updated information in the next report.

The Committee refers to its Statement of Interpretation on Articles 7§1 and 7§3 (Conclusions 2015). It points out that children under the age of 15 and those who are subject to compulsory schooling may perform only “light” work. Work considered to be “light” ceases to be so if it is performed for an excessive duration. States are therefore required to set out the conditions for the performance of “light work” and the maximum permitted duration of such work. The Committee considers that children under the age of 15 and those who are subject to compulsory schooling should not perform light work during school holidays for more than six hours a day or 30 hours a week in order to avoid any risks that the performance of such work might have for their health, moral welfare, development or education. The Committee also recalls that children should be guaranteed at least two consecutive weeks of rest during the summer holidays.

As to the length of light work during term time, the Committee considered that a situation in which children who were still subject to compulsory schooling carried out light work for two hours on a school day and 12 hours a week in term time outside the hours fixed for school attendance is in conformity with the requirements of Article 7§3 of the Charter (Conclusions 2011, Portugal). The Committee asks that the next report indicates whether the situation in France is in conformity with the above-mentioned principles. It asks, in particular, for information on the daily and weekly length of any light work that children under the age of 15 are allowed to perform during term time and school holidays.

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

Conclusion

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

Article 7 - Right of children and young persons to protection

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

The Committee takes note of the information provided in the French report.

In its previous conclusion (Conclusions 2011), the Committee found that the situation in France was not in conformity with Article 7§2 of the Charter on the ground that, except in vocational training, the legislation did not provide for a general prohibition on employing children under the age of 18 for dangerous activities.

The report states that the rules on prohibited and regulated work for young people under the age of 18 were amended in 2013 and in 2015 in order to transpose European Union Directive 94/33/EC of 22 June 1994 on the protection of young people at work into domestic law. The rules in force differentiate between two systems:

- Work prohibited for young persons under the age of 18

To protect the health and safety of young workers under the age of 18, it is prohibited, without any exception, to employ them in certain categories of work which could endanger their health, safety or morals, or work which they are not strong enough to perform (see Article L.4153-8 of the Labour Code). The prohibition on assignment to this type of work relates to all young persons aged 15 or more and under the age of 18, whether in vocational training or employment.

The Labour Code gives a detailed list of the work that is strictly prohibited with no exception (in Articles D.4153-15 to D.4153-37). It includes, for example, work which exposes the young persons concerned to pornographic or violent acts or images (see Article D. 4153-16) or to group 3 or 4 biological agents within the meaning of Article R.4421-3 (see Article D.4153-19), demolition or trench work involving a risk of collapse or burying (Article D. 4153-25), work at height on trees or other woody or semi-woody plants (see Article D.4153-32), slaughter, euthanasia or butchering of animals, and work involving contact with dangerous or venomous animals (see Article D.4153-37). The Committee notes the list of types of work prohibited for persons under the age 18 given in the report.

- “Regulated” work accessible to young workers aged 15 or more and under the age of 18 for their vocational training needs only

Regulated work refers to prohibited work which may exceptionally be assigned to young persons aged 15 or more and under the age of 18, whether attending school or under a working contract for vocational training needs, subject to certain formalities and obligations related to risk prevention which their employer, or the head of the education establishment where they are enrolled for training, is bound to respect (see Article L.4153-9 of the Labour Code).

The Labour Code gives a detailed list of this “regulated” work (see Articles D.4153- 15 to D.4153-37 of the Labour Code). It includes, for example, operations which may lead to exposure to level 1 asbestos fibres (see Article D.4153-18), work exposing persons to ionising radiation requiring a category B classification (see Article D.4153-21), work requiring the use or maintenance of certain machines (see Article D.4153-28), or work assembling or dismantling scaffolding (see Article D.4153-31).

With regard to the derogation procedure, the report states that any employer or establishment head wishing to assign a young person to regulated work as part of their vocational training must first submit a declaration of derogation from the relevant employment prohibitions to the Labour Inspectorate (Art. 4153-41 of the Labour Code). Such declarations are valid for three years.

The report states that Article 4153-40 of the Labour Code provides that employers or managers of units hosting young persons must take the following measures before assigning them to regulated work:

- assess the risks to which the young person is exposed and set up suitable prevention measures;
- inform young persons of the risks to their health and safety and the measures taken to mitigate them and provide them with safety training geared to their age and level of professional qualifications;
- ensure that young persons are supervised by a competent person while performing such work;
- acquire a medical opinion on each young person's fitness for work (issued either by the occupational physician for employees or by the school doctor for non-employees).

The Committee points out that pursuant to Article 7§2 of the Charter, domestic law must set 18 as the minimum age of admission to occupations regarded as dangerous or unhealthy. The only possible exceptions are when this type of work is strictly necessary for the young persons' vocational training, and only when they are supervised by a competent person, or when young people under the age of 18 have completed their training for the performance of dangerous tasks. In the light of the above, the Committee considers that the situation in France is in conformity with Article 7§2 of the Charter.

The report states that the provisions of Order No.2016-413 of 7 April 2016 on the supervision of the application of labour law strengthen subsequent checks by the Labour Inspectorate by assigning the inspection authorities the power to order that permission for a person under the age of 18 to work will be immediately withdrawn if they find that they have been assigned to prohibited work, or to regulated work under conditions exposing them to a grave and imminent danger to their life or health.

The report adds that these provisions also give the Regional Directorate for Companies, Competition, Consumer Affairs, Labour and Employment (DIRECCTE) the power to suspend and then terminate the employment contracts or traineeships of any person under the age of 18 if the inspection authorities find that there is a serious risk to their health and safety or to their physical or moral integrity, thus extending the application of provisions which currently only apply to apprentices.

The Committee asks for information in the next report on the application in practice of the above-mentioned rules, particularly on the checks carried out and measures taken in case of breaches (when it is found that a person under the age of 18 has been assigned to prohibited work, or that they have been assigned to regulated work under conditions exposing them to a grave and imminent threat to their life or health).

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in France is in conformity with Article 7§2 of the Charter.

Article 7 - Right of children and young persons to protection

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

The Committee takes note of the information provided in the French report.

The Committee points out that it previously found the situation to be in conformity with Article 7§3 of the Charter (Conclusions 2011).

The Committee notes that Article L.4153-2 of the Labour Code states that employing minors (aged 14 or 15) is permitted only during school holidays of at least 14 working or non-working days and as long as the minors in question enjoy a period of continued rest which may not be less than half of the total duration of these holidays.

The Committee refers to its Statement of Interpretation on Articles 7§1 and 7§3 (Conclusions 2015). It points out that children under the age of 15 and those who are subject to compulsory schooling may perform only “light” work. Work considered to be “light” ceases to be so if it is performed for an excessive duration. States are therefore required to set out the conditions for performing “light work”, particularly the maximum permitted duration. The Committee considers that children under the age of 15 and those who are subject to compulsory schooling should not perform light work during school holidays for more than 6 hours a day or 30 hours a week to avoid any risks that the performance of such work might pose to their health, moral welfare, development or education. The Committee also points out that, in any case, children should be guaranteed at least two consecutive weeks of rest during the summer holiday.

As regards the duration of light work during school terms, the Committee has considered that a situation in which a child who is still subject to compulsory education performs light work for two hours on a school day and 12 hours a week in term time outside the hours fixed for school attendance is in conformity with the requirements of Article 7§3 of the Charter (Conclusions 2011, Portugal).

The Committee asks for information in the next report on whether the situation in France is in conformity with the above-mentioned principles. It asks in particular for information on the daily and weekly hours of light work that children who are still subject to compulsory schooling are allowed to perform during term time and school holidays.

The Committee points out that the effective protection of the rights enshrined in Article 7§3 cannot be secured by legislation only, and that the actual implementation of this legislation must be effective and strictly monitored. The Labour Inspectorate has a decisive role to play here.

The Committee asks for information in the next report on the number and nature of breaches found with regard to the employment of children still subject to compulsory schooling, and on the penalties to which they were subject.

Conclusion

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

Article 7 - Right of children and young persons to protection
Paragraph 4 - Working time

The Committee takes note of the information provided in the French report.

The report states that Article L.3162-1 of the Labour Code provides that young workers may not work for more than eight hours a day or 35 hours a week. For some activities set out by the decree by Decree No. 2018-1139 of 13 December 2018 of the Conseil d'Etat, it is possible, when the collective organisation of the work so requires, to derogate from the daily duration of eight hours, but for no longer than two hours a day, and to the weekly duration of 35 hours, but for no longer than five hours a week. The Committee notes that according to the Decree No. 2018-1139 of 13 December 2018 of the Conseil d'Etat, when the collective organisation of work so requires, pursuant to Article L. 3162-1 of the Labour Code, young workers may be employed in actual work exceeding eight hours a day and thirty-five hours a week, up to a maximum of ten hours a day and forty hours a week for:

- Activities carried out on building sites;
- Activities carried out on public works sites;
- Creation, development and maintenance activities on landscaped areas.

However, the report adds that in such cases the labour inspector may only authorise exceptions to the maximum weekly and daily working hours not exceeding five hours a week subject to approval by the occupational physician or the doctor in charge of the medical supervision of students. Under no circumstances should young persons' working hours ever exceed the normal daily or weekly working hours of any adults employed by an establishment.

The working hours for an apprentice under the age of 18 are set out in the above-mentioned Article L.3162-1.

The report explains that these changes in the legislation make it easier to strike a balance between the rules on working hours for minors and the organisational constraints of the activity, while maintaining a high degree of protection for this vulnerable group. For example, construction and civil engineering companies generally adopt a 39-hour working week over five days. In addition, employees use group transport to reach construction sites, which are often far away from company headquarters. For a 35-hour limit on working hours for young workers to be respected, they would have to wait in the company vehicle for the other employees to finish their normal working hours before going home.

The Committee points out that pursuant to Article 7§4, domestic legislation must limit the working hours of workers under the age of 18 who are no longer subject to compulsory schooling to meet the needs of their development and, in particular, their need for vocational training. Such limits may be the result of legislation, regulations, contracts or practice (Conclusions 2006, Albania). For persons under the age of 16, a limit of eight hours a day or 40 hours a week fails to satisfy the requirements of the article (Conclusions XI-1 (1991), Netherlands). However, for persons older than 16, the same limits are in conformity (Conclusions 2002, Italy).

The Committee notes that through the amendments brought by Decree No. 2018-1139 of 13 December 2018 of the Conseil d'Etat, young workers may work up to a maximum of ten hours a day and forty hours a week in activities carried out on building sites and public works sites. Considering that the above-mentioned amendments were adopted outside the reference period, the Committee will examine the situation during its next assessment.

The Committee also points out that the situation in practice must be regularly assessed, and asks how the authorities, in particular the Labour Inspectorate, monitor whether the above-mentioned principles are respected in practice.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in France is in conformity with Article 7§4 of the Charter.

Article 7 - Right of children and young persons to protection

Paragraph 5 - Fair pay

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

The Committee notes that it previously found the situation to be in conformity with Article 7§5 of the Charter (Conclusions 2011) and that the situation has not changed.

Young workers

The Committee notes that the minimum wage for young workers with less than six months of professional experience in their branch of activity corresponds to the SMIC with a possible deduction of 10% of this amount if they are aged between 17 and 18, and 20% if they are less than 17 years old. The Committee points out that it considers these reductions to be in conformity with the Charter. Under the “professional future” legislation mentioned above, the minimum wage for apprentices aged between 16 and 20 is expected to be increased by €30 net per month (a decree is being drafted).

Apprentices

The report states that apprentices under 18 years of age receive remuneration corresponding to at least 25% of the SMIC during the first year of the contract, 37% the second year and 53% the third year. Nominally, these percentages are not in conformity with the requirements of the Charter: the wage of an apprentice at the beginning of the apprenticeship should amount to at least one third of the minimum wage of an adult worker and to at least two thirds towards the end of the apprenticeship.

The Committee notes, however, that, unlike adults in receipt of the SMIC, apprentices are exempt from social security contributions. As the minimum requirements in respect of apprentices have been established on an indicative basis and as the percentages in France correspond to these requirements, the Committee concludes that the situation is in conformity with Article 7§5 of the Charter.

Conclusion

The Committee concludes that the situation in France is in conformity with Article 7§5 of the Charter.

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 France.

The Committee notes that it previously found the situation to be in conformity with Article 7§6 of the Charter (Conclusions 2011).

The Report states that Article 6 of the law “*for the freedom to choose one’s professional future*” of 5 September 2018 includes an overhaul of the rules on time spent in training, as part of the skills development plan (which replaces the training plan).

It will be recalled that, until now, any training measure undertaken by an employee to ensure his/her adaptation to the workplace or related to developments or retention in the enterprise has been treated as effective working time, with the enterprise being required to continue to pay the employee’s wages during such hours (Article L6321-2 of the Labour Code). Training measures aimed at developing employees’ skills, however, may, under an arrangement between the employee and the employer, take place outside effective working hours: either within a limit of 80 hours per year and per employee, or, in the case of employees whose working hours are prescribed by a “package” agreement on annual working days or hours, within a limit of 5% of the fixed number of days or hours. Such arrangements must be formally agreed and may be terminated in the manner determined by Council of State decree (Article L6321-6 of the Labour Code).

The law of 5 September 2018 does away with this categorisation of training measures and proposes a different one based on the notion of mandatory training: any mandatory training undertaken by an employee will constitute effective working time and the enterprise must continue to pay the employee’s wages during such hours; other training measures may take place outside working hours subject to the employee’s consent.

The law clarifies what is meant by mandatory training, referring to the source of the obligation. The new legislation will apply to training that is mandatory by virtue of: an international convention (e.g. standards governing welding), statutory and regulatory provisions or, where applicable, a collective agreement.

Training measures which may take place outside working hours will require the employee’s consent. The arrangement must be formally agreed and may be terminated in the manner laid down by Council of State decree. Refusal by the employee to participate in training measures outside his/her working hours or termination of the arrangement cannot be deemed to constitute misconduct or a ground for dismissal.

The maximum number of training hours which may take place outside working hours will be prescribed by a collective agreement at enterprise or branch level. If there is no collective agreement, this upper limit shall be 30 hours per year and per employee.

For the duration of any training undertaken outside working hours, the employee will be covered by the social security legislation on protection with regard to industrial accidents and occupational disease (Article L6321-11 of the Labour Code).

Following on from this new categorisation, the law repeals the provisions concerning the requirement to determine with the employee, prior to the start of the training, the nature of the obligations with which the employer undertakes to comply if the person diligently attends the training course outside working hours in order to develop his/her skills and satisfies the requirements of the planned assessments (Article L6321-8 of the Labour Code).

A Personal Training Account (CPF) may be used by any employee, throughout his/her working life, to undertake training leading to qualifications. If the employee wishes to participate in training during working hours, he/she must contact his/her employer to seek permission at least: – 60 days before the start of the training if it lasts less than 6 months, – or 120 days before the start of the training if it lasts more than 6 months. The employer has 30 calendar

days within which to reply to the employee. Failure to reply within this time-limit is deemed to constitute acceptance of the training request. If the requested training is to be undertaken outside working hours, however, the employee does not have to seek the employer's consent and may use his/her training hours as he/she sees fit. In such cases, he/she may arrange to have his/her training request approved by a career development adviser.

The Committee concluded that the law of 5 September 2018 based on the notion of mandatory training according to which any mandatory training undertaken by an employee is to be treated as effective working time, with the enterprise being required to continue to pay the employee's wages during those hours, meets the requirements of Article 7§6 of the Charter.

Conclusion

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

Article 7 - Right of children and young persons to protection

Paragraph 7 - Paid annual holidays

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

The Committee notes that it previously found the situation to be in conformity with Article 7§7 of the Charter (Conclusions 2011) and that the situation has not changed.

Conclusion

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

Article 7 - Right of children and young persons to protection

Paragraph 8 - Prohibition of night work

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

The Committee notes that it previously found the situation to be in conformity with Article 7§5 of the Charter (Conclusions 2011).

The report states that the rules on night work for children working in the performing arts are as follows: night work is prohibited for young people under 18 years of age (Article L. 3163-1 of the Labour Code). Night work is considered to be any work: between 10 pm and 6 am in the case of young people between 16 and 18 years, and between 8 pm and 6 am in the case of young people under the age of 16 years. An exemption from the ban on night work may be sought from the labour inspectorate (cf. Articles R.3163-4 and R.7124-30-1 of the Labour Code) up to midnight, irrespective of age. Such exemptions are granted by the labour inspector responsible for the establishment where the employee is employed, following prior and systematic consultation with the labour inspector responsible for the place where the performance or filming takes place. If an exemption has been granted, the daily rest period may not be less than 12 consecutive hours (Article L. 3164-1 paragraph 2 of the Labour Code).

Conclusion

The Committee concludes that the situation in France is in conformity with Article 7§8 of the Charter.

Article 7 - Right of children and young persons to protection

Paragraph 9 - Regular medical examination

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

The Committee notes that it previously found the situation to be in conformity with Article 7§9 of the Charter (Conclusions 2011). The Committee had, however, asked for information on whether medical examinations were geared to young people's specific situations and the particular risks to which they were exposed and also on the activities of the labour inspectorate during the reference period. The report states that Article 102 of Law 2016-1088 of 8 August 2016 amended the provisions relating to the individual monitoring of workers' health status. These provisions have been in effect since 1 January 2017. Article L. 4624-1 of the Labour Code specifies in particular that "*all workers shall benefit, as part of the monitoring of workers' health provided for in Article L. 4622-2, from individual medical supervision provided by the occupational physician and, under his or her authority, by the associate physician referred to in Article L. 4623-1, the occupational medicine intern and the nurse*". This supervision includes one of the following. Either an information and prevention visit carried out by the occupational physician or under his/her authority by one of the above-mentioned health professionals. At the end of this visit, a certificate is issued (L 4624-1 Labour Code). The information and prevention visit is carried out before any worker under 18 years of age is assigned to a post (R. 4624-18 Labour Code). Or enhanced individual supervision for any worker assigned to a post which poses particular risks to his or her health or safety, or to that of colleagues or third parties. This supervision includes a medical examination to assess fitness for work (L. 4624-2). The 17 posts concerned are specified in Article R. 4624-23 of the Labour Code. Young people under 18 years who are assigned to "regulated work" also benefit from enhanced individual medical supervision in accordance with the last paragraph of Article R. 4153 of the Labour Code.

The Committee asks the next report provide information on controls carried out by the labour inspectorate.

Conclusion

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

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

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

Protection against sexual exploitation

The Committee asked in its previous conclusion (Conclusions 2011) how the social and psychological rehabilitation of child victims of sexual exploitation and trafficking was ensured in practice and how many children were provided with such assistance.

In reply the report refers in particular to Article 706-48 of the Code of Criminal Procedure, under which child victims of sexual abuse may undergo an expert medical and psychological assessment to gauge the nature and extent of the harm inflicted on them and establish whether appropriate treatment or care is necessary.

The report also states that on 1 June 2016, an experimental agreement between various stakeholders was signed in order to assist child victims of sexual abuse or exploitation. It focused on various stages, from the identification of situations by professionals (security forces, judicial authorities, social, healthcare or youth support services, associations) up to the integration of young people into a school or work integration project. A special system to report abuses of minors was set up, making it possible for them to appear in court within 24 hours. The agreement also provides for the systematic appointment of an ad hoc administrator. Training for professionals is provided by the association Hors la Rue.

According to the report, to date 84 victims have been referred to special protection and care services for victims of trafficking. They were young girls from Nigeria, who had fallen victim to trafficking in human beings for the purposes of sexual exploitation, aged for the most part between 15 and 18.

The Committee asked in its previous conclusion (Conclusions 2011), in what circumstances a minor (under 18 years old) could be held liable for any act connected with sexual exploitation and trafficking.

According to the report, since the repeal of the offence of soliciting by Law No. 2016-444 of 13 April 2016 on increased measures to combat the prostitution system and support prostitutes, victims of sexual exploitation, particularly minors, can no longer be prosecuted for such acts. Furthermore, the existing law makes it possible to exempt victims who are forced to commit offences from liability. Under Article 122-2 of the Criminal Code, persons acting under constraint or pressure which they cannot resist cannot be held criminally liable.

The report states that while French legislation has not wished to establish a special principle of non-punishment vis-à-vis victims of trafficking, particularly minors, the principle of discretionary prosecution, which is one of the main tenets of French criminal law, leaves it to the prosecuting authorities to decide whether or not to prosecute an offence. In addition, the criminal policy circular of 22 January 2015 on trafficking in human beings states that where there is evidence that a trafficking ring exists and the victims have been identified, the priority for criminal policy is to prosecute the leaders of the ring and protect the victims.

The Committee reiterates that child victims of sexual exploitation should not be prosecuted for any act connected with this exploitation. While taking note of the principles of French legislation, it asks if the principle of discretionary prosecution fully guarantees that children who are victims of exploitation will not be prosecuted for an act linked to this exploitation or to trafficking.

The Committee notes from the report that between 1 January 2010 and 31 December 2017, France strengthened its legal framework for the protection of minors against abuse and exploitation, particularly of a sexual nature:

- Law No. 2016-457 of 14 April 2016 on reporting to the administrative authorities by the judicial authorities and protection of minors set up a special reporting system for the protection of minors, which is compulsory in nature: the public prosecutor must notify the administrative authorities in writing of any sentence, even if not final, delivered against a person engaging in a social or occupational activity involving regular contact with minors and whose exercise is supervised by the administrative authorities, or if a person is placed under judicial supervision and is subject to an obligation not to perform an activity involving regular contact with minors. This applies in particular to offences of a sexual nature, murders, sexual harassment and violence against minors;

- Law No. 2017-242 of 27 February 2017 on the reform of statutory limitation in criminal cases extended limitation periods for criminal proceedings from 10 to 20 years for serious crimes and 3 to 6 years for lesser offences, including sexual offences against children.

The Committee notes that a working group set up by the Ministry of Justice in November 2017 has begun an investigation into the procedures for reporting offences of sexual assault and potential means of prosecuting perpetrators of sexual abuse more effectively. A methodological guide produced on the basis of its discussions was to be sent out to all practitioners by the end of 2018 with a view to improving the efficiency of judicial proceedings.

The Committee takes note of the measures taken by the Ministry of Education and Youth with regard to the sexual exploitation of minors (promotion of equality between boys and girls, protection of vulnerable children, sex education – which has been compulsory since September 2018 at the three levels of school: primary, lower secondary and upper secondary – and prevention policy). It notes that the Ministry of Education incorporates its measures in this sphere into the context of the plan to combat trafficking in human beings. It also notes that school inspectors and education authority chiefs take part in the meetings of *Département* Committees to combat prostitution, procuring and trafficking in human beings for the purposes of sexual exploitation.

The Committee notes from the Concluding Observations of the UN Committee on the Rights of the Child on the fifth periodic report of France (CRC/C/FRA/CO/5, 2016) that although engaging in child prostitution as a client is a criminal offence, clients are not always prosecuted, child victims of sexual abuse and exploitation are not heard by judges or recognised as victims of prostitution, as cases are dismissed owing to insufficient evidence, and the rape of a child, although a crime in the Criminal Code, is often reclassified as sexual assault.

The Committee asks to be informed of measures taken to protect children from sexual exploitation and assist victims.

Protection against the misuse of information technologies

The report states that an inter-ministerial working group on access by minors to pornographic websites is currently considering the issue with a view to strengthening the legislation restricting access for minors to such content. In addition, media and information literacy is taught throughout compulsory schooling.

The Committee notes from the Concluding Observations of the UN Committee on the Rights of the Child cited above that this Committee is concerned about the persistence of hypersexualized images of children, particularly girls, in the media, that no regulatory framework exists at present to protect children from inappropriate media and digital content and that many features for regulating children's access to inappropriate information on television, the Internet and smartphones, such as parental controls, are not effective in practice.

According to the report by GRETA, concerning the implementation of the Council of Europe Convention an Action against Trafficking in Human Beings by France (2017) a trend reported

to it was the recruitment through Internet ads of girls from deprived neighbourhoods for the purpose of sexual services, often involving violence.

The Committee asks for information in the next report on the work of the inter-ministerial working group on access by minors to pornographic websites and on any other measure taken to protect children against the misuse of information technologies.

Protection from other forms of exploitation

In its previous conclusion (Conclusions 2011), the Committee asked whether it was planned to draw up a national action plan to combat trafficking in human beings.

The report states that a joint ministerial task force answering to the minister in charge of women's rights has been set up to inter alia, combat human trafficking (MIPROF). It is tasked with national co-ordination of action against trafficking in human beings, in accordance with the requirements of the Council of Europe Convention on Action against Trafficking in Human Beings (Decree No. 2013-7 of 3 January 2013). To enhance its work in partnership with other bodies, MIPROF has set up a co-ordinating committee for action against trafficking in human beings (Decree of 11 August 2016 amending the Decree of 3 January 2013).

MIPROF drew up the first three-year national action plan against trafficking in human beings in consultation with the various ministries concerned and the associations working in this area, and this laid the foundations for a cross-cutting public policy to combat human trafficking in all its forms of exploitation, focusing on three priorities: identifying and supporting the victims of trafficking, dismantling trafficking rings and making the fight against trafficking a public policy in its own right.

The consultations held following the first action plan helped to establish the main lines of the second plan, which to be adopted before the end of 2018.

The Committee asks for information in the next report on the implementation and results of the second national action plan against trafficking in human beings and any subsequent plan.

The Committee notes from the GRETA report cited above that on the basis of its information system on criminal decisions, the Ministry of Justice's Department for Statistics and Studies (SDSE) estimated that in 2014, there were 1 475 victims of human trafficking, including 167 children and, in 2015, 1 439 victims, including 202 children. According to GRETA it is likely that these statistical data represent only a small proportion of actual trafficking victims and do not take account of the victims who have never been identified. The report states that all the stakeholders agree that the number of children identified as trafficking victims is well below the true figure.

The Committee asks for information in the next report on the measures taken to improve the collection of data for the national database on child victims of trafficking.

The Committee asked previously for information on the number of children who had been granted a temporary residence permit on grounds linked to trafficking in human beings (Conclusions 2011).

In reply, the report states that minors who are victims of trafficking in human beings are referred to the child protection system – their residence rights are unconditional and do not require a residence permit to be issued. As stated already, 84 victims, a large majority of whom were sexually exploited, have been referred to specific services for the protection and care of trafficking victims.

In this context, the Committee refers to the GRETA report cited above, which states that civil society stakeholders reported that, owing to child welfare professionals' poor knowledge of the legislation relating to trafficking victims' right of residence, it was sometimes the case that children reached adult age without their stay being legalised and ended up on the streets and illegally present in France, despite having been identified as trafficking victims.

The Committee asks for clarification of this matter in the next report.

The Committee notes from the GRETA report cited above that child victims of trafficking for the purposes of forced criminality or forced begging are still commonly regarded as petty offenders, prosecuted and sometimes convicted and imprisoned. According to one study (B. Lavaud-Legendre, A. Tallon, "Mineurs et traite des êtres humains en France", ECPAT, Chronique sociale, 2016), 60% of the child victims of trafficking for these purposes have been prosecuted for the offences committed. The Committee asks the next report to provide information on measures taken to address this issue.

In its previous conclusion (Conclusions 2011), the Committee asked for more detailed information on the implementation of measures and their practical effectiveness, in particular with regard to the problem of servitude/domestic labour of children.

According to the statistical data given in the report for the period 2010-2017 148 convictions were handed down on grounds of working or housing conditions that were incompatible with the dignity of a minor, or for forced labour or servitude (Articles 225-13 to 225-16 of the Criminal Code).

In its last conclusion (Conclusions 2011) the Committee repeated its question on the number of children in street situations and the measures taken to deal with this problem.

In reply, the report states that the National Strategy to prevent and combat poverty launched in 2018 focuses on the situation of children in poverty. The aim of the strategy is to eliminate all situations which are clearly harmful for children and reduce material privation of poor children by half by 2022. This will be reflected in a specific campaign to get children off the streets and put an end to begging by children.

It asks information on measures taken to protect and assist children in vulnerable circumstances, paying particular attention to children in a street situation and children forced to work, especially in rural areas.

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

Conclusion

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

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

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

Right to maternity leave

There has been no change in the situation previously considered in conformity with the Charter (Conclusions 2003, 2005 and 2011). All employees are entitled to 16 weeks' maternity leave; it may be extended in certain cases. A minimum of eight weeks' leave is compulsory, including six weeks following the birth.

The Committee notes from the report that under Law No. 2007-393 of 5 March 2007, it is possible to carry over prenatal leave to postnatal leave, subject to an upper limit of three weeks, provided that the employee can produce a medical certificate confirming her good health.

Right to maternity benefits

The Committee previously found the level of maternity benefit to be adequate. The amount of daily benefits amounts to approximately 95% of the daily salary paid over the previous 3 months. In 2018, according to the MISSOC database, the ceiling was fixed at €86 a day. Women working in the public service are entitled to full pay during maternity leave.

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

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

According to Eurostat data, the median equivalised annual income was €22,095 in 2017, or €1,841 per month. 50% of the median equivalised income was €11,048 per annum, or €921 per month. Eurostat data for 2017 puts the gross minimum monthly salary at €1,480.27 in France. In view of the above, the Committee finds that the situation is in conformity with Article 8§1 on this point.

Conclusion

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

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

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

In its previous conclusion (Conclusions 2011), the Committee found that the situation was in conformity with Article 8§2 of the Charter. Therefore, it will only consider the recent developments and additional information.

Prohibition of dismissal

The report states that under Article 10 of Law No. 2016-1088 of 8 August 2016 relating to Work, Modernisation of Social Dialogue and Securing of Professional Processes, the statutory period of prohibition to terminate the employment contract at the employer's initiative following pregnancy or maternity leave has been extended from four to ten weeks after maternity leave and now includes the period of paid leave immediately following maternity leave. The Committee notes that this protection covers pregnant women and also their employed spouses and adoptive parents.

Redress in case of unlawful dismissal

In its previous conclusion (Conclusions 2011), the Committee asked whether women employed in the public sector who did not have a permanent contract establishing them as civil servants, who were dismissed during the protected period, could be reinstated in their previous employment. The report does not answer this question. Therefore, the Committee reiterates it. It points out that, should the necessary information not be provided in the next report, nothing will enable the Committee to establish that the situation in France is in conformity with Article 8§2 of the Charter in this respect.

Conclusion

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

Article 8 - Right of employed women to protection of maternity

Paragraph 3 - Time off for nursing mothers

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

In its previous conclusion (Conclusions 2011), the Committee found that the situation was not in conformity with Article 8§3 on the grounds that (1) the remuneration of breastfeeding breaks was not guaranteed for employed women covered by the Labour Code, and (2) women working in the civil service were not entitled to breastfeeding breaks.

As to the first ground of non-conformity, the report does not contain any information. Therefore, the Committee reiterates its finding of non-conformity on this point.

As to the second ground of non-conformity, the report indicates that the legal framework covering breastfeeding breaks and leave of absence for women employed in the civil service is currently being changed. Therefore, the Committee finds that the situation is still not in conformity with Article 8§3 of the Charter. It asks for full, up-to-date information in the next report on the changes made to the legislation during the reference period.

Conclusion

The Committee concludes that the situation in France is not in conformity with Article 8§3 of the Charter on the grounds that:

- the remuneration of breastfeeding breaks is not guaranteed for employed women covered by the Labour Code;
- not all women working in the civil service are entitled to breastfeeding breaks and leave of absence is not provided.

Article 8 - Right of employed women to protection of maternity

Paragraph 4 - Regulation of night work

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

The Committee notes that there has been no change to the situation previously found in conformity with the Charter (Conclusions 2011) regarding the private sector. Therefore, it reiterates its finding of conformity on this point.

In its previous conclusion, the Committee asked what protection was afforded to women employed in the public sector. In response, the report indicates that the articles in the Labour Code on night work do not apply to permanent or contractual civil servants. However, the Committee understands from the report that employers must consider the possibility of temporarily transferring a pregnant woman to daytime work at her request or when the occupational physician states in writing that night work is incompatible with her health. The Committee asks for confirmation of this in the next report.

The Committee recalls that Article 8§4 also requires to protect women who have recently given birth or who are nursing their infant, and, therefore, asks what protection these women employed in the public sector enjoy. Consequently, it asks that the next report provide a full and up-to-date account of the situation of women (pregnant, recently given birth or nursing) employed in the public sector, in law and practice, as regards Article 8§4

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

Conclusion

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

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

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

In its previous conclusion (Conclusions 2011), the Committee found that the situation was in conformity with Article 8§5 of the Charter and asked what protection applied to women employed in the public sector.

In response, the report states that the Labour Code identifies a number of substances to which pregnant women should not be exposed at all or to which exposure should be limited. The regulatory requirements are binding on the employer and the pregnant woman and do not require the opinion of an occupational physician to be sought before implementation. These provisions are set out in part 4 of the Labour Code, which is directly applicable to the civil service.

The Committee points out that Article 8 of the Charter provides specific rights protecting employed women during pregnancy and maternity (Statement of Interpretation on Articles 8§4 and 8§5, Conclusions 2019). Since pregnancy and maternity are gender-specific, any less favourable treatment due to pregnancy or maternity is to be considered as direct gender discrimination. Consequently, the non-provision of specific rights aimed at protecting the health and safety of a mother and a child during pregnancy and maternity, or the erosion of their rights due to special protection during such a period are also direct gender discrimination. It follows that, in order to ensure non-discrimination on the grounds of gender, employed women during the protected period may not be placed in a less advantageous situation, also with regard to their income, if an adjustment of their working conditions is necessary in order to ensure the required level of the protection of health. It follows that, in the case a woman cannot be employed in her workplace due to health and safety concerns and as a result, she is transferred to another post or, should such transfer not be possible, she is granted leave instead, States must ensure that during the protected period, she is entitled to her average previous pay or provided with a social security benefit corresponding to 100% of her previous average pay. Further, she should have the right to return to her previous post. In this respect, the Committee asks the next report to confirm that the women concerned retain the right to return to their previous posts at the end of the protected period.

Conclusion

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

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

The Committee takes note of the information contained in the report submitted by France and the information provided in the comments made by the *Association Sociale Nationale Internationale Tzigane* (ASNIT) on 14 June 2019.

Legal protection of families

Rights and obligations, dispute settlement

In reply to the Committee's questions (Conclusions 2011) concerning the rules governing the **rights and obligations of spouses**, the report explains that under Article 212 of the Civil Code, spouses owe each other "respect, loyalty, aid and assistance". Although this provision does not apply outside marriage, the courts have had occasion to punish misconduct by one spouse towards another through damages, particularly in the context of break-ups. The Committee takes note of the clarifications given on the duty of spouses to offer material assistance (Articles 214 and 270 et seq. of the Civil Code), and the reciprocal undertaking to provide material aid and assistance covering partners tied by a civil solidarity pact (PACS). As to the question of the rights and obligations of parents vis-à-vis their children, the report refers to Article 371§1 of the Civil Code on parental authority and draws attention to the provisions concerning the obligations of children towards their parents. Issues related to **restrictions to parental rights and placement of children** are examined under Article 17§1.

With regard to the legal arrangements for the **settlement of disputes** between spouses and litigation concerning children, the report explains, in reply to the Committee that, other than in circumstances in which the criminal law or the rules on children at risk are being applied, the authority with jurisdiction in matters such as divorce and disputes over parental authority or alimony obligations is the Family Affairs Court. This court has many means at its disposal to arrange a friendly settlement (family mediation, social inquiries, mediated visiting rights, etc.) and it has the power to order a hearing of the child concerned, including in cases of divorce by mutual consent (which has been available since 2017 without the involvement of the courts) if the child asks to be heard. For some types of family dispute it may be compulsory to have a lawyer. This is the case for example with divorce proceedings. The Family Affairs Court also has jurisdiction to issue protection orders for victims of conjugal violence if the circumstances allow.

The Committee notes from the official French government website that family **mediation services** are available and spread evenly throughout the country (in family allowance fund offices and regional courts (*tribunaux de grandes instance*)) and that means-tested legal aid (with full or partial coverage of the costs by the state) is possible. It finds that the situation is still in conformity with the Charter on this point.

Domestic violence against women

The Committee takes note of the information detailed in the report concerning the developments occurred since its latest assessments (see Conclusions 2006 and 2011), in particular as regards on the one hand, the information and awareness-raising measures taken to improve prevention of violence (see details in the report) and, on the other hand, the adoption of new protection measures adopted in addition to those detailed in Conclusions 2006 and 2011 relating to matters including the eviction of violent spouses (Law No. 2004-439, Law of 4 April 2006 and Law No. 2010-769 of 9 July 2010). In this connection, the Committee asked for information on the implementation of the Law of 2010 setting up protection orders. The report states that convictions for breaches of such orders rose from 29 in 2014 to 47 in 2017, but it does not give details of how many protection orders were requested and actually granted or refused. The Committee asks for this information to be included in the next report.

The Committee also takes note of the information provided as regards prosecution of domestic violence and asks for updated data in the next report.

With regard to integrated policies, the Committee noted previously that measures had been taken to develop partnerships between the judicial authorities and all the professionals concerned (see Conclusions 2011). It notes that a working group was set up in November 2017 to discuss how to ensure more effective prosecution of perpetrators of sexual violence and make the judicial process more efficient.

Insofar as France has signed and ratified the Istanbul Convention on Preventing and Combating Violence against Women and Domestic Violence (which came into force in France on 1 November 2014), the Committee refers to the procedure to assess the conformity of the situation in France which took place in the context of this mechanism. It notes that in November 2019, the Council of Europe's Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) published its first baseline evaluation report on France. GREVIO noted the measures taken, notably in terms of legislation, in order to strengthen the legal framework for preventing and addressing violence, as well as the considerable increase in terms of resources allocated to combating such violence. Despite these measures, GREVIO has identified a number of areas where improvement is needed (see details in GREVIO report).

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

Social and economic protection of families

Family counselling services

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

Childcare facilities

The Committee found previously (Conclusions 2011) that the situation was in conformity with the Charter on this point. It notes from the report that during the reference period, the number of places for children under the age of three increased, even in the less well-funded areas of the country. It notes from MISSOC that most collective care facilities (such as crèches and nurseries) are subsidised by the state and the financial contribution expected of parents is calculated according to a scale which takes account of the number of dependent children in the household and its income. Childcare allowances are also available.

Family benefits

Equal access to family benefits

The Committee notes from MISSOC database and the Centre for Liaising with European and International Social Security Bodies (CLEISS) that family allowance funds (CAFs) pay monthly family benefits to employees and persons treated as such in all occupations, self-employed workers other than agricultural workers and all persons residing in France with their children who do not work. Family benefits are paid to persons who have at least two dependent children aged less than 20 years old.

In reply to the Committee's question (Conclusions 2011) the report confirms that, under Article L. 512-2 of the Social Security Code, foreign nationals are entitled to family benefits if they and their dependent children are lawfully resident in France. A child's residence in France is considered lawful if he/she was born in France, entered the country through family reunion or

is the child of a person granted refugee, subsidiary protection or stateless status, or of a foreign national holding a temporary “private and family life” residence permit issued because of their very strong personal and family ties in France.

Level of family benefits

The report does not contain any up-to-date information on the level of family benefits awarded in France during the reference period. The Committee points out that where data are liable to change from one cycle to another, relevant up-to-date information must be provided every time the situation with regard to Article 16 of the Charter is examined, even if it was found to be in conformity in previous conclusions. The Committee notes from MISSOC and CLEISS that the level of family benefits depends on the family income, the number of dependent children and their age. In 2017, the (rounded) monthly amount of family allowances (after deduction of the contribution to the reimbursement of social debt) was €130 for two children, €296 for three, €463 for four and €166 for each further child, or at least 7.05% of the monthly median equivalised income (which was €1841 in 2017). These amounts are divided by two or by four if the recipient’s income exceeds a certain threshold (€67 408 per year, or €5 617 per month for a family with two children). The Committee takes note of the supplements and supplementary benefits provided for in certain cases (birth and adoption benefits, childcare benefits, tax credits or reductions etc. – see details in MISSOC).

The Committee notes from OECD data that in 2015 public spending on family benefits in France amounted to 3.68% of GDP (of which 1.51% consisted of monetary benefits and 1.43% of services), in other words a considerably higher percentage than the average in OECD countries (2.4%) and EU countries (2.7%). Based on the information available and taking into account the various tax reductions, the Committee considers that the amount of family benefits is sufficient.

Measures in favour of vulnerable families

Monthly family maintenance allowances amount to €149 for each motherless and fatherless child and €110 if a child is raised by a single parent. If child maintenance is not paid, the state may pay a cash advance and recover the sums owed by the parent later. In the area of social assistance, the active solidarity income (RSA) provides single parents with a minimum income, whether or not they are fit to work. Income ceilings for entitlement to childcare allowances are increased for single-parent families. There is also a back-to-school allowance for 6 to 18 year-olds, which is a means-tested one-off payment, the amount of which depends on the age of the child. Lastly, family allowances may be supplemented by special allowances for children with disabilities, which are not means tested.

With regard to Roma families, the report refers to the information provided in relation to Article 31 and in the course of the follow-up to the collective complaints procedure (see below). Insofar as the failings detected relate to the housing of these families, the Committee refers to its examination of this question under Article 31, resulting in a finding of non-conformity (see below).

Housing for families

In its previous conclusion (Conclusions 2011), the Committee found that the situation in France was not in conformity with the Charter on the ground that housing conditions for Traveller families were inadequate. This conclusion resulted from the finding of violations of Article 16, and of Article E taken in conjunction with Article 16, in the framework of complaint European Roma Rights Centre (ERRC) v. France (Complaint No. 51/2008, decision on the merits of 19 October 2009), which referred to the violations found in respect of Article 31 of the Charter.

Subsequently, the Committee found new similar violations of Article E, taken in conjunction with Article 16, in the framework of complaints European Roma and Travellers Forum (ERTF)

v. France (Complaint No. 64/2011, decision on the merits of 24 January 2012) and Médecins du Monde – International v. France (Complaint No. 67/2011, decision on the merits of 11 September 2012). These violations were related to the housing situation of Roma and Traveller families, as assessed under Article 31 of the Charter.

As all the aspects of housing for families covered by Article 16 are also covered by Article 31, the Committee refers to its examination of Article 31, including its findings concerning the follow-up to the violations relating to housing conditions found in its decisions on collective complaints (see Conclusions 2019, Article 31, for details of these complaints). In this connection, the Committee points out that it concluded (Findings of 6/12/2018) that the relevant violations highlighted in these complaints had not been remedied and observes that the reference period of the current conclusions is covered by those findings. The Committee recalls that the subsequent follow-up to these complaints will be carried out when examining the report which France is due to submit by 31/12/2019.

In the light of the above, the Committee can only conclude, on the same grounds, that the situation is not in conformity with Article 16 of the Charter on account of the inadequate protection of Roma and Traveller families with respect to housing, including in terms of eviction conditions and access to social housing.

Participation of associations representing families

The Committee notes that the participation of associations representing families in the preparation of family policies is managed by the “High Council for Families, Children and the Elderly” (which replaced the High Council for Families referred to in Conclusions 2011 in 2016). This body, which answers to the Prime Minister, is made up of an equal number of men and women and is tasked with fostering public debate and providing the authorities with forward-looking, cross-cutting expertise on questions connected with families, childhood and advancing age, and the adaptation of society to ageing and caring approaches, all seen from an intergenerational viewpoint. The Committee finds that the situation is still in conformity with the Charter on this point.

Conclusion

The Committee concludes that the situation in France is not in conformity with Article 16 of the Charter on account of the inadequate protection of Roma and Traveller families with respect to housing, including in terms of eviction conditions and access to social housing.

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

Paragraph 1 - Assistance, education and training

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

The legal status of the child

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

According to EUROSTAT in 2015 there were 6,395 first time asylum applications in the EU by children recorded as stateless and 7,620 by children with an unknown nationality. This figure only concerns EU states and does not include children born stateless in Europe, 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 further asks what measures have been taken to facilitate birth registration, particularly for vulnerable groups, such as Roma, asylum seekers and children in an irregular situation.

Protection from ill-treatment and abuse

In its previous conclusion (Conclusions 2011) the Committee held that the situation was not in conformity with the Charter as all forms of corporal punishment of children were not prohibited. It recalls that it found in the follow up to *APPROACH v. France*, Complaint no.92/20113, decision on the merits of 4 December 2014, Findings 2018 that the situation had not been brought into conformity with the Charter.

The Committee notes that the Law on the prohibition of ordinary educational violence (*violences éducatives ordinaires*) was adopted unanimously by the Senate in July 2019. It amends article 371-1 of the Civil Code and provides that: "Parental authority is exercised without any physical or psychological violence". However, as this development took place outside the reference period the Committee will review it next time it examines Article 17.1 of the Charter.

The Committee notes that there was no change to the situation during the reference period which it had previously found not to be in conformity with the Charter. Therefore, it reiterates its previous findings of non-conformity on this ground.

Public care

The Committee previously asked for information on the criteria for the restriction on custodial or parental rights and on the extent of such restrictions. It also asked to be informed about the procedural safeguards ensuring that children are removed from their families only in exceptional circumstances. It also asked if the national law allowed to appeal against a decision limiting parental rights, to take a child into public care or to restrict the child's right of access to their closest family (Conclusions 2011).

The report provides details of the circumstances in which parental rights may be restricted, namely where the health and safety of the child are in danger, or when their physical or intellectual development are seriously compromised. A judge must strive to keep a child in their family setting and must consider the best interests of the child. Where the child must be placed outside the home they must be able to maintain contact with their family. Children old

enough and able to voice their views must be heard by the judge and have the right to be assisted by a lawyer.

As regards appeals against a decision to place a child outside the home or to impose educational assistance measures, the report states that either parent or the child over 16 years of age may appeal within 15 days of notification of the decision.

The Committee asks for clarification as to whether it is possible for a child to be placed outside their home solely on the basis of the parents' lack of resources.

The Committee recalls from its previous conclusions that the Child Welfare Department (*Aide Sociale à l'Enfance* – ASE (ASE) is the main body concerned with child protection. Children entrusted to the ASE are mainly placed in foster care or in institutions.

The Committee requests that the next report provide updated information on the number of children in public care, the number placed in foster care and the number placed in institutions, as well as trends in the area.

Right to education

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

Children in conflict with the law

There is no minimum age legally set below which children cannot be held criminally responsible. Young persons under the age of 18 “able to understand what they are doing” are criminally responsible for the felonies, misdemeanours or petty offences which they have been found guilty of. The Committee recalls that the age of criminal responsibility should not be too low and in any rate, it should not be lower than 14 years of age. States should seek to progressively raise the minimum age of criminal responsibility. The Committee requests that the next report indicate whether a minimum age of criminal responsibility has been adopted and, if not, whether in practice children under 14 years of age have been held criminally liable.

The Committee previously found that the situation was not in conformity on the grounds that the maximum length of pre-trial detention was too long.

The report reiterates that the length of pre-trial detention varies depending on the case, the age of the child and the offence he/she is accused of and may last up to two years for children aged 16 and above.

The Committee notes that the situation which it has previously found not to be in conformity with the Charter has not changed. Therefore, it reiterates its previous conclusion of non-conformity on this ground.

The Committee previously requested the Government to comment on reports that France favours punitive measures over educational ones, especially with respect to the reforms introduced by Law No. 2007-1198 of 10 August 2007 that strengthens the fight against recidivism of adults and juveniles, and allows children to be tried as adults (Conclusions 2015). The report states that legislative reforms did not alter the principle that children in conflict with the law should foremost be subject to protective measures, provided with assistance or subject to educational measures. Alternatives to detention should be favoured. These principles were recalled in a circular of 13 December 2016. Certain provisions of the above-mentioned 2007 law were modified in 2014, and minimum sentencing applicable to repeat offenders was dropped.

The Committee requires that the next report provide updated information on the maximum sentences applicable to children in prisons and in alternative detention centres such as closed educational facilities.

The Committee recalls having previously noted that, under Article D. 283-1 of the Penal Procedure Code, the solitary confinement of minors is prohibited.

As regards the separation of children from adults in detention facilities, the Committee notes from the Concluding Observations on the fifth periodic report of France of the UN Committee on the Rights of Child (CRC/C/FRA/CO/5) that girls may be detained with adult women. The Committee asks to receive further information on the situation and recalls its case law that children should not be detained with adults.

Right to assistance

Article 17 guarantees the right of children, including children in an irregular situation and non-accompanied minors, to care and assistance, including medical assistance and appropriate accommodation [International Federation of Human Rights Leagues (FIDH) v. France, Complaint No 14/2003, Decision on the merits of September 2004, § 36, *Defence for Children International (DCI) v. 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 considers that the detention of children on the basis of their immigration status or that of their parents is contrary to the best interests of the child. Likewise, unaccompanied minors should not be deprived of their liberty, and detention cannot be justified solely on the grounds that they are unaccompanied or separated, or on their migratory or residence status, or lack thereof.

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 recalls that the European Committee for Home-Based Priority Action for children and families (EUROCEF) v. France, Complaint No.114/2015, Decision on the merits of 24 January 2018, found that unaccompanied minors were detained in waiting areas and hotels, sometimes with adults, and deprived of the assistance of a guardian, in violation of Article 17§1. The Committee also found the situation in the above-mentioned complaint to be in violation of Article 17§1 on the grounds that bone testing was used to determine the age of unaccompanied children.

The Committee notes that it will examine the follow-up to this collective complaint in 2020.

Therefore, the Committee requests further information on the measures taken to find alternatives to detention for asylum-seeking children, to ensure that accommodation facilities for migrant children in an irregular situation, whether accompanied or unaccompanied, are appropriate and adequately monitored.

Meanwhile, the Committee finds that the situation is not in conformity on the grounds that migrant children and unaccompanied minors may be detained, and bone testing be carried out to determine the age of unaccompanied children

Child poverty

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

The Committee notes from EUROSTAT that in 2017 22.3% of children in France, slightly below the EU average of 24.9%, were at risk of poverty and social exclusion.

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

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

Conclusion

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

- not all forms of corporal punishment of children were prohibited in all settings during the reference period;
- the maximum length of pre-trial detention is excessive;
- bone testing is used to determine the age of unaccompanied children;
- migrant children unaccompanied minors may be detained in inappropriate settings.

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

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

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

Enrolment rates, absenteeism and drop out rates

According to UNESCO in 2017 the net enrolment rate for primary education for both sexes was 98.93%, the corresponding rate for secondary education was 94.80%.

According to the report, several measures are in place to prevent children leaving education early, such as special general and vocational classes for children in difficulty, personalized learning pathways and special classes and boarding schools for children identified in the framework of the fight against absenteeism and early school leaving.

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

Costs associated with education

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

Vulnerable groups

The Committee previously asked what measures had been taken to assess the school enrolment rate for Traveller children (Conclusions 2011) The report replies it is prohibited to collect data on the basis of ethnicity.

The Committee recalls that the gathering and analysis of statistical data (with due safeguards for privacy and against other abuses) is indispensable for the formulation of a rational policy aiming at the protection of particularly vulnerable groups or at reducing a particular phenomenon (see, *mutatis mutandis*, ERRC v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005, §23; ERRC v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, §27; Conclusions 2005, France, Article 31§2, p.268). Therefore, the Committee asks again what measures have been taken to ensure effective access to education for Traveller children and Roma children and how are the effectiveness of these measures assessed.

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

The Committee recalls that in collective complaint European Roma and Travellers Forum (ERTF) v. France No. 119/2015, Decision on the merits of 5 December 2017 the Committee found a violation of Article 17§2 on the ground that the frequent eviction of Roma in particular in Aix jeopardized Roma children's right to education. It will examine the follow up to this complaint in 2020.

The Committee asks for information on any measures taken to improve the educational outcomes of other vulnerable groups such as children from ethnic minorities.

The Committee previously asked whether children in an irregular situation enjoy the right to education (Conclusions 2011). The report states that paragraph 1 of Article L. 131-1 of the Education Code provides that education is compulsory for French and foreign children of both sexes between the ages of six and sixteen. A ministerial circular No. 2002-063 sets out the procedures for enrolling and educating students of foreign nationality. The Committee recalls that in Collective Complaint EUROCEF v. France No 114/2015, decision on the merits of 24 January 2018, it noted all children irrespective of status, of compulsory school age have the right to access education.

As France has accepted Article 15§1 of the Charter the Committee will examine the rights of children with disabilities to education under that provision.

Antibullying measures

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

The voice of the child in education

Securing the right of the child to be heard within education is crucial for the realisation of the right to education in terms of Article 17§2. This requires states to ensure child participation across a broad range of decision-making and activities related to education, including in the context of children's specific learning environments. The Committee asks what measures have been taken by the State to facilitate child participation in this regard.

Conclusion

Pending receipt of the information requested the Committee concludes that the situation in France is in conformity with Article 17§2 of the Charter.

Article 19 - Right of migrant workers and their families to protection and assistance
Paragraph 1 - Assistance and information on migration

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

Migration trends

The Committee has assessed the migration trends in France in its previous conclusion ([Conclusions 2011](#)). It asks that the next report provide up-to-date information on the developments in this respect.

Change in policy and the legal framework

The Committee notes that it has previously assessed the policy and legal framework relating to migration matters (Conclusions 2011). The report provides no information on any changes in this respect. 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).

The Committee notes, in this respect, that it has comprehensively assessed the services and information for migrant workers (see for a detailed description Conclusions 2011). It asks that the next report provide up-to-date information in this respect.

Measures against misleading propaganda relating to emigration and immigration

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

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

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

The Committee further recalls that in order to combat misleading propaganda, there must be an effective system to monitor discriminatory, racist or hate-inciting speech, particularly in the public sphere. It underlines that the authorities should take action against misleading

propaganda as a means of preventing illegal immigration and trafficking in human beings (Conclusions 2006, Slovenia).

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

The Committee notes in this respect that it has deferred its previous conclusion ([Conclusions 2011](#)), requesting information on measures taken to effectively fight against misleading propaganda, in particular, on training for public employees on issues such as tolerance of differences, public service neutrality and, more generally speaking, respect for others. It also asked for additional information on the training given to police officials by the contact prosecutors appointed to run anti-discrimination centres.

The report does not provide any information in this respect. Accordingly, the Committee considers that it has not been established that measures were adequately taken to combat misleading propaganda and to prevent from creating an atmosphere of hostility towards and rejection of migrant workers, members on minority groups in certain media.

Conclusion

The Committee concludes that the situation in France is not in conformity with Article 19§1 of the Charter on the ground that it has not been established that sufficient measures were taken to fight against misleading propaganda against migrant workers.

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 France.

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 has assessed the situation in its previous conclusion ([Conclusions 2011](#)) and reiterated its conclusion on conformity. The Committee noted that the European Commission against Racism and Intolerance (ECRI) recommended that the French authorities should review the new measures taken in the field of integration such as the compulsory reception and integration contract and the integration tests applicable to certain non-EU citizens – which are regarded as a prerequisite for admission to the country – to ensure that this new legislation did not have a counter-productive effect on the integration process by stigmatising the persons concerned or jeopardising their individual rights. The Committee asked for information and statistics concerning any decisions not to renew the residence permits of nationals of states party to the Charter because they have shown disregard in complying with these requirements.

In reply, the report confirms that, pursuant to the Code of Entry and Residence of Foreigners and the Right of Asylum, a foreigner can benefit from a multi-year residence permit as long as they attend, subject to exceptional circumstances, and actively participates in training prescribed by the State in the framework of the integration contract and do not manifest rejection of the essential values of French society and the Republic. Accordingly, in order to issue the multi-year residence card, the prefect assesses whether the foreigner has complied with the commitments he has made under this contract and, as confirmed by the French Immigration and Integration Office, attended and actively participated in the relevant training courses. These courses allow foreigners to acquire appropriate linguistic and civic knowledge, essential for their proper integration.

The report further states that a foreigner who does not meet the conditions set out above cannot obtain the issuance of the multi-year residence card. He may, however, remain in France if he satisfies other conditions laid down by the legislation under the temporary residence permit system. The number of applications resulting in a refusal of a residence permit for non-compliance with the integration contract is, each year, less than 0.1% of the total number of applications.

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 France is in conformity with Article 19§2 of the Charter.

Article 19 - Right of migrant workers and their families to protection and assistance
Paragraph 3 - Co-operation between social services of emigration and immigration states

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

It 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 has assessed the situation in 2006 ([Conclusions 2006](#)) and found it to be in conformity with the Charter. In its previous conclusion ([Conclusions 2011](#)), it asked for full, up-to-date description of the situation.

The report does not reply to the Committee's request. The Committee repeats its question and considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation is still in conformity with Article 19§3 of the Charter.

Conclusion

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

Article 19 - Right of migrant workers and their families to protection and assistance
Paragraph 4 - Equality regarding employment, right to organise and accommodation

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

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).

In its previous conclusion ([Conclusions 2011](#)) the Committee considered that it had not been established that in respect of access to employment and working conditions migrant workers enjoyed treatment not less favourable than that of nationals. It noted, in particular, that despite the existence of several international and Community instruments on equal treatment in employment and, more specifically, 2001 Anti-Discrimination Act, discriminatory practices were still extremely widespread and socially accepted in France. Having observed that a series of measures had been taken by the relevant authorities and other stakeholders to try to improve this worrying situation, the Committee asked to be kept informed about the measures taken and any improvement in the situation with regard to the eradication of discrimination against foreigners in the workplace.

The introduction of a training obligation on the fight against discrimination, awareness raising measures, such as "Testing" campaign piloted by the Ministry of Labour on means of investigation intended to detect a situation of discrimination or "Skills First" campaign on the subject of discrimination, present in municipalities, public and social media and involving public central and decentralised authorities, HR institutions, NGOs, local authorities, professional organisations.

Furthermore, in 2016, an agreement was signed between the Ministry of Labour and the Defender of Rights to strengthen the fight against discrimination at work, with the main purpose of promoting the consistency and complementarity of actions relating to the fight against discrimination between the labour inspection services and the Defender of Rights, strengthening coordination between the two institutions, the exchange of information and documents, the pooling of training actions, as well as the sharing of experience.

The Committee notes the efforts of the Government to combat and prevent discrimination in the workplace and asks the next report to provide information on the impact, noted and expected of all the adopted and yet envisaged measures. Meanwhile, it reserves its position on this point.

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

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

The Committee noted in its previous conclusion that all employees are free to join a trade union of their choice and that discrimination is prohibited (Conclusions 2011). It asked for a full and up-to-date description of the situation, underlining that "it was not enough for a government to prove that no discrimination existed in law alone but that it was obliged to prove, in addition, that no discrimination was practised in fact or to inform the supervisory organs of the practical measures taken to remedy it" (Statement of interpretation, Conclusions III).

The report submits that as regards access of posted workers to trade union organizations, Article D. 1263-21 of the Labour Code, which entered into force in 1 July 2017, provides that on building or civil engineering sites a poster mentioned in Article L. 1262-4-5 which presents

the information on the French regulation of labour law applicable to employees posted to France, should specify the names and contact details of representative union organizations. Furthermore, awareness-raising and training on diversity, equality and anti-discrimination were contacted by the Labour Inspectorate.

The report further states that an agreement between the Ministry of Labour and the Defender of Rights was signed to reinforce the controls operated in order to fight in particular against union discrimination. It also provides statistics of interventions carried out by the Labour Inspectorate and their outcomes.

Finally, the report provides that the Court of Cassation issued new case-law, which strengthens the effective exercise of elective or union mandates with no adverse impact on the employee.

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

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).

In its previous conclusion ([Conclusions 2011](#)) the Committee considered it not established that migrant workers enjoyed equal treatment in respect of access to accommodation. In particular, it found excessive the length of residence requirement to be entitled to submit an application for social housing. Furthermore, it found that the housing conditions of Roma migrant workers in a legal situation were not adequate.

The report states that the right to decent and independent housing is granted to any person residing in French territory on a regular, permanent basis and who is unable to access it by their own means or to maintain themselves there (under the law known as DALO).

The Committee also notes that according to the information given by the representative of France to the Governmental Committee in 2012 (regarding Conclusions 2011), the two-year residence requirement had been annulled by the Conseil d'Etat and that the two-year residence requirement is no longer applied to non-EU nationals for entitlement to submit an application to the committee in charge of the DALO procedure. The Committee notes its conclusion under Article 31§1 that the situation has been brought into conformity with the Charter in this respect.

The report further provides that a structural reform of access to housing for people without stable home is underway. It also describes a slum reduction policy supported by the Government and gives numbers as regards the budget in the reference period allocated to its implementation. The Committee asks the next report to provide comprehensive information on the reform and its implementation, insofar as it concerns migrant workers access to housing.

As regards migrants identified as Roma with a right to stay, the report states that whether they are non-EU or intra-EU, they have the same rights as all persons legally established in France for access to housing. However, the Committee refers to its detailed assessment under Article 31§1 (Conclusions 2019) where it finds that despite the State's efforts and the positive results described in the report, the situation is still not in conformity with the Charter. Accordingly, it upholds its conclusion of non-conformity on this point.

Monitoring and judicial review

The Committee recalls 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 Committee notes the information referred to above on the extended competences of the Defender of Rights and the Labour Inspectorate. As it has not yet had the opportunity to assess the situation in full from this angle, it asks the next report to submit comprehensive information on the functioning of these two monitoring bodies, as well as on the judicial review of cases of alleged discrimination in the workplace, in particular with respect to nationality. Meanwhile, it reserves its position on this point.

Conclusion

The Committee concludes that the situation in France is not in conformity with Article 19§4 of the Charter on the ground that, in practice, Roma migrant workers do not have equal access to housing.

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 France.

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

The Committee notes that it addressed the relevant legal framework and found it to be in conformity with the requirements of the Charter (see [Conclusions 2002](#)). Considering the fact that the situation was repeatedly reported to have remained unchanged, the Committee could renew its positive conclusion, most recently in 2011 ([Conclusions 2011](#)).

In the previous conclusion (Conclusions 2011), the Committee requested a full and up-to-date description of the situation in law and practice in respect of Article 19§5. The report does not respond to this request. The Committee again asks for a renewed description of the legal framework, in the light of the fact that the latest comprehensive assessment of the situation dates back to 2002.

Conclusion

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

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

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

Scope

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

The Committee refers to its previous conclusion ([Conclusions 2011](#)), as regards the scope of persons entitled to family reunion, which is considered to be in conformity with the Charter.

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).

The Committee also recalls that States may require a certain length of residence of migrant workers before their family can join them. A period of a year is acceptable under the Charter (Conclusions I, Germany). In this respect, the Committee considers that France's eighteen-month residence requirement is excessive and therefore it remains not in conformity with the Charter (see also [Conclusions 2011](#)).

Other requirements deciding on the eligibility for a family reunion have been comprehensively assessed by the Committee in its previous conclusion (Conclusions 2011). The Committee then requested specific information including figures on any rejections of applications for family reunion based on the criteria relating to available means, housing, state of health or "integration into the Republic". The report does not provide the requested information and the Committee strongly reiterates its request.

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 wishes to make an in-depth assessment of the relevant review mechanism in France and requests comprehensive information in this respect in the next report.

Conclusion

The Committee concludes that the situation in France is not in conformity with Article 19§6 of the Charter on the ground that the requirement to have been residing lawfully in France for at least eighteen months before a migrant worker may be joined by close relatives is excessive.

Article 19 - Right of migrant workers and their families to protection and assistance
Paragraph 7 - Equality regarding legal proceedings

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

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 (see for a detailed assessment [Conclusions 2006](#)). Considering the fact that the situation was repeatedly reported to have remained unchanged, the Committee could renew its positive conclusion, most recently in 2011 ([Conclusions 2011](#)). It then requested a full and up-to-date description of the situation in law and practice..

In reply, the report provides that, pursuant to the 2016 Law on Foreigners in France, foreign nationals habitually and regularly residing in France are eligible for legal aid. In addition, legal aid may exceptionally be granted to persons who do not fulfill these conditions but their situation appears particularly worthy of interest in view of the subject of the dispute or the foreseeable costs of the proceedings. Legal aid is granted without conditions of residence to foreigners when they are minors, assisted witnesses, indicted, defendants, defendants, convicts or civil parties, when they benefit from a protection order or where they are the subject of the procedure of appearance on prior recognition of guilt, as well as to persons subject to some specific procedures. In any case, access to the law and to legal information is open to all in an anonymous, free and unconditional manner. Moreover, under the National Charter of Access to the Law, which aims to provide access to the law for the poor and the fight against poverty and for social inclusion, partnerships can be established at local level with 7 signatory associations, including CIMADE, which accompanies foreigners in defending their rights. This association is subsidized by the Ministry of Justice.

The Committee asks the next report to confirm whenever migrant workers may, if the interests of justice so require, have the free assistance of an interpreter and have any necessary documents translated.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in France is in conformity with Article 19§7 of the Charter.

Article 19 - Right of migrant workers and their families to protection and assistance
Paragraph 8 - Guarantees concerning deportation

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

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

In its previous conclusion ([Conclusions 2011](#)), the Committee concluded that the situation was not in conformity with Article 19§8 on the ground that during the reference period Roma were expelled for reasons not permitted by the Charter. The Committee recalls that it has decided on the merits of Centre on Housing Rights and Evictions (COHRE) v. France, Complaint No. 63/2010, decision on the merits of 28 June 2011 and found a violation of Article 19§8 of the Charter on the ground that during the summer 2010 Roma of Romanian and Bulgarian origin were collectively expelled. This decision was adopted outside the reference period and its follow-up could not be carried out in its conclusion 2011. In the light of the fact that the French government did not provide necessary information so far, the Committee is still supervising the implementation of this decision, awaiting confirmation whether the practices at issue in the decision on the complaint have been definitely halted (see [2015 Assessment of the follow-up: Centre on Housing Rights and Evictions \(COHRE\) v. France, Collective Complaint No. 63/2010](#)). The report provides explanations on the events, pointing out to the fact that they concerned irregularly staying foreigners (see [report](#) for details). The Committee understands that no incidents of collective returns took place after 2010 and asks the next report to confirm that this is the case.

The Committee has assessed the legal framework as regards guarantees concerning deportation in its previous conclusions (see for details Conclusions 2011 and 2006). The report confirms that a foreigner lawfully present in France may not be expelled by the administrative authority unless he/she constitutes a serious threat to public order/security. Furthermore, in order to protect the right to family/private life some foreigners benefit from an almost absolute protection against expulsion. No-one shall be repatriated where there is a risk to their life or liberty or where there is a risk he/she will be subject to treatment in breach of Article 3 of the European Convention on Human Rights.

In the previous conclusion (Conclusions 2011), the Committee asked whether persons who may not be expelled were granted leave to remain. The Committee repeats its request for this information.

The Committee furthermore asked for statistics on deportations of migrant workers, as well as on grounds on which the relevant deportations were based. It also wished to receive information on the frequency of appeals against expulsion orders, as well as the proportion which were successful. The report provides information on the number of deportation orders issued in 2017 (225) and by September 2018 (183). It states that no statistical data exists on the frequency of appeals against grounds for deportations or the proportion of remedies used.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in France is in conformity with Article 19§8 of the Charter.

Article 19 - Right of migrant workers and their families to protection and assistance
Paragraph 9 - Transfer of earnings and savings

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

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

The Committee further notes that it previously addressed the legal framework relating to transfer of earnings and savings of migrant workers ([Conclusions XVI-1 \(2002\)](#)) and found it to be in conformity with the requirements of the Charter. In its previous conclusion ([Conclusions 2011](#)) the Committee asked for an updated description of the situation. The report provides detailed information on transfers of earnings and savings of migrant workers to African countries. The Committee understands that all migrant workers may transfer money abroad without restrictions and asks the next report to confirm that this is the case.

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

Conclusion

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

Article 19 - Right of migrant workers and their families to protection and assistance
Paragraph 10 - Equal treatment for the self-employed

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

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

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

The Committee has found the situation in France not to be in conformity with Articles 19§1, 19§4 and 19§6. Accordingly, for the same reasons as stated in the conclusions on the abovementioned Articles, the Committee concludes that the situation in France is not in conformity with Article 19§10 of the Charter.

Conclusion

The Committee concludes that the situation in France is not in conformity with Article 19§10 of the Charter as the grounds of non-conformity under Articles 19§1, 19§4 and 19§6 apply also to self-employed migrants.

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

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

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

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

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

The Committee notes that it previously addressed the teaching of the national language to migrant workers and their families ([Conclusions 2011](#)). It deferred its conclusion, pending confirmation that language classes for migrants were free of charge.

The report recalls the existing various learning opportunities for French as a foreign language, both for children and adults. It confirms that these language courses are offered to foreigners free of charge. They are financed by the State through its operator, the French Office for Immigration and Integration (OFII), which entrusts this service to training organizations.

The report also provides statistics on numbers of migrants benefiting from language training and on the number of migrant children in schools, who receive educational support.

Conclusion

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

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

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

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

The Committee has assessed the legal framework and the system of teaching mother tongue of migrants in schools and found that the concept behind them was in conformity with Article 19§12 (Conclusions 2004). The Committee has, however, repeatedly asked for more complete information on the availability of mother tongue language classes for migrant worker's children outside the school system, i.e. whether other bodies, such as local associations, cultural centres or private initiatives, teach migrant workers' children the language of their country of origin (Conclusions 2004, 2006 and 2011). Due to persistent absence of information, the Committee concluded in 2011 that there was failure to comply (Conclusions 2011).

In reply, the report states that there are two types of language courses for foreigners taught outside school time: Language and Culture Education Courses (ELCO), organized by bilateral agreements with Algeria, Morocco, Tunisia, Italy, Portugal, Serbia, Croatia and Turkey and, since 2015, international language courses (EILE) organised by the Ministry of National Education with other partner countries. An ELCO course or an EILE course is opened on initial request of parents of students. ELCO can, if necessary, continue in vocational colleges and high schools. The supervision of the ELCOs and EILEs is carried out under the authority of the French territorial inspection bodies with the support of the partner countries (National Education Inspectors and Regional Pedagogical Inspectors). Furthermore, as regards the outside of the school system, Spain has chosen to leave the ELCO system in favor of associative-type education (ALCE), especially for families of Spanish origin or nationality.

In addition, the report specifies that in the school system, Italy and Portugal participate in the first level in foreign language teaching (ELVE) in Italian and Portuguese: this is the compulsory foreign language taught from preparatory course (CP), during school time.

The Committee asks the next report to provide statistics on the number of children receiving education in their mother tongue within and outside school system.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in France is in conformity with Article 19§12 of the Charter.

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

Paragraph 1 - Participation in working life

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

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

Employment, vocational guidance and training

In its previous conclusion (Conclusions 2011), the Committee asked for updated information on any placement, counselling, or training programmes for workers with family responsibilities. The report does not provide any information on this point. The Committee accordingly reiterates its request.

Conditions of employment, social security

In its previous conclusion, the Committee asked whether workers were entitled to relevant social security benefits, in particular health care, during periods of parental or other childcare leave. In reply, the report states that during the entire period of parental education leave (full-time or part-time), workers retain their right to have their health care costs reimbursed by the basic social security fund. However, in the event of full-time parental education leave, employment contracts are suspended and employees are no longer covered by the employee's mutual insurance scheme, although they can subscribe to an individual complementary health insurance.

The Committee notes from the report that workers with family responsibilities are entitled to the authorisation of leave of absence and to move over to part-time work, and employers may not refuse such requests. According to the report, employees with children who have completed one year of service have the right to take parental educational leave in the form of full-time leave or a reduction in weekly working hours for an initial period of one year, which may be extended twice. Workers taking care of a seriously ill, dependent or disabled relative have the right to take solidarity family leave or caregiver leave, this may be taken part-time.

The Committee notes from the report that the Labour Code contains different leave entitlements enabling both men and women employees to fulfil their family responsibilities while continuing to work (maternity leave, paternity leave, new parent's leave, adoption leave, leave to care for a sick child, parental presence leave, etc.). According to the report, Law No. 2016-1088 of 8 August 2016 on labour, modernisation of social dialogue and career path protection has provided for new rights to leave for family events. In particular, the law has established a minimum number of days for family events and provided that additional days may be negotiated.

Under Law No. 2014-459 of 9 May 2014, companies may set up a system for donating rest days to a parent whose child is seriously ill. Law No. 2018-84 of 13 February 2018 (outside the reference period) has set up similar arrangements which make it possible to donate leave days which have not been taken to the caregivers of dependent persons or persons with disabilities.

Child day care services and other childcare arrangements

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

Conclusion

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

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

Paragraph 2 - Parental leave

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

In its previous conclusion (Conclusions 2011), the Committee found that the situation was in conformity with Article 27§2 of the Charter. It will therefore only consider recent developments and additional information.

The Committee noted previously that parental educational leave is granted to all employees in service for a year or more. It is available both to fathers and to mothers (natural and adoptive). Parents may take leave simultaneously or one after the other. It can be taken in one total amount or in the form of a reduction of weekly working hours. Employers may not refuse leave, extensions to leave nor changes in leave arrangements (to full or part time).

The report states that employees choose the initial duration of the leave, up to a maximum of one year. It may be extended twice, though not beyond the child's third birthday (or three years after the arrival in the household of an adopted child).

The report states that employees may finance their leave using their time-saving accounts.

With regard to benefits paid during parental leave, the report states that the Law of 4 August 2014 on genuine equality between women and men reformed the "free choice of activity supplement" (CLCA), transforming into the shared child educational benefit (PreParE). The affected employee can also receive an early childhood benefit (PAJE) awarded by the French Family Allowance Fund (CAF), depending on the resources. In conjunction with this allowance, the employee can receive the shared benefit for the education of the child (PreParE). The Committee notes from the report that the PreParE amounts to €392 per month for employees who give up their work entirely, €253 for those who continue working part-time up to 50% and €146 for part-time work between 50 and 80%.

Conclusion

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

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

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

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

It already examined the situation with regard to the illegality of dismissal on the ground of family responsibilities in its previous conclusion (Conclusions 2011). It will therefore only consider the recent developments and additional information.

Protection against dismissal

The Committee notes from the report that Law No. 2014-873 of 4 August 2014 on genuine equality extended protection from dismissal after the birth of a child (which already applied to mothers) to cover fathers. Law No. 2016-1088 of 8 August 2016 on labour, modernisation of social dialogue and career path protection extended this protection period: the statutory ban on the termination of women's employment contracts at the initiative of the employer following leave linked to pregnancy and maternity was extended from four to ten weeks after the maternity leave and now includes the paid leave period immediately following maternity leave. This protection also covers the spouses of pregnant women and adoptive parents.

The Committee has noted previously that the various types of parental leave and flexible working arrangements available to employees with family responsibilities cannot constitute grounds for a justified dismissal.

Effective remedies

The report states that under Article L. 1132-4 of the Labour Code, any measure or act that is incompatible with the provisions on the principle of non-discrimination is automatically void. Employees whose dismissal has been declared void by a judge may return to work. If they do not wish to do so, the court will award them compensation for the entire damage resulting from the illegal nature of the dismissal, which must be no less than the last six months' salary (Article L. 1235-3-1 of the Labour Code) and is paid in addition to statutory severance pay.

The Committee takes note of the examples of decisions given by the relevant national courts which have not been appealed on points of law.

Conclusion

The Committee concludes that the situation in France is in conformity with Article 27§3 of the Charter.

Article 31 - Right to housing
Paragraph 1 - Adequate housing

The Committee takes note of the information contained in the report submitted by France and the information provided by the *Association Sociale Nationale Internationale Tzigane (ASNIT)*.

Criteria for adequate housing

In its previous conclusion (2011), the Committee found that the situation in France was not in conformity with the Charter because of the problem of substandard housing and the lack of suitable amenities for a large number of dwellings.

The Committee also refers to its Findings 2018 on the follow-up to decisions in collective complaints (decision on the merits in *FEANTSA v. France*, Complaint No. 39/2006, 5 December 2007, §76), in which it found that the situation had not yet been remedied. The Committee noted that according to the Government, between 15 000 and 20 000 people, mostly poor migrants from Eastern Europe, lived in shanty towns. This form of housing was considered very precarious and could not be considered “housing of an adequate standard”.

The current report states that housing posing inherent risks to the health or safety of occupiers or third persons is qualified by the law as “unfit”. This category includes the housing both of very poor owner occupiers and of known slumlords exploiting very vulnerable tenants. It acknowledges that of the 36 million homes in France, 420 000 on the mainland are considered unfit, along with another 100 000 in France’s overseas *départements*. The amount of unfit housing is steadily declining, however, as a result of the coercive measures taken by the authorities against negligent landlords to force them to carry out the necessary work. In response to new cases of unfit housing (co-ownership arrangements involving slumlords and the frequent presence of occupiers in situations of neglect), public measures to renovate housing are combined with various other steps, ranging from grants for building work to criminal proceedings.

The Committee also notes that according to a report by the Abbé Pierre Foundation on the state of bad housing in France (“L’état du mal-logement en France”, 2018 annual report, based on figures from the most recent national housing survey conducted by the French national statistics institute, the INSEE), some 2.1 million people were living in housing without some amenities (i.e. lacking one of the following: running water, shower, indoor toilet, kitchenette or kitchen, heating or properly maintained outside walls) and 934 000 people were living in “acutely” overcrowded conditions, in other words two rooms short of the national norm. While, according to this report, the number of persons living in housing lacking in basic sanitary amenities (running water, shower, indoor toilet) fell by 41% between 2006 and 2013, the number of acutely overcrowded dwellings grew by 17%, as a result, in particular, of the national housing crisis. The Committee asks the Government to comment on this information in its next report.

The Committee notes that the Government recognises that there are still 420 000 homes on the mainland considered unfit, along with 100 000 overseas. It asks for full, up-to-date information in the next report on the percentage of the population living in inadequate or overcrowded housing, and the practical measures taken to improve the situation. In the meantime, the Committee considers that the situation is still not in conformity with Article 31§1 in this respect.

Responsibility for adequate housing

The Committee has already found in its previous conclusions (Conclusions 2003, 2005, 2011) that there was no general national legislation on procedures to check that housing was adequate. The report states that the renovation of unfit housing is brought about by various means such as state grants for building work and the possibility of criminal proceedings.

According to the United Nations Special Rapporteur on adequate housing (preliminary observations following her visit to France from 2 to 11 April 2019, outside the reference period), the local authorities were required to inspect housing to ensure that it is safe and to protect tenants from health risks caused by dilapidated housing. She noted, however, that for many years the City of Marseille had not employed a single individual with the necessary training to undertake such checks and that even now there were not enough staff to perform this task. She noted in this connection that on 5 November 2018, two buildings collapsed in the Noailles neighbourhood of Marseille killing 8 people and displacing over 100 residents.

The Committee asks for specific information in the next report on procedures to check whether housing is adequate at national and local level, particularly inspections. Pending receipt of this information, it reserves its position on this point.

Legal protection

The Committee refers to its previous conclusion (Conclusions 2011) for a description of the legal remedies provided for by the DALO Act (Law No. 2007-290 of 5 March 2007 establishing an enforceable right to housing) for protection of the right to adequate housing. The Committee found that the situation was not in conformity with Article 31§1 of the Charter on the ground that the requirement of two years' prior residence in France to be entitled to submit an application to the committee in charge of the DALO procedure, and hence to have an opportunity to be granted decent housing, was excessive.

The Committee notes that according to the information given by the representative of France to the Governmental Committee in 2012 (regarding Conclusions 2011), the two-year residence requirement had been annulled by the Conseil d'Etat. The Committee notes that the legislation was also amended following this decision (Decree No. 2012-1208 of 30 October 2012 – Article 2) and that the two-year residence requirement is no longer applied to non-EU nationals for entitlement to submit an application to the committee in charge of the DALO procedure. The Committee considers therefore that the situation has been brought into conformity with Article 31§1 in this respect.

The Committee notes however that the effectiveness of the arrangements and the remedies provided for by French legislation on the enforceable right to housing has been questioned by several actors and institutions. The European Court of Human Rights found in its *Tchokontio Happi v. France* judgment of 9 April 2015 that there had been a violation of Article 6§1 of the European Convention on Human Rights because of the failure to enforce a judgment calling for the priority rehousing of the applicant as a matter of urgency in the context of the DALO Act. Other applications have been made to the European Court concerning total or partial failure to enforce judgments under the DALO Act.

The United Nations Special Rapporteur on the right to adequate housing also expressed regret that the implementation of the DALO Act had been limited (preliminary observations following her visit to France from 2 to 11 April 2019, outside the reference period). She noted that applicants accorded priority DALO status who had not been granted housing within a reasonable time could initiate judicial proceedings resulting in the payment either of a fine (which was transferred to a national housing fund) or a compensation for the damage incurred, but this did not necessarily mean that they would actually be assigned decent housing. This could result in a denial of access to justice as the authorities could simply buy their way out of their obligation to respect the right to housing. In this connection, she asserted that the payment of fines should not replace the effective implementation of the right to housing.

In addition, the DALO Supervisory Committee found in 2016 that 55,089 households which had been granted priority status under the DALO Act were still waiting for a housing proposal after six months to ten years (DALO figures for 2008-2016, published by the DALO Supervisory Committee in 2017). The Supervisory Committee also noted that the number of applications for rehousing injunctions and claims for compensation seemed extremely low when compared with these figures (7 532 "injunction" applications and 1 674 claims for

compensation lodged in 2016). With regard to injunctions, the fact that the penalty imposed on the State for failure to propose housing was not paid to the individual applicant created an incomprehensible situation for applicants and gave them no incentive to bring proceedings. As to claims for compensation, the Supervisory Committee noted that such claims were more complex from a legal point of view as applicants had to provide proof of the damage they had sustained. The Supervisory Committee also found that a large number of persons who might be covered by the Act did not apply for assistance as the number of applications made under the Act was well below the number of persons who met one of the criteria for entitlement. In this connection, it recommended that public information about access to DALO should be improved and measures to help persons who wished to submit a DALO application should be stepped up.

The Committee asks for up-to-date information in the next report on the number of persons entitled to assistance under the DALO Act who have been waiting for housing for many years despite a positive decision, as well as on the effectiveness of existing judicial remedies to remedy this situation. As to the effectiveness of DALO applications, the Committee asks whether the public services propose information and/or support measures for people living in inadequate housing situations with regard to the possibility of making a DALO application and the procedures to follow. In the meantime, it reserves its position on this point.

Measures in favour of vulnerable groups

The Committee refers to its Conclusions 2011, in which it found that the housing conditions of many Roma in France failed to satisfy the requirements of Article 31§1 (failure to create a sufficient number of stopping places, and poor living conditions and operational failures on such sites; lack of access to housing for settled Travellers; insufficient progress as regards the eradication of substandard housing conditions for a large number of Roma).

The Committee also refers to its Findings 2018 on the follow-up to decisions in collective complaints (decisions on the merits in *International Movement ATD Fourth World (ATD) v. France*, Complaint No. 33/2006, 5 December 2007; *FEANTSA v. France*, Complaint No. 39/2006, 5 December 2007; *European Roma Rights Centre (ERRC) v. France*, Complaint No. 51/2008, 19 October 2009; *Centre on Housing Rights and Evictions (COHRE) v. France*, Complaint No. 63/2010, 28 June 2011; *European Roma and Travellers Forum (ERTF) v. France*, Collective Complaint No. 64/2011, 24 January 2012; and *Médecins du Monde – International v. France*, Complaint No. 67/2011, 11 September 2012), relating to similar violations of the rights of Roma and Travellers. In these findings, the Committee took note of Law No. 2017-86 of 27 January 2017 on equality and citizenship, which aims in particular to diversify the range of Traveller stopping sites and housing and to increase the number of places available in stopping areas for Travellers, and the implementing regulations published at the end of 2017. The Government explained in particular that this law had incorporated rented family plots into the *département* scheme for Travellers, making it possible to restore permanent stopping places to their original purpose, which was the temporary accommodation of families who were moving around.

The Committee points out that in its decision of 5 December 2017 on *European Roma and Travellers Forum (ERTF) v. France*, Collective Complaint No. 119/2015, it found that there was a violation of Article E taken in conjunction with Article 31 of the Charter because the group of persons concerned by the complaint (Roma children and young adults) did not in practice enjoy the rights provided for in this article, and there was no valid justification for this situation (see §§ 124 and 125). In Resolution CM/ResChS(2018)4, the Committee of Ministers took note of the Government's undertaking to bring the situation into conformity with the Charter with regard to the violations found by the Committee in its decision of 5 December 2017. The Committee points out that the report that France is expected to submit by 31 December 2019 on the follow-up to decisions in collective complaints should include information on the follow-up to this decision.

The current report provides information on the percentage of planned pitches on permanent stopping places set up by 31 December 2017 (71.6% at national level, 45.2% in Ile-de-France; and 40.2% in Provence-Alpes-Côte d'Azur). According to an assessment by the Ministry of the Interior published in 2014, 49% of the large stopping sites provided for in plans had been set up.

The report also explains (in relation to Article 19§4c) of the Charter) that the situation of Roma migrants must be distinguished from that of French Travellers, who are covered by specific legislation on their housing choices. Migrants identified as Roma holding residence rights, whether European Union nationals or not, enjoy the same rights as all other people legally residing in France with regard to access to housing. They are entitled to emergency accommodation, social housing and housing support. France also grants the right to decent, independent housing to all persons living lawfully in France permanently and unable to gain access to or retain housing by their own efforts (DALO Act). Access to all these measures is based on the principle of equal treatment. Furthermore, the Government's shanty-town clearance policy forms part of a process of speeding up access to housing for disadvantaged people. For example, since 2013, over 5 100 persons from shanty towns have been rehoused.

According to information from the *Association Sociale Nationale Internationale Tzigane (ASNIT)*, the stopping places for Travellers (a group of about 400 000 people including Manush, Sinti, Roma, Yenish and Catalan and Spanish Gypsies) provided for in Law No. 2000-614 of 5 July 2000 on reception and accommodation of Travellers (known as the Besson Act, and amended in 2007 and 2017) are still insufficient (only about 70% of stopping places and fewer than 50% of large stopping places have been completed). The authorities have progressively reduced municipalities' obligations where it comes to providing stopping places. For example, they now have the right to convert such sites into rented family plots for low-income families. Furthermore, punitive measures for parking mobile homes outside available sites have been stepped up, particularly through the imposition of heavier criminal sanctions (fines or imprisonment) and the possibility for prefects to serve occupants notices to quit without prior judicial authorisation. According to ASNIT, stopping places are often set up in isolated areas or near infrastructure causing disturbance to site dwellers (such as motorways, railways or industrial areas), and site planning and organisation fails to cater for the nomadic or semi-nomadic lifestyle of the persons concerned and their family life. In addition, Travellers wishing to install caravans on land that they have acquired often find it difficult to get the required planning permission or gain access to water and electricity supplies. As a result, they run the risk of being evicted from their own land. Lastly, as caravans are not regarded as homes, living in a caravan which is still mobile does not secure eligibility for housing support or loans. Owing to inadequate policies and obstructive legislation, Travellers are often forced to adopt a settled life which is at odds with their usual lifestyle and has discriminatory effects.

The Committee notes that following his visit to France in September 2014, the Council of Europe Commissioner for Human Rights found that the Besson Act was not being fully implemented and expressed concern about the obstacles raised by the legal status of caravans. The Commissioner called on the French authorities to act fully in accordance with the decisions of the European Committee of Social Rights relating to Travellers, "ensuring, if necessary by obliging them to do so, that all municipalities effectively comply with their obligations in terms of the making available of reception sites, albeit without excluding all possibilities of parking on private land". He also called on the authorities to grant the status of housing to mobile homes and extend the benefit of the DALO Act to Travellers wishing to settle in one place. With regard to the situation of migrant Roma, the Commissioner noted that most of the people recorded in autumn 2014 as living in France's 500 shanty towns were migrant Roma. He condemned the dangerous and insanitary living conditions in these areas (no electricity, limited access to water and no refuse collection). He recommended that the authorities should make those sites which so required safe, particularly in terms of sanitary facilities, so as to ensure the dignity of the persons who lived there.

In 2015, in its fifth report on France, ECRI also highlighted the still inadequate enforcement, despite continued progress, of the law on reception and accommodation of Travellers.

In the 2016 Concluding observations with regard to the International Covenant on Economic, Social and Cultural Rights, the United Nations Committee on Economic, Social and Cultural Rights regretted the shortcomings in the implementation of the Besson Act, reflected by the fact that the actual rate of establishment of stopping places still fell short of the goals set by the *département* plans for the reception of Travellers. Lastly, the United Nations Special Rapporteur on the right to adequate housing noted that about two-thirds of the population of informal settlements in France were people of Roma origin from Eastern Europe and was struck by the appalling conditions in such settlements (preliminary findings after her visit to France from 2 to 11 April 2019, outside the reference period, in which the Special Rapporteur referred to a visit to a Roma settlement of 120 people in the 15th district of Marseille).

In the light of the foregoing, and despite the State's efforts and the positive results described in the report, the Committee holds that the situation is still not in conformity with Article 31§1 of the Charter for the reasons outlined in its previous conclusion. It asks for detailed information in the next report on all measures taken to improve the situation.

Bearing in mind its Statement of Interpretation on the rights of refugees under the European Social Charter (Conclusions 2015), the Committee asks for information in the next report on the housing situation of refugees.

Conclusion

The Committee concludes that the situation in France is not in conformity with Article 31§1 of the Charter on the following grounds:

- considerable substandard housing and lack of suitable amenities for a large number of dwellings;
- the failure to create a sufficient number of stopping places for Travellers and the poor living conditions and operational failures on such sites;
- lack of access to housing for settled Travellers;
- insufficient progress in the eradication of substandard housing conditions for a large number of Roma.

Article 31 - Right to housing

Paragraph 2 - Reduction of homelessness

The Committee takes note of the information contained in the report submitted by France and the information provided by the *Association Sociale Nationale Internationale Tzigane* (ASNIT).

Preventing homelessness

The Committee found previously (Conclusions 2011) that the situation in France was not in conformity with Article 31§2 on the ground that the measures currently in place to reduce the number of homeless were insufficient, both in quantitative and qualitative terms.

The Committee also refers to its Findings 2018 on the follow-up to decisions on the merits in collective complaints (decision on the merits in *FEANTSA v. France*, Complaint No. 39/2006, 5 December 2007, §§101-108), in which it took note of the adoption of the five-year “Housing First” Plan, along with other measures taken to reduce the number of homeless people, such as the creation of accommodation places and sustained budgetary efforts, and asked for information on the implementation of these action plans so that it could assess whether the situation had been remedied.

The current report states that there were approximately 143 000 homeless people in France in 2012 (according to the French national statistics institute, INSEE), and it is very probable that this figure has increased in recent years. The action of the State and all of those working on the ground, resulting in the provision of huge numbers of accommodation places (an increase of 75% since 2012, giving a total of 138 568 generalist accommodation places on 31 December 2017) has not made it possible to reverse the trend; facilities are still overcrowded and spending is rocketing: the State budget for this policy has been increasing steadily over the last six years (amounting to €1.89 billion in 2017, having increased by €800 million or 61% since 2012).

The Committee notes that in its Concluding observations of 2016 on the International Covenant on Economic, Social and Cultural Rights, the United Nations Committee on Economic, Social and Cultural Rights expressed concern about the persistently high number of homeless persons in France and the fact that over 40% of requests for emergency shelters had not been processed and that, in 80% of cases, accommodation was provided for one night only. The United Nations Special Rapporteur on the right to adequate housing (preliminary findings after her visit to France from 2 to 11 April 2019, outside the reference period) commended the Government for the increase in the annual budget devoted to emergency shelters but was concerned that this response was only temporary in nature. In this connection, she pointed out that, because of the rising numbers of people who found themselves homeless, the emergency 115 hotline (through which callers could access the emergency accommodation system) was swamped. As a result, in Paris, in November 2017, only one quarter of the 35 380 requests for shelter for one night or more through the 115 line had been successful.

The Committee takes note of the adoption by the State of a five-year “Housing First” plan to combat homelessness (2018-2022) and its sustained budgetary efforts in this sphere, particularly in connection with the increase in the number of accommodation places. It notes that the last public survey on the homeless dates back to 2012. It asks for up-to-date information in the next report on the number of homeless people in France and the impact of the five-year plan and other measures taken on the progressive reduction of this number. In the meantime, the Committee considers that the situation is still not in conformity with Article 31§2 on the ground that the measures currently in place to reduce the number of homeless are insufficient.

Forced eviction

The Committee found previously that the situation in France was not in conformity with Article 31§2 because of the unsatisfactory application of the legislation on the prevention of evictions, the lack of measures to provide rehousing solutions for evicted families and the failure to respect Travellers' human dignity during eviction procedures (Conclusions 2011).

The Committee refers to its Findings 2018 on the follow-up to decisions on the merits in collective complaints (decisions on the merits in *International Movement ATD Fourth World (ATD) v. France*, Complaint No. 33/2006, 5 December 2007, §§ 77-83, *FEANTSA v. France*, Complaint No. 39/2006, 5 December 2007, §§ 85-91, *ERRC v. France*, Complaint No. 51/2008, 19 October 2009, §§ 67-71, *COHRE v. France*, Complaint No. 63/2010, 28 June 2011, §§ 41-55, *European Roman and Travellers Forum (ERTF) v. France*, Collective Complaint No. 64/2011, §§ 117-135, and *Médecins du Monde – International v. France*, Complaint No. 67/2011, 11 October 2012, §§ 73-82), in which it found that there was a violation of Article 31§2 of the Charter with regard to eviction procedures in general and forced evictions/evacuations of Roma and Travellers from camps or sites where they were installed (in conjunction with Article E of the Charter with regard to Roma and Travellers).

The current report explains that the number of judicial proceedings for the eviction of tenants and judicial decisions ordering evictions fell for the first time in 2016 after ten years of steady growth, then again in 2017. It states that the Government policy is to prevent eviction as far in advance as possible by helping tenants who can do so to remain and to rehouse those whose rental situation is irretrievably compromised. This is the aim of the Interministerial Action Plan for the prevention of the eviction of tenants launched in 2016 and taken over by the Ministry of Territorial Cohesion in 2018. The report does not provide any further information about forced eviction or evacuation procedures covering camps in which Roma or Travellers are installed.

The Committee notes that in its judgment *Winterstein and Others v. France* of 17 October 2013 (outside the reference period), the European Court of Human Rights found that an eviction decision concerning persons belonging to the Traveller community and members of their families who had been living on a site for many years constituted a violation of Article 8 of the European Convention on Human Rights because the national authorities had failed to examine the proportionality of the measure. The Committee notes that in the report by the Council of Europe Commissioner for Human Rights following his visit to France in September 2014, the Commissioner drew the authorities' attention to the need to apply the criteria set down by the Court and to do so at an early stage, when the decision was taken on whether or not to evict people from land. The Commissioner also expressed concern at the number of forced evictions affecting migrant Roma. He asked the authorities to put an end without delay to compulsory evictions of unlawfully occupied sites which were not accompanied by long-term rehousing solutions for all the occupants of those sites.

In its Concluding observations of 2016 concerning the International Covenant on Economic, Social and Cultural Rights, the United Nations Committee on Economic, Social and Cultural Rights also expressed concern about the number of forced evictions in France, whether tenant evictions, evictions of persons from informal settlements or evictions of members of the Roma community or of Travellers from stopping areas.

The Committee notes from another source (Human Rights League and European Roma Rights Centre: "Census of forced evictions in living areas occupied by Roma (or people designated as such) in France", 2017), that in 2017, over 11 300 Roma or persons designated as such were subject to forced evacuations or evictions from illegal camps or squats, which was an increase of 12% over 2016. According to this source, some of these evictions took place in the winter and half were carried out despite the absence of any rehousing proposal for the evicted families and with complete disregard for the circular of 26 August 2012. As to tenant evictions, according to a report by the Abbé Pierre Foundation in 2018 (outside the reference period), actual evictions with the assistance of law enforcement agencies increased

by 140% in 15 years, reaching 15 222 evictions in 2016 (and rising by 31% between 2014 and 2016). This report also states that two to three times more households leave their homes before the police arrive, under the pressure of the eviction procedure.

In the light of the foregoing, the Committee asks for information in the next report on the supervision and assessment of the measures adopted to improve the situation and on the number of evictions ordered (tenant evictions, evictions from illegal camps or shanty towns, including those affecting camps in which Roma or Travellers are installed). It also asks for clarification as to whether:

- the administrative authorities and courts carry out a proportionality check on eviction measures in the light of the individual and family circumstances of the persons concerned;
- forced evacuations or evictions from illegal camps or shanty towns are prohibited during the winter.

In the meantime, the Committee considers that the situation is still not in conformity with Article 31§2 of the Charter for the reasons previously stated.

Right to shelter

In its previous conclusion (Conclusions 2011), the Committee asked whether emergency accommodation satisfied security requirements and health and hygiene standards, whether it was provided without the requirement for a residence permit and whether the applicable regulations provided for a prohibition on forced eviction.

The report refers to the applicable legislation on emergency accommodation. Article L354-2-2 of the Social Welfare and Family Code of 27 March 2014 provides that “all persons without shelter in situations of medical, psychological or social hardship shall have access at all times to emergency accommodation”. This emergency accommodation must enable such persons to make use, in conditions showing due regard for human dignity, of services providing board and lodging, sanitary facilities and an initial medical, psychological and social welfare evaluation and to be referred to any professional or body capable of affording them the assistance warranted by their circumstances. Article L345-2-3 provides that all persons admitted to an emergency accommodation facility must have access to personalised care and remain in the facility, provided that they so wish, until they can be referred to a body providing stable accommodation or health care, or offered housing suited to their situation.

The Committee notes that the right to emergency accommodation is laid down by law as an unconditional right and therefore is not subject to residence requirements for non-nationals. The law also establishes that accommodation arrangements must be in accordance with human dignity. The Committee also notes that those concerned may remain in emergency accommodation until they can be referred to a body providing stable accommodation or they can be offered suitable housing (the principle of continuity of accommodation). In this connection, the Committee refers to its Statement of Interpretation on Article 31§2 (Conclusions 2015) and reiterates that eviction from emergency accommodation without a rehousing proposal must be prohibited. It asks for clarification in the next report on whether it is possible in practice to discontinue accommodation in an emergency shelter and whether there is case law on the subject.

The Committee also notes that according to a circular of 12 December 2017 on the examination of administrative statuses in emergency accommodation facilities, teams of officials from prefectures and the National Office for Immigration and Integration may enter emergency accommodation centres to check residents’ administrative statuses on the basis of a census of the persons accommodated. The Abbé Pierre Foundation’s 2018 report drew attention to the risk of moves to undermine the unconditional nature of migrants’ right to accommodation regardless of their administrative status. It also emerges from a study in 2018 (outside the reference period) by the French High Commission for the Housing of Disadvantaged Persons (HCLPD) that according to the case-law of the *Conseil d’Etat*, persons

whose applications for asylum have been definitively rejected and foreigners who have received a notice of their obligation to leave French territory must provide evidence of “exceptional circumstances” to lay claim to accommodation (“The principle of unconditional reception in the light of the relevant case-law: 2012-2018”). The United Nations Special Rapporteur on the right to adequate housing regretted how extremely limited access to emergency shelter was for migrants living in camps in the area of Calais, who were repeatedly evicted by the police (preliminary findings after her visit to France from 2 to 11 April 2019, outside the reference period).

The Committee points out that Article 31§2 of the Charter applies to irregular migrants, and States Parties have a duty to provide suitable accommodation for these people as long as they fall within their jurisdiction (*Conference of European Churches (CEC) v. the Netherlands*, Complaint No 90/2013, decision on the merits, 1 July 2014, §§ 128-130 and 144; *European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands*, Complaint No. 86/2012, decision on the merits of 2 July 2014, §§ 58-61 and 110; *Conclusions 2011, Ukraine*). This obligation must be met both in law and in practice (*FEANTSA v. the Netherlands*, Complaint No. 86/2012, decision on the merits of 2 July 2014, §§ 105-129). Consequently, the Committee asks for clarification in the next report on whether the right to emergency accommodation of migrants in an irregular situation is sufficiently guaranteed in law and in practice. Pending receipt of the relevant information, it reserves its position on this aspect.

With regard in particular to unaccompanied foreign minors, the Committee has already found a violation of Article 31§2 of the Charter by France because of its failure to provide shelter for such persons (*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, §§ 173-177). The Committee considered that the already overstretched reception system provided for by the circulars of 2013 and 2016 on shelter for unaccompanied foreign minors in some areas of the country made it impossible to provide them with adequate care. Although the follow-up to this decision does not fall within the ambit of this conclusion, the Committee must note that it relates to a situation which already existed during the reference period. It also notes that in its judgment of 28 February 2019 *Khan v. France*, the European Court of Human Rights (ruling outside the reference period but on facts which occurred during it, in 2016) found that the failure to provide a minor with care after the makeshift camps on the “*lande de Calais*” had been dismantled constituted a violation of Article 3 of the European Convention on Human Rights (prohibition of degrading treatment).

In the light of the foregoing, the Committee asks for detailed information in the next report on the way in which the right to shelter of unaccompanied foreign minors is guaranteed in law and in practice.

In the meantime, the Committee reserves its position on this point. If the necessary information is not provided in the next report, there will be nothing to show that the situation in France regarding unaccompanied foreign minors’ right to shelter is in conformity with Article 31§2.

Conclusion

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

- the measures to reduce the number of homeless persons are insufficient;
- the implementation of the legislation on the prevention of evictions is unsatisfactory and no arrangements have been made to propose rehousing solutions to evicted families;
- the rights of Roma and Travellers are not respected during the implementation of eviction procedures.

Article 31 - Right to housing

Paragraph 3 - Affordable housing

The Committee takes note of the information contained in the report submitted by France and the information provided by the *Association Sociale Nationale Internationale Tzigane* (ASNIT).

Social housing

The Committee refers to its previous conclusions (Conclusions 2003, 2005 and 2011) in which it noted that there was inadequate provision of social housing, and to its findings of violations of Article 31§3 on this ground in its decisions in *International Movement ATD Fourth World v. France*, Complaint No. 33/2006, decision on the merits of 5 December 2007; *FEANTSA v. France*, Complaint No. 39/2006, decision on the merits of 5 December 2007.

The Committee also refers to its Findings 2018 on assessment of the follow-up to those decisions. The Government stated that in 2016 it had provided funding for 124 226 rented social housing units in metropolitan France, not including projects by the National Agency for Urban Renewal, compared with 108 921 in 2015. The Committee took note of these funding efforts but nonetheless noted that a considerable number of people were still living in shanty towns (see the conclusion under Article 31§1, "Criteria for adequate housing") and were therefore deprived of accessible social housing. The Committee had repeated its request for information concerning remedies where there was a failure to provide social housing at an affordable price for the poorest people and in the event of an excessively long waiting time before being allocated housing.

The current report contains no information on these matters. It indicates (in respect of Article 19§4) that the obligation to provide social housing has been made more stringent by increasing the minimum rate of social housing production from 20% to 25% and increasing the penalties for municipalities in default pursuant to Law No. 2017-86 of 27 January 2017 on equality and citizenship.

The Committee notes from one source (*L'Union sociale pour l'habitat, "Chiffres-clés du logement social"*, national edition 2018) that in late 2017, there were an estimated 2.1 million requests for social housing that had not yet been fulfilled.

The Committee asks for the next report to provide detailed information on progress in the provision of social housing, in particular on whether the minimum rate stipulated by law (25%) has been achieved in the majority of regions in France. It reiterates its request regarding remedies where there has been a failure to provide social housing or in the event of an excessively long waiting time before being allocated housing.

With regard to Roma and Travellers, the Committee refers to its previous conclusion (Conclusions 2011), to the findings of violations of Article E in conjunction with Article 31§3 in the decisions in *International Movement ATD-Fourth World v. France*, Complaint No. 33/2006, Decision on the merits of 5 December 2007, *FEANTSA v. France*, Complaint No. 39/2006, Decision on the merits of 5 December 2007 (insufficient implementation of the legislation on reception areas for Travellers), and *European Roma and Travellers Forum v. France*, Complaint No. 64/2011, Decision on the merits of 24 January 2012 (no effective access to social housing for Travellers and Roma wishing to live in mobile homes), as well as to its Findings 2018 on the follow-up to these decisions. For the reasons outlined above (see "Measures in favour of vulnerable groups" under Article 31§1) and in its Findings 2018, the Committee considers that the situation is still not in conformity with Article 31§3 of the Charter in this respect.

The Committee considers that the situation is still not in conformity with Article 31§3 for the following reasons:

- the shortage of social housing at an affordable price for the poorest people and low-income groups;

- the disfunctioning of the social housing allocation system and the related remedies;
- the deficient implementation of legislation on stopping places for Travellers and the lack of effective access to housing assistance for Travellers and Roma wishing to live in mobile homes.

Housing benefits

The Committee refers to its Findings 2018 on assessment of the follow-up to the decision in European Roma and Travellers Forum (ERTF) v. France, Complaint No. 64/2011, decision on the merits of 24 January 2012 (no effective access to social housing for Travellers and Roma wishing to live in mobile homes). In response to the Committee's request for information on access to housing support for Travellers and Roma living in mobile homes, the Government stated that as caravans were not recognised as housing, no assistance such as personal housing support (*Aide personnalisée au logement*, APL) was granted to occupants. However, it added that the CAF (Family Allowances Fund) had been able to grant APL to occupants on an ad-hoc basis if the wheels of the caravan were removed, which meant that the caravan was therefore no longer regarded as a mobile residence.

The present report does not provide information on this aspect. The Committee refers to its conclusion under "social housing" above.

The Committee further notes that in 2017 the Government applied a general reduction in APLs of five Euros per month (Abbé Pierre Foundation, "*L'état du mal-logement en France*", annual report 2018). The Committee asks for the next report to provide information on the reasons for this measure, on the continuation of this measure over time and on any changes to the amount of this aid for people on more modest incomes.

Conclusion

The Committee concludes that the situation in France is not in conformity with Article 31§3 of the Charter for the following reasons:

- the shortage of social housing at an affordable price for the poorest people and low-income groups;
- the disfunctioning of the social housing allocation system and the related remedies;
- the deficient implementation of legislation on stopping places for Travellers and the lack of effective access to housing assistance for Travellers and Roma wishing to live in mobile homes.