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EUROPEAN SOCIAL CHARTER

European Committee of Social Rights

Conclusions 2019

HUNGARY

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 Hungary on 20 April 2009. The time limit for submitting the 9th report on the application of this treaty to the Council of Europe was 31 October 2018 and Hungary submitted it on 17 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).

Hungary has accepted all provisions from the above-mentioned group except Articles 7§2 to 10, 19, 27 and 31.

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

The present chapter on Hungary concerns 9 situations and contains:

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

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

- the right to work (Article 1),
- the right to vocational guidance (Article 9),
- the right to vocational training (Article 10),
- the right of persons with disabilities to independence, social integration and participation in the life of the community (Article 15),
- the right to engage in a gainful occupation in the territory of other States Parties (Article 18),
- the right of men and women to equal opportunities (Article 20),
- the right to protection in cases of termination of employment (Article 24),
- the right to workers to the protection of claims in the event of insolvency of the employer (Article 25).

The deadline for the report was 31 December 2019.

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

Article 7 - Right of children and young persons to protection
Paragraph 1 - Prohibition of employment under the age of 15

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

The Committee previously noted that the Labour Code established the minimum age of admission to employment at 16 (Conclusions 2011). It further noted that according to Article 34§3 of the Labour Code, subject to authorisation by the guardianship authority, young persons under the age of 16 may be employed in cultural, artistic, sports or advertising activities (Conclusions 2015).

In its previous conclusion (Conclusions 2015), the Committee found that the situation in Hungary was not in conformity with Article 7§1 of the Charter on the ground that the definition of light work was not sufficiently precise. The Committee noted in particular that in Hungary there is no list of works considered to be light.

In this respect, the current report indicates that the Hungarian legislation defines occupational safety and health limit values to ensure the protection of young employees. In particular, the Decree of the Ministry of Welfare No. 33/1998 (VI.24) contains list of work burdens when the employment of young people is prohibited or allowed only under certain conditions, as well as the list of those working conditions when risk assessment is to be carried out in the framework of the aptitude test for the employment of young people. The Committee takes note of the information provided and asks the next report to specify what are the work burdens listed in the relevant decree when the employment of young people is prohibited or allowed only under certain conditions. In the meantime, it reserves its position on this point.

In its previous conclusion (Conclusions 2015), the Committee asked whether the daily limit of 8 hours applied to light work performed by young workers under 15 years of age or otherwise what was the daily and weekly duration of light work allowed for young persons under the age of 15.

The current report indicates that children under the age of 16 can be employed in cultural, artistic, sports or advertising activities. The duration of such work is regulated by the same provisions of the Labour Code applicable to young employees under the age of 18. In particular, Section 114 of the Labour Code provides that the daily working time of young employees is limited to 8 hours, and the number of working hours performed under different employment relationships shall be summed up.

The Committee refers to its Statement of Interpretation on Articles 7§1 and 7§3 (Conclusions 2015) and 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", 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 per day and 30 hours per week to avoid any risk to their health, moral welfare, development or education. As to the length of light work during term time, the Committee considered that a situation in which children who were still subject to compulsory schooling carried out light work for two hours on a school day and 12 hours a week in term time outside the hours fixed for school attendance, was in conformity with the requirements of Article 7§3 of the Charter (Conclusions 2011, Portugal).

Given that under Section 114 of the Labour Code, young employees, including children under the age of 15, are allowed to work up to 8 hours a day, the Committee concludes that the duration of such work is excessive and therefore cannot be qualified as light work.

The Committee notes from the report that children of at least 15 years of age receiving full-time school education are allowed to enter into an employment relationship during the school holidays. The Committee asks the next report to indicate if such children are allowed to

perform work other than in cultural, artistic, sports or advertising activities and, if so, what is the work they are allowed to perform. It also asks what is the daily and weekly working time of such children working during the school holidays.

As regards monitoring child labour, in its previous conclusion (Conclusions 2015), the Committee asked the next report to provide information on the number and nature of violations detected and sanctions imposed.

The current report indicates that in order to prevent and eliminate the illegal employment of children, as of 1 January 2011, the labour inspectors are legally obliged to inform the family and child welfare service, along with the guardianship authority, if they learn that a child is legally employed or exposed to the risk of illegal employment. In cases of suspicion of a crime committed against the child, the guardianship authority initiates criminal proceedings.

Moreover, the report indicates that in case the labour authority identifies an infringement concerning the age limit related to the employment relationship, they shall notify the child welfare service about the vulnerability of the child. In this regard, pursuant to Section 6/A of the Child Protection Act, the inspector shall propose imposing labour fine, and such fine shall be imposed, if the employer has breached the applicable regulations on the age limit related to the employment relationship (including the ban on child labour).

As for the number of violations detected, the Committee notes from the report that, according to the data provided by the Hungarian Central Statistical Office, the labour authority reported 136.986 cases in 2016 and 124.777 in 2017. The Committee asks if the abovementioned data refer to the violations detected by the labour authorities concerning the prohibition of the employment of children under the age of 15. It also asks what were the measures taken by the authorities and the sanctions imposed in practice. The Committee further asks the next report to provide up-to-date information on the monitoring activities and findings of the authorities concerning the prohibition of the employment of children under the age of 15, including the number of violations detected and the sanctions imposed in practice. In the meantime, it defers its position on this point.

In its previous conclusion (Conclusions 2015), the Committee recalled that work within the family also comes within the scope of Article 7§1 and asked the next report to indicate how work done at home is monitored in practice.

The current report indicates that the Labour Code sets out general prohibitive rules and restrictive provisions concerning the employment of children and young persons, and domestic work does not constitute an exception to such rule and provisions.

The Committee recalls that the prohibition of the employment of children under the age of 15 applies to all economic sectors, including agriculture, and all places of work, including work within family enterprises and in private households (Conclusions I (1969), Statement of Interpretation on Article 7§1). It further recalls that the prohibition also extends to all forms of economic activity, irrespective of the status of the worker (employee, self-employed, unpaid family helper or other). The Committee asks what are the measures taken by the authorities (e.g. labour inspection, social welfare and child protection, the police, prosecutors, Ombudsman) to protect and prevent children under the age of 15 from engaging in harmful and exploitative work in the informal economy and to detect such cases in practice.

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

Conclusion

The Committee concludes that the situation in Hungary is not in conformity with Article 7§1 of the Charter on the ground that children under the age of 15 are permitted to perform light work for an excessive duration and therefore such work cannot be qualified as light.

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 Hungary.

Right to maternity leave

In its previous conclusion (Conclusions 2015), the Committee noted that under Article 127 of the Labour Code, employed women were entitled to 24 weeks' maternity leave, including up to four weeks' prenatal leave and 20 weeks' postnatal leave (only two weeks' maternity leave are compulsory). The Committee asked whether mandatory leave was also two weeks in the public sector.

In reply, the report states that women employed in the public sector are entitled to 24 weeks' maternity leave under Articles 110 (1) to (3) of the Public Service Officials Act (Law No. CXCIX of 2011, which entered into force on 1 March 2012). According to Law No. LXXXV of 2014 on the amendment of certain laws relating to legal status, it is compulsory for mothers to use two weeks out of the 24 weeks to which they are entitled.

In its previous conclusion, the Committee asked what legal safeguards existed to avoid any undue pressure from employers on women who have recently given birth to shorten their maternity leave, whether there was an agreement with social partners on the question of postnatal leave which protected women's free choice, and whether there were any collective agreements which offered additional protection. It also asked for information on the general legal framework surrounding maternity (for instance, whether there was a parental leave system whereby either parent could take paid leave at the end of the maternity leave). 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 Hungary is in conformity with Article 8§1 of the Charter in this respect.

In reply, the report states that fathers are entitled to five days' paid paternity leave (seven in the case of multiple births). Article 65(3) of the Labour Code (which entered into force on 1 July 2012), prohibits employers from dismissing employees during pregnancy and maternity leave, and for up to six months from the beginning of treatment relating to procreation, provided that these employees have informed their employers of such circumstances. In addition, there are restrictions on dismissing single mothers or fathers until their child turns three. In such cases, employment relationships may only be terminated if there are valid reasons (established in law as there is no room for a broad interpretation).

Under Article 8§1 of the 1961 Charter, States Parties have undertaken to ensure the effective right of employed women to protection by providing that women can take leave before and after childbirth for up to a total of at least 14 weeks. In particular, the Committee has considered that the law should provide in all cases for a compulsory period of leave of no less than six weeks which may not be waived by the woman concerned. Where compulsory leave is less than six weeks, the rights guaranteed under Article 8 may be realised through the existence of adequate legal safeguards that fully protect the right of employed women to choose freely when to return to work after childbirth – in particular, an adequate level of protection for women who have recently given birth and wish to take the full maternity leave period (for example, legislation against discrimination at work based on gender and family responsibilities); an agreement between social partners protecting the freedom of choice of the women concerned; and the general legal framework surrounding maternity (for instance, whether there is a parental leave system whereby either parent can take paid leave at the end of the maternity leave) (Conclusions 2011, Statement of Interpretation on Article 8§1).

The Committee notes that the Labour Code provides that postnatal leave may not be less than six weeks if the child is stillborn. Save in such circumstances, the law does not appear to provide that some of the period of postnatal leave must be compulsory. The Committee therefore concludes that the situation is not in conformity with Article 8§1 on this point on the

ground that it has not been established that there are, in law and in practice, adequate safeguards to protect employees from pressure to take less than six weeks' postnatal leave. However, the Committee requires that the next report indicate what proportion of women in the private and public sectors have taken less than 42 days of paid postnatal leave. It also asks for information in the next report on any relevant case law on complaints of discrimination based on pregnancy or maternity leave and for clarification on who bears the burden of proof in such cases. It also reiterates its request for information on any safeguards relating to maternity leave which are enshrined in collective agreements or result from agreements with social partners. The Committee also asks what legal safeguards have been put in place to prevent employers exerting pressure on public sector employees having recently given birth, leading them to shorten their maternity leave.

Right to maternity benefits

In its previous conclusion, the Committee noted that the duration of affiliation provided for by the Hungarian scheme was very long (employees must have been insured for at least 365 days over the two years prior to the child's birth in order to be entitled to 70% of the average gross daily wage received the previous year). It requested information on how such qualifying periods were calculated and whether career breaks counted as contribution periods. It considered that, in the absence of this information, nothing would allow to establish that the situation was in conformity with the Charter in this respect. As the report does not reply to these questions, the Committee repeats them and, in the meantime, concludes that the situation is not in conformity with Article 8§1 on the ground that it has not been established that career breaks are taken into account when assessing the qualifying period required for a woman to receive maternity benefits. The Committee also considers that the situation is not in conformity with Article 8§1 of the Charter on the ground that, in order to be entitled to maternity leave and maternity benefits, employees are required to have contributed to the social security scheme for 365 days over the two years preceding childbirth, which is too long a period.

In its previous conclusion, the Committee also asked for information on the situation of women who were employed but did not qualify for maternity benefits; in the light of the available statistical data, if any, on the proportion of the women concerned, as well as of information on the benefits available to them in addition to, or instead of, the home child care allowance (*GYES – Gyermekgondozási segély*), which was available for uninsured women in an amount corresponding to that of the minimum old-age pension. In reply, the report states that uninsured parents who are not entitled to the infant care fee or child care fee are entitled to child care benefit under the Family Support Act. This benefit is set at a fixed amount corresponding to the minimum old-age pension (HUF 28,500, or €92 on 31 December 2017), and does not depend on the beneficiary's insurance or income. The Committee notes from the report that the number of recipients of this benefit increased over the reference period from 161,226 a month in 2014 to 164,297 a month in 2017. According to the report, recipients may be in paid employment for an unlimited time after their child has reached the age of six months. The Committee notes that insured parents are also entitled to this benefit. It points out that, under Article 8§1 of the Charter, maternity benefits must be at least equal to 70% of the employee's last wage. The right to benefit may be subject to conditions such as a minimum period of contribution and/or employment as long as these conditions are reasonable; in particular, if qualifying periods are required, they should allow for some interruptions in the employment record (Statement of interpretation of Article 8§1, Conclusions 2015). In the light of the information provided, the Committee finds that the situation is not in conformity with Article 8§1 of the Charter on the ground that the amount of maternity benefits granted to employed women who do not meet the conditions for receiving benefit is insufficient.

In its previous conclusion, the Committee also asked whether the same rules applied to public sector employees. The report indicates in reply that, pursuant to Article 110(5) of the Public Service Officials Act, the duration of maternity leave (except where entitlement is specifically

linked to work) must be recognised as time spent at work: civil servants are entitled to their salary during maternity leave (except for certain allowances specifically linked to work). According to Law No. LXXXIII of 1997 on compulsory health insurance benefits, civil servants are entitled to the same benefits as employees with an employment relationship.

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

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

According to Eurostat data, the median equivalised income in 2017 was €4,993 a year or €416 a month. 50% of the median equivalised income was €2,497 a year, or €208 a month. The gross minimum monthly wage was €411.52 (70% – €288 for insured employees or €92 for those who were uninsured). In the light of the foregoing, the Committee finds that the situation is in conformity with Article 8§1 in this respect as regards insured employees.

Conclusion

The Committee concludes that the situation in Hungary is not in conformity with Article 8§1 of the Charter on the grounds that:

- it has not been established that there are in law and in practice adequate safeguards to protect employees from pressure to take less than six weeks' postnatal leave;
- it has not been established that career breaks are taken into account when assessing the qualifying period required for a woman to receive maternity benefits;
- the period of 365 days for which employees are required to have contributed to the social security scheme before pregnancy in order to be entitled to maternity leave and maternity benefits is too long;
- the amount of maternity benefits granted to employed women who do not meet the conditions for receiving benefit is insufficient.

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 Hungary.

Prohibition of dismissal

The Committee notes from the report that in accordance with Article 65(3) of the Labour Code, it is still forbidden to dismiss a worker during pregnancy, during maternity leave and for up to six months from the beginning of a treatment related to procreation. According to the report, public service workers enjoy similar protection under the Public Service Officials Act (Section 70(1)a), b) and f)).

In its previous conclusion (Conclusions 2015), the Committee noted that it was not possible to terminate the employment of public service workers or the service relationship linking armed forces personnel to the Army during pregnancy or maternity or paternity leave. The Committee therefore asked whether there were exceptions to those rules for public service workers and armed forces employees. In reply, the report indicates that specific legislation provides for protection against dismissal in a way similar to the general provisions included in the Labour Code. The Committee previously found that the exceptions provided for in the Labour Code were in conformity with Article 8§2 of the Charter (Conclusions 2011 and 2015).

The report indicates that Article 65(6) of the Labour Code, under which mothers were entitled to protection against dismissal when both parents used unpaid leave to take care of their child, was repealed as a result of a legislative change (Section 122 of Act LXVII of 2016, which came into force on 18 June 2016). According to the report, the extension to both parents of protection against dismissal during maternity leave was also introduced under Section 70(5) of Act CXCI of 2011 on Public Service Officials and Section 67(3) of Act CCV of 2012 on the legal status of soldiers.

Redress in case of unlawful dismissal

In its previous conclusion (Conclusions 2015), the Committee noted that Article 82 of the Labour Code made the employer liable for damages in the event of unlawful termination of employment and asked whether there was a ceiling on compensation for unlawful dismissal. It also asked whether the compensation covered both pecuniary and non-pecuniary damage or whether the victim could also seek compensation with no upper limit for non-pecuniary damage through other legal avenues. The report states that the situation which the Committee previously found to be in conformity with Article 8§2 (Conclusions 2011) has not changed since the entry into force of the 2012 Labour Code: the courts can still order employers to reinstate workers in their posts in the event of unlawful dismissal. Should an employee not wish to be reinstated or, upon the employer's request, should the court deem reinstatement impossible, then after weighing up all applicable circumstances (in particular the unlawful action and its consequences) the court orders the employer to pay the employee compensation of no less than two and no more than twelve months' average earnings. The employee is also reimbursed for lost wages (and other unpaid emoluments) and compensated for any damage arising from such loss. According to the report, the period between unlawful dismissal and reinstatement is regarded as time spent in employment.

In reply to the Committee's question concerning compensation in the event of unlawful dismissal of employees in the public sector, the report again indicates the legal remedies available to civil servants (including public service administrators) and senior government officials (including government administrators and directors). Under Section 193(1) of the Public Service Officials Act, government officials are entitled, at their request, to be reinstated. In the case of unlawful dismissal, they receive compensation equal to their unpaid salary and other emoluments, and compensation for any damage resulting from the loss of earnings. If they do not wish to be reinstated, the court will order the employer to pay an amount equivalent to no less than two and no more than twelve months' average earnings. In addition, officials

may request compensation for other damage suffered, including (1) unpaid salary (but only until the day when the legal relationship was unlawfully terminated by the employer), (2) other unpaid emoluments (for example, allowances in lieu of leave, length-of-service payments, cafeteria benefits) and (3) other damage (for example, medical costs, travel and telephone costs incurred while looking for a job, etc.). The Committee considers that this is in line with its statement of interpretation on Articles 8§2 and 27§3 (see General Introduction to Conclusions 2011, §17) on compensation ceilings for unlawful dismissal.

Conclusion

The Committee concludes that the situation in Hungary 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 Hungary.

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

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

Conclusion

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

Article 8 - Right of employed women to protection of maternity
Paragraph 4 - Regulation of night work

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

In its previous conclusion (Conclusions 2015), the Committee found the situation to be in conformity with Article 8§4 of the Charter. It noted that the Labour Code which entered into force in 2012 prohibits employers from appointing women to night work from the date they are notified of their pregnancy until the child turns three. The report states, in reply to the Committee's question, that the same rules apply to women employed in the public sector and that there is no exception to this. With regard to members of the armed forces, the report states that since 30 June 2015, under the new Armed Forces Act, it has been prohibited to make women members of the armed forces perform night work between the confirmation of their pregnancy and the child's first birthday (Article 136(1)a), or the child's tenth birthday if parent who is a member of the armed forces is raising the child alone (Article 136(1)b)).

In its previous conclusion, the Committee also asked whether the employed women concerned were transferred to daytime work until their child turned three and what rules applied should such a transfer not be possible. In reply, the report states that employers must adapt the working hours and working conditions of women employees to their state of health. If this is impossible, employers must temporarily reassign the women concerned to another post between the date on which they were notified of the pregnancy and the child's first birthday. If an employer is unable to offer such a replacement post to a pregnant employee, she will be released from work and be paid her base salary for the duration of the exemption (Article 60 of the Labour Code). The Committee asks whether the same rules apply to women on maternity leave (after giving birth) and to those employed in the public sector.

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

Conclusion

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

In its previous conclusion (Conclusions 2015), the Committee noted that the legislation in force did not prohibit women from working in mines but did provide for restrictions to the employment of women in activities involving exposure to the hazards listed in Appendix 8 to Decree No. 33/1998 (VI. 24) of the Ministry of Welfare (such as noise, vibration and dust, and arduous working conditions).

In its previous conclusion, the Committee also asked what restrictions applied in the private and public sector to the employment of women who were pregnant, had recently given birth or were nursing their infant in activities involving exposure to lead, benzene, ionising radiation, high temperatures, vibrations or viral agents. Since the report does not contain new information and still does not reply to the Committee's question in this regard, the Committee repeats its question. 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 Hungary is in conformity with Article 8§5 of the Charter in this respect.

In its previous conclusion, the Committee noted that Article 60 of the Labour Code provided that women workers should be offered jobs in keeping with their state of health if, according to a medical opinion, they were unable to work in their original position between the confirmation of their pregnancy and the child's first birthday. Workers were entitled to the base salary normally paid for the job offered, but this could not, however, be lower than the base salary specified in their employment contract. If the employer was unable to offer a replacement position, the worker concerned would be released from work and receive her base salary for the duration of her exemption, except if she refused the job offered without good reason. Similar rules applied to public sector employees. As a result, the Committee asked whether the above-mentioned provisions protected all women employees in the private and public sectors. In reply, the report states that the compulsory rules cover all women employed in all sectors of the economy (the private and public sectors) and that the Labour Code only authorises derogations to these general rules in collective agreements if they benefit women employees.

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.

On this point and in reply to the Committee's question, the report states that the Labour Code does not impose an obligation on employers to maintain the right of pregnant women, or women who have recently given birth, or are nursing their infant after the protected period, to be reinstated in the post they initially occupied. According to the report, nor does the legislation contain any provisions relating to these categories of women. The Committee notes that the situation is not in conformity with Article 8§5 of the Charter on the ground that, in the event of

reassignment to a different post, the law does not guarantee the right of the women concerned to return to their previous job at the end of the protected period.

The Committee notes that the report does not contain information on the interpretation by the Hungarian courts of the notion of "refusal without good reason" with reference to the transfer to another post of employees who are pregnant, have recently given birth or are nursing their infant. Therefore, the Committee repeats its question and 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 Hungary is in conformity with Article 8§5 of the Charter in this respect.

Conclusion

The Committee concludes that the situation in Hungary is not in conformity with Article 8§5 of the Charter on the ground that, in the event of reassignment to a different post, the law does not guarantee the right of the women concerned to return to their previous job at the end of the protected period.

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 Hungary.

Legal protection of families

Rights and obligations, dispute settlement

The Committee refers to its previous conclusions (Conclusions 2015), for a description of the situation concerning **rights and obligations of spouses, settlement of disputes and mediation services** (see Conclusions 2015 for details), which it considered to be in conformity with Article 16 of the Charter.

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

Domestic violence against women

The Committee recalls that States Parties are required to ensure an adequate protection with respect to women, both in law and in practice, in the light of the principles laid down in Recommendation Rec(2002)5 of the Committee of Ministers of the Council of Europe to member States on the protection of women against violence and Parliamentary Assembly Recommendation 1681 (2004) on a campaign to combat domestic violence against women in Europe. It notes that these instruments have been superseded in 2011 by the Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), which is legally binding for the States which have ratified it. However, Hungary has not ratified it yet.

In its previous Conclusion (Conclusions 2015), the Committee requested information on the measures taken to improve protection of victims of domestic violence. In this respect, the report refers to amendments introduced in the new Criminal Proceedings Act, which provide for criminal supervision (house arrest), which can be ordered in combination with restraining orders, which will be regularly reviewed and can be prorogated. The new Criminal Proceedings Act also contains provisions aimed at implementing Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime. These provisions have been introduced in favour of persons with special needs who are victims of domestic violence, including measures to avoid secondary victimisation. The Committee notes however that the new Criminal Proceedings Act entered into force in 2018, outside the reference period.

The report also states that a hotline service (National Crisis Management and Information Hotline service – hereinafter OKIT) has been set up to give information to victims of domestic violence and help them to find a safe shelter in case of need, which may be contacted 24/7 free-of-charge across the country, via any service provider. The Committee takes note of the information provided on the number of cases treated through OKIT in 2017 and the support provided by the 15 crisis centres (sheltered accommodation, expert help, social assistance) and secret shelters to 1 200-1 300 victims per year (see details in the report). It also takes note of the information provided on the restructured and consolidated functioning of the support system, including the substantial increase in its financing and the planned establishment of an ambulance service.

As regards prevention, the report refers to a programme targeted at the age-group 14-18 and five awareness-raising campaigns under the slogan "Notice it!" which were organized between 2014 and 2017. According to the report, further prevention activities are planned, including a national survey which will assess the level of exposure to domestic violence and attitudes towards it.

The report also refers to the development in 2015 of integrated policies in the form of a Parliamentary Decision laying down the national strategy goals for the cause, and designating

a path for every sector that is involved in combating domestic violence for the planning and implementation of the strategic documents and the related measures respectively.

The report does not provide any global data on domestic violence against women and its prosecution. In this respect, the Committee takes note of the concern expressed in the United Nations Human Rights Committee (HRC)'s Concluding observations adopted in 2018 about reports that domestic violence continues to be a persistent and underreported problem and that the police response to cases of domestic violence and the mechanisms to protect and support victims are inadequate. According to the HRC, the Criminal Code does not fully protect women victims of domestic violence, since section 212/A does not explicitly refer to sexual offences as a form of domestic violence and includes too restrictive requirements as regards the criminalisation of violent behaviour that does not reach the level of battery. The Committee also notes that the 2017 Report of the Working Group on the Issue of Discrimination against Women in Law and in Practice indicates that domestic violence remains a serious issue, it states that some 88 women were killed in the context of domestic violence, accounting for 43% of all murders in 2015, and points out that the latest available data indicated that Hungary had one of the lowest reporting rates for rape in Europe.

In view of the foregoing, the Committee asks the next report to provide comprehensive and updated information on all aspects of domestic violence against women and related convictions, as well as on the use of restraining orders, the implementation of the various measures described in the report and their impact on reducing domestic violence against women. It reserves in the meantime its position on this point.

Social and economic protection of families

Family counselling services

The Committee refers to its previous conclusion (Conclusions 2015), where it took note of the services available. In the light of the information available it considers that the situation remains in conformity with the Charter in this respect

Childcare facilities

The Committee notes that kindergarten attendance for children over 3 years of age (instead of 5, under the previous law) has become obligatory as of September 2015 and, accordingly the number of children in kindergartens has constantly increased in the reference period. Some HUF 2.5 billion were allocated in 2016 to support the creation of new kindergarten places (approximately 9 200 new kindergarten places were created between 2010 and 2016) and further developments took place in 2017 (see details in the report). According to the report, in Hungary 91% of Roma children attend kindergarten, which is the highest percentage in the region and is close to the attendance rate of non-Roma children (see the Second European Union Minorities and Discrimination Survey – the Roma – selected findings; European Union Agency for Fundamental Rights (FRA), 2016).

The report furthermore indicates that, with the introduction of compulsory nursery school attendance, the kindergarten attendance benefit was replaced by a new support. The Committee asks the next report to provide comprehensive information on the childcare system resulting from the reform.

Family benefits

Equal access to family benefits

In its previous conclusion (Conclusions 2015) the Committee considered that the equal treatment of nationals of other States Parties with regard to family benefits was not ensured because the length of residence requirement was excessive.

The Committee notes from the report in this regard that following the amendments of 2014 to the Family Support Act, the personal scope has been extended to the following persons living in the territory of Hungary:

- Hungarian nationals;
- persons having the legal status of immigrants or residents and persons recognised by the Hungarian authorities as refugees, or persons enjoying subsidiary protection, or stateless persons;
- persons with the right of free movement and residence (EU citizens, family members of Hungarian or EU nationals), with the exception of the maternity support;
- persons falling within the scope of eligible persons under Regulation (EC) 883/2004 on the coordination of social security systems, from 1 January 2011, in respect of the maternity support;
- all women lawfully staying in Hungary, who attended prenatal care on at least 4 occasions in Hungary during their pregnancy, or once in the case of premature delivery;
- from 1 July 2011, third-country nationals holding a permit (EU Blue Card) authorising stay and employment in areas in which high-level qualifications are required;
- from 1 January 2014, third-country nationals holding a single permit, provided that their employment was permitted for a period exceeding 6 months.

The Committee considers that these amendments have brought the situation into conformity with the Charter as there is no longer a length of residence requirement for access to family benefits.

Level of family benefits

The Committee notes from MISSOC that the monthly amounts of Family Allowance (*Családi pótlék*) are as follows:

- 1 child in family: HUF12 200 (€39);
- 1 child, single parent: HUF13 700 (€44);
- 2 children in family: HUF13 300 (€43) per child;
- 2 children single parent: HUF14 800 (€48) per child;
- 3 or more children in family: HUF16 000 (€51) per child;
- 3 or more children, single parent: HUF17 000 (€55) per child;
- disabled child in family: HUF23 300 (€75);
- disabled child, single parent: HUF25 900 (€83);
- disabled child above 18 years of age: HUF20 300 (€65);
- child in foster home/at foster parent: HUF14 800 (€48).

The Committee notes from Eurostat that the medium equivalised income stood at € 416 in 2017. The family allowance for one child amounts to 9% of the median equivalised income and is, therefore, an adequate income supplement. The Committee considers that the situation is in conformity with the Charter on this point.

Measures in favour of vulnerable families

The Committee asks the next report to provide information on measures implemented, including statistics, to ensure the economic protection of Roma families and single-parent families.

Housing for families

In its previous conclusions (Conclusions 2011, 2015), the Committee found that the situation was not in conformity with the Charter on the ground that evictions from premises occupied

without rights or entitlement could take place without alternative accommodation and in the winter, with the result that evicted families could be left homeless.

The report does not provide any relevant information on this point. The Committee therefore asks the next report to provide up-to-date information on eviction procedures in case of unlawful occupation and, in particular, on whether the law prohibits such evictions at night or during winter. In this connection, it also wishes to be informed on whether the offer of emergency accommodation (shelters or other centres) corresponds to the number and needs of homeless families. In the meantime, the Committee reiterates its previous conclusion of non-conformity on this ground.

The Committee also considered (Conclusions 2015, 2017) that it had not been established that there was an adequate supply of housing for vulnerable families. It took note from the previous report that Hungary had adopted two strategies (the "National Social Inclusion Strategy" (NTFS) in 2011 and updated in 2014, and the "Policy Strategy underpinning the management of living in slum-like environments" in 2015). It asked the next report to provide further information about the concrete measures implemented under these strategies and their results (Conclusions 2017).

The current report refers to the results of several programmes for slums: by 2015-2016, 55 programmes for slums were implemented in 66 segregated areas. Renovation or building work was carried out in 8 settlements, in 112 dwellings (39 newly built; 73 renovated). The housing conditions of about 500 persons of 132 families were improved. The report further notes that the Hungarian Government concluded a partnership agreement with the European Commission in 2014 to lay the grounds for the operational programmes of the 2014-2020 programming period. One of the objectives of this agreement is that every 7th slum should be involved in the rehabilitation programme, which means 197 (out of 1 834) segregated areas to be involved. Some of the projects mentioned in the report aimed at improving housing conditions may include the construction of new social apartments.

The Committee takes note of the continuing efforts made by Hungary, in particular as regards the improvement of housing conditions of people living in slums and segregated areas. However, there is no substantial information in the report on the availability of housing support for vulnerable families. In this regard, the Committee notes from another source that the national housing allowance scheme (which targeted typically the lowest quintile) was abolished in 2015 and the task for introducing housing allowance programmes was transferred to local municipalities (Housing Europe, *The State of Housing in the EU 2017*, p. 72). It therefore asks the next report to provide detailed information on housing support for families for the next reference period, including figures (demand and supply) on the various types of support (social housing, housing-related allowances) at national and local level.

The Committee further notes that according to the European Index of Housing Exclusion 2019 (FEANTSA and Abbé Pierre Foundation, Eurostat EU-SILC 2017), Hungary has a particularly high overcrowded housing rate (40.5% of the total population, well above the average rate of 15.7% for the EU) and severe housing deprivation rate (15.9%, well above the average rate of 4% for the EU). The Committee accordingly asks the next report to provide up-to-date figures on the adequacy of housing (water, heating, sanitary facilities, electricity, living size/overcrowding).

In the meantime, pending receipt of all the information requested, the Committee reserves its position on whether there is sufficient supply of adequate housing for vulnerable families.

As regards the housing conditions of Roma families, the Committee previously considered (Conclusions 2015) that the situation was not in conformity with the Charter on the ground that they did not have access to adequate housing. The Committee notes from the current report that despite the continuing efforts to eliminate slums and segregated areas (see above), a significant part of the Roma population lives in settlements in the worst situation and in segregated areas. For instance, according to a national database and a map of segregated

areas referred to in the report, in 709 settlements there were 1 384 segregated settlements or underdeveloped settlement parts embedded in a settlement, inhabited mainly by Roma.

In addition, the Committee notes that Council of Europe and other international monitoring bodies have continued to express concerns about the housing segregation of Roma, including forced evictions (ECRI, report on Hungary of 19 March 2015, §§ 89-92; ECRI, conclusions on the implementation of the recommendations in respect of Hungary subject to interim follow-up, 21 March 2018, outside the reference period; Council of Europe Commissioner for Human Rights, report of 16 December 2014, following his visit to Hungary from 1-4 July 2014, §§ 107 and 111, and letter to the Minister of Human Capacities of 26 January 2016; United Nations Human Rights Committee, Concluding observations on the sixth periodic report of Hungary, 28-29 March 2018, § 15, outside the reference period; United Nations Committee on the Elimination of Racial Discrimination, Concluding observations on the combined eighteenth to twenty-fifth periodic reports of Hungary, 8 May 2019, § 20, outside the reference period).

In the light of the above, the Committee can only reiterate its finding of non-conformity on this point. It asks the next report to continue to provide information on the improvement of the housing conditions of Roma families, particularly on the results achieved under the different strategies and programmes implemented in this field.

Finally, the Committee refers to its Statement of Interpretation on the rights of refugees under the Charter (Conclusions 2015). In this connection, the Committee notes that during the reference period Hungary has been particularly affected by the refugee movements across Europe, experiencing an unprecedented number of refugees and migrants arrivals. It notes from some other sources (ECRI, report on Hungary of 19 March 2015, §§ 97-100; Council of Europe Commissioner for Human Rights, report of 16 December 2014, following his visit to Hungary from 1-4 July 2014, §§ 167-170) that refugees and other beneficiaries of international protection in Hungary faced serious integration challenges, including a real risk of becoming homeless. The Committee therefore asks for information in next report on the situation as regards access to housing for refugee families, particularly those who have moved out of reception centres.

Participation of associations representing families

In its previous conclusion (Conclusions 2015), the Committee noted that the Government consults civil and church family organisations, such as those representing the interest of families with young children or children with disabilities and in particular the National Association of Large Families (NOE).

Conclusion

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

- evicted families can be left homeless;
- the protection of Roma families with respect to housing is inadequate.

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 Hungary.

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 to obtain 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

The Committee notes that the situation which it has previously considered to be in conformity with the Charter has not changed (Conclusions 2015). All forms of corporal punishment are prohibited in all settings, including in the home.

Rights of children in public care

As regards the restriction of parental rights the Committee refers to its previous conclusion (Conclusion 2015). The Committee again seeks confirmation that parents may appeal against a decision to restrict their parental authority. If this information is not provided in the next report there will be nothing to establish that the situation is in conformity with the Charter.

The Committee notes that the number of children placed in foster care has increased very slightly over the reference period, in 2017 65.4% of children in care were placed with foster families,

The Committee previously asked to be kept informed about the placement of young children in foster families. According to the report, children under 12 years of age should be placed with a foster family and not in an institution except in exceptional cases. In 2017 84.51% of children under 12 years of age were placed with foster families, 85.60% of children under 3 years of age were in foster care.

The Committee asks to be kept informed of the number of children in foster care and in institutions as well as trends in the area.

The Committee previously considered that despite the measures taken to prioritise foster care and modernise institutional care by converting large institutions into residential homes, it seemed that institutions with up to 48 places still continued to operate. The Committee wished to be kept informed of the progress made and in the meantime it reserved its position on this issue (Conclusions 2015).

According to the report the Child Protection Act allows the operation of children's homes with up to 48 places, however an independent unit in a home may only host a maximum of 12 children.

The Committee notes from other sources [*Opening Doors for Europe's Children*, Hungary Country Fact Sheet 2018] that as part of the deinstitutionalization programme, Hungary has established approximately 400 small group homes across the country. Each small group home has a capacity to accommodate 12 children. The majority of such homes are located in remote areas with no proper transportation and limited access to basic services or mainstream/vocational education. The Committee asks for the Government's comments on this.

Further the Committee notes from the same source that the Ombudsman estimates that 30% of children separated from their families are separated for financial reasons. The Committee recalls that children should never be placed outside the home solely on the basis of the inadequate resources or material conditions of their parents (Statement of Interpretation on Article 16 and 17, 2011). The Committee previously noted that children could not be separated from their family on grounds of inadequate resources (Conclusions 2015). However it asks what measures have been taken to ensure that this does not happen in practice.

The Committee takes note of the projects implemented using EU funds, aimed at improving residential child facilities by replacing institutions operating in buildings in poor conditions and the establishment of institutions and facilities integrated into residential environments. The Committee wishes to be informed of the impact of these projects.

Right to education

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

Children in conflict with the law

In its previous conclusion the Committee found that the maximum duration of pre-trial detention of children was excessive and therefore the situation was not in conformity with the Charter (Conclusions 2015).

The Committee recalls that the duration of pre-trial detention in Hungary for children under the age of 14 may not exceed one year and that for children over the age of 14 may not exceed two years.

The Committee considers that the situation which it has previously considered not to be in conformity with the Charter has not changed. Therefore, it reiterates its previous finding of non-conformity on the ground that the maximum period of pre-trial detention is excessive.

The maximum term of imprisonment that may be imposed on a child over the age of 16 years at the time the crime is committed is 15 years. The Committee recalls that children should only exceptionally be sentenced to a period of imprisonment and only as a measure of last resort and sentences should be regularly reviewed. The Committee asks whether sentences are regularly reviewed.

The Committee asks whether children may ever be placed in solitary confinement, and if so, under what circumstances and for how long.

The Committee also seeks updated information on the age of criminal responsibility.

Right to assistance

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

The Committee 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.

The Committee refers to its previous conclusion for a description of the treatment of unaccompanied minors before the “crisis situation” it recalls that Pursuant to Section 48(2) of Act LXXX of 2007 on Asylum, as of 1 May 2011 unaccompanied minors shall be catered for by the child protection care system. In 2011 with a view to providing proper care to unaccompanied minors, a children’s home was opened to host and cater for unaccompanied minors. New places were opened during the reference period. The Committee recalls unaccompanied minors were to be appointed guardians within 8 days (Conclusions 2015).

However the Committee notes that the situation was amended in 2017 to deal with the “crisis situation”. In March 2017 amendments were introduced to the Act on Asylum. According to these, the government can declare a “state of crisis caused by mass migration” under which special rules apply. In particular, applications for asylum may only be submitted in a transit zone and it became mandatory for all asylum seekers, to be kept within specifically designated areas of transit zones for the entire duration of the asylum application process. The Government first declared a state of crisis in September 2015 and has extended it ever since. Since then unaccompanied minors over the age of 14 years are held in transit zones and are not placed in the care of the child welfare authorities until their asylum status has been determined. Whilst in transit zones, unaccompanied minors are not assigned a guardian. The Committee notes from the figures in the report that, in 2017, the number of unaccompanied minors placed in the children’s home has dropped significantly. Children accompanied by their families are also held in transit zones.

The Committee notes that many other bodies have expressed concern about the situation of children in transit zones. According to the report of the fact finding mission by the Special Representative of the Secretary General of the Council of Europe on migration and refugees to Serbia and two transit zones in Hungary in June 2017 [SG/Inf/2017)33] the confinement of asylum seekers in the transit zones raises questions about their de facto deprivation of liberty. The Special Representative questioned whether the system in place adequately addresses the protection and development needs of unaccompanied children throughout the period of time during which they stay in the transit zones, in accordance with their age, their particular needs given their vulnerability and their well-being.

In July 2017, a delegation of the Council of Europe Committee of the Parties to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Committee) visited the transit zones and issued a call to treat all persons under the age of 18 years as children, to ensure that all children under Hungarian jurisdiction are protected against sexual exploitation and abuse, and to systematically place them in mainstream child protection institutions in order to prevent possible sexual exploitation or sexual abuse against them by adults and adolescents in the transit zones [Lanzarote Committee, Special report further to a visit to transit zones at the Serbian/Hungarian Border (5-7 July 2017). 30 January 2018, T-ES(2017)11_en final.]

The CPT [Report on the visit to Hungary from 20 -26 October 2017, 18 September 2018, CPT/Inf (2018)42] expressed its misgivings about the fact that the transit zones constitute the only gateway to the asylum system in the country and that all foreign nationals seeking international protection, including families with children and unaccompanied minors (14 to 18 years of age) are compelled to stay there, for weeks and sometimes months on end, while their asylum claim is being processed. It highlighted that the highly carceral environment of the transit zones cannot be considered adequate for the accommodation of asylum seekers and even less so for the accommodation of families and children.

GRETA has also expressed concern that no measures had been taken to reduce children's vulnerability to trafficking by creating a protective environment for them [Report on Hungary, Urgent Procedure, 2018]. The Committee notes in this respect that the report makes reference to unaccompanied children disappearing from children's homes.

Therefore the Committee requests further information on measures taken to find alternatives to detention for asylum seeking families, to ensure that accommodation facilities for migrant children in an irregular situation, whether accompanied or unaccompanied, are appropriate and are adequately monitored. Furthermore it seeks confirmation that unaccompanied children are not detained with adults whether in transit zones or elsewhere.

The Committee considers that even where the state is of the view that minors (whether accompanied or unaccompanied) in Hungary ultimately seek to reach another destination, it is still required to ensure that those children are accorded meaningful care and assistance.

The Committee considers that the situation is not in conformity with the Charter as the inadequate and often unsafe conditions of children experienced by children in transit zones, in particular unaccompanied children, means that they are not adequately protected from violence and abuse.

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

Child poverty

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

The Committee notes that according to EUROSTAT in 2017 31.6% of children in Hungary of children were at risk of poverty or social exclusion, a rate that is significantly higher than the EU average of 24.9%.

The Committee notes from the report that a free /subsidised food programme was introduced for disadvantaged children (from families in receipt of child protection benefit) during school holidays.

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.

State Parties 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 Hungary is not in conformity with Article 17§1 of the Charter on the grounds that:

- the maximum length of pre-trial detention is excessive;
- unaccompanied children in transit zones are not adequately protected from violence and abuse.

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 Hungary.

Enrolment rates, absenteeism and drop out rates

The Committee previously requested to be kept informed of absenteeism and drop-out rates in compulsory education (Conclusions 2015).

According to the report the rates of absenteeism have been declining over the reference period. The rate of children leaving school without a qualification was 12.5% in 2017 higher than the EU average of 10.6%. The drop out rate in the academic year 2016/2017 was 6.63%. 10.85% of children in 2017 in years 5-12 dropped out. The report states that in 2016 a national scheme was implemented to prevent early school leaving. According to the report, measures adopted under the scheme include making kindergarten compulsory for children over 3 years of age, the introduction, in November 2016, of the early warning and teaching support systems to prevent drop-outs, the promotion of inclusive education, the introduction of school social workers and targeted support for vulnerable groups.

Meanwhile the Committee notes from UNESCO that in 2017 the net secondary school enrolment rate was 88.03% in 2017 for both sexes. The corresponding rate for primary education was 90.83%. The Committee considers that these rates are low and asks for the Government's comments on this.

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

Costs associated with education

The Committee previously asked what assistance exists to cover the costs of education (schoolbooks, transport) of primary and secondary education for vulnerable families (Conclusions 2015).

According to the report all children in years 1-9 are entitled to free text books, they may be provided to children above year 9 based on need. According to the report two thirds of all students receive free text books. Students are also entitled to subsidised travel.

Vulnerable groups

The Committee previously concluded that the situation was not in conformity with the Charter on the grounds that Roma children were subject to segregation in the educational field (Conclusions 2015).

According to the report, the Public Education Act and the Equal Treatment Act were amended in 2017 in order to strengthen the prevention of segregation and in response to the infringement proceedings instituted by the European Commission. The regulations on school districts were also amended to prevent segregation and ghettoisation. 91% of Roma children now attend Kindergarten and 95% of Roma children attend an educational institution.

However the Committee notes from written comments made by the European Roma Rights Centre (ERRC) Joint submission to UN Committee on the Rights of the Child on Hungary 27 February 2018 and written comments of the ERRC concerning Hungary to the UN Human Rights Committee that school segregation of Roma children still exists in Hungary. Approximately 45% of Roma children attend schools or classes in Hungary where all or the majority of their classmates are also Roma. Further despite the ruling of the European Court of Human Rights in *Horváth and Kiss v. Hungary* in 2013, Roma children are continued to be placed in special schools in Hungary.

The Committee wishes to receive information on the number of Roma pupils in special schools or in separate schools or classes as well as other information demonstrating that Roma children are no longer segregated in education. In the absence of information indicating that Roma children are no longer segregated in the educational field, the Committee reiterates its previous conclusion.

As regards asylum seeking children and children with an irregular migration status, including unaccompanied children, the Committee notes that all such children are entitled to education on the same basis as nationals. However the Committee notes that as of 2017 families with children and unaccompanied children over the age of 14 years are held in transit zones until their applications are processed. According to the report, education became available in transit zones in September 2017.

The Committee recalls that access to education is crucial for every child's life and development. The denial of access to education will exacerbate the vulnerability of an irregularly present child. Therefore, children, whatever their residence status, come within the personal scope of Article 17§2. The Committee, therefore, holds that States Parties are required, under Article 17§2 of the Charter, to ensure that children unlawfully present in their territory have effective access to education in keeping with any other child (Statement of interpretation on Article 17§2 , Conclusions 2011).

Education in transit zones is provided from Kindergarten up to 18 years. The Committee notes however that there is a special curriculum. The Committee asks what measures taken to ensure the adequacy of the education provided in transit zones and to ensure that children in transit zones enjoy the right to education to the same extent as nationals, including the same scope and quality of education. In the interim, it reserves its position on this point.

The report states that free school meals are provided to children from families with low income, children from families where there are more than 3 children, children from families where there is a child with a disability or chronic illness, attending Kindergarten and up to year 8. After year 8 certain children may receive subsidised school meals.

The Committee asks what measures have been taken to promote equal access to education for other vulnerable groups such as children in rural areas.

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

Anti-bullying measures

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

The voice of the child in education

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

Conclusion

The Committee concludes that the situation in Hungary is not in conformity with Article 17§2 of the Charter on the ground that Roma children are subject to segregation in education.