March 2020

EUROPEAN SOCIAL CHARTER

European Committee of Social Rights

Conclusions 2019

IRELAND

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 Ireland on 4 November 2000. The time limit for submitting the 16th report on the application of this treaty to the Council of Europe was 31 October 2018 and Ireland submitted it on 31 October 2018. The Committee received on 13 May 2019 observations from the Irish Human Rights and Equality Commission on the application of Articles 7, 8, 16, 17, 19, 27 and 31. It also received on 13 May 2019 observations from the Community Action Network (CAN) and Centre for Housing Law, Rights and Policy Research, NUI Galway on the application of Articles 7, 8, 16, 17, 19, 27 and 31. The reply from the Government on these comments was registered on 3 July 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).

Ireland has accepted all Articles from this group with the exception of Article 8§3 and 31.

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

The present chapter on Ireland concerns 32 situations and contains:

– 16 conclusions of conformity: Articles 7§2, 7§6, 7§9, 7§10, 8§4, 8§5, 19§1, 19§2, 19§4, 19§5, 19§7, 19§8, 19§9, 19§11, 19§12 and 27§3;

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

In respect of the other 3 situations concerning Articles 17§2, 19§3 and 27§1, 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 Ireland under the Revised Charter. The Government consequently has an obligation to provide this information in the next report from Ireland on the articles in question.

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

The deadline for submitting that report was 31 December 2019.

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

Article 7 - Right of children and young persons to protection

Paragraph 1 - Prohibition of employment under the age of 15

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

In its previous conclusion, the Committee found that the situation in Ireland was not in conformity with Article 7§1 of the Charter on the ground that the minimum age of 15 years for employment does not apply to children employed by a close relative (Conclusions 2011).

In this respect, Section 9 of the Protection of Young Persons (Employment) Act, 1996 (No. 16 of 1996, PYP Act) gives the Minister authority to make exclusions from or modifications to certain provisions of the Act, by way of Regulation. Following the enactment of the PYP Act, the Minister issued the Protection of Young Persons (Employment) (Exclusion of Close Relatives) Regulations 1997 (S. I. No. 2 of 1997), which provided the exclusion of close relatives from certain provisions of the PYP Act. The latter Regulation states that Sections 3, 5, 6 (1) (a) and 11 of the PYP Act, 1996 (No. 16 of 1996), shall not apply to the employment of close relatives. In particular, the Regulation excludes children employed by a close relative from the statutory framework prohibiting child work and from the regulations concerning the exception for light work over the age of 13.

The Committee notes that there has been no change to the situation which it has previously found to be in non-conformity with the Charter. It therefore reiterates its previous finding of non-conformity on this point. The Committee recalls that a Recommendation addressed to Ireland was adopted in 2007 by the Committee of Ministers, requesting Ireland to take measures to bring the situation into conformity with the Charter (Recommendation CM/RecChS(2007)1).

The Committee recalls that the employment of a young person is regulated by the PYP Act, 1996 (No. 16 of 1996). The Act defines a child as a person under the age of 16 and a young person as someone between the age of 16 and 18. It prohibits the employment of children under the age of 16. However, an employer may employ a child who is over the age of 15 years to do part-time light work during school term time, provided that the hours of work do not exceed 8 hours in any week, as part of an approved work experience or education programme where the work is not harmful to their safety, health or development. Moreover, an employer may employ a child who is over the age of 14 years and who is a full-time student at an institute of secondary education pursuant to any arrangements made or approved of by the Minister for Education as part of a programme of work experience or educational programme, provided that the hours of work do not exceed 8 hours in any day or 40 hours in any week.

Furthermore, Section 3 of the PYP Act states that children under the age of 16 can be employed in cultural, artistic, sports or advertising activities which are not likely to be harmful to the safety, health or development of the child and to interfere with the child's attendance at school, vocational guidance or training programmes or ability to obtain maximum advantage from schooling. In order to do so, permission must be obtained by way of a licence issued on behalf of the Minister for Business, Enterprise and Innovation. According to the report, in 2017 the number of licences issued was 509 and the number of children covered by licences was 1,282.

The Committee notes that according to Section 3 (4) (a) of the PYP Act, an employer may employ a child who is over the age of 14 years to do light work during any period outside the school term for 7 hours a day and 35 hours a week.

The Committee refers to its Statement of Interpretation 2015 on permitted duration of light work and recalls that children under the age of 15 and those who are subject to compulsory schooling are entitled to perform only "light" work. Work considered to be "light" in nature ceases to be so if it is performed for an excessive duration. States are therefore required to set out the conditions for the performance of "light work" and the maximum permitted

duration of such work. The Committee considered that children under the age of 15 and those who are subject to compulsory schooling should not perform light work during school holidays for more than 6 hours per day and 30 hours per week in order to avoid any risks that the performance of such work might have for their health, moral welfare, development or education (Conclusions 2015, General Introduction, Statement of interpretation of Article 7§1).

Given that under the PYP Act, 1996 (No. 16 of 1996), children under 15 years of age are allowed to perform light work during any period outside the school term for 7 hours a day and 35 hours a week, the Committee considers that the duration of such work is excessive and therefore cannot be qualified as light work.

The report provides information on the inspection activity and outcomes conducted by the WRC (Workplace Relations Commission) inspectorate in respect of the PYP Act from the year 2010 to the year 2017. In 2017, out of 4,747 total inspections, the report did not reveal any breach of the PYP Act and indicates that two cases have been prosecuted. The Committee asks the next report to indicate how work done at home by children is monitored 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 Ireland is not in conformity with Article 7§1 of the Charter on the grounds that:

- the minimum age of 15 years for employment does not apply to children employed by a close relative;
- children under the age of 15 are permitted to perform light work for an excessive duration and therefore the work cannot be qualified as being light.

Article 7 - Right of children and young persons to protection

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

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

The Committee noted previously that according to Chapter 1 of Part 6 “Sensitive Risk Groups of the Safety, Health and Welfare at Work” (General Application) Regulations, 2007 (S. I. 299 of 2007), young persons are prohibited from being employed for work which is likely to entail specific risks for young people including work involving harmful exposure to physical, biological and chemical agent, which involves harmful exposure to radiation or to agents which are toxic, carcinogenic, cause heritable genetic damage, or harm to the unborn child or which in any other way chronically affects human health. Young persons are prohibited from being employed for work in which there is a risk to health from exposure to extreme heat or cold or to noise or vibration and work involving the risk of accidents which it may be assumed cannot be recognised or avoided by a child or young person owing to insufficient attention to safety or lack of experience or training. The Committee noted previously that there are lists of specific prohibited physical, biological and chemical agents as well as work processes. It further noted that there may be exceptions for vocational training purposes.

The Committee recalls that in its previous conclusion (Conclusions 2011) it asked Ireland if the Regulations concerning the prohibition of employment under the age of 18 for dangerous or unhealthy activities apply to young persons employed by a close relative. Pending receipt of the information requested the Committee deferred its conclusion (Conclusions 2011).

The current report indicates that the abovementioned Regulations apply to children and young persons employed by a close relative and that there is a prohibition on their employment in dangerous activities specified in the Regulations. Therefore, they cannot be exposed to such risks if employed by a close relative.

According to the report, several programmes and guides have been developed by the Health and Safety Authority and have been introduced into the school programme to foster a culture of safety and health and to inform young persons about health and safety at the workplace.

Furthermore, the report indicates that statistical data provided by the Health and Safety Authority concerning a sectoral breakdown of reported non-fatal injuries (NACE) in the 0-17 age band from 2011 to 2017, a sectoral breakdown of reported fatalities (sub-NACE) in the 0-17 age band from 2011 to 2017 and the total number of inspections from 2011 to 2017 (i.e. 9,940 inspections in 2017).

Conclusion

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

Article 7 - Right of children and young persons to protection

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

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

In its previous conclusion, the Committee concluded that the situation in Ireland was not in conformity with Article 7§3 of the Charter on the ground that the rules applying to the employment of children still subject to compulsory education do not apply to children employed by a close relative (Conclusions 2011).

In this respect, the report states that the full provisions of the Act do not apply to employment of close relatives. According to the report, there has been no change to the legislative framework with regard to the exemption of close relatives from certain provisions of the legislation since the last time the Irish Government reported to the Committee.

The Committee notes that there has been no change to the situation which it has previously found to be in non-conformity with the Charter. It therefore reiterates its previous finding of non-conformity on this point. The Committee recalls that a Recommendation addressed to Ireland was adopted in 2007 by the Committee of Ministers, urging Ireland to take measures to bring the situation in conformity with the Charter (Recommendation CM/RecChs (2007)1).

The Committee refers to its Conclusion under Article 7§1 concerning the general framework of working hours for child and young persons. In this respect, the Committee recalls that under the Protection of Young Persons (Employment) Act, 1996 (No. 16 of 1996), children under 15 years of age are allowed to perform light work during any period outside the school term for 7 hours a day and 35 hours a week. In the light of the Statement of interpretation 2015 on permitted duration of light work, mentioned under Article 7§1, the Committee considers that the daily and weekly duration of light work permitted to children subject to compulsory education during school holidays is excessive and therefore cannot be qualified as being light work.

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

The Committee recalls that in order not to deprive children of the full benefit of their education, States Parties must provide for a mandatory and uninterrupted period of rest during school holidays. Its duration shall not be less than 2 weeks during the summer holidays. Furthermore the assessment of compliance over the school year takes account of the length and distribution of holidays, the timing of uninterrupted period of rest, the nature and the length of the light work and of the control efficiency of the labour inspectorate (Conclusions 2011, Statement of Interpretation on Article 7§3)).

According to section 3 (4) of the PYP Act, the child over 14 years old employed in light work outside the school term does not do any work during the period of summer holidays for at least 21 days. According to the report, under 16s must be given a 30 minutes break after working 4 hours. They must be given a break of 14 hours in every 24 hours, and 2 days off in every 7 day period. Concerning early morning and night work, the report indicates that the hours permitted for children under 16 years old are after 8 a.m. and up to 8 p.m.

The report does not specify whether during the summer holidays the child has the right to a rest period free of work of at least two consecutive weeks out of the 21 free days. The Committee therefore reiterates its previous question. Meanwhile, it reserves its position on this point.

Conclusion

The Committee concludes that the situation in Ireland is not in conformity with Article 7§3 of the Charter on the grounds that:

- the rules applying to the employment of children still subject to compulsory education do not apply to children employed by a close relative;
- the daily and weekly duration of light work permitted to children subject to compulsory education during school holidays is excessive and therefore the work cannot be qualified as being light.

Article 7 - Right of children and young persons to protection

Paragraph 4 - Working time

The Committee takes note of the information contained in the report submitted by Ireland as well as of the additional information submitted by the Irish Human Rights and Equality Commission.

The Committee previously noted that the provisions of the protection of Young Persons (Employment) Act 1996 governing young persons' working did not apply to young persons employed by close relatives and requested information on the number of young persons employed by close relatives and on any other categories of workers not covered by the Protection of Young Persons (Employment) Act (Conclusions 2011). The report stated that no statistics existed on the number of children working for a close relative. The Committee therefore concluded that the situation in Ireland was not in conformity with Article 7§4 of the Charter on the ground that it was unable to assess whether the working hours of the great majority of persons under 18 are limited in accordance with the needs of their development (Conclusions 2011).

According to the Central Statistics Office (CSO), the latest Labour Force Survey (LFS) indicated that in 2018 the number of persons "assisting relatives" was 14.800 in the first quartet and 11.700 in the second quartet. However, the CSO has indicated that the total number of 11.700 persons that responded in the survey may be too small to categorise or analyse any further. Furthermore, it appears from preliminary information provided by the CSO that the cohort are not actually employed by close relatives but responded to the survey as having been "assisting relatives".

Pending receipt of the relevant information concerning children working for close relatives, the Committee cannot assess whether the working hours of persons under 18 working for close relatives are limited in accordance with the needs of their development. Therefore, the Committee reiterates its previous conclusion of non-conformity on this ground.

Conclusion

The Committee concludes that the situation in Ireland is not in conformity with Article 7§4 of the Charter on the ground that it has not been established that the working hours of persons under 18 working for close relatives are limited in accordance with the needs of their development.

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 Ireland.

Young workers

The Committee previously concluded that the situation in Ireland was not in conformity with Article 7§5 of the Charter on the ground that the remuneration of the young workers was not adequate. It noted that the rate for workers under 18 years of age was 30% lower than that of adult workers.

The Committee recalls that, under Article 7§5 of the Charter, wages paid to young workers between 16 and 18 years of age can be reduced by as much as 20% compared to a fair adults' starting or minimum wage. Therefore, if young workers were paid 80% of a minimum wage in line with the Article 4§1 fairness threshold (60% of the net average wage), the situation would be in conformity with Article 7§5 (Conclusions XVII-2 (2005), Spain). It further recalls that under Article 7§5 of the Charter, young workers' wages may be less than the adult starting wage, but the difference must be reasonable and the gap must close quickly. In the case of young persons between 15 and 16 years of age, wages 30% lower than the adult wage are acceptable. Between the ages of 16 and 18 years, the reduction may not exceed 20% (Conclusions 2006, Albania, Article 7§5).

The Committee notes from the report that a Law Pay Commission (LPC) was established under the National Minimum Wage (Low Pay Commission) Act 2015. The LPC was requested, as part of its 2016 work programme, to examine the sub-minima (special training and youth rates) of the National Minimum Wage and to report its recommendations to the Minister for Employment Affairs and Social Protection. The Commission's report in December 2017 recommended the abolition of the trainee rates, and the retention and simplification of the age-related rates. But not its abolition. The Minister for Employment Affairs and Social Protection accepted the recommendations of the Commission, and Government gave its approval to the Minister's proposal to amend the legislation on 12 February 2018. The legislation, when enacted, will abolish training rates; establish that employees under 18 will receive a minimum of 70% of the minimum wage; employees aged 18 will receive a minimum of 80% of the minimum wage and those aged 19 a 90% of the minimum wage.

The Committee therefore notes that the situation is unchanged and the 30% difference in the rate payable to workers under 18 years of age will be kept under the new reform. The Committee maintains that a gap of 30% for workers over 16 years of age is too great and that this situation is not inconformity with the Charter. Moreover, the Committee recalls that in the previous Conclusions it found under Article 4§1 of the Charter that the situation in Ireland was not in conformity with Article 4§1 of the Charter on the ground that, although it may be acceptable to pay a lower minimum wage to younger workers, the reduced national minimum wage applicable to adult workers on their first employment or following a course of studies is not sufficient to ensure a decent standard of living (Conclusions Article 4§1, 2014).

The report confirms again that young persons working for close relatives are excluded from the provisions of the Minimum Wage Act. The Committee considers that young persons working for close relatives are not guaranteed the minimum wage as set down in the Minimum Wage Act.

Apprentices

With regard to the allowances paid to apprentices, the Committee notes that there has been no change to the situation which it previously found to be in conformity (Conclusions 2006).

Conclusion

The Committee concludes that the situation in Ireland is not in conformity with Article 7§5 of the Charter on the grounds that:

- the wage paid to young workers between 16 and 18 years is too low;
- young persons working for close relatives are not covered by the Minimum Wage Act.

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 Ireland, and of the last Conclusions on this Article, in which the situation was considered to be in conformity with the Charter (Conclusions 2011, Ireland, Article 7§6).

The report confirms that the situation has not changes, as any time spent with the consent of the employer by a young person working under any combined work/training scheme is deemed to be working time.

Conclusion

The Committee concludes that the situation in Ireland 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 Ireland.

The Committee noted previously that young workers, like all other workers, have a right to four weeks paid annual leave (Conclusions 2011, Ireland, Article 7§7). The Committee noted that the Organisation of Working Time Act 1997 does not apply to a person who is employed by a relative and is a member of that relative's household, and whose place of employment is a private dwelling house or a farm in or on which he or she and the relative reside. The Committee asked previously whether young workers falling into the above-mentioned category are guaranteed annual leave, and deferred its conclusion pending receipt of information on this (Conclusions 2011, Ireland, Article 7§7). The report explains that the derogations for agriculture and family members derive from the EU Working Time directive (2003/88/EC), and that all households should be able to enjoy some derogations from working time obligations or else they would not be able to function. Given that the Act excludes this category of employee, the leave provisions do not apply to young workers in this field. The Committee recalls that all young persons under eighteen years of age must be given at least four weeks' annual holiday with pay, with no exception, and therefore, the situation is not inconformity with the Charter in this respect.

Conclusion

The Committee concludes that the situation in Ireland is not in conformity with Article 7§7 of the Charter on the ground that young workers employed by a relative, and whose place of employment is a private dwelling house or a farm in or on which he or she and the relative reside, have no right to four weeks paid annual leave.

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 Ireland.

The Committee previously concluded that the situation in Ireland was not in conformity with Article 7§8 of the Charter on the ground that it was unable to assess whether the great majority of persons under 18 are prohibited from working at night. Indeed, the Protection of Young People at Work Act 1996 provides that persons under the age of 18 years are prohibited from working at night. However, these provisions do not apply to young persons employed by close relatives. The Committee asked for information on the number of young persons employed by close relatives. The report produced by the Government refers to the data produced by the Central Statistics Office (COS), which conducts a survey called the Labour Force Survey (LFS). The LFS is a large-scale, nationwide survey of households in Ireland. It is designed to produce quarterly labour force estimates that include the official measure of employment and unemployment in the state (ILO basis). The report itself states that it is unlikely that the CSO's efforts will yield the statistics sought by the Committee. It therefore concludes that the lack of information available on this point implies reiterating its conclusion of non conformity.

Conclusion

The Committee concludes that the situation in Ireland is not in conformity with Article 7§8 of the Charter on the ground that it has not been established that the great majority of persons under 18 are prohibited from working at night.

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 Ireland.

In its former conclusions, the Committee asked for further information on who determines the frequency on health surveillance as well as information on the involvement of the Labour Inspectorate when a risk assessment has identified a possible safety and health risk for the young worker. The report states that the Regulations, Schedule 7 to the Safety, Health and Welfare at Work (S.I. No. 299/2007), do not stipulate the frequency of health surveillance and health assessments. Neither is it outlined in the guide to the Regulations. Therefore, the employer would take the advice of the doctor carrying out the health surveillance or health assessment regarding the required frequency. The Health and Safety Authority is not aware of any situations in Ireland which warrant health surveillance or health assessments for children and young workers under the Regulations. The Committee asks for information on what is the work developed by the Labour Inspectorate carried out, whether there have been any breaches detected, as well as explain the risks or situations identified, and indicate the medical examinations conducted or how regular they are.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Ireland 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 Ireland. It also takes note of the comments submitted by the Irish Human Rights and Equality Commission (IHREC) of 3 May 2019.

Protection against sexual exploitation

According to the report the Criminal Law (Sexual Offences) Act 2017, (outside the reference period) enhances and updates laws to combat the sexual exploitation and sexual abuse of children. It widens the range of offences associated with child pornography to cover any person involved in the creation, distribution, viewing or sharing of such material. The Act contains new criminal offences to protect children against grooming, from online predators and in relation to child pornography. It also introduces new provisions regarding evidence by victims, particularly children.

The Committee previously asked to be kept informed of the measures taken to prevent the abuse and exploitation of children in institutional settings and by members of religious bodies (Conclusions 2011)

According to the report the Children First Act 2015 provides a legal basis for elements of the Children First: National Guidance for the Protection and Welfare of Children. The Act provides a number of key child protection measures which include: a requirement on organisations providing services to children to keep children safe and to produce a Child Safeguarding Statement; a requirement on defined categories of persons (mandated persons) to report child protection concerns over a defined threshold to the Child and Family Agency (Tusla); and a requirement on mandated persons to assist the Child and Family Agency and "to give to the Agency such information and assistance as it may reasonably require" in the assessment of a child protection risk.

Children First: National Guidance for the Protection and Welfare of Children (2017) is a national policy document which assists people in identifying and reporting child abuse. It describes the four main types of abuse and sets out the steps which should be taken to ensure that the child or young person is protected from harm. It is intended to assist, whether a member of the public, a professional, employee or volunteer in identifying and reporting child abuse and neglect, and to deal effectively with these concerns. It also sets out the statutory responsibilities for mandated persons and organisations under the Children First Act 2015 and provides information about how the statutory agencies respond to reports of concerns made about children.

The Health Service Executive (HSE) is committed to safeguarding people who may be vulnerable and at risk from abuse and launched its safeguarding policy – Safeguarding Vulnerable Persons at Risk of Abuse – National Policy and Procedures, in December 2014.

The HSE has put in place a National Independent Review Panel with an independent Chair and Review Team, modeled on the National Review Panel which reviews cases where children who are in the care of the State, die or experience serious incidents.

The report states that Oberstown Children Detention Campus has published their Child Safeguarding Statement which was developed in line with legislative requirements under the Children Act 2001 and the Children First Act 33 2015, and national policy including Children First: National Guidance for the Protection and Welfare of Children (2017), and Tusla's Child Safeguarding: A Guide for Policy, Procedure and Practice. Section 180 of Children Act 2001 obliges Oberstown to have regard to young people's health, safety, welfare, interests. In addition to the procedures listed in the Oberstown risk assessment, a range of other policies and procedures support Oberstown's intention to safeguard children in detention. Children and young persons in Oberstown also have access to Empowering People in Care (EPIC)

advocacy service and the Ombudsman for Children, both of whom visit the campus regularly.

The Committee notes the positive developments in this regard but notes that according to the comments submitted by IHREC the UN Special Rapporteur on the sale and sexual exploitation of children has raised concerns about the 'absence of regularly gathered, comprehensive data on the scope and different forms of sexual abuse and exploitation of children in Ireland'. In particular, there is an absence of disaggregated data which enables the specific vulnerabilities of certain groups of children to be identified, including children with disabilities, children in care, children from the Traveller and Roma communities and children in the Direct Provision system [Human Rights Council, Visit to Ireland: Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material A/HRC/40/51/Add 2, (March 2019)].

Further IHREC states that according to ECPAT, official and reliable data on the exploitation of children in prostitution is difficult to find in Ireland, but the presence of children in brothels has been reported with victims being predominantly Irish or EU citizens.

The Committee asks what measures have been taken to improve data collection of children on the scope and different forms of sexual abuse and exploitation of children.

As regards religious institutions the Committee notes that the report contains no information on this specific issue. According to the comments submitted by IHERC the Child and Family Agency (TUSLA) published an Audit of Religious Orders, Congregations and Missionary Societies Safeguarding Arrangements and Management of Allegations of Child Sexual Abuse in April 2017. The audit reviewed the management of 1,882 separate allegations of child sexual abuse made against 55 of the 135 Religious Orders included within its scope. It concluded that the safeguarding mechanisms in place varied from being excellent or satisfactory to extremely poor, with clear evidence that some Religious Orders were not implementing safeguarding policies and procedures in practice.

Again according to IHREC the National Board of Safeguarding Children in the Catholic Church in Ireland recorded 104 allegations against priests and members of religious orders relating to child sexual abuse between April 2017 and March 2018. This is an increase on the previous year. The UN Special Rapporteur on the sale and sexual exploitation of children has raised concerns about the gaps in the recording practices and information shared between the National Board and An Garda Síochána. The Commission notes the Special Rapporteur's view that the policies in place create a protection gap in which church communities may not be notified despite an incident of abuse being revealed and clerical offenders may benefit from impunity. Overall, the Special Rapporteur identified a culture of silence around issues of childhood sexual abuse and exploitation in Ireland and observed that assumptions that institutional and clerical abuse have been resolved deters reporting and prevents full accountability.

The Committee asks what measures have been taken to strengthen protection from sexual abuse in this context.

Protection against the misuse of information technologies

According to the information submitted by IHREC an Action Plan for Online Safety has been published and there are legislative proposals for the establishment of an Online Safety Commissioner. Further IHREC notes that a 2017 report by the Garda Inspectorate highlighted serious failings in the process of receiving, investigating and tracking online referrals of child sexual abuse materials by An Garda Síochána. In particular, it found that the Online Child Sexual Exploitation Unit was not sufficiently resourced and that there were unacceptable delays in conducting forensic examinations of devices.

The Committee asks the next report to provide updated information.

Protection from other forms of exploitation

The second National Action Plan to Prevent and Combat Human Trafficking adopted in 2016 contains specific measures in relation to child victims of trafficking, including a commitment to addressing the possibility of establishing a specific identification mechanism which takes into account the special circumstances and needs of child victims of trafficking. The Plan also includes measures in relation to providing assistance to children, reviewing data collection systems, developing training, supporting access to education, ensuring best practice in age assessment procedures, providing effective protection for children in their dealings with the criminal justice system, and ensuring that the best interests of the child are the primary consideration

The anti-human trafficking team of the Irish Health Service Executive (HSE) have a role in assessing victims (irrespective of the age of the victim), supporting victims, developing care plans, referring people to appropriate health and personal social services, and delivering training for the Gardaí and other State agencies. Victims of human trafficking have the same rights as any Irish citizen in relation to access to accommodation, health care; education; and material assistance.

The Child and Family Agency (Tusla) which was established in 2014 is responsible for the protection and welfare of children and for the reception into care and provision of care to all separated children/unaccompanied minors. Tusla makes all the necessary provisions for any unaccompanied child identified as a potential or suspected victim of trafficking. The services provided include accommodation, counselling, debriefing and full medical screening. Each child is allocated a social worker to oversee and implement their care plan.

IHREC notes Ireland is both a destination and source country for child victims of sex trafficking and forced labour. It recalls that according to the Anti-Human Trafficking Unit in the Department of Justice and Equality, the authorities identified 20 child victims of trafficking from 2013-2017 (out of a total 283 victims). There were 3 reports of child trafficking in 2017, with victims originating in Ireland, Europe and Africa. No prosecutions relating to child trafficking cases were initiated in 2017.

The Committee notes that the Council of Europe Group of Experts on Action against Trafficking in Human Beings ("GRETA") recommended that the State review the victim identification procedure and decision-making process as a matter of priority and to place protection and assistance measures for victims of trafficking on a statutory basis. Furthermore, GRETA called on the Irish authorities to set up a specific identification mechanism that takes into account the special circumstances and best interests of children and involves child specialists [GRETA (2017) 28].

IHREC in its comments states that it is concerned that the 'fundamental review' of the victim identification process does not seem to be subject to concrete timelines or clear outcomes, including with regard to the establishment of a specific identification mechanism for child victims of trafficking. The current administrative arrangements for the identification and protection of victims also need to be placed on a statutory basis, with special provision for children in this regard.

The Committee asks the next report to provide updated information on the situation in particular on identification procedures.

The Committee previously asked about the numbers of street children and children forced into begging as well as measures taken to combat this phenomenon (Conclusions 2011).

According to the report the Criminal Law (Human Trafficking) (Amendment) Act 2013, amended existing law, to bring forced begging and forcing a person to engage in criminal activities, within the scope of existing human trafficking offences. The Anti-Human Trafficking Unit of the Department of Justice and Equality produces Annual Reports, which include data on victims of trafficking recognised by NGOs and/or coming to the attention of State

Authorities. One suspected child victim of human trafficking for the purposes of forced begging was identified in 2014. Suspected child victims of human trafficking for the purposes of forced criminality were identified in 2014 (1) and in 2017 (1).

The Committee asks the next report to provide information on cases of children trafficked for labour exploitation and measures taken to address the problem.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Ireland is in conformity with Article 7§10 of the Charter.

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 Ireland.

Right to maternity leave

The Committee previously noted that the Maternity Protection Act entitled pregnant employees to 26 consecutive weeks' maternity leave, of which two weeks had to be taken before the end of the week in which the baby was due and four weeks after that week. The remaining 20 weeks could be taken before or after the birth, as the employee wished. The Act did not provide for an option enabling women to voluntarily give up all or part of the 26 weeks' maternity leave. The same regime applied to female employees in the public sector. A further 16 weeks of unpaid maternity leave could be taken immediately after the statutory maternity leave.

In its previous conclusion (Conclusions 2011), the Committee asked what legal safeguards had been put in place to avoid any undue pressure from employers on employees who had recently given birth to shorten their maternity leave. It also asked whether there was an agreement with the social partners on the question of postnatal leave which protected women's freedom of choice and whether there were any collective agreements which offered additional protection. It also requested information on the general legal framework for maternity (for example whether there was a parental leave system whereby either parent could take paid leave at the end of the maternity leave).

The report does not contain any of the information requested. Consequently the Committee repeats its request. 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 Ireland is in conformity with Article 8§1 of the Charter in this respect.

Right to maternity benefits

The report indicates that female employees in the public sector are entitled to 26 weeks' maternity leave during which they receive maternity benefit at the full rate of pay.

However, in its previous conclusion (Conclusions 2011), the Committee concluded that the situation was not in conformity with Article 8§1 of the Charter on the ground that the amount of maternity benefit was manifestly too low in the private sector.

With regard to the ground for non-conformity, the report points out that maternity benefit is paid during the 26 weeks of maternity leave to all pregnant women covered by social security who are employed or self-employed. Prior to 1 January 2014, the rate of benefit depended on the level of earnings and represented 80% of the earnings received in the previous contribution year; the amount was subject to a minimum of €217.80 and a maximum of €262 per week. However, from January 2014, a single weekly payment of €240 was paid to qualifying persons, with the amount paid no longer dependent on income level. The report nonetheless states that a number of Irish employers pay their employees full pay while on maternity leave.

Eurostat data for 2017 puts the minimum gross monthly salary at €1,563.25 in Ireland.

The Committee reiterates that pursuant to Article 8§1 of the Charter, the maternity benefit must be equal or close to the normal salary, i.e. at least 70% of the person's previous earnings. The Committee notes that the situation is not in conformity with Article 8§1 of the Charter on the ground that the amount of maternity benefit of female employees in the private sector is manifestly too low.

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

Conclusion

The Committee concludes that the situation in Ireland is not in conformity with Article 8§1 of the Charter on the ground that the amount of maternity benefit of employees in the private sector is manifestly too low.

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 Ireland.

Prohibition of dismissal

In its previous conclusion (Conclusions 2011), the Committee found that the situation was not in conformity with Article 8§2 of the Charter on the ground that it had not been established that there was adequate protection against unlawful dismissals during pregnancy or maternity leave.

It noted previously that the Maternity Protection Act 2004 declares void any decision intended to terminate an employment relationship of an employee during her maternity or related leave and asked whether there were any exceptions to this prohibition. The report states that pregnant women and women on maternity leave enjoy special protection against dismissal. The same rules apply to public sector employees, including those with fixed-term contracts. The report does not answer the Committee's question. Therefore, the Committee reiterates it.

The Committee also noted (Conclusions 2011) that under the Unfair Dismissals Act, dismissals are unfair if they result wholly or mainly from the employee's pregnancy, or matters connected with it, unless the employee, by reason of her pregnancy or matters connected with it, was unable (i) to perform adequately the work for which she was employed, or (ii) to continue to do her work without contravention of a statutory requirement by her employer, (iii) and her employer had no other suitable vacancy to offer at the time of the dismissal, or (iv) she refused an offer for a suitable alternative job in order to keep her employed, notwithstanding her pregnancy. It also noted that discrimination based on pregnancy was covered by the Employment Equality Act. The Committee asked therefore how the Acts mentioned above interacted in the event of the dismissal of a pregnant woman and how the relevant authorities and courts interpreted them.

In reply, the report states that the three Acts (the Maternity Protection Act, the Unfair Dismissals Act and the Employment Equality Act) provide for legal remedies in the event of unlawful dismissal. According to the report, although there are three avenues of redress, the one usually chosen by a woman who has been treated less favourably during the protected period is the Employment Equality Act. The Committee takes note of the examples of case-law provided in the report, relating to cases of unlawful dismissal in the public and private sectors.

The Committee recalled that this provision does not lay down an absolute prohibition. It allows for exceptions in certain cases, in particular, if an employed woman has been guilty of misconduct justifies breaking off the employment relationship, if the undertaking ceased to operate, or the period described in the employment contract has expired. The Committee interprets these exceptions strictly. The Committee asks anew for clarification on situations (i), (ii), (iii) and (iv), which seem to go beyond exceptions acceptable under Article 8§2. In the meantime, it finds that the grounds for dismissal of an employee during pregnancy or maternity leave go beyond the exceptions allowed and the situation is therefore not in conformity with Article 8§2 of the Charter.

Redress in case of unlawful dismissal

In its previous conclusion (Conclusions 2011), the Committee found that the situation was not in conformity with Article 8§2 of the Charter on the ground that it had not been established that reinstatement or sufficient compensation was provided for in the event of unlawful dismissal during pregnancy or maternity leave.

The Committee noted previously that under the Maternity Protection Act, any dismissal during maternity leave is prohibited and would be considered void. It asked whether the

victime was entitled to claim reinstatement and whether there was adequate compensation in cases where reinstatement was not possible. It also asked for further information on the case-law on dismissals during pregnancy and the compensation that could be awarded when such claims were brought before the relevant authorities and courts.

The report states that women dismissed during the special protected period of pregnancy or maternity leave can bring claims under the Unfair Dismissal Act or Employment Equality Act. The redress provided for in each case is the same, namely (i) re-instatement; (ii) re-engagement either in the position held immediately before dismissal or in a different position which would be reasonably suitable; (iii) compensation in respect of any financial loss incurred attributable to the dismissal (up to an amount equivalent to two years' remuneration for the position of which the applicant was dismissed). The Committee takes note of the examples of compensation awarded in similar cases, provided in the report.

The Committee recalls that compensation for unlawful dismissal must be both proportionate to the loss suffered by the victim and sufficiently dissuasive for employers. Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive are proscribed. If there is such a ceiling on compensation for pecuniary damage, the victim must be able to seek compensation for non-pecuniary damage through other legal avenues (e.g. anti-discrimination legislation), and the courts competent for awarding compensation for pecuniary and non-pecuniary damage must decide within a reasonable time (Conclusions 2011, Statement of interpretation of Article 8§2). The Committee asks for detailed, updated information in the next report on the redress provided for in the event of unlawful dismissal.

The report also states that an online form is available to file a complaint under any of these Acts. Free mediation and arbitration services are provided by a Rights Commissioner from the Workplace Relations Commission (see Conclusions 2011).

The Committee notes that public sector employees, including those with fixed-term contracts, are covered by the Maternity Protection and Employment Equality Acts.

Conclusion

The Committee concludes that the situation in Ireland is not in conformity with Article 8§2 of the Charter on the ground that the reasons for dismissal of an employee during pregnancy or maternity leave go beyond the exceptions allowed.

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 Ireland.

In its previous conclusion (Conclusions 2011), the Committee concluded that the situation was in conformity with Article 8§4.

The Committee notes from the report that according to the Maternity Protection Act, employers may not require employees to perform night work during pregnancy or for 14 weeks following childbirth if a doctor certifies that working at night puts his health and safety at risk. In such cases, the person concerned must be transferred to daytime work or where this is not possible, leave must be granted to her (Regulation 151 of the General Application Regulations, 2007).

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

The Committee concludes that the situation in Ireland 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 Ireland.

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

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

Conclusion

The Committee concludes that the situation in Ireland 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 Ireland, in the comments by the Irish Human Rights and Equality Commission (IHREC) of 3 May 2019 and by Community Action Network and Centre for Housing Law, Rights and Policy Research, NUI Galway, of 26 April 2019, as well as in the Government's reply to the latter comments.

Legal protection of families

Rights and obligations, dispute settlement

The Committee takes note of the changes that have affected the legal framework governing **rights and obligations of spouses** during the reference period. In particular, following a referendum on 22 May 2015, Article 41 of the Constitution of Ireland was amended to provide that marriage may be contracted in accordance with law by two persons without distinction as to their sex. The constitutional amendment was given legislative effect by the Marriage Act 2015 which was enacted on 29 October 2015 and came into operation on 16 November 2015. The Act enables same-sex couples to marry on the same basis as opposite-sex couples. Existing civil partners may remain as civil partners and their rights as such are not affected. Foreign marriages between same sex couples are recognised under Irish law as marriages. The Children and Family Relationships Act 2015 was enacted in April 2015. The Act is child–centred and addresses the rights of children to legal security, to the care of their parents and important adults in their lives, and to equality before the law.

In response to the Committee's question (Conclusions 2011), the report presents in detail the legal arrangements available for the **settlement of disputes**, in particular as regards children (care and maintenance, deprivation and limitation of parental rights, custody and access to children when the family breaks up). It notes that issues related to maintenance are determined by the courts in cases where the persons involved cannot reach agreement, whether informally or through mediation (see details of the relevant legislation in the report). The same applies in respect of Custody arrangements for the children: if the parents cannot agree and cannot work out a custody agreement through mediation, they must apply to the courts. Section 11 of the Guardianship of Infants Act 1964 provides that either of them may apply to court for a direction regarding the custody of a child or the right of access to the child. A court may also make an order under section 11 when granting a judicial separation or divorce. Following extensive amendments in 2015, this Act now places added emphasis on the court's obligation to consider the child's best interests in the resolution of all proceedings concerning the guardianship or custody of, or access to, any child. The report also presents the legal framework concerning separation agreements, also in respect of civil partners, as well as Judicial separation, divorce and dissolution of civil partnerships. The report indicates that, in granting a decree of judicial separation, divorce or dissolution, a court has the power to make a wide variety of orders. These include orders relating to custody of and access to children, maintenance and lump sum payments, ownership of property and assets, pension rights and succession rights. When considering what orders to make in each particular case, a court will consider all of the circumstances of the family (see details in the report).

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

With regard to **mediation services**, the report indicates that a state-funded family mediation service was established on a pilot basis in 1986 and placed on a statutory footing by the Family Support Agency Act 2001. Since November 2011 the family mediation service has been provided by the Legal Aid Board. The Civil Law (Miscellaneous Provisions) Act 2011 amended the Civil Legal Aid Act 1995 to provide that one of the functions of the Legal Aid Board is to provide family mediation services. Family mediation offered by the Legal Aid

Board is free of charge and is available to all on a first-come first-served basis. It is provided through 16 mediation offices located across Ireland. Court-based mediation is offered in certain locations. According to the report, in 2017, the service provided 10 196 mediation sessions, countrywide. 2 279 of these were mediation information sessions and there were 2453 completed cases, with an average of 3.04 sessions per completed case. There were 1175 written agreements. Finally, family mediation is also available from the private sector.

Domestic violence against women

Ireland has signed and ratified the Istanbul Convention on Preventing and Combating Violence against Women and Domestic Violence (which came into force in Ireland on the 1st July 2019, out of the reference period). The assessment under this instrument has not taken place yet.

The Committee takes note of the information provided in the report concerning the developments occurred since its latest assessment (see Conclusions 2011), in particular as regards the Second National Strategy on Domestic, Sexual and Gender-based Violence 2016-2021 which was launched in January 2016, which includes prevention measures (a six year national awareness raising campaign to change societal behaviours and activate bystanders to prevent domestic and sexual violence) and the strengthening of protection measures through the setting up, within the Garda, of a National Protective Services Bureau as well as of a nationwide network of Victim Services Offices with dedicated staff in each of the 28 police divisions. According to the report, the Bureau is tasked with improving services to victims, improving the investigation of sexual and domestic violence incidents, and identifying and managing risk. It is also intended to establish Divisional Protective Services Units (DPSUs) in each policing division, mirroring the responsibilities held by the National Protective Services Bureau, by end of 2019 (out of the reference period). The report also refers to the passing into Law, in November 2017, of the Criminal Justice (Victims of Crime) Act 2017, which introduced statutory rights for all victims of crime, including victims of domestic violence: the legislation gives all victims of crime an entitlement to information about the system and their case, and supports, and special measures during investigation and court proceedings if necessary. The Domestic Violence Act 2018, which was enacted on May 2018 (out of the reference period) contains further enhancements, also in respect of prosecution of domestic violence: a new criminal offence of coercive control recognises psychological abuse in an intimate relationship.

The Committee notes that most of the measures referred to were taken at the end of the reference period or after it and that the report does not provide any information as regards the effective implementation of the measures already taken in the past, nor on the results obtained. It is furthermore not clear whether integrated policies have been set up, i.e. whether all levels of government and all relevant agencies and institutions are involved in the drafting and implementation of the National Strategies adopted and in the coordination of the activities of the Cosc, the National Office for the Prevention of Domestic, Sexual and Gender-based Violence.

In this connection, the Committee takes note of the concerns expressed by the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) in its Concluding Observations 2017, and by the IHREC about the lack of gender-disaggregated data on gender-based violence against women, including domestic violence. The IHREC also denounces gaps in the legal framework for domestic violence (for example about the posting online of intimate images without consent, which is not yet criminalised) and the fact that victims of domestic violence face multiple barriers in accessing justice (notably on account of negative attitudes among members of *An Garda Síochána* and the lack of specialised family or children's court system) and in accessing specialist support system. In particular, the IHREC points out that the number and geographical spread of domestic violence refuges is insufficient, notably in rural areas: no such refuge is available is 9 counties out of 32, the number of places is reportedly less than one third than that required

and, according to 2016 statistics, refuges were unable to meet 3 981 requests from women for emergency accommodation because they were full. In addition, IHREC denounces that fact that women are required to demonstrate that they meet the necessary residence condition to be deemed eligible for support, which leaves undocumented women who are victims of domestic violence without protection.

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 availability and use of restraining orders, the implementation of the existing measures and their impact on reducing domestic violence against women also in the light of the abovementioned IHREC and CEDAW observations. It reserves in the meantime its position on this point.

Social and economic protection of families

Family counselling services

In response to the Committee's question (Conclusions 2011), the report indicates that family counselling services are funded by Tusla (Child and Family Agency) through a network of community-based counselling services and Family Resource Centres around the country. Tusla provides funding to voluntary organisations offering the following types of counselling, psychotherapy and support: a) marriage and relationship counselling; b) child counselling; c) rainbows peer support programme for children; d) bereavement counselling and support on the deaths of a family member. Many funded counselling services were originally established by local enterprises. Most of these services are community-based and have evolved from a volunteer-led model to a service provided by professional counsellors and psychotherapists on a "low or no-cost" basis. Tusla issued funding of €6.2m to 315 counselling services throughout Ireland in 2017. In 2018 (out of the reference period) all counselling services funded by Tusla signed a Service Level Agreement (SLA) which introduced comprehensive governance standards, including a provision to ensure accessibility of these services to all family types.

Childcare facilities

The Committee refers to its previous conclusion (Conclusions 2011) for an overall description of childcare facilities. It notes from the EU Commission report on Barcelona objectives (2018) that, as of 2016, Ireland had reached the targets, with 92.9% children between 3 and 6 years old in childcare (and 28.6% as regards children below 3 years of age).

The report provides, as requested, some additional information about the Visiting teacher service for 3552 children with hearing or visual impairments. In response to the Committee's request of information on the implementation of the Síolta, the National Quality Framework for Early Childhood Education, the report also explains that to support quality provision for children in the early childhood care and education (ECCE) scheme, the Department of Education and Skills (DES) has developed two national practice frameworks that apply in all settings where children aged 0-6 are present, Aistear and Síolta, which were however reviewed in 2017-2018 (out of the reference period). With regard to the standards in the childcare services, the IHREC points out however that data from the Inspectorate for early childhood education and care services demonstrates that in 2017 only 55% of services were found to be compliant with the standard on safeguarding the health, safety and welfare of children. 33% of the complaints received by the Inspectorate in 2017 also related to the health, welfare and development of children.

The IHREC furthermore points out in its comments that families still face a high burden of cost and there is a high level of unmet need in Ireland for formal childcare supports, particularly among disadvantaged families. It refers to research by the Economic and Social

Research Institute (ESRI) which demonstrates that the amount families pay for childcare influences maternal employment, and that higher costs are associated with a subsequent reduction in the paid working hours of mothers. On average, ESRI identified that families are paying 12% of their disposable income on the cost of childcare for one three-year-old child. Research has also demonstrated that formal childcare costs represent a particularly substantial barrier to lone-parent labour market participation. According to the abovementioned report by the European Commission, with reference to OECD statistics, the out-of-pocket cost for a single parent was the highest in Europe (41.6% of net family income) and, for that reason, participation rates for children in low-income families were at 12%, much less of those for children from high-income families (57%). The same report identifies that over 15% of women are inactive in the labour market and 10% of women are working part-time in Ireland because of caring responsibilities, of which 40% report a lack of suitable careservices. The IHREC mentions some measures which were adopted in 2018-2019, out of the reference period, but indicates that they had not been implemented yet or their impact was not yet tangible (see the abovementioned comments for details about the Affordable Childcare System Scheme, the introduction of additional childcare subsidies and the publication of *First Five: A Whole-of-Governments Strategy for Babies, Young Children and their Families 2019-2028*).

The Committee underlines that States Parties are required to ensure that childcare facilities are available, affordable and of good quality (coverage with respect to the number of children aged 0-6, ratio of staff to children, staff training, suitable premises and cost of childcare to parents, etc.). It asks the next report to provide updated information on the coverage of children aged 0-6 and on the cost of childcare to parents, as well as on the implementation of the measures mentioned in the report and in the IHREC comments and their impact on improving the availability, affordability and quality of childcare. It considers in the meantime that it has not been established that adequate and affordable childcare facilities are available in Ireland.

Family benefits

Equal access to family benefits

In response to the Committee's request for clarifications (Conclusions 2011) on how the habitual residence condition (HRC) is applied in practice and to what extent this condition has excluded foreigners from receiving payment of family benefits (the number of persons who have been refused family benefits on the ground of not satisfying the habitual residence requirement), the report confirms that the HRC is applied to all applicants for the relevant payments, regardless of their nationality. On this point, the IHREC objects that in practice the HRC can nevertheless have a disproportionate and discriminatory impact on certain groups (see below, as regards vulnerable families). In fact, the report indicates that out of 246 809 applications for child benefit submitted between 01-01-2011 and 31-12-2017, the total number of those refused on the basis of the applicant not satisfying habitual residence conditions was 5 195, i.e. 2.1% of the applicants, mostly foreigners (5 096 out of 5 195).

The report explains that the Department of Employment Affairs and Social Protection regularly monitors the way in which the HRC is applied and makes improvements where necessary. In particular, it indicates that Comprehensive guidance on assessing HRC is provided to staff, as well as general and specialist training, and the guidelines are regularly updated (lastly in July 2017) with a view to ensuring both fairness and consistency in its application. Furthermore, HRC decision-makers can refer complex cases to their line managers, to the Decisions Advisory Office (a specialist unit which provides guidance on complex cases) or the Staff Development Unit for further consideration.

The Committee recalls that States may apply a length of residence requirement as regards non-contributory benefits on condition that the length is not excessive. The proportionality of such length of residence requirements is examined on a case-by-case basis having regard

to the nature and purpose of the benefit. It notes from the information available that the entitlement to child benefit in Ireland, which is a non-contributory benefit, is assessed on a case by case basis. Detailed guidelines have been issued in this respect and include exceptions, for example in respect of refugees or EU migrant workers. In light of the information available, the Committee considers that the situation is in conformity with the Charter, as regards equality of access to family benefits. It asks nevertheless the next report to provide updated information on the application of the HRC and the number of applications rejected, also in the light of the IHREC comments.

Level of family benefits

The Committee previously noted (Conclusions 2004) that Family benefits consisted of the universal child benefit and a range of other means-tested family benefits. The report does not provide any updated information on this point. MISSOC database indicates that child benefit is a tax financed flat rate universal scheme covering all resident children up to the age of 16 or 18. In 2017, it amounted to €140 per child per month, that is around 7.3% of the median equivalised income (which was €1 906.58 monthly in 2017, according to Eurostat). The Committee considers that the situation remains in conformity with the Charter on this point, but asks the next report to provide comprehensive and updated information on the family benefits system.

Measures in favour of vulnerable families

The Committee refers to its previous conclusion (Conclusions 2011), in which it had noted the setting up of bodies in charge of coordinating actions in respect of the Traveller community and asked for information on the measures taken to ensure the economic protection of Traveller families. In response to this question, the report refers to the launching on 13 June 2017 of the National Traveller and Roma Inclusion Strategy (NTRIS) 2017-2021, but does not specify what actions have been taken, and what results have been achieved, in ensuring the economic protection of Traveller families.

The Committee furthermore notes the concerns expressed by the IHREC about the situation of single-parent families, which are disproportionately affected by poverty: in 2017, these families had the highest consistent poverty rate at 20.7%; their "at-risk-of poverty" rate was 39.9% (against 15.7% for the general population) and 44.5% of them experienced two or more types of enforced deprivation (against 18.8% of the population). While noting that children of lone parents are more than twice as likely to live in consistent poverty as the general child population, the IHREC considers that this is partly due to changes to the eligibility criteria for the One Parent Family Payment, and the ensuing financial and social impact on lone parents. It also refers to similar concerns expressed by the CRC Committee in 2016 that consistent poverty disproportionately affects children from Traveller, Roma and refugee backgrounds and to the 2016 data of the Social Inclusion Monitor on consistent poverty rate. The IHREC furthermore points out that migrant families, Traveller families and Roma families can face particular challenges in satisfying the conditions of the HRC due to their nomadic way of life, employment patterns, family ties or overall length of time spent in the country.

The Committee recalls that States Parties are required to ensure the protection of vulnerable families, single-parent families, Roma families, in accordance with the principle of equality of treatment. It asks the next report to provide comprehensive and updated information on the measures taken to specifically address the economic situation of vulnerable families, in particular Traveller families and single-parent families, and the results achieved in ensuring their protection from poverty, in light of the abovementioned IHREC observations. It considers in the meantime that it has not been established that Traveller families, single-parent families and other vulnerable families receive appropriate economic protection.

Housing for families

In its previous conclusion (Conclusions 2011), the Committee asked for comprehensive information concerning access to adequate housing for families, in the light of the principles established in its case-law.

As regards the provision of an adequate supply of housing for families, the Committee notes from the current report that social housing provision increased during the reference period (25 901 social housing units delivered in 2017 compared to 7 261 units in 2014), compared to the previous period in which there had been a steep decline due to the economic crisis and the collapse in the home building sector. The Action Plan for Housing and Homelessness-Rebuilding Ireland 2016-2021 was launched in 2016 and sets out the Government's approach to increasing the provision of housing, including social housing and other State-supported housing. This is to be achieved through a suite of measures over five 'pillars' of action across government, addressing homelessness, accelerating social housing, building more homes, improving the rental sector and utilising existing housing. For instance, the overall target for social housing is to increase the stock of social housing by 50 000 houses by 2021 and, in addition, to provide a further 87 000 housing supports through housing-related assistance schemes between 2016 and 2021. This Plan also addresses the problem of homelessness, particularly the unacceptable level of families in emergency accommodation. In this respect, the Plan aims at ensuring that hotels are only used in limited circumstances for emergency accommodation for families, by meeting housing needs through the Housing Assistance Payment (HAP), which is a housing support scheme for people staying in the private rental sector. Family hubs are intended as an alternative to living in hotels; their aim is to provide a form of emergency accommodation that offers greater stability for homeless families, with common facilities and spaces, while move-on options to long-term independent living are identified and secured. Finally, the report refers to the National Implementation Plan for Housing First launched in September 2018 (outside the reference period), which aims at supporting long-term homeless individuals move from emergency accommodation to independent living.

The Committee notes from the information and public figures provided by Community Action Network and Centre for Housing Law, Rights and Policy Research, NUI Galway, as well as by the Irish Human Rights and Equality Committee, that there has been an increase of families becoming homeless during the reference period (1 408 families with 3 079 children in emergency homeless accommodation in December 2017 compared to 407 families with 880 children in December 2014). According to the Irish Human Rights and Equality Committee, the rise in homelessness has been exacerbated by Government policy choices, such as the decision to withdraw from building social housing and to instead provide rent supplement for private renters, making low-income households extremely vulnerable in the housing market. The Committee also notes from the Irish Human Rights and Equality Committee's comments that the use of family hubs may normalise family homelessness, and takes note of its concerns concerning the long-term impact of stays in such hubs on parents and children.

The Committee takes note of all the measures launched and adopted by the national authorities during the reference period, which include targeted actions for the period up to 2021 to address the problem of homeless people and families and to increase and accelerate the provision of social housing. It notes however that the problem of homelessness of families has worsened during the reference period (see also Housing Europe, The State of Housing in the EU 2017, Ireland; European Social Policy Network (ESPN), « National strategies to fight homelessness and housing exclusion: Ireland », 2019, p. 5-7; FEANTSA, Homelessness country profile: Ireland, 2018). The growth in family homelessness is linked to the lack of sufficient supply of social housing and the inadequate levels of rent supplement (see the United Nations Committee on Economic, Social and Cultural Rights' Concluding observations on the third periodic report of Ireland, 19 June 2015, § 26). The Committee therefore asks the next report to provide detailed information on

housing support for vulnerable families for the next reference period, including figures (demand and supply) on the various types of support (emergency homeless accommodation, social housing, housing-related allowances), as well as on the average waiting time for the attribution of social housing. The Committee also asks to be provided with information on the achievement of the overall targets included in the Action Plan for Housing and Homelessness-Rebuilding Ireland 2016-2021 concerning homelessness and social housing. As regards the use of family hubs as an emergency accommodation, the Committee asks whether there are any limits on the length of the stay of families in such hubs.

The Committee further notes the concerns raised by Community Action Network and Centre for Housing Law, Rights and Policy Research, NUI Galway, about the inadequate housing standards (condensation and mould, overcrowding, lack of regeneration, unsatisfied maintenance) and the ineffective complaint mechanism for local authority housing tenants. In this connection, it recalls that during the reference period, it found a violation of Article 16 of the Charter on account of the inadequate conditions for not an insignificant number of families living in local authority housing in the framework of collective complaint International Federation for Human Rights (FIDH) v. Ireland, Complaint No. 110/2014, decision on the merits of 12 May 2017.

The Committee notes from the Government's reply to the comments made by Community Action Network and Centre for Housing Law, Rights and Policy Research, NUI Galway that regulations (SI 17 of 2017, entered into force on 1 July 2017) updated the minimum standards regulations for rental accommodation which local authorities are required to adhere. The Dublin City Council as the largest local authority adheres to these standards and has been carrying out condition surveys on its housing stock since 2018 (outside the reference period), as well as improvement works in the light of these surveys. Increasing numbers of local authorities have undertaken housing stock condition surveys. The Committee recalls that the follow-up to its decision on the collective complaint mentioned above will be carried out when examining the report which Ireland is due to submit by 31/12/2019.

In the meantime, and in the light of all the information at its disposal, the Committee considers that it has not been established that there is a sufficient supply of adequate housing for vulnerable families.

As to the legal protection of the right to adequate housing, the Committee notes from the Government's reply to the comments made by Community Action Network and Centre for Housing Law, Rights and Policy Research, NUI Galway, that while the Irish Constitution does not contain an express right to housing, there are however a range of rights and protections in relation to social housing provided for in Irish (primary and secondary) legislation. The Committee asks the next report to provide information on whether the right to adequate housing, including in relation to social housing, is protected through judicial or non-judicial remedies, and if so, to provide examples of such remedies and their effectiveness.

In respect of the protection for persons threatened by eviction, the national report explains that the Residential Tenancies Board (RTB) was established as an independent statutory body under the Residential Tenancies Act 2004, to operate a national tenancy registration system and to facilitate the resolution of disputes between landlords and tenants. The Residential Tenancies Acts 2004 to 2016 prescribe notice periods (maximum required notice period of 224 days) to apply for tenancy terminations. As regards accessibility to legal remedies, the RTB can issue a legally binding Determination order to settle disputes; in case of non-compliance, the RTB may initiate court proceedings to enforce it. The RTB has created a panel of solicitors to assist parties in taking enforcement proceedings. However, the RTB was set up to deal with disputes on an informal basis and is intended to minimise expenses. Therefore, legal representation should not be necessary and its costs will only be awarded in exceptional circumstances. Any of the parties concerned may appeal a

Determination order of the RTB to the High Court. In case of a finding of unlawful termination, the landlord may be directed to allow the tenant re-entry into the dwelling and/or required to pay damages depending on the circumstances of the case.

The Committee notes in this regard the comments made by Community Action Network and Centre for Housing Law, Rights and Policy Research, NUI Galway, to the effect that there are no figures available on the numbers of possession orders executed by lenders for mortgage arrears, including the number of evictions of families with children. It also notes from the data supplied by them that many home loan debtors had no recorded legal representation in court, although lenders enforcing the security of the mortgage were always represented. The Government, in their reply to such comments, provided information on several legislative developments intended to strengthen the protection for borrowers with mortgage arrears (Land and Conveyancing Law Reform 2013 and its Amendment Bill 2019 before the Dáil), as well as on the functioning of the Abhaile Scheme, established in 2016 to provide homeowners in serious mortgage arrears with free access to independent expert financial and legal advice. While the main focus of this scheme is on resolving the mortgage arrears themselves rather than providing full legal aid, Abhaile offers unrepresented borrowers independent legal advice on any legal questions regarding repossession proceedings issued against them. Furthermore, civil legal aid is available subject to the normal conditions.

The Committee takes note of all the information contained in the report and the Government's additional reply concerning eviction conditions. It asks the next report to provide up-to-date figures on the number of executed evictions, including mortgage-related and rental evictions, and on the number of evicted families.

As regards the housing conditions of Traveller families, the Committee previously took note (Conclusions 2011) of the programmes carried out under the Housing (Traveller Accommodation) Act 1998 as well as of the functions of the National Traveller Accommodation Consultative Committee (NTACC). It asked for information on the development in programmes dedicated to Traveller families housing.

During the reference period, the Committee found a violation of Article 16 of the Charter on account of the inadequate protection of Travellers in respect of accommodation and housing, including in terms of eviction conditions, in the framework of collective complaint European Roma Rights Centre (ETTC) v. Ireland, Complaint No. 100/2013, decision on the merits of 1 December 2015. The Committee recalls that it concluded in its Findings of 6/12/2018 that despite the progress made, the situation had not yet been brought into conformity with Article 16. It points out that the subsequent follow-up to this decision will be carried out when examining the report which Ireland is due to submit by 31/12/2019.

The current report states that the NTACC recommended the establishment of an Independent Expert Group, which has now begun to review the Traveller Accommodation Act 1998. The National Traveller and Roma Inclusion Strategy 2017-2021 launched on 13 June 2018 commits the Irish Government to a number of actions aimed at improving the lives of Travellers in practical and tangible ways, including in the field of accommodation.

In the light of its previous negative assessments in respect of the reference period covered by the present conclusions, the Committee can only conclude that the situation is not in conformity with Article 16 of the Charter on account of the inadequate protection of Traveller families with respect to housing, including in terms of eviction conditions.

As regards Roma families, the Committee takes note the comments made by the Irish Human Rights and Equality Commission. A "National Roma Needs Assessment", commissioned by the Department of Justice and Equality, was published in 2018 (outside the reference period). It identified significant issues with regard to housing for the Roma community, including discrimination in accessing accommodation; severe overcrowding; poor quality accommodation; a lack of security of tenure; homelessness; and a lack of

access to social housing and rent supplement. The Committee asks the next report to comment on this assessment and to provide information on any measures taken in this area.

Finally, the Committee refers to its Statement of Interpretation on the rights of refugees under the Charter (Conclusions 2015). In this connection, the Committee takes note of the concerns raised by the United Nations Committee on Economic, Social and Cultural Rights during the reference period (Concluding observations on the third periodic report of Ireland, 19 June 2015, § 14) concerning the poor living conditions and the lengthy stay of asylum seekers in Direct Provision centres and their negative impact on asylum seekers' right to family life and their children's best interests (see also Conclusions 2019, Article 17§1, as regards children). It also notes from the comments submitted by the Irish Human Rights and Equality Commission that persons who have been granted refugee status are unable to access private rental accommodation and continue living in Direct Provision centres. The Committee therefore asks for information in next report on the situation, in law and in practice, as regards access to housing for refugees and their families.

Participation of associations representing families

In response to the Committee's question (Conclusions 2011), the report confirms that the authorities consult associations representing families when drafting family policies. The Department of Justice and Equality engages with and consults with non-governmental associations, civil society organisations and other interested parties on an ongoing basis in relation to the development of policy on family law. The Department for Children and Youth Affairs (DCYA) hosts a biannual Early Years Forum to consult and formulate policies pertaining to the early year's education with relevant stakeholders, including a number representing parents, such as the National Parents Council (NPC) and One Family, a charity advocating on behalf of single parent families. DCYA has also hosted open policy debates relating to its forthcoming ten-year strategy on babies, young children and their families, which have included a range of stakeholders representing parents. Finally, a number of consultative working groups have been established as part of the development of the Affordable Childcare Scheme, which includes numerous focus groups with parents utilising childcare supports under the current system. This builds upon a national public consultation conducted at the outset of development of the scheme, which attracted more than 4 000 responses.

Conclusion

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

- it has not been established that adequate and affordable childcare facilities are available;
- it has not been established that Traveller families, single-parent families and other vulnerable families receive appropriate economic protection;
- it has not been established that there is a sufficient supply of adequate housing for vulnerable families;
- the protection of Traveller families with respect to housing, including in terms of eviction conditions, is inadequate.

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

Paragraph 1 - Assistance, education and training

The Committee takes note of the information contained in the report submitted by Ireland. It also takes note of the comments submitted by the Irish Human Rights and Equality Committee of 3 May 2019.

The legal status of the child

Registration of a father's name on the birth certificate is now compulsory. The Civil Registration (Amendment) Act 2014 provides that in the case of the registration of a non-marital birth, a father is required to provide his information and the mother is required, other than in exceptional circumstances, to supply the father's details.

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 or those who have not sought asylum. In 2015, UNHCR estimated the total number of stateless persons in Europe at 592,151 individuals.

Therefore the Committee asks what measures have been taken 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, persons in an irregular situation.

Protection from ill-treatment and abuse

In its previous conclusion the Committee concluded that the situation in Ireland was not in conformity with Article 17§1 of the Charter on the grounds that corporal punishment of children was not explicitly prohibited in the home (Conclusions 2011). The Committee notes that the Children First Act which entered into force in 2015, abolished the common law defence of reasonable chastisement. Therefore the Committee notes that the situation is now in conformity with the Charter (see Follow up to Decisions on the merits of collective complaints, Findings 2018 in respect of Ireland).

Rights of children in public care

According to the report the Child Care Act 1991 (as amended) continues to form the statutory framework within which child welfare and protection services are provided in Ireland. The legislative framework thus remains substantially the same as it was in the 2011 report. However in 2014 Tusla, the Child and Family Agency was established, which is responsible for child protection, family support and other functions formerly vested in the Health Service Executive.

The Committee previously asked what were the criteria for the restriction of custody or parental rights and what the extent of such restrictions is. It also asked what were the procedural safeguards to ensure that children are removed from their families only in exceptional circumstances. It further asked whether the national law provided for a possibility to lodge an appeal against a decision to restrict parental rights, to take a child into public care or to restrict the right of access of the child's closest family (Conclusions 2011).

The report states that in some cases a child may be taken into the care of the State through a voluntary care agreement with the parent(s). In other circumstances Tusla may apply to the courts for one of a number of orders provided for under the Child Care Act 1991. The main types of orders include, Emergency Care Order, Interim Care Order, Care Order, Supervision Order, Special Care Order.

Where a care order is in force, parental rights over the child are exercised by Tusla. This is not the case under voluntary care, an emergency care order, or an interim care order. In the latter instances parental rights continue to be exercised by the child's parent(s), albeit that the child is in the care of Tusla. As a result, parental consent is required for children in care in these circumstances to undergo medical procedures, apply for a passport, etc. The requirement for parental consent in these instances can only be waived by judicial decision.

To make a care order under the Act the District Court must be satisfied that child has been or is being assaulted, ill-treated, neglected or sexually abused, that the child's health, development or welfare has been or is being avoidably impaired or neglected, or that the child's health, development or welfare is likely to be avoidably impaired or neglected; and that the child requires care or protection which he is otherwise unlikely to receive. For an interim care order the Court must find reasonable cause to believe that these circumstances are taking or have taken place. In the case of the more strictly time-limited emergency care order the Court must find reasonable cause to believe that there is an immediate and serious risk to the health or welfare of the child.

Orders restricting parental rights can only be made, extended, reviewed or modified by judicial decision in the District Court.

The Committee notes from the information provided by the Irish Human Rights and Equality Commission that there were 6,189 children in care at the end of 2017, of which 65% were in general foster care, 27% in foster care with relatives and 6% were in residential care. 395 children were in private foster care placements. The information cites concerns about the State's reliance on private non statutory placements, and the lack of independent monitoring of private residential centres. The Committee seeks the Governments comments on this. The Committee points out that where children are placed in private foster care facilities or private residential centres , the state remains responsible for ensuring that the children receive the care and assistance they need and that their rights are respected through independent monitoring. States must ensure the adequate supervision on such facilities.

The Committee asks to be kept informed of the number of children in foster care and residential care, the number placed in private placements as well as information on the supervision of private placements.

Right to education

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

Children in conflict with the law

The Committee refers to its previous conclusion for a description of the measures available when dealing with children in conflict with the law. A range of community sanctions are available, such as community service order, day centre order, probation supervision order, probation order, family support order etc. Detention is a measure of last resort. The Committee previously noted the *Garda* (Police) Youth Diversion Programme (GYDP) which provides a package of measures for dealing with children aged 12-17 who commit an offence or offences. This programme enables young persons to be dealt with by way of caution rather than by the formal court system. The Committee asked for further information on this programme as well as information on new community sanctions to be implemented by the probation service (Conclusions 2011).

According to the report here has been a modest expansion of the GYDP and at present there are 105 GYDP projects operating nationally which provide services to approximately 4,000 participants.

Since October 2016, the Department of Children and Youth Affairs has been operating a pilot "Bail Supervision Scheme." This Scheme operates from the Dublin Children's Court, and was established as a pilot for 2 years with the option of a 3rd year. The Scheme provides a court with the option to grant bail to a child, rather than detaining the child, during remand proceedings.

The Committee requests information on whether the scheme referred to above has reduced the number of children in pre-trial detention. It also requests information on the maximum duration of pre-trial detention which may be imposed on young persons.

The Committee notes that minors accused of serious offences maybe sent forward to the Circuit and Central Criminal Courts and hence may lose certain guarantees/safeguards afforded to minors. The Committee asks if any measures have been taken to ensure minors transferred to adult courts are treated as minors.

The Committee previously found the situation not to be in conformity with Article 17 of the Charter on the grounds that in St. Patrick's Institution (which was a closed institution managed by the prison service) children aged 16 and 17 years could be detained with adults.

The report states the practice of detaining children in adult prison facilities was ended in 2016. St. Patrick's Institution has been closed. Oberstown Children Detention Campus provides accommodation for all children under age 18 remanded for a period of pre-trial detention or committed to a period of detention, by a court.

According to the report a comprehensive care model encompassing care, education, health and wellbeing, addressing offending behaviour is in operation at Oberstown. Oberstown is staffed predominantly with residential social care workers.

The Committee notes that the situation is now in conformity in this respect.

As regards the solitary confinement of minors, the Committee notes the comments of the Irish Human Rights and Equality Commission which has stated that as a result of concerns regarding de facto solitary confinement (single separation), a new national policy on single separation was introduced in 2017 but no legislative measures have been taken to implement the policy. The Committee requests the next report to provide information on single separation, including information on how long children may be placed in single separation and under what circumstances.

The Committee further previously found the situation not to be in conformity with the Charter on the grounds that the age of criminal responsibility was to low (Conclusions 2011). It recalls in this respect that the general age of criminal responsibility in Ireland is 12 years. However, an exception is made for 10 and 11-year-old children charged with the most serious offences on the statute book (murder, manslaughter, rape or aggravated sexual assault), who face trial in the Central Criminal Court. The Committee notes that there has been no change to this situation and therefore reiterates its previous conclusion of non conformity. However it notes that according to the report the Department of Justice and Equality is currently engaged in a review of the Children Act 2001 and this process will include consideration of the provisions in relation to the age of criminal responsibility. It asks to be kept informed of all developments in this respect, in particular with regard to 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 notes that children with their family applying for asylum will be accommodated through a system of direct provision and will also be entitled to free healthcare. Unaccompanied minors are under the responsibility of Tusla and may be placed in foster care or supported lodgings.

Tthe Committee further notes from Commissioner for Human Rights of the Council of Europe's report following his visit to Ireland in 2016 (CommDH2017(8)) that the vast majority of asylum seekers (4,116 persons as of November 2016) have to live for long periods of time in Direct Provision, made up of privately-run accommodation centres under contract with the Reception and Integration Agency. One third of persons living in direct provision are children. He cited the report of the Working Group to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, Final Report, June 2015, which found that the majority of Direct Provision units are buildings that were designed originally for different purposes generally aimed at short-term living, including hotels, boarding schools and holiday homes. The majority of families are accommodated in such units with no separate living space. Some of these units are described as being in bad material condition.

The Direct Provision system has been repeatedly criticised by human rights bodies as having serious adverse consequences on the residents and on children in particular. In his 2016 Report, the government-appointed Special Rapporteur on Child Protection recommended that the Direct Provision system should be abolished, and in the interim living standards at Direct Provision Centres should be improved (Ninth Report of the Special Rapporteur on Child Protection A Report Submitted to the *Oireachtas*, Professor Geoffrey Shannon, November 2016, recommendations 1.7.1.). According to the Ombudsman for Children, the system places children in a "fundamentally unsuitable setting" (Ombudsman for Children (OCO), Report of the Ombudsman for Children to the UN Committee on the Rights of the Child on the occasion of the examination of Ireland's consolidated Third and Fourth Report to the Committee, April 2015, paragraph 10.2.2).

The Irish Human Rights and Equality Commission, inter alia, in its submissions to the Committee also expresses concern that lengthy stays in Direct Provision Centres have a negative impact on the best interests of the child. It further highlights that the national monitoring agency for health and social service (HIQA) does not have the authority to conduct inspections of Direct Provision Centres.

The Committee asks what measures have been taken to address these concerns and to ensure that children are accommodated in appropriate settings.

It also requests further information on assistance given to unaccompanied minors, especially to protect them from exploitation and abuse. Lastly it requests information as to whether minors irregularly present accompanied by their parents or not, may be detained and if so under what circumstances.

The Committee notes the comments of the Irish Human Rights and Equality Commission that applications for international protection for unaccompanied minors are often delayed

until they are approaching 18 years of age which impacts on their rights to employment education and other services. The Committee asks the Government to respond to this.

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 Ireland 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 under the terms of Article 17 of the Charter.

The Committee notes that according to EUROSTAT in 2017 25.2% of children in Ireland were at risk of poverty or social exclusion (EU average 24.9%).

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

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

Conclusion

The Committee concludes that the situation in Ireland is not in conformity with Article 17§1 of the Charter on the ground that the age of criminal responsibility is too low.

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 Ireland. It also takes note of the comments submitted by the Irish Human Rights and Equality Commission of 3 May 2019.

Enrolment rates, absenteeism and drop out rates

The Committee notes from UNESCO that in 2017 the net secondary school enrolment rate was 98.66% for both sexes. The corresponding rate for primary education was 95.78%.

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

Access to education

As regards access to education, the Committee previously noted the fact that the overwhelming majority of primary schools were Catholic schools and asked for what measures are taken for the integration of pupils from other denominations as well as immigrants (Conclusions 2011).

The Committee notes from other sources [Commissioner for Human Rights of the Council of Europe's report following his visit to Ireland in 2016 (CommDH2017(8))] that during the reference period the vast majority (96%) of primary schools were under the patronage of religious denominations. Approximately 90% of national schools were under the patronage of the Catholic Church, while 5.5% were under the patronage of the Church of Ireland. At the secondary level, patronage was more diverse although denominational schools still represented 58% of the total secondary school population.

According to the comments submitted by the Irish Human Rights and Equality Commission (IHREC), in the 2017/2018 academic year, 95.8% of primary schools had a religious patron. 90% of all primary schools remained under the patronage of the Catholic Church and 6% were run by minority religions. In four counties in Ireland, there is no alternative to denominational primary school provision. In 2017, 48.3% of post-primary schools had a Catholic ethos, while 42.5% were inter-denominational and 5.5% were multi-denominational.

Further IHREC states that each school determines its admission criteria. While there is a general principle of non-discrimination on the grounds of religion or belief in the Irish Constitution, statutory legislation provides for an exemption clause under which denominational schools may give preference to students of a particular religious denomination or refuse students not of that religious denomination (Section 7(3)(c) of the Equal Status Act 2000).This means in practice that for 96% of the primary schools it is possible to use the religion of the child (or lack thereof) as an admission criteria.

According to IHREC the main concern raised by this admission system relates to difficulties in accessing oversubscribed schools in some areas for those children who are not of the religion of that school. In Ireland, 20% of primary schools are oversubscribed due to their presence in highly populated areas. In practice and given the large majority of Catholic schools in Ireland, this means that in some places, mainly in urban areas and particularly in Dublin, it is difficult for a non Catholic child to find a school that would enroll them due to the system of preferential admission of Catholic students.

The Committee notes from the report in this respect, that the Education (Admission to Schools) Act 2018 was passed by the *Oireachtas* on 4 July 2018, and was signed into law by the President on the 18 July 2018 (outside the reference period). According to the report the Act, when commenced, will create a more parent-friendly, equitable and consistent

approach to how school admissions policy should operate for all primary and post-primary schools.

The Act will, when commenced, bring into operation a number of measures, such as to ensure that where a school is not oversubscribed (approximately 80% of schools) must admit all students applying and contains a provision to remove, in the case of recognised denominational primary schools, the existing provision in the Equal Status Act 2000, which permits such schools to use religion as a selection criterion in school admissions.

The report states that the lack of diversity of patronage in the primary sector is being addressed through the implementation of the recommendations of the Forum on Patronage and Pluralism, which was established in 2011. The Advisory Group to the Forum published its report in 2012.

The Report's recommendations covered the following four broad areas including future patronage arrangements a more diverse range of patronage types for new schools in areas of rising population and the creation of more inclusive schools, where divesting to another patron is not a feasible option.

From 2013 to 2017, ten multi-denominational schools have opened under the patronage divesting process.

Between September 2011 and September 2017, 25 new primary schools (all multidenominational) and 28 new post-primary schools (23 multi-denominational and 5 denominational) have been established under the new patronage process.

The Committee notes the positive developments in the situation but nonetheless notes that Commissioner for Human Rights of the Council of Europe and IHREC note that progress has been slow in divesting patronage. It asks the next report to provide updated information on the implementation of the Education Act 2018 and on progress in establishing more multi denominational schools to ensure diversity in education and equal access for all.

Costs associated with education

According to the report in 2017, the Minister for Education and Skills introduced measures that require school authorities to adopt principles of cost-effective practices which will put a greater emphasis on reducing the cost of school uniforms and increase the financial support for book rental schemes, in order to reduce/eliminate school book costs for parents.

Funding is provided by the Department of Education and Skills for the provision of a book grant to all recognised primary and post primary schools within the Free Education Scheme, with Delivering Equal Opportunity in Schools (DEIS) schools receiving an enhanced rate.

Primary and Post Primary schools received funding of €15.7m over three years 2014 – 2016 in support of the establishment of book rental schemes. DEIS schools received €150 per child and non-DEIS schools received €100 per child in seed capital to establish book rental schemes. The most recent figures available indicate that 65% of primary schools operate a book rental scheme and at post primary level 68% of schools reported operating a book rental scheme.

IHREC in its submissions state that according to the results of a survey conducted by Barnardos in 2017, the total 'back to school' costs were €395 for a parent with a child in the fourth class of primary school and €800 for a parent with a child in the first year of secondary school. School books, stationary and uniforms are the largest expenditure items. Although the Back to School Clothing and Footwear Allowance is an important support, this survey documents that it falls short of the real costs incurred.

According to IHREC it has been documented that Roma children face significant financial barriers to education, yet many Roma families are not deemed eligible for this allowance.

Further according to IHREC there is also a common practice in primary and secondary schools of seeking voluntary financial contributions from parents. Concerns have been raised about both the lack of transparency as to whether this money is used to meet basic school running costs and the pressure faced by parents when schools pursue the non-payment of such contributions.

The Committee asks for comments on the above remarks as well as the effect of the Action Plan on Education on the cost of education.

Vulnerable groups

The Committee previously noted high dropout rates exist among children belonging to the Traveller community and asked the next report to provide information on the situation and to provide information about drop-out and enrolment rates for Roma children (Conclusions 2011).

The report states that education policy in relation to Traveller education is that traveller children attend mainstream schools, with previously segregated provision now funded as part of the mainstream system. A number of Traveller-specific supports remain in the system to assist with the transition to the mainstream system of pupils, previously provided for in segregated provision. These include 141 resource teacher posts for schools with significant numbers of Travellers at a current cost of €8.46 m. and additional pupil capitation for Travellers at a rate of €70 per pupil for Primary, and €201 per pupil for Post Primary at a current cost of €1.11m.

The Delivering Equality of Opportunity in Schools (DEIS) Plan 2017 includes specific actions in relation to Traveller and Roma education to promote improvements in school attendance and completion in order to improve educational outcomes and overall life chances for Traveller and Roma children and young people.

The report states that an ethnic identifier is collected on a voluntary basis for primary pupils in Irish schools. Based on the data provided, the analysis shows that the total population of Roma children in Irish primary schools stood at 1,415 in 2017, and of these some 1.2% of pupils drop-out of the system on average each year (meaning their reason for leaving is unknown). As the total population of Roma children in Ireland is unknown (census 2016 data on ethnicity is incomplete) therefore the total enrolment rates cannot be calculated. Information on the ethnic group of post-primary pupils is unavailable.

The report states that at present, separate achievement data is not collected for Traveller and Roma pupils so it is not possible to establish the impact of the additional resources currently provided for them. This is an issue to be addressed in the context of the DEIS Plan 2017 Monitoring and Evaluation Framework to provide an evidence-base for future interventions.The Committee asks the next report to provide updated information in this regard.

In June 2017 the new National Traveller and Roma Inclusion Strategy 2017- 2021 (NTRIS) was published by the Minister for Justice and Equality. Measures include the development of education resources on Traveller and Roma culture and history for use in primary, post primary and adult education settings, improved access, participation and outcomes for Travellers and Roma in education to achieve outcomes that are equal to those for the majority population and strengthening of cooperation between formal education and non-formal learning sectors to address the high rate of early school-leaving in the Traveller and Roma communities.

According to comments submitted by the IHREC, significant challenges relating to the participation, attendance and attainment of children from the Traveller and Roma communities in the Irish education system have been identified. IHREC states that despite improvements in this area, recent reports indicate that Travellers and Roma continue to experience high levels of educational disadvantage. The Census 2016 demonstrates that the

level of education among Travellers remains well below that of the general population, with just 13.3% of girls from the Traveller community being educated to upper secondary or above compared with 69.1% of the general population. Boys from the Traveller community are approximately four times as likely to leave school at primary level than the general population.

Further according to the comments of the IHREC, a specific 'soft barrier' to education faced by some children in Ireland is exclusion from school by means of a reduced timetable. It is being reported that schools are opting to place children – particularly those from educationally disadvantaged backgrounds – on reduced timetables as a response to challenging behaviour when there is a lack of learning supports available, while others are using it as a disciplinary method. The Irish Traveller Movement has also documented a rising trend in the use of reduced timetables for Traveller children. This measure involves the school allowing a child to attend school for a few hours or less per day, without appropriate monitoring by the Child and Family Agency or the Department of Education and Skills. It has been highlighted by IHREC that there is widely diverging practice with regard to the use of reduced timetables across Ireland and a lack of regulations and guidelines in place. The Committee asks for the Governments comments on this.

According to the report all immigrant children, including children in direct provision can access pre-school, first and second level education in a manner similar to Irish nationals. However the Committee notes that the Ombudsman for Children, had expressed his concern about the provision of education for Syria refugee children living in Emergency Reception and Orientation Centres (EROCs) in Ireland. It notes that subsequently the Department of Education and Skills and National Educational Pychological Service carried out an investigation of the situation and produced a report on education in these centres making several recommendations. These included, inter alia, recommendations that attendance at the on-site schools should be time-limited to a maximum of three months for primary school children, all second-level EROC students should be enrolled in local mainstream schools, with appropriate supports, after a very short period of familiarisation in an EROC school and management of each EROC school should ensure that the length of the school day is at least equivalent to that provided in mainstream schools for each child's age category. The Committee asks for information on the implementation of these recommendations.

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

Children deprived of the liberty have a statutory right to education like all other children, The provision of education in Oberstown is the responsibility of the Department of Education and Skills and this is provided through the Dublin and Dún Laoghaire Education Training Board. The curriculum includes both primary and secondary level courses, remedial literacy and numeracy, based on an Individual Educational Plan (IEP).

The Committee notes that the so called parental rule – where by a school can give priority in its admission policies to applicants who are the children of past pupils of that school, and which had been widely criticized has been retained in part by the Education Act (Admissions to Schools) 2018. It provides that 25% of the places in a school that is oversubscribed can be reserved for children of past pupils.

It notes that the IHREC has expressed concern that that the application of this 'past pupil' criterion will act as a barrier, particularly for children of Travellers, immigrants and people with disabilities, in accessing education and may result in their segregation in particular schools.

The Committee asks what measures have been taken if any to mitigate the potential negative and discriminatory effects of such a rule.

Anti bullying measures

According to the report anti-bullying procedures for all primary and post primary schools were published at the beginning of the 2013/14 school year. The procedures are designed to give direction and guidance to school authorities and school personnel in preventing and tackling school-based bullying behavior amongst its pupils. All Boards of Management are required to adopt and implement an anti-bullying policy that fully complies with the requirements of these procedures. There is no requirement on schools to report incidents of bullying behavior to the Department. However, the Department's Inspectorate in the course of their whole school inspection work gathers information about how schools deal with bullying in a number of ways. The Department's Inspectorate, as part of its whole school evaluation inspections of schools, specifically examines schools compliance with the anti-bullying procedures including the actions taken to create a positive school culture and to prevent and tackle bullying.

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 defers its conclusion.

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

Paragraph 1 - Assistance and information on migration

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

Migration trends

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

Change in policy and the legal framework

The Committee notes that it has previously assessed the policy and legal framework relating to migration matters (Conclusions 2011). The report provides 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 that it has previously assessed the services and information provided to migrant workers (Conclusions (2011)). The report provides further information in this respect, confirming that the situation, found to be in conformity with the Charter, has not changed.

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 has positively assessed the measures taken to combat misleading propaganda against migrant workers in its previous conclusion. It asked whether law enforcement officials who are first in contact with migrant workers were specially trained. In reply, the report provides extensive information on current and future training, which encompasses, in particular, an advanced anti-discrimination practitioner modular training course, tailor-made for roll out to front-line Garda Ethnic Liaison Officers, Community Garda members and first responders. designed to understand and respond appropriately to the sensitivities pertaining to migrant workers under a range of diversity strands, namely: age, disability, gender, sexual orientation, and ethnicity; religion and Traveller/Roma community. The report further provides that the aim of the training is to ensure that attendees are able to carry out their policing roles effectively when coming into initial front-line contact with migrant workers in ways that promote awareness around diversity, human rights protection, and to reduce the propensity for any forms of unlawful discrimination and/or hate crime.

Conclusion

The Committee concludes that the situation in Ireland is in conformity with Article 19§1 of the Charter.

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 Ireland.

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 report provides an extensive update on the situation, which the Committee previously had considered to be in conformity with the Charter (Conclusions 2011), making clear that migrant workers on arrival were entitled to assistance from the authorities with respect to information on employment and, if appropriate, to social and medical benefits.

In particular, the report provides information on employment services responsible for placement, advice and counselling to jobseekers who wish to find work or return to Ireland. A number of recruitment and mobility projects was established to address skills shortages and surpluses, with financial support covering some relocation or living costs incurring by jobseekers undertaking a job in Ireland or leaving to work abroad.

Access to medical care is offered to any person ordinarily residing in Ireland, regardless of nationality or employment status. Full eligibility (with a medical card covering all in- and out-patient services, as well as dental, ophthalmic and aural services and appliances) is determined by reference to income limits. Limited eligibility (in-patient and out-patient services in public hospitals, as well as consultant services subject to certain charges) is enjoyed by all others. Medical Visit Card is issued for people with lower incomes who do not quality for a medical card. Children under age 6 and persons over 70 years of age, as well as those in receipt of Carers Benefit Allowance have automatic eligibility for the Medical Visit Card. The Committee understands that, in emergency, all migrant workers, also those temporarily residing in Ireland have access to medical care and asks the next report to confirm that this is the case.

Finally, the report states that under certain conditions, migrant workers qualify for family benefits and for specific payments under the Supplementary Welfare Allowance scheme even without having a habitual resident status.

The Committee requests updated information on what social assistance, financial or otherwise, is available to migrants in emergency situations, in particular in response to their needs of food, clothing and shelter and whether the family is also eligible.

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.

Conclusion

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

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

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

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

It appeared to the Committee from the report that the Irish Government viewed Article 19§3 mainly in terms of provision of social security. The issue of national and international co-operation between social services has not been addressed.

The Committee has assessed the situation as compliant with the requirements of the Charter in its previous conclusions, with the latest comprehensive assessments in 1994 (Conclusions XIII-2) and 1998 (Conclusions XIV-1) and it was reported to have remained unchanged ever after (see Conclusions 2011). The Committee is aware that the number and origin of foreign workers coming to Ireland may largely differ from that at the time of its initial assessment. In thus requests the next report to reply to the following questions, crucial for evaluation whether all requirements of Article19§3 are met:

- What measures were adopted to promote cooperation between social services? What kinds of service are involved in such cooperation?
- What contacts and information exchanges are established by social services in emigration and migration countries? Are there any international agreements or networks, and specific examples of cooperation (whether formal or informal)?
- Does the cooperation extend beyond social security alone (for example in family matters)?

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 Ireland.

Remuneration and other employment and working conditions

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

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

In its previous conclusion (Conclusion 2011), the Committee considered that the legal framework which aims at insuring equality in Ireland in this area was in conformity with the Charter. However, it asked that the next report contain information on the situation in practice.

The report provides extensive information on various programmes, polices and measures taken to implement the relevant legal framework. In particular:

According to the report, the Migrant Rights Centre Ireland (MRCI) is a Government sponsored body working to promote justice, empowerment and equality for migrants. Furthermore, Office for the Promotion of Migrant Integration (OPMI) has a mandate to develop, lead and co-ordinate migrant integration policy across Government Departments, agencies and services. Its functions include the promotion of the integration of legal immigrants into Irish society and establishment of new structures for this purpose.

The report further provides details on a comprehensive Integration policy in Ireland. For instance, some of the ways in which Government Departments have made their services more accessible include through providing information for migrants, the translation of various documents, providing interpretation services and making services more interculturaly competent for migrant clients. The Migrant Integration Strategy in 2017 envisages a whole-of-Government approach involving actions by all Departments. Finally, the report provides an example of an action strategy to support Integrated Workplaces funded by the Minister for Integration and the Equality Authority to manage a culturally diverse workplace, to contribute to and develop an integrated workplace.

The Committe considers the situation in this respect to be in conformity with the Charter.

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)).

In its previous conclusion (Conclusion 2011), the Committee considered that the legal framework which aims at insuring equality in Ireland in this area was in conformity with the Charter. However, it asked that the next report contain information on the situation in practice.

In reply, the report provides that in 2010/2011, the Irish Congress developed guidelines towards a strategy on integrating migrants and ethnic minorities into trade unions. It confirms that it has been the consistent policy of successive Irish Governments to promote collective bargaining through the laws and through the development of a supportive institutional framework. There is an extensive range of statutory provisions designed to back up the voluntary bargaining process, such as, for instance, the Industrial Relations Act 2015.

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 (Conclusion 2011), the Committee considered that the legal framework which aims at insuring equality in Ireland in this area was in conformity with the Charter. However, it asked that the next report contain information on the situation in practice.

The report provides detailed information on the allocation of social housing by local authorities. It confirms that, in practice, a person with a net income of less than €30,000-35,000 per year can benefit social housing, regardless of the nationality of the applicant. This amount varies depending on location authority and can also be adjusted upwards to reflect an applicant household size and composition (see the report for a comprehensive description).

Monitoring and judicial review

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

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

The report provides that the Workplace Relations Commission (WRC) established in 2015 is an independent, statutory body which core services include the inspection of employment rights compliance, the provision of information, the processing of employment agency, provision of mediation, conciliation, facilitation and advisory services.

The Committee notes from the Migration Integration Policy Index (MIPEX) 2015 report on Ireland that Irish anti-discrimination protections and equality bodies work to guarantee equal opportunities in practice and that Ireland has rather strong anti-discrimination protections in all areas of life are becoming standard. It further notes from this report that the Human Rights and Equality Commission merges Equality Tribunal and Human Rights Commission in order to strengthen protections, following the trend towards single bodies and has favourable powers but limited funding. It asks the next report to comment on this observation.

The Committee asks the next report to provide up-to-date information on the functioning of the monitoring bodies and of the review of discrimination cases.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Ireland is in conformity with Article 19§4 of the Charter.

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 Ireland.

The Committee has previously assessed the situation (see most recently Conclusions 2011) and considered it to be in conformity with the Charter.

The report confirms that there is no discrimination in the treatment of migrant workers when it comes to the imposition of income tax, universal social contributions and pay related social insurance contributions. Furthermore, administrative supports were put in place in the reference period to assist migrant workers comply with their tax obligations. Information forms and leaflets have also been translated in to some of the most common languages used by migrant workers.

Conclusion

The Committee concludes that the situation in Ireland 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 Ireland. It also takes note of the information contained in the comments by the Irish Human Rights and Equality Commission, registered on 13 May 2019, as well as of the addendum to the report by Ireland, in response to these comments, transmitted on 3 July 2019.

The Irish Human Rights and Equality Commission describes the family reunification process in Ireland as lengthy, 'not applicant friendly', 'labour intensive' and 'prohibitively costly', with the absence of targeted legal services to support families. The Committee also notes from the Migration Integration Policy Index 2015 (MIPEX) that non-EU family members in Ireland face greater obstacles to reunite and to integrate than in nearly all other developed countries. It asks the next report to comment on these observations.

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 noted that the scope of family reunion, which had previously been found to be in conformity with the Charter (Conclusions 2011), has not changed. However, it also notes from the comments by the Irish Human Rights and Equality Commission that providing sufficient documentary evidence to establish the relationship between family members has been frequently cited as a challenge. It asks the next report to comment on this observation.

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 that 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).

In its previous conclusion (Conclusions 2011), the Committee concluded that that the situation was not in conformity with the Charter on the ground that it had not been established that migrant workers receiving social benefits were not precluded from the right of family reunion. The Committee recalls that the level of means required by States to bring in the family or certain family members should not be so restrictive as to prevent any family reunion (Conclusions XVII-1 (2004), the Netherlands). Social benefits shall not be excluded from the calculation of the income of a migrant worker who has applied for family reunion (Conclusions 2011, Statement of Interpretation on Article 19§6).

The report submits that social welfare payments are not reckonable as earnings for this purpose, albeit availing of public funds does not definitively preclude these migrants from family reunification. The Committee considers that the fact that social benefits are not

included in the calculation of the required level of income is not in conformity with the Charter.

The Committee recalls that once a migrant worker's family members have exercised the right to family reunion and have joined him or her in the territory of a State, they should have an independent right to stay in that territory (Conclusions XVI-1 (2002), Article 19§8, Netherlands). The Committee understands that this is not the situation in Ireland and asks the next report to provide information whether this is the case.

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 report does not provide any information on this matter. The Committee notes from the comments by the Irish Human Rights and Equality Commission that decision-making process is inconsistent and lacking transparency. Furthermore, according to MIPEX 2015, there is no independent appeal mechanism. Judicial review in the High Court may be possible in some cases but these are very lengthy and expensive proceedings for all parties to the legal action, and families must bear all the costs if they lose. The Committee asks the next report to provide comprehensive information on the mechanism of appeal or review. Meanwhile, it considers that is has not been demonstrated that such mechanism is available in line with requirements of the Charter.

Conclusion

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

- social benefits are excluded from the calculation of the level of means required for the family reunion;
- it has not been established that the exercise of the right to family reunion is subject to an effective mechanism of appeal or review.

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 Ireland. It also takes note of the information contained in the comments by the Irish Human Rights and Equality Commission, registered on 13 May 2019, as well as of the addendum to the report by Ireland, in response to these comments, transmitted on 3 July 2019.

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 notes that it previously assessed the legal framework relating to the access to free legal counsels, legal aid and interpreter for migrant workers in judicial proceedings concerning the rights guaranteed by Article 19§7 (Conclusions 2011) and found it to be in conformity with the requirements of the Charter. It will focus in the present assessment on any changes or outstanding issues.

In reply to the Committee's query, the report confirms that migrant workers may have the free assistance of an interpreter if they cannot properly understand or speak the national language used in legal proceedings and have any necessary documents translated. This principle applies both in civil and criminal proceedings and it is free (in civil cases it is payed by the Courts Service, upon the order of a judge). The Legal Aid Board can also approve claims from practitioners for interpretation and translation services.

While assessing positively the legal framework, the Committee notes from the comments by the Irish Human Rights and Equality Commission that availability of interpreters for different languages has been highlighted as an issue in the family courts and that concerns gave been raised about the quality if the legal interpretation services. It asks the next report to comment on this observation.

Conclusion

The Committee concludes that the situation in Ireland 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 Ireland.

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 found the situation in Ireland not to be in conformity with Article 19§8 of the Charter on the grounds that there was no right of appeal to an independent body against a decision by the Minister of Justice to deport, apart from a judicial review. The Committee noted that judicial review is a very specific type of remedy and could not be considered as an appeal or review of the merits of any decision.

In reply, the report states that in 2010 the Irish Supreme Court found in the Meadows v Minister for Justice, Equality and Law Reform [2010] 2 IR 701 that the proportionality test should be used when reviewing administrative actions that implicate fundamental rights protected by the Constitution and the ECHR and that the judicial review had to be an effective remedy. Judicial review has therefore been held by the Irish Supreme Court to meet the requirements of an effective remedy following the Meadows judgment. In Efe v. Minister for Justice, Equality and Law Reform [2011] IEHC 214 the Irish Supreme Court found that the arrangments of the Immigration Act 1999 providing for a mechanism for considering new facts prior to deportation, together with judicial review amounted to an effective remedy.

The Committee asks the next report to provide more detailled information on criteria or rules followed by judges in determining whether or not to expel a foreigner, together with statistics on expulsion cases before Irish courts and the grounds for expulsion, if it was ordered.

Conclusion

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

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 2011) and found it to be in conformity with the requirements of the Charter.

The report confirms that there continue to be no taxation provisions which limit the right of migrant workers to transfer their earnings and savings. Moreover, the present report indicates that Revenue Commissioners do not impose such restrictions, and that commercial banks and money transfer services facilitate the transfer of earnings and savings.

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 Ireland.

Conclusion

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

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 Ireland not to be in conformity with Article 19§6. Accordingly, for the same reasons as stated in the conclusion on the abovementioned Article, the Committee concludes that the situation in Ireland is not in conformity with Article 19§10 of the Charter.

Conclusion

The Committee concludes that the situation in Ireland is not in conformity with Article 19§10 of the Charter as the ground of non-conformity under Article 19§6 applies 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 Ireland.

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), assessing the system in detail in its Conclusions 2006 and found it to be in conformity with the requirements of the Charter. It will focus in the present assessment on any changes or outstanding issues.

The report provides updated information on the situation, stating that English for Speakers of Other Languages classes are provided by the State run second level schools across the country to meet the needs of the migrant workers and also unemployed migrants, comprising of learners who may be highly educated with professional and skilled backgrounds, as well as those who are less qualified and are attending classes to learn English or improve their English.

Conclusion

The Committee concludes that the situation in Ireland 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 Ireland.

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 had little information so far on teaching mother tongue of migrants in Ireland. Previous reports explained merely that embassies and ethnic associations provided many possibilities for language and cultural courses and events (see Conclusions 2004 and 2006). In the light of the above, the Committee considered in its previous conclusions that it had not been established that Ireland effectively promotes and facilitates the teaching of the migrant workers' mother tongue to their children (Conclusions 2011). The Committee observed, in particular, that it was missing information on teaching of migrants' mother tongue in Irish schools.

In reply, the report states that the Ireland's Strategy for Foreign Languages in Education 2017 – 2026 was launched in December 2017, aimed at maintaining the migrants own heritage languages, and in diversifying the range of languages available for schools to offer. Furthermore, the new Primary Language Curriculum recognises that most schools now include some children whose home language is other than English or Irish. In examples of best practice some schools have encouraged the progression of reading and writing skills in the home languages. In 2017 French, German, Spanish and Italian were introduced into junior educational cycles and a short course in Chinese Language and Culture was developed. The Post Primary Languages Initiative (PPLI) has also developed short courses in Japanese and in Polish as a heritage language and a short course in Lithuanian is underway. Schools are free to use this to develop their own short courses in line with the given guidelines. At Senior Cycle, in addition to the four main foreign languages, Japanese, Russian and Arabic are also available as curricular languages. Students from the EU can also opt to sit a further non-curricular language, typically this will be their home language, for State Examination including: Latvian, Lithuanian, Romanian, Slovenian, Modern Greek, Finnish, Polish, Estonian, Slovakian, Swedish, Czech, Bulgarian, Hungarian, Portuguese, Danish, Dutch, Croatian, and Maltese. The Post Primary Language Initiative has worked very closely with a number of Embassies to further develop supports for home languages in second level schools.

The Committee welcomes the positive developments and asks whether statistics are available for the number of children being taught the mother tongue of their parent(s) and whether mother tongue language classes for migrant worker's children are available of outside the school system.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Ireland 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 Ireland. It recalls that this country has not accepted to be bound by Article 27§1c of the Revised Charter.

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 whether there were placement services, information programmes or training measures for workers with family responsibilities. The report contains no information on this aspect. Consequently, the Committee repeats its request. The Committee 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 Ireland is in conformity with Article 27§1 of the Charter in this respect.

Conditions of employment, social security

In its previous conclusion (Conclusions 2011), the Committee noted that the Labour Relations Commission had drawn up a Code of Practice on Access to Part-time Working. Consequently, the Committee asked whether there were any other arrangements available to employees that could make reconciling working and private life easier. The report contains no information on this aspect. Consequently, the Committee repeats its request. 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 Ireland is in conformity with Article 27§1 of the Charter in this respect.

In its previous conclusion (Conclusions 2011), the Committee asked whether workers with family responsibilities were entitled to social security benefits under the different schemes, in particular health care, during periods of parental leave. The report contains no information on this aspect. Consequently, the Committee repeats its request. 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 Ireland is in conformity with Article 27§1 of the Charter in this respect.

In its previous conclusion (Conclusions 2011), the Committee concluded that the situation was not in conformity with the Charter on the ground that periods of parental leave were not taken into account in the calculation of pension. The report explains that there is a homemakers' scheme which allows such periods to be disregarded for the purposes of calculating a person's yearly average, thereby increasing the rate of the pension. The Committee notes from that report that the government has announced a reform of the pension system and asks for the next report to contain information on the outcome of this reform. It further asks to what extent period of absence due to family responsibilities are taken into account for determining the right to pension and for calculating the amount of pension.

Conclusion

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

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 Ireland.

In its previous conclusion (Conclusions 2011), the Committee concluded that the situation was in conformity with Article 27§2 of the Charter. Accordingly, it will examine only recent developments and additional information.

The report states that with effect from 1 September 2016, male employees who are fathers are entitled to two consecutive weeks of paternity leave, to be taken at their convenience within six months of the birth or adoption. This leave also applies to the spouse and cohabiting or registered partner of the child's mother.

The report states that the 1998 Parental Leave Act (amended in 2013) provides for 18 weeks' parental leave in respect of children up to the age of eight. It must be taken over a continuous period or in two blocks (with a minimum of six weeks and a maximum of ten weeks between the two) and is unpaid. Both parents can avail themselves of this right.

Under Article 27§2 of the Charter the States are under a positive obligation to encourage the use of parental leave by the father ou the mother. The States shall ensure that an employed parent is adequately compensated for his/her loss of earnings during the period of parental leave. The modalities of compensation are within the margin of appreciation of the States Parties and may take the form of paid leave (continued payment of wages by the employer), a social security benefit, any alternative benefit from public funds or a combination of such compensations. Regardless of the modality of payment, the level of compensation shall be adequate (Statement of interpretation on Article 27§2 of the Charter, General Introduction to Conclusions 2015). The Committee considers that because of the absence of any remuneration or compensation during parental leave, the situation is not in conformity with the Charter.

However, the report outlines the changes made in 2019 (outside the reference period) in respect of paid parental leave. The Committee will examine these changes in detail in its next report. It asks for the next report to contain a full update of the information on paid parental leave.

Conclusion

The Committee concludes that the situation in Ireland is not in conformity with Article 27§2 of the Charter on the ground that no compensation or remuneration is paid for parental leave.

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 Ireland.

Protection against dismissal

The Committee previously noted that workers were protected against dismissal on the ground of applying for or taking parental leave, force majeure leave or carer's leave to take care of another family member. The protection of employees in these cases comprises protection not only from dismissal but also from any unfair treatment of the employee (Conclusions 2007 and 2011).

Effective remedies

In its previous conclusions (Conclusions 2011), the Committee noted that in gender discrimination claims initiated in the Court, there was no limit to the amount of compensation that could be ordered, and it asked whether treating employees differently on the basis of parenthood or family responsibilities was also considered gender-based discrimination. In the affirmative, it asked whether the compensation payable to an employee unlawfully dismissed because of family responsibilities was determined by the courts depending on the circumstances of the case and not subject to any maximum upper limit. It also asked whether the courts had made any decisions in this area.

The report confirms that treating employees differently on the basis of parenthood or family responsibilities is considered indirect gender-based discrimination. However, it may constitute a standalone ground itself, as discrimination based on family status is illegal. In practice, workers file complaints for gender discrimination or discrimination based on marital status with the Workplace Relations Commission. The Committee takes note of the responsibilities deriving from family status as explained in the report.

A complaint for discrimination based on family status can be decided by an Adjudication Officer of the Workplace Relations Commission; it cannot be taken to the Circuit Court. In those cases, compensation for any financial losses incurred by the employee is subject to an upper limit of an amount equivalent to 104 weeks' remuneration in respect of the employment from which they were dismissed. However, a complaint for indirect gender discrimination may be made to the Circuit Court where the amount of compensation is not subject to an upper limit. The report states that claims are rarely brought to the Circuit Court and that the last known case taken on the gender ground dates back to in 2005 (a case involving sexual harassment).

The Committee recalls that compensation for unlawful dismissal must be both proportionate to the loss suffered by the victim and sufficiently dissuasive for employers. Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive are proscribed. If there is such a ceiling on compensation for pecuniary damage, the victim must be able to seek compensation for non-pecuniary damage through other legal avenues (e.g. through invoking anti-discrimination legislation), and the courts competent for awarding compensation for pecuniary and non-pecuniary damage must decide within a reasonable time (Statement of interpretation on Articles 8§2 and 27§3 of the Charter (Conclusions 2011). The Committee requests that the next report give examples of complaints relating to the dismissal of persons with family responsibilities dealt with by the Workplace Relations Commission.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Ireland is in conformity with Article 27§3 of the Charter.