



March 2020

# **EUROPEAN SOCIAL CHARTER**

European Committee of Social Rights

Conclusions 2019

**ITALY**

*This text may be subject to editorial revision.*



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

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

The European Social Charter (revised) was ratified by Italy on 5 July 1999. The time limit for submitting the 18th report on the application of this treaty to the Council of Europe was 31 October 2018 and Italy submitted it on 10 May 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).

Italy has accepted all Articles from this group.

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

The present chapter on Italy concerns 36 situations and contains:

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

– 15 conclusions of non-conformity: Articles 7§1, 7§2, 7§3, 7§4, 7§5, 8§2, 16, 17§2, 19§1, 19§4, 19§10, 27§3, 31§1, 31§2 and 31§3.

In respect of the other 7 situations concerning Articles 7§10, 8§3, 17§1, 19§3, 19§6, 19§8 and 19§12, 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 Italy under the Revised Charter. The Government consequently has an obligation to provide this information in the next report from Italy on the articles in question.

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

The deadline for submitting that report was 31 December 2019.

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

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

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

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

The Committee previously noted (Conclusions 2002) that Legislative Decree No. 345/1999 sets down a minimum age for admission to employment of 15 years that applied to all sectors of the economy. It further noted that the only work that a child under 15 may perform is as part of an artistic or cultural performance, for which the authorisation of the labour inspectorate was required. In its previous conclusion (Conclusions 2011), the Committee noted that on 1 September 2007, the minimum age of admission to employment was raised from 15 to 16 as a result of the entry into force of Section 1, §622, of Act No. 296 of 27 December 2006, which extended the period of compulsory schooling to 10 years.

The Committee notes that Article 6 of the Legislative Decree No. 345/1999 allows children under the age of 16 subject to compulsory schooling to work in arts, sports and cultural activities after prior authorisation from the labour inspectorate and parents' consensus, and provided that these activities do not harm their safety, their development, their physical and mental integrity, and do not prejudice their attendance at school and their participation in vocational guidance and training programs. The Committee notes that the report does not contain any information on the regulation of this work and asks the next report to provide all the relevant information.

As regards specifically the working hours of such children, the Committee refers to its Statement of Interpretation on Articles 7§1 and 7§3 (Conclusions 2015) and notes 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 ceases to be so if it is performed for an excessive duration (International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, §§29-31). States are therefore required to set out the conditions for the performance of "light work" and the maximum permitted duration of such work.

As regards the duration of children's work during school holidays, the Committee has held 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, Statement of interpretation on Articles 7§1 and 7§3). As regards the duration of light work during school term, the Committee has held that a situation in which a child who is still subject to compulsory education performs light work for 2 hours on a school day and 12 hours a week in term time outside the hours fixed for school attendance is in conformity with the requirements of Article 7 of the Charter (Conclusions 2011, Portugal).

The Committee asks the next report to indicate whether the situation in Italy is in conformity with the above-mentioned principles. In particular, it asks for information on the daily and weekly duration of light work that children under the age of 15 are allowed to perform during term time and during school holidays. In the meantime, it defers its conclusion on this point.

In its previous conclusion (Conclusions 2011), the Committee found that the situation in Italy was not in conformity with Article 7§1 of the Charter on the ground that it had not been established that the legislation prohibiting employment under the age of 15 was being effectively applied. In particular, the Committee noted that there had been no surveys since 2000 to establish how many children worked and determine whether the measures taken since had had any impact in terms of reducing child labour.

The current report states that a sample survey was conducted by the Bruno Trentin association and Save the Children, presented in 2013 by the Minister of Labour. The survey showed that 260 000 minors under the age of 16, or 5.2% of the population in this age group (about 5 million people), were employed. According to the report, the incidence is minimal

before the age of 11 (0.3%), it is close to 3% among 11-13 years old and reaches a peak among 14-15 years-old (18.4%). As regards the type of professional experience of minors aged 14-15 years, nearly 3 out of 4 (41%) work for the family, helping parents in their professional activities, 33% work in small or very small family undertakings where they perform domestic chores and the remaining 26% are equally divided between those who work within the circle of family and friends.

Furthermore, according to the report, the survey showed that approximately 30 000 minors aged 14-15 years (15% of 14-15-year-olds who work) are involved in activities where they may be said to be "at risk of exploitation", with minors being considered to be at risk if: they work in the evening or at night (after 8:00 pm); they work continuously and have indicated two or more of the following circumstances: they miss school in order to work; work interferes with study; work does not leave time for fun with friends and rest; the work is defined as moderately dangerous.

The Committee recalls that the prohibition of employment under the age of 15 applies to all economic sectors, including agriculture, and all places of work, including work within family enterprises and in private households (Conclusions I (1969), Statement of Interpretation on Article 7§1). It also extends to all forms of economic activity, irrespective of the status of the worker (employee, self-employed, unpaid family helper or other) (International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, paragraphs 27 and 28).

Given the number of children aged 11 to 15 years who work, in particular, the number of children aged 14 or 15 years who are involved in activities where they are "at risk of exploitation", according to information at the disposal of the Committee, it concludes that the situation in Italy is not in conformity with Article 7§1 of the Charter on the ground that the implementation of the legislation on prohibition of employment under the age of 15 is not ensured in practice.

With regard to monitoring activities, in its previous conclusion (Conclusions 2011) the Committee noted that various inspection activities were carried out and that monitoring programmes to assess and combat undeclared labour, particularly among minors, had helped to uncover nearly 700 cases of children being employed illegally. The Committee asked that the next report include an indication as to what proportion of these 700 minors were under 15 and what action was taken subsequently.

In this respect, the report specifies that the monitoring undertaken by labour inspectors to determine whether workers under the age of 18 were employed lawfully had helped to uncover 220 cases of minors being employed unlawfully in 2017, a slight decrease (-7%) compared to 2016 (236 cases), but 17% higher than in 2015 (187 cases) and about 28% higher than in 2014 (172 cases).

With regard specifically to young persons and children under the age of 15, the report specifies that the inspection activities carried out by labour inspectors identified very few cases. In 2013, across the country as a whole, only 10 children (all aged 13 to 14) and five young persons (aged 15) were found to be working in violation of the legislation protecting child and adolescent labour (Act No. 977/1967), while in the case of four other children, violations of various types were reported, involving for example failure to conduct the preventive medical examination on recruitment (Article 9 of Legislative Decree No. 345/99) and the legislation on working time (Legislative Decree No. 66/2003).

The Committee notes from the report that there are currently no disaggregated data based on the age (above and below 15 years) of minors found to be working in irregular conditions. The Committee also notes that the report does not contain any information concerning the measures adopted and the sanctions imposed on the employer in the event of non-compliance with child labour regulations. Therefore, the Committee reiterates its request.

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

### *Conclusion*

The Committee concludes that the situation in Italy is not in conformity with Article 7§1 of the Charter on the ground that the legislation on prohibition of employment under the age of 15 is not enforced in practice.

## **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 Italy.

The Committee recalls that under Section 6 of Act No. 977/1967, Legislative Decree No. 345/1999 and the amendments introduced by Legislative Decree No. 262/2000, it is prohibited to employ persons under the age of 18 in dangerous or unhealthy tasks (listed in Appendix I to the Act) except for reasons that are indispensable for their vocational training during the time required for training, provided that they are carried out under the supervision of trainers who also have qualifications in prevention and the protection of young people and with due regard for all the health and safety standards set out in the relevant legislation.

The Committee previously noted (Conclusions 2011) that all such training activities must be authorised in advance by the Provincial Labour Directorate with the prior approval of the local health authority (ASL). The Committee further noted (Conclusions 2011) that this prior approval is not required by law for dangerous tasks performed by young people for indispensable reasons connected with their vocational education and training in technical and vocational training institutes.

In its previous conclusion (Conclusions 2011), the Committee found that the situation in Italy was not in conformity with Article 7§2 of the Charter on the ground that it had not been established that the labour inspectorate undertook inspection visits in training places where some tasks carried out by persons under the age of 18 could be considered dangerous or unhealthy even if they had not been declared as such. In particular, the Committee cited the fact that the Provincial Labour Directorates had not conducted any inspections at technical and vocational training institutes for the sole reason that they did not provide any training which could be considered as dangerous or unhealthy.

The current government report indicates that the curricula of national technical and vocational institutes and regional training institutes do not include any educational activities that could be classed as dangerous or unhealthy. The report states that labour inspectors have therefore not carried out checks at national or regional educational institutions to ensure that training activities classed as dangerous or unhealthy are in fact linked to training requirements.

The Committee refers to its previous conclusion (Conclusions 2011) and reiterates the point that inspections should not be confined to places where training regarded as dangerous or unhealthy is authorised; they should also be carried out in places where there is a ban on such training to ensure that the ban is applied. The Committee therefore concludes that the situation in Italy is not in conformity with Article 7§2 of the Charter on the ground that the labour inspectorate does not undertake inspection visits in training places where some tasks considered dangerous or unhealthy could be carried out by persons under the age of 18.

The Committee further notes that the current report does not provide any information on the monitoring activities and findings of the labour inspectors in relation to the prohibition of employment under the age of 18 for dangerous or unhealthy activities. The Committee asks that the next report contain this information, in particular as regards the number of violations detected, the measures taken and the sanctions imposed on employers for breach of the regulations regarding prohibition of employment under the age of 18 for dangerous or unhealthy activities.

In its previous conclusion (Conclusions 2011), the Committee noted that the report referred only to the situation of young people attending technical and vocational training institutes and asked whether the comments in the report covered all vocational training establishments and, if this was not the case, for the next report to contain information on other vocational training establishments in which young people might be required to carry out dangerous or unhealthy tasks as part of their training. The Committee observes that the current report

does not answer its questions and asks that the next report provide the relevant information. The Committee also asks that, where applicable, the next report provide information on the monitoring activities of labour inspectors with regard to other vocational training establishments in which young people may be required to carry out dangerous or unhealthy tasks as part of their training.

#### *Conclusion*

The Committee concludes that the situation in Italy is not in conformity with Article 7§2 of the Charter on the ground that the labour inspectorate does not undertake inspection visits in training places where some tasks considered dangerous or unhealthy could be carried out by persons under the age of 18.

## **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 Italy.

The Committee previously noted (Conclusions 2011) that education was made compulsory up to the age of 16 on 1 September 2007 through the entry into force of Section 1, § 622 of Act No. 296 of 27 December 2006, which extended the period of compulsory schooling to ten years, and of Decree No. 139/2007 of the Minister of Education.

In its previous conclusion (Conclusions 2011), the Committee concluded that the situation in Italy was not in conformity with Article 7§3 of the Charter as there was no indication that the legislation on the prohibition of employment under the age of 15 was effectively applied.

The Committee refers to its conclusion under Article 7§1 of the Charter and, in view of the number of children aged 11 to 15 years who work, in particular the number of children aged 14 or 15 years who are involved in activities where they are “at risk of exploitation”, according to information at the disposal of the Committee, it concludes that the situation in Italy is not in conformity with Article 7§3 of the Charter on the ground that the legislation on prohibition of employment of children under the age of 15 or subject to compulsory education is not effectively enforced.

In its previous conclusion (Conclusions 2011), the Committee noted that the report did not provide any information about the nature of the employment of young people who had not completed their compulsory schooling. The Committee therefore repeated its question on this point.

In this respect, the current report states that Article 6 of Legislative Decree No. 345/1999 prohibits minors under the age of 16 who are subject to compulsory schooling from working. The Committee refers to its conclusion under Article 7§1 of the Charter and notes that the same article allows such minors to be employed in artistic, sporting and cultural activities, with the prior approval of the labour inspectorate and the consent of the parents, and provided that the activities are not detrimental to their safety, development, physical and mental integrity, and do not affect school attendance or participation in vocational guidance or training programmes. The Committee notes that the report does not provide any information on how such work is regulated and asks the next report to provide the relevant information.

In its previous conclusion (Conclusions 2011), the Committee pointed out that allowing children to work in the morning before going to school was contrary to Article 7§3 and asked whether school-age children were allowed to work in the morning before going to school and, if so, what the precise arrangements were and what kind of work they did.

In this respect, the current report states that it is difficult to foresee a situation where children under the age of 16 could work before going to school. Under the current regulations on working hours, this period would fall entirely or partly into the category of night work, defined as activity performed during the hours between 10 pm and 6 am or between 11 pm and 7 am. The Committee notes that the report does not indicate whether children are generally able to work after 6 or 7 am, before going to school. The Committee therefore reiterates its question. In the meantime, it reserves its position on this point.

In its previous conclusion (Conclusions 2011), the Committee referred to its interpretative statement on Article 7§3 and asked the next report to indicate whether the rest period free of work had a duration of at least two consecutive weeks during the summer holiday. It also asked what were the rest periods during the other school holidays. Since the present report does not address this matter, the Committee reiterates its question. In the meantime, it reserves its position on this issue.

The Committee points out that the situation in practice should be regularly monitored and asks that the next report provide information on the monitoring activities of the labour

inspectors, in particular the number and nature of violations detected as well as on sanctions imposed for breach of the regulations regarding prohibition of employment of children who are still subject to compulsory education.

#### *Conclusion*

The Committee concludes that the situation in Italy is not in conformity with Article 7§3 of the Charter on the ground that the legislation on the prohibition of employment of children subject to compulsory education is not effectively applied.

**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 Italy.

In its previous conclusion (Conclusions 2011), the Committee found that the situation in Italy was not in conformity with Article 7§4 of the Charter on the ground that it had not been established whether the working hours of young persons between the ages of 15 and 16 were reasonable. In particular, the Committee cited the fact that there was a contradiction between the Act raising the compulsory schooling age to 16 and the regulation on working time for young people between the ages of 15 and 16 – which should not be possible since the date when education became compulsory up to the age of 16. The Committee thus asked if the provisions in question had been repealed in respect of children between the ages of 15 and 16 or, if this was not the case, for the next report to explain how these provisions and those making education compulsory up to the age of 16 could be reconciled.

The Committee recalls that under Article 7§4, domestic law must limit the working hours of persons under 18 years of age who are no longer subject to compulsory schooling. The limitation may be the result of legislation, regulations, contracts or practice (Conclusions 2006, Albania). For persons under 16 years of age, a limit of eight hours a day or forty hours a week is contrary to the article (Conclusions XI-1 (1991) the Netherlands). However, for persons over 16 years of age, the same limits are in conformity with this article (Conclusions (2002) Italy).

The Committee further points out that where children subject to compulsory schooling are concerned, the provisions and interpretative statements on Article 7§3 of the Charter apply.

The current report states that under Section 18 of Act No. 977/1967, the working time for young persons (minors aged between 15 and 18 years and who are no longer subject to compulsory schooling) may not exceed 8 hours per day and 40 hours per week. Moreover, under Section 18 of Act No. 977/1967, children who are “free from any obligation to attend school” (minors who have not reached the age of 15 or who are still subject to compulsory schooling) are not permitted to work more than 7 hours per day and 35 hours per week. The Committee finds the same contradiction noted in its previous conclusion and notes that the current report does not answer its questions. It asks that the next report provide the relevant information. It also asks that the next report indicate what children who are “free from any obligation to attend school” means, considering that such children are still subject to compulsory education under the age of 16.

In the meantime, it reiterates its finding of non-conformity on this issue, on the ground that it has not been established that the working hours of young persons between the ages of 15 and 16 are reasonable.

The Committee points out that the situation in practice should be regularly monitored and asks the next report to provide information on the monitoring activities of the labour inspectors, in particular the number and nature of violations detected as well as on sanctions imposed for breach of the regulations regarding the working time for young workers under the age of 18 who are no longer subject to compulsory schooling.

*Conclusion*

The Committee concludes that the situation in Italy 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 young persons between the ages of 15 and 16 are reasonable.

## **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 Italy.

The Committee concluded previously (Conclusions 2007 and 2010) that the situation in Italy with regard to decent remuneration was not in conformity with Article 4§1 of the Charter on the ground that it had not been established that the minimum wage ensured a decent standard of living. It asked for information concerning the amount of the average wage and the minimum wage, net of social contributions and tax deductions. It deferred its decision on the same ground in its precedent conclusion (Conclusions 2014).

### **Young workers**

The Committee points out that young workers' wages may be less than the adult starting wage but any difference must be reasonable and the gap must close quickly. For young people who are 15 or 16, a wage 30% lower than the adult starting wage is acceptable. For 17 year-olds, the difference may not exceed 20%.

The report states that Article 37, paragraph 3, of the Constitution establishes the right of child workers to equal wages for equal work compared with adult workers. This implies that minors are entitled to equal pay for equal qualifications and equal tasks. This right, which represents a specific application of the principle of equality, applies to all the components of an employee's pay, including any increases for length of service incorporating periodic wage increases for work carried out. Young people's lack of experience and the possible desire to promote their employment may warrant lower wages than their older counterparts but only if they are given different, less difficult tasks (Court of Cassation: judgment No. 18856/2010).

In its previous conclusion, the Committee asked for examples of minimum wages or lower net wages for minors so as to be able to assess whether the situation in Italy is in conformity with the provisions of the Charter.

The report states that in Italy, the legal system makes no provision for the quantification of the minimum wage as working conditions are determined through collective bargaining. The report does not provide any examples of minimum wages.

The Committee asks for the next report to provide the necessary information.

### **Apprentices**

The Committee emphasises that it must have information on the minimum or lowest wages of apprentices, calculated net, i.e. after deduction of taxes and social security contributions. The Committee reiterates its request for detailed figures showing the average net value of apprentices' remunerations compared to the net value of adult workers' starting or agreed salaries.

### *Conclusion*

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

- it has not been established that the minimum wage paid to young workers is fair.
- it has not been established that the minimum allowances paid to apprentices are fair.

## **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 Italy.

The Committee asked whether the time young persons spent on vocational training was included in working hours, and if so, whether they were remunerated for it.

On this issue, the report states with regard to apprentices, that employers are required to ensure that the obligation to provide vocational training laid down by law and by collective agreements is respected. Training takes place during working hours as it is a key component of apprentices' schedules: without training there can be no apprenticeship contract. Such contracts are, in any event, the only type of contract which provides for training.

During first-level apprenticeships, which are governed by Legislative Decree No. 81/2015, time spent on training (in-house and external) is regarded as working time. As a result, Article 43 paragraph 7, of this decree provides that employers "shall be exempt from any obligation to pay for hours spent on training in training establishments ..." while "10% of salary is paid to workers for training time, to be covered by employers". The provision therefore introduces an exemption relating to the remuneration of first-level apprentices, based on the understanding that time spent on training is included in working hours.

Both Legislative Decree No. 167/2011 and Legislative Decree No. 81/2015 (Article 47) provide for penalties if apprenticeship training is not remunerated and the employer is clearly solely responsible.

Article 47, paragraph 1, of Legislative Decree No. 81/2015 provides for a specific penalty against employers who do not comply with their undertakings under the individual training programme, thus failing to meet their obligation to provide training to apprentices employed under one of the three types of apprenticeship contracts.

As for the criteria for attributing responsibility to employers, the rule sets out four objective and subjective grounds for a breach of the rules to be found:

- There has to be a manifest "failure to provide the training" planned for the apprentice;
- The training in question must only be "training payable by the employer";
- The employer must be "solely responsible" for the breach;
- The failure to provide training must be such as to "prevent the achievement of the goal" sought by the apprenticeship.

The Committee also asks whether the measures described apply to all categories of young workers. If this is not the case, it asks for the next report to include an estimate of the percentage of those who are not covered and information on which categories they belong to. It also asks why some workers may not be covered and whether specific measures are taken for them.

### *Conclusion*

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

It notes that there has been no change in the relevant legislation. The Committee notes that it previously found the situation to be in conformity with Article 7§7 of the 1961 Charter (Conclusions 2002 and 2004).

The report confirms again that Article 23 of Law No. 977/67 guarantees paid leave to young persons aged between 16 and 18 for a minimum of 30 days and to children under 16 for a minimum of 20 days (or four weeks under Article 10, paragraph 1, of Legislative Decree No. 66 of 8 April 2003).

The Committee asked whether in the event of injury or illness occurring before or during their leave, employees were entitled to take unused leave at another time. In this connection, the report states that the Court of Cassation (Decision No. 2515/96) found that under Article 2109 of the Italian Civil Code, as amended following a Constitutional Court judgment, illness suspends holidays, except in cases where the illness is not such that it would affect the purpose of the leave, the aim being to allow the employee concerned to recover their psychological and physical energies through rest and leisure activities. Workers who fall ill during their holiday must immediately obtain a medical certificate proving their illness. A copy of the certificate must be sent either to their employer or to their local health office within two days of the onset of the illness. Consequently, holiday can only be converted into sick leave if the employer has been notified of the nature of the employee's illness, unless the employer can demonstrate that the employee's illness does not prevent him or her from taking full advantage of their holiday (Court of Cassation decision No. 8016, 6 June 2006). Collective agreements may not introduce exceptions to this case law. Consequently, on several occasions the Court of Cassation has set aside contractual clauses which were in breach of these principles.

Lastly, it should be noted that workers who fall ill during their leave are not obliged to return home to be allowed to suspend their holiday. Periods of illness can also be spent away from home, and therefore also in a holiday location, provided that this is mentioned immediately on the medical certificate sent to the social security services, which should always be able to assess the real health condition of the worker concerned.

These provisions also apply to working children.

Having noted that the Labour Inspectorate did not find any violations, the Committee asks that the next report contains information on the activities of the Labour Inspectorate in relation to the paid annual holidays of young workers under 18 and on whether staffing levels and qualifications of Labour Inspectors are sufficient.

### *Conclusion*

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

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

*Paragraph 8 - Prohibition of night work*

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

It notes that the relevant legislation has remained the same. The Committee previously found the situation to be in conformity with Article 7§8 of the Charter (Conclusions 2011). It points out, however, that even if the legislation has not changed, the de facto situation must be regularly monitored and the report must describe the activities of the labour inspectorate during the reference period. It asks for this information to be provided in the next report.

*Conclusion*

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

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

*Paragraph 9 - Regular medical examination*

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

It notes that the relevant legislation has remained the same. The Committee found previously that the situation was in conformity with Article 7§9 of the Charter (Conclusions 2011). It points out, however, that even if the legislation has not changed, the de facto situation must be regularly monitored and the report must describe the activities of the labour inspectorate during the reference period. Furthermore, medical examinations must be geared to young people's specific situations and the particular risks to which they are exposed. The Committee asks for this information to be included in the next report.

*Conclusion*

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

***Protection against sexual exploitation***

In its previous conclusion (Conclusions 2011) the Committee asked for information on the activities of the Observatory for the Fight against Paedophilia and Child Pornography and other bodies charged with identifying and assisting child victims of prostitution and pornography.

The report states that under the regulation establishing the Observatory, the National Plan for Preventing and Combating Sexual Abuse and Exploitation of Children for 2015-2017 was adopted as an integral part of the Fourth National Action and Intervention Plan for the Protection of the Rights and Development of Children and Young Persons.

According to the report, the database of the Observatory for the Fight against Paedophilia and Child Pornography shows an increase of 49.3% in the number of victims of child prostitution (from 73 to 109) over the period from 2014 to 2016. On the other hand, the number of victims of child pornography decreased by 26.6% over this period (from 241 to 177) although it rose again having fallen to 150 victims in 2015. The number of minor victims of sexual offences fell by 15.8% (from 437 in 2014, to 410 in 2015 and 368 in 2016) and offences of corruption of children decreased by 20% between 2014 and 2016 (from 155 to 124).

The Committee also takes note of the legislative amendments adopted following the ratification of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201), such as the doubling of limitation periods for certain offences against minors, (Article 600bis of the Criminal Code), and the criminalisation of soliciting of minors under the age of 16 and grooming (Article 609 of the Criminal Code). In addition, the perpetrator of an offence against a minor cannot now use the defence of ignorance of the victim's age (new Article 602f the Criminal Code). The fact that the victim is under 18 and the offence was committed with a view to exploitation for the purposes of prostitution constitutes an aggravating circumstance (Article 602 ter of the Criminal Code).

The Committee notes from the reply by Italy to the questionnaire on the implementation of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (T-ES(2014)GEN-IT) that Article 609 of the Criminal Code prohibits sexual activities with minors under the age of 14. In addition, Article 609 bis of the Criminal Code makes perpetrators of sexual activities with children under the age of 14 liable to criminal punishment. This age limit increases to 16 if the perpetrator is, a natural or adoptive parent, a parent's partner, a guardian, any other person to whom the child has been entrusted for treatment, education, supervision or care, or a person who cohabits with the child. A minor who engages in sexual activities with a child over the age of 13 will not be punished if the age difference is less than three years.

The Committee points out that the States Parties must criminalise all activities referred to in Article 7§10 when they involve children under the age of 18, even if the age of sexual consent is lower. It seeks confirmation that this is the case.

The Committee also asks whether child victims of sexual exploitation, can be held criminally liable for their acts.

The Committee asked previously what training was offered to law enforcement officers and social workers to improve their knowledge on how to prevent and deal with cases of sexual exploitation ( Conclusions 2011)

The report does not respond to this question the Committee repeats its request for this information.

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

In its previous conclusion (Conclusions 2011) the Committee asked for information about the measures taken to protect minors from the misuse of information technologies.

The Committee notes from the GRETA report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Italy (2018) (outside the reference period) that the National Centre for the Fight against Internet Child Pornography, which is answerable to the Ministry of the Interior, co-ordinates national activities, based on information provided by Internet providers, network operators, Interpol and Europol, NGOs and information on financial transactions supplied by the Bank of Italy.

According to the report, the data contained in the report by the Government to the Parliament on “Regulation on the exploitation of prostitution, pornography and sexual tourism to the detriment of minors, amounting to new forms of slavery” indicated that the “blacklist”, which was drawn up following an Internet monitoring operation and shared with Italian Internet service providers, comprised 1 972 child pornography sites in 2016 (after checks on 22 398 sites and the discovery of a further 151 offending sites in 2016).

The Committee asks for information in the next report on the implementation of Law No. 71 of 29 May 2017 and any new measures taken to protect children from the misuse of information technologies.

### ***Protection from other forms of exploitation***

In its previous conclusion (Conclusions 2011) asked for information on the measures taken to improve co-ordination between the National Anti-Mafia Directorate and the Public Prosecution Offices, given the current delays in the prosecution of related crimes.

The report states that following the ratification of the Council of Europe Convention on Action against Trafficking in Human Beings, legislative amendments and rules were adopted.

On 26 February 2016, the Council of Ministers adopted the First National Action Plan against the Trafficking and Extreme Exploitation of Human Beings for 2016-2018. Since 2016, when this plan was adopted, the Government has substantially increased the funds for the implementation of victim protection schemes: funding rose from €8 million up to and including 2015, to about €15 million in 2016 for 18 projects lasting 15 months, then to €22.5 million in 2017 for 21 projects covering the entire country.

The Committee notes from the report that under Article 13 of Law No. 228 of 2003 on special assistance programmes for victims of the offences described in Articles 600 (reduction to slavery or holding of persons in slavery or servitude) and 601 (trafficking in human beings) of the Criminal Code, 712 trafficking victims were given assistance in 2015, including 65 minors, while 117 minors were assisted in 2016 and 114 in 2017.

The Committee refers to the aforementioned GRETA report, which talks of an increase in the number of girls from Nigeria and Romania forced into prostitution, as well as boys from Egypt and Bangladesh exploited for forced labour, drug trafficking and prostitution. It also notes that according to GRETA official data fail to give an accurate picture as the number of children who receive assistance through projects funded by the Department for Equal Opportunities is low: in 2016, only 111 children were placed in the anti-trafficking system (94 girls and 17 boys), most of them Nigerian, followed by Romanians. These data overlook the overwhelming majority of young victims of trafficking who are left outside the official anti-trafficking system.

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

In its previous conclusion, the Committee asked for information on trends and measures taken to assist children in a street situation. The report provides no information on this issue.

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

It asks again for information on measures taken to protect and assist children in vulnerable circumstances, paying particular attention to children in a street situation and children at risk of child labour, especially in rural areas.

*Conclusion*

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

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

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

***Right to maternity leave***

In its previous conclusion (Conclusions 2011), the Committee noted that the situation was in conformity with Article 8§1 with regard to the length of leave and compulsory maternity leave. Maternity leave is granted for five months and may be extended in some cases; it consists of two months before the birth and three months after. Women are required to take at least one month of prenatal leave and three months of postnatal leave. Any leave not taken prior to the birth may be carried over to the period after the birth. The same rules apply to public sector employees.

However, the Committee notes from the report that Article 16 of Decree No. 151/2001 was amended by Legislative Decree No. 119 of 18 July 2011, and paragraph 1bis of this article now grants employees the possibility of returning to work in case of specific events (voluntary or medical termination of pregnancy after the 180<sup>th</sup> day or death of the baby at birth or during maternity leave) and under specific circumstances, thus waiving their postnatal leave completely or in part. In such circumstances, employees shall provide their employers with a ten days' prior notice of request and a certificate from a national health service doctor or another qualified physician stating that returning to work will not endanger their health.

The Committee refers to its Statement of Interpretation on Article 8§1 (2011) and points out that this article of the Charter aims at protecting working women when they get pregnant; it also aims at reflecting a more general interest in public health, i.e. the health of mothers and children. The two aforementioned requirements are met insofar as national legislation, on the one hand, gives women the right to use all or part of their recognised entitlement to cease work for 14 weeks at least, while safeguarding their freedom of choice by means of a benefit scheme set at an adequate level; on the other hand, it obliges the employer to respect the free choice of women.

Given the specific nature of this legislative amendment intended to protect women workers' physical and mental health, the Committee considers that the situation is in conformity with the Charter and requests the next report to state whether there are any other arrangements whereby women may renounce their claim to their postnatal maternity leave.

The report also states that in the event of serious complications during pregnancy, or pre-existing medical conditions liable to be made worse by pregnancy, women workers are entitled, regardless of the nature of their work, to stop work earlier, on the grounds of a high-risk pregnancy (Article 17 of Decree No. 151/2001).

The Committee takes note of the figures presented in the report concerning the number of beneficiaries of maternity leave by type of occupation.

***Right to maternity benefits***

In its previous conclusion (Conclusions 2011), the Committee found that the situation was in conformity with Article 8§1. The report shows that there has been no change in the situation: private sector workers are entitled to 80% of their pay during maternity leave (there is no upper limit and the remaining 20% is often made up by employers under collective agreements); as to public sector employees, they are entitled to full pay.

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

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

According to Eurostat data, median equivalised income in 2017 was €16,542 a year, or €1,378.50 a month. 50% of the median equivalised income was €8,271 € per year, or €629.25 per month. In the absence of data on minimum maternity benefits, the Committee asks that this information should be systematically provided in each report concerning Article 8§1. 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 Italy is in conformity with Article 8§1 of the Charter in this respect. In the meantime, the Committee reserves its position on this point.

#### *Conclusion*

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

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

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

***Prohibition of dismissal***

In its previous conclusion (Conclusions 2011), the Committee found the situation to be in conformity with Article 8§2 of the Charter. Since the situation remains unchanged, it confirms its previous finding of conformity.

The report states that judgment No. 27055 of 3 December 2013 of the Court of Cassation confirmed that the dismissal of a worker during the first year of her child's life is unlawful if it is due to restructuring or staff cuts. Dismissal is permissible only in the event that the company ceases to operate.

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

In its previous conclusion (Conclusions 2011), the Committee asked what compensation would be paid if the worker was not reinstated. In reply, the report points out that the dismissal of an employee during the protected period is considered null and void. Under Article 18 of the Labour Code (as amended), in the event of unlawful dismissals, the courts must order full reinstatement. Accordingly, workers dismissed unlawfully are entitled to (1) be reinstated in their posts, (2) receive damages for the period from dismissal until their reinstatement, minus any payment received for other employment (but the compensation may not in any circumstances be less than five months' salary), (3) receive payment of social security contributions for the entire period from the date of dismissal until the date of reinstatement and (4) exercise their right of option, i.e. choose between reinstatement and compensation in lieu amounting to 15 months' actual total salary.

The Committee points out that, in case of the unlawful dismissal of an employee during pregnancy or maternity leave, national legislation must provide for adequate and effective means of redress; employees who consider that their rights in this respect have been violated must be able to take their case before the courts. Reinstatement should be the rule. Exceptionally, if this is impossible (e.g. where the enterprise closes down) or the woman concerned does not wish it, adequate compensation must be available. Under national law, courts must be able to award a level of compensation that is sufficient both to deter the employer and fully compensate the victim of dismissal. In light thereof, the Committee finds that the situation is not in conformity with the Charter on the grounds that adequate compensation may not be awarded in case of unlawful dismissal during pregnancy or maternity leave if the woman concerned does not wish to be reinstated.

It also asked for information on the rules applicable to women employed in the public sector, in particular those on fixed-term contracts. In reply, the report states that under Article 54(3c) of the Legislative Decree No. 151/2001, dismissal during the protected period is allowed in certain cases, in particular upon expiry of fixed-term contracts. The report states that employers may not dismiss pregnant workers until the end of their contracts (except in the event of serious misconduct or closure of the company). Contracts may, however, be terminated on the agreed expiry date. In the event of unlawful dismissal (before the contract expires), workers on fixed-term contracts are entitled to compensation of an amount equal to all the remuneration they ought to have received up to the initial expiry date of the contract, minus any payments received by the workers from other employers during the periods concerned. The Committee asks whether this compensation covers both pecuniary and non-pecuniary damage or whether the victims can also seek compensation with no upper limit for non-pecuniary damage through other legal avenues (e.g. antidiscrimination legislation).

### *Conclusion*

The Committee concludes that the situation in Italy is not in conformity with Article 8§2 of the Charter on the ground that adequate compensation may not be provided for in cases of unlawful dismissal during pregnancy or maternity leave if the woman concerned does not wish to be reinstated.

**Article 8 - Right of employed women to protection of maternity**  
*Paragraph 3 - Time off for nursing mothers*

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

In its previous conclusions, the Committee found that the situation in Italy was not in conformity with Article 8§3 on the ground that domestic workers and home workers were not entitled to paid breaks to breastfeed their infants.

The Committee takes note of the new explanations provided in the report concerning the ground for non-conformity. As regards the situation of home workers, the report indicates that home-based work is governed by Law No. 877/1973 of 18 December 1973 (as amended by Law No. 850/1980 and by Legislative Decree No. 112/2008). Payment is based on piece rates, without reference to an hourly or monthly wage (Article 8). Article 11 provides that a home worker cannot work for several employers where the demand from a single employer corresponds to a number of hours of work equivalent to that mentioned in the branch collective agreement. The Committee notes from the statement made by the Representative of Italy to the Governmental Committee, that since remuneration is based not on hours worked but on piece rates, it is impossible to calculate the share of working time corresponding to breaks, with the result that the legislation on nursing breaks cannot apply to this category of women workers.

Regarding the situation of domestic workers, the Committee also takes note of the statement made by the Representative of Italy to the Governmental Committee making a distinction between two scenarios in this respect: 1) if the employee works full time with the employer's family, she may take nursing breaks in the context of the organisation of her working time and these will be remunerated; 2) if she works part-time for several employers, arrangements for nursing breaks shall be left to the discretion of the parties, bearing in mind the relationship of trust inherent in this type of work.

The Committee asks what guarantees are in place to insure full-time domestic workers are entitled to paid nursing breaks.

In its previous conclusion (Conclusions 2011), the Committee also asked whether the same regime in respect to breastfeeding breaks applied to women employed in both the private and public sector. In response, the report indicates that all workers in the private and public sectors, whatever their working relationship, have a right to daily paid breaks. The Committee asks what rules apply to women working part-time.

*Conclusion*

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

**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 Italy.

In its previous conclusion (Conclusions 2011), the Committee found the situation to be in conformity with Article 8§4 of the Charter. Since the situation has not changed, it reiterates its previous finding of conformity: Section 53 of Legislative Decree No. 151 of 26 March 2001 and Section 11 of Legislative Decree No. 66/2003 strictly prohibit night work (between midnight and 6 am) for pregnant women, women having recently given birth and women with a child under one year of age.

The Committee notes from the report that these two legislative norms have been supplemented by Legislative Decree No. 80 of 15 June 2015 (which came into force on 25 June 2015) providing for an exemption from any obligation of night work for adoptive mothers and foster mothers for the first three years after taking a minor into their family. A similar rule applies to working adoptive or foster fathers.

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 Italy 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 Italy.

In its previous conclusion (Conclusions 2011), the Committee found the situation to be in conformity with Article 8§5 of the Charter. There has been no change in the situation and the report provides an update. Therefore, the Committee 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 Italy 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 Italy.

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

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

As regards the **rights and obligations of spouses**, the Committee refers to its previous conclusions, which took note of the provisions recognising the legal equality of spouses and the joint exercise of parental rights (Conclusions 2011).

In answer to the request for more details on the **settlement of disputes** between spouses (Conclusions 2011), in particular ones relating to children, the report sets out the relevant provisions governing child custody, as laid down in Act 54/2006 and the changes introduced by presidential decree 154/2013, and the associated financial obligations.

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

Regarding **mediation services**, the report states that there are some 5000 family mediators operating in the country, based on three main professional associations, AIMS, SIMeF and AIMeF, which since 2017 have come under the umbrella of the confederation of family mediators (FIAMeF).

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

The Committee takes note of the information submitted in the report concerning developments since its last assessments (see Conclusions 2006 and 2011). In particular, it takes note of the data published in 2015 (see details in the report), according to which some 7 million women (6 788 000) aged 16 to 70, or almost one in three (31.5%), had suffered some form of physical or sexual violence, including over one million cases of rape or attempted rape (652 000 and 746 000 respectively), mainly committed by their current or former partners. According to the data, some 2 800 000 women had suffered acts of violence at the hands of their partners. In particular, partners had been the perpetrators of almost 63% of rapes (62.7%) and, more generally, over 90% (90.6%) of cases of unwanted sex experienced by women as acts of violence. According to the report, the number of crimes involving sexual violence reported had nevertheless fallen (from 4 617 cases in 2011 to 4 046 in 2016).

The report also refers to the ratification of the Istanbul Convention on Preventing and Combating Violence against Women and Domestic Violence in 2013 (Law No. 77/2013) and the adoption in this context of new legislation and regulations (Decree Law 93/2013) on prosecution, introducing aggravating circumstances for the crime of sexual violence committed by spouses (including when separated or divorced) and in the event of stalking committed by current or former spouses/partners of the victims or committed electronically.

The Committee also takes note of the steps taken with a view to improving the prevention of violence, the protection of victims and implementation of integrated policies under the *Extraordinary Action Plan to Combat Sexual and Gender Violence* for the period from 2015 to 2017, which was adopted by Prime Ministerial decree of 7 July 2015, and under the *National Strategic Plan to Combat Male Violence against Women* for the three-year period from 2017 to 2020 (see report for further details). Under the latter plan, the report indicates that national recommendations were adopted in November 2017 concerning care provision by health authorities and hospitals for victims of violence and training for health and police personnel (see details in the report). The report also refers to an increase in the funds allocated for combating violence, which boosted capacity in terms of facilities for victims: from 2013 to October 2017, the number of shelters increased from 163 to 258 and the number of anti-violence centres from 188 to 296.

Insofar as Italy has signed and ratified the Istanbul Convention on Preventing and Combating Violence against Women and Domestic Violence (which came into force in the country on 1 August 2014), the Committee refers to the procedure to assess the conformity of the situation in Italy in the context of this mechanism. It notes that in January 2020, the Council of Europe's Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) published its first baseline evaluation report on Italy. The GREVIO experts welcomed the legislative measures taken to combat violence against women. They nevertheless concluded that there was a need to develop further solutions offering a co-ordinated multiagency response to violence, to expand the coverage and capacity of specialist services that followed a human rights-based approach and to remove the barriers preventing victims from accessing effective protection under protection orders.

The Committee also notes the concerns voiced by the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) in its Concluding Observations in 2017 concerning the high prevalence of gender-based violence against women and girls; the underreporting of such violence and the low prosecution and conviction rates; the limited access to civil courts for women victims of domestic violence seeking restraining orders; the fact that courts continued to refer victims to alternative dispute resolution, such as mediation and conciliation; the cumulative impact and intersection of racist, xenophobic and sexist acts against women; the lack of studies addressing the structural causes of gender-based violence against women and the lack of measures intended to empower women; the regional and local disparities in the availability and quality of assistance and protection services, including shelters, for women victims of violence, as well as the intersecting forms of discrimination against women from minority groups who were victims of violence.

The Committee requests that the next report provide updated information on domestic violence against women and related convictions, as well as on the use of protection orders, the implementation of the various measures described in the report and their impact on reducing domestic violence against women, including in the light of the above-mentioned GREVIO and CEDAW observations and recommendations.

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

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

The Committee notes that the situation which it previously found to be compatible with the Charter remains unchanged (see Conclusions 2011).

#### ***Childcare facilities***

In answer to the Committee (Conclusions 2011, Article 27§1), the report describes the various forms of financial assistance for parents' childcare arrangements, such as vouchers to cover, at least partially, the cost of baby sitting or of day nursery services in public or approved private facilities for up to six months (Act 92/2012), or the crèche voucher system, in force since 2017, which provides for an annual reduction of € 1000 in the cost of day care of children born after 2016 (Act 232/2016).

The report also states that in the 2014-2015 school year, some 197 328 children under two years of age were enrolled in crèches. There were 13 262 registered nursery facilities offering social and educational provision for young children, of which 36% were public and 64% private. The 357 786 places available covered 22.8% of the potential demand (children under 3 resident in Italy). According to the report, registering a child with a crèche does not depend on the parents' status, that is whether or not they are married. The Committee notes the figures provided in the report which concern the coverage rates of crèches, educational facilities and early admissions to nursery schools of children aged under two, the number of users of these services and the number of available places.

## **Family benefits**

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

In its previous conclusion (Conclusions 2011), the Committee found that the situation in Italy was incompatible with Article 16 on account of the unequal treatment of foreigners with regard to family benefits, as certain of them were reserved for Italian nationals or European Union nationals with long-term residence permits.

It notes from information supplied to the Governmental Committee (Report to the Governmental Committee on Conclusions 2011, Doc. CG(2012)32) that the courts have extended entitlement to the birth grant and the allowance for families with at least three children to all legally resident aliens. However, the report contains no information on this subject and does not specify whether, or subject to what conditions, foreign nationals are eligible for household allowances (ANF – *Assegno per il nucleo familiare*). The Committee therefore repeats its request for information on the conditions governing eligibility for the household allowance, particularly for nationals of states party to the Charter legally resident in Italy. In this context, it asks for more details on the length of residence required for eligibility for family benefits. In the absence of conclusive information on this point, the Committee considers that it has not been established that equal access to family benefits is ensured for nationals of other States Parties.

Furthermore, the report does not answer the Committee's question (Conclusions 2011) concerning non-wage-earning families' entitlement to the household allowance, the birth grant (*assegno di natalità/bonus bébé*) or other family benefits. The Committee asks whether there are restrictions on eligibility according to type of family, such as one-parent families or civil unions, or parents' employment status, such as self-employed, public official, unemployed and so on.

### **Level of family benefits**

The Committee previously noted (Conclusions 2011) that family benefits in Italy consisted of household allowances (ANF – see above), the level of which varied according to number of children and family income, and allowances for large families (at least three under-age or disabled children), which were means-tested. It noted that there were certain additional bonuses, but also that studies showed that the impact of social transfers on the poverty risk was minimal. It therefore asked for the next report to provide a clear, detailed description of the family benefits situation for all population categories, whether or not wage earners. It also repeated its request for data on the number of beneficiaries and stated that unless the next report supplied the requisite information there would be nothing to show that family allowances in Italy represented a sufficient additional income for a considerable number of families.

The Committee notes the information and statistics provided in the report, following the introduction of statistical tools to make it easier to monitor the impact of social transfers on household poverty. The data supplied indicate an absolute family poverty rate of about 6% between 2013 and 2016, with higher rates in southern regions (8.5% in 2016), and a deterioration in 2016 in the situation of households with three or more under-age children. The proportion of such households in absolute poverty rose to 26.8%, compared with 18.3% the previous year. The report also states that in 2016 social transfers to families, in the form of family and maternity allowances and grants to households on low incomes, only accounted for 0.6% of households' gross income. In the light of this information, the Committee concludes that the situation in Italy is not compatible with Article 16 of the Charter because family allowances do not represent a sufficient additional income for a considerable number of families. It asks for clearly presented information in the next report on available family benefits, the eligibility conditions, the number of households receiving

them compared with the total number of households, and any taxation measures taken to benefit families.

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

The Committee had previously observed a rise in the poverty rate among single-parent families and asked for information on measures aimed specifically at this group (Conclusions 2011). It notes from information in the report that in 2012, thus outside the reference period, 58% of single-parent families received social transfer payments but 35.5% of single-parent families with under-age children still faced a risk of continued poverty.

The report does not provide information on the current situation of these families or on specific measures taken. However, it does contain information on expenditure, at regional level, on the implementation of the 2014-2016 national family plan, adopted in 2012 and thus outside the reference period. This is primarily concerned with families with three or more children, ones requiring continuing assistance because of old age or disability and ones requiring support because of intra-family relationship problems. The Committee notes this information but does not consider it sufficient to enable it to assess the impact of the relevant measures on vulnerable, including one-parent, families. It asks for updated information in the next report and detailed statistics on the situation of vulnerable families, to enable it to identify any possible improvements or deteriorations in the situation.

In the case of Roma and Sinti families, the Committee refers to the information below on housing for families.

As regards the violation found in respect of these families, on account of the undue interference with their family life resulting from the conditions under which these families had been subject to identification and census procedures, following the 2009 declaration of the state of emergency in relation to settlements of nomad communities, it notes that the state of emergency and the implementing orders at issue in the complaint no longer apply, following a decision by the Court of Cassation in 2013 (decision No. 9687/2013) recognising their unlawful nature (see collective complaint Centre on Housing Rights and Evictions (COHRE) v. Italy, complaint No. 58/2009, decision on the merits of 25 June 2010 and Findings of 6/12/2018).

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

As all the aspects of families' housing covered by Article 16 also fall within the scope of Article 31, the Committee refers to its examination of Article 31, including the follow-up to violations relating to housing conditions identified in collective complaints from the standpoint of Article 16 (for more details, see Conclusions 2019, Article 31).

The Committee concluded in its Findings of 6/12/2018 that the violation of Article E read in conjunction with Article 16 in respect of the housing conditions of Roma and Sinti families identified in the collective complaint COHRE v. Italy (Complaint No. 58/2009, decision on the merits of 25 June 2010), had not yet been remedied. It observes that the reference period for the current conclusions is covered by those findings. The Committee will next assess the follow-up to the complaint when it examines the report that Italy is due to submit before 31/12/2019.

In the light of the above, the Committee can only conclude, on the same grounds, that the situation is not in conformity with Article 16 of the Charter concerning the housing conditions of Roma and Sinti families.

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

In answer to the Committee's question (Conclusions 2011), the report states that organisations representing families are consulted in the formulation of family policies through a national family "observatory". The observatory's assembly has 36 members, including

three representatives of national family associations. The assembly lays down the general direction of the observatory's action plan. It is charged with carrying out investigations and research into, documenting and promoting, and providing expert advice on national family policies and supports the family policy department in the preparation of a national family plan (Prime Minister's decrees of 10 March 2009 and 8 August 2016).

#### *Conclusion*

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

- it has not been established that equal access to family benefits is ensured for nationals of other States Parties;
- family allowances do not represent a sufficient additional income for a considerable number of families;
- Roma and Sinti families are not adequately protected with respect to housing, including in terms of eviction procedures and access to social housing.

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

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

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

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

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

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

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

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

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

The Committee recalls that in the complaint World Organisation against Torture (OMCT) v. Italy, Complaint No. 19/2003, decision on the merits of 7 December 2004, it held that "it is apparent from Judgment No. 4909 of the Court of Cassation of 16 May 1996 (...), that the Court explicitly and conclusively removed any ambiguity concerning the lawfulness of the use of any degree of violence against children by any person, and even in circumstances traditionally regarded as justifying such conduct" ( § 46).

However, in its previous Conclusion on Article 17.1 (Conclusions 2011), the Committee noted from another source [Global Initiative to End Corporal Punishment of Children] that the law still confirms the right to correction ("jus corrigenda"). The 1996 Court of Cassation ruling states that the law cannot be used to defend the use of corporal punishment but this has not been confirmed in legislation. According to the same source, the near universal social acceptance of corporal punishment in childrearing in Italy necessitates clarity in law that no level of corporal punishment is acceptable.

The Committee asked whether there were any plans to amend the legislation following the 1996 ruling, and explicitly ban corporal punishment in all settings, such as in the home, in schools and in institutions (Conclusions 2011).

The Committee notes that according to the report corporal punishment of children is unlawful. Further it states the use of violence as a means of correction and discipline, which is in any case not permitted, is an offence if the acts entail a risk of injury. The jurisprudence of the courts has recalled that education using anti-educational means is not permitted because it would be a contradiction in itself that could affect the physical and / or mental health of the minor.

However, the Committee notes that the Global Initiative to End Corporal Punishment of Children: Country report Italy 2019 maintains that prohibition is still to be achieved in the home. Further the UN Committee on the Rights of the Child in its Concluding Observations on the combined fifth and sixth periodic report of Italy [CRC/C/ITA/C/5-6, February 2019], inter alia, recommends that Italy explicitly prohibits corporal punishment, however light by law in all settings.

Therefore, the Committee asks how the jurisprudence of the courts is respected in practice. Meanwhile the Committee once again reserves its position on this point

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

The Committee recalls that Italy has pursued a policy of de- institutionalisation through the closure of residential institutions and their transformation into other types of care

The Committee previously asked the next report to provide statistics on the number of children placed in the new types of care, set up as a result of closure of institutions as well as in foster care (Conclusions 2011).

The Committee notes that the report provides a significant amount of data on the placement of children outside their home although some of the data is from before the reference period. According to the report children placed outside the home are either placed in childrens' homes or in foster families. The most recent data from 2010 indicated that there were 14,528 children in foster families and 14,781 in childrens' homes. A number of these children were non-Italian nationals. However other figures in the report suggest that in 2015 more than 21,000 children were placed in family type establishments. The Committee emphasizes the need for comprehensive, up to date information to be provided on these matters in its next report.

The Committee notes from other sources [[http://www.dirittierisposte.it/Schede/Famiglia/Affidamento/l\\_affidamento\\_dei\\_minori\\_id1108883\\_art.aspx](http://www.dirittierisposte.it/Schede/Famiglia/Affidamento/l_affidamento_dei_minori_id1108883_art.aspx)] that children may be placed in a family with a single person in a family-type community or in a public or private institution, preferably located as close as possible to the place of residence of the family. Children aged less than 6 cannot be placed in an institution but only in a family-type community.

The Committee asks to be kept informed of the number of children in childrens' homes, and in foster care and of the progress made in deinstitutionalization. It also asks for information on the monitoring of foster care and all types of childrens' homes.

As regards the grounds for the placement of children outside their home, the report states that a child may be placed outside their home in cases of abuse and neglect where the child is in grave and imminent danger but also maybe placed outside their family in other circumstances. According to the report the majority of children were removed due to parental incompetence 37%, parental addiction problems 9%, relationship problems 8% or due to health problems of the parents 6% (data from 2010). However, the report also mentions problems related to the economic situation of the family or housing as secondary grounds for the placement of children outside their family. The Committee notes from other sources [<https://www.ilpost.it/2019/08/18/affido-familiare/>] that economic issues alone cannot justify the placement of children, under the Law 149/2001, as amended.

An appeal against the removal of a child from their family is possible by the parents, members of the family or guardian.

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

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

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

The Committee recalls that the age of criminal responsibility is 14 years of age.

The Committee previously asked what was the maximum length of pre-trial detention. It also asked whether children can be detained with adults (Conclusions 2015).

The report states that children in conflict with the law are firstly subject to diversionary measures. They are referred to social services for the child. Social services will accompany the child through the criminal justice system.

Children in conflict with the law may be initially placed in reception centres (for up to 96 hours) and prior to being brought before a judge. After their stay in the reception centre, the judge can order that the minor be placed in preliminary detention (*custodia cautelare*) or placed in a community; or can order home detention (*permanenza in casa*) or other precautionary measures (in accordance with art. 20 DPR 448/1988). The length of pretrial detention for minors between 16 and 18 years old is half than that for adults. The length of pretrial detention as regards children aged less than 16 years is one third of the length provided for adults old. The maximum length is respectively 3, 6 or 12 months for adults, so for children the maximum length of pretrial detention is 6 months. The Committee asks the next report of the State to confirm that this is the case.

The Committee notes the detailed information provided in the report on the number of children in conflict with the law placed in homes or in juvenile detention centres.

The Committee asks what is the maximum period of detention a child may be sentenced to post conviction. The Committee recalls that children should only exceptionally be sentenced to a term of imprisonment as a measure of last resort and for the shortest period necessary, any period of detention should be regularly reviewed. The Committee seeks confirmation that periods of detention are regularly reviewed.

The Committee notes that according to the report children placed in detention are placed in specialized juvenile facilities and always segregated from adults. However, the Committee notes that where a child reaches the age of 18 years of age he/she will remain in the juvenile detention centre until the age of 21. The Committee asks whether young persons over the age of 18 are separated from children under that age.

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

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

Article 17 guarantees the right of children, including children in an irregular situation and non-accompanied minors to care and assistance, including medical assistance and appropriate accommodation[International Federation of Human Rights Leagues (FIDH) v. France, Complaint No 14/2003, Decision on the merits of September 2004, § 36, *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 requests information as to whether children who are irregularly present in the State accompanied by their parents or not, may be detained and if so under what circumstances. The Committee also requests further information on measures taken to ensure that accommodation facilities for migrant children in an irregular situation, whether accompanied or unaccompanied, are appropriate and are adequately monitored.

The Committee asks what assistance is given to children in an irregular situation to protect that against negligence, violence or exploitation.

The Committee asks whether children in an irregular situation have access to healthcare.

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 Italy uses bone testing to assess age and, if so, in what situations the state does so. If the state does use such testing, the Committee asks what are the potential consequences of such testing (e.g., can the results of such a test serve as the sole basis for children being excluded from the child protection system).

The Committee notes from the Concluding Observations of the UN Committee on the Rights of the Child on the combined fifth and sixth reports of Italy [CRC/C/ITA/5-6, February 2019], that the UN Committee stated that Law No.47/2017 on protection measures for unaccompanied foreign children strengthens the protection of unaccompanied children in the fields of access to services, safeguards against expulsion, prohibition against the return of unaccompanied children at the border, more appropriate social and medical age assessment procedures, and accelerated access to asylum procedures.

The UN Committee however, expressed about the length of stay of children in emergency or first-level reception centres, and delays in the appointment of guardians.

However the UN Committee also expressed concern about Law No. 132/2018 (adopted outside the reference period) on urgent measures on international protection and migration, public security, which includes measures to suspend the asylum process for persons, including children, considered “socially dangerous” or convicted of a crime, to abolish humanitarian protection in favour of a special permits system in narrowly prescribed circumstances, and to increase immigration detention periods from 90 to 180 days.

The Committee notes the above-mentioned law falls outside its reference period but asks the next report to provide full details of the legislation and its impact on children.

### ***Child poverty***

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

The Committee notes that according to EUROSTAT in 2017 32.1% of children were at risk of poverty and social exclusion (well above the EU average -24.9%).

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

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

### ***Conclusion***

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

## **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 Italy.

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

According to the report the enrolment rate for primary and lower secondary education is 100%.

The Committee notes, however, the information discussed below with regard the enrolment rate for Roma children.

According to UNESCO in 2017 the net enrolment rate for primary education for both sexes was 95.66% in 2017, the corresponding rate for secondary education was 94.20%.

Following legislation in 2012 in order to combat early school leaving a national register of pupils was introduced. In lower secondary school the percentage of students at risk of dropping out of school is 0.2%. In upper secondary school, the percentage is 1.24%. Different regions and cities have introduced programmes in order to prevent children dropping out of school early.

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

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

According to the report books at primary school level are free of charge, the cost of books for secondary school is subject to a ceiling.

The Committee notes that parents can be asked to contribute to the cost of extra-curricular school activities, the amounts of which are fixed by the school itself. The Committee asks whether this system is regulated in practice to ensure that it does not operate as a barrier to children participating in such activities.

The Committee asks the next report to provide information on any other measures taken to mitigate the costs of education, such as meals, transport, stationary etc.

#### ***Vulnerable groups***

The Committee previously concluded that the situation in Italy was not in conformity with Article 17§2 of the Charter on the ground that it had not been established that measures taken to improve access for Roma children to education were sufficient (Conclusions 2011).

The Committee notes the adoption of a National Roma Integration Strategy (NRIS), which focuses on four priorities – work, housing, health and education. Objectives under the Strategy include promoting preschool education, facilitating the transition between primary and secondary education, improving teacher training, improving exchange of good practices, co-operation between schools and families and the re-introduction of Roma mediators into schools.

The report states that in 2012/2013, 11 481 Roma children were in school. However, it also states that estimates suggest that more than 30,000 children are not enrolled in compulsory education. Further the report states that there has been a decrease in the number of Roma children enrolled /attending education between 2008 and 2013. However, data from 2016 suggests that the number of Roma children enrolled in education has begun to increase.

The Committee notes from ECRI [Fifth monitoring cycle, CRI(2016)19, 2016] that the implementation of the measures provided for in the Roma Integration Strategy seems to have been considerably delayed and no specific funding has been allocated to the

implementation of the Strategy. Further, according to ECRI, access to education for Roma also remains a problem.

According to the Advisory Committee on the Framework Convention for the Protection of National Minorities' Fourth Opinion on Italy adopted November in 2015 [ACFC/OP/IV(2015)006], Roma children continue to face significant (and growing) problems in access to education. It is estimated that at least 20,000 Roma children of foreign origin under the age of 12 (for the most part from the Balkans) are not schooled at all. Furthermore, the number of Roma children attending school at all levels of education has been decreasing in the last years.

The Committee notes that the UN Committee on the Rights of the Child [Concluding Observations [CRC/C/ITA/CO/5-6, February 2019] (outside the reference period)] expressed, concern about the high rates of school dropout, including from compulsory schooling, of Roma, Sinti and Caminanti children, also as a consequence of forced evictions.

The Committee considers that it has still not been established that the measures taken to improve access for Roma children to education are sufficient and therefore reiterates its conclusion of non-conformity.

One of the measures taken to reduce early school leaving and promote social inclusion on the part of Roma is the summer opening of certain schools. The summer schools project provides for the adoption of educational programs focused on the use of non-verbal languages and artistic and sporting activities. Many schools with pupils of Roma origin participated in the summer schools project.

Special projects and programmes have been developed for schools with a high number of children with a migrant background, including special projects for schools in risk zones (deprived areas).

The Committee asks for further details on these projects and programmes.

The Committee also asks whether children in an irregular migrant situation have access to education.

As Italy has accepted Article 15.1 of the Charter, the Committee will examine the rights of children with disabilities to education under that provision.

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

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

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

Securing the right of the child to be heard within education is crucial for the realisation of the right to education in terms of Article 17.2 This requires states to ensure child participation across a broad range of decision-making and activities related to education, including in the context of children's specific learning environments. The Committee asks what measures have been taken by the State to facilitate child participation in this regard.

### ***Conclusion***

The Committee concludes that the situation in Italy is not in conformity with Article 17§2 of the Charter on the ground that it has not been established that the measures taken to improve access for Roma children to education are sufficient.

## **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 Italy.

### ***Migration trends***

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

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

The Committee notes that it has previously assessed the policy and legal framework relating to migration matters (Conclusions 2011). The report provides no information on any changes in this respect. The Committee asks that the next report provide up-to-date information on the framework for immigration and emigration, and any new or continued policy initiatives.

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

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

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

The Committee further notes that it has comprehensively assessed the services and information for migrant workers (see for a detailed description 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 notes in this respect that in its previous conclusion (Conclusions 2011) it found that the situation was not in conformity with the Charter on the ground that the racist misleading propaganda against migrant Roma and Sinti indirectly allowed or directly emanating from public authorities. This ground of non-conformity was the one which led to the finding of violation in COHRE v. Italy. The Committee noted, in particular, that public authorities have been considered directly responsible for the relaxation of the anti-discrimination law dealing with incitement of racial hatred and violence and racially-motivated offences, as well as for the use of xenophobic political rhetoric or discourse against Roma and Sinti. In this regard, the Committee notes that the Government has not taken all appropriate steps against misleading propaganda by means of legal and practical measures to tackle racism and xenophobia affecting Roma and Sinti. The Committee also notes that the statements by public actors such as those reported in COHRE v. Italy create a discriminatory atmosphere which is the expression of a policy-making based on ethnic disparity instead of on ethnic stability.

The report provides that in order to fight against acts of discrimination, the Observatory of Security against Acts of Discrimination (OSCAD) was created in September 2010 at the Ministry of Interior and tasked to respond to the security demand of people exposed to the risks of discrimination and to integrate the activities carried out by the national police and by the Carabinieri Army for the preventing and combating all "hate crimes".

The Committee notes that it has assessed all the relevant information in this context in 2018, in its 2nd Assessment of the follow-up: Centre on Housing Rights and Evictions (COHRE) v. Italy, Collective Complaint No. 58/2009 the Committee considered that the situation has not been brought into conformity with the Charter in this respect (see [Findings 2018, complaint No. 58/2009](#)). Accordingly, it reiterates its conclusion on non-conformity. In view of this, the Committee asks that the next report provide detailed, updated information on measures against misleading propaganda concerning emigration, in particular to prevent racism and xenophobia in politics and, more particularly, misleading propaganda against Roma and Sinti migrants.

#### *Conclusion*

The Committee concludes that the situation in Italy is not in conformity with Article 19§1 of the Charter on the ground that on the ground that the measures against misleading propaganda concerning emigration, in particular to prevent racism and xenophobia in politics, and, more particularly, misleading propaganda against Roma and Sinti migrants, were not sufficient.

This ground of non-conformity is the one which led to the finding of violation in COHRE v. Italy.

## **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 Italy.

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

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

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

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

The Committee has assessed the assistance offered to migrant workers in Italy and found it to be in conformity with the requirements of the Charter. Considering the fact that the situation was repeatedly reported to have remained unchanged, the Committee could renew its positive conclusion, most recently in 2011 (Conclusions 2011). It then asked for an up-to-date information on the situation.

In reply, the report provides extensive information on information available to migrant workers and integration services and programmes for migrant workers. Given that the previous most exhaustive information on other issues dates back to 1998, the Committee asks the next report to submit details as to:

- what assistance, financial or otherwise, is available to migrants in emergency situations, in particular in response to their needs of food, clothing and shelter;
- whether other help is available from the state, in particular whether there are limits or restrictions on the access of migrant workers to state welfare provision, and if so, what those limits are;
- what measures are in place to ensure that all residents have access to emergency healthcare.

Finally, the report states that migrant Italian workers benefit from consular assistance if they have problems related to various reasons (accidents, theft, arrest / incarceration or other). If they find themselves without any means of subsistence, they can benefit from a repatriation loan with a repayment commitment to the State Treasury or, if they are already resident and are in a situation of documented poverty, they can receive help from consular offices or other forms of assistance from bodies receiving ministerial support for this purpose. Diplomatic and consular representations are also available in case of requests for information and facilitation of contacts by Italian entrepreneurs, professionals, workers and researchers.

#### ***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, should such recruitment occur, and whether there is any mechanism for monitoring and dealing with complaints, if needed.

*Conclusion*

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

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

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

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

The Committee has most recently assessed the situation in Italy in 1998 ([Conclusion XIV-1](#)) and 2000 ([Conclusions 2000](#)) and found it to be in conformity with the Charter.

Upon the Committee's request for an updated information ([Conclusions 2011](#)), the report states that Italian consulates abroad maintain guidance services for Italian citizens abroad.

While positive, this information cannot be regarded as sufficient to enable the Committee to comprehensively assess the situation under Article 19§3 of the Charter. To this aim, the Committee needs to know, in particular:

- the form and nature of contacts and information exchanges established by social services in emigration and immigration countries;
- measures taken to establish such contacts and to promote the cooperation between social services in other countries;
- international agreements or networks, and specific examples of cooperation (whether formal or informal) between the social services of the country and other origin and destination countries;
- whether the cooperation extend beyond social security alone (for example in family matters);
- examples of cooperation at a local level and any instances where such cooperation has occurred.

The Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter in this respect.

### *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 Italy.

### **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). It 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).

The Committee noted in its previous conclusions that migrant workers enjoy equal rights and equal treatment with regard to remuneration. It asked, however, about implementation of the relevant provisions in practice (see [Conclusions 2011](#)).

The Committee also notes from that Migration Integration Policy Index (MIPEX) 2015 report on Italy, that Italian law does not yet provide full definitions of discrimination. It asks the next report to comment on this observation. It also asks for information on the right to equal treatment for migrant workers, in law and practice, as regards other employment and working conditions than remuneration, including access to training or promotion.

As regards practical measures taken to ensure equal remuneration for migrant workers, the report states that in 2017, the seventh Annual Report "Foreigners in the Labour Market in Italy" was presented under the direction of the Directorate General of Immigration and Integration Policies of the Ministry of Labour and Social Policies. This report indicated, in particular, that the wage gap between foreigners and Italians did not derive from the foreign origin of employees, but from elements which, when they come together, determine a "wage disadvantage": low qualifications and employment in industries with the lowest productivity. In addition, the generally young age of the workforce determines a low seniority. However, it has also been found that the wages of immigrants tend to undergo some improvement with the increase of years of residence in Italy, because over the years, immigrants tend to occupy more stable jobs. In any case, the average wage level of immigrant workers and the wage gap with Italians change according to certain characteristics. The Committee asks what measures have been taken or envisaged to eliminate any possible discrimination in wages, such as, for example, provision of training, skills development, awareness raising.

The Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter on this point.

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

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

The report confirms that all migrants can join unions, regardless of their legal or contractual status. It further points out to the constant increase of foreign workers' accessions to trade unions and provides comprehensive statistics in this respect. In addition, it describes the assistance, information and social protection offered to immigrants by CAFs and Trade Unions, who also guarantee assistance with the procedures for issuing and renewing

residence permits, applications for authorization for family reunification, the Italian language test, issues relating to entry quotas, amnesties and regularisations.

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

### ***Accommodation***

The Committee recalls that States shall eliminate all legal and de facto discrimination concerning access to public and private housing (European Roma Rights Centre (ERRC) v. France, Complaint No. 51/2008, decision on the merits of 19 October 2009, §§111-113). It also recalls that there must be no legal or de facto restrictions on home-buying (Conclusions IV (1975), Norway), access to subsidised housing or housing aids, such as loans or other allowances (Conclusions III (1973), Italy).

In its previous conclusions (Conclusions 2004 and 2006), the Committee noted that Act No. 189/2002 only provided equality of treatment for migrant workers with a residence permit of at least two years. Lacking information on the criteria for allocating accommodation, in particular with regard to migrant workers' access to housing, it considered in 2011 (see Conclusions 2011) that it had not been established that the situation regarding housing is compatible with Article 19§4c of the Charter. It also asked whether migrant workers with residence permits valid for less than two years could benefit from a national house building plan that was intended to increase the supply of housing through both new build and renovation for disadvantaged groups of the population.

The Committee notes that no information was submitted in reply to its query on criteria for allocating social accommodation nor about access to housing for persons with residence permits of less than two years. Furthermore, the Committee notes its conclusion of non-conformity with Article 31§3 of the Charter in which it considered that it had not been demonstrated that nationals of other Parties to the Charter and to the 1961 Charter lawfully residing or regularly working in Italy are entitled to equal treatment with regard to access to social housing (see Conclusions 2019 on Article 31§3).

Furthermore, in its previous conclusion (Conclusions 2011), the Committee noted the adoption of "Pacts for Security" signed by state and local authorities in 2006 to implement a strategy to solve the so-called "nomad emergency", pursuant to which many forced evictions of Roma were carried out and alternative accommodation was not offered to these persons, which included Roma migrant workers from other States Parties to the Charter who were covered by Article 19. The Committee considered that these evictions were carried out without due respect of the necessary procedural safeguards to guarantee full respect of every individual's human dignity, which was not in conformity with Article 19§4c of the Charter.

The Committee also refers to its 2018 Findings on the follow-up to decisions on collective complaints (European Roma Rights Centre (ERRC) v. Italy, Complaint No. 27/2004, decision of 7 December 2005, and Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, decision of 25 June 2010), on violations due to a lack of permanent housing and because Roma did not have effective access to social housing (ERRC) and because of the segregation of Roma and Sinti in camps (COHRE). In these findings, the Committee took note of the progress made in some municipalities but held that the information provided was not sufficient to find that there had been any general improvement in the living conditions of Roma and Sinti. Accordingly, it found that the violations at issue had not been remedied.

The report provides that complaints are still being filed by foreigners with the National Office against Racial Discrimination (UNAR) about discrimination in access to housing, in cases where individuals or real estate agencies do not accept to sell or rent a home to foreigners, sometimes at the explicit request of owners / sellers. If, as a result of a preliminary investigation, the UNAR reports actual ethnic or racial discrimination, actions are deployed

both towards the owners and the real estate agencies. Also, in order to prevent and combat discriminatory attitudes towards housing, Memorandum of Understanding between UNAR and FIAIP (Italian Federation of Professional Real Estate Agents) was signed in 2012, providing for the definition and promotion of joint awareness-raising activities on anti-discrimination issues, particularly in the real estate sector.

The Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter on this point.

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

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

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

The report does not address these issues. The Committee recalls that states must show that the national situation is in conformity with the Charter and that in the event of repeated absence of information, it concludes that there is failure to comply.

At the same time, the Committee notes from the Migration Integration Policy Index (MIPEX) 2015 report on Italy that the access to justice is poor or may be denied as equality policies are weak; Italy's young anti-discrimination laws and weakest equality policies in developed world mean that few people are aware of their rights and few potential victims are reporting racial, ethnic or religious discrimination. According to MIPEX, Italy has not yet taken steps to properly enforce and resource their anti-discrimination laws in order to guarantee the same access to justice for potential discrimination victims as they do for victims of other crimes and illegal acts. The Committee asks the next report to comment on these observations.

Meanwhile, the Committee considers that it has not been established that the situation is in conformity with the Charter as regards the functioning of the monitoring and judicial review in the field.

### *Conclusion*

The Committee concludes that the situation in Italy is not in conformity with Article 19§4 of the Charter on the ground that it has not been established that the State has taken adequate practical steps to eliminate all legal and de facto discrimination concerning the access to accommodation.

**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 Italy.

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

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

Upon the Committee's request for a full and up-to-date description of the situation in law and practice in respect of Article 19§5, the report confirms that Article 53 of the Constitution guarantees the absolute equality of treatment for the purposes of taxation and the contributions of workers, nationals or non-nationals, without discrimination of any kind. The Committee asks the next report to provide more information on the situation in practice.

*Conclusion*

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

### **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 has positively assessed the legal framework in this respect in its previous conclusion ([Conclusions 2011](#)).

### **Conditions governing family reunion**

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

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

In its previous conclusion ([Conclusions 2011](#)), the Committee observed that applicants must have an annual income from legitimate sources that is not less than the annual minimum income, increased by half for each family member concerned by the reunion procedure. It considered that this requirement was likely to hinder family reunion rather than facilitate it and recalled that "the level of means required by States to bring in the family or certain family members should not be so restrictive to prevent any family reunion" (Conclusions XIII-1, The Netherlands).

In reply, the report specifies that in the absence of a minimum annual income from a legal source, the means requirement is no less than the annual amount of the social allowance plus half the amount of the social allowance for each family member. For two or more children under the age of 14, the income shall by no means be less than twice the annual amount of the social allowance. For the purposes of determining income, the total annual income of family members living with the applicant is taken into account. The Committee understands that social benefits shall not be excluded from the calculation of the income of a migrant worker who has applied for family reunion. It asks the next report to confirm that all social allowances, also those to which the family members would be eligible, are taken into account when assessing the means requirement for the family reunion.

### **Remedy**

10. 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).

11. The Committee asked about the availability of such remedy in its previous conclusion. The report does not provide any information in this respect. The Committee recalls its question and underlines that should the next report not provide comprehensive information in this respect, there will be nothing to show that the situation is in conformity with the Charter on this point.

*Conclusion*

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

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

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

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

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, following legislative changes in the reference period, migrant workers who cannot properly understand or speak the national language used in legal proceedings, may have both the free assistance of an interpreter and have any necessary documents translated.

The report specifies that the Code of Criminal Procedure, as amended in 2014, in the new wording of paragraph 1, recognizes that an accused who does not know the Italian language has the right to be assisted by an interpreter, free of charge and independently of the result of the proceedings, in order to be able to understand the accusation made against him and to follow the procedures in which he participates. The accused is also entitled to the free assistance of an interpreter to communicate with the lawyer prior to an examination or to file an application or memorandum during the proceedings. The right to the translation of the basic acts of criminal procedure is a novelty introduced to the Code of Criminal Procedure which, in its previous wording, only recognized the right to the interpreter (free of charge since the amendment). Under paragraph 2 it provides for a written translation, within a reasonable time, allowing the exercise of the right to defense, guarantee information, information on the right to defense, measures involving personal precautionary measures, notification of the conclusion of preliminary inquiries, decrees for summons to the preliminary hearing and summons, convictions and penal decrees of conviction.

The Committee asks the next report to confirm that the right to free translation and interpretation are also available to migrant workers lacking means in civil or administrative proceedings.

### *Conclusion*

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

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

In its previous conclusion ([Conclusions 2011](#)), the Committee concluded that the situation in Italy was not in conformity with Article 19§8 of the Charter on the grounds that during the reference period "security measures" representing a discriminatory legal framework target Roma and Sinti, making it very difficult for them to obtain identification documents in order to legalise their residence status and, therefore, permit even the expulsion of Italian and other EU citizens.

The Committee notes that these facts led also to the decision on merits in the case Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, of 25 June 2010, in which the Committee found a violation of Article 19§8 of the Charter. In its [2nd Assessment of the follow-up to this case](#), the Committee took note of the decision 9687/2013 of the Court of Cassation and the following termination of the "security measures" linked with the state of emergency, which had given rise to the expulsion of a number of Roma from the country, and considered that the situation had been brought into conformity with the Charter with regard to this violation.

In the previous conclusion, the Committee also asked for information on the ground on which expulsion may be ordered by a prefect, as well as on all circumstances in which a judge may order it. The Committee noted in this respect the concept of "social dangerousness" and asked how it differed from the concept of the public order.

The report provides that deportation is ordered by the prefect when the foreigner: (a) has entered the territory of the State by evading border controls; (b) remained in the territory of the State without having applied for a residence permit on time, or if the residence permit was revoked, cancelled or refused or expired for more than sixty days and was not renewed (c) falls into one of the categories referred to in Articles 1, 4 and 16 of Legislative Decree 159 of 6 September 2011. The Committee asks for more explanations on the grounds referred to under letters (b) and (c), in particular, as to the possibility to review and appeal against such decisions or to remedy the situation post factum and whether such measures have a suspensive effect.

The report confirms that in cases of expulsion, the person's individual circumstances, degree of integration, duration of residence, family ties, cultural or social ties with the country of origin. etc are taken into account. With regard to the judicial review of removal decisions, it states that the expulsion ordered by the prefect may be appealed before courts.

Administrative action is possible against the expulsion order issued by the Minister of Interior.

The report also provides information on limitations to deportation of a foreigner who has exercised the right to family reunification, to deportation to a state in which a foreigner may be persecuted on the grounds of race, sex, language, nationality, religion, political opinion or personal or social circumstances or is likely to be returned to another state where he is subject to persecution. Deportation of a person to a state is also not permitted if there are reasonable grounds to believe that he or she may be subjected to torture. Law provides also for a ban on deportation for certain categories of foreigners, such as foreigners under the age of 18 (with the exception of the right to follow the deported foster parent); foreigners holding a residence permit, foreigners residing with family members up to the second degree or with the spouse of Italian nationality; pregnant women or within six months of the child's birth; foreigners with serious health problems.

The Committee repeats its question as regards the circumstances under which a judge may order expulsion of a person and on the concept of "social dangerousness", in particular in connection with the commission of minor criminal offences. It considers this information crucial for a comprehensive assessment of guarantees concerning deportation in Italy.

#### *Conclusion*

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

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

*Paragraph 9 - Transfer of earnings and savings*

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

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.

No changes to the legal framework have been reported. The report indicates that the amounts of money transferred out of the country by migrant workers has been steadily raising as of 2005.

The report submits that a website dedicated to money transfer was created for migrants on the internet portal Portale Integrazione Migranti. The website, which exists also in English and was certified by the World Bank, contains information on various options, duration and costs of money transfers.

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 Italy.

*Conclusion*

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

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

*Conclusion*

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

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

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

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

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

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

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

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

The report provides information about the principles behind the inclusive education in Italy and the system of linguistic support for all foreign children of school age. The teaching of Italian for migrant children consists of three stages:

- initial stage when children attend a basic linguistic course, 2 hours per day for 3 to 4 months;
- a bridge stage when children begin to participate in common learning, however, are accompanied in this process by teachers who teach specific language of different subjects, provide "simplified" materials with a more accessible language, help to develop writing skills and reading / comprehension of narrative texts;
- third stage of assisted learning, when children are fully integrated into mainstream education, receiving pedagogical support upon needs-tested-basis and whenever any difficulties appear.

As for teaching of Italian to adults, the Permanent Territorial Centres and graduate schools provide free evening courses in linguistic and social integration for foreigners. Adult education system was redefined in 2012 in accordance with Presidential Decree No. 263 which laid down the general rules for the organizational and educational structure of educational institutions for adults, including night classes. The new Provincial Centres of Adult Education were launched from the in 2014.

Finally, the report provides extensive statistics on the number of migrant workers and their children attending language classes and learning in Italian schools.

### *Conclusion*

The Committee concludes that the situation in Italy 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 Italy.

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 assessed in 2002 the legal framework and practice related to teaching of mother tongue and considered that the system described was likely to promote and facilitate, as far as practicable, the teaching of migrant workers' mother tongues to their children ([Conclusions 2002](#)). It noted, in particular, that the legal framework considered linguistic and cultural differences to be fundamental to respect and tolerance and the Ministry of Education was committed to preserving the original languages and cultures of children of immigrants and encouraging cultural exchanges. Projects in support of these aims were undertaken in schools on the basis of studies carried out in conjunction with immigrant associations and foreign diplomatic and consular representatives. The Committee asked for the information on the number of children provided with language classes in their mother tongue and how the teaching was financed. Given that no reply was given (see [Conclusions 2004](#), [2006](#) and [2011](#)), in 2011 the Committee concluded that it had not been established that the situation was in conformity with the Charter.

In reply, the report submits extensive statistical data on foreign children in Italian schools. It also provides information on research launched in 2011 and aimed at ensuring the visibility of mother tongues and to promoting training for teachers. The project derives from initiatives promoted by the Language Policy Unit of the Council of Europe with the document Guide for the Development and Implementation of Programs for Plurilingual and Intercultural Education.

The Committee asks the next report to provide information on outcomes of the mentioned research, as it could possibly help to paint a more comprehensive picture of the situation. It notes from outside sources, such as International Schools Search, that bilingual schools exists in Italy. It asks for the next report to reply to following specific questions:

- whether statistical data is collected on the number of children receiving education in their mother tongue what languages are taught?
- on what basis children of migrants have access to multilingual education and what steps that government has taken to facilitate the access of migrants' children to these schools and whether it supports them financially?
- what additional educational programs for the instruction of foreign languages exist?
- whether any non-governmental organisations provide teaching of migrants' languages, and whether they receive support?

### *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 1 - Participation in working life*

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

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

In its previous conclusion (Conclusions 2011) the Committee asked whether there were any specific vocational guidance, counselling, information and placement services for workers with family responsibilities, to assist such workers in participating or advancing in professional activity.

In addition to the information referred to in the previous conclusion, the Committee notes that in 2012, the Council of Ministers approved the National Plan for the Family, which contains guidelines on family policy.

The report states that following a labour market reform (Law No. 92 of 28 June 2012), the regulations on the integration contract (Article 54 of Law No. 276/2006) designed to integrate or reintegrate certain categories of persons into the labour market through individual projects to improve occupational skills have been replaced by other measures to protect such workers. With effect from 1 January 2013, the 50% reduction in employer contributions was granted for certain categories of persons (see report for more details).

The Committee refers to its conclusion on Article 10§3 of the Charter (Conclusions 2016) in which it reserved its position pending receipt of information regarding the total number of unemployed persons with family responsibilities participating in continuing training and the activation rate – i.e. the annual average number of previously unemployed beneficiaries of active measures divided by the number of registered unemployed persons and beneficiaries of active measures.

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

The report states that Decree-Law No. 61/2000 which gave workers with family responsibilities the opportunity to work part-time had been replaced by Legislative Decree No. 81/2015. The report explains that the Legislative Decree does not contain another type of contract, but specific working time arrangements enabling workers to reconcile their professional and private lives. The report states that the reduction in working time can be: (i) horizontal, where the employee works every day but fewer hours than the statutory daily working time; (ii) vertical, where the employee works full-time but only a few days a week, month or year; (iii) of a mixed type, where the two above forms may be combined. Employees have a right to ask to change from a full-time contract to a part-time contract on the grounds of health reasons, as an alternative solution to using parental leave.

In its previous conclusion (Conclusions 2011), the Committee asked whether workers were entitled to social security benefits, in particular health care, during periods of parental leave. In response, the report explains that, at the request of the person concerned, it is possible to interrupt parental leave in the event of illness of a parent or child. In particular, in accordance with Circular No. 8/2003 of the Italian National Institute of Social Welfare, it is possible to change the reason for absence from parental leave to sick leave; in this case, the social security scheme pays the sickness allowances. The corresponding period is not taken into account when calculating the total period of parental leave granted. Once the illness is over, parental leave can be resumed.

In reply to another question asked by the Committee, the report states that periods of leave from work due to family responsibilities are taken into account in the calculation of pension rights. The Committee once again asks for the next report to explain how these are calculated.

With regard to reconciling work and private life, the report states that the government has promoted new initiatives, such as the “Family Audit” seal of quality. It is a means of certification that identifies the organisation that has been awarded the seal of quality as being responsive to the needs of its employees in terms of reconciling work and family life. To obtain this seal of quality, the organisation (public or private) must voluntarily undergo an audit process lasting 3.5 years for which a fee is charged.

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

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

In its previous conclusion, the Committee asked what forms of financial assistance were available for the parents of children attending childcare facilities. The report presents several types of financial assistance for parents. Law No. 92 of 28 June 2012 introduced, on a trial basis, the possibility for working mothers to request, at the end of maternity leave and within the following eleven months, vouchers for babysitting services or a contribution to cover the costs of the public network of childcare services or approved private services for a maximum period of six months.

### ***Conclusion***

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

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

*Paragraph 2 - Parental leave*

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

In its previous conclusion (Conclusions 2011, 2007 and 2003), the Committee found that the situation was in conformity with Article 27§2 of the Charter. It will therefore only consider recent developments and additional information.

The report states that following a change to the legislation, either parent (in possession of a contract of employment) is entitled to paid parental leave, until the child reaches the age of twelve. The total duration of parental leave may in principle not exceed ten months. If the father requests at least three months of this leave, an additional month is granted to him. However, only the first six months of this leave are paid. In addition, the child must not have reached the age of six years (compared to three years before the reform). This period may be extended until the child reaches the age of eight.

As regards take-up of parental leave, the report states that 306 701 employees in the private sector (52 130 men and 254 571 women) requested parental leave in 2016.

*Conclusion*

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

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

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

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

#### ***Protection against dismissal***

In its previous conclusion (Conclusions 2011), the Committee found that the situation was in conformity with Article 27§3 regarding protection against dismissal of workers with family responsibilities. It noted that, under Article 54§6 of the Legislative Decree No. 151/2001, the dismissal “of a worker (male or female) applying for or taking parental leave when related to the illness of the child” was null and void. It asked whether employees were also protected against dismissal because of family responsibilities towards dependent relatives requiring care (elderly parents, for example).

In reply, the report states that the legislation does not include any specific provisions to that effect. The Committee therefore points out that family responsibilities may not be a valid ground for the termination of employment. It considers that the situation is not in conformity with Article 27§3 of the Charter regarding protection against dismissal on the grounds that workers with family responsibilities towards members of their immediate family requiring care and support are not protected against dismissal.

#### ***Effective remedies***

In its previous conclusion (Conclusions 2011), the Committee considered that the situation was in conformity with Article 27§3 regarding effective remedies and asked whether there was a ceiling on the amount that could be awarded as compensation for unlawful dismissal; if so, whether this compensation covered both pecuniary and non-pecuniary damage, or whether compensation with no upper limit for non-pecuniary damage could also be sought by the victim through other legal avenues. It also asked whether both types of compensation were awarded by the same courts, and how long on average it took courts to make their rulings on this.

In reply, the report states that the parent concerned can challenge the dismissal by submitting evidence that it was a retaliatory or discriminatory measure, if it was prompted by their applying for or taking parental leave on account of the illness of their child. According to the report, in the case of workers recruited as from 7 March 2015, Articles 3 and 4 of the Legislative Decree No. 23/2015 (Jobs Act) provide that the compensation may vary, depending on the unlawfulness found, from a minimum of two months to a maximum of 24 months according to the worker’s length of service. For workers recruited until 6 March 2015, the legislation in Article 18(5) of the Labour Code (as amended) applies. The Committee refers to its conclusion on Article 8§2 of the Charter (Conclusions 2019) regarding the effective remedy provided for in Article 18 of the Labour Code. 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 could preclude damages from being commensurate with the loss suffered and sufficiently dissuasive for the employer is 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 make their rulings within a reasonable time (Statement of Interpretation on Articles 8§2 and 27§3 (Conclusions 2011)). In light of the above, the Committee finds that the situation is not in conformity with the Charter on the ground that adequate compensation is not provided for in cases of unlawful dismissal on grounds of family responsibilities, if the worker concerned does not wish to be reinstated.

### *Conclusion*

The Committee concludes that the situation in Italy is not in conformity with Article 27§3 of the Charter on the grounds that

- workers with family responsibilities with respect to members of their immediate family requiring care and support are not protected against dismissal,
- adequate compensation is not provided for in cases of unlawful dismissal on grounds of family responsibilities if the worker concerned does not wish to be reinstated.

**Article 31 - Right to housing**  
*Paragraph 1 - Adequate housing*

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

***Criteria for adequate housing***

The Committee refers to Conclusions 2007 for a description of the criteria for adequate housing in Italy (Conclusions 2007). It previously deferred its conclusion and asked for information on several aspects concerning effective access to adequate housing and effective enjoyment of this right (Conclusions 2011).

In its previous conclusion (Conclusions 2011), the Committee asked whether the “certificate of accessibility” granted to buildings that complied with safety, hygiene, health and energy standards also included checks on exposure to lead and asbestos. The report states that the purpose of this document is to certify the safety, health and energy standards of buildings and the equipment installed in them but there is no reference to checks on exposure to lead and asbestos. There are several bodies, however, which are responsible for monitoring and checking exposure to lead and asbestos, and which conduct checks during censuses or following reports or complaints.

The Committee also asked for statistics or figures on the adequacy of housing, and information on the financial resources invested to guarantee the right to adequate housing (Conclusions 2011).

In reply the report states that statistics are difficult to collect given the fact that the regions have had sole competence in the area of residential construction since the reform of Title V of the Constitution. The report describes the various existing national programmes and funds for housing (such as the National Support Fund for Access to Rented Housing, the Fund for Unintentionally Poor Paying Tenants and the Solidarity Fund for Loans for First-Time Home Buyers), along with an indication of the funds actually awarded during the reference period.

The Committee points out that the requirement to maintain statistics is particularly important in the case of the right to housing (International Movement ATD Fourth World (ATD) v. France, Complaint No. 33/2006, decision on the merits of 5 December 2007, § 63). Consequently, the Committee asks again for the next report to provide statistics on the adequacy of housing, including data on overcrowding. On this point, the Committee notes from the European Index of Housing Exclusion 2019 (FEANTSA and Abbé Pierre Foundation, Eurostat-EU-SILC 2017) that the overcrowding rate for housing in Italy in 2017 was 27%, well above the European Union average of 15.7%.

Pending receipt of the information requested, the Committee reserves its position

***Responsibility for adequate housing***

The Committee refers to Conclusions 2007 for a description of the measures to monitor the standard of housing.

The Committee asks for confirmation in the next report that there are procedures to check the adequacy of existing housing (whether rented or owner-occupied), including inspections, and which authorities are responsible for such matters.

***Legal protection***

The Committee refers to its previous conclusion (Conclusions 2011) for a description of the legal protection of the right to housing and, in particular, of the case-law of the Constitutional Court and the Court of Cassation.

The Committee asks for updated information in the next report on the case-law of Italian courts with regard to the right to housing. In this connection, it asks for clarification in the

next report on how affordable and effective judicial remedies are where it comes to enforcing the right to adequate housing.

### ***Measures in favour of vulnerable groups***

In its previous conclusion (Conclusions 2011) the Committee found that the situation in Italy was not in conformity with Article 31§1 of the Charter on the ground that measures taken by the public authorities to improve the substandard housing conditions of most Roma in Italy were inadequate. It also asked for information on the tangible follow-up given to the report drawn up in 2011 by a Special Commission of the Italian Senate for the protection and the promotion of human rights with regard to the situation of Roma settlements.

With regard more particularly to the situation of Sinti, the Committee asked previously (Conclusions 2011) for clarification as to the rehousing solutions available to Sinti who could no longer park their caravans on their land following the entry into force of a Law of 2001 on construction and housing.

The Committee also refers to its 2018 Findings on the follow-up to decisions in collective complaints (European Roma Rights Centre (ERRC) v. Italy, Complaint No. 27/2004, decision of 7 December 2005, and Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009 of 25 June 2010), on violations *inter alia* of Article 31§1 read in conjunction with Article E of the Charter, because camps for Roma were insufficient and unsuitable (ERRC) and the living conditions of Roma and Sinti in camps or similar settlements were unsatisfactory (COHRE). In these findings, the Committee took note of the progress made in some municipalities but held that the information provided was not sufficient to find that there had been any general improvement in the living conditions of Roma and Sinti. It referred in particular to comments made by the Advisory Committee on the Framework Convention for the Protection of National Minorities (Opinion of 19 November 2015) and the United Nations Human Rights Committee (Concluding observations of 23 March 2017). In the light of the foregoing, the Committee found that the violations of Article 31§1 at issue had not been remedied.

The current report refers to the position taken by the representative of Italy before the Governmental Committee during its 126<sup>th</sup> session (October 2012), during which he described the National Strategy for the Inclusion of Roma, Sinti and *Camminanti* for 2012-2020. It also refers to the information provided in the simplified reports submitted in the context of the follow-up to the collective complaints referred to.

In reply to the Committee's questions, the report states that the Senate's Special Commission for the Promotion and Protection of Human Rights attempts to provide continuity through ongoing work to protect Roma rights, both at parliamentary level and through public awareness-raising campaigns. As to Sinti, the report states that they may only settle on private building land and that they must obtain a building permit to set up their trailers or mobile homes. The alternative to private land is a "micro-site", where single family homes are built for up to five or six families. This interim solution would eliminate the most extreme cases of deterioration of camps.

The Committee takes note of this information. It also notes that during the reference period, on 30 May 2015, the Rome Civil Court ruled on a case brought by a group of NGOs against the Municipality of Rome and held that "nomad settlements" were a form of segregation and discrimination on ethnic grounds in breach of Italian and European law (see the ECRI report on Italy of 18 March 2016, §82). ECRI found that despite some positive developments, most Roma, especially those in large cities, continued to live in conditions of acute marginalisation and discrimination in terms of access to housing and other social rights (ECRI report, §§ 83 and 84).

The Committee asks for information in the next report on the practical impact of the implementation of the National Strategy for the Inclusion of Roma, Sinti and *Camminanti* for

2012-2020 with regard to housing, and on other measures planned to improve the situation. It also asks for information on the follow-up to the decision of the Rome Civil Court of 30 May 2015 and the subsequent case law on the subject. In the meantime, given that the reference period for these conclusions is covered by Findings 2018 and that not enough relevant information has been provided, the Committee finds that the situation is still not in conformity with Article 31§1 of the Charter because of the inadequate living conditions of Roma and Sinti in camps or similar settlements.

The Committee refers to its Statement of Interpretation on the rights of refugees under the Charter (Conclusions 2015). In this connection, the Committee notes that once they have left the reception system, refugees or other persons with some form of protected status in Italy may find themselves in vulnerable situations, sometimes in informal camps (see the report of 2 March 2017 on the fact-finding visit to Italy from 16 to 21 October 2016 by the Special Representative of the Secretary General of the Council of Europe on migration and refugees, in which he referred to a settlement in Rome in which there were about 1 200 people). The Committee therefore asks for the next report to describe the measures being taken to secure adequate housing for refugees.

#### *Conclusion*

The Committee finds that the situation in Italy is not in conformity with Article 31§1 of the Charter because of the inadequate living conditions of Roma and Sinti in camps and similar settlements.

## **Article 31 - Right to housing**

### *Paragraph 2 - Reduction of homelessness*

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

#### ***Preventing homelessness***

In its previous conclusion (Conclusions 2011), the Committee held that the initiatives undertaken to reduce the number of homeless persons were inadequate in terms of quantity. Given the significant increase in the number of homeless persons (which had reached about 100 000), it was clear that emergency accommodation arrangements did not meet the demand.

The report describes various measures taken during the reference period to prevent homelessness and combat extreme poverty, including the introduction of a single, universal inclusion income under Delegated Law No. 33 of 15 March 2017, the publication in 2015 of “Guidelines on combating the extreme marginalisation of adults in Italy”, which identifies priority measures for the authorities under the First National Plan to Combat Poverty in accordance with a so-called housing-first approach, the establishment of a social protection and inclusion network to promote greater uniformity in the services offered in different regions, the allocation of €100 million to activities to combat extreme poverty and homelessness for the period from 2014 to 2020, financed by European funds, and the launch of an awareness-raising campaign entitled *#Homeless Zero*, sponsored by the Ministry of Labour and Social Policies.

The report points out that the number of homeless persons has declined compared to the preceding period, falling from 70 000 to about 50 000. In 2011 and 2014, the statistics office ISTAT (*Instituto nazionale de statistica*) conducted national surveys on the homeless and the services provided for them in 158 municipalities. They showed that 50 724 homeless people made use at the least of a canteen or night shelter service in 2014, compared to 47 648 in 2011, which amounts to a 6% increase. According to the report, these surveys show a trending rise in the homeless population linked to migration. In this connection, the Committee notes that according to the 2014 survey, 58.2% of homeless people were foreign nationals (FEANTSA country sheet on Italy, December 2018). It also notes that according to these surveys, chronic homelessness is on the rise. The proportion of people who had been living on the street for between two and four years increased from 11% in 2011 to 20% in 2014, and the proportion who had been living on the street for more than four years rose from 16% in 2011 to 21% in 2014 (FEANTSA country sheet on Italy, December 2018).

The Committee notes that during the reference period, the United Nations Committee on Economic, Social and Cultural Rights drew attention to the growing number of homeless people in Italy and the inadequacy of the measures taken to combat this problem (Concluding observations concerning Italy’s fifth periodic report of 9 October 2015).

The Committee takes note of all the measures described in the report and of the Italian authorities’ undertaking to improve the situation. It considers, however, that the information provided concerning the number of homeless people is still not sufficient to determine whether the services provided meet the demand because they merely indicate the number of homeless people who have used the basic services on offer. It asks for updated data in the next report on the total number of homeless people and for clarification as to whether the emergency solutions on offer live up to the demand. It also asks for information on the impact of all the measures adopted and described in the report on the reduction of the number of homeless people with a view to the gradual elimination of homelessness.

The Committee notes from the report that to be entitled to inclusion income (REI), claimants must be European Union citizens or members of a European Union citizen’s family, or hold a long-term residence or international protection permit. Given that homelessness affects foreign nationals in particular (see the proportion of homeless people who were found to be

foreign nationals in the 2014 survey cited above), the Committee asks for the next report to clarify to what extent the REI benefits homeless foreigners who do not meet these conditions and/or whether these persons have access to other similar economic benefits.

Pending receipt of the information requested, the Committee finds that the situation continues to be not in conformity with Article 31§2 of the Charter on this point.

### ***Forced eviction***

The Committee refers to Conclusions 2007 for a description of the rules governing eviction procedures.

The Committee concluded previously (Conclusions 2007 and 2011, and the decisions on the merits in *European Roma Rights Centre (ERRC) v. Italy*, Complaint No. 27/2004, 7 December 2005, and *Centre on Housing Rights and Evictions (COHRE) v. Italy*, Complaint No. 58/2009, 25 June 2010, in which it found that there was a violation of Article 31§2 of the Charter read in conjunction with Article E) that the evictions of Roma and Sinti failed to observe the necessary procedural safeguards to ensure that each individual's dignity was respected. It also found that these evictions were often accompanied by acts of violence.

In this context, the Committee refers to Findings 2018 on the follow-up to the decisions on the merits in the collective complaints referred to above, in which it held that the situation had not been brought into conformity with the Charter.

The Committee also notes that other international bodies and actors continued to report cases of forced eviction of Roma and Sinti during the reference period (Concluding observations of the United Nations Committee on Economic, Social and Cultural Rights concerning Italy's fifth periodical report, 9 October 2015; Concluding observations of the United Nations Human Rights Committee concerning Italy's sixth periodical report, 23 March 2017, § 14; United Nations Committee on the Elimination of Racial Discrimination, Concluding observations of 8 December 2016 concerning Italy's nineteenth and twentieth reports; Advisory Committee on the Framework Convention for the Protection of National Minorities, fourth opinion on Italy, 19 November 2015, § 42; ECRI report on Italy of 18 March 2016, §§ 93-95; letter of 26 January 2016 of the Council of Europe Commissioner for Human Rights to the Italian authorities).

The report simply refers to the communication by the representative of Italy to the Governmental Committee during its 126<sup>th</sup> session (October 2012, outside the reference period), in which he described the National Strategy for the Inclusion of Roma, Sinti and *Camminanti* for 2012-2020. It also refers to the information provided in the simplified reports submitted in the context of the follow-up to the collective complaints referred to above. In the report submitted in 2018, the Government referred to the guidelines which were being drawn up by the National Office Against Racial Discrimination (UNAR) to help local authorities clear camps with due regard for the fundamental rights of the persons concerned.

The Committee asks for the next report to state whether these guidelines have been adopted and, if so, to what extent they are applied when Roma and Sinti are evicted. It asks for information in the next report on the exact number of evictions involving Roma and Sinti.

In the light of the foregoing, the Committee reiterates its finding of non-conformity with Article 31§2 on this point.

### ***Right to shelter***

In its previous conclusion (Conclusions 2011), the Committee reserved its position and asked for clarification on the following points:

- whether shelters/emergency accommodation satisfied security requirements (including in the immediate surroundings) and health and hygiene standards (in

- particular whether they were equipped with basic amenities such as access to water and heating and sufficient lighting);
- whether shelter/emergency accommodation was provided regardless of residence status;
- whether the law prohibited eviction from shelters or emergency accommodation.

In reply to the first question, the report states that all services (dormitories, family homes and other accommodation) have to meet health and hygiene standards (offering water, sufficient lighting and heating) in accordance with the legislation in force.

As to access to emergency accommodation for foreign nationals, the report states that unlawfully present foreign nationals *per se* do not have access to housing services, apart from reception centres (initial and secondary reception). These are multi-unit collective residences (usually offering 20 to 50 places), where the main focus is on temporarily meeting immediate food and housing needs. This does not rule out the possibility that, if they are still in a state of need once, after the relevant time limits, they have left such facilities, they may be accommodated in low threshold facilities (dormitories, family homes, tents, etc.). The Committee asks for detailed information in the next report, relating to the next reference period, on the number of reception centres for unlawfully present migrants, the number of people belonging to this group accommodated in such centres and these centres' features and standards (with regard to safety, health, hygiene and overcrowding). It also asks for clarification on whether there is a legal obligation to provide emergency accommodation of a sufficient standard to unlawfully present foreign nationals who are not or no longer accommodated in the reception centres referred to and, if this is so, what procedure needs to be followed and what type of facility is available. In this connection, the Committee reiterates that a national situation is not in conformity with Article 31§2 of the Charter if the right to shelter is not guaranteed to persons irregularly present, including children, for as long as they are within the jurisdiction of the state (Conclusions 2011, Ukraine; Conference of European Churches (CEC) v. the Netherlands, Complaint No. 90/2013, decision on the merits of 1 July 2014, §§ 129 and 135-145). Pending receipt of these clarifications, the Committee reserves its position on this point.

With regard to unlawfully present, unaccompanied foreign minors, the report points out that Law No. 47 of 7 April 2017 on protection measures for unaccompanied foreign minors made specific changes to the previously existing legislation. The rules on the reception of minors provide that they must be offered adequate and safe housing and the necessary support services to secure their best interests. The most suitable forms of reception are placement with family members or a foster family, accommodation in open, supervised reception centres equipped with special facilities for minors, or, for older minors, placement in individual dwellings.

As to the last question put on this point in Conclusions 2011, the report states that although the Italian legal system does not include any provision which expressly prohibits eviction from emergency accommodation, the rules on the rescue and the humanitarian assistance of foreigners present in Italy still apply regardless of such foreigners' legal status. The Committee asks for the next report to indicate to what extent the rules on humanitarian assistance for foreigners may prevent the eviction of a foreign national from emergency accommodation in practice.

Pending receipt of the information requested, the Committee reserves its position on this point.

### *Conclusion*

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

- the steps taken to reduce the number of homeless persons are insufficient;

- evictions of Roma and Sinti continue to be carried out without due regard for the necessary procedural safeguards to guarantee full respect of every individual's human dignity.

**Article 31 - Right to housing**  
*Paragraph 3 - Affordable housing*

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

In its previous conclusion (Conclusions 2011), the Committee asked for the next report to state whether measures had been taken to make the price of housing affordable to those without adequate resources and, in particular, whether the affordability ratio of the poorest applicants for housing was compatible with their level of income.

The report states that the levels of rent for social housing are proportionate to family incomes and compositions. It is for the regions to set social housing rents in accordance with tenants' financial capacities, the composition of their families and the features of their homes.

The Committee asks for clarification in the next report on the average affordability ratio (the rent-income ratio) of persons in the lowest income quintile.

***Social housing***

The report describes social housing policy in Italy, referring to various existing funds and programmes and providing information on the funds actually allocated to these (including the National Support Fund for Access to Rented Housing; the Fund for Unintentionally Poor Paying Tenants; the Solidarity Fund for Loans for First-Time Home Buyers; the Programme for the Renovation and Rationalisation of Social Housing; and various laws providing for the suspension of eviction procedures after the end of a lease for some categories of persons).

The Committee takes note of all the measures described in the report. It notes however that the proportion of social housing in Italy (4% of national housing stock) is still low (European Social Policy Network (ESPN), National Strategies to Fight Homelessness and Housing Exclusion: Italy, 2019; FEANTSA and the Abbé Pierre Foundation, Third Overview of Housing Exclusion in Europe, 2018, both outside the reference period). It would also seem that only a third of the persons who need social housing are actually granted it, and that there are waiting lists comprising about 650 000 pending housing applications by families meeting the eligibility criteria (Housing Europe, The State of Housing in the European Union, 2017).

Consequently, the Committee asks for information in the next report on the total number of requests for social housing, the percentage of these requests met and the average waiting times for housing allocation. In the meantime, it reserves its position on this point.

The Committee points out that it found in its previous conclusion (Conclusions 2011) that in some regions and municipalities, nationals of other Parties to the Charter and to the 1961 Charter lawfully residing or working regularly in Italy were not entitled to equal treatment with regard to access to housing.

In response to this finding of non-conformity, the report states that this issue has been resolved and refers to the written communication by the representative of the Italian Government before the Governmental Committee at the 2012 session and the information transmitted with regard to the implementation of Article 19§4 of the Charter. These data show that under the relevant immigration law (Article 40.6 of Legislative Decree No. 286), foreign nationals with a long-term residence permit and lawfully present immigrants with a residence permit for a period of at least two years engaged in a gainful occupation as employees or self-employed workers are entitled to social housing under the same conditions as Italian nationals. The communication of 2012 also referred to the case law in this sphere of the Italian courts, including the Constitutional Court and a recommendation by the National Office Against Racial Discrimination (UNAR) on the prohibition of discrimination between Italian and non-European Union nationals with regard to access to social housing. This recommendation invited the regional and municipal authorities to refrain from including

an Italian nationality or long-term residence requirement among the conditions required for access to social housing. In relation to Article 19§4, the report states that the requirements concerning the length of residence of foreign nationals have been assessed several times by courts and judges.

The Committee takes note of these developments. It notes that according to the ECRI report on Italy of 18 March 2016 (§ 76), some municipalities had introduced tougher conditions of access to public housing by increasing the requirements, resulting in cases of indirect discrimination in access to housing for non-European Union immigrants. However, the report also stated that a number of regulations imposing these tougher conditions had been amended as a result of legal proceedings brought by NGOs against the local authorities concerned. The Committee therefore asks for clarification in the next report on whether the UNAR's recommendation and/or the case-law of the Italian courts referred to have been followed in law and in practice throughout the country and, if so, it asks for tangible examples of laws or regulations of the regional or local authorities complying with these criteria.

The Committee also asks for an explanation in the next report on how equal treatment with regard to access to social housing is guaranteed in law and in practice for nationals of States Parties to the Charter and the 1961 Charter who hold a residence permit which is valid for less than two years (see also conclusion under Article 19§4 of the Charter, Conclusions 2011).

Pending receipt of the information requested, the Committee finds that the situation is not in conformity with Article 31§3 on this point.

With regard more particularly to access to social housing for Roma and Sinti, the Committee points out that in its previous conclusion (Conclusions 2011), it found that the situation was not in conformity with the Charter because it had not been established that resources had been invested to improve access for Roma and Sinti to social housing without discrimination in practice.

The Committee also refers to its 2018 Findings on the follow-up to decisions on collective complaints (European Roma Rights Centre (ERRC) v. Italy, Complaint No. 27/2004, decision of 7 December 2005, and Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, decision of 25 June 2010), on violations *inter alia* of Article 31§3 read in conjunction with Article E of the Charter because of a lack of permanent housing and because Roma did not have effective access to social housing (ERRC) and because of the segregation of Roma and Sinti in camps (COHRE). In these findings, the Committee took note of the progress made in some municipalities but held that the information provided was not sufficient to find that there had been any general improvement in the living conditions of Roma and Sinti. Accordingly, it found that the violations of Article 31§3 at issue had not been remedied.

The report refers to the written communication by the representative of Italy to the Governmental Committee during its 126th session (2012) and the National Strategy for the Inclusion of Roma, Sinti and *Camminanti* for 2012-2020. It also gives a detailed description of a number of measures taken by local authorities to dismantle camps and provide medium and long-term housing solutions, including the direct allocation of social housing and the reorganisation of stopping places. In 2014, for example, these programmes provided access to public housing for over 75 families in Florence and about 160 families in the region of Tuscany as a whole, with the result that a total of 780 people could be allocated social housing.

The Committee takes note of the steps taken by some regions and municipalities to improve housing conditions for Roma and Sinti, including with regard to access to social housing. However, as the reference period for these conclusions is covered by Findings 2018, the Committee finds that the situation is still not in conformity with Article 31§3 of the Charter

with regard to Roma and Sinti as well. It asks for updated information in the next report on the measures taken throughout the country in relation to access for Roma and Sinti to social housing.

### **Housing benefits**

In its previous conclusion (Conclusions 2011), the Committee found that the situation was not in conformity with Article 31§3 of the Charter as nationals of other States Parties to the Charter and to the 1961 Charter lawfully residing or regularly working in Italy were not entitled to equal treatment with regard to access to housing benefits in certain regions and municipalities. It also asked for examples of case-law relating to refusals to grant housing benefits.

In reply to this question, the report refers to a judgment of the Constitutional Court of 20 July 2018 (outside the reference period), in which it was found that the conditions of access applied to third-country nationals with regard to housing benefits granted for the payment of rent (*bonus affitti*) were unconstitutional. The Constitutional Court held that it was manifestly unreasonable and arbitrary to set a ten-year national residence requirement or a five-year regional residence requirement for third-country nationals to be entitled to housing benefits of this type, as had been stipulated by Article 11, paragraph 13, of Decree-Law No. 112 of 25 June 2008.

The Committee takes note of this positive development in the case law. In this connection, it points out that under other articles of the Charter (12§4 and 16), a ten-year national residence requirement for foreign nationals to have access to a non-contributory social benefit was deemed excessive and disproportionate (see Conclusions 2017, Italy, under Article 12§4). Since the Constitutional Court's judgment was given outside the reference period, the Committee finds that the situation is still not in conformity with Article 31§3 of the Charter on the ground that nationals of other States Parties to the Charter lawfully residing or regularly working in Italy are not entitled to equal treatment with regard to access to housing benefits.

In addition, it notes that the Stability Law of 2019 introduced a citizenship income (*reddito di cittadinanza*), which was due to replace the old inclusion income (REI) in May 2019 (outside the reference period). This measure awards a supplement of €280 to all persons in situations of poverty to help them pay their rent. It would seem, however, that to be entitled to this income, claimants are required to have resided for at least ten years in Italy, a requirement which may exclude many foreign nationals (European Social Policy Network (ESPN), National strategies to fight homelessness and housing exclusion: Italy, 2019). The Committee therefore asks for the next report to clarify whether this requirement is compatible with the principle of equal treatment and the case-law of the Constitutional Court in this area.

### *Conclusion*

The Committee concludes that the situation in Italy is not in conformity with Article 31§3 of the Charter on the following grounds:

- it has not been established that nationals of other States Parties to the Charter lawfully residing or regularly working in Italy are entitled to equal treatment with regard to access to social housing;
- it has not been established that sufficient resources have been invested throughout the country to improve access for Roma and Sinti to social housing without discrimination in practice;
- nationals of other States Parties to the Charter lawfully residing or regularly working in Italy are not entitled to equal treatment with regard to access to housing benefits because the length of residence requirement is excessive.