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EUROPEAN SOCIAL CHARTER

European Committee of Social Rights

Conclusions 2019

LUXEMBOURG

This text may be subject to editorial revision.

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

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

The 1961 European Social Charter was ratified by Luxembourg on 10 October 1991. The time limit for submitting the 22nd report on the application of this treaty to the Council of Europe was 31 October 2018 and Luxembourg submitted it on 23 September 2019.

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

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

Luxembourg has accepted all provisions from the above-mentioned group except Article 8§4.

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

The present chapter on Luxembourg concerns 25 situations and contains:

– 18 conclusions of conformity: Articles 7§1, 7§2, 7§4, 7§5, 7§6, 7§7, 7§8, 7§9, 7§10, 8§1, 8§2, 8§3, 16, 17, 19§1, 19§3, 19§4 and 19§7;

– 6 conclusions of non-conformity: Articles 7§3, 19§2, 19§6, 19§8, 19§9 and 19§10.

In respect of the situation related to Article 19§5, 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 Luxembourg under the 1961 Charter. The Government consequently has an obligation to provide the requested information in the next report from Luxembourg on this provision.

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

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

The deadline for the report was 31 December 2019.

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

Article 7 - Right of children and young persons to protection

Paragraph 1 - Prohibition of employment under the age of 15

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

The Committee noted previously (Conclusions XIX-4) that Article L. 342-1 of the Labour Code of 31 July 2006 prohibits child labour. The ban covers all minors under the age of 15 or still subject to compulsory schooling (which was extended to the age of 16 through an increase in the length of compulsory schooling from 11 to 12 years introduced by the Compulsory Schooling Act of 6 February 2009).

The Committee also noted (Conclusions XIX-4) that exceptions to this prohibition are provided for by Articles L. 342-3 and L. 342-4 of the Labour Code. Article L. 342-3 provides as follows: “child labour is not considered to include the following tasks provided that they do not pose threats or risks to the children, do not undermine their education or training, are not harmful to or incompatible with their physical, psychological, mental, spiritual, moral or social development and do not result in their economic exploitation: 1. work in technical or vocational colleges, provided that it is chiefly educational in nature, is not designed for commercial gain and is approved and supervised by the relevant authorities; 2. occasional domestic service of short duration performed in a private household by children for families which have taken lasting responsibility for them”.

The Committee further noted (Conclusions XIX-4) that children can also participate, subject to prior individual authorisation by the Minister of Labour, in audio-visual, cultural, artistic or advertising activities and in fashion-related events, under the strict conditions set out in Article L.342-4 of the Labour Code.

The Committee previously concluded (Conclusions XIX-4 and Conclusions XX-4) that the situation was in conformity with Article 7§1 of the 1961 Charter.

In its previous conclusion (Conclusions XX-4), the Committee pointed out that the situation in practice had to be regularly monitored and requested that the next report provide information on the number and nature of violations detected and sanctions imposed by the Labour and Mines Inspectorate (ITM) in relation to prohibition of employment under the age of 15.

In this regard, the report states that in 2016 and 2017, the violations found did not concern children under the age of 16, but young persons aged between 16 and 18 years. In 2018, inspectors from the Inspections, Sites and Authorisations Department (CCA) ordered the immediate cessation of the employment of a child who was not yet 16 and was being employed by a building company as a worker on a temporary or mobile construction site. According to the report, the file concerned was submitted to the public prosecution department with a view to possible criminal proceedings against the employer under Article L. 345-2 of the Labour Code, which provides that “violations of Articles L.342-1, L.342-4, L.343-2, L.343-3, L.344-1 to L.344-3 and L.344-7 to L.345-17 shall be punishable with imprisonment of eight days to six months and/or a fine of 251 to 25 000 euros or by one of these penalties only”.

The Committee asks for updated information in the next report on the monitoring activities and findings of the Labour Inspectorate in relation to the illegal employment of children under the age of 15, in particular, the number of violations detected, and the sanctions applied in practice.

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

Conclusion

The Committee concludes that the situation in Luxembourg is in conformity with Article 7§1 of the 1961 Charter.

Article 7 - Right of children and young persons to protection

Paragraph 2 - Higher minimum age in dangerous or unhealthy occupations

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

The Committee noted previously (Conclusions XIX-4) that under Article L. 343-3 of the Labour Code of 31 July 2006, it is prohibited for persons under 18 to be employed in tasks which exposed them to specific threats to their safety, health or physical, psychological, mental, spiritual, moral or social development, or were liable to adversely affect their education or vocational training, owing to a lack of experience, a failure to appreciate the actual or potential risks involved or the incomplete development of the young people concerned. The Committee referred to the list of prohibited tasks set out in the second paragraph of the relevant article and in Appendices 3 (Work prohibited to young people because of its inherent threat to their health) and 4 (Occupations prohibited to young people because of the threat posed to their moral standards) of the Labour Code.

It also noted (Conclusions XIX-4) that in exceptional cases the Minister of Labour can allow young people to perform such tasks if they are essential for their vocational training and are carried out under the supervision of a qualified person.

The Committee notes that the situation which it previously found to be in conformity with the 1961 Charter (Conclusions XIX-4 and Conclusions XX-4) has not changed.

In its previous conclusion (Conclusions XX-4), the Committee pointed out that the situation in practice had to be regularly monitored and requested that the next report provide information on the number and nature of violations detected, as well as on sanctions imposed for breach of the regulations relating to the employment of young persons in dangerous or unhealthy occupations.

In this connection, the report states that in 2016 and 2017, the violations found did not concern the employment of young workers aged under 18 in dangerous or unhealthy occupations. In the case of findings in 2018, a breach of Articles L.342-1 and L.343-3 and Appendix 3 of the Labour Code was found regarding the employment of a young person aged under 18 by a building company on excavation work involving a danger of collapse. According to the report, the labour inspectors ordered the immediate cessation of the employment and the file was submitted to the public prosecution department with a view to possible criminal proceedings against the employer under Article 345-2 of the Labour Code, which provides that “violations of Articles L.342-1, L.342-4, L.343-2, L.343-3, L.344-1 to L.344-3 and L.344-7 to L.345-17 shall be punishable with imprisonment of eight days to six months and/or a fine of 251 to 25 000 euros”.

The Committee asks for updated information in the next report on the monitoring activities and findings of the Labour Inspectorate concerning breach of the regulations relating to the employment of young persons in dangerous or unhealthy occupations, in particular the number of violations detected and the sanctions applied in practice.

Conclusion

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

Article 7 - Right of children and young persons to protection

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

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

The Committee previously noted (Conclusions XIX-4) that Article L. 342-1 of the Labour Code of 31 July 2006 prohibits child labour. The ban covers all minors under the age of fifteen or still subject to compulsory schooling (which was extended to the age of 16 through an increase in the length of compulsory schooling from 11 to 12 years introduced by the Compulsory Schooling Act of 6 February 2009). Exceptions to the ban were provided for in Articles L. 342-3 and L. 342-4 of the Labour Code.

The Committee previously noted (Conclusions XX-4) that children aged 15 and over who are still subject to compulsory education can perform light work during school holidays. The Committee also noted that during one calendar year, children who were still subject to compulsory education can actually work for two months during the summer holidays, which covered the entire duration of the summer holidays. The Committee therefore concluded that the situation was not in conformity with Article 7§3 of the 1961 Charter in this respect, on the ground that children still subject to compulsory education are not guaranteed at least two consecutive weeks of rest during the summer holidays. As there has been no change in the situation, the Committee renews its previous finding of non-conformity in this respect.

With regard to the duration of “light” work which children may perform, in its previous conclusion (Conclusions XX-4), the Committee referred to its statement of interpretation relating to Articles 7§1 and 7§3 (Conclusions XX-4) and requested that the next report provide information on the daily and weekly duration of light work which children aged 15 and over still subject to compulsory education were allowed to perform during the school holidays. The Committee notes that the report does not provide this information. The Committee therefore repeats its request and points out that should the next report not provide the information requested, there will be nothing to establish that the situation in the country is in conformity with Article 7§3 of the Charter.

In its previous conclusion (Conclusions XX-4), the Committee pointed out that the situation in practice had to be regularly monitored and requested the next report to provide information on the number and nature of violations detected, as well as on sanctions imposed for breach of the regulations on the prohibition of the employment of young persons still subject to compulsory education.

In this connection, the report states that in 2016 and 2017, the violations found did not concern the employment of young persons still subject to compulsory education. In the case of findings in 2018, a breach of Articles L.342-1 and L.343-3 and Appendix 3 of the Labour Code was found regarding the employment of a young person still subject to compulsory schooling by a building company on excavation work involving a danger of collapse. According to the report, the labour inspectors ordered the immediate cessation of the employment and the file was submitted to the public prosecution department with a view to possible criminal proceedings against the employer under Article 345-2 of the Labour Code, which provides that “violations of Articles L.342-1, L.342-4, L.343-2, L.343-3, L.344-1 to L.344-3 and L.344-7 to L.345-17 shall be punishable with imprisonment of eight days to six months and/or a fine of 251 to 25 000 euros”.

The Committee asks for updated information in the next report on the monitoring activities and findings of the Labour Inspectorate in relation to breaches of the regulations prohibiting the employment of young persons still subject to compulsory education, in particular the number of violations detected and the sanctions applied in practice.

Conclusion

The Committee concludes that the situation in Luxembourg is not in conformity with Article 7§3 of the 1961 Charter on the ground that children still subject to compulsory education are not guaranteed two consecutive weeks of rest during the summer holidays.

Article 7 - Right of children and young persons to protection

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

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

The report indicates that there have been no changes to the situation which the Committee previously found to be in conformity with Article 7§4 of the 1961 Charter.

The Committee previously noted (Conclusions XIX-4) that young persons under 18 who are no longer subject to compulsory education may work up to eight hours a day and forty hours a week under Article L. 344-7 of the Labour Code of 31 July 2006.

The Committee points out that the length of compulsory schooling was increased from 11 to 12 years under the Compulsory Schooling Act of 6 February 2009. Children under 16 are therefore subject to compulsory schooling.

In its previous conclusion (Conclusions XX-4), the Committee pointed out that the situation in practice had to be regularly monitored and requested that the next report provide information on the number and nature of violations detected, as well as on sanctions imposed for breach of the regulations on the length of working time for young persons under 16 who were no longer subject to compulsory education.

In this connection, the report states that in 2016 and 2017, the violations found did not concern the employment of young persons under 16. In the case of findings in 2018, a breach of Articles L.342-1 and L.343-3 and Appendix 3 of the Labour Code was found regarding the employment of a young person under 16 still subject to compulsory schooling by a building company on excavation work involving a danger of collapse. According to the report, the labour inspectors ordered the immediate cessation of the employment and the file was submitted to the public prosecution department with a view to possible criminal proceedings against the employer under Article 345-2 of the Labour Code, which provides that “violations of Articles L.342-1, L.342-4, L.343-2, L.343-3, L.344-1 to L.344-3 and L.344-7 to L.345-17 shall be punishable with imprisonment of eight days to six months and/or a fine of 251 to 25 000 euros”.

The Committee points out that the situation in practice should be regularly monitored and requests 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 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 Luxembourg is in conformity with Article 7§4 of the 1961 Charter.

Article 7 - Right of children and young persons to protection

Paragraph 5 - Fair pay

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

Young workers

In its previous conclusion the Committee found that the situation in Luxembourg was not in conformity with Article 7§5 of the 1961 Charter on the ground that young workers' wages were not fair.

The Committee points out that the "fair" or "appropriate" nature of pay is assessed by comparing young workers' pay with the starting wage or minimum wage paid to adults (aged eighteen or above) (Conclusions XI-1 (1991), United-Kingdom).

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% (Conclusions 2006, Albania).

With regard to the minimum wage paid to adults, it points out that it previously found the situation in Luxembourg to be in conformity with Article 4§1 of the 1961 Charter. The minimum wage for workers is enough to ensure a decent standard of living (Conclusions (2018). In 2016, the minimum wage was €1 922.

The Committee asked previously for information on the net value of the minimum wage paid to adults and young workers (Conclusions XIX-4 (2011).

With regard to young workers' wages, the report specifies that Article L. 344-17 of the Labour Code provides: "Without prejudice to Article L.343-1, paragraph (3), sub-paragraph 3, agreed minimum wages for persons under the age of 18 shall be set at the following percentages of the adult wage for work of equal value in the same post: 80% for 17 year-olds and 75% for 15 and 16 year-olds. Workers over the age of 18 shall be guaranteed the minimum social wage rate. For persons under the age of 18, the percentage allowances provided for in the first sub-paragraph above shall apply to the minimum social wage." For 17 year-olds, the gross monthly salary was €1538. For 15 and 16 year-olds, the gross monthly salary was €1442.

This situation is in line with the requirements of the Charter.

Apprentices

The Committee concluded previously that the situation in Luxembourg was not in conformity with Article 7§5 of the 1961 Charter on the ground that it had not been established that apprentices' allowances were appropriate. In reply, the report provides detailed information on apprentices' allowances. Article L. 111-11 of the Labour Code provides: "During apprenticeships, employers shall pay apprentices an apprenticeship allowance which shall be set by a Grand-Ducal Regulation, based on the opinion of the relevant professional bodies. This allowance shall be adjusted in line with variations in the cost-of-living index." Currently, apprenticeship allowances are set by the Grand-Ducal Regulation of 9 July 2018, 1. determining the occupations and professions covered by vocational training; 2. setting apprenticeship allowances in the craft, commerce, hotel and catering, industrial, agricultural and health and welfare sectors.

The amounts of apprenticeship allowances vary according to the occupational sector between €339 and €1873 and increase progressively.

This situation is in line with the requirements of the Charter.

Conclusion

The Committee concludes that the situation in Luxembourg is in conformity with Article 7§5 of the 1961 Charter.

Article 7 - Right of children and young persons to protection

Paragraph 6 - Inclusion of time spent on vocational training in the normal working time

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

The report shows that there has been no change in the situation which the Committee found previously to be in conformity with Article 7§6 of the 1961 Charter.

Conclusion

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

Article 7 - Right of children and young persons to protection

Paragraph 7 - Paid annual holidays

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

The report states that there has been no change in the situation which the Committee previously found to be in conformity with Article 7§7 of the 1961 Charter.

The Committee points out that the *de facto* situation should be regularly monitored. The report states that in 2016, no infringement of the right to holidays was reported with regard to young persons. In 2017 and 2018, there was one infringement of the right of young persons to holidays for each of the two years, both of which were rectified by the employers.

Conclusion

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

Article 7 - Right of children and young persons to protection

Paragraph 8 - Prohibition of night work

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

The report states that there has been no change in the situation which the Committee found previously to be in conformity with Article 7§8 of the 1961 Charter.

No breach of the rules on night work involving young persons was reported for the years between 2016 and 2018.

Conclusion

The Committee concludes that the situation in Luxembourg is in conformity with Article 7§8 of the 1961 Charter.

Article 7 - Right of children and young persons to protection

Paragraph 9 - Regular medical examination

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

In its previous conclusion (Conclusions 2015), the Committee pointed out that it had found the situation to be in conformity with Article 7§9 of the 1961 Charter.

Under Article L. 343-2 of the Labour Code, young workers are subject to medical examinations at recruitment and periodically thereafter, during employment, in accordance with the legislation on occupational health services.

The report states that the relevant department of the Ministry of Health, namely the Occupational Health and Environment Division, was notified neither by an occupational health service nor following an inspection of any infringement in an undertaking over the period from 2014 to 2018.

Conclusion

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

Article 7 - Right of children and young persons to protection

Paragraph 10 - Special protection against physical and moral dangers

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

Protection against sexual exploitation

In its previous conclusion (Conclusions XX-4 (2015)), the Committee found that the legislative framework was in conformity with the Charter with regard to the protection against sexual exploitation of children. The Committee asks the next report to provide updated information on measures taken to combat the sexual exploitation of children.

Protection against the misuse of information technologies

The Committee notes from the Concluding Observations of the UN Committee on the Rights of the Child on the report submitted by Luxembourg under Article 12 (1) of the Optional Protocol to the UN Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (CRC/C/OPSC/LUX/CO/1), that there is no legal framework to ensure that Internet-hosting services registered in the State party speedily remove illegal child pornographic content.

The Committee asks for updated information on the measures taken to protect children against the misuse of information technologies.

Protection from other forms of exploitation

The Committee notes from the report that Article L.343-3 of the Labour Code prohibits minors from engaging in certain occupations because of the dangers they pose to their moral welfare such employment in bars and cabarets, peddling, street vending, employment in establishments whose activities consist in producing, printing, displaying or selling written works, images or other items liable to cause young people moral harm and employment in gambling venues other than video-game arcades intended primarily for young people.

The Committee previously asked for information on the extent of child trafficking and children in street situations.

The Committee notes from the report that where child trafficking for the purpose of exploitation through labour is suspected, the amended Law of 29 August 2008 on the free movement of persons and immigration provides that the formal identification of victims will be carried out by the organised crime unit of the criminal investigation department of the Grand Ducal Police.

If there is evidence of trafficking, the Labour and Mines Inspectorate notifies the Grand Ducal Police and, where appropriate, files a report with the State Prosecutor on the aggravating circumstances relating to illegal labour described in Article L.572-5 of the Labour Code. Aggravating circumstances include offences by employers who use the labour or services of a national of a third country who is unlawfully present in the country while knowing that the person is a victim of trafficking.

In addition, the Law of 18 December 2015 on international protection and temporary protection lays down the rules for the reception, in particular, of vulnerable people requesting international protection, including minors and trafficking victims. Under Article 21 of this law, unaccompanied minors under the age of 16 must be accommodated in a housing facility which has been specially equipped for children.

In 2017, 50 unaccompanied minors applied to the Immigration Directorate for international protection (51 in 2016 and 102 in 2015). The most common nationalities were as follows: Albanian (12 people), Moroccan (10 people) and Algerian (5 people).

Many of the staff members of the Luxembourg Reception and Integration Office (OLAI) and its partners working with international protection applicants have attended training on detection of and support for trafficking victims.

According to the human trafficking assistance services, there are currently no known cases of unaccompanied minors who have not been taken care of.

The Committee notes from the GRETA report on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Luxembourg (2018) that the phenomenon of children in a street situation exists in Luxembourg, but there is little knowledge of it.

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

The Committee asks what measures have been taken to protect and assist children in vulnerable situations, with particular attention to children in street situations and children at risk of child labour, including those in rural areas.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Luxembourg is in conformity with Article 7§10 of the 1961 Charter.

Article 8 - Right of employed women to protection

Paragraph 1 - Maternity leave

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

Right to maternity leave

In its previous conclusion (Conclusions XX-4 (2015)), the Committee noted that the situation was in conformity with Article 8§1 with regard to the duration of compulsory leave and maternity leave. The report states that all gainfully employed women (employees, self-employed workers and trainees who have been affiliated to the compulsory sickness and maternity insurance scheme for at least six months out of the 12 months prior to the beginning of the maternity leave) are entitled to 20 weeks' maternity leave, i.e. eight weeks before childbirth and, under the law of 15 December 2017, 12 weeks thereafter.

In the event of a premature birth, the days of prenatal leave not taken are carried out the postnatal leave (but the total length of maternity leave may not exceed 20 weeks). When delivery occurs after the due date, prenatal leave is extended to the actual date of birth but the postnatal leave period is not shortened, remaining at 12 weeks.

The Committee finds that the situation is still in conformity on this point.

Right to maternity benefits

In its previous conclusion, the Committee asked whether career breaks were taken into account when calculating maternity benefits. The report does not answer this question. It points out, however, that to be entitled to cash maternity benefits, employees are required to have been affiliated to the Luxembourg social security scheme for at least six months out of the 12 months preceding maternity leave. The Committee repeats its question. It points out that, should the necessary information not be provided in the next report, nothing will enable the Committee to establish that the situation in Luxembourg is in conformity with Article 8§1 of the 1961 Charter in this respect.

The Committee asks for information in the next report on the right to benefits for employed women who do not qualify for maternity benefits during their maternity leave.

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

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

According to Eurostat data, the median equivalised income in 2017 was €36,102 a year or €3,008.50 a month. 50% of the median equivalised income was €18,051 a year, or €1,504 a month. The gross minimum monthly wage was €1,998.59. The report states that the cash maternity benefit may not be combined with the cash sickness benefit or any other income from employment. In the light of the foregoing, the Committee finds that the situation is in conformity with Article 8§1 on this point.

Conclusion

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

Article 8 - Right of employed women to protection

Paragraph 2 - Illegality of dismissal during maternity leave

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

Prohibition of dismissal

In its previous conclusions (Conclusions XX-4 (2015)), the Committee found that the situation was in conformity with Article 8§2 of the Charter on this point. Since the situation has remained unchanged, it confirms its previous findings of conformity.

Redress in case of unlawful dismissal

In its previous conclusion (Conclusions XX-4 (2015)), the Committee noted that employees unlawfully dismissed during pregnancy or maternity leave could bring an action for damages if they were not reinstated in their former post. It asked for all relevant information regarding the interpretation of this principle by the Luxembourg courts, the criteria applied and any amounts awarded. In reply, the report states that no relevant new case law was established during the reference period. The Committee reiterates its questions.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Luxembourg is in conformity with Article 8§2 of the 1961 Charter.

Article 8 - Right of employed women to protection

Paragraph 3 - Time off for nursing mothers

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

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

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

Conclusion

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

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

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

Legal protection of families

Rights and obligations, dispute settlement

As regards **rights and obligations** of spouses and the **settlement of disputes**, the Committee had previously found that the situation was in conformity with the 1961 Charter (Conclusions XX-4 (2015)). Since the report does not indicate a change, the Committee considers that the situation remains in conformity but asks that the next report provide updated information.

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

As regards lastly **mediation services**, the Committee refers to its previous conclusion (Conclusions XX-4 (2015)) for a description of existing provision and reiterates its request for clarification concerning the accessibility of these services to all families, in particular from a financial point of view.

Domestic violence against women

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

The Committee refers to its previous conclusions (Conclusions XX-4 (2015)), taking note in particular of the protection measures provided for in the 2003 law on domestic violence, as amended in 2013, various prevention measures (information and awareness campaigns, training) introduced under the 3rd National Plan for equality between women and men 2015-2018 and the development of integrated policies by the Committee on co-operation between professionals in the field of combating domestic violence, established by law in 2003.

The report does not provide any information on prosecutions or developments since the last review. The Committee notes, however, the concerns expressed by the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) in its Concluding observations on Luxembourg in 2018, namely the absence of provisions on gender-based violence against women with disabilities and on all forms of psychological violence, the absence of a specialised helpline for victims of gender-based violence against women that is available 24 hours a day and free of charge; the lack of systematic capacity-building for professionals dealing with women and girls who are victims of gender-based violence, including judges, law enforcement officers, migration officers, social workers, medical staff and teachers; the insufficient resources allocated to shelters for women and girls who are victims of gender-based violence and the overcrowding of existing shelters; the fact that women living in de facto unions and sharing leases are not adequately protected by legislation on domestic violence as a result of restrictions on the application of expulsion orders; the insufficient analysis of the reasons for the recent decrease in requests for protection orders; and the fact that data collection does not cover all forms of gender-based violence, which impedes the assessment of the situation and data-driven policymaking.

The Committee asks that the next report provide updated information on domestic violence against women and relevant prosecutions, including restraining orders, as well as on the implementation of the various prevention and protection measures introduced and their impact on the reduction in domestic violence against women, also in the light of the aforementioned recommendations of the CEDAW.

Social and economic protection of families

Family counselling services

The Committee points out that it previously noted (Conclusions XVIII-1 (2006)) the existence of family counselling services and services providing psychological support for families.

Childcare facilities

The Committee refers to its previous conclusion (Conclusions XX-4 (2015)), which contained an overall description of childcare facilities and mentioned draft legislation currently being examined which sought to put in place a national framework on childcare and new criteria regarding training and supervision. The Committee asks that the next report provide information on the follow-up to this proposal together with comprehensive and up-to-date information on childcare facilities, including notably on the number and percentage of children under the age of six covered and the cost for parents.

Family benefits

Equal access to family benefits

In response to its question in the previous conclusion (Conclusions XX-4 (2015), the Committee notes from the report that there is no length of residence requirement for claiming family benefits.

Family allowance is awarded to the child from the month in which he or she is born until the age of 18 years provided that the child:

- is legally domiciled in Luxembourg;
- has effectively and continuously resided in Luxembourg;
- is a member of the family of any person subject to Luxembourg legislation and covered by EU regulations or other bi- or multilateral social security instruments concluded by Luxembourg that provide for the payment of family allowances according to the legislation of the country of employment, provided that the child resides in a country covered by these regulations or the instruments in question.

To be eligible for family allowance, therefore, the child must be legally domiciled in Luxembourg and must have effectively and continuously resided there.

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

Level of family benefits

The Committee considers that, in order to comply with Article 16, family benefits must constitute an adequate income supplement. The Committee notes from the report that in 2017 the basic universal family allowance up to 6 years was €265 per month, or 8% of median equivalised income (€3 000 per month according to MISSOC). The Committee considers that the amount of family benefits is sufficient and that the situation is therefore in conformity with the Charter in this respect.

Housing for families

In its previous conclusion (Conclusions XX-4 (2015)), the Committee asked for information on legal aid for tenants threatened with eviction and on any obligation to provide alternative accommodation.

In response to this question, the report states that in disputes before the Justice of the Peace concerning rental agreements, the parties are not required to engage a lawyer. The cost of the procedure is very low if the tenant does not enlist the services of a lawyer.

The Committee asks however that the next report clarify whether there is a system of free legal aid for tenants who do not have sufficient means to pay a lawyer and whether there is an obligation to offer alternative accommodation in cases of forced eviction.

As regards the provision of an adequate supply of housing for families, the Committee had previously requested information on the upcoming reform of the law relating to social housing and information on the situation in practice (waiting times for social housing, condition and renovation of existing stock).

The report explains, from the point of view of Article 19§4 of the 1961 Charter, that individual housing grants, known as *aides à la personne* (to enable individuals to become home owners) and grants for state-owned and private developers, known as *aides à la pierre* (for building subsidised housing for rent) are provided for in the amended Housing Benefit Act of 25 February 1979. A complete overhaul of this legislation is to be carried out shortly, with a view to reforming the entire system of housing benefits, enabling more people to benefit from it, in particular single parents and families with children. Since 1 January 2016, furthermore, depending on their income and composition, households can apply for a housing grant in the form of a rent subsidy.

The Committee takes note of this information and asks that the next report provide details of the reform of the Housing Benefit Act. It also wishes to be provided with information on the demand for housing grants in the form of rental subsidies and the number of people who have been awarded such grants since 2016. The Committee notes from another source that the number of households on the *Fonds du Logement* waiting list for social housing in May 2017 was 2 700 and that the social housing market appears incapable of satisfying existing needs (European Policy Network (ESPN), "National strategies to fight homelessness and housing exclusion: Luxembourg", 2019, p. 14; see also the ECRI report on Luxembourg, 5th monitoring cycle, 6 December 2016, §§ 81-82). The Committee therefore invites the Government to indicate in the next report the total number of applications for social housing over the next reference period, the percentage of applications granted and the average waiting time for the allocation of social housing.

The Committee also takes note of the information in the report (under the section relating to Article 19§4 of the 1961 Charter) concerning the existence of shelters for the homeless, including families, and other measures co-ordinated by the Ministry of Family Affairs and Integration to prevent homelessness (National strategy against homelessness and housing exclusion 2013-2020, "winter action" programme to provide shelter for homeless people).

As regards the situation of Roma families, the Committee previously requested (Conclusions XX-4 (2015)) information on their actual housing situation, the number of families illegally encamped, whether legal stopping places existed, etc.

The Committee notes that the report does not answer this question. It therefore repeats the question. It points out that should the next report not provide the information requested, there would be nothing to establish that Luxembourg is in conformity with the Charter in this respect.

The Committee refers lastly to its Statement of Interpretation on the rights of refugees under the Charter (Conclusions 2015) and asks that the next report also provide information on access to housing for refugee families.

Participation of associations representing families

The Committee refers to its previous conclusion (Conclusions XX-4 (2015)) for a description of the situation.

Conclusion

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

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

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

The legal status of the child

The Committee previously asked to be informed about the outcome of the legislative amendments to the law on parentage and in particular, whether it affects the right of a child to know his/her origins (Conclusions XX-4 ,2015). The report states that the proposed amendments have not yet been adopted. The Committee asks to be kept informed of all developments in the situation.

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

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

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

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

Protection from ill-treatment and abuse

The Committee previously found the situation to be in conformity in this respect; all forms of corporal punishment are prohibited in all settings. There has been no change to this situation.

Rights of children in public care

The Committee refers to its previous conclusions regarding the criteria for the restriction on parental rights and the placement of children outside their families (Conclusions XX-4, 2015).

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

Children in conflict with the law

The Committee asks for updated information on the age of criminal responsibility.

The Committee previously noted that where a juvenile court has decided that the procedures of the ordinary Penal Code must be applied, a child over the age of 16 may be sentenced to the same penalties as an adult offender. Life imprisonment is the maximum penalty provided by the Penal Code. However, this penalty has never been imposed on a child (Conclusions XX-4, 2015).

The Committee previously asked what are the typical sentences imposed on children (Conclusions XX-4, 2015).

According to the report only one minor has been placed in prison and only for one night.

The Committee asks for further information on the contents of the circular of the Prosecutors Office and the draft law No 7276 on a Youth Protection regime referred to in the report.

As regards pre-trial detention, in exceptional circumstances, a minor can be detained for a period not exceeding one month. The Committee seeks confirmation that this understanding is correct.

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

Right to assistance

The Committee asked previously what assistance is given to children in an irregular migration situation to protect them against negligence, violence or exploitation (Conclusions XX-4, 2015). If this information is not provided in the next report there will be nothing to demonstrate that the situation is in conformity with the Charter.

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 or their parents' immigration status is contrary to the best interests of the child. Likewise unaccompanied minors should not be deprived of their liberty and detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status or lack thereof.

Therefore the Committee requests information on accommodation facilities for migrant children whether accompanied or unaccompanied including measures taken to ensure that such accommodation facilities are appropriate and are adequately monitored.

The Committee again asks whether children in an irregular migration situation have access to healthcare. If this information is not provided in the next report there will be nothing to establish that the situation is in conformity with the Charter.

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

Child poverty

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

The Committee notes that according to EUROSTAT in 2017 23.6% of children in Luxembourg of children were at risk of poverty or social exclusion (lower than the EU average of 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 concludes that the situation in Luxembourg is in conformity with Article 17 of the 1961 Charter.

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

Paragraph 1 - Assistance and information on migration

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

Migration trends

The Committee has assessed the migration trends in Luxembourg in its previous conclusion (Conclusions XX-4 (2015)). The report does not provide any new information in this regard. The Committee asks that the next report includes an up-to-date description of the developments in the migration trends.

Policy and the legal framework

The Committee notes that it has previously assessed the policy and legal framework relating to migration matters (Conclusions XX-4 (2015)). It assessed, in this respect, the legislative framework provided by the 2008 Law on the reception and integration of foreigners in the Grand Duchy of Luxembourg and the 2008 Law o on the free movement of persons and immigration, together with the Luxembourg Reception and Integration Office (OLAI) anti-discrimination activities are complemented by those of the Equal Treatment Centre (CET) and found the situation to be in conformity with the 1961 Charter.

There are no changes reported to the situation. The Committee asks that the next report provide up-to-date information on the framework for immigration and emigration, and on 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 found the situation to be in conformity with the 1961 Charter in its previous conclusion (Conclusions XX-4 (2015)), noting in particular, free and multilingual information and assistance provided by the OLAI. It asked whether additional information and services related to the formalities and conditions of life and work were provided for migrant workers in practice.

In response, the report provides that websites, including Guichet.lu in particular, provide information for migrant workers on formalities to be completed and living and working conditions (vocational guidance and training, social security measures, membership of trade union organizations, housing, social services, education and health, etc.). The Guichet.lu portal allows also to carry out your administrative procedures online and to obtain practical information relating to varous aspects of life in Luxembourg. This information is available in several languages .In addition, any non-Luxembourgish resident can sign a Reception and Integration Contract and, through this, participate in civic instruction courses, language

courses and an orientation course with the main administrations and associations working in the field of integration in Luxembourg.

Measures against misleading propaganda relating to emigration and immigration

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

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

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

The Committee 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.

The Committee notes from the previous report that the OLAI and the CET work to integrate foreign nationals and combat discrimination and the report confirms that this is still the case. The Committee request the next report to provide more details and examples of measures taken to counter misleading propaganda relating to migrant workers.

In reply to the Committee's question about action against misleading propaganda as a means of preventing illegal immigration and trafficking in human beings the report provides that the government has put in place a national action plan against trafficking in human beings in 2016 and its implementation and coordination is ensured by the Ministry of Justice. The activities provided for in the action plan relate to three priority areas: detection and protection of victims, prosecution and punishment of perpetrators and an active, effective and efficient policy against trafficking. The action plan provides in particular for the finalization of a roadmap, corresponding to the national identification and orientation mechanism, the facilitation of the identification process, the strengthening of the status of victims, the establishment of a reception and adequate support for male victims and minor victims, adequate training for those concerned and better awareness of the general public and at-risk audiences, for example through awareness raising campaigns, some of which already took place in 2016-2018. Furthemore, an information brochure on trafficking in human beings was issued, providing information on the criminal penalties and informing the public about possible and detectable signs of trafficking offenses.

The Committee asks the next report to provide information on any developments in this respect, including on the envisaged adoption of the Instanbul Convention.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Luxembourg is in conformity with Article 19§1 of the 1961 Charter.

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

Paragraph 2 - Departure, journey and reception

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

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 previously concluded (Conclusions XX-4 (2015)) that it had not been established that the measures intended to facilitate the departure, journey and reception of migrant workers were adequate. The subsequent reports stated solely that Luxembourg had no active policy to recruit migrant workers, thus no measures were necessary to facilitate their departure, journey and reception. The Committee pointed out that the persistent absence of the information requested amounted to a breach of the reporting obligation entered into by Luxembourg under the Charter.

The present report again repeats the same statement on the part of the authorities. The Committee recalls that the scope of Article 19§2, as indicated above, goes much beyond the active recruitment policy and the resulting journey and reception of migrant worker. In this light, the Committee again insists that the next report provide a comprehensive reply to following questions:

- what specific steps are taken in the period following the arrival of any new migrants to assist them with matters such as those mentioned in the case-law of the Committee?
- what assistance, financial or otherwise, is available to all migrants in emergency situations, in particular in response to their needs of food, clothing and shelter?
- is other help available from the state, in particular are there limits or restrictions on the access of working migrants to state welfare provision, and if so, what those limits are?
- what rules govern the access to healthcare for all migrants, irrespectively of their status, in particular in emergency?

The Committee recalls that states must demonstrate that the national situation is in conformity with the Charter. In the event of repeated absence of information, the Committee will conclude that there is failure to comply.

Services during the journey

As regards the journey, the Committee recalls that the obligation to "provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey" relates to migrant workers and their families travelling either collectively or under the public or private arrangements for collective recruitment. The Committee considers that this aspect of Article 19§2 does not apply to forms of individual migration for which the state is not responsible. In such cases, the need for reception facilities would be all the greater (Conclusions V (1975), Statement of Interpretation on Article 19§2).

The Committee notes that no large-scale recruitment of migrant workers has been reported in the reference period. It asks what requirements for ensuring medical insurance, safety and social conditions are imposed on employers, shall such recruitment occur, and whether there is any mechanism for monitoring and dealing with complaints, if needed.

Conclusion

The Committee concludes that the situation in Luxembourg is not in conformity with Article 19§2 of the 1961 Charter on the ground that it has not been established that the measures taken to facilitate the departure, journey and reception of migrant workers and their families are adequate.

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 Luxembourg.

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 need's 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 already positively assessed the co-operation between Luxembourgian social services and social services of emigration and immigration states (see Conclusions XIX-4 (2011) and earlier ones, in particular, Conclusions XIV-1 (1998)). It deferred its previous conclusion (Conclusions XX-4 (2015)) pending receipt of full and up-to-date information on the situation in law and in practice.

In reply, the report recalls that as regards social security and social services, migrant workers and their families are treated on an equal footing with Luxembourgers. In order to maintain and facilitate access to social rights for migrants from third countries to Luxembourg, bilateral relations have been developed through social security agreements with countries outside the Economic Area, including the Parties to the Charter (Bosnia and Herzegovina, Macedonia, Moldova, Montenegro, Serbia, Turkey, Albania. Negotiations are ongoing with Russia and Ukraine).

The report further provides that Social Offices were created under the supervision of the communes, with a view to, in particular, provide advice and information as regards social measures, benefits, socio-educational guidance to allow migrant workers to gradually overcome their difficulties.

The Committee asks whether the cooperation extends beyond social security alone (for example in family matters) and what kinds of service are involved in this communication.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Luxembourg is in conformity with Article 19§3 of the 1961 Charter.

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

Paragraph 4 - Equality regarding employment, right to organise and accommodation

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

It concluded previously ((Conclusions XX-4 (2015)), as well as Conclusions XIX-4 (2011), XVIII-1 (2006) and XVI-1 (2003)) that the situation in Luxembourg was not in conformity with Article 19§4 of the 1961 Charter, as due to the lack of essential information it was not able to establish that migrant workers lawfully resident in the country were treated no less favourably than Luxembourg nationals with regard to remuneration and other working conditions, as well as accommodation.

Remuneration and other employment and working conditions

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

In its previous conclusion (Conclusions XX-4 (2015), the Committee noted the equality principles in the legal framework, negatively assessing the limited scope of the prohibition on discrimination set out in Article 251 of the Labour Code, which did not cover discrimination on the grounds of nationality, origin or residence, and did not apply to non-employed work, limiting the scope of legal protection of migrant workers facing these situations. In reply to these findings, the report states that the ground of nationality was introduced to the scope of the prohibition of discrimination covered by Article 251 of the Labour Code by the law of 7 November 2017. With this in mind, it recalls that the Labour Code prohibits direct or indirect discrimination, which extends to conditions of access to employment, including selection criteria, recruitment conditions and promotion, access to vocational guidance and training, terms of employment and working conditions, including rules on dismissal and remuneration.

The Committee has also previously pointed out (see Conclusions XX-4) that besides the prohibition of discrimination in law, proportionate steps must also be taken to prevent or remedy discrimination in practice (Conclusions III (1973), Statement of Interpretation on Article 19§4). In reply to its conclusion of non-conformity with the Charter on this point, the report states that the government is actively supporting a series of projects led by non-governmental organizations that promote the employment of people of foreign origin through targeted training. The government also actively supports the private initiative of the "Lëtzebuerg Diversity Charter" for the companies of Luxembourg in which they commit themselves to act for the promotion of diversity through concrete actions going beyond legal and regulatory obligations of non-discrimination. The purpose of the Charter is to encourage businesses to respect and promote diversity. Another practical implementation measure is, according to the report, the national action plan for integration and the fight against discrimination (NAP) entrusted to the newly created Luxembourg Office for Reception and Integration (OLAI). The OLAI has been given explicit jurisdiction in the fight against discrimination. In the reference period, the OLAI conducted an annual program of information and awareness actions. Also, the Employment Development Agency has set up individualized monitoring of jobseekers, in particular foreign origin women, in order to offer targeted language training and courses.

Furthermore, to promote awareness among the judiciary, relevant initial and continuous training of legal professions (lawyers, magistrates of the judiciary and magistrates of the administrative order, notaries, bailiffs) is ensured. Moreover, each major political action is accompanied by specific training for the professional circles concerned or by an awareness-raising campaign.

As regards the Committee's question whether posted workers have the right, for the period of their stay and work in Luxembourg, to be treated no less favourably than national workers, the report states that pursuant to the Labour Code, posted workers receive the same treatment as that accorded to national workers and the same provisions of the Labour Code apply to them.

The Committee notes from the Migration Integration Policy Index (MIPEX) 2015 report on Luxembourg that non-EU residents have unfavourable access to the labour market, being excluded from the public sector, several areas of the private sector and self-employment. The Committee asks the next report to comment on these observations.

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

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

The Committee has noted developments in this respect in its previous conclusion (see Conclusions XX-4 (2015) for detailed description).

In reply to the Committee's detailed questions, the report states that migrant workers enjoy the right to take part in trade union activities and to be the founding member of a trade union provided they are entitled to work in Luxembourg. Furthermore, the report provides information on the status of representatives of employees working in Luxembourg and the functioning of the European Works Council and the cross-border information and consultation procedure provided for by Articles L432-1 et seq. of the Labour Code. The legal framework in all these aspects indicates an equal treatment for migrant workers (see report for an exhaustive description).

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 reply to the Committee's request for information on the law and practice in its previous conclusion, the report confirms that the conditions for obtaining individual housing benefits or access to social housing are the same for national and foreign households, without discrimination. The Committee understands that migrant workers are included and asks the next report for confirmation. Furthermore, the Government is not only confined to ensuring non-discrimination between nationals and foreigners in housing but conducts an active housing policy. Since 2016, housing assistance in the form of a rent subsidy can be granted, the amount varying according to the income and the composition of the household. Social housing and shelters are provided for people who are homeless or at risk of social exclusion.

Monitoring and judicial review

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

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

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

The report provides information on several monitoring and supervisory bodies.

Firstly, the Ombudsman Office was created in 2003 as an independent institution competent to deal with complaints related to the functioning of the administrations of the State and the communes, as well as public establishments. In 2006 the Centre for Equal Treatment was tasked with promoting, analysing and monitoring equal treatment of all persons without discrimination on grounds of race, ethnic origin, sex, sexual orientation, religion or belief, disability and age. Furthermore, in 2007 a special commission was established by the Minister of the Civil Service to ensure compliance with the provisions prohibiting harassment in the field of the public sector. Finally, the Equality Officer's mission is to defend equal treatment as regards access to employment, vocational training and promotion, as well as remuneration and working conditions, with specific powers conferred upon it by legal provisions, empowering it to act alone or in conjunction with trade unions.

As regards judicial remedies, complaints about discrimination may be brought before courts, with anti-discrimination principles and the reversed burden of proof, as set be by criminal, civil and administrative codes. Protection of victims or witnesses of a discriminatory act or behaviour is enhanced by the right of non-profit associations approved by the Minister of Justice to take legal action before the courts.

The Committee notes from the MIPEX 2015 report that "Luxembourg's equality policies and body provide weak leadership to support the public to use their rights and promote equality across society". It asks the next report to comment on these observations.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Luxembourg is in conformity with Article 19§4 of the 1961 Charter.

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

Paragraph 5 - Equality regarding taxes and contributions

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

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

In its previous conclusion (Conclusions XX-4 (2015) the Committee has assessed an up-to-date description of the legal framework relating to taxes and mandatory employment contributions of migrant workers and considered that there had been no changes in the legal situation which it previously found to be in conformity with Article 19§5 of the 1961 Charter. It asked, however, for information on the treatment of posted workers with regard to employment taxes, dues and contributions.

The report confirms that the income tax law only makes a distinction between resident and non-resident taxpayers, while ensuring that migrant workers, being legally on the territory of the Grand Duchy, receive treatment no less favourable than national workers with regard to taxes, charges and contributions relating to work. The report does not provide information on the treatment of posted workers in this respect. The Committee recalls its question and underlines that should the next report not provide a comprehensive reply, 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 6 - Family reunion

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

Scope

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

The Committee refers to its previous conclusion (Conclusions XX-4 (2015)), in which it has found the scope of the right to family reunion to be in conformity with the Charter. The Committee observes that the legal framework allows migrant workers to apply for their adult spouse or civil/long-term partner, dependent parents as well as minor children. Since 2008, they can also apply for adult children who are financially dependent or up to age 21. Under December 2011 Immigration Law, a stable relationship can be taken into account, based on the intensity, length and stability of the links proven by all means (e.g. living together for more than a year, shared responsibility for a child).

Conditions governing family reunion

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

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

The Committee notes from the report that since 2017 there is no length of residence requirement to apply for a family reunion and confirms its finding of conformity with the Charter on this point.

In its previous conclusion (Conclusions XX-4 (2015) the Committee has assessed the housing requirement and found it to be in conformity with the Charter. Nevertheless, it recalls its request for examples of how derogation from this requirement is applied in practice.

As to the means requirement, the Committee noted in the previous conclusion that it applied in Luxembourg, however, the minister may find in favour of sponsors despite their having insufficient means having taken account of developments in their situation, particularly as regards the stability of their employment and income or the fact that they own their own home or occupy it free of charge. The Committee asked whether social assistance benefits were included in the calculation of the sufficient income. In reply, the report provides that third-country nationals, whether or not they are workers, are entitled to social assistance benefits after a stay of at least five years in the last 20 years. Social assistance benefits are not taken into account for the assessment of sufficient resources for family reunification. The Committee considers that it is not in conformity with the Charter. It refers to the statement of

interpretation on income (Conclusions XIX-4 (2011), Statement of interpretation on Article 19§6) and recalls that social benefits shall not be excluded from the calculation of the income of a migrant worker who has applied for family reunion.

The Committee has previously noted that under the 2008 Grand-Ducal Regulation enforcing certain measures relating to the administrative formalities for residence permits, checks as to whether integration has been achieved to the level required to obtain a long-term residence permit were carried out, in particular by compliance with the provisions of a reception and integration contract (CAI) and participation in the measures and activities provided for by law. It asked how such provisions were applied in practice. The report does not address the issue of language or integration tests, the Committee therefore repeats its request for information on this subject 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. The Committee recalls in this respect that the requirement to sit tests is contrary to Article 19§6 if it has the potential effect of denying entry or the right to remain to family members of a migrant worker or it strips the right guaranteed under Article 19§6 of its substance, for example by imposing prohibitive fees, or by failing to consider specific individual circumstances such as age, level of education or family or work commitments (Conclusions XX-4 (2015), Statement of interpretation on Article 19§6).

With regard to the health requirement, the Committee noted from the previous report that an application for family reunion may be rejected or potentially residence permits withdrawn from migrant workers and their families for public order or public health reasons pursuant to the 2008 Law for applications for family reunion by citizens of a third country, albeit such situation has never arisen in practice. The Law restricts these public health reasons to the potentially epidemic diseases described by the World Health Organisation and the contagious infectious diseases listed in the Grand-Ducal Regulation and provides for the possibility, in exceptional circumstances when there is serious evidence of the need to do so, to require a person with the right to residence to undergo a medical check-up within three months of arriving so that it can be certified that he or she is not suffering from one of the aforementioned diseases. Furthermore, Committee observed that the 2009 Grand-Ducal Regulation on the medical examination of foreign nationals stated that examinations before applying for a residence permit were designed to detect diabetes, drug addiction, tuberculosis, mental disorders and health problems which are clearly incompatible with the purpose of staying in the country, including the desire to engage in a salaried activity.

The Committee recalls that a state may not deny entry to its territory for the purpose of family reunion to a family member of a migrant worker for health reasons. A refusal on this ground may only be admitted for specific illnesses which are so serious as to endanger public health (Conclusions XVI-1 (2002), Greece). These are the diseases requiring quarantine which are stipulated in the World Health Organisation's International Health Regulations of 1969, or other serious contagious or infectious diseases such as tuberculosis or syphilis. Very serious drug addiction or mental illness may justify refusal of family reunion, but only where the authorities establish, on a case-by-case basis, that the illness or condition constitutes a threat to public order or security (Conclusions XV-1 (2000), Finland). With this in mind, the Committee asked for information on practice of medical examinations relating to drug addictions and mental disorders and how it is established that such conditions, even if incompatible with the desire to engage in a salaried activity, constitute a threat to public order or security.

The report does not provide any information in this respect. The Committee considers that although the requirements of the law may prevent family reunion in only a limited number of cases, it is important that in practice the authorities in charge of issuing residence permits following applications for family reunion take account of the fact that "the principle of family reunion is but an aspect of the recognition in the Charter (Article 16) of the obligation of states to ensure social, legal and economic protection of the family (…). Consequently, the application of Article 19§6, should in any case take account of the need to fulfil this

obligation" (Statement of interpretation – Conclusions VIII). Accordingly, the Committee concludes that it has not been established that the refusal of a family reunification on health grounds is strictly limited to situation when the illness or condition constitutes a serious threat to public order or security.

Finally, the Committee recalls that once a migrant worker's family members have exercised the right to family reunion and have joined him or her in the territory of a State, they should have an independent right to stay in that territory (Conclusions XVI-1 (2002), Article 19§8, Netherlands). It asks whether a family member would be expelled if the sponsoring member's residence permit expires and if so, under which circumstances. Meanwhile, it reserves its position on this point.

Remedy

The Committee recalls that restrictions on the exercise of the right to family reunion should be subject to an effective mechanism of appeal or review, which provides an opportunity for consideration of the individual merits of the case consistent with the principles of proportionality and reasonableness (Conclusions 2015, Statement of Interpretation on Article 19§6).

The report does not address this issue. 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.

Conclusion

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

- social benefits are excluded from the calculation of the income of a migrant worker who has applied for family reunion;
- it has not been established that the refusal of a family reunification on health grounds is strictly limited to situation when the illness or condition constitutes a serious threat to public interest;
- it has not been established that the right to family reunion is subject to an effective mechanism of appeal or review.

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

Paragraph 7 - Equality regarding legal proceedings

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

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 civil and criminal proceedings concerning the rights guaranteed by Article 19§7 (Conclusions 2015) and found it to be in conformity with the requirements of the Charter. The Committee asked for information with respect to legal aid in administrative or extra-judicial proceedings.

The report confirms that legal aid is granted on an equal basis in extra-judicial and non-contentious proceedings. It is also available before administrative courts. Legal aid therefore applies outside the process, in particular for legal consultations or bailiff's summons, administrative remedies, as well as for enforcement proceedings. It may be refused when "the action appears obviously inadmissible, unfounded, abusive or disproportionate in relation to the costs to be exhibited". It is the responsibility of the President of the court, through the supporting documents and the description of the dispute provided in support of the application, whether the judicial action concerned is covered by one of these exceptions. When the President makes a reasoned refusal decision based on this provision, the applicant for legal aid may lodge an appeal against this decision before the Disciplinary and Administrative Council in the form of a registered letter within ten days of the notification of the decision of the President. The Council's decision may be subject to an appeal.

Conclusion

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

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

Paragraph 8 - Guarantees concerning deportation

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

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).

Following a long series of its conclusions on non-conformity of the situation in Luxembourg with requirements of Article 19§8, in its previous conclusions (Conclusions XX-4 (2015)), the Committee was able to consider the arrangements under the Law of 29 August 2008 to be in conformity with Article 19§8 of the 1961 Charter. It noted, namely, that expulsion is reserved for foreigners whose presence constitutes a serious threat to public order or safety or who reappear in the country in breach of an entry ban. Decisions in this connection are taken by the minister and communicated to the person concerned by administrative channels and must fully and precisely state the public order and safety reasons unless this is contrary to national security interests, as well as outlining the procedures and time-limits for appeals.

The Committee reserved, however, its position, asking whether decisions on expulsion take account of the personal circumstances, what facts or decisions can give rise to expulsion in practice and what national security interests may prevent reasons from being given in expulsion decisions. It also asked for information on the effects that the expulsion of migrant workers may have on the right of residence of their family members.

The report does not provide any information on these issues. The Committee considers that it has not been established that the situation is in conformity with the 1961 Charter as regards guarantees concerning deportation.

Conclusion

The Committee concludes that the situation in Luxembourg is not in conformity with Article 19§8 of the 1961 Charter on the ground that it has not been established that there are sufficient guarantees concerning deportation of migrant workers.

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 Luxembourg.

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 addressed the legal framework relating to transfer of earnings and savings 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 XIX-4).

In 2011 (Conclusions XIX-4), the Committee requested a full and up-to-date description of the situation in law and practice in respect of Article 19§9. In 2015, the Committee deferred its conclusion, pending receipt of this information (Conclusions XX-4).

The report states that there have been no changes to the situation which the Committee previously considered to be in conformity with the Charter. The Committee recalls its request for updated information, in the light of the fact that the latest comprehensive assessment of the situation dates back to 1994. Meanwhile, it considers that it has not been demonstrated that the situation is still in conformity with Article 19§9 of the 1961 Charter.

Conclusion

The Committee concludes that the situation in Luxembourg is not in conformity with Article 19§9 of the 1961 Charter on the ground that it has not been established that there are no excessive restrictions on the right of migrants to transfer earnings and savings

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 Luxembourg.

The Committee notes from the report and from previous reports that self-employed migrant workers are treated in the same way as employed migrant workers. It points out, however, that a finding of non-conformity with one of the other paragraphs (1 to 9) of Article 19 of the 1961 Charter may lead to a finding of non-conformity with paragraph 10 (Conclusions I (1969), Statement of interpretation on Article 19§10).

The Committee, noting that self-employed migrant workers do not enjoy the protection provided for by Articles 19§2, 19§6, 19§8 and 19§9 of the 1961 Charter, concludes that the situation in Luxembourg is not in conformity with Article 19§10 of the 1961 Charter.

Conclusion

The Committee concludes that the situation in Luxembourg is not in conformity with Article 19§10 of the 1961 Charter on the ground that the same grounds for non-conformity under Articles 19§2, 19§6, 19§8 and 19§9 of the 1961 Charter apply also to self-employed migrants.