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EUROPEAN SOCIAL CHARTER

European Committee of Social Rights

Conclusions 2019

MALTA

This text may be subject to editorial revision.

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

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

The European Social Charter (revised) was ratified by Malta on 27 July 2005. The time limit for submitting the 12th report on the application of this treaty to the Council of Europe was 31 October 2018 and Malta submitted it on 31 October 2018.

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

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

Malta has accepted all provisions from the above-mentioned group except Articles 8§3, 19, 27§1 and 31.

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

The present chapter on Malta concerns 19 situations and contains:

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

In respect of the other 3 situations concerning Articles 7§2, 7§5 and 7§9, 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 Malta under the Revised Charter. The Government consequently has an obligation to provide this information in the next report from Malta on the articles in question.

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

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

The deadline for the report was 31 December 2019.

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

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

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

In its previous conclusion, the Committee found that the situation in Malta was not in conformity with Article 7§1 of the Charter on the ground that the prohibition of employment of children under 15 did not apply to children employed in occasional or short-term work involving domestic service in a private household or work in a family undertaking (Conclusions 2015).

According to the report, the Maltese authorities consider that the protection of young persons is still guaranteed under the existing regulations since the exemption is applicable only in so far as occasional work or short-term work is concerned. Moreover, it is emphasised that in both cases, the work to be performed cannot be regarded as being harmful, damaging or dangerous to a young person.

The Committee notes that there has been no change to the situation which it has previously found to be in non-conformity with the Charter. It therefore reiterates its previous finding of non-conformity on this point.

The report indicates that the employment of a young person is regulated by the Young Persons (Employment) Regulations issued under Chapter 452 of the Employment and Industrial Relations Act. Young persons are persons under the age of 18, and this includes children and adolescents. The law defines a 'child' as a person who is under school leaving age (currently this is 16) and 'adolescents' as persons who have reached 16 years of age but are less than 18 years of age.

The report further indicates that employment of children is only allowed in certain situations for the purposes of cultural, artistic, sporting or advertising activities and in light work if the child has reached at least 14 years of age. This is subject to prior authorisation by the Department of Industrial and Employment Relations (DIER) in each specific case. The report further describes the conditions and procedure of granting such authorisation.

The Committee notes that the duration of light work performed during school term-time outside the fixed school hours for children under 15 is established at two hours per school day and 12 hours per week (according to the Schedule to Regulation 4(1): Working time for a child). It further notes that according to the same Schedule, children under 15 years of age are allowed to perform light work during school holidays for seven hours per day and 35 hours per week.

The Committee refers to its Statement of Interpretation on permitted duration of light work and recalls that children under the age of 15 and those who are subject to compulsory schooling are entitled to perform only "light" work. Work considered to be "light" in nature ceases to be so if it is performed for an excessive duration. States are therefore required to set out the conditions for the performance of "light work" and the maximum permitted duration of such work. The Committee considered that children under the age of 15 and those who are subject to compulsory schooling should not perform light work during school holidays for more than 6 hours per day and 30 hours per week in order to avoid any risks that the performance of such work might have for their health, moral welfare, development or education (Conclusions 2015, General Introduction).

As regards the duration of light work during school term, the Committee has considered that a situation in which a child who is still subject to compulsory education performs light work for 2 hours on a school day and 12 hours a week in term time outside the hours fixed for school attendance, is in conformity with the requirements of Article 7§3 of the Charter (Conclusions 2011, Portugal). The Committee notes that the Maltese Regulations comply with the requirements of Article 7§1 of the Charter as regards the duration of light work during school term.

Given that under the Young Persons Employment Regulations, children under 15 years of age are allowed to perform light work up to seven hours a day and 35 hours a week during their

school holidays, the Committee considers that the duration of such light work is excessive and therefore cannot be qualified as being light work.

The report provides information on the number of breaches related to the employment of minors detected during the reference period (for example, 15 violations in 2015, 21 violations in 2016 and 4 violations in 2017). The Committee asks for up-to-date information regarding the activities carried out by the labour inspectorates and breaches detected in relation to the employment of minors in the next report.

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

Conclusion

The Committee concludes that the situation in Malta is not in conformity with Article 7§1 of the Charter on the grounds that:

- the prohibition of employment of children under the age of 15 does not apply to children employed in occasional or short-term work involving domestic service in a private household or work in a family undertaking;
- children under the age of 15 are permitted to perform light work for an excessive duration and therefore the work cannot be qualified as light.

Article 7 - Right of children and young persons to protection

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

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

In its previous conclusion (Conclusions 2015), the Committee asked for a full and up-to-date description of the situation in law and in practice with regard to prohibition of employment of young persons under the age of 18 in occupations regarded as dangerous or unhealthy.

The report provides information on the working conditions of children (persons who are under school leaving age, which is currently at 16, see Conclusion on Article 7§1).

In order to assess the situation, the Committee asks for information on the employment conditions of adolescents (persons who have attained 16 years of age but are less than 18 years of age) and in particular whether persons under 18 years of age are prohibited to work in dangerous and unhealthy activities.

The Committee recalls that in application of Article 7§2, domestic law must set 18 as the minimum age of admission to prescribed occupations regarded as dangerous or unhealthy. There must be an adequate statutory framework to identify potentially hazardous work, which either lists such forms of work or defines the types of risk (physical, chemical, biological) which may arise in the course of work (Conclusions 2006, France). However, if such work proves absolutely necessary for their vocational training, they may be permitted to perform it before the age of 18, but only under strict, expert supervision and only for the time necessary (Conclusions 2006, Norway). The Committee asks information on the statutory framework to identify potentially hazardous work, which either lists such forms of work or defines the types of risk (physical, chemical, biological) which may arise in the course of work.

The report provides information on the number of accidents at work by age groups for the period 2015-2017 as provided by the National Statistics Office. For example the rate of occupational accidents for the age group 15-24 represented 13.3% in 2015, 14.2% in 2016 and 12.4% in 2017. The Committee asks for up-to-date information in the next report.

Conclusion

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

Article 7 - Right of children and young persons to protection

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

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

The Committee noted previously that no person may employ a minor of compulsory school age without the written permission of the Minister responsible for education. The latter may give his permission after having made the necessary investigations and once he is of the opinion that there are sufficient reasons to justify the exemption from the regular attendance of the minor at school and when the Minister is also of the opinion that the employment of the minor would not be of harm to the health or normal development of that minor (Conclusions 2015).

The Committee previously asked for information indicating whether the situation in Malta complied with the principles set out in its Statement of Interpretation on Article 7§3 in the General Introduction of Conclusions 2011. In particular, it asked whether the rest period free of work had a duration of at least two consecutive weeks during the summer holiday and what were the rest periods during the other school holidays.

The Committee noted that according to Regulation 7 of the Young Persons (Employment) Regulations (S.L. 452.92), a child shall have an aggregate minimum of 21 days free of any work during school holidays (Conclusions 2015). It asked confirmation that children have 2 consecutive weeks free from work during the summer holiday.

The current report indicates that according to Regulation 6 the Young Persons (Employment) Regulations (S.L. 452.92), children shall be entitled to a minimum daily rest period of fourteen consecutive hours for each twenty four hour period, and a minimum weekly rest period of two consecutive days in any calendar week, one day of which shall be a Sunday. The report indicates that nothing precludes a child working in terms of the Maltese Regulations to request 2 consecutive weeks of annual vacation leave.

The Committee recalls that during school term, the time during which children may work must be limited so as not to interfere with their attendance, receptiveness and homework (Conclusions (2006) Albania). The Committee recalls in this sense that states are required to define the types of work which may be considered light, or at least to draw up a list of those who are not. Work considered to be light ceases to be so if it is performed for an excessive duration (International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §§29-31).

The Committee refers to its Statement of Interpretation on permitted duration of light work and recalls that children under the age of 15 and those who are subject to compulsory schooling are entitled to perform only "light" work. Work considered to be "light" in nature ceases to be so if it is performed for an excessive duration. States are therefore required to set out the conditions for the performance of "light work" and the maximum permitted duration of such work. The Committee considered that children under the age of 15 and those who are subject to compulsory schooling should not perform light work during school holidays for more than 6 hours per day and 30 hours per week in order to avoid any risks that the performance of such work might have for their health, moral welfare, development or education. In addition, the Committee recalls that, in any case, children should be guaranteed at least two consecutive weeks of rest during summer holiday (Conclusions 2015, General Introduction).

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

The Committee notes that according to the Schedule to Regulation 3(3)(b)(ii) the duration of light work performed during school term (outside the school fixed hours) is of two hours on a

school day and 12 hours a week provided that the maximum daily working time shall be seven hours per day (for 14 up to 15) and eight hours per day (over 15-16). The Committee considers that the situation complies with the requirements of Article 7§3 of the Charter on this point.

With regard to light work performed during school holidays, the Committee notes that according to the Schedule to Regulation 3(3)(b)(ii), children of 14 up to 15 are may perform light work for seven hours a day and 35 hours a week, while children over 15 up to 16 are allowed to perform light work of up to eight hours a day and 40 hours a week. In the light of its Statement of Interpretation mentioned above, the Committee considers that the daily and weekly duration of light work permitted to children subject to compulsory education during school holidays is excessive and therefore such work cannot be qualified as light.

The report provides information on the number of breaches related to employment of minors detected during the reference period (for example 15 violations in 2015, 21 violations in 2016 and 4 violations in 2017). The Committee asks up-to-date information on the activities of the authorities of monitoring and detecting cases of possible illegal employment of young workers subject to compulsory education.

Conclusion

The Committee concludes that the situation in Malta is not in conformity with Article 7§3 of the Charter on the ground that the daily and weekly duration of light work permitted to children subject to compulsory education during school holidays is excessive and therefore such work cannot be qualified as light.

Article 7 - Right of children and young persons to protection

Paragraph 4 - Working time

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

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

The Committee noted previously that in Malta a limit of eight hours per day and 40 hours per week were established with respect to the work performed by children of 14-16 years of age under a combined work, or training scheme or an in-plant work-experience scheme. It therefore concluded that the situation is not in conformity with Article 7§4 of the Charter on the ground that the daily and weekly working time for children under the age of 16 is excessive (Conclusions 2015).

The current report indicates that Regulation 4 (3) and (4) of the Young Persons (Employment) Regulations (S.L. 452.92) establishes that any time spent on training by a young person working under a theoretical and, or practical combined work, training scheme or an in-plant work-experience scheme shall be counted as working time. Where a young person is employed by more than one employer, working days and working time shall be cumulative and shall not exceed the working days and working time established by the Young Persons (Employment) Regulations.

With regard to the working time, the Committee notes that there has been no change to the situation which it has previously found to be in non-conformity with the Charter. It therefore reiterates its conclusion of non-conformity on this point.

Conclusion

The Committee concludes that the situation in Malta is not in conformity with Article 7§4 of the Charter on the ground that the daily and weekly working time for children under the age of 16 is excessive.

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 Malta.

Young workers

The Committee recalls that under Article 7§5 of the Charter, wages paid to young workers of 16 and 17 years of age can be reduced by as much as 20% compared to a fair adult's starting or minimum wage.

The report indicates that in 2018, the net national minimum wage for young workers aged under 17 years was € 146.56 (€162.89 gross wage less €16.30 social security contributions), the net national minimum wage for young workers aged 17 years was € 149.16 (€165.73 gross wage less €16.57 social security contributions), the net minimum wage of workers aged 18 years and over was € 155.25 (€172.51 gross wage less €17.26 social security contributions). In all cases, no tax is deducted. In this respect the Committee asks if these amounts are to be intended per week.

Under Article 7§5 the Committee examines if young workers are paid the equivalent of 80% of a minimum wage in line with the Article 4§1 fairness threshold (60% of the net average wage). Thus, if young workers' wage amounts to 80% of the minimum threshold required for adult workers (60% of the net average wage), the situation would be in conformity with Article 7§5 (Conclusions XVII-2, Spain).

In order to assess the situation, the Committee needs information on the minimum wage/starting wage of young workers and adult workers calculated net. The Committee underlines that it requests information on the net values, that is, after deduction of taxes and social security contributions.

The Committee notes that in its Conclusions 2018 on Malta on Article 4§1 concluded that it has not been established that the minimum wage ensure a decent standard of living for all workers. Therefore, the Committee reserves its position on this point.

Apprentices

The Committee recalls that apprentices may be paid lower wages, since the value of the on-the-job training they receive must be taken into account. However, the apprenticeship system must not be deflected from its purpose and be used to underpay young workers. Accordingly, the terms of apprenticeships should not last too long and, as skills are acquired, the allowance should be gradually increased throughout the contract period: starting from at least one-third of the adult starting wage or minimum wage at the commencement of the apprenticeship, and arriving at least at two-thirds at the end (cf. Conclusions Portugal, 2006).

In its conclusions 2011 the Committee considered that the apprentices' allowances were below the fairness threshold set in Article 7§5, and therefore were not in conformity with the Charter.

The report indicates that apprentices are entitled to receive from the employer a remuneration of € 49,97 per week on the first year of apprenticeship and € 52,50 on the second year. The apprentices are also entitled to receive an allowance of € 87.64 every 4 weeks from the Maintenance Grant (stipend) on the first and second year of apprenticeship. The report indicates that in addition to the weekly remuneration paid by the employer, apprentices are entitled to receive a summer remuneration through the Students Maintenance Grant of € 232,94. In this respect the Committee asks if these amounts indicated of the Maintenance Grant (stipend) and the Students Maintenance Grant are per week through all year or not. Therefore, the Committee reserves its position on this point.

Conclusion

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

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 Malta.

The report indicates that any on the work training is to be considered as working time and thus is to be remunerated accordingly. Thus if the Inspectorate Section receives complaints and reports or becomes aware of situations where training is not being remunerated, remedial action would be taken accordingly.

The Committee recalls that the situation in practice should be regularly monitored and reiterates its request for information as regards the activities of the Department of Industrial and Employment Relations (DIER), its findings and sanctions in relation to the obligation of employers to provide remuneration for training time as for the normal working time.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Malta is in conformity with Article 7§6 of the Charter.

Article 7 - Right of children and young persons to protection

Paragraph 7 - Paid annual holidays

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

The Committee recalls that according to Article 7§7 of the Charter, employees incapacitated for work by illness or accident during all or part of their annual leave must have the right to take the leave lost at some other time – at least to the extent needed to give them the four weeks' paid annual leave provided for in the Charter. This principle applies in all circumstances, regardless of whether incapacity begins before or during leave – and also in cases where a company requires workers to take leave at a specified time (Conclusions 2006, France).

In its previous Conclusions (2015), the Committee asked whether the young workers have the possibility to take the leave lost, due to illness or accident, at some other time.

The report indicates that if a young person in employment is on sick leave or injury leave, the annual vacation leave continues to accrue in his/her favour. If it is not possible for a young worker to enjoy the balance of leave during the calendar year during which he/she was absent due to sickness or injury, he/she has the right to carry forward that balance of leave to the following year and enjoy it accordingly.

The Committee recalls that the satisfactory application of Article 7 cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised. It therefore asks 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 regarding paid annual holidays of young workers under the age of 18.

Conclusion

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

Article 7 - Right of children and young persons to protection
Paragraph 8 - Prohibition of night work

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

The report indicates that objective grounds must be present in order for work to be carried out at night. Moreover the law emphasizes that compensatory rest should be granted once there is an objective ground justifying night work.

The Committee previously asked information on the proportion of young workers not covered by the prohibition of night work. It also requested information showing that the exceptions to the prohibition of night work in health care, culture, sports, advertising, shipping and fisheries are necessary for a proper functioning of the relevant economic sector and that the number of young workers concerned is low (Conclusions 2011 and Conclusions 2015). The report does not provide the requested information. Therefore, the Committee maintains its conclusion of non-conformity.

The Committee recalls that the situation in practice should be regularly monitored and therefore it asks 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 regarding prohibition of night work for young workers under the age of 18.

Conclusion

The Committee concludes that the situation in Malta is not in conformity with Article 7§8 of the Charter on the ground that it has not been established that the exceptions to the prohibition of night work in some economic sectors are justified and do not concern their proper functioning.

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 Malta.

In its previous conclusion (Conclusions 2011), the Committee analysed the legal framework and concluded that the situation in Malta was in conformity with Article 7§9 of the Charter.

The report indicates that the officers of the Occupational Health and Safety Authority may see copies of the reports of such compulsory medical examinations, while, in order to avoid unnecessary bureaucratic burdens, there is no legal obligation on the part of the employers to submit to the Occupational Health and Safety Authority (OHSA) a copy or details of, medical examinations carried out under S.L. 424.10 (LN 91 / 2000).

The Committee previously (Conclusions 2011 and Conclusions 2015) requested information on the monitoring activity of the Labour Inspectorate. The report does not provide the requested information. The Committee recalls that the situation in practice should be regularly monitored. Since the report is silent on the number and nature of violations detected as well as on sanctions imposed on employers for breach of the regulations regarding the regular medical examinations of young workers the Committee defers its conclusion on this point. The Committee points out that, if this information is not provided in the next report, there will be nothing to establish that the situation is in conformity with Article 7§9 of the Charter.

Conclusion

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

Article 7 - Right of children and young persons to protection

Paragraph 10 - Special protection against physical and moral dangers

The Committee notes that the report submitted by Malta contains no information on this provision.

Protection against sexual exploitation

The Committee previously asked whether all acts of sexual exploitation of all children under the age of 18, including simple possession of child pornography, are criminalised. In the meantime the Committee reserved its position on the issue of protection against sexual exploitation (Conclusions 2015).

It also asked the next report to comment on observations of the UN Committee of the Rights of the Child on the second periodic report of Malta (2013) that the UN Committee was concerned about the insufficient data and awareness of the sexual exploitation of children in Malta and the lack of adequate mechanisms for ensuring the detection, investigation and prosecution of perpetrators of child sexual exploitation and abuse.

Further it asked whether child victims of sexual exploitation can be prosecuted for any act connected with this exploitation (Conclusions 2015).

No information is provided in the report with respect to any of these issues. Therefore the Committee concludes that it has not been established that children are adequately protected against sexual exploitation.

The Committee notes that the UN Committee on the Rights of the Child in its Concluding Observations on the combined third to sixth report of Malta [CRC/C/MLT/CO/3-6, May 2019] (outside the reference period) stated it remained concerned about the insufficient data and awareness regarding sexual abuse and exploitation of children in the State party.

The Committee asks the next report to confirm that legislation protects all children under 18 years of age against all forms of sexual exploitation. It also asks the next report to provide information on measures taken to address the problem such as the adoption of a National Action Plan.

Protection against the misuse of information technologies

The Committee previously asked whether Internet service providers have an obligation to remove or prevent accessibility to illegal material of which they have knowledge (Conclusions 2015).

No information is provided in the report, the Committee repeats its request for this information and asks for updated information on measures taken to prevent the exploitation of children via the Internet. It considers that 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 in this respect.

Protection from other forms of exploitation

The Committee previously asked what measures are taken to assist children in street situations (Conclusions 2015). The report provides no information in response.

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

It again requests to be informed about measures 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. 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 in this respect.

As regards the trafficking of children the Committee asks the next report to provide information on measures taken to prevent the trafficking of children and assist child victims.

Conclusion

The Committee concludes that the situation in Malta is not in conformity with Article 7§10 of the Charter on the ground that it has not been established that children are adequately protected against sexual exploitation.

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

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

It has already examined the situation with regard to maternity leave (entitlement to maternity leave and to maternity benefits) in its previous conclusions. It will therefore only consider the recent developments and additional information.

Right to maternity leave

In its previous conclusion (Conclusions 2015), the Committee noted that employees are entitled to an uninterrupted period of 14 weeks' maternity leave on full pay, with 6 weeks' compulsory postnatal leave. The same set of rules applies both to the private and public sectors.

Right to maternity benefits

The Committee noted previously that, according to Article 7 of the Protection of Maternity (Employment) Regulations, working women on maternity leave are entitled to 14 weeks' maternity leave benefits on full pay, without any qualifying period of contributions or employment. The same set of rules applies both to the private and public sectors.

In its previous conclusion (Conclusions 2015), the Committee found that the situation was in conformity with Article 8§1 of the Charter and asked whether the minimum amount 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 annual income was €13,572 in 2016, or €1,131 per month. 50% of the median equivalised income was €6,786 per annum, or €566 per month. According to EUROSTAT data, the gross minimum monthly salary in 2017 was € 732.63.

In the light of the above, the Committee finds that the situation is in conformity with Article 8§1 on this point.

Conclusion

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

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

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

Prohibition of dismissal

The Committee previously noted that according to Section 12 of the Protection of Maternity (Employment) Regulations, it is unlawful for an employer to dismiss a pregnant employee from the moment she has formally notified her employer of her pregnancy, or because she avails herself of her right to maternity leave. According to the report, the same regime applies both to the private and public sectors. However, the Committee noted that Section 12§2 of the Protection of Maternity (Employment) Regulations states that the prohibition of dismissal is without prejudice and shall not apply to cases falling under Article 36§§4 and 14 of the Employment and Industrial Relations Act, concerning respectively redundancy and "dismissal for good and sufficient cause". In the latter case, the fact that an employee is pregnant or is absent from work during maternity leave cannot be considered a good and sufficient cause for dismissal.

In its previous conclusion (Conclusions 2015), the Committee asked under what circumstances a pregnant or nursing woman may be dismissed "for good and sufficient cause" in conformity with Section 12§2 of Protection of Maternity (Employment) Regulations. The report does not provide any information on this point. Therefore, the Committee reiterates its request and points out that, should the necessary information not be provided in the next report, nothing will enable the Committee to establish that the situation in Malta is in conformity with Article 8§2 of the Charter in this respect.

Redress in case of unlawful dismissal

In its previous conclusion (Conclusions 2015), the Committee noted that complaints for alleged unfair dismissal could be brought before the Industrial Tribunal. Under Article 12A(c) of the Protection of Maternity (Employment) Regulations, as amended in 2011, it is for the employer to prove that the employee was dismissed for a good and sufficient cause, failure of such proof being considered by the Tribunal as an inference that the dismissal was indeed related to the employee's pregnancy. If the Industrial Tribunal finds that the dismissal was unfair, it can order the reinstatement, upon request of the worker and if such reinstatement is considered possible. If there is no specific request for reinstatement or re-engagement, or if the Tribunal decides not to make an order for it, the unfairly dismissed worker can be awarded compensation, to be paid by the employer. In determining the amount of such compensation, the Tribunal shall take into consideration the real damages and losses incurred by the worker who was unjustly dismissed, as well as other circumstances, including the worker's age and skills as may affect the employment potential of the worker (Section 81 of the Employment and Industrial Relations Act).

Conclusion

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

Article 8 - Right of employed women to protection of maternity

Paragraph 4 - Regulation of night work

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

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

The Committee refers to its Statement of Interpretation on Articles 8§4 and 8§5 (Conclusions 2019) and asks the next report to confirm that no loss of pay is caused by any exemption from work related to pregnancy and maternity; it furthermore asks the next report to confirm that the women concerned retain the right to return to their previous employment at the end of the protected period.

Conclusion

The Committee concludes that the situation in Malta is in conformity with Article 8§4 of the Charter.

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

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

In its previous conclusion (Conclusions 2015), the Committee found that the situation was in conformity with Article 8§5 of the Charter. Since the situation remains unchanged, it confirms its previous finding of conformity.

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

Conclusion

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

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

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

Legal protection of families

Rights and obligations, dispute settlement

As regards **rights and obligations of spouses**, the Committee previously noted that equality of spouses was provided under Section 2 of the civil code as amended by Act No. XXI of 1993 (Conclusions XV-1 (2000)). It recalls that, under Article 16 of the Charter, spouses must be equal in respect of rights and duties within the couple in particular on issues linked to ownership, administration and use of property, etc. and children in particular on issues linked to parental authority, management of children's property. It asks the next report to provide comprehensive and up-to-date information on these points.

As regards **settlement of disputes** and **mediation services** the Committee refers to its previous conclusions (Conclusions 2015 and 2011).

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

Domestic violence against women

Malta has signed and ratified the Istanbul Convention on Preventing and Combating Violence against Women and Domestic Violence (which came into force in Malta on the 1st November 2014). The assessment under this instrument has not taken place yet.

The Committee takes note of the information presented in the report concerning the developments occurred since its latest assessment (see Conclusions 2015), in particular as regards the adoption in 2018 (out of the reference period) of a new Act on Domestic and Gender Based Violence which essentially transposed the Istanbul Convention into Maltese Law. The new law provides that a risk assessment has to be carried out on every report lodged at Police Stations. If the score of the risk assessment is high the Police will notify the duty magistrate to issue a protection order in favour of the victim. The risk assessment tool has been developed by the Domestic Violence Services of the *Aġenzija Appoġġ* within the Foundation for Social Welfare Services (FSWS) and is carried out by social workers from the Emergency Team of the same agency. The report points out that protection of victims of domestic violence was already provided under the 2013 Domestic Violence Act and provides data about the number of cases of domestic violence the FSWS professionals dealt with during the reference period (313 new cases in 2014 against 362 in 2017). The report explains that the Ministry for the Family, Children's Rights and Social Solidarity also has three contractual agreements with three NGOs which operate domestic violence shelters. These have a bed capacity of 14 each and generally take in victims for an average of six months a year so that these shelters, which are normally always full, assist roughly 84 victims a year between them.

The report does not provide information on the implementation of integrated policies involving all levels of government and all relevant agencies and institutions, including prevention measures, nor on the prosecution of domestic violence against women. In this respect the Committee takes note of the concern expressed in the United Nations Human Rights Committee's (HRC) Concluding observations adopted in 2014 about the low number of prosecutions of perpetrators of violence against women and children, the lack of information on sanctions imposed on perpetrators, as well as on remedies provided to victims.

In view of the foregoing, the Committee asks the next report to provide comprehensive and updated information on all aspects of domestic violence against women and related convictions, as well as on the use of restraining orders, the implementation of the measures described in the report and their impact on reducing domestic violence against women also in

the light of the CCPR remarks and recommendations. In the meantime, it reserves its position on this point.

Social and economic protection of families

Family counselling services

The Committee refers to its previous conclusion (Conclusions 2015), in which it found the situation to be in conformity with the Charter.

Childcare facilities

The Committee previously noted (Conclusions 2015) the adoption of a policy of free childcare facility for working parents and the setting up of quality standards for childcare. In this respect, the report states that the Directorate for Quality and Standards in Education (DQSE) ensures quality of care through yearly review visits and ad hoc inspections upon receipt of complaints. It adds that the quality of standards published in the 2006 'National Standards for Child Day Care Centres' would be revised by the end of 2018 (out of the reference period).

In response to the Committee's question about the number of children that childcare centres can accommodate, the report indicates that, by the end of 2017, there were 116 registered childcare centres with a capacity of 4787 children. The Committee notes from the EU Commission report on Barcelona objectives (2018) that in 2016 the rate of access to childcare in Malta was 31.3% for children below 3 years old and 88.1% for preschool children above 3 years old.

The Committee recalls that States Parties are required to ensure that childcare facilities are available, affordable and of good quality (coverage with respect to the number of children aged 0-6, ratio of staff to children, staff training, suitable premises and cost of childcare to parents, etc). It asks the next report to provide comprehensive and up-to-date information on all these points.

Family benefits

Equal access to family benefits

The Committee noted previously that the equal treatment of nationals of States parties to the European Social Charter residing in Malta was ensured regarding family benefits (Conclusions 2011).

The Committee notes that one of the general eligibility criteria for granting child benefits is that one of the parents should be a citizen of Malta or married to a Maltese citizen or in Civil Union with a Maltese citizen, or is a citizen of a European Union Member State, or a citizen of a member State of the European Social Charter (according to the official website: www.socialsecurity.gov.mt).

The current report indicates that under the Subsidiary Legislation 217.05 – Status of Long-term Residents (Third Country Nationals) Regulations, which is transposing the provisions of EC Directive 2003/109 concerning the status of third-country nationals who are long-term residents, in order to qualify for such status the persons concerned have to satisfy a 5 year residence requirement.

The Committee recalls that Article 16 precludes length of residence requirements as far as contributory benefits are concerned, but States may apply a length of residence requirement as regards non-contributory benefits on condition that the length is not excessive. The proportionality of such length of residence requirements is examined on a case-by-case basis having regard to the nature and purpose of the benefit: a period of 6 months is reasonable

and therefore in conformity with Article 16. On the other hand periods of 1 year, and a fortiori, 3-5 years are manifestly excessive and therefore in violation of Article 16.

The Committee asks whether nationals of States Parties to the European Social Charter (other than EU nationals) are entitled to family allowances only after residing in Malta for 5 years or which is the minimum length of residence upon which nationals of States Parties (other than EU nationals) are entitled to receive family benefits. The Committee reserves its position on this point.

Level of family benefits

The Committee notes that according to Eurostat data, the monthly median equivalised income in 2017 was €1 210. According to MISSOC, the maximum monthly amount payable was € 96.32 for one child, € 192.64 for two children, € 288.96 for three children, € 385.28 for four children and € 96.32 for any additional child. When considering these maximum amounts, the Committee notes that they represent a significant percentage of the monthly median equivalised income.

However, the Committee takes note that according to MISSOC, the minimum child allowance payable per annum per child is €450 which means that the minimum monthly child allowance is €37.5. The latter value represents 3.1% of the monthly median equivalised income in 2017.

The Committee recalls that in order to comply with Article 16, child allowances must constitute a significant income supplement, which is the case when they represent an adequate percentage of the monthly median equivalised income. The Committee asks for information and statistical data in the next report on the percentage of families who receive child allowances representing less than 5% of the median equivalised income from the total number of families with children. Meanwhile, it reserves its position on this point.

The Committee notes from MISSOC that the age limits to receive family benefits are: 16 years old; for students 21 years old; for persons registering as unemployed for the first time 21 years old.

Measures in favour of vulnerable families

The Committee asks for updated information in the next report on measures taken to support vulnerable families such as families in an economically vulnerable situation or single parent families.

Housing for families

The Committee refers to its previous conclusion (Conclusions 2015) for a description of forced eviction proceedings justified by public interest. It asked for information on the legislation on forced evictions for reasons other than public interest such as insolvency or wrongful occupation.

The report states that the Housing Authority is now using Chapter 573 of the legislation on forced eviction to effect evictions. The Committee accordingly reiterates its previous request to enable it to fully assess whether the legislative framework for the protection of persons threatened by eviction meets the requirements of Article 16 of the Charter.

The Committee takes note of several measures during the reference period mentioned in the report, such as the doubling of rent subsidies in 2017, the building of more social housing units, or the increase of the stock by leasing residential units from the private market and then subletting them for social housing purposes to applicants on waiting list for social accommodation.

The Committee previously considered (Conclusions 2015) that the situation was not in conformity with the Charter on the ground that migrant families faced discrimination in their

access to housing. It referred to the 2013 ECRI report on Malta as well as to the 2011 visit report by the Council of Europe Commissioner for Human Rights.

The current report explains that the Housing Authority has no control over private market leasing. In 2013 third country nationals (persons who are neither Maltese citizens nor European Union citizens but who hold a long-term resident status) became eligible to benefit from rent subsidy. One of the criteria required is to have set up residence in Malta for 18 consecutive months before submitting an application. The Committee notes that non-EU nationals can, after five years of residence in Malta, apply for long-term residence status, which grants equal access to social security, assistance and protection, among others. Eligibility requirements include evidence of stable and regular resources, integration test, English or Maltese language test (see the latest ECRI report on Malta, adopted on 2 March 2018, § 57, outside the reference period, according to which African migrants reported their frustration at never obtaining permanent resident status). The Committee recalls that lengths of three to five years of residence as a requirement for housing benefits have been held to be excessive and in breach of Article 16 (Conclusions XVIII-1 (2006), Denmark, concerning also a period of one year of residence to be eligible for a child allowance, under Article 16). It therefore considers that the residence requirement of five years to obtain a long-term residence status and then become eligible to the rent subsidy scheme is clearly excessive, and in breach of Article 16. In this connection, the Committee asks for an explanation in the next report on how equal treatment with regard to access to housing allowances/benefits is guaranteed in law or in practice for nationals of States Parties to the Charter and the 1961 Charter who do not hold long-term residence status.

The Committee also asks the next report to indicate what measures are taken to improve migrant families' access to affordable housing and to eradicate the discrimination that they might face in this field (see the letter of 14 December 2017 to the Maltese authorities by the Council of Europe Human Rights Commissioner, in which it urged Malta to give full effect to Article 16 of the Charter in this respect).

As regards refugee families, the report indicates that persons holding a refugee status may apply for Alternative Accommodation (social housing), depending on their income and assets. According to the information supplied, prospective applicants are required to have set up residence in Malta for 12 consecutive months within 18 months of residence before submitting the application. The rent subsidy has been available to refugees since 2002. The Committee asks the next report to clarify whether persons granted refugee status but who do not meet the previous residence requirement are in fact eligible to other types of housing support. In this respect, the Committee refers to its Statement of Interpretation on the rights of refugees under the Charter (Conclusions 2015). It notes from the latest ECRI report on Malta (2018, outside the reference period) that persons granted refugee status or subsidiary protection are offered accommodation at one of eight open centres where they may remain for up to one year. According to some NGOs, accommodation in most of these centres still presented shortcomings, inadequate material conditions and very poor infrastructure. The Committee accordingly asks for comprehensive and up-to-date information (including figures and statistics) in the next report on the housing situation of refugee families, as well as on all the measures taken to ensure adequate housing to them. Pending receipt of the information requested, the Committee reserves its position on this point.

Participation of associations representing families

In its previous conclusion (Conclusions 2017), the Committee found the situation to be in conformity with the Charter on this point. The report refers to policies launched during the reference period with the specific objective to enhance the well-being of the family and children (such as the National Strategic Policy for Poverty Reduction and Social Inclusion of 2014 and the National Children's Policy of 2017) and confirms that the general public and all interested parties were involved in the consultative process. The Committee asks nevertheless the next

report to clarify whether associations representing families are specifically involved in the drafting of family-related policies.

Conclusion

The Committee concludes that the situation in Malta is not in conformity with Article 16 of the Charter on the ground that nationals of other States Parties to the Charter residing in Malta who do not hold a long-term residence status are not entitled to equal treatment with regard to access to housing allowances (rent subsidy).

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

Paragraph 1 - Assistance, education and training

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

The legal status of the child

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

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

The Committee notes from the UN Committee on the Rights of the Child's Concluding Observations on the combined third to sixth report on Malta [CRC/C/MLT/CO\3-6 May 2019] (outside the reference period) that the UN Committee expressed concern about cases of children who are not registered at birth and are at risk of statelessness.

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

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

Protection from ill-treatment and abuse

In its previous conclusion the Committee found that the situation was not in conformity with the Charter as not all forms of corporal punishment were prohibited in all settings during the reference period. But the Committee considered that with the legislative amendments introduced outside the previous reference period the situation had been brought into conformity with the Charter (Conclusions 2015). Article 339 of the Criminal Code explicitly prohibits all forms of corporal punishment in all settings

The Committee concludes that the situation is in conformity with the Charter.

Rights of children in public care

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

The Committee asks the next report to provide information on the developments of the Child Protection (Out of Home Care) Bill and if adopted its contents. It also asks to be kept informed of the number of children removed from their families, the total number in care, the number placed in foster care and in institutions and trends in the area.

Right to education

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

Children in conflict with the law

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

According to the report Article 37(1) of Chapter 9 of the Laws of Malta provides that children under sixteen years of age are exempt from criminal responsibility for any act or omission done without any *mischievous discretion*. In the case where the act or omission is committed by a child who is aged between fourteen to sixteen years of age with *mischievous discretion* and in the case where the child is aged between sixteen and eighteen years, the applicable penalty shall be decreased by "one or two degrees".

A further amendment to the Criminal Code provides that suspects and accused persons, including children, involved in criminal proceedings have the right to have access to a lawyer, to have a third party informed of their detention and to communicate with third persons.

The report states that a new Legal Aid Agency was established which also provides assistance to children throughout judicial proceedings.

The Committee previously asked what is the maximum length of pre-trial detention and what is maximum prison sentence that can be imposed on a child (Conclusions 2015). No information is provided in this respect. The Committee repeats its request for this information. It also asks whether children can be placed in solitary confinement and if so, under what circumstances and for how long.

The Committee notes from the UN Committee on the Rights of the Child's Concluding Observations on the combined third to sixth report on Malta [CRC/C/MLT/CO\3-6, May 2019] that there are cases where children are held with adults in detention facilities. The Committee wishes to receive further information on the situation. It recalls that children should always be detained separately from adults.

Right to assistance

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

The Committee considers that the detention of children on the basis of their immigration status or that of their parents is contrary to the best interests of the child. Likewise, unaccompanied minors should not be deprived of their liberty, and detention cannot be justified solely on the grounds that they are unaccompanied or separated, or on their migratory or residence status, or lack thereof.

According to the report unaccompanied children are accommodated in a dedicated reception centre. The reception centre offers accommodation and social care services to asylum-seeking unaccompanied children. A care order is issued to protect the child. A social worker acts as the legal guardian of the child. All children have a specific care plan.

Unaccompanied children are given similar access to Health Services as Maltese citizens. Since their care falls under the responsibility of the State, they are further provided with free medication. They have access to the General Practitioner (GP) in the health centres. Children at the age of 16 upwards have legal access to the Maltese labour market.

The Committee notes from UN that Committee on the Rights of the Child's Concluding Observations on the combined third to sixth report on Malta [CRC/C/MLT/CO\3-6, May 2019] that the State put an end in 2015 to automatic detention of asylum-seekers and refugees, including children. However the Reception of Asylum Seekers Regulations adopted under the Refugee Act still provides for the possibility of placing asylum-seeking and refugee children in

detention as a measure of last resort and of placing unaccompanied children aged sixteen years or over in accommodation centres for adult asylum-seekers.

Therefore the Committee asks what consideration has been given to alternatives to detention and to ensure that all unaccompanied children are accommodated in appropriate facilities and are never accommodated with adults.

It also seeks information as to whether the conditions in reception centres are monitored to ensure their appropriateness for children. In particular as it notes from a letter addressed to the Maltese authorities from the Commissioner for Human Rights of the Council of Europe in 2017 (CommHR/NM/sf 043-2017) that many migrants remain in reception centres for some time due to a lack of affordable housing.

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 Malta uses bone testing to assess age and, if so, in what situations the state does so. Should the State carry out such testing, the Committee asks what potential consequences such testing may have (e.g., can a child be excluded from the child protection system on the sole basis of the outcome of such a test?).

Child poverty

The prevalence of child poverty in a State Party, whether defined or measured in either monetary or multidimensional terms, is an important indicator of the effectiveness of State Parties efforts to ensure the right of children and young persons to social, legal and economic protection. The obligation of States Parties 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% of children in Malta 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 rates of child poverty as well as on measures adopted to reduce child poverty, including non-monetary measures such as ensuring access to quality and affordable services in the areas of health, education, housing etc. Information should also be provided on measures focused on combatting discrimination against and promoting equal opportunities for children from particularly vulnerable groups such as ethnic minorities, Roma children, children with disabilities, and children in care.

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

Conclusion

Pending receipt of the information requested the Committee concludes that the situation in Malta is in conformity with Article 17§1 of the Charter.

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

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

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

The Committee previously requested information on the implementation of the Education Strategy for 2014-2024 (Conclusions 2015).

The report states that the Education Strategy for Malta 2014-2024 has four broad goals in line with European and world benchmarks, including: to reduce the gaps in educational outcomes between boys and girls and between students attending different schools, decrease the number of low achievers and raise the bar in literacy, numeracy, and science and technology competence and increase student achievement, support the educational achievement of children at-risk-of-poverty and from low socio-economic status, and reduce the relatively high incidence of early school-leavers.

The report provides details of some of the measures adopted under the strategy, for example secondary level education will be adapted to include more vocational subjects. More emphasis will be placed on vocational training.

The Committee notes the information on changes to the school system falling outside the reference period, it asks the next report to provide information on their implementation and impact.

Enrolment rates, absenteeism and drop out rates

According to UNESCO in 2016 (latest data available) the net enrolment rate for primary education for both sexes was 98.46% in 2016, the corresponding rate for secondary education was 97.81%.

The Committee previously requested information on the results of the implementation of the attendance policy in education that was introduced in 2014 (Conclusions 2015).

According to the report, the Addressing Attendance in Schools Policy was adopted to have a unified collective and collaborative action by educators, administrators, parents and students. The policy has been introduced to improve student learning behaviour and well-being of learners. A strong effort has been made, led by the National School Support Service, to reduce school absenteeism with significant reduction in absenteeism being registered, particularly in primary schools. Following a consultation process, a revised strategy was to be launched in September 2018, while new proposals and recommendations were to be put forward in the new Education Act. The Committee asks to be kept informed about the content and impact of these developments.

A digital system is available to assist teachers in the recording of absenteeism. This will be strengthened further through the phased in introduction of a new management information system as from 2018/19. The Committee asks to be kept informed about the impact of this system.

Other initiatives to improve attendance in state schools include better communication between schools, students and parents/guardians, direct and personal contact with parents/guardians, monitoring of absenteeism through medical certificates, more coordinated and better support to students, an increase in the number of social workers within the Directorate for Educational Services and the adoption of a national campaign.

The report states that a measure that had significant impact on the reduction of absenteeism was the Child Supplement Benefit, implemented in the academic year 2014/2015. Through this initiative, families were granted supplementary grants that are conditional on children having a 95% school attendance record. From the 11,588 students who were eligible, 6,290 students attended state schools. The attendance of such students increased by an average of 3% when compared with the attendance of the previous academic year (2013/2014), and

although 2,373 students were eligible, they did not receive this benefit as their attendance did not reach 95%. While noting its apparently positive impact in terms of the attendance of some students, the Committee emphasises that any such conditional education-related benefits should not operate so as to exacerbate social and economic vulnerability.

The Committee notes that in 2016/2017, 1.13% of primary school children had unauthorized absences of more than 30 days, this figure was 4.58% for secondary school children. The Committee notes that whilst there has been a downward trend in the rate of absenteeism over the last decade, it remains quite high.

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

Costs associated with education

The report indicates that, within the framework of the National Education Strategy, the authorities have decided to reduce the financial burden of education through the establishment of a system of free and supervised school transport, the development of “Breakfast clubs” as well as the provision of free meals for lunch. In addition, several measures such as the abolition of examination fees, free past papers and the organization of free revision sessions aim to encourage pupils to take exams while reducing the financial burden on parents.

Vulnerable groups

The Committee previously requested information on measures taken to facilitate access to education for children from vulnerable groups, including children from minorities and well as children irregularly present in the territory (Conclusions 2015).

The report states that the establishment of a Migrant Learners’ Unit has strengthened the provision of support for children from a migrant background. The Migrant Learners Unit was set up to help young persons with a migrant background under the age of 16 years integrate into mainstream education system. The development of a one-year induction programme for these children has been an important development in this regard. Programmes are available to promote the teaching of Maltese. The Unit also provides intensive language courses during the summer to consolidate the acquisition of Maltese and English in compulsory school-aged learners.

The report does not directly address the question of whether children in an irregular migration situation have a right to education, However the Committee notes from other sources [Concluding Observations of the UN Committee of the Rights of the Child on Malta’s combined third to sixth periodic report CRC/C/MLT/3-3, June 2019] that such children do in principle have access to education. The UN Committee noted in this respect that children in vulnerable and marginalized situations, such as asylum-seeking, refugee and migrant children continue to face barriers in their access to quality education, including owing to delays in the registration of asylum applications.

The Committee asks the next report to provide updated information on the situation of and the steps taken to identify and address barriers faced by, children in an irregular migration situation in relation to the right to education.

A support service and educational programme for unmarried pregnant children exists to assist them with parenting and continuing their education.

As Malta has accepted Article 15§1 of the Charter the right of children with disabilities to education is examined under that provision.

Anti-bullying measures

In line with the requirements of the ‘Addressing Bullying Behaviour in Schools Policy’, schools have been expected to draft and implement tailor-made anti-bullying guidelines. The anti-

bullying service has helped schools and the students' councils in the drafting and implementation of such guidelines.

The report states that Malta has developed a Trans, Gender Variant and Intersex Students in Schools Policy. This Policy aims to foster a school environment that is inclusive, safe and free from harassment and discrimination for all members of the school community, students and adults, regardless of sex, sexual orientation, gender identity, gender expression and/or sex characteristics.

Voice of the child in education

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

Conclusion

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

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

Paragraph 2 - Parental leave

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

In its previous conclusion (Conclusions 2015), the Committee found that the situation was in conformity with Article 27§2 of the Charter and asked what financial compensation or benefits were provided during the period of parental leave.

In reply, the report states that parents who take parental leave are not granted financial compensation or any other advantage by the Maltese state. However, under the Social Security Act, parents who take a break in their career to look after their child are awarded contribution credits when their pension is assessed.

The Committee considers that under Article 27§2 of the Charter the States Parties are under a positive obligation to encourage the use of parental leave by the father or the mother. States shall ensure that an employed parent is adequately compensated for their loss of earnings during the period of parental leave.

The modalities of compensation are within the margin of appreciation of the States Parties and may take the form of paid leave (continued payment of wages by the employer), a social security benefit, any alternative benefit from public funds or a combination of such compensations. Regardless of the modalities of payment, the level shall be adequate (Statement of Interpretation of Article 27§2 of the Charter, General Introduction to Conclusions 2015).

The Committee considers that in so far as parental leave is not remunerated or compensated, the situation is not in conformity with the Charter.

In its previous conclusion (Conclusions 2015), the Committee noted that since 2010 parental leave is of four months duration. It recalls that Article 27§2 requires States to provide the possibility for each parent to obtain parental leave. An important element for the reconciliation of professional, private and family life are parental leave arrangements for taking care of a child. Whilst recognising that the duration and conditions of parental leave should be determined by States Parties, the Committee considers important that national regulations should entitle men and women to an *individual right* to parental leave on the grounds of the birth or adoption of a child. With a view to promoting equal opportunities and equal treatment between men and women, the leave should, in principle, be provided on a non-transferable basis to each parent. The Committee therefore asks whether the legislation guarantees the individual right of fathers to a non-transferable parental leave and if so, what is its length.

Conclusion

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

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

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

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

In its previous conclusion (Conclusions 2015), the Committee found that the situation was in conformity with Article 27§3 of the Charter. Since the situation remains unchanged, it confirms its previous finding of conformity.

Conclusion

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