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EUROPEAN SOCIAL CHARTER

European Committee of Social Rights

Conclusions 2019

MONTENEGRO

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 Montenegro on 3 March 2010. The time limit for submitting the 8th report on the application of this treaty to the Council of Europe was 31 October 2018 and Montenegro submitted it on 14 May 2019.

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

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

Montenegro has accepted all provisions from the above-mentioned group except Articles 7§10, 19§1-19§10 and 31.

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

The present chapter on Montenegro concerns 22 situations and contains:

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

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

In respect of the other 3 situations concerning Articles 17§1, 19§12 and 27§1, the Committee needs further information in order to assess the situation.

The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Montenegro under the Revised Charter. The Government consequently has an obligation to provide this information in the next report from Montenegro on the articles in question.

The next report from Montenegro 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 Montenegro.

The Committee previously noted (Conclusions 2015) that according to Section 16 of the Labour Law young persons of at least 15 years old and with a general health ability to work may conclude an employment contract with an employer. It further noted that according to Section 17 of the Labour Law, young persons under the age of 18 may enter into an employment contract only with the written consent of their parents, adoptive parents or guardians and provided that the work does not affect their health, moral and education or it is not prohibited by law.

In its previous conclusion (Conclusions 2015), the Committee asked whether Section 16 of the Labour Law (stipulating a minimum age of 15 for admission to employment) applied to all activities, without exceptions, including self-employed workers and family work. The current report confirms that the provision for a minimum age for employment of 15 years refers to all sectors and activities, including self-employed workers and family work unless otherwise provided by a special law. According to the report, the national labour legislation does not provide for exceptions relating to the employment of persons under the age of 15, nor for light work or artistic performances. The Labour Law sets 15 years of age as the absolute lower limit for employment below which employment is not allowed.

In its previous conclusion (Conclusions 2015), the Committee noted from another source that 12.9% of children between the ages of 5 and 14 years were involved in child labour, mainly on family farms (Direct Request (CEACR) – adopted 2011, published 101st ILC session (2012), Minimum Age Convention, 1973 (No. 138), Montenegro). The Committee asked the next report to indicate what were the measures taken by the Labour Inspectorate or by other institutions to detect cases of children under the age of 15 working in the informal economy, outside the scope of an employment contract. The Committee further asked the next report to provide information on the activities and findings of the Labour Inspectorate of monitoring the prohibition of employment under the age of 15, including on the violations detected and sanctions applied in practice.

In this respect, the current report indicates that the Labour Inspectorate found children under 15 years of age working in the informal sector, but there is no sanction provided for these situations. Such children are removed from the inspected workplace, and the employers are warned about the impossibility of regulating work relations with children of that age. It is subsequently monitored, through frequent visits, that the employer complies with the inspector's warnings. The Committee further notes from the report that there are no records of children under the age of 15 found working in the informal economy because it is not mandatory by the statutory regulations for which this inspection is carried out.

The Committee notes from another source (Multiple Indicator Cluster Survey (MICS), UNICEF, 2018, Montenegro, Statistical Snapshot Child Labour) that 12% of children aged 5-17 years are engaged in child labour in Montenegro and 5% of children aged 5-17 years work under hazardous conditions.

The Committee recalls that the prohibition of the employment of children under the age of 15 applies to all economic sectors, including agriculture, and all places of work, including work within family enterprises and in private households (Conclusions I (1969), Statement of Interpretation on Article 7§1). It also recalls that the prohibition also extends to all forms of economic activity, irrespective of the status of the worker (employee, self-employed, unpaid family helper or other).

The Committee further recalls that the effective protection of the rights guaranteed by Article 7§1 cannot be ensured solely by legislation if this is not effectively applied and rigorously

supervised. The Labour Inspectorate has a decisive role to play in this respect (International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §32).

Considering that the Labour Inspectorate does not have the competence to record cases of children under the age of 15 engaged in the informal economy and that no sanctions are provided for the employers in cases where children under the age of 15 are found engaged in such work, the Committee considers that the situation in Montenegro is not in conformity with Article 7§1 of the Charter on the ground that the legislation on the prohibition of employment under the age of 15 is not effectively enforced in practice.

In its previous conclusion (Conclusions 2015), the Committee asked whether the State authorities monitored work done at home by children under 15 years of age and what were their findings in this respect.

The current report indicates that despite the legal basis for this form of work process organisation, it is very rare that an employment contract is concluded for doing work at home. According to the report, since in practice, this type of employment contract is almost non-applicable, just one case was recorded in 2015 where the Labour Inspectorate was informed. The Committee notes from the information provided in the report that the Labour Inspectorate does not have the jurisdiction to identify such work and undertake measures. According to the report, if such work is performed in practice, it is concealed and inaccessible for inspections control.

The Committee recalls that States Parties are required to monitor the conditions under which work done at home by children is performed in practice (Conclusions 2006, General Introduction on Article 7§1) and considers that the situation in Montenegro is not in conformity with the Charter on the ground that work done at home by children under the age of 15 is not monitored in practice.

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

Conclusion

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

- the legislation on the prohibition of employment under the age of 15 is not effectively enforced;
- work done at home by children under the age of 15 is not monitored.

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 Montenegro.

The Committee previously noted (Conclusions 2015) that under Article 17 of the Labour Law, an employment contract with a person under 18 years of age can be concluded upon written approval of the parents or guardians under the condition that such work does not threaten their health, morals and education and is not prohibited by law. It previously noted also that young persons under 18 are prohibited from performing jobs involving very difficult physical work, underground or underwater work as well as jobs that may have a harmful effect or an increased risk for their health and life (Conclusions 2015).

In its previous conclusion (Conclusions 2015), the Committee noted that according to Section 60 (2) of the Law on Safety and Health Protection at Work provides that secondary legislation shall be adopted within two years following the date of entry into force of the Law on Safety and Health Protection at Work which was 16 August 2014. The Committee requested the next report to provide up-to-date information with respect to the adoption of such secondary legislation.

In this respect, the current report indicates that the ministry of Labour and Social Welfare adopted the Rulebook on Safety Measures in the workplace, which was published on 24 July 2015. The report indicates that the Council Directive 94/33 of 22 June 1994 on the protection of young people at work have also been transposed to this Rulebook. In addition to provisions regarding standards for working conditions in the workplace, the Rulebook states that the employer should provide minors with jobs that will not adversely affect their development, as well as not be assigned to work on tasks: (I) which are objectively above their physical or psychological abilities; (II) which include exposure to dangerous substances that cause heritable genetic damage or in any other way cause the acute health effect; (III) which include the risks of accidents that can be presumed that minors cannot recognize or avoid due to their insufficient attention or lack of experience; (IV) where there is a risk to health due to extreme cold or heat, noise or vibration.

The Rulebook further provides that minors shall not be exposed to work with specific risks, such as (I) physical harm; (II) biological harms; (III) chemical substances and harms and (IV) other risks.

According to the report, the Ministry of Labour and Social Welfare adopted the Rulebook on Special Working Conditions Jobs and the Conditions that Employees Need to Fulfil in order to Work on those Jobs, published on 9 November 2016. In particular, the Rulebook provides for a list of jobs with special working conditions where it is prescribed that only employees older than 18 years can work on it. The Committee takes note of the list of jobs and considers the situation in Montenegro in conformity with Article 7§2 of the Charter on this point.

In its previous conclusion, the Committee asked the next report to provide information on the activities and findings of the Labour inspectorate in relation to the prohibition of employment under the age of 18 for dangerous or unhealthy activities, including the number of violations detected and sanctions applied.

The report indicates that within the scope of its competence the labour inspectorate, in carrying out inspection supervision, did not find persons under the age of 18 in carrying out dangerous or unhealthy jobs and activities.

The Committee refers to its conclusion on Article 7§1 where it noted from another source (Multiple Indicator Cluster Survey (MICS), UNICEF, 2018, Montenegro, Statistical Snapshot

Child Labour) that 12% of children aged 5-17 years are engaged in child labour in Montenegro and 5% of children aged 5-17 years work under hazardous conditions.

Considering the lack of information on the monitoring activities and findings of the Labour Inspectorate, the Committee concludes that the situation in Montenegro is not in conformity with Article 7§2 of the Charter on the ground that it has not been established that the legislation on the prohibition of employment under the age of 18 for dangerous or unhealthy activities is effectively enforced in practice.

Conclusion

The Committee concludes that the situation in Montenegro is not in conformity with Article 7§2 of the Charter on the ground that it has not been established that the legislation on the prohibition of employment under the age of 18 for dangerous or unhealthy activities is effectively enforced.

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 Montenegro.

The Committee previously noted (Conclusions 2015) that primary education in Montenegro lasts for nine years and shall be free and compulsory for all children from the age of 6 to 15 years (nine years of primary school). It also noted (Conclusions 2015) that if a child is fifteen during the school year, he/she will have to attend the courses until the end of that school year. The Committee took note in its conclusion on Article 7§1 that the minimum age of admission to employment is 15.

In its previous conclusion (Conclusions 2015), the Committee asked the next report to confirm that the legislation does not provide exemptions relating to the employment of persons under the age of 15 (such as for example light work or artistic performances). The Committee refers to its conclusion on Article 7§1 where it noted that the current report confirms that the provision for a minimum age for employment of 15 years refers to all sectors and activities, including self-employed workers and employees in family business, unless otherwise provided by a special law. According to the report, the national labour legislation does not provide for exceptions relating to the employment of persons under the age of 15, nor for light work or artistic performances. The Labour Law sets 15 years of age as the absolute lower limit for employment below which employment is not allowed.

In its previous conclusion (Conclusions 2015), the Committee noted from another source that 12.9 per cent of children between the ages of 5 and 14 years were involved in child labour, mainly on family farms (Direct Request (CEACR) – adopted 2011, published 101st ILC session (2012), Minimum Age Convention, 1973 (No. 138), Montenegro). It asked if in practice children who are still subject to compulsory education are employed in any type of work, including in family undertakings such as family farms. It also asked how the Labour Inspectorate monitors any illegal work performed by children who are subject to compulsory education and information on its findings.

The current report indicates that it has not come to the attention of the Labour Inspection that children who are still subject to compulsory education are employed in any type of work, including work in family undertakings. It further indicates that the Labour inspection monitors the illegal work performed by children through regular activities and direct on-site inspection, especially in the framework of increased inspection during the summer tourist season. However, according to the report, special records on the work of children subject to compulsory education are not kept.

The Committee refers to its conclusion on Article 7§1 where it noted from another source (Multiple Indicator Cluster Survey (MICS), UNICEF, 2018, Montenegro, Statistical Snapshot Child Labour) that 12% of children aged 5-17 years are engaged in child labour in Montenegro and 5% of children aged 5-17 years work under hazardous conditions.

It further refers to its Statement of interpretations mentioned on Article 7§1 and, considering that the labour inspectorate does not have the competence to record cases of children still subject to compulsory education working illegally and that no sanctions are provided for the employers in cases where children under the age of 15 are found engaged in such work, the Committee considers that the situation in Montenegro is not in conformity with Article 7§1 of the Charter on the ground that the legislation on the prohibition of employment of children subject to compulsory education is not effectively enforced.

Conclusion

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

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 Montenegro.

In its previous conclusion (Conclusions 2015), the Committee asked if the legislation in Montenegro provides for reduced working hours for young workers under 18 years of age. The Committee also asked if daily and weekly rest periods are established for such workers. Pending receipt of the information requested, the Committee reserved its position on this point.

In this respect, the current report indicates that full-time employment shall not be longer than 40 hours a week, without exception in relation to persons under 18 years of age. As regards daily and weekly rest periods, the report indicates that there is no difference in the law with respect to employee under 18 years of age: the employee is entitled to a break of at least 12 consecutive hours between two consecutive working days. However, as for the weekly break, a longer break is prescribed for employees under the age of 18. In particular, the Labour Law stipulates that the employee has the right to a weekly rest period of not less than 24 successive hours continuously whereas employees under 18 years of age are entitled to weekly rest of at least two consecutive days, one of which is Sunday.

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

Given that the Labour Law provides for 40 working hours a week and does not provide for exceptions for persons under the age of 16, the Committee considers that the situation is not in conformity with Article 7§4 of the Charter.

In its previous conclusion (Conclusions 2015), the Committee asked how the Labour Inspectorate monitors the working time and rest periods in relation to young workers under 18 and which are its findings in this respect.

According to the report, the Labour Inspectorate monitors the working hours of workers under the age of 18, as well as for other employees, through the schedule of shift work and the schedule for the use of weekly rest periods, which the employer is obliged to determine if the activity is continuously carried out and the weekly holiday is not used on Sundays. According to the report, also an overview of the annual leave is being made, given that the law prescribes a minimum annual leave of 24 working days for persons under 18 years of age.

The Committee notes that the report does not provide any information on findings of the Labour Inspectorate with regard to the legislation concerning working time and rest periods of young workers not subject to compulsory education. The Committee recalls that the effective protection of the rights guaranteed by Article 7 cannot be ensured only by legislation; the legislation must be effectively applied in practice and rigorously supervised. The Labour Inspectorate has a decisive role to play in this respect (International Commission of Jurists (ICJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §32). The Committee therefore reiterates its question and asks the next report to provide information on the activities and findings of the Labour Inspectorate in relation to working time and rest periods of young workers not subject to compulsory education, including the number of violations detected and sanctions applied.

Considering the lack of information on the monitoring activities and findings of the Labour Inspectorate, the Committee concludes that the situation in Montenegro is not in conformity

with Article 7§4 of the Charter on the ground that it has not been established that the legislation on the working time and rest periods of young workers not subject to compulsory education is effectively enforced in practice.

Conclusion

The Committee concludes that the situation in Montenegro is not in conformity with Article 7§4 of the Charter on the grounds that:

- the limit of 40 hours' work per week for young workers under the age of 16 is excessive;
- it has not been established that the legislation on working time and rest periods for young workers under 18 years of age is effectively enforced.

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 Montenegro.

In application of Article 7§5, domestic law must provide for the right of young workers to a fair wage and of apprentices appropriate allowances. This right may result from statutory law, collective agreements or other means.

In the present case, since Montenegro has not accepted Article 4§1 of the Charter, the Committee makes its own assessment on the adequacy of young workers wage under Article 7§5. For this purpose, the ratio between net minimum wage/lowest wage and net average wage is taken into account.

Young workers

The young worker's wage may be less than the adult starting wage, but any difference must be reasonable and the gap must close quickly (Conclusions II (1971), Statement of Interpretation on Article 7§5). For fifteen/sixteen year-olds, a wage of 30% lower than the adult starting wage is acceptable. For seventeen/eighteen year-olds, the difference may not exceed 20% (Conclusions 2006, Albania).

The report indicates the net minimum wage in Montenegro amounts to 193 euros, and the average net wage amounts to €510.71.

The Committee notes that the net monthly minimum wage corresponds to only 37.8% of the average wage in Montenegro which is too low to secure a decent standard of living. Therefore, the Committee considers that the right to a fair pay of young workers is not guaranteed since the reference wage itself (the minimum wage of adult workers) is too low to secure a decent standard of living.

The Committee also requests in the next report if there is any specific legislation referring to young workers wages to be included.

Apprentices

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 (Conclusions II (1971), Statement of Interpretation on Article 7§5), 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 (Conclusions 2006, Portugal).

According to the report, the Labour Law stipulates that an employer may sign a contract with a person being employed for the first time as a trainee for a specific level of education, or professional qualification, in accordance with the law and collective agreement. The traineeship shall be extended in case of absence from work due to: temporary incapacity for work in accordance with the regulations on health protection and health insurance and maternity leave.

The report indicates the salary of interns is further regulated by the General Collective Agreement and in Article 20 it prescribes that it shall be determined in the amount that may not be lower than 80% of the salary for appropriate group of jobs referred to in Article 18 or Article 19 of this collective agreement and/or articles whereby basic groups of jobs with coefficients for determining salaries based on the complexity of the learning outcomes achieved are defined. Therefore, the amount of salary of interns depends on the coefficients

defined for the jobs being trained for and it may not be lower than 80% of the salary for appropriate group of jobs.

Conclusion

The Committee concludes that the situation in Montenegro is not in conformity with Article 7§5 of the Charter on the ground that young workers' wages are not fair..

Article 7 - Right of children and young persons to protection

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

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

The Committee recalls that in application of Article 7§6, time spent on vocational training by young people during normal working hours must be treated as part of the working day (Conclusions XV-2 (2001), Netherlands). Such training must, in principle, be done with the employer's consent and be related to the young person's work. Training time must thus be remunerated as normal working time, and there must be no obligation to make up for the time spent in training, which would effectively increase the total number of hours worked (Conclusions V (1977), Statement of Interpretation on Article 7§6). This right also applies to training followed by young people with the consent of the employer and which is related to the work carried out, but which is not necessarily financed by the latter.

In its previous conclusion the Committee asked confirmation that in all cases the time spent in vocational training is included in the normal working time and thus remunerated as such.

The report responding to the Committee's question indicated that the Labour Inspection did not identify cases of acting contrary to the law, that is, the collective agreement and the contract of employment, regarding the treatment of the time spent on the vocational training of employees, including those under the age of 18, as well as the salary compensation for that time. There were no complaints of employees that would indicate disrespect of this right.

The Committee also in its previous conclusion asked that the next report provided information on the activity and findings of the Labour Inspectorate in relation to the inclusion of time spent on vocational training in the normal working time.

The report provides that the Labour Inspection did not identify cases of acting contrary to the law.

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. Having noted that the Labour Inspectorate did not find any violations, the Committee asks that the next report contains information on the activities of the Labour Inspectorate in relation to the inclusion of time spent on vocational training by young workers in the normal working time.

Conclusion

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

The Committee recalls that in application of Article 7§7, young persons under 18 years of age must be given at least four weeks' annual holiday with pay. The arrangements which apply are the same as those applicable to annual paid leave for adults (Article 2§3). For example, employed persons of under 18 years of age should not have the option of giving-up their annual holiday with pay; in the event of illness or accident during the holidays, they must have the right to take the leave lost at some other time.

In its previous conclusion the Committee noted that according to the Labour Law, an employee under 18 years of age shall be entitled to annual leave of at least 24 working days.

The Committee previously noted that if an employee is temporarily unable to work during his/her annual leave in accordance with the health insurance regulations and during maternity or parental leave, he/she shall have the right to continue the annual leave at the end of sick leave (Section 66 of the Labour Law (consolidated text) published in "Official Gazette of Montenegro", 49/2008, 26/2009, 59/2011 and 66/2012 available on ILO NATLEX).

The Committee asks whether young workers are allowed to waive their right to annual leave in return for increased remuneration.

In its previous conclusion the Committee requested information on the activity and findings of the Labour Inspectorate in relation to the paid annual holidays of young workers under 18.

The report provides there have been no cases of non-compliance in relation to paid annual holidays of workers under the age of 18.

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

Conclusion

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

The Committee recalls that, in application of Article 7§8, domestic law must provide that under-18 year olds are not employed in night work. Laws or regulations must not cover only industrial work. Exceptions can be made as regards certain occupations, if they are explicitly provided in national law, necessary for the proper functioning of the economic sector and if the number of young workers concerned is low (Conclusions XVII-2 (2005), Malta).

In its previous conclusion the Committee noted that according to Section 106 of the Labour Law, employees under 18 years of age are prohibited to work at night. Exceptionally, an employee under 18 years of age may be deployed to work at night when it is necessary to continue work which was interrupted due to natural hazards, or to prevent damage to raw materials or other materials.

The Committee also remarked that according to the Labour Law, work performed between ten o'clock in the evening and six o'clock in the morning the next day shall be considered night time work (Section 56 of Labour Law (consolidated text) published in "Official Gazette of Montenegro", 49/2008, 26/2009, 59/2011 and 66/2012 available on ILO NATLEX).

The current report states that the drafting of a new Labour Law is in progress, which will supplement the protection of this category of employees, and the planned replacement of an article relates to the ban on night work for persons under the age of 18. The applicable law permits an exception to the ban at night for this category of employees in situations where it is necessary to continue work interrupted by natural disasters, to prevent damage to raw materials or other material. The new law will regulate the night work for these persons without exception and prohibit fully work at night for this category of employees, whereby the protection of youth under 18 years of age will be raised concerning such work.

The Committee requests in the next report the relevant Articles and provisions of the new Labour law are provided concerning under-18 year olds are not employed in night work and the exceptions to this.

In its previous conclusion the Committee requested information on the activity of the Labour Inspectorate, its findings and sanctions applied to possible illegal involvement of young workers under 18 in night work.

The report provides that the Labour Inspection did not identify cases of illegal work at night of workers under the age of 18, and there was no address of these employees in that direction.

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. Having noted that the Labour Inspectorate did not identify any violations, the Committee asks that the next report contains information on the activities of the Labour Inspectorate in relation to possible illegal involvement of young workers under 18 in night work and on whether staffing levels and qualifications of Labour Inspectors are sufficient.

Conclusion

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

Article 7 - Right of children and young persons to protection

Paragraph 9 - Regular medical examination

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

The Committee recalls that in application of Article 7§9, domestic law must provide for compulsory regular medical check-ups, for under-eighteen year olds employed in occupations specified by domestic laws or regulations (Conclusions IV (1975)). The obligation entails a full medical examination on recruitment and regular check-ups thereafter (Conclusions XIII-1 (1993), Sweden). The intervals between check-ups must not be too long. In this regard, an interval of two years has been considered to be too long (Conclusions 2011, Estonia).

The Committee in its previous conclusion, asked if regular medical examination are provided to young workers of 15 -18 years after recruitment and at which intervals. In addition, the Committee requested for information on the activity and findings of the Labour Inspectorate in relation to the medical examination of young workers under 18.

The report indicates that the Labour Law does not prescribe the obligation of medical examinations after employment of persons under 18. Also, the Law on Safety and Health at Work does not prescribe regular medical examinations after employment for this population of employees, but only for employees at workplaces with special working conditions, or increased risk.

Conclusion

The Committee concludes that the situation in Montenegro is not in conformity with Article 7§9 of the Charter on the ground that the legislation does not provide for compulsory regular medical check-ups, for under-eighteen year olds.

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 Montenegro.

In its previous conclusion (Conclusions 2015), the Committee found that the situation was in conformity with Article 8§1. It will therefore only consider the recent developments and additional information.

Right to maternity leave

The report states that there was no change to the legal framework on maternity leave during the reference period: under Article 111a of the Labour Code, employees are entitled to 45 days' maternity leave before the birth of their child (including 28 compulsory days) and 45 days' compulsory leave after. The report states that the same rules apply to public sector employees.

Right to maternity benefits

In its previous conclusion, the Committee noted that during maternity leave, workers were entitled to wage compensation corresponding to their regular salary and asked for information on the requirements for entitlement to maternity benefits. In reply, the report states that there are no specific criteria other than being on maternity leave.

In its previous conclusion, the Committee 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.

In the absence of a Eurostat indicator on the median equivalised income, the Committee notes from the report that the absolute national poverty threshold was set at €186.45 per month (the amount has not changed since 2013). The report states that under the Labour Code, the minimum wage cannot be lower than 30% of the average wage paid in the last six months. In 2013, the minimum wage was €193. According to Eurostat data for 2014, 2015, 2016 and 2017, the gross minimum monthly wage was €288.05 in Montenegro. The Committee notes from MISSCEO data that the amount reimbursed by the state budget may not be lower than the minimum wage (€193) or higher than twice the average national gross wage (€1 530 in 2018). In the light of the above, the Committee finds that the situation is in conformity with Article 8§1 on this point.

In reply to the Committee's question, the report states that women working in the public have the same entitlements to maternity benefits.

Conclusion

The Committee concludes that the situation in Montenegro 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 Montenegro.

Prohibition of dismissal

In its previous conclusions (Conclusions 2015), the Committee found that the situation was in conformity with Article 8§2 of the Charter on this point and asked what exceptions applied concerning dismissal during pregnancy or maternity leave.

In response, the report states that pregnancy does not protect a woman from dismissal if there are objective grounds for dismissal, such as failure to meet the work objectives (set out in the collective agreement, the employer's instructions or the employment contract), or non-compliance with the obligations laid down in law, the collective agreement or the employment contract. The Committee requests that the next report specify how domestic courts interpret and apply these exceptions. In the meantime, it reserves its position on this issue.

The report confirms that the public and the private sector are subject to the same rules in this respect.

Redress in case of unlawful dismissal

In its previous conclusions (Conclusions 2015), the Committee found that the situation was in conformity with Article 8§2 of the Charter on this point and asked what criteria were taken into account by the courts in awarding compensation and whether any ceiling applied in this respect. It also asked whether adequate compensation was awarded when reinstatement was not possible and whether the same rules applied to employees in the public sector.

In response, the report states that in determining the compensation amount, the courts take into consideration the loss of earnings incurred by the employee who was unfairly dismissed. As for non-pecuniary damages, the amount depends on the workplace and the employee's length of service. The courts determine this amount by taking into account the need to ensure that the compensation is proportionate and dissuasive. The Committee understands from the report that the law does not set a ceiling in this respect. However, it asks anew for concrete examples of the compensation awarded in cases of unlawful dismissal of employees who were pregnant or on maternity leave.

Women workers in public and private sector are equally protected.

Conclusion

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

Article 8 - Right of employed women to protection of maternity

Paragraph 3 - Time off for nursing mothers

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

In its previous conclusion (Conclusions 2015), the Committee noted that under Article 111a of the Labour Code, employees who resuming work before the child is one year old were entitled to a daily nursing break of 90 minutes.

In response to the Committee's question, the report indicates that all employees, including domestic workers, public sector employees and those on a fixed-term or part-time contract, are entitled to nursing breaks. These breaks are assimilated to working time and are remunerated as such.

In response to another question of the Committee, the report indicates that women employees are entitled to nursing breaks until the end of their maternity leave or until their child is one year old.

Conclusion

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

Article 8 - Right of employed women to protection of maternity

Paragraph 4 - Regulation of night work

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

In its previous conclusion (Conclusions 2015), the Committee found that the situation was in conformity with Article 8§4 and asked whether the same rules applied to women working in the public sector. The report confirms that the public and the private sector are subject to the same rules regarding the protection of women who are pregnant, who have recently given birth or are nursing their infant.

In its previous conclusion, the Committee also asked whether the employed women concerned were transferred to a daytime work until their child was three years old and what rules applied if such transfer was not possible. In response, the report indicates that, under Article 110 of the Labour Code, women workers who are pregnant or have a child under three years of age, in both the private sector and the public sector, must be transferred to daytime work. The report states that, during the reference period, the Labour Inspectorate did not identify complaints regarding night work.

The Committee notes that the report only partly answers these questions. Therefore, it reiterates them. In particular, it asks that the next report clarify what rules apply if a transfer to daytime work is not possible. It points out that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Montenegro is in conformity with Article 8§4 of the Charter.

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

Conclusion

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

In its previous conclusion (Conclusions 2015), the Committee found that the situation was in conformity with Article 8§5 of the Charter and asked whether the same rules applied to employees of the public sector. The report confirms that both the private and public sector are subject to the same rules in this regard.

The report states that the new Law on Safety and Health Protection at Work, adopted in 2014 (published in Official Gazette No. 34/14 of 8 August 2014) has replaced the Law on Safety at Work (Official Gazette of the RCG No. 79/04, Official Gazettes of Montenegro Nos. 26/10 and 40/11). Under Articles 13§2 and 3 of the new law, the Ministry of Labour and Social Welfare adopted the Rules on Safety Measures in the Workplace (Official Gazette No. 40/15). The Rules lay down minimum safety measures for employers and employees, including women who are pregnant, have recently given birth or are nursing their infants. Article 9 provides that employers must carry out a risk assessment for such women. Women workers in the above categories must be assigned to posts that do not affect their health and do not expose them to risks. Activities considered to be dangerous for women who are pregnant, have recently given birth or are nursing their infant are those which involve physical agents (vibrations, noise, high temperatures, extreme temperatures, etc.), biological factors and chemical substances (lead and lead derivatives, mercury and mercury derivatives, carbon monoxide, etc.). The risks taken into account in these Rules cover exposure to infectious agents such as rubella or toxoplasmosis (unless it is proven that the person is sufficiently immunised). The Rules also give a list of the types of underground work in which it is prohibited to employ these categories of women.

The Committee asks whether other dangerous activities, particularly those involving exposure to benzene, ionising radiation or viral agents, are also prohibited or strictly regulated for the categories of women concerned.

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

Legal protection of families

Rights and obligations, dispute settlement

In its previous conclusion (Conclusions 2015), the Committee asked whether spouses are equal, particularly in respect of rights and duties within the couple and children. As to **rights and obligations of spouses** toward their children (parental authority and management of children's property), the report confirms that equality of spouses is guaranteed under the Family Law (see details in the report). However, it provides no information about equality of spouses within the couple (reciprocal responsibility, ownership, administration and use of property, etc.).

In this respect, the Committee notes from the Concluding Observations of the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) of 2017 that "a) The definition of marital property in article 288 of the Family Law seems narrow and excluding of intangible assets such as accrued pension rights and other work-related benefits, in addition to future earning capacity, and does not adequately address gender-based economic disparities between spouses resulting from traditional work and family-life patterns, which often lead to men benefiting from an enhancement of their human capital and greater earning potential, whereas women often experience the reverse; (b) Although the law provides for a community property regime that equally divides property acquired during marriage upon divorce, women are nevertheless required to prove their actual monetary contribution to the acquisition of property; (c) Article 294 of the Family Law allows for unequal division of the joint property in cases where one spouse can prove that his/her contribution has been higher. That constitutes a disposition which, according to recent research, is detrimental to women". The Committee asks the next report to comment on these points. It reserves in the meantime its position.

As regards the legal framework applicable to the **settlement of disputes** within the couple, the Committee refers to its previous conclusion (Conclusions 2015), where it considered the situation to be in conformity with Article 16 of the Charter.

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

In its previous conclusion (Conclusions 2015), the Committee asked for information on access to **mediation services**. The report refers to the services provided in the framework of the Law on Social and Child Protection (see below, as regards Family counselling) but it does not clarify the legal framework applying to mediation in the context of divorce and whether such services are easily accessible in terms of costs and geographical availability. The Committee notes however from the first baseline report of the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO, see below) that mediation services, as a measure to settle a family law dispute (divorce, custody, alimony, etc.) exist in Montenegro (Article 326 of the Family Law provides that they are regulated by the Mediation Law). It asks the next report to clarify whether such mediation procedure is voluntary or mandatory and whether it is affordable.

Domestic violence against women

The Committee previously took note of the protection measures and enforcing bodies provided under the Law on Protection of Domestic Violence (see Conclusions 2015) and requested information on the protection provided in practice to women in case of domestic violence through for example the collection and analysis of reliable data, training, particularly

for police officers, and services to reduce the risk of violence and support and rehabilitate victims. In response, the report indicates that a single database collecting relevant data is being set up and a Law was adopted in June 2015, which provides for damage compensation for victims of violence. In addition, a unique national and cost-free SOS line for victims of domestic violence was set up in September 2015, operated by a coordinator, four consultants and a professional psychologist (in 2018, it treated 3 737 calls and provided mostly information services but also confidential call services). The Committee notes from the report that there are three shelters for family violence (Podgorica, Niksic and Berane) with a total capacity of 38 persons (women and children) and provide an emergency and long-term service for women and children seeking shelter from domestic violence. In addition, they provide support in the following areas: legal advice, psychological support and advisory services, legal representation, escorting to court and mediation, as well as finding a job. According to the report, their assistance is crucial in all official procedures and significantly increases the chances of obtaining urgent protection measures or restraining orders. The report also presents some prevention measures (training of social work professionals in cooperation with NGOs) carried out in 2018 and 2019 (out of the reference period). As regards the setting up of integrated policies addressing domestic violence against women, the report refers to a new Strategy on the Protection against Domestic Violence (2016-2021) adopted in December 2015, but does not provide information on its content.

The report does not provide information as regards prosecution of domestic violence. In this respect, the Committee takes note of the concerns expressed in the abovementioned Concluding Observations of the CEDAW of 2017, in particular as regards legislative shortcomings (the definition of rape is not based on absence of consent and marital rape is not criminalised) but also discriminatory attitudes and/or passiveness "displayed towards victims by judges, prosecutors and police and other law enforcement officers, who often give priority to reconciliation over prosecution in order to preserve the family and consider domestic violence as a private matter; the lack of implementation of the legislative framework to prevent and punish gender-based violence against women owing to weak intersectoral cooperation, insufficient human, technical and financial resources, a low level of gender sensitivity among members of the legal profession, the very small number of protection orders issued even after repeated reports of violence and the growing resort to issuing double charges to both spouses in cases of domestic violence; the lenient sentences handed down for perpetrators of gender-based violence against women".

Insofar as Montenegro has signed and ratified the Istanbul Convention on Preventing and Combating Violence against Women and Domestic Violence (which came into force in Montenegro on 1 August 2014), the Committee refers to the assessment procedure which took place in the context of this mechanism. It notes that in October 2018, the Council of Europe's Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) published its first baseline evaluation report on Montenegro (GREVIO/Inf(2018)5). GREVIO experts welcomed the adoption of new legislation on domestic violence which introduced emergency barring and restraining orders, the criminalisation of other forms of violence against women (stalking, female genital mutilation and forced sterilisation) and important rights for domestic violence victims, such as the right to legal aid. However, GREVIO noted that measures addressing other types of violence, such as rape and forced marriage needed further improvement. It urged the authorities to set up rape crisis and/or sexual violence referral centres in sufficient numbers, ensure adequate training of professionals and develop sufficient funding opportunities for women's NGOs that run specialist support services for victims.

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 protection orders, the implementation of the existing measures and those under way and their impact on reducing domestic violence against women, also in the light of the

abovementioned GREVIO and CEDAW recommendations. In the meantime, in the light of the information available, the Committee considers that it has not been established that measures implemented to address the problem of domestic violence have been sufficient.

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 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.). As the report does not provide any information on this issue, the Committee asks the next report to provide comprehensive and up to date information in this respect.

Family benefits

Equal access to family benefits

In its previous conclusion the Committee asked the next report to indicate whether foreign nationals, stateless persons and refugees are treated equally with regard to family benefits. It notes from the report in this respect that the on Social and Child Protection provides it Article 5 that the rights in the area of social and child protection established by this Law and international treaty may be exercised by a foreigner with granted temporary or permanent residence in the state, in accordance with a special law. The Committee understands that the law does not establish any length of residence requirement for entitlement to family benefits. It asks the next report to indicate whether this understanding is correct.

Level of family benefits

In its previous conclusion (Conclusions 2015) the Committee noted that the scheme of child benefit was based on social assistance, i.e. entitlement upon need. Therefore, the Committee considered that the situation was not in conformity with the Charter on the ground that family benefits did not cover a significant number of families. The Committee notes from the report in this respect that the Law on Social and Child Protection provides in Article 42 that the right to child allowance can be exercised by a child who:

- is a beneficiary of financial support;
- is a beneficiary of care and support allowance;
- is a beneficiary of personal disability allowance;
- is without parental care;
- whose parent, adoptive parent, guardian, foster parent i.e. person to whom care, upbringing and education of the child have been entrusted as a beneficiary of financial support.

According to the report, the right to child allowance is used by about 15 150 children from around 7 000 families and for their needs € 400 000 have been allocated per month. The amounts of allowance vary from € 24 to € 40 per month. In order to determine whether child benefit constitutes an adequate income supplement, the Committee asks for information on the level of median equalised income or a similar indicator, such as the average income.

The Committee also notes from MISSCEO that the entitlement to a child allowance is restricted to given social eventualities: to beneficiaries (parent) of social assistance benefits, care and assistance allowance or disability allowances; to children without parents; to

beneficiaries (parent) of social assistance benefits provided within the setting of an agreement of activation or other unfavourable social situation.

The Committee recalls that under Article 16 a child allowance must be granted either universally, or subject to a means-test. However, in both cases, it should cover a significant percentage of all families. The Committee considers that as regards Montegenro, the situation which it has previously found not to be in conformity with the Charter has not changed. The entitlement to child allowance is limited to families, beneficiaries of social assistance. Therefore, the situation is not in conformity with the Charter.

The Committee asks the next report to indicate what percentage of families receive child allowance.

Measures in favour of vulnerable families

In reply to the Committee's question in the previous conclusion (Conclusions 2015), the report states that the Government has adopted a new Strategy for Social Inclusion of Roma for 2016-2020.

According to the report, the basic principle of the Strategy is the principle of affirmative action. The Committee notes that according to the the census, 6251 persons declared themselves to be Roma or 1.01% of the total population. For the purpose of Roma inclusion, the Strategy covers the following areas: housing, education, health care, employment, legal status, social status and family protection, culture, language and identity. The Committee asks the next report to provide the information about the outcome of the implementation of the Strategy.

As regards single-parent families, according to the report, they enjoy all the rights to social and child care in accordance with the prescribed conditions and in certain segments a single parent, when exercising these rights, is entitled to higher benefits than other beneficiaries. For example, a single parent, in accordance with Article 25 of the Law on Social and Child Protection, may exercise the right to financial assistance, even if she/he does not fulfil the conditions prescribed by law regarding income, property, etc.

Housing for families

In its previous conclusion (Conclusions 2015), the Committee asked for comprehensive information concerning the different aspects of the legal protection for persons threatened by eviction, according to the principles established in its case-law.

In its reply, the report indicates that with the entry into force of the Law on Spatial Planning and Construction of Structures on 14 October 2017, a new policy in the area of planning and construction of structures has been established. This law provides for the legalization of illegal structures, within a time limit of nine months from the date of entry into force of the law. Article 171 of this law stipulates that in the case of removal of an illegal structure serving as a primary residence, the local self-government unit shall provide alternative accommodation to the owner of the illegal structure and the members of his family household. The report therefore stresses that eviction is not possible without providing adequate alternative accommodation. The competent local authority prescribes the procedure and the criteria for alternative accommodation, with prior approval of the Ministry.

The Committee takes note of this information. However, it finds no information in the report on issues such as the obligation to fix a reasonable notice period before eviction, accessibility to legal remedies, and compensation in case of unlawful eviction. It therefore asks the next report to provide comprehensive information on all the aspects concerning the legal framework ensuring protection against eviction, including in cases of eviction for reasons other than the removal of illegal structures (for example, insolvency or wrongful occupation by tenants). Pending receipt of the information requested, the Committee reserves its position on this point.

The Committee further notes from the report that a new Social Housing Programme was adopted for the period 2017-2020. Having in mind this programme, it was recommended for local self-government units to intensify the implementation of local social housing programmes, with a focus on addressing the housing needs of the following target groups: persons with disabilities, persons over 67 years of age (pensioners), young married couples and Roma and Egyptians. The Committee asks the next report to provide detailed information on the implementation of these local social housing programmes, as well as figures on the overall availability of social housing provided by municipalities (demand and supply).

As regards access to adequate housing for Roma families, the Committee previously asked (Conclusions 2015) for information on measures taken to improve the housing situation of these families.

In its reply, the report states that according to a survey conducted for the needs of the “Strategy for Social Inclusion of Roma and Egyptians in Montenegro 2016-2020”, about 40% of this population was located in structures that were not legalized. About 60% of the total number of houses and settlements concerned were inadequate structures (30% of this population lived in barracks, 37% in structures that were built in bricks and/or blocks, and about 7.3% in buildings). Article 4 of the Law on Social Housing provides that the priority in exercising the right to social housing is given to Roma and Egyptians. In this connection, the report provides some figures on the housing units built and allocated for use to members of the Roma and Egyptian population, including in Podgorica (Konik).

The Committee notes from the latest ECRI report on Montenegro (adopted on 20 June 2017, fifth monitoring cycle, §§ 68 and 70) that the situation of Konik camp (a settlement of temporary structures in a suburb of Podgorica) remained problematic, despite ECRI’s previous recommendation to the effects that the Montenegrin authorities should find standard accommodation for its Roma and Egyptian inhabitants and close down the camp (see also ECRI’s conclusions of 9 December 2014). According to the Advisory Committee on the Framework Convention for the Protection of National Minorities (Third Opinion on Montenegro, 7 March 2019, outside the reference period, § 54), the Konik camp was officially closed in December 2018 (outside the reference period), although there were still four families without durable housing. Although the Advisory Committee recognised that the housing situation of many Roma and Egyptians (particularly displaced persons) had improved substantially through the construction of new housing, it noted with concern that poor living conditions persisted in some communities/settlements around the country (notably in Ulcinj/Ulqin, Herceg Novi and Tivat). The Committee notes that other monitoring bodies have expressed similar concerns about the housing conditions of Roma and Egyptians in Montenegro (United Nations Committee on the Elimination of Racial Discrimination, Concluding observations on the combined fourth to sixth periodic reports of Montenegro, 17 August 2018, outside the reference period).

The Committee therefore asks the next report to continue to provide information on the measures taken with a view to improving the housing situation of Roma and Egyptian families around the country. In the meantime, it reserves its position on this point.

Finally, the Committee refers to its Statement of Interpretation on the rights of refugees under the Charter (Conclusions 2015). The Committee accordingly asks for information in the next report on the housing situation of refugee families.

Participation of associations representing families

In response to the Committee’s question on the participation of associations representing families in the formulation of family policy (Conclusions 2015), the report refers to the legal framework regulating the role of Non-governmental organisations (Law Nos. 39/11 and 37/17) and indicates that in 2018 (outside the reference period) the rules regulating NGOs participation to public debate, including the design and implementation of public policies,

were updated (see Government Decree No. 41/18, updating a previous Regulation of 2012). Under the revised regulation, the Ministry of Labour and Social Welfare is obliged to provide participation of the NGO sector in the process of enacting laws, strategic documents and bylaws, through a public call for competition, where NGOs make a significant contribution. Cooperation with NGOs also takes place through consultations on issues of importance in this field.

The Committee takes notes of the information provided on the cooperation of NGOs and their representatives with public authorities and administration, especially in the field of social and children protection. It asks however the next report to clarify whether associations representing families are among the NGOs taking part to the elaboration of family policies.

Conclusion

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

- it has not been established that the measures implemented to address the problem of domestic violence have been sufficient;
- family benefits do not cover a significant percentage of families.

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 Montenegro.

The legal status of the child

The Committee previously requested confirmation that there was no discrimination between children born within marriage and outside marriage, for example in matters relating to inheritance rights and maintenance obligations (Conclusions 2015). The report speaks about the conditions for the recognition of informal marriages and equates these to formal marriages but does not confirm that there is no discrimination between children born within marriage and outside marriage. The Committee repeats its requests for confirmation that there is no such discrimination.

The Committee previously asked whether there are restrictions on the right of an adopted child to know their origins (Conclusions 2015). According to the report Article 122 of the Family law stipulates that a child has the right to know that they were adopted. Article 61 of the said law stipulates that a child has the right to know who their parents are but this right may be limited by law. The same article prescribes that a child who is able to form an opinion may consult the birth register and other documents pertinent to their origin.

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 notes from the UN Committee on the Rights of the Child's Concluding Observations on the combined second and third periodic reports of Montenegro [CRC/C/MNE/CO/2-3, June 2018] that the UN Committee expressed concern that that some groups of children, such as Roma, Ashkali and Egyptian children, children abandoned after birth, and children born to refugees, face difficulty in having their birth registered.

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

The Committee 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 considered that the situation was not in conformity with the Charter as corporal punishment of children was not explicitly prohibited in the home and in institutions (Conclusions 2015).

The Committee notes that as a result of amendments to the Family Law adopted in 2016 all forms of corporal punishment have now been prohibited in all settings. The Committee considers that the situation is now in conformity with the Charter in this respect.

Rights of children in public care

The Committee previously asked what are the criteria for the restriction of custody or parental rights and what is the extent of such restrictions. It also asked what are the procedural safeguards to ensure that children are removed from their families only in exceptional circumstances. It further asked whether the national law provides for a possibility to lodge an appeal against a decision to restrict parental rights, to take a child into public care or to restrict the right of access of the child's closest family (Conclusions 2015).

The report states that a court shall deprive a parent of the right to live with a child if s/he significantly neglects the child. A parent is considered to significantly neglect a child in particular if he or she does not pay sufficient attention to nutrition, clothing, medical assistance, regular attendance of school, and fails to prevent the child from keeping bad company, or from begging or thieving. An appeal is possible against the placement of a child outside his/her home. A decision to restrict parental right is reviewed after a year.

The Committee recalls from previous State reports that the Law on Social and Child Protection imposes a duty on all those who work in child protection to make every effort to assist a child to remain in their family by providing family support and if this is not possible, through the provision of family placement-foster care. A child under three years of age should not be placed in an institution and only when all other options are exhausted. In such cases the placement must be reviewed at least every six months.

The Committee recalls that the Social Protection Reform Strategy (2012-2016) sought to develop services which support the natural family and family environment, to develop foster care, adoption services, day centres, and home assistance. In addition it sought to reduce the number of children in institutions and develop a range of new services in order to bring the conditions in the institution closer to the standards of living in the family.

The Committee previously asked to be informed about the implementation of the Social Protection Reform Strategy (Conclusions 2015).

According to the report during the period of implementation of the Strategy, activities focused on the improvement of the regulatory framework. In addition, significant systemic changes were achieved through institutional strengthening of the system, primarily by establishing the Institute for Social and Child Protection, as well as by introducing the Social Welfare Information System (SWIS).

Family-friendly services have been developed. The goal of this service is to empower biological families so that children, especially children from 0 to 3 years of age, grow up in their family. The provider of this service is the NGO "Family Centre" – Kotor. The service is currently being implemented in six municipalities in Montenegro and it is planned that the service will be developed and expanded to all municipalities in Montenegro. In 2017 this service provided assistance to 100 families. 13 day care centres for children with disabilities have been established.

According to the data from December 2017, 84 children over 3 years of age, including 25 children with disabilities were accommodated at the PI Children's Home "Bijela". There were no children under 3 years of age placed at the mentioned institution.

Family placement-fostering was used to accommodate 368 children, of which 317 were placed with relatives.

A new Social and Child Protection System Development Strategy for the period for the period 2018-2022 was adopted as a continuation of activities from the previous Strategy. The Committee asks that the next report provide information on the implementation of the Strategy, including its impact.

The Committee notes that UN Committee on the Rights of the Child in the above mentioned Concluding Observations noted, inter alia, that children from the most disadvantaged and marginalized groups remain at a high risk of family separation and institutionalization.

The Committee asks to be informed about the implementation of the above mentioned strategy, as well as about the number of children placed in institutional care (including any children under the age of three years) and the number placed in foster care, including information on trends in the area. The Committee also asks for information as to the steps taken to ensure that the laws on family separation and the placement of children in institutions do not have a disproportionate impact on disadvantaged and marginalized groups, particularly minority ethnic groups including Roma, Ashkali and Egyptian children.

Right to education

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

Children in conflict with the law

The Committee previously asked what is the age of criminal responsibility and for information on the maximum length of pre-trial detention and prison sentence for children. It also asked whether children are always separated from adults (Conclusions 2015).

Article 3 of the Law on the Treatment of Juveniles in Criminal Proceedings ("Official Gazette of Montenegro", No 64/11 and 01/18), provides that a juvenile is a person who at the time of commission of a crime is at least 14 but under 18 years of age. The same article differentiates between a person who at the time of commission of a crime is at least 14, but under 16 years of age ("younger juvenile") and a person who at the time of commission of a crime is at least 16 but under 18 years of age ('older juvenile'). The Law excludes the application of criminal sanctions and other measures in relation to persons who at the time of commission of a crime are younger than 14. There are three types of criminal sanctions that may be applied to juveniles, in particular: correctional measures, a juvenile detention term, or security measures. A child younger than 16 years of age ("a younger juvenile") may only be subject to correctional measures. A child older than 16 years of age ("an older juvenile") may be sanctioned through correctional measures and, exceptionally may be sentenced to a term in a juvenile detention centre. A juvenile may also, under conditions set by this Act, be sanctioned by the security measures set by the Criminal Code.

Children over 16 years of age may only be sentenced to a period in a juvenile detention centre where they have committed a crime which by law carries a sanction of over five years in prison and there is a high degree of guilt, taking into account the circumstances under which the crime was committed, or the nature and seriousness of the crime. Regarding the length of a juvenile detention term, it may be not less than six months and not longer than five years, for crimes which carry a prison term of not less than ten years the court may order a sentence of up to ten years in juvenile detention.

The Committee recalls that prison sentences should only exceptionally be imposed on children and only as a measure of last resort for the shortest period possible and should be subject to regular review. The Committee asks whether prison sentences are regularly reviewed. The Committee also asks that the next report include information on: the number of children subject to correctional measures (and the nature of such measures); the number of children subject to criminal sanctions; the number of children subject to imprisonment and for how long.

As regards pre trial detention the reports states that pretrial detention of up to 30 days renewable once may be imposed. In such cases children are separated from adults.

The reports states that children sentenced to a period of detention are in fact placed in an adult prison but in a separate part.

However the Committee notes that UN Committee on the Rights of the Child Committee on the Rights of the Child in the above mentioned Concluding Observations expressed concern that children may be placed in detention with an adult and that separate facilities for children

do not exist. It asks for the Governments comments on this and that existing provisions for alternatives to detention are not being fully implemented.

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

Right to assistance

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

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

The Committee requests information on accommodation facilities for migrant children whether accompanied or unaccompanied, including measures taken to ensure that children are accommodated in appropriate settings and have access to healthcare. It also requests further information on the assistance given to unaccompanied children, in particular to protect them from exploitation and abuse. Lastly it requests information as to whether children who are irregularly present in the State accompanied by their parents or not, may be detained and if so under what circumstances.

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 Montenegro 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 State 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 under the terms of Article 17 of the Charter.

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 defers its conclusion.

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

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

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

Enrolment rates, absenteeism, drop-out rates

The Committee previously asked what was the enrolment rate in primary education as well as the drop-out rate. It also asked what measures had been taken to reduce absenteeism (Conclusions 2015).

The Committee notes the information provided in the report on the number of children enrolled in pre-school, primary and secondary education. However no information is provided on the enrolment rate. The Committee notes that according to UNESCO in 2017 the net enrolment rate for primary education for both sexes was 95.7%, the corresponding rate for secondary education was 92.08%. The Committee notes that the enrolment rate in secondary education is low and asks for further information on the reason for this.

As regards drop-out rates, the report states that the dropout rate is 0.54% but there are also a number of "hidden drop-outs". In addition to children who are at risk of leaving school early, there are children who during the school year have a high rate of absenteeism but who have not left education. In order to reduce the number of children dropping out, a Protocol for Action and Prevention of Early School Drop-Outs has been developed in order to identify children at risk of dropping out at primary and secondary school level.

The Committee wishes to receive up to date information on enrolment and drop-out rates as well as on measures taken to address issues related to these rates.

The Committee also wishes to receive information on measures taken to prevent school exclusions and to reintegrate students who have been excluded into education.

Costs associated with education

According to the report Roma and Egyptian children receive free textbooks and free transport in certain cities to and from school. Roma and Egyptian children attending secondary schools receive scholarships.

The Committee asks whether any other measures exist in order to support the cost of education for other groups such as children in rural areas and from low income families.

Vulnerable groups

The Committee previously asked whether children in an irregular situation have a right to access education in Montenegro (Conclusions 2015).

According to the report, foreign nationals who have been issued a temporary residence permit or permanent residence permits "shall be equal in exercising the rights to education to the Montenegrin nationals in line with the special law" General Law on Education and Upbringing ("Official Gazette of Montenegro" Nos. 64/02, 31/05, 49/07, 4/08, 21/09, 45/10, 40/11, 45/11, 36/13, 39/13 and 44/13 i 47/17).

The Committee understands from this that children without a residence permit (permanent or temporary) do not have access to education. The Committee recalls that access to education is crucial for every child's life and development. The denial of access to education will exacerbate the vulnerability of an unlawfully present child. Therefore, children, whatever their residence status, come within the personal scope of Article 17§2. Therefore the Committee finds that the situation is not in conformity on this point.

The Committee notes from the UN Committee on the Rights of the Child's Concluding Observations on the combined second and third periodic reports of Montenegro

[CRC/C/MNE/CO/2-3, June 2018] that the UN Committee expressed concern about the limited access of asylum and refugee children to education.

The Committee previously asked to be informed about the progress made in improving access and enrolment in education of Roma children and children from other vulnerable groups (Conclusions 2015).

The report states that when working with the children of the Roma and Egyptian population, the focus is on integration, fairness, quality, the continuity of education and improvement of school and social achievement. 249 Roma and Egyptian children were enrolled in pre school, 1860 in primary school, and 142 in high school.

The Committee asks what proportion of Roma and Egyptian children are enrolled in compulsory education.

According to the report, Roma and Egyptian children are either integrated into regular pre-school activities, educational units in organized Roma settlements or are in interactive services in the municipalities where a significant number of the relevant populations live.

The report notes that a preparatory kindergarten, which is not part of compulsory education, has been organized in 9 pre-school institutions for Roma and Egyptian children who have acquired the legal right to enrol in the first grade. The Committee asks what criteria are used to establish whether children have a legal right to enrol in the first grade. The Committee also asks what proportion of Roma and Egyptian children do not have such a legal right.

The report states further that a campaign to encourage the enrolment of Roma and Egyptian children in the first grade of elementary school has been conducted. During the campaign, flyers were distributed in the Roma, Montenegrin and Albanian languages. Roma mediators have been engaged in schools.

The report indicates that separate classes in certain settlements inhabited by Roma and Egyptian children have been closed and the children transferred to regular primary schools. The Committee seeks confirmation that this is the case and that there are no longer separate facilities (whether de jure or de facto) for Roma or Egyptian children in Montenegro.

The Committee notes that in 2017 ECRI noted that the number of Roma attending compulsory primary school increased to a level of 58%, but also that the drop-out rate still remains high and the completion rate of primary school is only 29% (in 2013). Data suggest that Roma children are most likely to drop out at age 10 and the highest percentage of out-of-school children is among those aged 10–14 years. As a result, less than half of Roma children who finish primary school enroll in secondary school, with a completion rate of 8% [ECRI report on Montenegro –fifth monitoring cycle, 2017, CRI(2017)37]. The Committee finds these figures to be particularly low and asks to be kept informed of measures taken to improve educational outcomes for Roma and Egyptian children. Meanwhile it reserves its position on this point.

The Committee asks what measures have been taken to ensure the right to education for children in street situations.

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

Anti-bullying measures

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

The voice of the child in education

Securing the right of the child to be heard within education is crucial for the realisation of the right to education in terms of Article 17§2 This requires states to ensure child participation across a broad range of decision-making and activities related to education, including in the

context of children's specific learning environments. The Committee asks what measures have been taken by the State to facilitate child participation in this regard

Conclusion

The Committee concludes that the situation in Montenegro is not in conformity with Article 17§2 of the Charter on the ground that children without residence permits are not entitled to access education.

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

Paragraph 11 - Teaching language of host state

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

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

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

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

The Committee notes that it previously addressed the teaching of the national language to migrant workers and their families ([Conclusions 2015](#)) and found it to be in conformity with the requirements of the Charter. It will focus in the present assessment on any changes or outstanding issues.

In reply to the Committee's request, the report provides detailed information on the number of migrants in Montenegro, the major groups being Serbian, Bosnian, Albanian, Kosovian and Macedonian. The Education Program for learning the Montenegrin language was developed by the National Council in 2013 and relevant activities are being implemented by the Centre for Vocational Education in accordance with the Law on International and Temporary Protection of Foreigners.

The Committee asks the next report to supply the information on teaching the national language to adult migrants and whether, within or outside school system, children who continue to struggle due to language barriers may receive further assistance.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Montenegro is in conformity with Article 19§11 of the Charter.

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

Paragraph 12 - Teaching mother tongue of migrant

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

The Committee recalls that according to its case law, States must promote and facilitate, as far as practicable, the teaching in schools or other structures, such as voluntary associations, of those languages that are most represented among migrants within their territory. In practical terms, States should promote and facilitate the teaching of the mother tongue where there are a significant number of children of migrants who would follow such teachings (Conclusions 2011, Statement of interpretation on Article 19§12).

The Committee deferred its previous conclusion, awaiting information on policies or initiatives which specifically aim towards the education of migrant children of the most represented groups in their own culture, language and traditions ([Conclusions 2015](#)). It also asked for examples on any implemented projects in this respect.

No comprehensive reply has been provided in the report, which solely states that consultations in 2 schools were held on the way of inclusion and monitoring of the programme "Montenegrin as non-native language".

The Committee notes from outside sources, such as the Committee of Experts of the European Charter for Regional or Minority Languages, that main minority languages in Montenegro are Albanian, Bosnian, Croatian and Romani. The European Charter for Regional or Minority Languages entered into force in Montenegro in June 2006. Under the Constitution, minorities and their members have the right to education in their language in regular and vocational education. The Committee of Experts' report of 2017 highlighted that Montenegro had made some progress in the promotion of minority languages, however, there was a need to develop a structured policy ensuring the access to minority language education in all territories.

In order to fully evaluate the situation, the Committee asks that the next report replies to the following questions:

- whether provision for the teaching of migrants' mother tongue is made within the school system or through other organisations?
- whether the children of migrants have access to multilingual education, and on what basis; what steps that government has taken to facilitate the access of migrants' children to these schools and how they are funded?
- what additional educational programs for the instruction of foreign languages exist within and outside the school system?
- whether there are any local associations, cultural centres or private initiatives that teach migrant workers' children the language of their country of origin and whether they receive support?

Meanwhile, the Committee considers that the information in its disposal does not permit it to assess the situation and once again reserves its position on this issue. It considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Montenegro is in conformity with Article 19§12 of the Charter.

Conclusion

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

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

Paragraph 1 - Participation in working life

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

It notes that this country has only accepted Article 27§1a of the Charter.

Employment, vocational guidance and training

The Committee deferred its previous conclusion (Conclusions 2015) and requested information on the implementation of the Law on Employment and Exercising Rights with respect to Unemployment Insurance. It also asked what special assistance was given to persons with family responsibilities wishing to return to work after parental leave. The report merely indicates that this law does not use the term 'person with family responsibilities'. The Committee notes that the report does not provide the requested information and therefore reiterates its questions.

The Committee notes that in its conclusion on Article 10§3 of the Charter (Vocational training and retraining of adult workers) it had considered that it had not been established that vocational training and retraining was guaranteed for adult workers.

The report indicates that the State Employment Agency implemented various active labour market programmes aimed at, *inter alia*, helping women who are unemployed and those seeking employment. The measures include modules focusing on developing professional qualifications and key skills, and participation in work of public interest. The report refers to other measures to increase employment, such as a pilot programme (which began in 2018, outside the reference period) to provide support to hard-to-employ individuals ("*Oснаži me i uspeću*") in preparing for the labour market and obtaining a job, and a training and employment programme for young people with higher education qualifications with the aim of preventing informal business operations ("*Stop the grey economy*").

The Committee takes note of the data provided in the report for 2018 (outside the reference period). It notes that the report does not contain information on any specific measures for jobseekers with family responsibilities. Accordingly, it asks for the next report to specify whether there are placement services, information programmes or training opportunities for workers with family responsibilities.

The Committee points out that, should the necessary information not be provided in the next report, nothing will enable the Committee to establish that the situation in Montenegro is in conformity with Article 27§1 of the Charter in this respect.

Conclusion

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

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

Paragraph 2 - Parental leave

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

In its previous conclusion (Conclusions 2015), the Committee found that the situation was in conformity with Article 27§2 of the Charter and asked whether under the legislation fathers had an individual, non-transferable right to parental leave and if so, what was its length.

In reply, the report notes that, under the Labour Code, parental leave may be used from the 45th day until the 365th day following the birth of the child by either parent who may be absent from work (Article 111(1)-(3)). If one parent starts working before the expiry of 365 days (but not before the expiry of 45 days from the birth of the child), the other parent should have the right to use the remaining part of the parental leave (Article 111(5)).

The report also states that under the new draft Labour Code, fathers are to have a non-transferable right to 30 days' parental leave. The Committee asks for updated information on any changes to the legal framework concerning parental leave to be provided in the next report. In the meantime, it considers that the situation is not in conformity with Article 27§2 of the Charter on the ground that the legislation does not provide for an individual, non-transferable right to parental leave for each parent.

Conclusion

The Committee concludes that the situation in Montenegro is not in conformity with Article 27§2 of the Charter on the ground that the legislation does not provide for an individual, non-transferable right to parental leave for each parent.

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 Montenegro.

It already examined the situation with regard to the illegality of dismissal on the ground of family responsibilities in its previous conclusion (Conclusions 2015). It will therefore only consider the recent developments and additional information.

Protection against dismissal

In its previous conclusion, the Committee asked whether fathers on parental leave benefited from protection against dismissal. In reply, the report states that Article 108§3 of the Labour Code expressly stipulates that an employer may not terminate an employee's work contract while he or she is absent from work on parental leave.

Effective remedies

In its previous conclusion, the Committee asked whether the legislation set an upper limit to the amount of compensation that was awarded in case of unlawful dismissal on the ground of family responsibilities.

In reply, the report states that the legislation does not place an upper limit to the amount of compensation that is awarded in case of unlawful dismissal. If the court finds that there were no legal or valid grounds for the termination of a contract of employment, the employee shall have the right to return to work, and shall be entitled to compensation for pecuniary and non-pecuniary damage.

Conclusion

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