March 2020

EUROPEAN SOCIAL CHARTER

European Committee of Social Rights

Conclusions 2019

POLAND

This text may be subject to editorial revision.

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

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

The 1961 European Social Charter was ratified by Poland on 25 June 1997. The time limit for submitting the 18th report on the application of this treaty to the Council of Europe was 31 October 2018 and Poland submitted it on 13 December 2018.

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

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

Poland has accepted all of the above-mentioned provisions, with the exception of Articles 7§1, 7§3, 7§5 and 8§4(b).

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

The present chapter on Poland concerns 23 situations and contains:

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

– 6 conclusions of non-conformity: Articles 8§4, 16, 17, 19§6, 19§8 and 19§10.

In respect of the other 5 situations concerning Articles 7§2, 7§10, 19§1, 19§2 and 19§3, 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 Poland under the 1961 Charter. The Government consequently has an obligation to provide the requested information in the next report from Poland on this provision.

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

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

The deadline for the report was 31 December 2019.

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

Article 7 - Right of children and young persons to protection

Paragraph 2 - Higher minimum age in dangerous or unhealthy occupations

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

The Committee notes from the report submitted by Poland that there have been no changes to the legal situation which it has previously considered to be in conformity with Article 7§2 of the 1961 Charter.

The Committee noted previously that the Council of Ministers Regulation of 24 August 2004 establishes a list of tasks that young people may not perform because they pose threats to their health or safety. It further noted that the Regulation also establishes a list of occupations which may only be performed by young people over 17 as part of an apprenticeship. The Committee examined the list of occupations referred to in the Regulation and concluded that the situation was in conformity with the 1961 Charter (Conclusions XX-4 (2015)).

In its previous conclusion (Conclusions XX-4 (2015)), the Committee asked the next report to provide disaggregated data concerning the measures taken by the labour inspectorate in cases where there have been violations of the legislation on the employment of young people in dangerous or unhealthy occupations.

As regards monitoring activities concerning the list of occupations which may only be performed by young people over 17 as part of an apprenticeship, the current report indicates that in 2014 the labour inspector found 405 violations of the Regulation and issued 111 decision, 294 questions and 12 instructions. In 2015, 379 violations were identified and 134 decisions, 237 questions and 16 instructions were issued. In 2016, 221 violations were identified and 79 decisions, 138 questions and 10 instructions were issued. In 2017, the labour inspectorate found only 67 violations and issued 32 decisions, 33 questions and 2 instructions.

As regards monitoring activities concerning the list of tasks that young people may not perform because they pose threats to their health or safety, the current report indicates that in 2014 the labour inspector found 495 violations and issued 157 decision, 331 questions and 18 instructions. In the year 2015, 453 violations were identified and 188 decisions, 256 questions and 18 instructions were issued. In 2016, 307 violations were identified and 109 decisions, 192 questions and 9 instructions were issued. In 2017, the labour inspector found only 83 violations and issued 32 decisions, 48 questions and 3 instructions.

The Committee also notes from the current report that over the period 2014-2015, violations were identified in 38% of the companies inspected with regard to the list of tasks authorised during apprenticeships and in 37%-38% of the companies inspected with regard to occupations prohibited to young workers. The report points out that data concerning the percentage of violations identified during inspections are not available for the years 2016 and 2017 due to changes in the data collection method.

The report indicates that violations of the statutory provisions included cases of young people performing work connected with the removal of asbestos (sheets of eternit). The work was carried out at height and without appropriate protective equipment. In addition, young workers: (i) performed tasks involving exposure to substances which are harmful to human health (e.g. work involving the use of organic solvents), (ii) operated machinery and equipment which were especially dangerous or had no protective cover or worked in buildings which did not meet occupational health and safety standards (they performed guillotining, for example). Cases of young people being employed to transport loads above the accepted limits were also reported.

Moreover, the current report indicates that over the period 2014-2017, 75 cases of accidents at work concerning young workers were registered, including 2 cases that led to the death of the victim and 20 cases of serious injuries. The Committee expresses its concern on the

number of accidents at work registered and asks the next report to provide updated information on this point, including on measures to address the issue. In the meantime, it reserves it’s position on this point.

The Committee notes from another source that Ukrainian children are seasonally engaged by individual farmers to work in agriculture, but the problem remains unrecognised since no institution is entitled to inspect private farms (Fundamental Rights Agency – Report on "Severe labour exploitation: workers moving within or into the European Union", June 2015). The Committee wishes to receive information on how hazardous work in agriculture within family farms performed by children and young persons under the age of 18 is monitored in practice.

The Committee asks the next report to provide up-to-date information concerning the activities and findings of the labour inspectorate, including the number of violations detected and the percentage of the companies inspected where there have been violations of the Regulation. In particular, it asks the next report to indicate what are the measures taken and the sanctions imposed in practice on the employer in cases of violations concerning the employment of young people in dangerous or unhealthy occupations.

Conclusion

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

Article 7 - Right of children and young persons to protection

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

The Committee notes from the report submitted by Poland that there have been no changes to the legal situation which it has previously considered to be in conformity with Article 7§4 of the 1961 Charter.

The Committee previously noted that Article 202§1 of the Labour Code limits working hours of young workers under the age of 16 to a maximum of 6 hours per day and it covers both time devoted to work and time spent in vocational training. Moreover, Article 203§1 of the Labour Code provides for a strict ban on overtime in respect of young workers (Conclusions XVI-2 (2003)).

In its previous conclusion (Conclusions XX-4 (2015)), the Committee asked the next report to provide disaggregated data on the number and nature of violations detected by the Labour Inspection as well as on sanctions imposed for breach of the regulations regarding working time for young workers under the age of 16.

As regards monitoring of the regulations concerning working time for children under the age of 16, the current report indicates that over the period 2014-2017 the labour inspector found (i) 80 violations of the legislation concerning the daily working time; (ii) 131 violations concerning overtime work; (iii) 178 violations concerning the minimum uninterrupted rest period of 48 hours including Sunday; (iv) 63 violations concerning the minimum uninterrupted rest period of 14 hours including the night. Following the inspections, the labour inspector issued respectively (i) 76 questions and 4 decisions of the legislation concerning the daily working time; (ii) 133 questions and 1 decision concerning overtime work; (iii) 181 questions concerning the minimum uninterrupted rest period of 48 hours including Sunday; (iv) 63 questions concerning the minimum uninterrupted rest period of 14 hours including the night.

The Committee also notes from the current report that over the period 2014-2015, (i) violations concerning the daily working time were identified in 2% to 3% of the companies inspected; (ii) violations concerning overtime work were identified in 4% to 5% of the companies inspected; (iii) violations concerning the minimum uninterrupted rest period of 48 hours including Sunday were identified in 5% of the companies inspected; (iv) violations concerning the minimum uninterrupted rest period of 14 hours including the night were identified in 2% to 3% of the companies inspected; (v) violations concerning night work were identified in 1% of the companies inspected. The report points out that data concerning the percentage of violations identified during inspections are not available for the years 2016 and 2017 due to changes in the data collection method. The Committee asks the next report to indicate whether sanctions have been imposed in practice in cases of violations and what was the follow up in this respect.

The Committee recalls that the situation in practice should be regularly monitored (International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §32) and asks the next report to provide up-to-date information on the monitoring activities of the Labour Inspectorate concerning the length of working time for young persons under 16. In particular, the Committee asks the next report to indicate what are the measures taken and the sanctions imposed on the employer in cases of violations concerning the length of working time for young persons under 16.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Poland is in conformity with Article 7§4 of the 1961 Charter.

Article 7 - Right of children and young persons to protection

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

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

The Committee notes from the report submitted by Poland that there has been no change in the situation in law which it previously found to be in conformity with Article 7§6 of the 1961 Charter.

In the previous conclusion, it asked for information on the monitoring activities of the Labour Inspectorate, including the number and nature of infringements detected and the penalties imposed for breach of the regulations regarding the inclusion of time spent on vocational training by young workers in standard working hours. The report states that in the period between 2014 and 2016, the authorities did not collect data on the implementation of the provisions regarding the inclusion of time spent on training in standard working hours. In 2017, 11 breaches of the legal provisions were noted and 11 penalties were imposed.

The Committee points out that even where the legislation has not been changed, the situation, should be regularly monitored, and it invites the authorities to keep it informed of developments.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Poland is in conformity with Article 7§6 of the 1961 Charter.

Article 7 - Right of children and young persons to protection

Paragraph 7 - Paid annual holidays

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

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

The Committee points out that the *de facto* situation should be regularly monitored. The report contains data on the infringements identified and the penalties imposed in the event of a breach of the provisions on the annual holidays for workers under 18 years of age.

Conclusion

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

Article 7 - Right of children and young persons to protection

Paragraph 8 - Prohibition of night work

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

The Committee notes from the report that there has been no change in the legal situation it previously considered to be in conformity with Article 7§8 of the 1961 Charter.

The report gives the total number of decisions handed down by the Labour Inspectorate with regard to the prohibition of night work for young workers. Because of a change in the methods of data collection, the data on the percentage of employers found to have breached the legal rules during inspections in 2016-2017 are not available.

The Committee points out that the situation in practice should be regularly monitored. It asks for disaggregated data to be provided in the next report on the number and nature of violations reported by the Labour Inspectorate and on the penalties imposed for breach of the regulations on the prohibition of night work for young workers under the age of 18.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Poland is in conformity with Article 7§8 of the 1961 Charter.

Article 7 - Right of children and young persons to protection

Paragraph 9 - Regular medical examination

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

The Committee notes from the report that there had been no change in the legal situation it previously found to be in conformity with Article 7§9 of the 1961 Charter.

The report contains statistics on the breaches found on inspections during the reference period with regard to medical check-ups on taking up work and regular medical check-ups for workers under 18.

Conclusion

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

Article 7 - Right of children and young persons to protection

Paragraph 10 - Special protection against physical and moral dangers

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

Protection against sexual exploitation

In its previous conclusion (Conclusions XX-4 (2015)), the Committee asked for information on the content of the amendments made in 2014 to the Criminal Code and to other pieces of legislation to bring Polish law into line with the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the Lanzarote Convention) and Directive 2011/93/EU.

In reply, the report states that Article 200 of the Criminal Code was amended during the reference period and now provides that that:

- anyone who has sexual intercourse with a minor under 15 years of age or commits another sexual act against them or forces them to submit to or commit such acts is liable to criminal punishment;

- anyone who presents pornographic content to a minor under 15 years of age, places such material at their disposal or disseminates pornographic content in a way that gives minors access to it is liable to criminal punishment;

- anyone who advertises or promotes pornographic content in a way that gives minors under 15 years of age access to it is liable to criminal punishment.

The Committee notes that in 2016, under Article 200§1 of the Criminal Code ("Anyone who has sexual intercourse with a minor under 15 years of age or commits another sexual act against them or incites them to submit themselves to such acts or to perform them is liable to a prison sentence of two to 12 years"), there were 2 289 prosecutions and 1 241 convictions.

The Committee recalls that Article 7§10 of the Charter requires all children below the age of 18 years to be proeced from sexual exploitation, the Committee asks what protection from sexual exploitation is afforded to children bwtween the ages of 15 and 18. In the interim, it reserves its position on this point.

Article 202 of the amended Criminal Code provides for increased criminal liability for any act involving the dissemination, production, recording, importing, storage, possession or presentation of pornographic content involving a minor. Paragraph 2 of this Article provides that anyone who records pornographic content involving a minor is liable to a prison sentence of one to ten years. In addition, anyone who takes part in the presentation of child pornography for their sexual gratification will be prosecuted (Article 202§4 of the Criminal Code).

The report points out that to limit the prostitution of minors, Article 199§3 of the amended Criminal Code punishes anyone who has sexual intercourse with a minor or commits a sexual act against them or forces them to submit to such acts or to commit them by abusing their trust, giving them material or personal benefit in exchange or promising them such a benefit.

The Committee asks the next report to confirm that a minor is a person under the age of 18 years.

The Concluding Observations of the United Nations Committee on the Rights of the Child on the combined third and fourth periodic reports of Poland [CRC/C/POL/CO3-5, (2015)] indicate that the existing law fails to ensure that identified child victims are not prosecuted for acts committed as a direct result of being subject to trafficking.

The Committee asks whether child victims of sexual exploitation, whether subject to trafficking or not, can be held criminally liable for their acts. In the interim, it reserves its position on this point.

Protection against the misuse of information technologies

In its previous conclusion (Conclusions XX-4 (2015)), the Committee asked whether Internet service providers are responsible for monitoring the material they host and encouraging the development and use of the best system to supervise Internet activities.

The report states that hosting companies need to play a more active role in combating unlawful content on the Internet, but it is important that this role is not transformed into one of monitoring users' activities resulting in censorship and/or breaches of privacy.

The Committee recalls that Internet services providers should be under an obligation to remove or prevent accessibility to illegal material to which they have knowledge and internet safety hotlines should be set up through which illegal material could be reported. The Committee asks what measures are in place to ensure that Internet providers take adequate steps to protect children from harmful content.

According to the report, the education system disseminates information among children and young persons on safety and conduct to adopt when faced with threats, connected with the use of information and communication technologies, Schools and institutions which give Internet access to pupils are required to take measures to protect them against access to potentially dangerous content, including installing and updating security software. The 2015-2018 "Safer Schools" government programme aims to prevent threats deriving from the use of cyberspace by pupils.

Protection from other forms of exploitation

The Committee previously asked for information on the system for providing assistance to child victims of trafficking, both in terms of accommodation and of medium and long-term support programmes (Conclusions XX-4, 2015). The report states with regard that secure accommodation specifically tailored to children is not be provided, as regional anti-trafficking teams have found practically no trafficking victims among Polish or foreign children.

The Committee takes note of the measures and projects designed to curb child trafficking, including the National Action Plan to Combat Trafficking in Human Beings for 2016-2018, which sets out measures to combat forms of trafficking in human beings which may involve forced child labour. The Action Plan provided for the establishment, at the end of 2018, of a national referral mechanism for trafficking victims and a similar mechanism for children. The Committee asks for information in the next report on the implementation and results of the national reference mechanism for children set up as part of the National Action Plan to Combat Trafficking in Human Beings.The report states that, since the 2017-2018 school year, in order to enhance the prevention of child trafficking for the purposes of sexual exploitation, forced labour or forced criminal activity, schools and educational institutions have been required to set up educational and preventive programmes

The Committee notes in this respect that in its Concluding Observations on the third and fourth periodic report of Poland [CRC/C/POL/CO3-4, 2015], the UN Committee on the Rights of the Child expressed concern that the identification of child victims of trafficking remains a challenge, inappropriate decisions are taken on the protection of child victims including their placement in institutions for socially maladjusted children which do not necessarily provide counselling and other services and that there is no public service to provide specialised care and support for child victims of trafficking.

It also notes the recommendation by GRETA in its report concerning the implementation of the Council of Europe Convention against Trafficking in Human Beings [(2917)29] that the Polish authorities improve the identification and assistance of child victims of trafficking, inter

alia by increasing the capacity to detect child victims of trafficking and by providing safe accommodation for child victims of trafficking and unaccompanied children. The Committee asks what measures have been taken to identify child victims of trafficking and provide assistance including suitable accomodation. The Committee notes from the above-mentioned Concluding Observations of the United Nations Committee on the Rights of the Child that there is no systematic effort to protect and support children engaged in begging.

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

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

Conclusion

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

Article 8 - Right of employed women to protection

Paragraph 1 - Maternity leave

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

In its previous conclusion (Conclusions XX-4 (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 Committee previously noted that all employees are entitled to 20 weeks' maternity leave and 6 weeks' "additional maternity leave". The leave can be taken up to 6 weeks before the expected date of birth.

In its previous conclusion, the Committee asked if the law provided for a compulsory minimum length of postnatal leave which working mothers could not waive.

In reply, the report states that having taken at least 14 weeks' postnatal maternity leave, mothers may waive the remaining leave provided that the remainder is used by the child's father if he is working or insured and if, during the period corresponding to the remainder of the maternity leave, he looks after the child personally and takes a break in his paid activity to do so.

The Committee concludes that the situation is in conformity with Article 8§1 of the 1961 Charter on this point.

Right to maternity benefits

The report states that the provisions concerning maternity benefits have not changed during the reference period: all insured women are entitled, for the whole length of their maternity leave (26 weeks), to a benefit corresponding to 100% of their average gross monthly salary paid over the 12 calendar months preceding the leave (a benefit corresponding to 80% of the salary can alternatively be paid for 52 weeks if the employee chooses to cumulate maternity and parental benefit).

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.

According to Eurostat data, the median equivalised annual income was €5,960 in 2017, or €497 per month. 50% of the median equivalised income was €2,980 per annum, or €248 per month. According to the Eurostat data for 2017, the gross minimum monthly wage in Poland was €463.38.

However, the Committee notes from the report that in 2015, maternity benefit amounted to 80% of the salary if the benefit was paid over the entire period provided for by the law (52 weeks). If this corresponded to the minimum wage (PLN 1,750 (€416) gross, full time), maternity benefit was PLN 1,400 (€333) gross (or about PLN 1,194 (€284) net).

In the light of the above and in view of the information in the report, the Committee finds that the situation is in conformity with Article 8§1 in this respect.

In its previous conclusion, the Committee asked if a minimum period of insurance of 30 uninterrupted days was required to be entitled to maternity benefit. In reply, the report states that the right to this benefit is acquired as soon as the women employees are registered with the health insurance scheme; therefore, there is no waiting time.

The Committee also asked if interruptions in the employment record were taken into account when calculating maternity benefits. In reply, the report states that the amount of maternity benefit is calculated on the basis of the average monthly wage. If, in the course of any given month, the employee has worked for less than half the month, the basis of calculation is the wage for those months during which she has worked for at least half her standard working hours.

Conclusion

The Committee concludes that the situation in Poland is in conformity with Article 8§1 of the 1961 Charter.

Article 8 - Right of employed women to protection

Paragraph 2 - Illegality of dismissal during maternity leave

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

It already examined the situation with regard to the illegality of dismissal during maternity leave (prohibition of dismissal and redress in case of unlawful dismissal) in its previous conclusion (Conclusions XX-4 (2015)). Therefore, it will only consider the recent developments and additional information.

Prohibition of dismissal

In its previous conclusion (Conclusions XX-4 (2015)), the Committee noted that the situation was in conformity with Article 8§2 regarding the prohibition on dismissing a woman during the period between the moment when she notified her employer that she was pregnant and the end of her maternity leave. Since there has been no change in the situation, it confirms its previous finding of conformity on this point.

Redress in case of unlawful dismissal

The Committee previously noted (Conclusions XX-4 (2015) and XIX-4 (2011)) that in the event of a dismissal based on unjustified grounds, pregnant women and women on maternity leave, whether they have been reinstated or not, are entitled to compensation corresponding to the loss of earnings resulting from the time they were unemployed.

In its previous conclusion (Conclusions XX-4 (2015)), the Committee asked (1) to provide further information on relevant cases, if any, concerning the award of non-pecuniary damage in connection with the unlawful termination of employment during pregnancy or maternity leave, (2) to clarify whether compensation awarded in this context, under the Civil code, was limited or not, and (3) in the light of any relevant data and case-law, whether damages could be claimed under the anti-discrimination legislation in cases of unlawful termination of employment during pregnancy or maternity leave.

In response, the report states that under the Civil Code, a redress is a form of pecuniary compensation for non-pecuniary damage. The Civil Code provides that the amount of compensation for damage suffered must be appropriate, but it does not provide the criteria determining it. According to the report, these criteria have been set in the Supreme Courts case-law.

The report also confirms that, in the event of unfair dismissal during an employee's pregnancy or maternity leave, compensation and redress may be claimed in accordance with the anti-discrimination legislation. As to examples of case-law showing the level of compensation granted in cases of unfair dismissal during an employee's pregnancy or maternity leave, the report states that such data has not been collected.

Conclusion

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

Article 8 - Right of employed women to protection

Paragraph 3 - Time off for nursing mothers

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

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

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

Conclusion

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

Article 8 - Right of employed women to protection

Paragraph 4 - Regulation of night work and prohibition of dangerous, unhealthy or arduous types of work

The Committee takes note of the information, relating to Article 8§4(a) of the 1961 Charter, contained in the report submitted by Poland.

It previously noted that Article 151 of the Labour Code defines as night worker a worker who carries out at least one-fourth of his/her working time between 9 p.m. and 7 a.m. or at least three hours every 24 hours during period mentioned above.

The Committee previously found that the situation was in conformity with Article 8§4(a) of the 1961 Charter as regards pregnant women, as well as women who have recently given birth or are nursing and notes from the report that there have been no changes in this respect: night work is prohibited for pregnant women and any worker (men or women) who has a child below four years of age can only be employed at night upon the worker's consent (Article 178 of the Labour Code). The employer must transfer a pregnant night worker to a daytime post, matching as far as possible the employee's qualification and wages. If this is not possible, she is entitled to a compensatory allowance (Conclusions XV-2 (2001), XVI-2 (2004), XVII-2 (2005), XIX-4 (2011) and XX-4 (2015)).

The Committee found however that the situation was not in conformity with the 1961 Charter as regards other categories of women employed as night workers in industrial employment, in that the applicable regulations did not provide adequate protection to them. The Committee recalls in this respect that, while Article 8§4, under the Revised Charter, concerns all employed women but only in relation to maternity (pregnant women, women having recently given birth, nursing women), the correspondent provision of the 1961 Charter requires states to regulate night work for women in industrial employment, not only in relation to maternity (Explanatory report on the Revised Social Charter).

Article 8§4(a) of the 1961 Charter does not require states to prohibit night work for women, but to regulate it in order to limit the adverse effects on the health of the woman. Furthermore, this provision does not require the adoption of night work regulations specific to women if there are regulations that apply equally to workers of both sexes (Conclusions X-1 (1987) the United Kingdom), as long as they afford sufficient protection (Conclusions XIII-1 (1996), Ireland): these regulations should be designed to limit the damaging effects of night work and to prevent abuse and, to this end, should lay down conditions under which such work can be carried out (Conclusions X-2 (1988) Ireland), such as prior authorisation, working hours, breaks, days of rest following periods of night work etc. (Statement of Interpretation on Article 8§4, Conclusions X-2 (1988); Conclusions XIII-5 (1997) Portugal), the existence of regular medical check-ups and the possibility for night workers to be transferred to daytime work (Conclusions XV-2 (2001) Poland), whether, before introducing night work, the employer must consult with worker representatives and what are the penalties prescribed for breaches of the legislation (Conclusions XV-2 (2001) Spain). Accordingly, to be found in conformity with Article 8§4 (a) of the 1961 Charter, a state must be able to prove that effective protection measures, such as those indicated above, apply to all women in industrial employment and not only in relation to maternity.

In their report, the authorities state that the relevant legislation offers adequate protection to women employed as night workers. They confirm however that no prior authorisation is required before introducing night work and affecting a worker to it, and no particular rules apply as regards breaks and compensatory rest for night workers unless the activity carried out is considered to be dangerous or implying a heavy mental or physical strain. Furthermore, despite the requirement to undergo a medical assessment before being employed on night work and regularly afterwards – at three to five year intervals depending on the work – there is no right to be transferred to daytime work in case of health problems related to night work (Conclusions XIX-4 (2011) and XX-4 (2015)). The report states that this situation has not changed; accordingly the Committee considers that the regulation of night

work does not adequately protect night workers, in particular, those covered by Article 8§4(a) of the 1961 Charter, namely women carrying out night work in industrial employment.

Conclusion

The Committee concludes that the situation in Poland is not in conformity with Article 8§4(a) of the 1961 Charter on the ground that the regulation of night work does not adequately protect women carrying out night work in industrial employment.

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 Poland and the comments made by the trade unions NSZZ « *Solidarność* » and *Ogólnopolskie Porozumienie Związków Zawodowych* (OPZZ).

Legal protection of families.

Rights and obligations, dispute settlement

The Committee refers to all of its previous conclusions (Conclusions XV-1 (2000) et seq.) for a description of the situation, which it had found to be in conformity with the 1961 Charter, as regards **rights and obligations of spouses**. It asks that the next report indicate any relevant changes.

In response to the Committee's questions (Conclusions XX-4 (2015)) concerning the **settlement of disputes** between spouses and the financial support available to make it easier for families to access services, the report mentions ongoing efforts to introduce a new "family information procedure" into the Code of Civil Procedure and new legal arrangements regarding **mediation**. The Committee asks that the next report provide more detailed and up-to-date information on these matters.

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

Domestic violence against women

Poland has signed and ratified the Istanbul Convention on Preventing and Combating Violence against Women and Domestic Violence (which came into force in Poland on 1 August 2015). The assessment under this instrument has not taken place yet.

The Committee takes note of the detailed information contained in the report as regards developments since its last review (Conclusions XX-4 (2015)), in particular, with respect to integrated policies, the implementation in 2014 of the National programme for combating violence in the family for 2014-2020 and other programmes involving numerous information and awareness measures, together with training, with a view to improving the prevention of violence. It also takes note of the information on the protection measures taken to help victims of violence, the funds allocated to these measures and the restraining orders issued against perpetrators of violence (2 341 in 2014, 2 400 in 2015 and 2 965 in 2016). As regards prosecutions, the Committee takes note of the data provided in the report regarding the number of victims during the reference period (197 989 in 2014, 207 385 in 2015, 225 164 in 2016, 224 225 in 2017), the number of persons arrested for domestic violence (13 922 in 2014, 15 540 in 2015, 16 881 in 2016) and the number of final convictions (11 442 in 2014, 10 840 in 2015 and 10 883 in 2016).

The Committee takes note, however, of the concerns expressed by the United Nations Human Rights Committee (HRC) in its Concluding observations 2016 regarding the high number of women victims of domestic violence and the lack of adequate protection mechanisms, in particular the lack of mechanisms providing immediate protection, the small number of restraining orders issued, the insufficient number of emergency shelters and specialised assistance centres and the low number of prosecutions and sentences. These concerns mirror those already expressed by the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) in its Concluding observations in 2014.

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

aforementioned recommendations of the HRC and the CEDAW. In the meantime, it reserves its position on this point.

Social and economic protection of families

Family counselling services

The Committee refers to its previous conclusion (Conclusions XX-4 (2015)), in which it found the situation to be in conformity with Article 16 of the 1961 Charter.

Childcare facilities

In its previous conclusion (Conclusions XX-4 (2015)), which contains an overall description of childcare facilities, the Committee had noted that only 5.7% of children up the age of 3 were covered by childcare facilities and asked for information on the measures planned and taken to enable a larger number of children aged 3 and under to attend such facilities.

The report explains that family support systems were reviewed in July 2017. According to the report, the amendments made to the Law on Childcare Services for Children up to the Age of 3 facilitate the establishment and operation of childcare facilities for the youngest children. In addition, state budgetary support for the development of nurseries, children's clubs and childminders has tripled and the requirements for setting up nurseries and children's clubs and employing childminders have been reviewed (the list of authorised entities has been expanded, the requirement to have at least two rooms for the children has been abolished, and new criteria concerning staff training, parental participation and the nutritional quality of meals have been introduced). The Committee takes note of the information provided regarding the implementation of the "Toddler+" programme to develop childcare facilities for children up to the age of 3 and the funding allocated (101 million PLZ in 2014, 151 million PLZ in 2015, 2016 and 2017 and 450 million PLZ per year in 2018).

The Committee notes, however, from the Eurostat data that the percentage of children under the age of three attending childcare facilities was less than 10% in 2016 and asks that the next report provide updated information on this subject.

Family benefits

Equal access to family benefits

In its previous conclusion (Conclusions XX-4 (2015)) the Committee noted that under 2013 Law on foreign nationals the right to family benefits was granted to foreign nationals subject to some conditions, in particular, apart from exceptions, if the person is residing in Poland on the basis of a permanent residence permit or on the basis of a temporary residence permit (of 3 months to 3 year) including the right to work. The Committee asked for it to be clarified whether entitlement to a permanent residence permit was subject to a length of residence requirement and, if so, what the length of residence was.

The Committee recalls that States parties may apply a length of residence requirement with regard to non-contributory benefits provided that the length is not excessive (Conclusions XIV-1 (1998), Sweden). The proportionality of such length of residence requirements is examined on a case-by-case basis having regard to the nature and purpose of the benefit. The Committee has held that lengths of 6 to 12 months are reasonable and hence in conformity with Article 16 (Conclusions XIV-1 (1998), Sweden). On the other hand, it has held that lengths of 3 to 5 years are clearly excessive and therefore in breach of the Charter (Conclusions XVIII-1 (2006), Denmark).

The report states that the length of residence requirement ranges from minimum stay of one year (for victims of trafficking in human beings) to minimum stay of ten years of residence on the basis of the regular temporary residence permit.

The Committee considers that the situation in this respect is not in conformity with the 1961 Charter, as the 10-year residence requirement in order to qualify for family benefits for foreigners without a work permit, is excessive.

Level of family benefits

The Committee notes that there is a family allowance on the basis of the 2013 Law on Family Benefits, which is means-tested, and a child benefit pursuant to the Law on State support in raising children (the so-called Family 500Plus Program), universally applied for the second and subsequent child and on the means-testing basis for the first or single child. The Committee notes in this respect from the comments by the OPZZ NSZZ "Solidarność" submitted on 18 March 2019 that the benefit for bringing up a child has become an alternative to the system based on the Law on Family Benefits, which has greatly marginalized it. Benefits dedicated to families struggling with income difficulties (family benefits) have become an addition to the Family 500Plus Program.

According to Eurostat data, the monthly median equivalised income in Poland stood at €496 per month in 2017. According to MISSOC, child benefit the 2013 Law on Family Benefits for children under the age of 5 was €22, amounting to 4.4% of that income, while for children between 5 and 18, it was €29 amounting to 5.8% of that income, and for those between 18 and 24 it was €32 amounting to 6.4% of that income.

The Committee considers that, in order to comply with Article 16, family benefit must constitute a significant income supplement, which is the case when it represents an adequate percentage of the median equivalised income. It considers that child benefit for children under the age of 5 remains inadequate, constituting the same percentage of the median equivalised income, as the Committee considered incompatible with the requirements of the Charter in its previous conclusion (see Conclusions XX-4 (2015)). Therefore, the situation is not in conformity on this point.

The report provides that benefit for bringing up children (500Plus) in a monthly amount per child of PLN 500 (€118) does not depend on the age of the child. The amount of the benefit does not vary with the family's income but no benefit is paid for the first or only child if family income per capita exceeds PLN 800 (€188) per month (PLN 1 200 (€282) in the case of families with a disabled child). In this respect, the Committee notes from that according to Eurostat data from 2017, the monthly average wage in Poland stood at PLN 4 650, meaning that a considerable share of families with a single child would not receive any child benefit if their 3-person family overall income is more than PLN 2 400 (€600) per month. The report does not reply to the Committee's request from its previous conclusion (Conclusions XX-4 (2015)) to indicate what percentage of families are paid child benefit. It solely states that in the "500Plus" program, 23% of beneficiaries are single-child families.

The Committee further notes from the comments by the OPZZ NSZZ "Solidarność" that the means restrictions of the "500 Plus" program entails discrimination of some families. This mainly applies to children raised by single parents, as very often their income, due to the smaller number of family members, is too high to qualify for the benefit for the first child.

The Committee notes that in 2019, outside the reference period, the legal framework changed in that no maximum means level applies to the child benefit for the first or single child and it will take it into account in its next examination cycle. In the light of the above, the Committee considers that in the reference period the situation was not in conformity with the 1961 Charter because it has not been established that a significant number of families were entitled to child benefit for the first child.

Measures in favour of vulnerable families

In its previous conclusion (Conclusions XX-4 (2015)) the Committee asked for information on the implementation of means to secure the economic protection of Roma families. The report

provides in reply that persons of Roma origin receive all family benefits and social assistance under the same conditions as other Polish citizens. At the same time, the Minister of the Interior and Administration is implementing a scholarship.

Housing for families

In its previous conclusions (Conclusions XX-4 (2015) and XXI-2 (2017)), the Committee found that the situation was not in conformity with Article 16 of the 1961 Charter on the ground that it had not been established that families had access to adequate housing, in view of the lack of information (regarding the number of families waiting for housing and the adequacy of housing). It refers to its previous conclusion (Conclusions XXI-2 (2017)), in which it found that the situation was in conformity with regard to the procedural safeguards surrounding the right to adequate housing.

As regards families' access to adequate housing, the Committee notes from the present report that a governmental support scheme was launched in 2015 to activate the construction of low-rent social housing, intended in particular for families with children. The low-rent housing is built by qualified investors (social housing associations, municipal enterprises, housing co-operatives), subject to an agreement being concluded with the municipality. Under the 2015, 2016 and 2017 programmes, 136 applications concerning plans to build 6 381 units, including 2 738 for families with children, were selected to receive financial support. The report further states that in 2016 the Council of Ministers adopted a National Housing Programme. This programme sets out the objectives of the State's housing policy until 2030. One of those objectives is to reduce the number of people living in conditions that do not comply with the regulations (poor technical condition of the building or overcrowding) by 2 million (from 5.3 million to 3.3 million people). As regards social housing, the programme includes support for the construction of municipal rental housing for people on the lowest incomes, as well as an increase in the supply of low-rent housing for middle-income households, with the option to purchase the property. Lastly, the report refers to the "Housing for Young People" scheme launched in 2014, the aim of which is to provide financial support for the purchase of housing by married couples or single parents under the age of 35, as well as married couples and individuals with three or more children.

The Committee takes note of the measures taken or planned to improve families' access to housing. It notes, however, that despite its requests, there is still no information in the report on the number of families waiting for housing. The Committee further notes that the United Nations Committee on Economic, Social and Cultural Rights, in its Concluding observations on the sixth periodic report of Poland (7 October 2016), expressed concern about the shortage of social housing, and in particular the waiting time for social housing, which could extend to seven years (§36). It notes from another source that in 2017 over 154 100 households were waiting for municipal housing and that, of these, 59% were waiting for social dwellings. Nearly 60% of those waiting for social dwellings were entitled to such dwellings based on a court decision on eviction (European Social Policy Network (ESPN), "National strategies to fight homelessness and housing exclusion: Poland", 2019, p. 13). The Committee accordingly asks that the next report indicate the total number of applications for social housing, the percentage of applications granted and the average waiting time for the allocation of such housing.

As regards the adequacy of housing, the Committee notes from the data provided in the report that 5.3 million people are living in conditions that do not comply with the regulations. It notes from another source (FEANTSA and Abbé Pierre Foundation, "European Index of Housing Exclusion 2019", Eurostat-EU-SILC 2017) that the overcrowding rate in Poland for 2017 was 40.5%, significantly higher than the average rate for the European Union (15.7%) (see also the Concluding observations of the United Nations Committee on Economic, Social and Cultural Rights, 2016, noting the significant proportion of the population living in overcrowded apartments). It therefore asks that the next report provide statistics relating to the adequacy of housing (overcrowding, water, heating, sanitation facilities, electricity) and

information on the implementation of the objectives of the National Housing Programme on reducing the number of people living in conditions that do not comply with the regulations.

In the meantime, the Committee reserves its position on whether families have access to adequate housing. If the requested information on all the above mentioned points is not provided in the next report, there will be nothing to establish that the situation is in conformity with the 1961 Charter on this point.

With regard to eviction, the Committee asked in its previous conclusion (Conclusions XX-4 (2015)) for information on access to judicial remedies during eviction procedures and compensation in the event of wrongful eviction. The present report does not contain any relevant information on this point. The Committee therefore reiterates its request. If the requested information is not provided in the next report, there will be nothing to establish that the situation is in conformity with Article 16 of the 1961 Charter on this issue.

With regard to the situation as regards housing for Roma families, the report states that the Programme for the integration of the Roma community in Poland for 2014-2020 is under way. The funds earmarked were used to allocate or renovate apartments for 514 Roma in 2015. In 2016 and 2017, social housing was renovated for or allocated to 768 Roma. The Committee asks for further information in the next report on measures planned and taken to improve the housing situation of Roma families. It also wishes to be provided with information on the number of Roma families living in informal settlements.

Lastly, having regard to its Statement of Interpretation on the rights of refugees under the Charter (Conclusions 2015), the Committee asks that the next report also provide information on the housing situation of refugee families.

Participation of associations representing families

The Committee refers to its previous conclusion (Conclusions XX-4 (2015)) for a description of the situation which it found to be in conformity with Article 16 of the 1961 Charter.

Conclusion

The Committee concludes that the situation in Poland is not in conformity with Article 16 of the 1961 Charter on the following grounds:

- the 10-year residence requirement to be eligible to family benefits for foreigners without a work permit, is excessive;
- family benefits are inadequate for children under the age of five;
- it has not been established that in the reference period a significant number of families was entitled to child benefit for their first child.

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

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

The legal status of the child

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

According to EUROSTAT in 2015 there were 6,395 first time asylum applications in the EU by children recorded as stateless and 7,620 by children with an unknown nationality. This figure only concerns EU states and does not include children born stateless in Europe or those who have not sought asylum. In 2015, UNHCR estimated the total number of stateless persons in Europe at 592,151 individuals.

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

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

Protection from ill-treatment and abuse

The Committee recalls that corporal punishment is prohibited in all settings. There has been no change to this situation.

Rights of children in public care

The Committee refers to its previous conclusion for information on the grounds for the restriction of parental rights (Conclusions 2015). According to the report amendments to the Family and Guardianship Code explicitly prohibit the placement of a child outside his/her family on the grounds of the family's lack of resources. The placement of a child outside his or her family must be a measure of last resort. Legislation has been introduced to strengthen family support measures and improve the quality of care provided in institutions and family care.

The report states that the maximum number of children who can be placed in a care institution will be reduced to 14 by 2021 and no child under 10 years old will be placed in institutional care except in very limited circumstances (for example when the child's health is concerned or if the child's mother or father is located in a given institution)(Article 95 of the law of 9 June 2011 on Family Support and Foster Care System).

The report provides detailed data on the number of children in care. It appears from the data that most children are placed in a family like setting or in foster families. However the Committee notes that a significant number of children remain in institutional care and this number seems to be increasing. According to Opening Doors for Europe's Children Poland Counrty Fact sheet in 2017, the total number of children living in institutional care settings was 41,200. The Committee further notes that there is concern on the part of civil society actors that there is a development towards smaller institutional care settings rather than a broader deinstitutionalization process, and many new institutions have been established either through the division of old, bigger institutions (but practically remaining under the same roof) or as part of the new group homes in some counties. (Opening Doors for Europes Children Campaign Poland country fact sheet 2018).

The Committee asks to be kept informed of all measures taken to ensure the deinstitutionalization of children separated from their families, whether in terms of family-like institutions or otherwise, as well as information on trends in the field.

Children in conflict with the law

In its previous conclusion the Committee held that the situation in Poland was not in conformity with the Charter as the maximum length of pre-trial detention of children was excessive (2 years), (Conclusions 2015).

According to the report, the pre-trial detention of a child over 15 years of age for up to two years is only possible in exceptional situations; in case of serious offences which are listed under Article 10§2 of the Penal Code. Pre- trial detention is only resorted to when no other measure is possible to ensure the proper conduct of criminal proceedings. Only a small number of children are subject to pre- trial detention and the number has decreased significantly during the reference period.

The Committee notes that there has been no change to the situation and therefore the Committee reiterates its previous finding of non-conformity on this ground.

The Committee recalls that it previously noted that the maximum length of a prison sentence imposed on a child cannot exceed two thirds of that imposed on an adult, hence 15 years (Conclusions 2015). The Committee recalls that periods of detention must be a measure of last resort, for the shortest time possible and subject to regular review. It considers that a sentence of up to 15 years to be very lengthy and asks where a sentence of this length is imposed whether it is regularly reviewed.

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

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

The Committee notes that the report states in response to the question put in the previous conclusion (Conclusions 2015) on protection and assistance for children in an irregular situation, that in light of the Appendix to the Charter, it considers the Committee does not have the right to evaluate the situation in Poland. The Committee recalls its long standing case law on the personal scope of the Charter. In this respect the Committee refers to decisions, including Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §§28-39, 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, and recalls that, the restriction of the personal scope included in the Appendix should not be read in such a way as to deprive foreigners coming within the category of irregularly present migrants of the protection of the most basic rights enshrined in the Charter or to impair their fundamental rights such as the

right to life or to physical integrity or the right to human dignity. This includes those rights on assistance guaranteed by Article 17 (1).

The Committee requests information on accommodation facilities for migrant children whether accompanied and unaccompanied, including measures taken to ensure that children are accommodated in appropriate settings. The Committee reiterates its previous request for information on what assistance is given to children in irregular situation to protect them against negligence, violence or exploitation, noting that if the requested information is not provided in the next report there will be nothing to establish that the situation is in conformity with the Charter on this point. 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 Poland uses bone testing to assess age and, if so, in what situations the state does so. Should the State use such testing, the Committee asks what are the potential consequences of such testing (e.g., can the results of such a test serve as the sole basis for children being excluded from the child protection system?).

Child Poverty

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

The Committee notes from EUROSTAT data that in 2017 17.9% of children were at risk of poverty or social exclusion, below the EU average (24.9%).

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

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

Conclusion

The Committee concludes that the situation in Poland is not in conformity with Article 17 of the 1961 Charter on the ground that on the ground that the maximum length of pre-trial detention is excessive.

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

Paragraph 1 - Assistance and information on migration

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

Migration trends

The Committee has assessed the migration trends in Poland in its previous conclusion (Conclusions XX-4 (2015)). The report does not indicate any changes. The Committee asks that the next report provide up-to-date information on the developments in this respect.

Policy and the legal framework

The Committee notes that it has previously assessed the policy and legal framework relating to migration matters (see detailed description in Conclusions XX-4 (2015)) and found it to be in conformity with the Charter.

The report provides that in 2016 the Law on promotion of employment and labor market institutions and, the Law on the National Labor Inspectorate and the law on the implementation of certain provisions of the European Union concerning equal treatment were amended with a view to better promote equal treatment for citizens of the EU Member States and of the Member States of the European Free Trade Association, parties to the Agreement on the European Economic Area and members of their families residing in Poland who have used their right of free movement. Furthermore, with respect to all migrant workers, not only those from the EU Member States, in 2017 an amendment to the Law on employment promotion and labor market institutions was issued, enhancing the provisions relating to compliance with the principle of equal treatment in access to and use of labor market services and instruments (regardless of sex, race, origin ethnic, nationality, religion, belief, disability, age or sexual orientation) also concerning labor mediation.

The Committee renews its conclusion on conformity with the 1961 Charter in this respect.

Free services and information for migrant workers

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

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

The Committee has made a comprehensive assessment in its previous conclusion (see detailed description in Conclusions XX-4 (2015)). In reply to its request for further information, the report provides that since 2015 the Ministry of Interiour in cooperation with the International Organization for Migration has been implementing the project “Migrant.Info – helping migrants and their integration into Polish society”. As part of this project, expert hotline consultants operating at the IOM office in Warsaw advise foreigners on the legality of employment and on the Labour Inspectorate’s monitoring activities carried out.

Furthermore, the Labour Inspectorate provides legal advice in the area of labor law and employment law, especially to foreigners. Migrant workers benefit from legal advice provided

by officials of the General Labor Inspectorate and regional labor inspectorates. For district labor inspections, legal advice is provided in person and by telephone. Since 2017, interested parties benefit from this advice in a separate organizational unit within the General Labor Inspection – PIP Advice Center, as well as from its dedicated website. Also the Ministry of Labour provides legal consultations for migrant workers by answering questions by phone. Information on the employment of foreigners is also disseminated to employers, in particula through brochures containing information on the principles of employment of foreigners in Poland, as well as on the obligations of entities employing foreigners and the consequences of their non-compliance.

The Ministry of Labour also distributes booklets and on-line information for foreigners, containing information on employment matters in Poland and, in general, for Polish citizens traveling abroad, available in Polish, English, Russian, Ukrainian, Romanian, Belarusian, Georgian and Armenian.

Finally, the Ministry of Labour prepared a model service procedure for foreigners to be applied by the local employment offices; a project to be carried out under the European Social Fund. This procedure is intended to help employees of the public employment services to support migrant workers in the labor market.

The Committee asks the next report to provide information on the implementation of the model service procedure for migrant workers. Meanwhile, it considers that the situation is in conformity with the Charter on this point.

Measures against misleading propaganda relating to emigration and immigration

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

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

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

The Committee recalls that in order to combat misleading propaganda, there must be an effective system to monitor discriminatory, racist or hate-inciting speech, particularly in the public sphere.

The Committee recalls that the authorities should take action against misleading propaganda as a means of preventing illegal immigration and trafficking in human beings (Conclusions 2006, Slovenia).

The Committee recalls that States must also take measures to raise awareness amongst law enforcement officials, such as awareness training of officials who are in first contact with migrants.

The report provides extensive information on activities of the Human Rights Defender in relation to migrants. The main tasks of the Ombudsman in this context include combating all forms of unequal treatment based on racial or ethnic origin, nationality or religion.

The report does not, however, reply to key questions asked by the Committee in its previous conclusions, namely:

- what measures have been adopted and envisaged against misleading propaganda relating to migration;
- what measures have been implemented to support the access of migrant workers to the job market and to combat negative or prejudicial attitudes;
- whether there is a general provision making racial motivation an aggravating factor for all crimes, though it must be taken into account during sentencing of criminals and what are statistical data on the number of prosecutions and convictions for discrimination crimes;
- what monitoring systems exist to ensure the implementation of anti-discrimination regulations;
- what is the role and activities of the National Broadcasting Council, which can receive complaints concerning discrimination;
- what measures were taken to target illegal immigration and in particular, trafficking in human beings.

The Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation is in conformity with Article 19§1 of the 1961 Charter.

Conclusion

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

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

Paragraph 2 - Departure, journey and reception

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

Immediate assistance offered to migrant workers

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

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

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

The Committee has assessed the assistance offered to immigrants in its previous conclusion (Conclusions XXI-2 (2017)) and the considered that the obligations under Article 19§2 were met. It requested confirmation that equivalent services existed for Poles wishing to emigrate.

The report states that the situation which the Committee has considered to be in conformity with the Charter has not changed. Foreigners who are entitled to social assistance benefits and if they find themselves in a difficult situation, can benefit from the appropriate material assistance and various services (care services, specialized care services, crisis intervention, food, accommodation, etc.). Foreigners who work legally in Poland are subject to health insurance and have access to public health care. Emergency health care is provided to all.

The report further states that due to the limited scale of emigration and immigration, it is not necessary to undertake any other measures beyond the activities currently being implemented.

However, the Committee notes that the Polish Central Statistical Office estimates that 2.21 million Poles emigrated from Poland and thus a considerable number of Polish citizens is likely to require some assistance when wishing to emigrate. The Committee again requests that the next report provide information as to whether any form of assistance for emigrants is available. Should it not be provided, there will be nothing to establish that the situation is in conformity with Article 19§2 of the 1961 Charter in this respect.

Services during the journey

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

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

Conclusion

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

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

Paragraph 3 - Co-operation between social services of emigration and immigration states

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

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

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

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

The Committee deferred its previous conclusion (Conclusions XX-4, 2015) and requested more comprehensive information on cooperation between relevant authorities and a full and up-to-date description of the contacts and exchanges established by social services in emigration and immigration countries.

The report provides that a cooperation agreement with Ukraine is underway, with a view to providing Ukraine workers in Poland with information related to employment. Furthermore, since 2015 the International Organization for Migration (IOM), has been implementing a project helping migrants and integrating them into Polish society. As a part of this project, hotline consultants at the IOM office in Warsaw advise foreigners on issues related to the legality of employment and supervise activities for foreigners working in Poland.

As regards the Committee's question on cooperation beyond the employment matters, the report states that given the limited scale of emigration and immigration and the reunification of migrant workers' families, there is no need for permanent cooperation with other countries. If necessary, individual cases are resolved within the framework of consular cooperation, justice and social security. Family and childcare benefits are coordinated by the EU's social security systems, in other cases bilateral agreements between interested countries are concluded.

The Committee notes that this information is in substance the same as examined in 2015, when it was considered insufficient. It notes from the IOM reports that Poland began adopting strategies to attract foreign labour to the country and that more and more migrants are coming to Poland each year. The Committee, accordingly asks for detailed information on the envisaged cooperation with Ukraine and on any measures adopted to promote cooperation between social services with other countries. It furthermore asks whether there exist any international agreements or networks (whether formal or informal), which assist migrants in fields other than employment, with a view to facilitate their integration into the Polish society.

Finally, the Committee notes that the Polish Central Statistical Office estimates that 2.21 million Poles live outside Poland and thus a considerable number of Polish migrant workers is likely to require the presence of cooperative activities in relation to social services. In this context, the Committee notes from the IOM reports (seehttps://www.iom.int/countries/poland) that there is need for information campaigns among Poles living abroad on possibilities after coming back to their country of origin. In the light of the above, the Committee requests information to be included in the next report on the assistance offered to returning migrants.

Conclusion

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

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

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

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

Remuneration and other employment and working conditions

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

In its previous conclusion (Conclusions XX-4 (2015)), the Committee has positively assessed the renumeration and other working conditions of migrant workers. In particular, it observed that the Labour Code lays down a general principal of non-discrimination in employment. Direct or indirect discrimination, including on grounds of race, religion, nationality, or ethnic origin is prohibited. Furthermore, discrimination on the grounds of employment for a limited duration, or being in full or part-time employment, is also prohibited. Furthermore, the Law of 3 December 2010 concerning the implementation of certain European Union law, prohibits discrimination in matters of, inter alia, vocational training, professional development or reorientation, and internships; the conditions of commencement and maintenance of employment; access to job market services, including unemployment services.

In reply to the Commitee's request for information on strategies and measures to put the legal framework in place, the report provides that one of the requirements for obtaining a work permit is that the employer declare the remuneration of an amount not less than the remuneration. a worker doing comparable work. The employer is obliged to pay the remuneration at least equal to this amount and, in case of breach of this obligation, he is obliged to pay the due amounts. The fact of entrusting a work in conditions other than those envisaged in a work permit is regarded as the fact of entrusting an illegal work which engages the responsibility of the employer.

The Committee considers the situation in this respect to be in conformity with the 1961 Charter.

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

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

In its previous conclusion (Conclusions XX-4 (2015) the Committee noted that migrant workers have the right to join trade unions on the same terms as polish workers by virtue of the Law on Trade Unions. It asked for information concerning the legal status of workers posted from abroad.

In reply, the report states that posted workers must be provided with working conditions not less favorable than those resulting from the provisions of the Labor Code and other provisions governing the rights and obligations of workers in Poland and enjoy equal treatment in matters of employment, trade union membership and collective bargaining.

The Committee considers the situation in this respect to be in conformity with the 1961 Charter.

Accommodation

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

The Committee notes that there have been no changes to the situation which it has previously found to be in conformity with the Charter: the municipality is required to house every resident who requires housing and does not have sufficient means. The report states that migrant workers are treated equally with Polish citizens (see Conclusions XX-4 (2015) for more details).

Monitoring and judicial review

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

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

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

The Committee noted in its previous conclusion (Conclusions XX-4 (2015)) that The Committee notes that the Labour Inspectorate is the competent authority for the monitoring of employment and working conditions of migrant workers. When it is informed of discrimination, the Labour Inspectorate can require the employer to cease the discriminatory activity, as well as impose sanctions on the responsible actors. Furthermore, the Border Guards are responsible for the verification of the legality of employment of foreigners. Inspections can be carried out of the place of employment, including domiciles where justified suspicion exists.

The Committee asks for more detail information on the competences of the Labour Inspectorate. It also asks for a comprehensive description of all avenues of appeal or review available under the legal framework as regards the aspects covered by this provision of the 1961 Charter.

Conclusion

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

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

Paragraph 5 - Equality regarding taxes and contributions

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

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

The report states that there have been no changes to the situation which the Committee has previously assessed (most recently in its Conclusions XX-4 (2015)) and found to be in conformity with the Charter.

Conclusion

The Committee concludes that the situation in Poland is in conformity with Article 19§5 of the 1961 Charter.

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

Paragraph 6 - Family reunion

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

Scope

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

The Committee has provided a detailed description of the scope of the right to family reunion in Poland in its previous conclusion (Conclusions 2015). The Committee considers the legal framework in this respect to be in conformity with the Charter.

Conditions governing family reunion

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

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

The Committee has already assessed the requirements for eligibility for family reunion as regards the length of residence, accommodation and health in its previous conclusion and found them in conformity with the Charter. It will focus its present assessment on any outstanding issues.

The report submits that the procedure for family reunification does not stipulate the requirement of knowledge of the Polish language or culture.

As regards the level of means required by States to bring in the family or certain family members, the Committee recalls should not be so restrictive as to prevent any family reunion (Conclusions XVII-1 (2004), the Netherlands). Social benefits shall not be excluded from the calculation of the income of a migrant worker who has applied for family reunion (Conclusions 2011, Statement of Interpretation on Article 19§6). With this in mind, the Committee noted in its previous conclusion (Conclusions 2015), that the Law on Foreigners 2003 required the family member of the sponsor to demonstrate that they have a "stable and regular source of income enough to cover the cost of maintenance of a foreigner and members of his/her family supported by him/her", and adequate health insurance. This income must be – after deduction of costs of accommodation – for each member of family higher than the amount of income being a basis for granting social assistance. The Committee asked whether, in the context of a family member seeking to prove that their expenses shall be met by the sponsoring migrant worker, any rights to social assistance which the migrant worker enjoys may be included in the calculation of means to cover the family. The report states that social benefits are not taken into account when calculating the

necessary income of a migrant worker who applies for a family reunion. The Committee considers that the situation is not in conformity with the Charter on this point.

Finally, the Committee recalls that once a migrant worker's family members have exercised the right to family reunion and have joined him or her in the territory of a State, they should have an independent right to stay in that territory (Conclusions XVI-1 (2002), Article 19§8, Netherlands). The report provides that family members' permits remain contingent upon the right to stay of the migrant worker. A foreigner who has been granted a temporary residence permit for family reunification will be deprived of his / her permit if the purpose of the stay, for which a temporary residence permit has been issued, ceases to exist, which is the case when the family member of the migrant worker is expelled. The Committee therefore considers that the situation is not in conformity with the Charter in this respect.

Remedy

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

The Committee has not yet fully assessed the relevant review mechanism in Poland and requests comprehensive information in this respect in the next report.

Conclusion

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

- family members of a migrant worker are not granted an independent right to remain after exercising their right to family reunion;
- social benefits are excluded from the calculation of the level of means required to bring in the family or certain family members.

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

Paragraph 7 - Equality regarding legal proceedings

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

The report states that there have been no changes to the situation, which the Committee previously found to be in conformity with the Charter (see Conclusions XX-4 (2015) for a comprehensive assessment).

Conclusion

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

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

Paragraph 8 - Guarantees concerning deportation

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

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

The Committee deferred its previous conclusion (Conclusions 2015), requesting following information necessary to establish whether some aspects of deportation of migrant workers satisfied the requirements of the Charter. Namely, whether:

- a foreigner considered to constitute a risk to public health is offered treatment in practice, before any decision on expulsion is issued?
- a foreigner, who has applied for social assistance and is eligible, shall be considered to have sufficient means for their stay in Poland, and will not be susceptible to expulsion?
- foreign nationals served with expulsion orders, even in cases where national security, public order or morality are at stake, have a right of appeal to a court which takes into account all aspects of the non-nationals' behaviour, as well as the circumstances and the length of time of his/her presence in the territory of the State?

In reply, the report submits that pursuant to the Foreigners Act of 2013 a third country national or EU citizen is to be expelled if he poses a threat to public health certified by medical examination. The Committee recalls that risks to public health are not in themselves risks to public order and cannot constitute a ground for expulsion, unless the person refuses to undergo suitable treatment (Conclusions V (1977), Germany). It thus considers that the situation is not in conformity with the Charter in this respect, since the report does not mention any treatment offered, except that the execution of the expulsion decision requires that the person is "fit to travel".

As regards the social assistance, the report states that the mere act of applying for social assistance benefits or the refusal to grant them cannot justify a decision to remove a foreigner from the territory. In the context of the deportation procedure, the "effective possession of sufficient financial resources" is verified. Deportation is limited to "obvious situations where a foreigner has no legal income or assets that could be a source of income and the chance to obtain them is low, if at all". The Committee considers that, despite its repeated requests, the report has not fully clarified whether a foreigner, who has applied for social assistance and is eligible, shall be considered to have sufficient means for their stay in Poland and will not be susceptible to expulsion. The Committee again recalls that the fact that a migrant worker is dependent on social assistance cannot constitute a ground for

expulsion (Conclusions V (1977), Italy). It considers that it has not been demonstrated that the situation is in conformity with the Charter on that point.

Insofar the right to appeal is concerned, despite the repeated requests the report does not provide an explicit reply to the Committee's question as regards the scope of the courts' assessment. It states that an appeal against an expulsion decision is available both to migrant EU- and non-EU nationals. It further submits that the appeal does not suspend the execution of a decision where the reason for removal are terrorist activities or a threat to the defence or independence of the State or to public security, peace or humanity. The Committee recalls that States must ensure that foreign nationals served with expulsion orders have a right of appeal to a court or other independent body, even in cases where national security, public order or morality are at stake (Conclusions V (1977), United Kingdom) and that such appeal must be effectively taking into account all aspects of the non-nationals' behaviour, as well as the circumstances and the length of time of his/her presence in the territory of the State. The information provided has not demonstrated that the situation is in conformity with all these requirements.

Conclusion

The Committee concludes that the situation in Poland is not in conformity with Article 19§8 of the 1961 Charter on the grounds that:

- a risk to public health constitutes a ground for expulsion;
- it has not been establishhed that a migrant worker's dependence on social assistance cannot constitute a ground for expulsion;
- it has not been established that a right to appeal is effectively guaranteed.

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

Paragraph 9 - Transfer of earnings and savings

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

It notes that it previously assessed the legal framework relating to transfer of earnings and savings of migrant workers (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.

The report confirms that there are no restrictions placed on transfer of earnings and savings for migrant workers, including transactions in a foreign currency. An authorisation may be required, based on general principles ruling financial operations.

In the previous conclusion (Conclusions 2015) the Committee referred to its Statement of Interpretation on Article 19§9 (Conclusions 2011), affirming that the right to transfer earnings and savings includes the right to transfer movable property of migrant workers. It asked whether there were any restrictions in this respect.

The Committee understands from the report that transfer of movable property of a migrant worker is unrestricted and ask the next report to confirm that this is the case.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Poland is in conformity with Article 19§9 of the 1961 Charter.

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

Paragraph 10 - Equal treatment for the self-employed

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

On the basis of the information in the report the Committee notes that there continue to be no discrimination in law between migrant employees and self-employed migrants.

However, in the case of Article 19§10, a finding of non-conformity in any of the other paragraphs of Article 19 ordinarily leads to a finding of non-conformity under that paragraph, because the same grounds for non-conformity also apply to self-employed workers. This is so where there is no discrimination or disequilibrium in treatment.

The Committee has found the situation in Poland not to be in conformity with Articles 19§6 and 19§8. Accordingly, the Committee concludes that the situation in the Poland is not in conformity with Article 19§10 of the 1961 Charter.

Conclusion

The Committee concludes that the situation in Poland is not in conformity with Article 19§10 of the 1961 Charter as the ground of non-conformity under Articles 19§6 and 19§8 applies also to self-employed migrant workers.