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EUROPEAN SOCIAL CHARTER

European Committee of Social Rights

Conclusions 2019

ROMANIA

This text may be subject to editorial revision.

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

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

The European Social Charter (revised) was ratified by Romania on 7 May 1999. The time limit for submitting the 18th report on the application of this treaty to the Council of Europe was 31 October 2018 and Romania submitted it on 7 November 2018.

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

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

Romania has accepted all provisions from the above mentioned group except Articles 19§§1 to 6, 19§§9 to 12, 27§1, 27§3 and 31.

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

The present chapter on Romania concerns 21 situations and contains:

– 8 conclusions of conformity: Articles 7§9, 8§1, 8§2, 8§3, 8§4, 8§5 19§7 and 27§2;

– 9 conclusions of non-conformity: Articles 7§1, 7§3, 7§5, 7§6, 7§7, 7§8, 16, 17§2 and 19§8.

In respect of the other 4 situations concerning Articles 7§2, 7§4, 7§10 and 17§1, the Committee needs further information in order to assess the situation.

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

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

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

The deadline for the report was 31 December 2019.

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

Article 7 - Right of children and young persons to protection

Paragraph 1 - Prohibition of employment under the age of 15

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

The Committee noted previously that both the Labour Code and Government Decision No. 600/2007 on the Protection of Young People at the Workplace prohibit employment under the age of 15. Children of 15 years of age may conclude an individual labour contract, with the consent of the parents or legal representatives, for carrying out activities which are appropriate with the physical development, the skills and knowledge of the child and if such activities are not detrimental/harmful to his/her health, development and training (Conclusions 2011).

The Committee noted previously that according to Section 3(c) of Government Decision No. 600/2007, "light work" is defined as any work, which on account of the inherent nature of the tasks which it involves and the particular conditions under which it is performed is not likely to be harmful to the safety, health or development of children; not such as to prejudice their attendance at school, their participation in vocational guidance or training programmes approved by the school management, or their capacity to benefit from the education received (Conclusions 2015). It also noted that a draft law regarding the regulation of children activities in cultural, artistic, sportive, advertising and modelling was under debate and asked information on any developments on this matter (Conclusions 2015).

The current report indicates that during the reference period, the Government Decision No. 75/2015 on regulating the conditions that need to be complied with when children perform paid activities within the cultural, arts, sports, advertising and modelling sectors was adopted in 2015.

The Committee notes that according to Section 2(1) of the Government Decision No. 75/2015 remunerated activities in the above-mentioned sectors may be carried out by a child over 14 years of age with the prior consent of parents or legal representatives. The current report indicates that parents have an obligation to notify in advance the Social Care Public Service the fact that their children undertake remunerated activities in the above-mentioned areas and the General Directorate for Social Care and Child Protection monitor the situation and apply sanctions. The Committee asks the next report to provide information regarding irregularities identified and sanctions applied by the Directorates for Social Care and Child Protection regarding employment of children over 14 years of age in cultural, arts, sports, advertising and modelling activities. The Committee reiterates that these activities should be closely monitored in practice with a view to effectively implementing the provisions relating to the prohibition of employment under the age of 15.

In its previous conclusion, the Committee requested information on the measures taken or envisaged to ensure that children who are not bound by an employment relationship, such as children performing unpaid work, work in the informal sector or work on a self-employed basis, benefit from the protection provided by Article 7§1 of the Charter (Conclusions 2015). The Committee asked what were the measures taken by the authorities (e.g. labour inspection, social welfare and child protection, the police) to detect cases of children under the age of 15 working on their own account or in the informal economy, outside the scope of an employment contract (Conclusions 2015).

The report indicates that the 'informal sector' is defined by Government Decision No. 867/2009 on the Prohibition of Hazardous Work for Children as the "sector where the activity undertaken by a child for natural persons takes place without any contractual form regulated by law, such as domestic activities within own or other households, in the agricultural sector, in the street (car windshield washing, renting parking spaces, distribution of leaflets/magazines) and other similar activities in marketplaces, train stations and ports, traditional activities such as melting non-ferrous metal, manufacturing of bricks etc."

The hazardous types of labour in the informal sector are identified by the General Directorate for Social Care and Child Protection (DGASPC), through specialised units – intervention in abuse situations, neglect, human trafficking and migration, following a report from children themselves, professionals and any other persons who are confronted with such situations. The Government Decision No. 867/2009 also stipulates measures for the parents, should they be exploiting their own children through informal labour in the informal sector, except for the cultural, arts, sports, advertising and modelling sectors. Thus, the parents must attend parental education programmes or, as applicable, counselling programmes, based on the services provided or facilitated by DGASPC. Also, the parents may receive an administrative sanction should they refuse to be provided with the above-mentioned services. The natural persons who involve children in dangerous forms of labour are sanctioned for committing an administrative offence.

The Labour Inspection body may take mandatory measures in such cases when children are traced to be performing lucrative activities while not complying with the legal provisions on the age limit, as well as with those on the working conditions for minors. According to Section 265 (1) of the Labour Code, failure to comply with the minimum age condition for employment or using a minor to perform some activities by not complying with the legal provisions regarding the working conditions of minors shall be deemed an offence and shall be punishable by a prison sentence of no less than three months and no more than two years or by a fine.

The report indicates that during the reference period, a total of 194 cases were notified by the Labour Inspection body (through the territorial Labour Inspectorates) to the criminal investigation authorities for non-compliance with the legal provisions regarding the minimum age of employment or the legal provisions on the employment conditions of minors.

The Committee notes that in its Concluding observations on the fifth periodic report of Romania of 13 July 2017, the Committee on the Rights of the Child urged Romania to take effective measures to prevent child labour, especially in agriculture, construction and at home, as well as child begging in the streets, and to mainstream its elimination in the relevant sectoral and intersectoral strategies and action plans; as well as to establish training programmes for labour inspectors and increase their number to ensure that employment practices are sufficiently monitored.

The Committee takes note from the Save the Children Report 2016 to the Fifth Periodic Report submitted to the UN Committee of the Rights of the Child by Romania that beyond the official data on the children's participation in the labour market, the media made public many cases when children are victims of economic exploitation, such as children working in the informal economy or performing physically demanding job (farming, animal breeding), with no proper accommodation. Some of them are sent away for work, far from home, by their own parents (in exchange of benefits). According to a study conducted by Save the Children, children's exploitation at home is also high, 2-8% depending on the indicators measured. 2% of the children stated that they were forced to beg, 5% that they were working instead of going to school and 8% that they stayed home to look after their younger siblings, instead of going to school.

The Committee asks that the next report provide information on the measures taken or envisaged to ensure that children involved in the house chores/home working are protected against labour exploitation and how their situation is monitored by the authorities, including accurate data on the breaches identified and sanctions applied. It also asks for information on the situation of children working in the informal economy or performing physically demanding jobs, how the situation is monitored by the authorities and measures taken to prevent labour exploitation of children under the age of 15. In the meantime, the Committee concludes that the situation is not in conformity with Article 7§1 of the Charter on the ground that prohibition of working under the age of 15 is not effectively enforced.

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

Conclusion

The Committee concludes that the situation in Romania is not in conformity with Article 7§1 of the Charter on the ground that prohibition of working under the age of 15 is not effectively enforced.

Article 7 - Right of children and young persons to protection

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

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

The Committee previously examined the situation and found it to be in conformity with Article 7§2 of the Charter (Conclusions 2011 and 2015).

The Committee previously noted that the Government Decision No. 867/2009 on the Prohibition of Hazardous Work for Children defined the hazardous work as any work which by its nature or conditions of performance might cause injure to the health, safety, development or moral of the child. The same Decision provided the list of dangerous works prohibited to children. Children are defined as young persons under 18 years of age. The Committee noted that the above-mentioned Decision applies also to the informal sector, namely to work carried out by children in households, agriculture, in the streets and parkings (car washing), markets, train stations and ports (Conclusions 2015).

In its previous conclusion, the Committee asked for up-to-date information on the activities and findings of the Labour Inspectorate in relation to the prohibition of employment under the age of 18 for dangerous or unhealthy activities (Conclusions 2015). The report indicates that during the reference period the Labour Inspection annually carried out campaigns on the monitoring of the activity carried out by young people in fields such as: construction, processing and preserving the meat/fish and bakery, warehousing and sale of cereal products and bakery products, manufacture and sale of dairy products, alcoholic and soft drinks production, wood industry, wholesale and retail trade, security, units operating in mountain and seaside resorts, units operating during the night (restaurants, bars, clubs, gambling, non-stop business units, fuel distribution units), collection and recycling of non-hazardous waste, maintenance and repair of motor vehicles, other services.

The report indicates that the Labour Inspection does not have any statistics regarding violations or the number of sanctions related to a certain professional category of workers or related to their age. The Committee recalls that the situation in practice should be regularly monitored and asks that the next report provide information on the activities and concrete findings of the Labour Inspectorate in relation to the prohibition of employment under the age of 18 for dangerous or unhealthy activities, including in the above listed fields. In the meantime, the Committee reserves its position.

Conclusion

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

Article 7 - Right of children and young persons to protection

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

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

The Committee noted previously that under Section 5 (1) of the Government Decision No. 600/2007 on the Protection of Young People at the Workplace, employment of children under 15 is prohibited. Exceptions to this provision are however provided, under Section 5 (2) of the same Decision, allowing children of at least 16 years of age who are subject to compulsory schooling to conclude an individual contract of employment for light work, and under Section 5 (3), allowing children of at least 15 years of age, who are subject to compulsory education, to carry out activities which are adequate to their physical development, skills and knowledge, upon consent of their parents or legal representatives and provided that such activities are not detrimental/ harmful to their health, development and training (Conclusions 2015). The Committee also noted previously that compulsory education in Romania continues up to the 10th grade which corresponds to the age of 16 or 17 (Conclusions 2011).

In its previous conclusion (Conclusions 2015), the Committee asked information on the regulation of cultural, artistic, sportive, advertising and modeling activities for children. The current report indicates that during the reference period the Government Decision No. 75/2015 providing the conditions that need to be complied with when children perform remunerated activities within the cultural, arts, sports, advertising and modeling sectors was adopted. The Committee refers to its Conclusion on Article 7§1 where it noted that the General Directorates for Social Care and Child Protection monitors the situation and applies sanctions. It asks information on the conditions provided by law (e.g. maximum duration of activity), measures taken by the authorities to ensure that children who are still subject to compulsory education are not prevented to attend school as well as cases of violations detected and sanctions applied.

In its previous conclusion, the Committee asked what is the daily and weekly maximum duration of work during school term and outside school term for children above 15 who are still subject to compulsory education (Conclusions 2015). The report indicates that the working time and rest hours of young people are regulated by Government Decision No. 600/2007 on the Protection of Young People at the Workplace. According to Section 10 (1) of this Decision, in the case of young persons the working time shall not be more than 6 hours per day and 30 hours per week [whether or not they are subject to mandatory schooling]. Young persons are defined as any person of at least 15 years of age but not more than 18 years of age. If young people accumulate multiple positions based on individual employment contracts, the work time is cumulated and cannot exceed the total of the above-mentioned limits.

The Committee asks confirmation that in case of young persons who are still subject to compulsory education the above mentioned working time limits are applicable during school holidays. It asks what is the daily and weekly maximum duration of work for young persons subject to compulsory education during school term. The Committee has considered that a situation in which a child who is still subject to compulsory education performs light work for 2 hours on a school day and 12 hours a week in term time outside the hours fixed for school attendance, is in conformity with the requirements of Article 7§3 of the Charter (Conclusions 2011, Portugal). The Committee reserves its position on this point.

The Committee previously asked whether children are guaranteed at least two consecutive weeks free of any work during the summer holidays (Conclusions 2011 and Conclusions 2015). It also asked information on the duration of school holidays (Conclusions 2015). The report indicates that the Government Decision No. 600/2007 on the Protection of Young People at the Workplace does not include any provisions according to which the rest period for young people should be of minimum of two consecutive weeks during school holidays. The report mentions that, however, under Section 15 (1) of the Decision No. 600/2007 young

people benefit from an additional leave of at least 3 business days and under Section 15 (2) of the same Decision, the employers should ensure that the period free of any work is included within the duration of school holidays for children above 15 years of age who are still subject to compulsory education. The report provides information on the duration of school holidays, indicating that the summer holidays usually last from 16 of June to 9 of September.

The Committee refers to its Statement of interpretation on Article 7§3 regarding the mandatory period of rest during school holidays and recalls that in order not to deprive children of the full benefit of their education, States Parties must provide for a mandatory and uninterrupted period of rest during school holidays which shall under no circumstances be less than two weeks during the summer holiday (Conclusions 2011). The Committee notes that young people above 15 years of age who are still subject to compulsory education are not guaranteed at least two consecutive weeks free of any work during the summer holidays and considers that the situation is not in conformity with the Charter on this point.

The Committee recalls that the satisfactory application of Article 7 cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised (International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §28). The Committee recalls that the situation in practice should be regularly monitored. It asks the next report to provide information on the number and nature of violations detected as well as on any measures taken and sanctions imposed on employers for breach of the regulations stipulating the conditions under which children who are still subject to compulsory education are allowed to work (e.g. Sections 4 to 9 of the Government Decision No. 600/2007), maximum working time and rest periods (e.g. Sections 10 to 15 of the Government Decision No. 600/2007).

The Committee noted previously that the situation in practice continued to show that many children subject to compulsory education were involved in illegal employment or work that was not light (Conclusions 2011) and there was still a high drop-out rate among Roma children and children from remote rural or disadvantaged areas (Conclusions 2015). It concluded that, in the absence of any other information to evidence that the situation in practice had improved, the situation was not in conformity with Article 7§3 of the Charter on the ground that the protection against employment of children subject to compulsory education is not effectively guaranteed (Conclusions 2015). Since the information provided in the current report do not show an improvement of the situation, the Committee maintains its conclusion of non-conformity on this point.

The Committee refers to its Conclusions on Article 17§2 of the Charter with regard to the measures taken in order to increase access to education of children from disadvantaged areas and Roma children.

Conclusion

The Committee concludes that the situation in Romania is not in conformity with Article 7§3 of the Charter on the grounds that:

- children who are still subject to compulsory education are not guaranteed an uninterrupted rest period of at least two weeks during summer holiday;
- the protection against employment of children subject to compulsory education is not effectively guaranteed.

Article 7 - Right of children and young persons to protection

Paragraph 4 - Working time

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

The Committee previously examined the situation and found it to be in conformity with Article 7§4 of the Charter (Conclusions 2015). It noted that according to Section 10 of the Government Decision No. 600/2007 on the Protection of Young People at Work, the maximum working time for young workers is 6 hours per day and 30 hours per week. Young persons are defined as persons between 15 and 18 years of age. Young workers are not allowed to perform overtime work. Between two working days, young workers are entitled to a minimum rest period of 12 uninterrupted hours. Young workers benefit also from a weekly rest period of 2 consecutive days, usually on Saturdays and Sundays (Conclusions 2015).

In its previous conclusion, the Committee asked for information on the number and nature of violations detected as well as on sanctions imposed on employers for breach of the regulations regarding working time for young workers under the age of 18 who are no longer subject to compulsory schooling (Conclusions 2015). The report indicates that the labour inspectorates notified the criminal bodies in 194 cases of violation of the obligation to comply with the minimum age requirement for employment or the legal provisions on the working conditions of minors. The Committee notes that no information is available with regard to the number of referrals to the criminal investigation bodies or number of sanctions applied for non-observance of the legal requirements regarding the duration of working time for young workers.

The Committee recalls that the situation in practice should be regularly monitored. It therefore asks for information in the next report on the activities and findings of the authorities (eg labour inspectorates, child protection agencies) for monitoring the working time for young workers under the age of 18 who are no longer subject to compulsory schooling. In the meantime, the Committee reserves its position.

Conclusion

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

Article 7 - Right of children and young persons to protection
Paragraph 5 - Fair pay

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

Young workers

The Committee previously concluded (Conclusions 2011) that the situation in Romania was not in conformity with Article 7§5 of the Charter on the ground that the right of young workers and apprentices to a fair wage and other appropriate allowances was not guaranteed in practice. With regard to the minimum wage of adult workers, According to the EUROSTAT data, the monthly gross minimum wage as a proportion of the average gross monthly wage amounted to 36.3% in 2013, to 38.5% in 2014, to 40.5% in 2015 and to 43.6% in 2016. In its Conclusions 2018, the Committee considered that the situation was not in conformity with Article 4§1 of the Charter on the ground that the national minimum wage is not sufficient to ensure a decent standard of living. If the reference wage is too low, even a young worker's wage which respects these percentage differentials is not considered fair. The Committee notes that in the present case the young workers are paid the same wage for the same kind of work as adults.

As previously asked by the Committee the report provides information on how the legal provisions are implemented into practice. Pursuant to Article 260 para. 1 a) of Law no. 53/2003 – the Labour Code, as amended , failure to comply with the provisions on the payment of the minimum gross domestic wage represents a misdemeanour and is punishable by a fine. During the reporting period, the employer's failure to comply with the legal provisions guaranteeing the payment the minimum gross domestic wage was sanctioned by fines.

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

Apprentices

According to art. 9 par. (5) and 6 of Law no. 279/2005 regarding the apprenticeship at the workplace, republished, as amended and supplemented, the monthly base salary, established by the apprenticeship contract at the workplace is at least equal to the minimum gross national salary, in force for a program 8 hours per day and 40 hours per week on average respectively.

The Committee reiterates its findings that if the reference wage is too low, even an apprentice's wage which respects these percentage differentials is not considered fair.

Conclusion

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

Article 7 - Right of children and young persons to protection

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

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

In its last Conclusion 2017 the Committee deferred its decision and asked information on the monitoring activities and findings of the Labour Inspectorate in relation to the inclusion of time spent on vocational training in the normal working time and its remuneration for young workers.

The report indicates that Article 194 of the Law no. 53/2003 – Labour Code, as amended and supplemented, provides that the employers have the obligation to ensure the participation of all employees in professional training programs at least every 2 years if they have at least 21 employees or at least every 3 years if they have less than 21 employees. The Committee understands that this rule apply to apprentices and young workers. It therefore asks if this provision responds to the need of this category of workers that need a more frequent and previsible vocational training than other workers. On this point the Committee asks information to be provided in the next cycle.

The report also indicates that the participation in the professional training may take place at the initiative of the employer or at the initiative of the employee (art. 196 (1) of the Labour Code, republished, amended and supplemented).

If the participation in the professional training courses or stages is initiated by the employer, all expenses generated by this participation are paid by them (art. 197 par. 1 of the Labour Code, republished, amended and supplemented).

If the employee is the one who has the initiative to participate in a form of professional training without performing his/her normal work tasks, the employer will analyse the employee's request with the trade union or, as applicable, with the representatives of the employees. The employer will take a decision about the application made by the employee within 15 days after having received the request. At the same time, the employer will decide on the conditions in which the employee will be allowed to participate in the professional training, including whether he/she will pay all cost generated by it or only part of this cost (art. 199 of the Labour Code, republished, amended and supplemented).

The Committee recalls that the situation in practice should be regularly monitored in particular the time spent for the professional training during the normal work time and the remuneration for young workers. The report replies that there are no statistical data on this issue. Therefore the lack of data is sufficient to conclude that there are flaws in the monitoring process and asks that the next report provide this information.

Conclusion

The Committee concludes that the situation in Romania is not in conformity with Article 7§6 of the Charter on the ground that there are no clear indications on the intervention of the labour inspectorate on the time spent on vocational training during the normal working time and the remuneration for young workers.

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 Romania.

In its last Conclusions (2017) the Committee asked the next report to provide information on the findings and sanctions imposed by the labour inspectorate in cases of breach of the applicable regulations with regard to paid annual holiday of young workers and deferred its conclusion.

The report indicates that the right to paid annual leave is guaranteed for all employees, in accordance with the provisions of art. 144 of Law no. 53/2003 – Labour Code, as subsequently amended and supplemented. The actual duration of the annual leave is set forth in the individual employment contract, by observing applicable law and the collective employment contracts and it is granted proportionally to the work performed throughout a calendar year.

Thus, the right to paid annual leave is guaranteed for all employees, including young people aged 15-18. The right to annual leave may not be subject to any assignment, renunciation or limitation.

According to the provisions of Article 147 par. 1 of the Labour Code, republished, as subsequently amended and supplemented, young people under 18 years of age benefit from an additional leave of at least 3 working days.

The Committee recalls that under Article 7§7, employers must grant young persons under 18 at least four weeks' paid annual holiday. The arrangements are the same as those that apply to annual paid leave for adults (Article 2§3). Employed persons under 18 should not have the option of waiving their annual paid holiday; in the event of an illness or accident during the holidays, they must have the right to take the leave lost at some other time. There is no such information in the report. Therefore the Committee asks if the current legislation satisfies such requirements.

The report indicates that through their control activities, the labour inspectors have checked how employers observe the legal provisions on the leave of employees, including of young workers. If an infringement of these legal provisions is found, mandatory measures with concrete deadlines for implementation are decided. The Labour Code does not provide any contravention sanctions for failure to observe the provisions on employees' leave. The Committee recalls that the labour Code should provide sanctions (fines) for the employers that do not respect paid annual leave. The absence of sanctions constitutes a violation of Article 7§7. The Committee recalls that the satisfactory application of Article 7§7 cannot be ensured solely by the operation of legislation, if this is not effectively applied and rigorously supervised in practice.

Conclusion

The Committee concludes that the situation in Romania is not in conformity with Article 7§7 of the Charter on the ground that the Labour Code does not provide sanctions for the employers that do not respect paid annual leave.

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 Romania.

In its last conclusion 2015, the report did not provide information on the monitoring activities of the Labour Inspectorate with regard to the prohibition of night work for young workers. The Committee recalled that the situation in practice should be regularly monitored. It asked detailed data on the findings of the Labour Inspectorate in relation to prohibition of night work for young persons under 18, including the nature and number of violations detected and sanctions imposed. The Committee pointed out that in the absence of such information in the next report, there will be nothing to establish that the situation in practice is in conformity with Article 7§8 of the Charter.

The report does not provide such information, therefore the Committee concludes that the situation is not in conformity.

Conclusion

The Committee concludes that the situation in Romania is not in conformity with Article 7§8 of the Charter on the ground that data are not provided on the findings of the Labour Inspectorate in relation to prohibition of night work for young persons under 18, including the nature and number of violations detected and sanctions imposed.

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 Romania.

In its last conclusion (2015) the report did not provide any information on the violations detected and the sanctions imposed effectively in practice by the labour inspectors. The Committee recalled that the satisfactory application of Article 7 cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised. It recalled that the situation in practice should be regularly monitored and asked the next report to provide information on the monitoring activities of the Labour Inspectorate, its findings and sanctions imposed in cases of breach of the applicable regulations to medical examination on recruitment and regular medical examination thereafter of young workers. The Committee pointed out that in the absence of such information in the next report, there will be nothing to establish that the situation in practice is in conformity with Article 7§9 of the Charter.

The report indicates that according to the provisions of art. 39, par. (4) of the Law on Occupational Health and Safety no. 319/2006, as subsequently amended, the infringement of the provisions regarding the medical examination and the periodical medical examinations provided at art. 13 letter j) of Law no. 319/2006 constitutes a contravention and is sanctioned by a fine ranging between lei 4,000 and lei 8,000.

Within the inspections carried out by the labour inspectors in business units, a priority point in the examination themes is the verification whether the legal provisions regarding workers' medical examination are observed, following the way the medical examination is performed for persons having special needs or for young people.

The Labour Inspection Department does not have at present any individual statistics on the number of sanctions applied for failure to observe the performance of medical examinations for young people, but only a general one covering all professional categories, regardless of age. Between 2014 and 2017 a number of 252,256 inspections were performed for checking the observance by employers of the occupational health and safety legislation and a no. of 953 contravention sanctions were applied for non-compliance situations identified on how the medical examination was performed when the employee was hired or periodically.

The report does not provide any information on the violations detected and the sanctions imposed effectively in practice by the labour inspectors. The Committee recalls that the satisfactory application of Article 7 cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised. It recalls that the situation in practice should be regularly monitored and asks the next report to provide information on the monitoring activities of the Labour Inspectorate, its findings and sanctions imposed in cases of breach of the applicable regulations to medical examination on recruitment and regular medical examination thereafter of young workers.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Romania is in conformity with Article 7§9 of the Charter.

Article 7 - Right of children and young persons to protection
Paragraph 10 - Special protection against physical and moral dangers

Protection against sexual exploitation

In its previous conclusion (Conclusions 2015), the Committee asked whether the new Criminal Code criminalises all forms of child pornography and prostitution involving a child under the age of 18.

According to the report, Law No. 286/2009 on the Criminal Code was amended in 2016 to transpose into national legislation Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography.

The Committee takes note of the relevant Articles of the Criminal Code. It notes that four terms appear in the text to denote the child: « underage person », « juvenile », « minor » and « child ».

The Committee therefore reiterates its question as to whether the new Criminal Code criminalises all forms of child pornography and prostitution involving a child under the age of 18.

The Committee notes from the UN Committee on the Rights of the Child's Concluding Observations on the fifth periodic report of Romania [CRC//C/ROU/CO/5 (2017)] where it noted the limited capacity of the public system to identify, report and address cases of violence, abuse and neglect of children, as well as sexual exploitation and abuse.

The Committee also notes that, the Committee on the Rights of the Child expressed concern about the large number of sexually exploited child victims of international and internal trafficking, and about the criminalisation of trafficked girl victims of sexual exploitation in some cases.

The Committee recalls that child victims of sexual exploitation should not be prosecuted for any act connected with this exploitation. It therefore requests that the next report provide information whether this principle is respected by Romania.

The Committee asks the next report to provide updated information on all measures taken to combat the sexual exploitation of children.

Protection against the misuse of information technologies

In its previous conclusion (Conclusions 2015), the Committee asked what measures have been taken to strengthen the protection of children against the misuse of information technologies.

According to the report, the Ministry of Communications and Information Society (MCSI) has taken measures to protect children against the misuse of information technologies. In particular, the MCSI has supported the CEF Telecom – Safer Internet 2014-2020 programme aimed at transforming the internet into a safer environment for children. It has developed a guide for parents and teachers aimed at educating children who navigate online. In addition, the National Regulatory Authority in Communications (ANCOM) has concluded a collaboration protocol with the Romanian Centre for Missing and Sexually Exploited Children (CRCDES) which was renewed in September 2015.

Under Art. 114 of the Law No. 196/2003 on preventing and fighting pornography, ANCOM receives notifications concerning non-compliance with the the law on pornography and, in the event of a notification and after verification of the content of the site, the ANCOM requests Internet service providers to block access to the site in question. Failure by Internet service providers to comply with the obligation to block such access within 48 hours of receiving ANCOM's request constitutes an offence punishable by a fine.

The Committee notes that GRETA, in its report on Action against Trafficking in Human Beings Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Romania (2016) considers that the Romanian authorities should take further steps to prevent online recruitment of children, including by co-operating with Internet service providers and raising the awareness of children, parents and education professionals of the risk of recruitment for trafficking through the Internet.

The Committee requests that the next report provide comprehensive information on further measures taken to protect children against the misuse of information technologies.

Protection from other forms of exploitation

The Committee previously asked the next report to provide information about the results of the measures taken to improve identification of child victims of trafficking as well as children in street situations. It wished to be informed of numbers of such children in the reference period as well as concrete steps taken by the authorities in cooperation with non-governmental actors to support them. In the meantime the Committee reserved its position on this issue (Conclusions 2015).

The Committee notes from the report that there is no distinct mechanism for the identification and referral of child victims of trafficking. The identification of child victims of trafficking, the reporting of such cases, the protection of child victims of trafficking are governed by Government Decision No 49 of 19 January 2011 on the approval of the Framework Methodology for Multidisciplinary Units and Networks for the prevention and intervention in the cases of violence against children and domestic violence, and the Methodology of Multidisciplinary and Inter-institutional Intervention with regard to children exploited or threatened with exploitation through labour, trafficking.

According to the report, this Decision provides a framework for authorities responsible for the protection of children and families against violence, trafficking and labour exploitation, as well as for service providers in this field and for professionals working directly with children and families. It regulates, among other issues, the identification of child victims of trafficking, the notification of such cases and the method of intervention.

The Committee notes the figures on assistance to child victims of trafficking in 2017.

According to the report, between 2014 and 2017, the Government and non-governmental organisations implemented prevention campaigns at the local, regional and national levels, aimed at informing children and young people and raising their awareness of the phenomenon of trafficking in persons. These activities were intended to cover all forms of exploitation (sexual exploitation, labour exploitation, forced begging).

A series of training programmes for different categories of professionals (social workers, psychologists, police, magistrates, teachers, etc.) was implemented between 2014 and 2017, one of the themes being the identification of victims of trafficking, adults and children.

The report indicates that Romania has adopted the National Strategy on the Protection and Promotion of Children's Rights 2014-2020 and the National Strategy against Trafficking in Persons for the period 2018-2022. The Committee asks that the next report should provide information on the implementation and impact of these national strategies in practice.

The Committee notes from GRETA's report mentioned above that a large proportion of the identified victims of trafficking were children, the great majority of whom were trafficked within Romania. According to the GRETA report, a relatively new trend in Romania is the exploitation of children for the purpose of forced criminality.

The Committee asks the next report to provide updated information on the trafficking of children and measures taken to address the problem.

The Committee notes from the above mentioned Concluding Observations of UN Committee on the Rights of the Child that the UN Committee urged the State party to take all necessary measures to enforce existing labour legislation, and to take effective measures to prevent child labour, especially in agriculture, construction and at home, as well as child begging in the streets, and to mainstream its elimination in the relevant sectoral and intersectoral strategies and action plans.

The Committee notes from a Direct Request of ILO CEARC (2017) that some children, mostly Roma, were involved in street begging, washing cars at dangerous intersections, loading and unloading heavy merchandise, or collecting waste products such as scrap iron, glass or paper, as well as in agriculture, including animal farming, and the construction sector.

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.

Recalling that children in a street situation are particularly exposed to the worst forms of child labour, the Committee refers to the General Comment No. 21 of the UN Committee on the Rights of the Child which provides authoritative guidance to States on developing comprehensive, long-term national strategies on children in street situations using a holistic, child rights approach and addressing both prevention and response .

Conclusion

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

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

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

Right to maternity leave

The report recalls that under Government Emergency Ordinance No. 158/2005 on medical leave and health insurance benefits, the length of maternity leave is 126 days (63 days before and 63 days after birth), including 42 days of compulsory postnatal leave. The same set of rules applies to women employed in the public sector.

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

Right to maternity benefits

The Committee deferred its previous conclusion (Conclusions 2015) on the right to maternity benefits and asked whether the same set of rules applied to women employed in the public sector (Conclusions 2015 and 2011).

According to the report, maternity benefits amount to 85% of the average gross monthly wage of the worker over the previous 6 months. Maternity benefits are paid for the duration of maternity leave and are funded entirely by the National Health Insurance Fund. The qualifying condition, for all insured persons, in both the public and the private sector, is to have contributed to the scheme for at least one month in the previous twelve months. The periods during which the insured person is on medical leave and drawing the benefits provided for in Government Emergency Ordinance No. 158/2005 on medical leave and health insurance benefits (as amended) are treated as periods of contribution to the health insurance scheme.

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

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

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

According to Eurostat data, the median equivalised annual income was €2,742 in 2017, or €229 per month. 50% of the median equivalised income was €1,371 per annum, or €114 per month. The gross minimum monthly wage was €297 in Romania (the amount of maternity benefits granted corresponds to 85% of the worker's average monthly wage over the previous 6 months and is €252). On this basis, the Committee considers that the situation is in conformity with Article 8§1 on this point.

Conclusion

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

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

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

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 conclusions (Conclusions 2017 and 2015). Therefore, it will only consider the recent developments and additional information.

Prohibition of dismissal

In its previous conclusions (Conclusions 2015 et 2011), the Committee asked whether the same regime applied to women employed in the public sector.

In response, the report states that the scope of Government Emergency Ordinance (GEO) No. 96/2003 has been broadened and covers workers who are pregnant, have given birth or are nursing, have a work or service relationship with an employer (Article 1§1a). Article 1§1 of Law No. 188/1999 on the Status of Public Servants (as amended) defines service relationships as the legal relationships between civil servants and the State or local public administration, through autonomous administrative authorities or public authorities and central and local government institutions. Therefore, the provisions of GEO No. 96/2003 concerning maternity protection at work apply to all employees, both in the private and public sector. The Committee refers to its previous conclusion (Conclusions 2015) for a full description of the situation and finds that it is in conformity with the Charter in this respect.

Redress in case of unlawful dismissal

In its previous conclusion (Conclusions 2017), the Committee found that the situation was in conformity with the Charter in this respect and asked what compensation was granted when the reinstatement of the employee was not possible and whether any ceiling applied. The report does not provide any information on this question. Therefore, the Committee reiterates it.

Conclusion

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

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

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

In its previous conclusion (Conclusions 2015), the Committee found that the situation was in conformity with Article 8§3 of the Charter. It asked whether the same regime applied to women employed in the public as in the private sector and whether women working on a part-time basis were entitled to paid nursing breaks.

In response, the report indicates that the scope of Government Emergency Ordinance No. 96/2003 has been broadened and applies to women employed in the public sector who are in an employment or service relationship with an employer (Article 1§1a). Article 1§1 of Law No. 188/1999 on the Status of Public Servants (as amended) defines service relationships as legal relationships between public servants and central or local government, through independent administrative authorities or central and local government authorities and institutions. Consequently, the provisions of Government Emergency Ordinance No. 96/2003 concerning maternity protection in the workplace apply to all women (who are pregnant, who have recently given birth or who are nursing), in the private as in the public sector. The Committee finds that the situation is in conformity on this point.

As regards part-time employees, the report indicates that under Article 134§1 of the Labour Code, they are entitled to a meal break or other breaks, under the conditions prescribed in the collective labour agreement or internal regulations, only if the duration of working time exceeds six hours. The Committee asks for clarification whether all women working on a part-time basis are entitled to paid nursing breaks.

Conclusion

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

Article 8 - Right of employed women to protection of maternity
Paragraph 4 - Regulation of night work

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

In its previous conclusion (Conclusions 2015), the Committee found that the situation was in conformity with Article 8§4 and asked whether the same regime applied to women employed in the public sector (Conclusions 2015 et 2011).

In response, the report indicates that the scope of Government Emergency Ordinance No. 96/2003 has been broadened and covers workers who are pregnant, who have recently given birth or who are nursing and who are in an employment or service relationship with an employer (Article 1§1a). The Committee refers to its examination under Article 8§3 for a full description of the change. Consequently, it finds that the provisions of Government Emergency Ordinance No. 96/2003 apply to all women employees, in the private sector as in the public sector.

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

Conclusion

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

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

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

In its previous conclusion (Conclusions 2015), the Committee found that the situation was in conformity with Article 8§5 of the Charter. It asked whether other dangerous activities, such as those involving exposure to benzene, ionising radiation or vibration, were also prohibited or strictly regulated for the categories of women concerned.

The report states that, in accordance with Government Emergency Ordinance No. 96/2003 (as amended), employers are required to carry out an annual assessment of the risks female employees' face in their workplace in terms of health and safety and inform them of the results. The Committee notes that Annex 1 of the Government Emergency Ordinance contains a non-exhaustive list of agents and processes that could pose a specific exposure risk (including physical, biological and chemical agents).

In response to another Committee's question, the report indicates that the same protection applies to domestic workers who are pregnant, who have recently given birth or who are nursing and who are in an employment relationship with an employer (Law No. 53/2003, as amended).

In its previous conclusion, the Committee noted that if, for objectively justified reasons, the employee could not be transferred, she was entitled to maternity leave and risk maternity benefit and asked whether the same regime applied to women employed in the public sector (Conclusions 2015 and 2011). In response, the report states that the scope of Government Emergency Ordinance No. 96/2003 has been broadened and covers workers who are pregnant, who have recently given birth or who are nursing and who are in an employment or service relationship with an employer (Article 1§1a). The Committee refers to its examination under Article 8§3 for a full description of the change. Consequently, it finds that the provisions of Government Emergency Ordinance No. 96/2003 apply to all women employees, in the private sector as in the public sector.

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

In its previous conclusion, the Committee asked whether, in case of temporary transfer to another post, the woman concerned retained the right to return to her previous employment at the end of the protected period. In response, the report states that the change in working conditions or the assignment to another post is temporary and that the employee has the

right to return to the post previously held (Article 9 of Government Emergency Ordinance No. 96/2003, as amended).

Conclusion

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

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

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

Legal protection of families

Rights and obligations, dispute settlement

The Committee refers to its previous conclusion (Conclusions 2015) for a description of the **rights and obligations of spouses**, in which it found the situation to be in conformity with the Charter, also in respect of legal framework relating to the **settlement of disputes** including in respect of children and **mediation services**. In reply to the Committee's request for statistical data on recourse to mediation services in the field of family law (Conclusions 2015), the current report provides information on the number of mediation agreements submitted by spouses to the competent courts.

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

Domestic violence against women

In its previous conclusion, the Committee asked for updated information on the implementation of measures to prevent and combat domestic violence, as well as statistical data and relevant examples of case-law in order to assess in particular how the law is interpreted and applied, and it reserved its position on this point (Conclusions 2015).

The Committee takes note of the information detailed in the report concerning the developments occurred since its latest assessment (see Conclusions 2015), in particular as regards on the one hand, the measures taken to improve prevention of violence such as awareness raising campaigns, information and awareness raising centres, training of police officers, and a hotline available 24 hours a day, and on the other hand protection of victims through shelters and day care services as well as through protection orders (see details in the report). With regard to integrated policies, the Committee notes from the report the creation in October 2016 of the Inter-Ministerial Committee for the Prevention and Combating of Domestic Violence. The Committee requests information on the impact of the activity of such Inter-Ministerial Committee on combating domestic violence in the next report.

The Committee notes however that the report does not provide information as regards prosecution of domestic violence and case-law examples.

The Committee also notes that Romania has signed and ratified the Istanbul Convention on Preventing and Combating Violence against Women and Domestic Violence (which came into force in Romania on 1 September 2016). It notes that within the framework of the assessment procedure which takes place in the context of this mechanism, the Council of Europe's Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) has not yet published its first (baseline) evaluation report on Romania (which is due in June 2021).

The Committee further notes that the United Nations Committee on the Elimination of Discrimination against Women (CEDAW), in its Concluding Observations 2017 expressed concern about certain shortcomings such as: women's lack of trust in the judicial system, their limited awareness about available remedies for obtaining redress and the stigmatisation of victims; the restrictive eligibility criteria preventing women without sufficient means from gaining access to the legal aid system; the lack of capacity-building for the police and the judiciary on dealing with cases of gender-based violence; the absence of data on the number of complaints and court decisions; the fact that the police intervene in cases of gender-based violence against women only upon court mandates, and the insufficient collaboration between the courts, the police and social workers in cases of domestic

violence; the high rates of withdrawal of complaints by victims of gender-based violence and the absence of *ex officio* prosecutions for offences of that type, as well as the use of mediation in cases of domestic violence; the low issuance rates and implementation of protection orders as well as the restricted access to legal and psychological counseling, the limited number of shelters and crisis centres for victims (see paragraphs 10-11 and 18-19 of Concluding Observations).

The Committee takes note that in the case of *Bălșan v. Romania* (Application no. 49645/09, Judgement of 23 May 2017), the European Court of Human Rights found that there was a lack of commitment in Romania to address domestic violence. The Court found in particular that Ms. Bălșan's husband had subjected her to violence and that the authorities had to have been well aware of that abuse, given her repeated calls for assistance to both the police as well as the courts. The Court considered that an approach such as the one taken by the authorities in this case – where the existence of acts of domestic violence had not been contested – deprived the national legal framework of its purpose and was inconsistent with international standards with respect to violence against women and domestic violence in particular (see paragraphs 64-71).

The Committee notes from a Study of the European Institute for Gender Equality (EIGE) on data collection on intimate partner violence by the police and justice sectors that in Romania 24% of women have been victims of intimate partner violence in their lifetime.

The Committee asks that the next report provide comprehensive and updated information on all points considered above, including relevant statistical data and examples of case law/related convictions applied, data on the use of protection orders, the availability of legal and psychological counseling as well as data on shelters and crisis centres for victims; the implementation of legislation/measures in the field and their impact in preventing and reducing domestic violence. In the light of all the information available and its case-law, it considers, in the meantime, that the measures taken to address the problem of domestic violence have been insufficient.

Social and economic protection of families

Family counselling services

The Committee noted previously that Law No.116/2002 on the prevention and fighting of social exclusion requires local Councils to provide free counselling services via their specialised units (Conclusions 2017). It asked that the next report provide further information, in particular the kind of services provided, the places where such services are provided and statistical data on the number of families benefiting from such services (Conclusions 2017).

The current report indicates that according to Law No. 292/2011 on social assistance, in the initial assessment of the social services provided, the person receives free of charge the information on the social risks and social protection rights he/she is entitled to, as well as, where appropriate, the necessary counselling services to overcome the difficult situations (Article 47 (4) of the Law). The initial assessment and intervention plan are carried out by the social assistant or, in the absence thereof, by the staff with social assistance competencies within the public social assistance service subordinated to the local public administration authorities.

According to the report, all accredited social services (which are certified as fulfilling the minimum standards of quality in social services) – currently 3 625 at the national level, comply with the obligation to inform/advise the beneficiaries and their families about their rights to social assistance. The report further provides the number of counseling centres at national level in the area of child rights protection (e.g. 73 centres in 2014 and 76 centres in 2017).

Childcare facilities

The Committee repeatedly asked for information as to how the Government ensured that affordable, good quality children facilities were available, in particular, in terms of number of children under the age of six in childcare, staff qualifications and suitability of the premises and the size of the financial contribution parents were asked to make (Conclusions 2006, 2011, 2015). It concluded that the situation was not in conformity with Article 16 of the Charter on the ground that it has not been established that affordable and good quality childcare is ensured for families (Conclusions 2015 and 2017). The Committee notes that the current report does not provide the requested information. Therefore, the Committee reiterates its conclusion of non-conformity on the ground that it has not been established that affordable and good quality childcare is ensured for families.

Family benefits

Equal access to family benefits

In its previous conclusion (Conclusions 2015) the Committee observed that according to the Social Assistance Law No. 292/2011 all foreign nationals and stateless persons who have their domicile or residence in Romania have the right to social assistance under the same conditions as Romanian citizens. The Committee noted that both the State Allowance for children as well as the Family Support Allowance are included in social assistance scheme and therefore are also provided to all eligible persons domiciled or resident in Romania.

The Committee notes from the report in this regard that according to Article 4 of Law No. 292/2011 the right to social assistance benefits is guaranteed in Romania, without any discrimination, for all Romanian citizens and for citizens of other states or for stateless persons as well, having their domicile or residence in Romania. According to this principle, the vulnerable persons benefit from social protection measures and actions, without any restriction or any preference of race, nationality, ethnic origin, language, religion, social category, opinion, gender or sexual orientation, age, political affiliation, disability, chronic disease or belonging to a disadvantaged category.

The Committee considers that the situation has not changed in this respect and that, therefore, it is in conformity with the Charter.

Level of family benefits

In its previous conclusion (Conclusions 2015) the Committee considered that the situation was in conformity with the Charter as the level of family benefits (the State Allowance and the Family Support Allowance) represented an adequate income supplement.

The Committee notes from the report in this regard that the State Child Allowance is a universal benefit granted by the State for all children who are resident or domiciled in Romania until the age of 18. The benefit is not means-tested. In 2017 the amount of this benefit stood at Lei 200 (€ 42) for children under 2 years of age and at Lei 84 (€ 17) for children aged between 2 and 18, as well as for young people who have reached the age of 18, who attend the high school or vocational education, until its completion.

The Committee also notes that in addition, the Family Support Allowance is paid to families with low income and is means-tested. The monthly amount varies with the income thresholds, the number of children and the Reference Social Indicator (RSI). The Committee notes that the level of this benefit ranged between € 15 for one child and € 68 for four children in 2017.

The Committee also takes note of other benefits, such as child raising benefit, child raising benefit for families with children with disabilities.

The Committee notes that in 2017 the median equivalised income stood at € 229 per month. The Committee considers that the State Child Allowance as well as the Family Support Allowance represent an adequate percentage of the median equivalised income. Therefore, the situation is in conformity with the Charter on this point.

Measures in favour of vulnerable families

In its previous conclusion the Committee asked for information on how the State ensures the protection of vulnerable families, notably, single-parent families and Roma families. In this regard, the Committee notes that single parents are entitled to a special allowance. As regards Roma families, the Committee takes note of benefits of social assistance granted to vulnerable families in order to prevent and combat poverty and the risk for social exclusion. The fight against poverty and social exclusion continues to be a national priority. The measures to prevent and combat poverty and the risk for social exclusion are part of the general framework of multidimensional actions of the social inclusion process, by which opportunities and necessary resources are ensured for the full participation of vulnerable persons in the economic, social and cultural life of the society, as well as in the decision-making process that concerns their lives and their access to fundamental rights.

The social inclusion policy of the Government has the general objective of increasing the standard of living and promoting public policies addressing all vulnerable groups, including Roma population, disabled people, women, children living in the streets, elderly people etc. The Committee asks what special measures are envisaged to protect Roma families.

Housing for families

In its previous conclusion (Conclusions 2015), the Committee asked for information about the implementation of the Dwelling Law. In particular, the Committee wished to know the total number of actual beneficiaries of social housing and the total number of eligible persons.

In response to the Committee's question, the report indicates that the Ministry of Regional Development and Public Administration does not collect data on the number of beneficiaries of social housing and the number of eligible persons is impossible to estimate in the absence of applicants' files, given the categories of beneficiaries and the criteria for accessing social housing. The categories of persons who may benefit from social housing are listed in Section 43 of the Housing Law No. 114/1996 (see Conclusions 2015 for details). According to the Methodological Norms for the implementation of the provisions of the Housing Law, when determining the order of priority for the allocation of social housing within each criterion by local authorities, the following considerations should be considered: the accommodation conditions of the applicants, the number of children and of other people living with the applicants, the state of health of the applicants or of their family members, and the date of the request. According to a survey carried out in 2014 (on the basis of a questionnaire sent to all territorial units), the reported stock of social housing in the responding municipalities was 29 167 social housing units. About 87% of all local authorities that participated in the survey considered that more investment in social housing was necessary. The presence of social housing is correlated with the level of development of the respondent cities. For instance, only 30% of the cities with high rates of poverty benefit from social housing, while the share reaches 81% in cities with low poverty rates. The report further indicates that during the reference period, a new category of dwelling was introduced under Law No. 143/2017 supplementing the Housing Law: "support dwelling", a dwelling which is attributed to persons or families who have been forcibly evicted due to non-payment of mortgage loans, and whose economic situation does not allow them to buy or rent a dwelling at market prices.

The Committee notes from the report that the presence of social housing is very low in cities with high poverty rates. It therefore asks the next report to provide figures on the availability of social housing units (number of applicants for social housing and number of those granted social housing) in such areas. According to another source, the social/public housing stock represents only 2% of the total housing stock (European Social Policy Network (ESPN), « National strategies to fight homelessness and housing exclusion: Romania », 2019, p. 4). The Committee also notes from this source that housing benefits are limited to heating aids

granted during the cold months to families on low incomes (p. 16). The Committee accordingly asks the next report to clarify whether other types of housing benefits are available to vulnerable or low-income families with no access to social housing.

With regard to the adequacy of housing for families, the Committee notes that according to the European Index of Housing Exclusion 2019 (FEANTSA and Abbé Pierre Foundation, Eurostat EU-SILC 2017), Romania has a particularly high overcrowded housing rate (47% of the total population, well above the average rate of 15.7% for the EU) and severe housing deprivation rate (17.2%, well above the average rate of 4% for the EU). The Committee accordingly asks the next report to provide up-to-date figures on the adequacy of housing (water, heating, sanitary facilities, electricity, living size/overcrowding).

Pending receipt of the information requested, the Committee reserves its position on whether there is a sufficient supply of adequate housing for families. If the requested information on all the abovementioned points is not provided in the next report, there will be nothing to establish that the situation in Romania is in conformity with the Charter on this point.

With regard to the legal protection for persons threatened by eviction, the Committee previously considered (Conclusions 2017) that the situation was not in conformity with Article 16 of the Charter on the grounds that the notice period before eviction was too short, and that occupiers were allowed to be evicted during winter. The Committee notes from the report that the provisions concerning the applicable notice periods under the special eviction procedure (Law No. 134/2010) have not changed. Therefore, it reiterates that the minimum notice period before eviction of 30 days for tenants and five days for occupiers are too short and not in conformity with the Charter. The report does not address the question of eviction of occupiers during winter. In this connection, the Committee recalls that in order to comply with the Charter, legal protection for persons threatened by eviction must include a prohibition to carry out evictions at night or during winter (European Roma and Travellers Forum (ERTF) v. the Czech Republic, Complaint No. 104/2014, decision on the merits of 17 May 2016, §81). The Committee therefore reiterates its previous finding of non-conformity on these two points.

The Committee also wished to be informed (Conclusions 2017) on the following aspects regarding eviction procedures: whether eviction of occupiers could be carried out without a court order; whether the law prohibited enforcement of evictions at night; whether compensation in case of illegal eviction was provided; whether evictions are governed by rules sufficiently protective of the rights of the persons and accompanied by proposals for alternative accommodation; and comprehensive information on the common procedure of eviction. The Committee finds no information in the present report on all these points. It accordingly reiterates its requests and considers that if the requested information is not provided in the next report, there will be nothing to establish that there are adequate procedural safeguards against eviction for families. It also asks the next report to indicate whether judicial proceedings provide for a proportionality assessment of the effects of the eviction on the particular circumstances of the persons or families concerned, and if so, to provide examples of any existing case-law in this respect.

The Committee previously considered (Conclusions 2011, 2015) that the situation was not in conformity with the Charter as the right to adequate housing was not guaranteed for Roma families.

The report lists several measures taken by the Government to improve the situation of Roma. The Government approved the Strategy for the Inclusion of Romanian Citizens belonging to the Roma minority for the period 2015-2020, which is accompanied by action plans for each area of interest, including housing. The National Housing Agency is running a pilot programme on social housing for Roma, with the aim of building 300 social housing units for Roma at locations established by the Ministry of Regional Development and Public Administration, following proposals received from the National Agency for Roma and local

authorities. Under this programme, 189 units were completed between 2015 and 2017 and investments were contracted in 2017 for 84 further units. According to the report, housing is also addressed through integrated interventions for marginalized urban communities, including Roma, funded from European funds. In this context, 40 Local Development Strategies have been selected for funding, 37 of which target marginalised urban communities. Interventions funded under these strategies include improving living spaces through building and rehabilitation or modernisation of social housing. The report also states that access to social housing does not depend on ethnicity.

The Committee notes that according to the United Nations Committee on Economic, Social and Cultural Rights (Concluding observations of 28 November 2014 on the combined third to fifth periodic reports of Romania, §§18-19), the majority of Roma continued to live in substandard housing conditions, there were reported cases of forced eviction of Roma from irregular settlements, often without genuine prior consultation and reasonable notice, leading to relocation to unsafe sites or segregated areas. The UN Committee was particularly concerned that, upon eviction, some families with children were left without adequate alternative housing, compensation and protection. The Advisory Committee on the Framework Convention for the Protection of National Minorities, in its fourth opinion on Romania (22 June 2017), also expressed concern about the continuing evictions of Roma without adequate alternative housing and without consultation. The Advisory Committee reported that in Baia Mare, the wall built to separate Roma houses from the rest of the residents continued to stand in 2017 in spite of a court's ruling declaring its construction an act of discrimination (§ 42).

The Committee further notes from the latest ECRI report on Romania (3 April 2019, outside the reference period, §§ 76-77) that the housing situation of Roma remains a matter of concern. ECRI reported that as of 2016, a high share of the Roma population was living without tap water (68%) and without a bathroom or toilet inside their dwellings (79%). ECRI was also concerned about the lack of sufficient procedural guarantees applicable to evictions and the fact that demolitions of informal settlements were not treated as evictions under the legislation, thus denying the legal safeguards applicable to other evictions. The Committee therefore asks the next report to comment on these findings and to clarify whether any procedural safeguards apply to demolitions of informal settlements of Roma families. It also wishes that the next report continues to provide information on all the measures envisaged or adopted to improve the housing situation of Roma families, including on the achievements of the Strategy for the Inclusion of Romanian Citizens belonging to the Roma minority for the period 2015-2020 in the field of housing.

In the meantime, in the light of the above assessments, the Committee considers that the situation is not in conformity with Article 16 of the Charter as regards the protection of Roma families with respect to housing, including in terms of eviction conditions.

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

Participation of associations representing families

The Committee previously asked for information on the participation of relevant associations representing families in the framing of family policies (Conclusions 2011 and 2015).

The report indicates that all legislative or strategic initiatives are based on a process of consultation with the main institutional actors or civil society partners operating in the respective fields. The latter have been permanently consulted and involved in the process of drafting and finalising normative or strategic documents. For example, the Students' Council – the main associative structure of children which brings together representatives of pupils from all school units at national level, as well as organisations representing the interests of parents/families – has been consulted when the issues under discussion concerned their

areas of interest (e.g. draft laws on adoption, the framework legislation on the protection and promotion of children's rights, etc.).

Conclusion

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

- the measures taken do not ensure an adequate protection of women against domestic violence;
- it has not been established that affordable and good quality childcare is ensured for families;
- the notice period before eviction is too short;
- families can be evicted during winter;
- the protection of Roma families with respect to housing, including in terms of eviction conditions, is inadequate.

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

Paragraph 1 - Assistance, education and training

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

The legal status of the child

The Committee previously asked for information about the circumstances under which the right of an adopted child to know his/her origins can be restricted (Conclusions 2015). According to the report the right of adopted persons to know their origins and their own past is a right guaranteed by Law 273/2004 on adoption as amended. According to the report the right of adopted persons to know their origins and their own past is a right guaranteed by Law 273/2004 on Adoption as amended. Government Decision 448/2017 *for the approval of the Methodology regarding the contact of natural parents or biological relatives, the access of the adopted to information about his origins and his own past as well and the access of the natural parents or biological relatives of the adopted persons to information about the latter* was adopted in order to implement this right. The decision regulates the administrative procedure by which adopted persons can obtain information.

The National Authority for Child Rights Protection assists persons seeking information surrounding their adoption and information about their natural parents. Persons under the age of 18 years may only receive identifying information if there are medical reasons which necessitate this.

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 those children unregistered at birth).

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

The Committee notes in this respect that the Conclusion Observations on the fifth periodic report of Romania by the UN Committee on the Rights of the Child [CRC/C/ROU/CO/5 of July 2017] recommended that Romania strengthen community based services to ensure that all children including those in rural communities have access to birth registration.

Protection from ill-treatment and abuse

The Committee recalls that all forms of corporal punishment are prohibited in all settings (Conclusions 2015). There has been no change to this situation.

Rights of children in public care

The Committee refers to its previous conclusion for for a description of the system for the restriction of parental rights (Conclusions 2015).

The Committee previously requested updated information on the numbers of children placed in foster or family type care as opposed to institutions. It also wished to know the average size of a childcare institution (Conclusions 2015). According to the report in 2016 56 866 children were in care ('the special protection system'), 37 105 children in a family type placement and 19 369 children in a residential placement. The corresponding figures for 2017 were 55 302, 37 105 and 18 197. It appears from the data that most children are placed in a family type setting. However the Committee notes that a significant number of children remain in institutional care. The Committee asks for a description of the different types of care .

In this respect the Committee notes that the Conclusion Observations on the fifth periodic report of Romania by the UN Committee on the Rights of the Child [CRC/c/ROU/CO/5 of July 2017 noted that a significant number of children are still being placed in institutional care and expressed concern about children from the most disadvantaged groups, including children from poor families, Roma children and children with disabilities, who remain at high risk of family separation and institutionalization.

The Committee recalls that a situation of financial need is not sufficient to justify taking a child into care. In such a case, the family must receive adequate support in the form of social assistance to ensure the child's well-being. It asks what measures have been adopted to ensure that children are never taken into care on the basis of their family's financial or material situation.

The Committee further notes from the report of the Commissioner for Human Rights of the Council of Europes following her visit to Romania in 2017 [CommDH92019]5] that that as of 2015, the minimum age for placement in institutions was raised from two to three years, and that newly adopted legislation prohibits the placement in institutions of children under the age of seven. However the new law exceptionally allows such placements in the situation of children with severe disabilities. The Commissioner expressed concern about the reported cases of abuse and neglect suffered by children in institutions.

The Committee asks for information on what measures have been taken to prevent and address cases of abuse and neglect suffered by children that are placed in care, both in institutions and other contexts.

It requests the next report to provide information on the measures taken to prevent the separation of children from their families and on measures taken to continue increase community based/family like care. It also seeks information on mechanisms in place to monitor the care provided to children in institutions and in care generally.

Education

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

Children in conflict with the law

The report states that where a child who is aged between 14 and 18 commits an offence, they are normally made the subject of a non- custodial educational measure. However a child maybe subject to a custodial educational measure where they have previously received an educational measure or where the offence committed, if committed by an adult, would attract a sentence of 7 years or more.

The duration of a custodial educational measure in an educational centre is between one and three years. A custodial educational measure may also take place in a detention centre where the duration is of 2-5 years. However where the offence committed attracts a sentence (if committed by an adult) of 20 years or more a child maybe detained for up to 15 years. The Committee recalls that period of detention must be a measure of last resort, for the shortest time possible and subject to regular review. It considers 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 also asks for the next report to explain the difference between detention in an educational centre and detention in a detention centre.

As regards pre trial detention the report states children should only exceptionally be subject to pre trial detention and pre trial arrest. Regarding the duration of such detention the law does not distinguish between adults and children, however in determining the “pre trial measure” the court will take into account the accused’s age. The report states that detention may be ordered for a maximum of 24 days, and but may not exceed 30 days. It also states that judicial control maybe ordered for up to 60 days but can be extended to between one and five years in certain circumstances. House arrest is possible for up to 180 days.

The Committee recalls it previously noted that children are detained separately from adults (Conclusions 2015).

The Committee asks whether children may be places in solitary confinement, 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 recalls it previously noted that unaccompanied children receive representation through a competent institution and are accommodated in special centres of protection for children under the same conditions as for the Romanian children.

However the Committee requests further information on accommodation facilities for migrant children whether accompanied and unaccompanied, including measures taken to ensure that children are accommodated in appropriate settings. It also requests further information on the assistance given to unaccompanied children, in particular to protect them from exploitation and abuse. Lastly it requests information as to whether children who are irregularly present in the State whether 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 can have serious consequences for children and is be 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 Romania uses bone testing to assess age and, if so, in what situations the state does so. Should the State carry out such testing, the Committee asks what potential consequences such testing may have (e.g., can a child be excluded from the child protection system on the sole basis of the outcome of such a test?).

Child poverty

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

The Committee notes that according to EUROSTAT in 2017 41.7% of children in Romania of children were at risk of poverty or social exclusion, significantly higher than the EU average (24.9%).

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

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

Meanwhile the Committee reserves its position on this point.

Conclusion

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

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

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

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

Enrolment rates, absenteeism and drop-out rates

The Committee notes from the UNESCO that in 2017 the net enrolment rate in primary education was 84.22%, the corresponding rate for secondary education was 85.40%. The Committee notes that these figures seem to be low (and lower than most other European countries) and asks for the Government comments. Meanwhile it concludes that the situation is not in conformity with the Charter on the ground that the net enrolment rate in primary education is too low.

The Committee wishes the next report to provide information on enrolment rates, absenteeism and drop out rates as well as information on measures taken to address issues related to these rates. It notes in this respect that the UN Committee on the Rights of the Child in its Concluding Observations on the fifth periodic report of Romania by the UN Committee on the Rights of the Child [CRC/C/ROU/CO/5 of July 2017] recommended that Romania develop programmes with monitoring and evaluation mechanisms to reduce dropout rates.

Costs associated with education

The Committee asks the next report to provide updated information on measures in place to mitigate the costs of education such as transport, books, uniforms and stationary.

Vulnerable groups

The Committee asks the next report to provide updated information on the situation of Roma children: enrolment, drop out and completion rates as well as measures taken to encourage school attendance and support Roma children in education. It also asks for information on the number of Roma children in special needs schools.

In this respect the Committee notes that the UN Committee on the Rights of the Child in its Concluding Observations on the fifth periodic report of Romania by the UN Committee on the Rights of the Child [CRC/C/ROU/CO/5 of July 2017] recommended that Romania facilitate the participation and inclusion of Roma children in mainstream education at all levels.

The Committee previously asked whether children in an irregular situation have a right to education (Conclusions 2015). According to the report children seeking asylum have access to compulsory school education under the same conditions as Romanian children. It would appear that unaccompanied children also have the right to access compulsory education. The Committee nevertheless seeks further information on the situation: it asks in particular whether all children in an irregular migration situation (beyond those who are seeking asylum or who are unaccompanied) may access education.

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

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

Anti-bullying measures

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

Voice of the child in education

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

Conclusion

The Committee concludes that the situation in Romania is not in conformity with Article 17§2 of the Charter on the ground that the net enrolment rate in primary education is too low.

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 Romania.

The Committee recalls that States must ensure that migrants have access to courts, to lawyers and legal aid on the same conditions as their own nationals (Conclusions 2015, Armenia).

It further recalls that any migrant worker residing or working lawfully within the territory of a State Party who is involved in legal or administrative proceedings and does not have counsel of his or her own choosing should be advised that he/she may appoint counsel and, whenever the interests of justice so require, be provided with counsel, free of charge if he or she does not have sufficient means to pay the latter, as is the case for nationals or should be by virtue of the European Social Charter. Whenever the interests of justice so require, a migrant worker must have the free assistance of an interpreter if he or she cannot properly understand or speak the national language used in the proceedings and have any necessary documents translated. Such legal assistance should be extended to obligatory pre-trial proceedings (Conclusions 2011, Statement of interpretation on Article 19§7).

The Committee has assessed the access to legal aid for migrant workers in its previous conclusions (most recently, for civil and administrative proceedings – [Conclusions 2006](#) and as regards criminal proceedings – [Conclusions 2015](#)) and found the situation to be in conformity with the requirements of the Charter.

The report confirms that the expenses of a representative in mandatory assistance cases are covered by the State or by the parties. If the parties cannot afford to pay, they have a right to a court-appointed counsel, paid by State. This right is provided without any distinction depending on citizenship.

Conclusion

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

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

Paragraph 8 - Guarantees concerning deportation

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

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

In its previous conclusion ([Conclusions 2015](#)), the Committee assessed the legal framework and reserved its position, awaiting information on what types of criminal offence may lead to a migrant worker being expelled, as it appeared that there were no constraints on which offences may lead to an expulsion order.

In reply, the report states that pursuant to the Law 286/2009, the ancillary penalty of a deportation may be applied as long as the main penalty determined by the court is a custodial sentence or a fine and the court deems it necessary, due to the nature of the offence, the circumstances of the case and the personal circumstances of the offender. Furthermore, under this Law, deportation becomes mandatory for some type of offences. It shall not be imposed when the sentence is to be suspended under probation or when there is probable cause to believe the person's life might be at risk or that the person might be subjected to torture or other inhuman or degrading treatment in the country he or she is to be expelled.

The Committee considers that this provision is wider than what is permissible under Article 19§8 of the Charter, the conviction of an individual for a criminal offence carrying a lesser sentence or a fine should not lead to an individual being considered an threat to public order or national security. This provision may lead to migrant workers being arbitrarily expelled and therefore cannot be considered as being in conformity with this provision of the Charter.

The report further provides that foreigners subject to an expulsion order have the right to appeal that decision before a court.

No reply has been provided to the Committee's request for statistics on expulsions and information on which offences have led to the deportation of a foreigner.

Conclusion

The Committee concludes that the situation in Romania is not in conformity with Article 19§8 of the Charter on the ground that a migrant worker may be considered as a threat to public order and therefore expelled where he/she has been convicted for a minor crime.

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

Paragraph 2 - Parental leave

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

In its previous conclusion (Conclusions 2015), the Committee found that the situation was in conformity with Article 27§2 of the Charter and asked whether fathers had an individual right to parental leave and whether at least a part of it was non-transferable.

In response, the report states that pursuant to Government Emergency Ordinance No. 111/2010 on parental leave and monthly childcare allowance (as amended), the right to parental leave is awarded on a non-transferable basis, provided that both parents fulfil the conditions for entitlement to this right: at least one month out of the total duration of parental leave is allocated to one of the persons who has not applied for this right. Should the person entitled to this period not request the right to this type of leave, the other parent may not take his/her place in exercising this right. The Committee notes from the report that the father is entitled to one month of parental leave awarded on a non-transferable basis.

Conclusion

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