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EUROPEAN SOCIAL CHARTER

European Committee of Social Rights

Conclusions 2019

SERBIA

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 Serbia on 14 September 2009. The time limit for submitting the 8th report on the application of this treaty to the Council of Europe was 31 October 2018 and Serbia submitted it on 8 March 2019.

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

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

Serbia has accepted all provisions from the above-mentioned group except Articles 19§11, 19§12, 27 and 31.

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

The present chapter on Serbia concerns 28 situations and contains:

– 5 conclusions of conformity: Articles 7§2, 7§6, 7§7, 7§8 and 8§3;

– 12 conclusions of non-conformity: Articles 7§1, 7§3, 7§4, 7§5, 7§9, 8§5 17§1, 19§3, 19§4, 19§6, 19§7 and 19§10.

In respect of the other 11 situations concerning Articles 7§10, 8§1, 8§2, 8§4, 16, 17§2, 19§1, 19§2, 19§5, 19§8 and 19§9, the Committee needs further information in order to assess the situation.

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

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

- the right to work (Article1),
- 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 Serbia.

The Committee recalls that, in application of Article 7§1, domestic law must set the minimum age of admission to employment at 15 years. The prohibition on the employment of children under the age of 15 applies to all economic sectors, including agriculture, and all places of work, including work within family enterprises and in private households (Conclusions I (1969), Statement of Interpretation on Article 7§1). It also extends to all forms of economic activity, irrespective of the status of the worker (employee, self-employed, unpaid family helper or other) (International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §§27-28).

The report indicates that according to Article 24 of the Labour Law, employment relationships can be established with a person above the age of 15 who meets other requirements for work at certain tasks, stipulated under the law and/or the Rules on Organisation and Systematisation of workplaces.

The Committee asked previously whether the prohibition of employment under the age of 15 applies to all economic sectors, including agriculture, family enterprises and private households (Conclusions 2015). Since the report does not reply to this question, the Committee reiterates it.

The Committee recalls that Article 7§1 allows for an exception concerning light work, namely work which does not entail any risk to the health, moral welfare, development or education of children. States are required to define the types of work which may be considered light, or at least to draw up a list of those who are not. Work considered to be light ceases to be so if it is performed for an excessive duration (International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §§29-31).

In its previous conclusion, the Committee asked whether there were exceptions to the rule prohibiting children under the age of 15 to enter into labour relations. It also asked whether, in practice, children under the age of 15 were involved in light work such as artistic performances, sports, advertising and in what conditions (Conclusions 2015).

Since the report does not address any of these questions, the Committee reiterates them. Referring to its Statement of Interpretation on Articles 7§1 and 7§3 on the permitted duration of light work (Conclusions 2015), the Committee asks what is the daily and weekly duration of light work that children under the age of 15 may perform during school term and during school holidays.

Meanwhile, given the lack of information on the above-mentioned aspects, the Committee concludes that the situation in Serbia is not in conformity with Article 7§1 of the Charter on the ground that it has not been established that the protection of children under the age of 15 against child labour is guaranteed.

With regard to monitoring child labour, the report indicates that the Labour Inspectorate, as an administrative body within the Ministry of Labour, Employment, Veteran and Social Affairs, performs the tasks of inspection, in the area of labour relations and occupational safety and health. The report indicates that during their inspections, labour inspectors have not identified working children under the age of 15, but only children aged 15 to 18.

The Committee asked previously what were the measures taken by the authorities (e.g. Labour Inspectorate, other bodies responsible for monitoring the rights of children in the country) to detect cases of children under the age of 15 engaged in economic activity in agriculture and in the informal economy (Conclusions 2015).

The report indicates that the Law on Simplified Work Engagement on Seasonal Jobs in Certain Activities ("Official Gazette of the RS", no. 50/2018 as of 29.06.2018), came into

force on 7 July 2018 and is applicable since 7 January 2019 (outside the reference period). The same law stipulates the control of work engagement on seasonal jobs in the area of agriculture, forestry and fishery, including control of natural persons – an owner or a member of family agricultural household dealing with agricultural production.

The Committee notes in the report "Rapid Assessment on Child Labour in Agriculture in the Republic of Serbia" published by the International Labour Office in 2018 that almost two-thirds of all child labour in Serbia is found in the agriculture, forestry and fishery sector (56.5%), and 59.4% of total child labour occurs on family farms. The data show that due to the fact that child labour is mainly found in agriculture and on family farms, the difference between urban and rural child labour prevalence rates is large with child labour being almost five times more prevalent in rural than in urban areas. The same source report that according to Multiple Indicator Cluster Survey (MICS) 2014, 9.9% of children (aged 5-17 years) in the general population and 4.7% in the Roma settlements were engaged in child labour.

The Committee recalls that the effective protection of the rights guaranteed by Article 7§1 cannot be ensured solely by legislation; the legislation must be effectively applied in practice and rigorously supervised. The Labour Inspectorate has a decisive role to play in this respect. The Committee asks that the next report provide information on the findings and measures taken by the Labour Inspectorate and social services to detect child labour in all areas, including in the agriculture, forestry, fishery and in the informal economy. The Committee asks whether the authorities monitor home working and domestic work performed by children and which are their findings in this respect.

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

Conclusion

The Committee concludes that the situation in Serbia is not in conformity with Article 7§1 of the Charter on the ground that the protection of children under the age of 15 against child labour is not guaranteed in practice.

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 Serbia.

The report indicates that according to Article 25 of the Labour Law, persons under the age of 18 may enter into an employment relationship upon written approval of the parents, adoptive parents or guardians, under the condition that such work does not jeopardize their health, moral or education, and/or is not prohibited under the law. The report adds that a person under the age of 18 can enter into employment relationship only upon certificate of the competent health care body substantiating that he/she is capable of performing such tasks that are stipulated in the labour contract and that these tasks are not harmful for his/her health.

Under Article 84 of the Labour Law, employees under the age of 18 shall not perform jobs that:

- involve strenuous physical work, underground work, underwater work or working at excessive heights;
- involve exposure to harmful radiation or to substances that are toxic, carcinogenic or causing genetic diseases, or to health risks due to the cold, heat, noise or vibrations;
- may increase risks to their health and life and be harmful due to their psychophysical capabilities, according to the findings of the competent health authority.

The report provides information on the applicable sanctions imposed on employers and entrepreneurs if they enter into labour relations with a person under the age of 18 contrary to provisions of Article 25 of the Labour Law mentioned above; or if they involve an employee under the age of 18 in dangerous or unhealthy activities contrary to Article 84 of the Labour Law mentioned above (Article 274 paragraphs 1 to 3 of the Labour Law).

The report provides information on the activities and findings of the Labour Inspectorate in 2017 and 2018 (the latter being outside the reference period). For example, during their inspections performed in 2017, labour inspectors identified 32 employees aged 15 to 18 working in the following areas: 7 persons in the area of construction, 7 in the area of agriculture, 6 persons in the personal services activities, 5 persons in the area of transport and warehousing, 4 persons in the area of food production and 3 persons in the area of accommodation and nutrition. The labour inspectors identified 10 persons under the age of 18 who were working illegally and they ordered the employers to conclude labour contracts after obtaining written approval from parents or guardians and the health certificate from the competent health authority, and to report them to the compulsory social insurance. In addition, labour inspectors submitted 4 requests for initiation of offence proceedings because employers did not conclude labour contracts with persons unde the age of 18 in accordance with the law.

The Committee asks for updated information in the next report on the monitoring activities and findings of the Labour Inspectorate (including violations detected and sanctions effectively applied in practice against the employers) in relation to the employment of young persons under the age of 18 for dangerous or unhealthy activities.

Conclusion

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

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 Serbia.

The report indicates that according to Article 25 of the Labour Law, persons under the age of 18 may enter into an employment relationship upon written approval of the parents, adoptive parents or guardians, under the condition that such work does not jeopardise their health, moral or education, and/or is not prohibited under the law. The report further provides information on the applicable sanctions imposed on employers and entrepreneurs if they enter into labour relations with a person under the age of 18 contrary to the requirements established by Article 25 of the Labour Law mentioned above.

In its previous conclusion, the Committee asked which was the maximum age for compulsory education in Serbia (Conclusions 2015).

The report indicates that according to Article 30 of the Law on Primary Education ("Official Gazette of the RS", no. 55/13, 101/17, 27/18) primary education is implemented for a period of eight years, in two educational cycles. All students are required to attend school until they turn 15, until the end of the school year. The school shall facilitate the education to the student who turned 15, and did not finalise the primary school, until he/she turns 17, if it is requested by the student or his parents and/or a legal representative. A student who turned 15 and did not complete primary education, may continue his/her education by functional basic education programme for adults.

The Committee asked previously what kind of jobs/tasks are performed in practice by children who are still subject to compulsory education (Conclusions 2015). The report does not address this question. The Committee reiterates its question and asks whether children who are still subject to compulsory education are allowed to perform light work. It also asks whether children who are still subject to compulsory education participate in artistic performances and what are the legal provisions applicable on this matter (e.g. legal requirements, working time, other safeguards).

The Committee recalls that Article 7§3 guarantees the right of every child to education by safeguarding its capacity to learn. Only light work is permissible for schoolchildren under this provision. The notion of “light work” is the same as under article 7§1. In the case of states that have set the same age, which is over 15 years, for admission to employment and the end of compulsory education, questions related to light work are examined under Article 7§1. However, since Article 7§3 is concerned with the effective exercise of the right to compulsory education, matters relating thereto are assessed under that article. Adequate safeguards must be in place to allow the authorities (labour inspectorate, social and education services) to protect children from work which could deprive them of the full benefit of their education.

Referring to its Statement of Interpretation on Articles 7§1 and 7§3 on the permitted duration of light work (Conclusions 2015), the Committee asks what is the daily and weekly duration of light work that children who are still subject to compulsory education may perform during school term and during school holidays.

In its previous conclusion, the Committee asked if children who are still in compulsory education benefit of two consecutive weeks free from any work during the summer holidays (Conclusions 2015). The report does not provide the requested information. The Committee reiterates its question.

Meanwhile, given the lack of information on the above mentioned aspects, the Committee concludes that the situation in Serbia is not in conformity with Article 7§3 of the Charter on the ground that it has not been established that the protection against child labour for children who are still subject to compulsory education is guaranteed.

Regarding the monitoring, in its previous conclusion, the Committee asked for information on the monitoring activities of the authorities in relation to the involvement of children who are

still in compulsory school in work which could affect their ability to receive education (Conclusions 2015).

The report indicates that the Labour Inspection, when monitoring the work of all employees and persons engaged in employment, including working hours of persons aged 15-18, has not yet encountered cases of organising the work of children in violation of the working hours prescribed by the labour Law.

The Committee notes in the report “Rapid Assessment on Child Labour in Agriculture in the Republic of Serbia” published by the International Labour Office in 2018, that according to the Labour Force Survey 2016 data, long working hours are correlated to the neglect of education. Data indicate that the highest share of school attendance is found among children aged 15–17 who are not engaged in any work. Also, a difference is present in school attendance between children who are engaged in “light work” and those who work long hours.

The Committee asks that the next report provide information on the findings and measures taken by the authorities (the Labour Inspectorate, social services, schools) to detect any type of child labour performed by children who are still subject to compulsory education (in all areas, including in the agriculture, forestry, fishery and the informal economy).

Conclusion

The Committee concludes that the situation in Serbia is not in conformity with Article 7§3 of the Charter on the ground that it has not been established that the protection against child labour for children who are still subject to compulsory education is 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 Serbia.

In its previous conclusion, the Committee noted that according to labour legislation young persons under 16 are allowed to work for eight hours per day, which is contrary to the Charter. The Committee considered that the situation was not in conformity with Article 7§4 of the Charter on the ground that the duration working time for young workers under the age of 16 is excessive (Conclusions 2015).

The report indicates that according to Article 87 of the Labour Law, full time working hours for persons under the age of 18 shall not exceed 35 hours per week or eight hours per day. Overtime and re-distribution of working hours shall not be allowed for employees under the age of 18.

The Committee notes that according to the information provided in the report, the situation has not changed and therefore reiterates its conclusion of non-conformity on this point.

The Committee previously asked for information on the monitoring activity of the Labour Inspectorate in relation to working time of young workers who are no longer subject to compulsory schooling (Conclusions 2015).

The report provides information on the level of sanctions imposed on employers in case of violations of the legal provisions pertaining to the employment of persons under the age of 18 (Article 274 paragraphs 1 to 3 of the Labour Law).

The Committee notes in the report “Rapid Assessment on Child Labour in Agriculture in the Republic of Serbia” published by the International Labour Office in 2018, that according to the Labour Force Survey 2016, 2.8% of children aged 15–17 years were engaged in an economic activity. Among them, 18.9% were working more than 43 hours per week. The same source indicates that 24.9% of children worked more than the legally permissible number of hours (>35).

The Committee takes note of the adoption of the Law on Dual Education (“Official Gazette of the RS“, No.101/2017) which establishes the possibility for a student to attend classes in school and to work with an employer in accordance with school curriculum. The report indicates that legislation governing the prohibition of dangerous work for persons under 18 shall be applied during work-based learning. The Committee notes in the report “Rapid Assessment on Child Labour in Agriculture in the Republic of Serbia” that working hours for persons under the age of 18 are set at a maximum of eight hours per day from 8 a.m. to 8 p.m.

The Committee recalls that the situation in practice should be regularly monitored. It asks that the next report provide data on the concrete actions, violations identified and sanctions imposed on employers in relation to working time for young persons under the age of 18 who are no longer subject to compulsory school attendance (e.g. violation of Article 87 of the Labour Law), including in the field of agriculture and in dual education system.

Conclusion

The Committee concludes that the situation in Serbia is not in conformity with Article 7§4 of the Charter on the ground that the duration of working time for young workers under the age of 16 is excessive.

Article 7 - Right of children and young persons to protection

Paragraph 5 - Fair pay

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

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

Young workers

The "fair" or "appropriate" character of the wage is assessed by comparing young workers' remuneration with the starting wage or minimum wage paid to adults (aged eighteen or above) (Conclusions XI-1 (1991), United-Kingdom). In accordance with the methodology adopted under Article 4§1, wages taken into consideration are those after deduction of taxes and social security contributions

The adult reference wage must in all cases be sufficient to comply with Article 4§1 of the Charter. If the reference wage is too low, even a young worker's wage which respects these percentage differentials is not considered fair (Conclusions XII-2 (1992), Malta).

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

The Committee in its previous Conclusion requested information on the minimum wage of young workers and apprentices calculated net (After deduction of social security contributions). It also requested information on the starting wages or minimum wages of adult workers as well as on the average wage.

The report indicates that remuneration is determined by law, company regulations and employment contracts (Article 104 of the Labour Law). All employees shall be guaranteed equal salary for the same work or the work of same value performed. From the report it appears young workers receive the same remuneration as adults.

According to the report, the minimum cost of labour, published in the Official Gazette of the Republic of Serbia and for 2018 it is set to RSD 143 per an hour. In average monthly minimum earning for 174 hours is RSD 24,882. This translates into 211.85 Euro per month. The average earning of older employees in the Republic of Serbia for May 2018 was RSD 50,377 excluding taxes and contributions which translates into 429.02 Euro.

The Committee notes from another source (EUROSTAT), that the monthly minimum wage as a proportion of average monthly earnings in Serbia for 2018 was 49.4% compared to 45% in 2013, to 44% in 2014, to 44.8% in 2015 and to 42.7% in 2016.

The Committee points out that, in order to ensure a decent standard of living within the meaning of Article 4§1 of the Charter, wages must be no lower than the minimum threshold, which is set at 50% of the average net wage. This is the case when the net minimum wage is more than 60% of the net average wage. When the net minimum wage lies between 50% and 60% of the net average wage, it is for the state to establish whether this wage is sufficient to ensure a decent standard of living (Conclusions XIV-2 (1998) statement of Interpretation on Article 4§1).

The Committee notes that the minimum net monthly wage was lower than 50% of the average net monthly wage during the second half of 2015 and 2016. According to EUROSTAT data, the monthly gross minimum wage as a proportion of the average gross monthly wage amounted to 49.4% in 2018 in Serbia, compared to 45% in 2013, to 44% in 2014, to 44.8% in 2015 and to 42.7% in 2016. 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.

The adult reference wage must in all cases be sufficient to comply with Article 4§1 of the Charter. If the reference wage is too low, even a young worker's wage which respects these percentage differentials is not considered fair. (Conclusions XII-2 (1992), Malta).

The Committee requests information on the starting wages or minimum wages of adult workers as well as on the average wage for the relevant reference period. The Committee underlines that it requests information on the net values, that is, after deduction of taxes and social security contributions. Net calculations should be made for the case of a single person.

Apprentices

According to the report trainees shall be entitled to no less than 80% of the basic salary for the jobs the labour contract has been concluded for, as well as compensation of expenses and other emoluments, pursuant to general document and labour contract (Article 109 of the Labour Law). Following the completion of traineeship, employee's earning (salary) shall be increased by 20% comparing to the earning (salary) the employee had in the period of traineeship.

In addition, employees' earnings (salaries) as well as trainees, in line with Article 111 of the Labour Law, cannot be lower from the earning set upon this law, which has been decided by the decision on the minimum cost of labour, published in the Official Gazette of the Republic of Serbia and for 2018 it is set to RSD 143 per an hour (1.2 EUR). In average monthly minimum earning for 174 hours is RSD 24,882 (211.85 EUR).

The report specifies that the Statistical Office of the Republic of Serbia does not conduct research related to trainees' earnings (salaries).

Conclusion

The Committee concludes that the situation in Serbia is not in conformity with Article 7§5, of the Charter on the ground that young worker's 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 Serbia.

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

The report indicates that according to Article 47 of the Labour Law, during the traineeship, a trainee shall be entitled to salary and all other rights resulting from the employment relationship, in accordance to the law, company regulations and employment contract (Article 47 (4)).

The report further states that the employer shall provide conditions for education, vocational training and advanced training for his/her employees when the work process requires so, or when new methods and organisation are to be introduced. The cost of such education, vocational training and advanced training shall be provided from the funds of the employer and other sources, pursuant to the law and general document.

In its previous conclusion, the Committee requested for confirmation that time spent on vocational training is included in the normal working time and thus remunerated as such.

According to the report, students pursuing work-based learning shall be entitled to compensation. Compensation for work-based learning shall be paid once per month, at the latest by the end of the current month for the preceding month, per hour spent in work-based learning, in the net amount not lower than 70% of the minimum labour cost in conformity with the law. A student does not have the same status of an employee, but he pursues work-based learning, receiving in-kind stimulation that has motivational role, and is not considered personal income of a student.

The Committee also previously requested information on the monitoring activity and findings of the Labour Inspectorate in relation to the inclusion of time spent on vocational training in the normal working time for young workers.

The report provided that inspection shall be conducted by the Ministry through education inspectorate. The oversight concerning working conditions and occupational safety at the employer shall be conducted by the ministry competent for labour affairs – through the labour inspectorate. The oversight of the assignments delegated by this Law to the Chamber of Commerce and Industry of Serbia shall be conducted by the Ministry.

The Committee requests that in the next report information is provided on the findings of the education and labour inspectorate.

Conclusion

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

Article 7 - Right of children and young persons to protection

Paragraph 7 - Paid annual holidays

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

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

Under Article 68 of the Labour Law, employees are entitled to annual paid holidays and cannot waive this right. The length of the annual holiday is determined by the employment contract but cannot be less than 20 working days (Article 69 of the Labour Law). Duration of any annual leave shall be determined by increasing statutory minimum of 20 working days on the basis of labour contributions, working conditions, work experience, educational level and other criteria set in the general document and labour contract.

In its previous conclusion the Committee asked for information on the monitoring activities of the Labour Inspectorate, its findings and sanctions imposed in cases of breach of the applicable regulations to paid annual holidays of young workers.

The report provides that pursuant to Article 275, para 1, item 3 of the Labour Law, it is foreseen that an employer in the capacity of a legal entity shall be fined in the amount of RSD 400,000 to 1,000,000 (3,403 to 8,511 EUR) if he\she acts contrary to the provisions of this law governing annual leave, while for the same offence an entrepreneur shall be fined in the amount of RSD 100,000 to 300,000 (851 to 2,552 EUR) as well as a responsible person in a legal entity shall be fined in the amount of RSD 20,000 to 40,000 (170 to 340 EUR) for the same offence (Article 245, para. 2 and 3 of the Labour Law).

The report mentions that during the inspections no cases of violating provisions of the Labour Law, governing duration and payment of annual leave to employees under the age of 18, have been identified.

The Committee recalls that the satisfactory application of Article 7 cannot be ensured solely by the operation of legislation, if this is not effectively applied and rigorously supervised. Having noted that the Labour Inspectorate did not find any violations, the Committee asks that the next report contains information on the activities of the Labour Inspectorate in relation to the paid annual holidays of young workers under 18 and on whether staffing levels and qualifications of Labour Inspectors are sufficient.

Conclusion

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

Article 7 - Right of children and young persons to protection

Paragraph 8 - Prohibition of night work

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

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

The report indicates that according to Article 88 of the Labour Law, employees below the age of 18 shall not work at night, except:

- in cases of work in the area of culture, sports, art and advertising;
- when it is necessary to continue the work which was discontinued due to the action of *force majeure*, under the condition that such work lasts for a definite period of time and has to be completed without delay, and the employer has no adult employees available. In this last situation, the employer shall ensure supervision by an adult of the work performed by a young employee under the age of 18.

The Committee in its previous conclusion asked what it is understood by "night work" in the national legislation. The Committee reiterates its questions and asked for the answer to be provided in the next report.

The Committee asked in its previous conclusion to be provided with information on the monitoring activity of the Labour Inspectorate, its findings and sanctions imposed in practice on employers for breach of the regulations prohibiting the involvement of young workers under 18 in night work.

The report provides according to Article 274, para. 1 of the Labour Law foresees that an employer in the capacity of a legal entity shall be fined in the amount of RSD 600,000 to 1,500,000 (5,106 to 12,765 EUR) if he/she orders an employee under the age of 18 to work contrary to provisions of this law, while for the same offence an entrepreneur shall be fined in the amount of RSD 200,000 to 400,000 (1700 to 3,403 EUR) as well as a responsible person in the capacity of a legal entity or legal entity representative shall be fined in the amount of RSD 30,000 to 150,000 (255,350 to 1,276 EUR) (Article 274, para 2 and 3 of the Labour Law).

During its inspections, the Labour Inspectorate has not identified cases of employers violating the provisions prohibiting engagement of employees under the age of 18 for the night work.

The Committee recalls that the satisfactory application of Article 7 cannot be ensured solely by the operation of legislation, if this is not effectively applied and rigorously supervised. Having noted that the Labour Inspectorate did not find any violations, the Committee asks that the next report contains information on the activities of the Labour Inspectorate in relation to the prohibition of night work of young workers under 18 and on whether staffing levels and qualifications of Labour Inspectors are sufficient.

Conclusion

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

Article 7 - Right of children and young persons to protection

Paragraph 9 - Regular medical examination

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

The Committee recalls that in application of Article 7§9, domestic law must provide for compulsory regular medical check-ups for 18-year olds employed in occupations specified by national laws or regulations. The check-ups must be adapted to the specific situation of young workers and the particular risks to which they are exposed.

The report indicates that according to Article 25 of the Labour Law, a person under the age of 18 may enter into employment relationship only upon certificate of the competent health care body, substantiating that he/she is able of performing such tasks that are stipulated in the employment contract and that these tasks are not harmful for his/her health. The cost of such medical examination for persons under the age of 18 that are registered by the National Employment Agency shall be borne by that Agency.

The report adds that under Article 84 of the Labour Law, employees under the age of 18 shall not perform jobs that:

- involve strenuous physical work, underground work, underwater work or working at excessive heights;
- involve exposure to harmful radiation or to the substances that are toxic, carcinogenic or causing genetic diseases, or to health risks due to the cold, heat, noise or vibrations;
- may increase risks to their health and life due to their psychophysical capabilities, according to the findings of the competent health authority. The cost of medical examinations carried out in the latter situation shall be borne by the employer.

The Committee recalls that the obligation of States under the Article 7§9 of the Charter entails a full medical examination on recruitment and regular check-ups thereafter. The intervals between check-ups must not be too long. In this regard, an interval of three years has been considered to be too long by the Committee (Conclusions 2011, Estonia).

The Committee asked in its previous conclusion whether young workers under 18 years of age are guaranteed regular medical check-ups during employment until they reach the age of 18 and which is the interval between the check-ups. It also asked how the medical examinations are performed in practice and who bears the responsibility of their costs.

The report provides that pursuant to Article 86 of the Labour Law, the cost of medical examinations referred to in Article 84 shall be borne by an employer. However, the report does not provide any information on whether young workers under 18 years of age are guaranteed regular medical check-ups during employment until they reach the age of 18 and which is the interval between the check-ups and how the medical examinations are performed in practice.

The Committee also requested in its previous conclusion on the monitoring activities and findings of the Labour Inspectorate, including violations detected and sanctions effectively applied in practice against the employers for breach of the regulations with regard to the regular medical examination of young workers under 18.

According to the report the Labour Inspectorate controls the implementation of applicable regulations in the field of labour and it has identified only the cases of employment of children without previously obtained health authority certificate and it has been ordered this to be corrected.

The Committee requests that the specific sanctions and violations detected by the Labour Inspectorate are included in the next report for breach of the regulations with regard to the regular medical examination of young workers under 18 of the subsequent reference periods. Additionally, the Committee asks how the medical examinations are performed in

practice, whether young workers under 18 years of age are guaranteed regular medical check-ups during employment until they reach the age of 18 and which is the interval between the check-ups and how the medical examinations are performed in practice.

Conclusion

The Committee concludes that the situation in Serbia is not in conformity with Article 7§9 of the Charter on the ground that it is not established that whether young workers under 18 years of age are guaranteed regular medical check-ups during employment and which is the interval between the check-ups and how the medical examinations are performed in practice.

Article 7 - Right of children and young persons to protection

Paragraph 10 - Special protection against physical and moral dangers

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

Protection against sexual exploitation

The report indicates that as of 2013, sexual offences against children in Serbia are no longer be subject to the statute of limitations (Article 108 of the Criminal Code of the Republic of Serbia).

The Committee recalls that in order to guarantee the right provided by Article 7§10, Parties must take specific measures to prohibit and combat all forms of sexual exploitation of children, in particular children's involvement in the sex industry. This prohibition must be accompanied by an adequate supervisory mechanism and sanctions. It therefore requests that the next report provide information on the functioning of a monitoring mechanism on sexual exploitation of children and a mechanism for collecting statistical data on sexual exploitation of children.

The Committee further asks whether the legislation allows for the prosecution of child victims of sexual exploitation and children involved in prostitution, whether the acts are or are not related to trafficking.

The Committee notes from the Committee on the Rights of the Child Concluding observations on the combined second and third periodic reports of Serbia (CRC/C/SRB/CO/2-3, 2017) that, as a result of the limited resources, the identification of victims of sexual exploitation remains a challenge in Serbia, particularly among asylum-seeking and refugee children.

The Committee also notes from the ILO Direct Request (CEACR) – adopted in 2017 and published at the107th ILC session (2018) – the absence of information on the application of Article 185 of the Criminal Code regarding the use of children in pornography. The Committee requests that the next report provide information on the implementation of Article 185 of the Criminal Code with regard to children under 18 years of age, including the number of investigations, prosecutions, convictions and sentences applied.

Meanwhile the Committee reserves its position ont the conformity of the situation.

Protection against the misuse of information technologies

In its previous conclusion (Conclusions 2015), the Committee asked for full information concerning supervisory mechanisms and sanctions for sexual exploitation of children through the information technologies. It also asked whether legislation or codes of conduct for Internet service providers is foreseen in order to protect children.

The report indicates that in February 2017, the National Contact Centre for Online Child Safety was established within the Ministry of Trade, Tourism and Telecommunications. Through this centre, the Ministry provides advice to children, parents, students and teachers, as well as other citizens, on the benefits and risks of using the Internet and how to use new technologies safely. It is possible to report harmful, derogatory and illegal content and behaviour on the Internet and/or to report the rights and interests of a child at risk. W Between February 2017 and July 2018, the total number of communications recorded at the National Contact Centre for Child Online Safety through phone calls, emails, site reports and social networks amounted to 5,072.

The Committee notes that the operators and educators of the National Contact Centre provide training on online safety by organising conferences in schools for children and parents, as well as training for the staff of health and social work centres. Between February 2017 and July 2018, training was organised for 150 health centre staff (directors,

pediatricians and psychologists of school clinics) and for 8,000 students and approximately 2,680 parents in 79 primary schools.

In addition, the Ministry of Trade, Tourism and Telecommunications conducts outreach through the "Smartly and Safely" website (www.pametnoibezbedno.gov.rs) and television video programmes and media and digital campaigns. In this context, it conducts an annual “IT caravan” campaign that in 2017 reached some 5,500 students and about 90 teachers from 17 primary schools in Serbia.

The Committee further notes that the Ministry of Trade, Tourism and Telecommunications has introduced a provision in a draft law on electronic communications that obliges an operator, at the request of the subscriber, to provide a parental control service, which would make it possible to: (1) restrict access to certain content; (2) prohibit the calling and sending of electronic messages to certain numbers; (3) call and send electronic messages only to certain numbers.

The Committee notes from the report that the protection of children against digital violence is the subject of the draft Strategy for the prevention and protection of children from violence for the period 2018 – 2022, which provides for appropriate measures and activities for the protection of children in the digital space.

The Committee requests that the next report provide information on the adoption and implementation of the law on electronic communications and of the Strategy for the prevention and protection of children from violence, including the abuse on Internet.

The Committee recalls that Internet services providers should be under an obligation to remove or prevent accessibility to illegal material to which they have knowledge and internet safety hotlines should be set up through which illegal material could be reported.

It therefore reiterates its question as to whether legislation or codes of conduct for Internet service providers contains such an obligation.

Protection from other forms of exploitation

The Committee notes from the report that upon the expiry of the National Strategy for the Prevention and Protection of Children Against Violence for the period 2009-2015, no formal evaluation of the impact of its implementation was carried out and that the results of extensive research show that violence against children is still present in Serbia and forms the basis for the adoption of a new strategy.

In July 2018, a final draft of the new strategy and accompanying action plan was prepared for the protection of children against violence.

The Committee requests that the next report provide information on the implementation on the strategy and plan and on their impact on protecting children against exploitation.

The Committee further notes the various actions and programmes undertaken to protect children against the worst forms of violence, such as Government Regulation on the list of hazardous jobs for children and the worst forms of child labour (adopted in May 2017), the General Protocol on the Protection of Children against the Worst Forms of Child Labour, the Protocol on the Actions of the Labour Inspectorate and the Instruction for Social Work Centres (adopted in September 2017).

In its previous conclusion (Conclusions 2015) the Committee asked that the next report indicate the measures taken to improve the knowledge of relevant professionals (including police officers, social workers, professionals working with children, labour inspectors, medical staff, public prosecutors, judges, the media and other groups concerned) about trafficking and the rights of victims.

The Committee notes from the report information on the activities of the Centre for the Protection of Victims of Trafficking in Human Beings in providing training, information to

professionals and the general public, consultation and professional support to experts in the fields of social protection, education and justice. However, no information is provided on the extent of the problem.

The Committee notes from the GRETA Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Serbia (2017), that between 2013-2016 there were 94 children among the identified victims (including 78 girls), trafficked primarily for the purpose of sexual exploitation, followed by forced begging (12 girls and 10 boys), forced marriage (15 girls), labour exploitation (6 girls) and forced criminality (3 boys and 1 girl).

The Committee also notes from the ILO Direct Request (CEACR) motioned above that, according to the indication provided by the Government, despite the various shelters and accommodation available, there are no specialised shelters for child victims of trafficking, and that they are often placed in one of the institutions of social protection, usually an institution for children without parental care.

It requests that the next report provide information on the measures adopted to identify and assist child victims of trafficking.

The Committee notes from the report that the problem of children in street situations is being adressed. Social work centres have been instructed to form special teams consisting of an expert from the guardianship authority, a police officer and a representative of the regional health centre. To date, 115 teams have been formed in 115 social work centres. Social work centres submit to the Ministry of Labour, Employment, Veteran and Social Affairs their quarterly reports on the implementation of the instructions given.

In January 2015, an Action Plan was developed to provide protection and support for children living and working on the streets. The Plan mainly provides for a programme, implemented by the Institute for the Education of Children in Belgrade, which is designed for children up to the age of 14 who have difficulties in their psychophysical, emotional and social development. According to the report, 90% of the children who participated in the programme (lasting 6-9 months), return either to their own families – parents or foster families, or to social welfare institutions for children without parental care. Further two licensed drop-in centres for children living and working on the streets operate in Serbia.

The Committee notes from the UN CRC Concluding observations mentioned above that children living in street situations are not legally recognised as victims but rather, after reaching the age of 14, treated as offenders. It also notes that the Committee on the Rights of the Child recommends to the authorities to assess the number of children living and/or working on the streets and to update studies on the root causes of their situation.

Furthermore, the Committee notes from the report that the Road Map for the elimination of child labour in Serbia, including the worst forms of child labour 2018-2022 was developed with a view to strengthening the prevention and elimination of the consequences of child labour. It was finalised between August and mid-November 2017.

The Committee requests that information on the implementation of the Road Map and on any measures taken to protect and assist children in vulnerable situations, with particular attention to children in street situations and children at risk of child labour, including those in rural areas.

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 Serbia.

Right to maternity leave

In its previous conclusion (Conclusions 2015), the Committee noted that working women were entitled to pregnancy and maternity leave as well as childcare leave for a total of 365 days, which could be doubled for the third and each subsequent child. The maternity leave can start any time between 45 and 28 days before the due delivery date (upon legal advice) and last up to three months after childbirth. The Committee asked whether this meant that a 3-month postnatal leave was compulsory and could not be shortened by the employee.

The report does not provide the information requested. However, according to a report by the European Equality Law Network (*Country report on gender equality, Serbia, 2018),* the Committee notes that pregnant women must begin maternity leave 28 days at the latest before the due delivery date (Article 94, paragraph 2) and may not be on maternity leave for less than three full months (Article 94, paragraph 3). According to MISSCEO, maternity leave also lasts for three full months even if the child is stillborn or dies during the leave. The Committee considers that the situation is in conformity with Article 8§1 in relation to the length of compulsory maternity leave.

In its previous conclusion, the Committee also asked whether the same provisions applied to all categories of women employees, both in the private and the public sectors. As the report fails to answer the question, the Committee asks again if the same rules apply to all women whether employed in the private or the public sectors. It points out that, should the necessary information not be provided in the next report, nothing will enable the Committee to establish that the situation in Serbia is in conformity with Article 8§1 of the Charter in this respect.

Right to maternity benefits

In its previous conclusion (Conclusions 2015), the Committee sought to clarify of the criteria for entitlement to maternity benefits and queried whether interruptions in the employment record were taken into account in the calculation of the qualifying period.

In reply, the report indicates that maternity benefit corresponds to the full amount of gross salary over the previous 12 months when the woman worked for at least six months prior to maternity leave, 60% when the woman worked between three and six months and 30% when she worked less than three months. If the employee worked less than 12 months, 50% of the Serb average salary in the month preceding the start of the leave is taken as the entitlement basis for the missing months. The benefit cannot be more than five times the national average salary. The Committee also understands from the report that maternity benefit cannot be lower than the minimum salary if the woman worked for at least six months, and requests that the next report confirm this point.

The Committee points out that Article 8§1 of the Charter requires maternity benefit to be equal or close to the usual salary, i.e. it must amount to at least 70% of the person's previous earnings. The Committee asks whether maternity benefits may also be combined with other benefits.

In its previous conclusion, the Committee also requested relevant information, in particular statistical data, on the percentage of women receiving less than 70% of their previous salary as maternity benefits. The report fails to answer this question, so the Committee repeats it.

Conclusion

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

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 Serbia.

Prohibition of dismissal

The report recalls that Article 187 of the Labour Code prohibits employers from dismissing women workers during pregnancy, maternity leave or parental leave, including those recruited on fixed-term contracts (contracts must be extended to cover the protected period).

In its previous conclusion (Conclusions 2015), the Committee asked whether the same rules applied to all employed women, in the private as in the public sector. The report does not answer the question. Therefore, the Committee reiterates it.

Redress in case of unlawful dismissal

In its previous conclusion, the Committee asked what remedies were available to women who had been unlawfully dismissed during pregnancy or maternity leave to contest such dismissal, whether the court could order their reinstatement to their post, in addition to compensation and whether, in case such reinstatement was impossible for objective reasons, the court could order adequate compensation to be paid to the victim. It asked whether there was a ceiling on compensation for unlawful dismissals and, if so, whether this upper limit covered both pecuniary and non-pecuniary damage and whether unlimited compensation for non-pecuniary damage could also be sought by the victim through other legal avenues (e.g. anti-discrimination legislation). It also asked if the two types of compensation were awarded by the same courts and how long it took on average for them to decide.

In response, the report states that under Article 187(3) of the Labour Code, dismissals are null and void if, at the date of termination of the employment contract, the employer was aware of the employee's pregnancy or if the employee has sent to her employer, within 30 days from the receipt of the dismissal notice, a medical certificate attesting to his condition. The Committee takes note of the sanctions provided for by Article 273 of the Labour Code against employers who illegally dismiss a women employee.

In case of unlawful dismissal, Article 191 of the Labour Code provides for the reinstatement of the employee (if she so requests) and the payment of compensation for material damage and the contributions corresponding to mandatory social insurance for the period during which the employee did not work.

If an unlawfully dismissed employee does not ask to be reinstated or re-engaged, the courts may order the employer to pay her compensation of up to 18 months' salary. To determine the amount of compensation, the court will take into account the employee's length of service, age and the number of dependants (Article 191(5)).

In the event of unlawful dismissal, if the employee requests reinstatement but the employer indicates the circumstances that suggest that reinstatement is impossible, the court rejects the request for reinstatement and orders compensation amounting to twice the amount calculated pursuant to Article 191(5).

The Committee notes that there is a ceiling on the compensation that may be awarded. The Committee recalls that compensation for unlawful dismissal must be both proportionate to the loss suffered by the victim and sufficiently dissuasive for employers. Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive are proscribed. If there is such a ceiling on compensation for pecuniary damage, the victim must be able to seek compensation for non-pecuniary damage through other legal avenues (e.g. anti-discrimination legislation), and the courts competent for awarding compensation for pecuniary and non-pecuniary damage must decide within a

reasonable time (Conclusions 2011, Statement of interpretation of Article 8§2). It asks anew for tangible examples of compensation awarded in cases of unlawful dismissal of employees who were pregnant or on maternity leave. In the meantime it reserves its position on this point.

Conclusion

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

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 Serbia.

The Committee deferred its previous conclusion and asked whether Serbian legislation provided for paid nursing breaks for all employees, in both the public and the private sector. It also asked for details of such provisions, including information on how long employed mothers were entitled to time off for nursing their child.

In addition to the information already provided, the report indicates that according to Article 93(a)§1 and §2 of the Labour Code, an employed woman who returns to work prior to the expiry of a period of one year following childbirth is entitled to one or more daily work breaks for a total of 90 minutes or to a daily working time reduced by 90 minutes to breastfeed her child (only if the working time exceeds six hours). These breaks are counted as working time and are remunerated (basic salary increased by years of service).

Conclusion

The Committee concludes that the situation in Serbia 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 Serbia.

In its previous conclusion (Conclusions 2015), the Committee concluded that the situation was in conformity with Article 8§4 of the Charter and asked whether there were any exceptions to the rules on night work in respect of certain categories of employees, in particular, whether the same rules applied to women employed in the private and in the public sector. It also asked whether women who performed night work when they were pregnant, had recently given birth or were nursing their infant underwent regular medical checks, whether they were entitled to be transferred to daytime work and what rules applied if such transfer was not possible.

The Committee also refers to its conclusion on Article 2§7 (Conclusions 2018) that the situation was not in conformity with the Charter on the ground that there was no provision in the legislation for compulsory medical examinations prior to employment on night work or for regular check-ups thereafter.

The Committee notes that the report provides no new information. Consequently, it reiterates its questions. It points out that, should the necessary information not be provided in the next report, nothing will enable the Committee to establish that the situation in Serbia is in conformity with Article 8§4 of the Charter in this respect.

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

Conclusion

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

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 Serbia.

The Committee deferred its previous conclusion (Conclusions 2015) and asked what rules applied to pregnant women, women who had recently given birth or who were nursing their infants as regards underground mining and other activities involving exposure to known hazards. It also asked whether the women concerned could be temporarily transferred to another post or, if no transfer was possible, whether they were entitled to paid leave. It asked what rules applied as regards their level of pay and whether they retained the right to return to their previous position at the end of the protected period. It asked whether the same rules applied to the private and the public sectors. It pointed out that, should the next report fail to provide information on these aspects, there would be nothing to establish that the situation was in conformity with Article 8§5 of the Charter in this respect.

The report does not answer its questions. Therefore, the Committee reiterates them and finds that the situation is not in conformity with Article 8§5 of the Charter on the ground that it has not been established that there are adequate regulations on dangerous, unhealthy and arduous work in respect of pregnant women, women who have recently given birth or women who are nursing their infant.

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.

Conclusion

The Committee concludes that the situation in Serbia is not in conformity with Article 8§5 of the Charter on the ground that it has not been established that there are adequate regulations on dangerous, unhealthy and arduous work in respect of pregnant women, women who have recently given birth or women who are nursing their infant.

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 Serbia.

Legal protection of families

Rights and obligations, dispute settlement

The Committee took note previously of the **rights and obligations of spouses** in respect of their children and in cases of conflicts relating to children (Conclusions 2015). The Committee asked for information on the rights and duties within the couple and the legal arrangements to settle marital conflicts (Conclusions 2015). The report does not provide the requested information. The Committee reiterates its request for information on the rights and duties of spouses within the couple (reciprocal responsibility, ownership, administration and use of property) and on the **settlement of disputes** between spouses (divorce).

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

Regarding **mediation services,** the report indicates that mediation is regularly provided in centres for social work as a support for individuals and families who are in a crisis, to improve family relations. A number of local self-governments have institutions specialised in mediation in family relations such as Marriage and Family Counselling Services, Development Counselling Services. These services are provided free of charge. The report provides information on the counseling/therapeutic and social services established in accordance with Article 40 of the Law on Social Protection. The Committee notes that the above mentioned services refer to counseling and intensive support services for families in crisis.

The Committee recalls that States are required to provide family mediation services. The following issues are examined: access to the said services as well as whether they are free of charge and cover the whole country, and how effective they are. The Committee asks whether families could settle their disputes through mediation, i.e. whether spouses can access a mediator in case of conflict, the cost and procedure of mediation and how mediation functions in practice. It reserves its position on this point.

Domestic violence against women

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 measures taken to improve prevention of violence and protection of victims through the adoption of the Law on Domestic Violence Prevention (in force as of 1 June 2017) providing for temporary removal of the perpetrator and prohibition to contact the victim. With regard to integrated policies, the Law on Domestic Violence Prevention established the obligation of a coordinated work and cooperation between public prosecutor's offices, police and centres for social work through a joint body – Coordination Group. The Centres for Social Work are obliged to provide protection, legal aid, psychological and other types of support to a victim to enable their recovery, empowerment and independence. The report provides statistical data on the number and coverage of shelters available to victims, indicating a total number of 14 lodging houses for women who have experienced violence and a national SOS telephone service for girls and women who experienced gender-based violence. A Special Report on the Discrimination against Women by the Equality Commissioner of Serbia indicates that women are often exposed to secondary victimisation after having reported violence.

The Committee notes however that the report does not provide information as regards prosecution of domestic violence and case-law examples/number of convictions applied in practice.

Insofar as Serbia has signed and ratified the Istanbul Convention on Preventing and Combating Violence against Women and Domestic Violence (which came into force in the country on 1 August 2014), the Committee refers to the procedure to assess the conformity of the situation in Serbia in the context of this mechanism. It notes that in January 2020, the Council of Europe's Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) published its first baseline evaluation report on Serbia. The GREVIO experts welcomed the policy commitment of the authorities to eliminate gender-based violence and the significant progress made in legislation and practice. They nevertheless concluded that there are still problems requiring an urgent response. GREVIO urged the authorities to ensure appropriate funding for specialist support services and to establish a dialogue with NGOs working in the field, ensure the provision of free legal aid for all and confidentiality and anonymity of all callers to the national helpline, and end the practice of "confrontations" between victims of rape and the defendants in the courtroom.

The Committee further notes that the United Nations Committee on the Elimination of Discrimination against Women (CEDAW), in its Concluding observations on the fourth report of Serbia (14 March 2019) expressed concern about certain shortcomings such as: inadequate risk assessment to prevent gender-based violence against women and girls, including femicide, and the lack of the timely issuance and effective implementation of emergency protection orders; the lack of effective prosecution of cases of gender-based violence against women, the persistent disparity between the number of criminal charges and the number of convictions, with a majority resulting in suspended sentences, and the low number of rape cases reported; the shortage of shelters for victims of gender-based violence; and the lack of a robust data collection and monitoring system for cases of gender-based violence against women and girls.

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 against perpetrators, data on the use of protection orders, as well as data on shelters and social centres for victims; the implementation of legislation/measures in the field and their impact in preventing and reducing domestic violence, including in the light of the above-mentioned GREVIO and CEDAW observations and recommendations. Meanwhile, the Committee reserves its position on this point.

Social and economic protection of families

Family counselling services

The report provides information on counseling and social services available to families in crisis situations established in accordance with Article 40 of the Law on Social Protection, including information concerning their funding.

According to the report, a new service – "Family Outreach Worker" – has been designed since 2013 to provide support to families (parents or guardians) in securing the protection of children fundamental rights. In 2015 a specialised service "Family Outreach Worker for Families of Children with developmental impairments" was developed.

The Committee asks updated information in the next report on the number and national coverage of centres which provide counseling services to families, including guidance on childrearing.

Childcare facilities

The Committee takes note of the detailed information in the report regarding the type of chilcare facilities such as nursery and kindergarten or day care, the children/staff ratio, qualification of educators, the adequacy of premises and funding.

Under Article 50 of the Pre-school Education Law, a parent, or other legal representative of a child shall co-pay the pre-schooling at the institution at national, regional or local levels. The decision on the amount of the co-payment referred to above shall be taken by the founder. Children without parental care, children with developmental disorders and disability, and children in economically deprived families shall be exempt from the co-payment obligation in case of either day or semi-day care, as provided for under the Law on Financial Support to Families with Children.

The Committee asks, whether in case of co-payment obligation of parents, there are rules concerning the threshold/maximum amount of the financial contribution of parents so that the childcare remains affordable to them.

Family benefits

Equal access to family benefits

In its previous conclusion (Conclusions 2015) the Committee considered that the situation was not in conformity with the Charter as the entitlement to family benefits was limited to nationals of Serbia. The Committee notes from the report of the Governmental Committee (GC(2016)22) that the representative of Serbia announced that a new law on financial support to families was planned to be adopted. With regard to rights of foreigners, it was envisaged that family benefits would be granted to a mother, who was not a national of Serbia and had a permanent residency in Serbia. The deadline for the adoption of this law was set at April 2017.

The Committee notes that the report does not provide any information about this legislative initiative. The Committee notes from MISSCEO that for eligibility to child benefit, one of the parents, custodians or foster parents must be a citizen of Serbia residing in Serbia or a foreigner with a status of permanently settled in Serbia or a foreigner working in Serbia if it is regulated by an international agreement.

The Committee recalls that Article 16 precludes length of residence requirements as far as contributory benefits are concerned, but States may apply a length of residence requirement as regards non-contributory benefits on condition that the length is not excessive. The proportionality of such length of residence requirements is examined on a case-by-case basis having regard to the nature and purpose of the benefit: a period of 6 months is reasonable and therefore in conformity with Article 16. On the other hand periods of 1 year, and a fortiori, 3-5 years are manifestly excessive and therefore in violation of Article 16. The Committee asks what are the conditions for obtaining a permanent resident status.

Level of family benefits

In its previous conclusion (Conclusions 2015) the Committee asked for the information regarding the level of median equivalised income or similar indicator, so that it could determine whether child benefit constituted an adequate income supplement for a significant number of families.

According to the report, the Law on Financial Support for Families with Children was enacted on 1 December 2017. The new provisions have simplified eligibility determination procedure, extend the scope of beneficiaries. The law provides for the additional care for children particularly from vulnerable groups (children with developmental disorders, children without parental care and children beneficiaries of cash social assistance). The law spells out a new entitlement to other benefits on the basis of birth, care and special care of a child. According to the report, such an entitlement shall for the first time allow a large number of women to acquire access to other benefits granted in the period immediately after the birth of a child. These are, among others, women who are not employed, but self-employed, who own a farmstead, or are temporary or casual workers, work on service contract, or on authorship contract, or at the moment of the childbirth are unemployed or have failed to exercise their

right to unemployment benefit while having been in employment over the period which is of relevance for the exercising of their right to benefit.

Child allowance is identified as a social policy measure. Its adjustment to social policy requirements is conditioned on the means-test, to ensure that only lower income families are entitled to it. Moreover, child allowance amount is linked to subsistence needs of a child.

The Committee notes from MISSCEO that there is a universal system financed by central budget based on prior census income examination. According to MISSCEO, the following amounts are paid:

- 2 791 RSD monthly per child (€ 23), paid for maximum 4 children per family.
- 3 589 RSD per child (€ 30) if the child is raised by a custodian, foster parent or single parent.

As regards the adequacy of coverage of child benefit, the Committee, having noted that entitlement is subject to a means test, asks what percentage of families have received this allowance. As regards the adequacy of the level, the Committee notes from Eurostat that the median equivalised income in 2017 stood at € 211. Therefore, it notes that the child benefit stood at 10% of the median equivalised income. It thus considers that the child benefit represents an adequate income supplement.

Measures in favour of vulnerable families

In reply to the Committee's question, the report states that the data on the basis of which Roma inclusion at local level is monitored are publicly available in e-database, where they have been collected since 2015. Local government units are liable for the accuracy of the data that are directly entered by them. Such an arrangement of a coordinated collection and processing of the data on five strategic priority areas (education, housing, employment, health care and social welfare) is showcased by the development of the data base – "a one-stop-shop" – under IPA 2012 "Here we are together – Technical assistance for Roma inclusion" project.

In May 2017, the Office for Human and Minority Rights launched public call for proposals of the projects from the associations involved in the improvement of the position and status of the Roma in Serbia and supported civil society organisations implementing project activities in local government units. RSD 16.6 million were allocated to 38 projects the activities of which were focused to anti-discrimination, encouragement of wider community towards positive treatment of the members of Roma community, strengthening of local-level services, access to health, education and employment. Also, a call for proposals was launched in 2018, when 37 organisations received support in the total value of RSD 13.9 million.

The Committee asks what measures are taken to support single-parent families.

Housing for families

The Committee previously deferred its conclusion and requested comprehensive information concerning access to adequate housing for families, including on protection against eviction, in the light of the principles established in its case-law (Conclusions 2015).

The current report indicates that the right to accommodation and protection from eviction is regulated under the Housing and Maintenance of Apartment Buildings Law. This new law provides for different types of housing support, including a housing allowance intended for the poorest segments of society. The law also specifically regulates the conditions under which eviction is conducted, the eviction procedure and the available remedies for persons threatened by eviction. The Committee asks the next report to provide more detailed information on eviction procedures and available remedies (judicial remedies), as well as on whether the existing legal framework provides for:

- an obligation to consult the parties affected in order to find alternative solutions to eviction;

- an obligation to adopt measures to re-house or financially assist the persons evicted in case of eviction justified by the public interest;
- an obligation to fix a reasonable notice period before eviction (and the applicable notice period);
- accessibility to legal aid;
- compensation in case of illegal eviction;
- prohibition to carry out evictions at night or during winter.

Should the next report not provide the requested information there will be nothing to show that the situation is in conformity with the Charter on this point.

The Committee further notes from the report that the National Strategy of Social Housing, adopted in 2012 in accordance with the Law on Social Housing (see Conclusions 2015), is still valid pending the adoption of a new housing strategy the development of which was expected to start by the end of 2018. It takes note of the results achieved under objective No. 2 of the Strategy during the reference period, notably the increase of the social housing stock by the construction of new apartments (135 apartments in 6 towns, funded by the national budget in the amount of € 2 million), some of which for leasing to low-income households.

The Committee notes that the United Nations Committee on Economic, Social and Cultural Rights, in its Concluding observations on the second periodic report of Serbia (adopted on 23 May 2014, § 31), raised concerns about the small number of social housing units constructed annually for low-income families. The Committee accordingly asks the next report to provide detailed figures on the overall availability of social housing (demand and supply), as well as information on the implementation of the new housing strategy for the next reference period. In the meantime, it reserves it's position on this issue.

As regards access to housing for vulnerable families and Roma in particular, the Committee takes note of the results achieved or under way under objective No. 7 of the National Strategy of Social Housing (improvement of the housing conditions of residents of substandard settlements, mostly Roma): urban planning of 13 substandard Roma settlements with about 1 150 households; improved infrastructure in 13 substandard settlements to cover about 1 200 households; 195 housing solutions (construction of new houses/apartments, assembling of prefabricated houses or reconstruction of dwellings) in substandard settlements. Some of these projects have been implemented with the support of the EU (Instrument for Pre-Accession Assistance, IPA). The Committee notes however that other human rights bodies have expressed concerns about the housing conditions of Roma families in informal settlements, as well as on cases of forced eviction from those settlements without consultation and due process of law (United Nations Committee on Economic, Social and Cultural Rights, ibid., §§ 30-31; United Nations Committee on the Elimination of Racial Discrimination, Concluding observations on the combined second to fifth periodic reports of Serbia, 1 December 2017, §§ 22-23, referring to reports that one-third of registered homeless persons are Roma and that 60,000 Roma, Ashkali and Egyptians live in substandard living conditions in hundreds of informal settlements; ECRI report on Serbia, 22 March 2017, §§ 83-85; Council of Europe Commissioner for Human Rights, report of 8 July 2015 following his visit to Serbia from 16 to 20 March 2015, §§ 53-57; Advisory Committee on the Framework Convention for the Protection of National Minorities, Fourth opinion on Serbia, 26 June 2019, outside the reference period, § 39). According to the United Nations Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination (Report of 26 February 2016 following her mission to Serbia from 18 to 25 May 2015), there were reportedly 583 informal settlements, where many Roma, Ashkali and Egyptians originally from Serbia or from other parts of the former Yugoslavia lived.

While taking note of the measures adopted and described in the current report, the Committee asks the next report to continue to provide information on the measures taken to

improve the housing conditions of Roma families, including on the achievements and results of the Action Plan of the National Strategy for Social Inclusion of Roma (2016-2025) during the next reference period and the procedural guarantees applied to eviction from settlements. It also wishes to be provided with statistics on the number of informal settlements, forced evictions and social housing units available for Roma. In the meantime, it reserves it's position on this point.

As regards internally displaced persons (IDPs), the Committee previously (Conclusions 2015) asked for information on the outcome of a programme aimed at providing permanent housing solutions for families living in collective centres. However, the current report does not provide any information on this issue. It notes from the 2016 report of the United Nations Special Rapporteur on adequate housing as a component of the right to an adequate standard of living that in 2015, there were still 10 collective centres left in Serbia, with 722 persons. The Committee therefore asks the next report to provide information on these centres and the housing situation of the families who lived there.

Finally, the Committee notes that several international and Council of Europe bodies have expressed concerns about the inadequate reception capacities for refugees and asylum seekers from outside the Balkans arriving in or transiting through Serbia notably during the refugee crisis (United Nations Committee on Economic, Social and Cultural Rights, ibid., § 14; United Nations Human Rights Committee, Concluding observations on the third periodic report of Serbia, 23 March 2017, § 32; Special Representative of the Secretary General of the Council of Europe on migration and refugees, Report on the fact-finding mission to Serbia and two transit zones in Hungary, 12-16 June 2017). In this connection, it also refers to its Statement of Interpretation on the rights of refugees under the Charter (Conclusions 2015). The Comittee asks for information in the next report on the accommodation conditions and housing situation of refugee families.

Participation of associations representing families

The report states that in the system of social and family protection and financial support to families with children, citizens' associations and associations representing families are always consulted when adopting strategies, action plans, laws, etc., either through a consultative procedure within working groups, through public debates that are mandatory when a law is to be enacted or by considering their proposals, initiatives, suggestions, etc. The Committee asks for concrete examples of such consultations in the next report.

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 1 - Assistance, education and training

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

The legal status of the child

The Committee previously asked whether there is a right for an adopted child to know his or her origins and whether there are restrictions to this right and if so under what circumstances this right may be restricted (Conclusions 2015).

According to the report, a child of 15 years of age who is deemed capable of reasoning may examine the birth register and other documents related to their origins. Under Article 326 of the Family Law, after an adoption has been entered into the birth register, only the adopted child and adoptive parents are entitled to examine the birth register. Prior to allowing the child to have access to the birth register, the registrar shall refer the child to a guardianship authority, family counsellor or any other institution specialized for family mediation services to have psychological and social counseling.

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. In 2015, UNHCR estimated the total number of stateless persons in Europe at 592,151 individuals.

The Committee notes from the UN Committee on the Rights of the Child's Concluding Observations on the combined second and third periodic reports of Serbia [CRC/C/SRB/CO/2-3, March 2017] there were approximately 8,500 persons who were not registered at birth, with the vast majority of those persons identifying themselves as Roma.

The Committee asks what measures have been taken by the State to reduce statelessness (such as ensuring that every stateless migrant child is identified, simplifying procedures for obtaining nationality, and taking measures to identify children unregistered at birth). The Committee asks further what measures have been taken to facilitate birth registration, particularly for vulnerable groups, such as Roma, asylum seekers and children in an irregular migration situation.

The report states that in 2014 the Equality Commissioner prepared a Special Report on Child Discrimination which found that Roma children and children with intellectual and other disabilities are the most discriminated against. The report made a number of recommendations for example on the need for rules in cases of discrimination in educational institutions (adopted in 2016).

Protection from ill-treatment and abuse

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

The Committee notes that there has been no change to the situation.

The Committee notes, however, that the report states that proposed amendments to the Family Law would prohibit all forms of corporal punishment in the family context. The Committee asks to be kept informed of all developments in this respect, as well as in relation to the prohibition of corporal punishment of children in institutions. Meanwhile it reiterates its previous conclusion of non-conformity.

Rights of children in public care

The Committee previously asked about the criteria for the restriction of custody or parental rights and about the procedural safeguards that existed to ensure that children were removed from their families only in exceptional circumstances. It also asked whether the financial conditions and material circumstances of the family can be a ground for placement of children outside the home (Conclusions 2015).

According to the report, under Article 60 of the Family Law, a child is entitled to live with their parents and is entitled to have their parents take care of them. The right of the child to live with its parents may be limited only by a court decision when in the best interest of the child. The court may decide to separate the child from their parents if there are reasons that justify complete or partial deprivation of the parent of its parental responsibility such as in cases of abuse, exploitation or violence.

The report states, citing the UN Guidelines for Alternative Care of Children (2009 b, paragraph 15), that children cannot be placed outside their home on the grounds of their parents' low income.

According to the report the family assistant project continued on a limited basis during the reference period, providing vulnerable families with assistance, inter alia, in order to prevent children being taken into care.

The report states that negotiations on continuing the family assistant project as a service are ongoing (service providers from Belgrade, Kragujevac, Nis and Novi Sad, Social Welfare Institute, Ministry of Labour, Employment, Veterans and Social Affairs and UNICEF). Also, amendments to the Social Welfare Law are pending which according to the report will provide a legal framework for the Centres for Children and the Family, out of which family assistants would operate.

However the Committee notes from other sources [Opening Doors for Europe's Children, Serbia Country factsheet 2018] that after its pilot phase, the service has largely ceased due to a lack of funding. The service was only ever accessible in four cities in Serbia (Belgrade, Novi Sad, Kragujevac and Niš) and it was not available for the rest of the country where approximately 70% of the population lives. The project "Family associate" can be seen as an example of a positive community-based practice. However, due to its limited coverage and lack of sustainability, it cannot be seen as an indicator of general improvement in the provision of this type of services in Serbia.

The Committee asks for the Government's comments on this as well as information on measures taken to support families and children at risk.

According to the report the de-insitutionalisation of children into foster care or small group homes continued during the reference period. However there has been little progress as regards the deinstitutionalization of children with intellectual disabilities. Therefore the state is developing specialized foster care, respite care for both biological and foster families and establishing small group homes.

According to other sources [Opening doors for Europe's Children, Serbia Country factsheet 2018] the total number of children who live in alternative care in Serbia is 5,986, out of whom 666 are living in residential care, while 5,320 are placed in foster care. Despite the ban on placing children under three years of age in institutional care, their institutionalisation continues.

The Committee notes from the UN Committee on the Rights of the Child's Concluding Observations on the combined second and third periodic reports of Serbia [CRC/C/SRB/CO/2-3, March 2017] that the UN Committee stated that the number of children, including children under 3 years of age, placed in formal care is still significant, with the risk of family separation and institutionalization remaining high for children from the most disadvantaged groups, including Roma children and children with disabilities. Children with disabilities continue to be significantly overrepresented in residential care and living

conditions in large-scale institutions for children with disabilities are inadequate, with children reportedly suffering from segregation, neglect, limited privacy and exclusion from education and play.

The Committee asks to be provided with information on trends in the field as well as information on the de-institutionalisation of children under the age of three years of age and children with disabilities. It also asks for information on the monitoring of care in institutions and other types of alternative care. Meanwhile it reserves it's position on the situation.

Education

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

Children in conflict with the law

The Committee previously asked what is the age of criminal responsibility. It also asked what is the maximum length of pre-trial detention and of prison sentences that can be imposed on a child, and whether children are always separated from adult prisoners (Conclusions 2015). The report provides no information on these issues, therefore the Committee repeats its request for this information. The Committee considers that if this information is not provided in the next report there will be nothing to establish that the situation is in conformity with the Charter.

The Committee asks whether prison sentences are regularly reviewed. The Committee also asks whether children may be subject to solitary confinement and if so, for how long and under what circumstances.

Right to assistance

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

The Committee previously asked what assistance is given to children in irregular situation to protect them against negligence, violence or exploitation (Conclusions 2015).

According to the report in July 2015, the Ministry of Labour, Employment, Veterans and Social Affairs issued Guidelines for centres for social work and residential care institutions for the provision of care and placement of unaccompanied migrant children. According to the report, unaccompanied children are appointed a guardian and placed temporarily in a residential institution/reception centre. An unaccompanied child is entitled to health care, clothing, adequate food while in the residential institution, psychological counselling and social support may also be provided. Once an unaccompanied child makes an application for asylum they are placed in an asylum centre.

The Committee notes from the UN Committee on the Rights of the Child's Concluding Observations on the combined second and third periodic reports of Serbia [CRC/C/SRB/CO/2-3, March 2017] that the UN Committee expressed concern about delays in the appointment of legal representatives, and the fact that there are inadequate interpretation services. Furthermore children under the age of 16 are often placed asylum centres that do not have adequate facilities or trained staff to care effectively for the children 24 hours per day, seven days per week. Limited space in asylum centres has forced many asylum-seeking and refugee children, including unaccompanied and separated children, to sleep on the streets without adequate shelter and in unsafe and unsanitary conditions.

In addition the Committee notes from the report of the Special Representative of the Secretary General of the Council of Europe on migration and refugees, following his visit to Serbia in June 2017 SG/Inf(2017)33, that unaccompanied children are often accommodated together with adults, in overcrowded conditions. Further according to the report the situation in respect of the accommodation and reception of unaccompanied children raises serious concerns about children's exposure to risks of violence, sexual abuse and exploitation and human trafficking. There is an urgent need to ensure proper accommodation for unaccompanied children in order to prevent criminal activities targeting them and to protect those who have fallen victim to human trafficking or to violence and abuse of children, including sexual violence and exploitation. The Special Representative's report also states that the guardianship system is not effective.

The report states that in October 2017, new Guidelines for centres for social work and residential care institutions for the provision of care and placement of unaccompanied migrant children were adopted. The Committee asks for further information on the content of these guidelines. It asks what measures have been taken to improve the guardianship system and what measures have been taken to ensure that accommodation facilities for migrant children in an irregular situation, whether accompanied or unaccompanied, are safe and appropriate and are adequately monitored. Meanhwile it reserves it's position on the conformity of the situation.

The Committee considers that 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 requests information as to whether minors irregularly present accompanied by their parents or not, may be detained and if so under what circumstances.

The Committee asks whether children in an irregular situation have access to healthcare.

As regards age assessments, the Committee recalls that, in line with other human rights bodies, it has found that the use of bone testing in order to assess the age of unaccompanied children is inappropriate and unreliable [European Committee for Home Based Priority Action for the Child and the Family (EUROCEF) v. France, Complaint No. 114/2015, Decision on the merits of 24 January 2018, §113]. The Committee asks whether Serbia uses bone testing to assess age and, if so, in what situations the state does so. Should the State use such testing, the Committee asks what are the potential consequences of such testing (e.g., can the results of such a test serve as the sole basis for children being excluded from the child protection system?).

Child poverty

The prevalence of child poverty in a State Party, whether defined or measured in either monetary or multidimensional terms, is an important indicator of the effectiveness of State Parties efforts to ensure the right of children and young persons to social, legal and economic protection. The obligation of 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 38.7% of children in Serbia were at risk of poverty or social exclusion, a very high rate (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 it reserves its position on this issue.

Conclusion

The Committee concludes that the situation in Serbia is not in conformity with Article 17§1 of the Charter on the ground that not all forms of corporal punishment are prohibited in all settings.

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 Serbia.

ENROLMENT RATES, ABSENTEEISM and DROP-OUT RATES

The Committee notes from the UNESCO that the net enrolment rate for primary education was 94.18% in 2017, for secondary education the corresponding rate was 94.76%.

The Committee notes from the Concluding Observations of the UN Committee on the Rights of the Child on the combined second and third report of Serbia [CRC/C/SRB/CO/2-3, March 2017] that the UN Committee noted that the rates of non-attendance and school dropout were high.

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

Costs associated with education

The Committee previously asked whether vulnerable families are provided with financial assistance to facilitate their access to and completion of compulsory education (Conclusions 2015). According to the report, Serbia has for a number of years been gradually implementing a programme to provide all primary school children with free school books. In the academic year 2017/18, about 86,000 pupils who are members of families in a socially vulnerable category or in economically deprived families (families in receipt of cash social assistance), pupils with mental and physical disabilities pupils who are schooled under the individual plan of education and the pupils who are in a family with more than three children received free school books. The Committee asks the next report to provide information on the proportion of children in primary school education who receive free school books or other forms of financial assistance.

The Committee previously noted that, in order to increase access to primary education, measures such as the construction/adaptation of school premises, procurement of school busses for transport of teachers or students, training of teachers for work with children from vulnerable groups were adopted. It asked to be informed of implementation of these measures and their outcome (Conclusions 2015). No information is provided in this respect The Committee asks for updated information on these and other measures taken to mitigate the costs of education such as transport, books, uniforms and stationery. If no information is provided in the next report there will be nothing to establish that the situation is in conformity with the Charter.

Vulnerable groups

The Committee previously asked whether irregularly present children have a right to education (Conclusions 2015). No information is provided on this issue. However the Committee notes from the report of the Special Representative of the Secretary General (of the Council of Europe) on migration and refugees following his visit to Serbia in 2017 [SG/Inf(2017)33] that at the time of the visit there were 3 994 refugee and migrant children in Serbia, of whom 1,209 belonged to the primary school age group and the remainder to the secondary education age group. Over 1,000 children were unaccompanied. Certain reception centres had spaces where children could play, learn basic math etc. However, there were no sustainable educational programmes, with curricula that are adapted to their age or needs. But according to information received by the Special Representative the Ministry of Education was making efforts to have as many migrant and refugee children as possible enrolled in Serbian schools during the upcoming academic year and several projects that would help the authorities pursue this objective were under preparation.

Further according to the report of the Special Representative of the Secretary General on migration and refugees, in 2017, a total of 200 refugee and migrant children were enrolled in local schools in Serbia. The low rate of refugee and migrant children's enrolment in local schools is due primarily to lack of knowledge of the Serbian language. Moreover, according to the Special Representative's report, parents are generally reluctant to send their children to school in Serbia as they think that this might reduce their chances of transfer to other European countries. There are also a number of other issues which limit children's enrolment in local schools, such as lack of information about their vaccination status, as well as practical difficulties in making arrangements for children to receive their meals outside the asylum or reception centres where they stay.

The Committee asks the next report to provide information on the situation including what measures have been taken to ensure access to compulsory education – both primary and secondary – for children in asylum and reception centres. If this information is not provided there will be nothing to establish that the situation is in conformity with the Charter.

The Committee previously asked the next report to describe the measures taken to improve access to mainstream education for Roma children (Conclusions 2015).

According to the report any discrimination in the education system inter alia on the basis of race, colour, extraction, nationality, migrant or displaced person status, nationality or ethnic minority, language, religion, political opinion, sex, gender identity, sexual orientation shall be prohibited. In 2016, recommendations were adopted following a report of the Equality Commissioner, inter alia on discrimination against Roma children in education. Further the Equality Commissioner prepared a publication "Prevention of segregation, development of inclusive enrolment policies and desegregation of schools and classes (international experience and recommendations for the improvement of practice in Serbia". In particular, the report recommended: the hiring of educational assistants and adviser to supports children who need it in inclusive settings; the further development of inclusive education and the adoption of affirmative action measures aimed at the Roma community to increase enrolment and prevent drop outs. The Committee asks that the next report provide information on measures taken to give effect to these recommendations and the impact of those measures. It further wishes to receive information on the enrolment and drop out rates for Roma children (in particular for girls) as well as the number of Roma children in special schools.

It notes in this respect that the UN Committee on the Rights of the Child in 2017 [see above cited Concluding Observations] expressed concern that the participation of Roma children, particularly girls, in preschool, primary, secondary and vocational education remains low, with many Roma children continuing to face segregation in the school system; high levels of truancy among Roma children were also of concern.

As Serbia 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

Under Article 111 of the Foundations of Education System Law any physical, psychological, sexual, digital and any other bullying, abuse and neglect at the institution of a pupil, by an adult, parent, or lawful representative or third party shall not be allowed. The Committee asks what measures have been taken to introduce anti bullying policies in schools, i.e., measures relating to awareness raising, prevention and intervention.

The voice of the child in education

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

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

Conclusion

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

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

Paragraph 1 - Assistance and information on migration

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

Migration trends

The Committee has assessed the migration trends in Serbia in its previous conclusion (see detailed description in Conclusions 2015). The report provides up-to-date statistical data in this respect and states that the Commissioner for Refugees and Migration issues the Serbia's Migration Profile on annual basis. It is a specific objective of the Migration Management Strategy and provides a comprehensive statistical overview on migration and national migration policies, informing migration stakeholders and general public on the migration situation and serving as a tool for a migration flow management.

Change in policy and the legal framework

The relevant legal framework has been comprehensively described in the previous conclusion (see Conclusions 2015). The report provides further information in this respect and replies to the Committee's detailed queries. In particular, it states that employment of foreigners is governed under the 2014 Employment of Foreigners Law, providing for a free access to labour market, i.e. employment and self-employment, to the EU nationals and members of their family who are not EU nationals and have obtained the approved temporary residence for the members of their family or for permanent residence/settlement in those countries. The report further provides information on Migration Management Law and other provisions, as well as on National Strategy on Refugees, relating, however, predominantly to migrants under international protection and to migrant workers, who are the focus of the assessment under Article 19 of the Charter.

The Committee asks that the next report provide up-to-date information on the framework for immigration and emigration, and any new or continued policy initiatives in so far as they affect migrant workers.

Free services and information for migrant workers

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

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

The Committee has positively assessed services and information for migrant workers in its previous conclusion (Conclusions 2015). It asked whether the services of employment agencies were available also to immigrants coming to Serbia.

The report confirms that the National Employment Service and recruitment agencies provide information on out of country employment opportunities and requirements, living and working conditions, labour and employment rights and responsibilities, and arrangements offering protection under out-of-country employment contract, as well as on the rights upon the return to home country. Through the established network of migration service centres, the migrant

and prospective migrants are provided with the information on the risks of irregular migration, migration rights, visa, residence and work permit procedures, out-of-country employment and studying opportunities, access to health care and education etc. It all advances effective dissemination of information on legal migration flows, i.e. better awareness and preparedness for possible leave and as adequate adjustment possible to the conditions and regulations in effect in a country of destination. Also, among the tasks falling under the scope of the migrant service centres is the referral of migrants, returnees on the basis of readmission agreement and asylum holders in the process if integration in the host county, i.e. Serbia to relevant local institutions to access to their rights and entitlements.

The report also provides detailed statistical data on the services provided.

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

Measures against misleading propaganda relating to emigration and immigration

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

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

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

The Committee further recalls that in order to combat misleading propaganda, there must be an effective system to monitor discriminatory, racist or hate-inciting speech, particularly in the public sphere. It underlines that the authorities should take action against misleading propaganda as a means of preventing illegal immigration and trafficking in human beings (Conclusions 2006, Slovenia).

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

The report provides that continuous training courses on protection, employment and treatment of vulnerable migrant population, identification of potential victims of human trafficking, gender-based violence, anti-discrimination and on other topics are delivered by competent institutions of Serbia and relevant NGOs with view to the provision of adequate support to migrants and prevention of different forms of violence. Furthermore, the Commissioner for Refugees and Migration undertakes awareness-raising activities in this respect and, inter alia, supports programmes of the Roma organisations focused to reintegration of returnees, as well as organises awareness-raising campaigns for the Roma and their inclusion in labour market.

The report also provides specific information with regard to anti-trafficking and relevant activities of the Centre for the Protection of Victims of Human Trafficking in this respect, such as training, awareness-raising and reporting activities, as well as carrying out field actions.

In its previous conclusion, the Committee also asked for complete and up-to-date information concerning the legal framework and practical policies undertaken to combat misleading propaganda concerning immigration and emigration. The report does not address

this issue. The Committee thus recalls its request asks for comprehensive description of any actions targeted against misleading propaganda, including legal and practical measures to tackle racism and xenophobia. Meanwhile, it reserves its position on this point.

Conclusion

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

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

Paragraph 2 - Departure, journey and reception

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

Immediate assistance offered to migrant workers

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

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

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

The Committee assessed the situation in its previous conclusion (Conclusions 2011) and found it to be in conformity with the Charter. It requested further information on healthcare assistance available to all migrants upon arrival, as well as clarification of what provision assistance is offered to migrant workers in emergency situations. It also asked for statistics concerning the number of beneficiaries of such assistance.

The Committee notes from the previous report that social protection services may be provided in urgent situations at all hours, in order to secure safety in situations threatening to the life, health or development of beneficiaries. These services shall be provided by the social welfare centre and through mandatory cooperation with competent authorities and services. It asks the next report to confirm that this assistance is available also to migrant workers.

The current report does not, however, reply to the Committee's query about the 2014 Migration Integration Policy Index report "Regional MIPEX Assessment of FYROM, Croatia, Serbia and Bosnia and Herzegovina" that foreigners in Serbia do not have equal access to social security and health care, unless their country of origin has signed international agreements. It asks again that the next report provides comprehensive information on the access to healthcare for migrant workers and their families. Should the next report not provide comprehensive information in this respect, there will be nothing to establish that the situation is in conformity with the Charter on this point.

Services during the journey

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

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

Conclusion

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

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

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

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

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

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

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

Upon the first examination of the situation in 2015, the Committee could not reach its conclusion, as the report provided no information on cooperation between social services of emigration and immigration states (Conclusions 2015).

The report states that centres for social work and other social welfare institutions cooperate with social welfare institutions abroad, when that is required for the purpose of the protection of the rights of migrants.

While positive, this information cannot be regarded as sufficient to enable the Committee to comprehensively assess the situation under Article 19§3 of the Charter. To this aim, the Committee needs to know, in particular:

- the form and nature of contacts and information exchanges established by social services in emigration and immigration countries;
- measures taken to establish such contacts and to promote the cooperation between social services in other countries;
- international agreements or networks, and specific examples of cooperation (whether formal or informal) which exist between the social services of the country and other origin and destination countries;
- whether the cooperation extends beyond social security alone (for example in family matters);
- examples of cooperation at a local level and any instances where such cooperation has occurred.

The Committee asks the next report to provide detailed reply to these questions. In the meantime, in the absence of information on these issues, the Committee finds that it has not been established that the cooperation between social services is in line with the requirements of Charter.

Conclusion

The Committee concludes that the situation in Serbia is not in conformity with Article 19§3 of the Charter on the ground that it has not been demonstrated that the cooperation between social services in emigration and immigration countries is sufficiently established and promoted.

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

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

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

Remuneration and other employment and working conditions

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

The Committee has assessed the legal framework guaranteeing equality regarding remuneration and other employment and working conditions in its previous conclusion (Conclusions 2011). It asked whether vocational training with a view to improving the skills and opportunities of workers was available on the same basis for migrants and nationals.

The report confirms that the Labour Code prohibits discrimination of migrant workers with respect to education, training and professional development. The Committee considers that the situation is in conformity with the Charter on this point.

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

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

The report provides that the Constitution and the Labour Law Code guarantee freedom of trade union association. The Committee asks whether migrant workers enjoy the benefits of collective bargaining on the same footing as nationals. It also repeats its question concerning legal status of workers posted from abroad and what legal and practical measures were taken to ensure equal treatment in matters of trade union membership and collective bargaining.

Should the next report fail to provide the information requested, the Committee considers that there will be nothing to demonstrate that the situation in Serbia is in conformity with Article 19§4 of the Charter.

Accommodation

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

In its previous conclusion (Conclusions 2011), in view of the lack of information on this aspect, the Committee asked how the right to accommodation of migrant workers and their families was ensured both in law and practice. The report still does not provide any information on migrant workers' access to accommodation and thus the Committee considers that it has not been demonstrated that the situation is in conformity in this respect.

Monitoring and judicial review

The Committee recalls that it is not enough for a government to demonstrate that no discrimination exists in law alone but also that it is obliged to demonstrate that it has taken

adequate practical steps to eliminate all legal and de facto discrimination concerning the rights secured by Article 19§4 of the Charter (Conclusions III (1973), Statement of interpretation).

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

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

The Committee asked previously (Conclusions 2011) what institutions were responsible for the monitoring of anti-discrimination legislation in relation to labour and employment. It requested relevant statistics concerning the activity of such institutions and asked for information concerning the measures undertaken to secure equality of treatment in practice. Furthermore it asked whether complainants have access to a court system to enforce their rights.

No reply to the Committee's questions was submitted. The Committee recalls its request for information and underlines that should the next report fail to provide it, there will be nothing to demonstrate that the situation in Serbia is in conformity with Article 19§4 of the Charter on this point.

Conclusion

The Committee concludes that the situation in Serbia is not in conformity with Article 19§4 of the Charter on the ground that it has not been established that migrant workers benefit from access to housing on the equal footing with nationals.

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

Paragraph 5 - Equality regarding taxes and contributions

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

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

The Committee has assessed the situation in its previous conclusion (Conclusions 2015) and found it to be in conformity with the requirements of the Charter. It noted, in particular, that the Law on Personal Income Tax did not discriminate between Serbians and nationals of any other country with regard to tax rates. The Committee asked what other contributions or taxes apply, and whether nationals of other countries are subject to any differing obligations.

The report does not directly address the issue of dues or contributions payable in respect of employed persons. It solely states that non-nationals are equally entitled to unemployment benefits as nationals.

The Committee thus repeats its request for comprehensive information concerning the regime of employment taxes, dues and contributions applicable in Serbia. It considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation is in conformity with Article 19§5 of the Charter.

Conclusion

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

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

Paragraph 6 - Family reunion

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

Scope

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

In its previous conclusion (Conclusions 2015), the Committee notes that family members of foreigners entitled to temporary residence may joined them in Serbia. It asked whether there were age, dependency or other requirements for eligibility of children. In reply, the report states that the eligible family members are children born in and out of wedlock, adoptive children, spouses, cohabiting partners, parents and adoptive parents. By way of derogation, other persons may be recognised as family members. The Committee considers this scope to be in conformity with the requirements of the Charter.

Conditions governing family reunion

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

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

The Committee noted in its previous conclusion (Conclusions 2015) that the Law on Foreigners authorised the refusal of entry or cancellation of a visa where the entrant did not have a certificate of vaccination or other proof of good health, when arriving from areas affected by an epidemic of infectious diseases. It asked for confirmation of which diseases might lead to refusal of entry for a family member pursuant to these provisions. The report does not address this issue. The Committee recalls that a state may not deny entry to its territory for the purpose of family reunion to a family member of a migrant worker for health reasons. A refusal on this ground may only be admitted for specific illnesses which are so serious as to endanger public health (Conclusions XVI-1 (2002), Greece). In the light of the lack of sufficient information, it considers that it has not been demonstrated that the situation is in conformity with the Charter on this point.

As to the means requirement for a family reunion, the Committee asked in the previous conclusion what threshold was required to demonstrate that the sponsoring person could bring in the family or certain family members and whether the income derived from social benefits could be taken into account. The report does not provide any information in this respect. Accordingly, the Committee considers that it has not been demonstrated that the level of means required to bring in the family or certain family members is not so restrictive as to prevent any family reunion.

The Committee has previously considered that the situation in Serbia was not in conformity with the Charter on the ground that family members of a migrant worker are not granted an independent right to stay after exercising their right to family reunion. The report does not reply to this finding of non-conformity. However, the Committee notes from the report submitted by the Governmental Committee of the European Social Charter concerning conclusions 2015, that the Representative of Serbia said that in 2016 a new law had been adopted affecting the rights of family members of a migrant worker. The new law granted an independent right of residence also to family members of a migrant worker. The Committee asks the next report to confirm that the new provisions comply with the requirements of the European Social Charter and to provide more detailed information in this respect.

Remedy

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

The Committee asked about the availability of such remedy in its previous conclusion. The report does not provide any information in this respect. Accordingly, the Committee considers that it has not been demonstrated that the situation is in conformity with the Charter on this point.

Conclusion

The Committee concludes that the situation in Serbia is not in conformity with Article 19§6 of the Charter on the ground that it has not been established that:

- a family member of a migrant worker may not be denied entry to Serbia for the purpose of family reunion for health reasons;
- the level of means required to bring in the family or certain family members is not so restrictive as to prevent any family reunion;
- the restrictions on the exercise of the right to family reunion are subject to an effective mechanism of appeal or review.

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

Paragraph 7 - Equality regarding legal proceedings

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

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).

In the previous conclusion (Conclusions 2015) the Committee requested information concerning the treatment of migrant workers in legal proceedings, in particular their access to free legal advice and interpretation where the interests of justice require.

The Committee recalls that states must show that the national situation is in conformity with the Charter. In the event of repeated absence of information, the Committee will conclude that there is failure to comply. The report submits that the Free Legal Aid Law has not been adopted and that asylum seekers are entitled to be informed about any associations offering assistance and information. However, no further information has been provided, which would enable the assessment whether migrant workers enjoy equality regarding legal proceedings.

Conclusion

The Committee concludes that the situation in Serbia is not in conformity with Article 19§7 of the Charter on the ground that it has not been established that equal treatment in respect of the right to legal aid is guaranteed to migrant workers.

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 Serbia.

General principles

The Committee has previously 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' behavior, 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).

Guarantees concerning deportation

In its previous conclusion (Conclusions 2015), the Committee has found the situation not to be in conformity with the Charter, on account that a migrant worker might be expelled where there existed reasonable doubt that he/she would take advantage of the stay for purposes other than those declared.

The report does not make clear whether this situation has changed. The Committee notes, however, from the report of the Governmental Committee concerning conclusions 2015 (GC(2016)22) that in 2016 a new law was adopted affecting the rights of migrant workers and strengthening their protection from expulsion. Furthermore, a complementary decree was to be published by the end of 2017.

The Committee requests the next report to provide a detailed description of the new legal framework, in particular replying to its questions which remain open since the previous examination:

- whether migrants served with expulsion orders have a right to appeal to a court or other independent body which, in determining whether a migrant should be expelled, takes into account all aspects of the non-national's behaviour, as well as the circumstances and the length of time of his/her presence in the territory of the state;
- whether recourse to social assistance may form a ground of expulsion under Serbian law or practice;
- whether risk to public health may constitute a ground for expulsion.

Conclusion

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

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

Paragraph 9 - Transfer of earnings and savings

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

The Committee recalls that this provision obliges States Parties not to place excessive restrictions on the right of migrants to transfer earnings and savings, either during their stay or when they leave their host country (Conclusions XIII-1 (1993), Greece).

In the previous conclusion (Conclusions 2015), the Committee noted that there were no restrictions on amount of money which could be brought to Serbia (Conclusions 2015). However, it deferred its conclusion, pending information on any restrictions on the financial transfers for migrant workers from Serbia to other countries.

In reply, the report states that a right to free management of wages and savings is guaranteed to all non-nationals.

The Committee furthermore referred to its Statement of Interpretation on Article 19§9 (Conclusions 2011), affirming that the right to transfer earnings and savings includes the right to transfer movable property of migrant workers. It asked whether there were any restrictions in this respect. The report does not address this issue.

The Committee acknowledges the fact that there appears to be no restrictions on money transfers for migrant workers. However, it still asks the next report to provide more detail on legal and practical framework applicable in this respect, as it has not yet have had an opportunity to assess the situation in full. It also repeats its question about any possible restrictions on transfer of movable property.

The Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Serbia is in conformity with Article 19§9 of the Charter.

Conclusion

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

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

Paragraph 10 - Equal treatment for the self-employed

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

On the basis of the information in the report the Committee notes that there continues to be no discrimination in law between migrant employees and self-employed migrants in respect of the rights guaranteed by Article 19.

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

The Committee has found the situation not to be in conformity with Articles 19§3, 19§4, 19§6 et 19§7. Accordingly, for the same reasons as stated in the conclusions on the abovementioned Articles, the Committee concludes that the situation in Serbia is not in conformity with Article 19§10 of the Charter.

Conclusion

The Committee concludes that the situation in Serbia is not in conformity with Article 19§10 of the Charter as the grounds of non-conformity under Articles 19§3, 19§4, 19§6 et 19§7 apply also to self-employed migrants.